

**COURT OF APPEAL OF ALBERTA****Form AP-5**  
[Rule 14.87]

COURT OF APPEAL FILE NUMBER: 2301-0144AC

TRIAL COURT FILE NUMBER: N/A

REGISTRY OFFICE: CALGARY

PLAINTIFF/APPLICANT: MICHAEL JUDD

STATUS ON APPEAL: APPELLANT

DEFENDANT/RESPONDENT: ALBERTA ENERGY  
REGULATOR and PIERIDAE  
ALBERTA PRODUCTION LTD.

STATUS ON APPEAL: RESPONDENTS

DOCUMENT: **FACTUM**




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Appeal from the Decision of  
the Alberta Energy Regulator  
Dated the 19th day of May, 2023

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**FACTUM OF THE APPELLANT**


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## PART 1 – STATEMENT OF FACTS

### A. HISTORY OF EVENTS

1. On February 19, 2021, Pieridae Alberta Production Ltd. [**Pieridae**] submitted application 31097955 to the Alberta Energy Regulator [**Regulator**] under [AER Directive 056](#) *Energy Development Applications and Schedules* [**Directive 056**] for a licence to construct and operate a pipeline to transport sour natural gas with an H<sub>2</sub>S concentration of 320 mol/kmol (32%).<sup>1</sup>
2. The Appellant filed a Statement of Concern with the Regulator on March 20, 2021, objecting to application 31097955.<sup>2</sup>
3. On August 16, 2021, the Regulator dismissed the Appellant’s Statement of Concern, approved application 31097955, and issued Pipeline Licence 62559.<sup>3</sup>
4. In a decision issued on January 19, 2022, the Regulator determined that the Appellant is directly and adversely affected by the decision to issue Pipeline Licence 62559 and granted the Appellant a regulatory appeal hearing (Regulatory Appeal 1935549) in relation to the issuance of Pipeline Licence 62559.<sup>4</sup>
5. In Regulatory Appeal 1935549, the Regulator will decide whether to confirm, vary, suspend, or revoke its decision to issue Pipeline Licence 62559.
6. On April 13, 2023, the Appellant filed a motion [**Appellant’s Motion**] with the Regulator in Regulatory Appeal 1935559 seeking disclosure and access to information collected, received, assessed, compiled or produced by the Regulator under [AER Directive 067](#): *Eligibility Requirements for Acquiring and Holding Energy Licences and Approvals*<sup>5</sup> [**Directive 067**] and [AER Directive 088](#): *Licensee Life-Cycle Management*<sup>6</sup> [**Directive 088**]

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<sup>1</sup> Appellant’s Extracts of Key Evidence at 4, which was attached as Exhibit “A” to an affidavit of the Appellant dated October 11, 2022 and filed with the Appellant’s Motion.

<sup>2</sup> Appellant’s Extracts of Key Evidence at 4, *ibid*.

<sup>3</sup> Appellant’s Extracts of Key Evidence at 4, *ibid*.

<sup>4</sup> Appellant’s Extracts of Key Evidence at 6, *ibid*.

<sup>5</sup> [AER Directive 067](#): *Eligibility Requirements for Acquiring and Holding Energy Licences and Approvals*, at Appendix A attached to this Factum.

<sup>6</sup> [AER Directive 088](#): *Licensee Life-Cycle Management*, at Appendix B attached to this Factum.

in relation to Application 31097955 and Pipeline Licence 62559, and in relation to a holistic licensee assessment of Pieridae and its eligibility to acquire and hold a licence for energy development in Alberta.<sup>7</sup>

7. On May 19, 2023, the Regulator denied the Appellant's Motion [**Motion Decision**].<sup>8</sup>
8. On October 20, 2023, Justice A. Kirker granted permission to the Appellant to appeal the Motion Decision before this Court [**Leave Decision**].<sup>9</sup>
9. On January 16, 2024, the Regulator adjourned the proceedings of Regulatory Appeal 1935559 until after this Court renders its decision in this appeal.

## **B. THE DECISIONS**

10. In the Motion Decision, the Regulator denied the Appellant's Motion on the basis that a licensee eligibility determination and holistic assessment under Directives 067 and 088 is separate and distinct from the application process under Directive 056 for a licence under the *Pipeline Act*.
11. In the Leave Decision, Justice A. Kirker identified the question of law arising out of the Motion Decision as the following:

When the Regulator considered whether the information requested by the Appellant was relevant and material to the issues in Regulatory Appeal 1935559 did the Regulator err in law by effectively confining itself to the information obtained by the Regulator under Directive 056?<sup>10</sup>

## **PART 2 – GROUNDS OF APPEAL**

12. The Appellant appeals the Motion Decision on the following grounds:
  - a. the Regulator erred in law by failing to interpret applicable legislation in a manner that accords with a literal, contextual, or purposive approach, all of which indicate conclusively that a decision by the Regulator to grant or deny an application for a

<sup>7</sup> Appellant's Extracts of Key Evidence at 10 - 13.

<sup>8</sup> Appeal Record at 8 – 14.

<sup>9</sup> *Judd v Alberta Energy Regulator*, [2023 ABCA 296](#).

<sup>10</sup> *Judd v Alberta Energy Regulator*, [2023 ABCA 296](#) at para [12](#).

pipeline licence includes, and is integrated with, a licence eligibility determination and holistic assessment under Directives 067 and 088; and

- b. the Regulator erred in law by failing to comply with its duty of procedural fairness owed to the Appellant whose rights, privileges or interests are directly affected by the decision to issue Pipeline Licence 62559, to ensure that the Appellant has a full and complete opportunity to know and meet the case against him in an adjudicative hearing.

### **PART 3 – STANDARD OF REVIEW**

13. The standard of review for questions of law arising from the Motion Decision is correctness.<sup>11</sup>

### **PART 4 – ARGUMENT**

- A. **The Regulator erred in law by failing to interpret applicable legislation in a manner that accords with a literal, contextual, or purposive approach, all of which indicate conclusively that a decision by the Regulator to grant or deny an application for a pipeline licence includes, and is integrated with, a licence eligibility determination and holistic assessment under Directives 067 and 088.**
14. The legislative framework for Regulatory Appeal 1935559 and the Motion Decision includes the following enactments:
  - a. *Responsible Energy Development Act*, [SA 2012, c R-17.3 \[REDA\]](#);
  - b. *Pipeline Act*, [RSA 2000, c P-15](#), and the *Pipeline Regulation*, [Alta Reg 91/2005](#);
  - c. AER Directives 056, 067 and 088.
15. The Regulator’s conclusion that a licensee eligibility determination and holistic assessment under Directives 067 and 088 is separate and distinct from the application process under

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<sup>11</sup> *Canada (Minister of Citizenship and Immigration) v Vavilov*, [2019 SCC 65](#) at para 37.

Directive 056 for a licence under the *Pipeline Act* is manifest in three statements made by the Regulator in the Motion Decision:

- a. Determination of licence eligibility under Directive 067 is a separate regulatory process from deciding an application for a new licence under the *Pipeline Act*;<sup>12</sup>
  - b. A licensee's licence eligibility is not determined anew with every application for a new licence;<sup>13</sup>
  - c. While a licence transfer application will trigger a holistic licensee assessment of both the transferor and transferee, this is not the case for an application for a new licence.<sup>14</sup>
16. The Appellant submits each of these three statements in the Motion decision are inconsistent with a literal, contextual and purposive interpretation of applicable legislation, and accordingly are incorrect applications of the law.

**Determination of licence eligibility under Directive 067 is integrated with a decision made on an application for a new licence under the *Pipeline Act***

17. The Regulator's statement that the determination of an eligibility assessment under Directive 067 is a separate regulatory process from deciding an application for a new licence under the *Pipeline Act* is inconsistent with a literal, contextual, and purposive reading of section 21(1) of the *Pipeline Act*, section 2.1 of the *Pipeline Regulation*, and Directive 056.
18. A literal reading of section 21(1) of the *Pipeline Act* explicitly integrates an eligibility assessment with the application for, and holding of, a pipeline licence: "No person shall acquire or hold a licence unless the person meets the eligibility requirements set out in the rules . . ." (emphasis added).
19. A literal reading of section 2.1 of the *Pipeline Regulation* explicitly attaches the licensee eligibility requirement in Directive 067 to an application for a pipeline licence:

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<sup>12</sup> Appeal Record at 11.

<sup>13</sup> Appeal Record at 11.

<sup>14</sup> Appeal Record at 11.

Eligibility to hold a licence

2.1(1) An applicant must meet the licence eligibility requirements set out Directive 067 in order to be eligible to hold a licence under the Act.

(2) If an applicant meets the licence eligibility requirements of Directive 067 to the satisfaction of the Regulator, the Regulator may grant licence eligibility subject to any restrictions, terms or conditions the Regulator considers appropriate.

(3) If an applicant does not meet the licence eligibility requirements of Directive 067 to the satisfaction of the Regulator, the Regulator may refuse to grant licence eligibility.

(4) The Regulator may revoke or restrict the licence eligibility of an applicant if the applicant fails to acquire licences under the Act within a year of the day of the licence eligibility being granted by the Regulator.

(5) A licensee must continue to meet the licence eligibility requirements of Directive 067.

(6) The Regulator may restrict a licensee’s eligibility to hold a licence if a licensee does not meet the licence eligibility requirements of Directive 067. (emphasis added)

20. A contextual reading of these sections, along with Directive 056, shows that reference to ‘applicant’ in section 2.1 of the *Pipeline Regulation* is intended as a reference to an applicant for a pipeline licence:
- a. the *Pipeline Act* references the word ‘applicant’ in sections 18(5) and 51(3), and only in relation to an application for a licence or the transfer of a licence;
  - b. In addition to section 2.1, the *Pipeline Regulation* references the word ‘applicant’ in sections 4(1), 10, 80(1), and all in relation to a licence;
  - c. Section 2.2.1 of Directive 056 provides that “the AER cannot consider a licence application unless the applicant and all consultants have a valid BA code and the applicant has obtained licensee eligibility from the AER (see Directive 067)”.
21. A literal and contextual reading of the applicable legislation confirms that an eligibility assessment is a determination by the Regulator that applies to an applicant for a pipeline licence, and is not a separate regulatory process unto itself.
22. Section 3 of Directive 067 connects an eligibility assessment with a decision to grant or deny a licence application. This section explicitly sets out how the connection is implemented as restrictions, terms and conditions where an applicant or licensee poses an ‘unreasonable risk’



under criteria assessed by the Regulator pursuant to sections 4 and 5 of Directive 067, including additional scrutiny during an application for a licence:

Restrictions, terms, and conditions may include

- the types of licences or approvals that may be held,
- the number of licences or approvals that may be held,
- additional scrutiny required at time of application for or transfer of a licence or approval,
- requirement to provide security,
- requirements regarding the minimum or maximum working interest percentage permitted,
- a requirement to address outstanding noncompliances of current or former AER licensees that are directly or indirectly associated with the applicant or its directors, officers, or shareholders, and
- anything else the AER considers appropriate in the circumstances. (emphasis added)

23. The foregoing demonstrates clear legislative intention that a decision by the Regulator to grant or deny an application for a pipeline licence includes, and is integrated with, a licence eligibility determination under Directive 067.
24. There is no purpose for a licensee eligibility determination under Directive 067 in the absence of an application for a licence to develop an energy resource (such as a pipeline licence).

**Licence eligibility is a continuing and ongoing determination applicable to a licensee**

25. The Regulator’s statement that licence eligibility is not determined anew with every application for a new licence is inconsistent with a literal reading of section 2.1 of the *Pipeline Regulation* and section 5 of Directive 067. It is also not in accordance with the purpose of the eligibility determination as evidenced in statements made by the Minister of Energy and the Regulator itself.
26. A literal reading of section 2.1(5) of the *Pipeline Regulation* explicitly states that the eligibility determination is a persistent and ongoing requirement: “[a] licensee must continue to meet the licence eligibility requirements of Directive 067.” (emphasis added)
27. A literal reading of section 5 in Directive 067 also explicitly states that the eligibility determination is a persistent and ongoing requirement: “All existing licensees or approval

holders must meet licence eligibility requirements (section 4) on an ongoing basis and ensure that the information the AER has on file is kept accurate.” (emphasis added).

28. It is absurd for the Regulator to conclude in the Motion Decision that licence eligibility is not determined anew with every application for a new licence in the face of explicit legislative text that establishes an obligation of a licensee to ‘continue to meet’ eligibility requirements on an ‘ongoing basis’.
29. The Regulator’s conclusion that licence eligibility is not determined anew with every application for a new licence is also contrary to the purpose of applicable legislation.
30. The integration of an eligibility determination with an application for a pipeline licence serves as the fundamental basis for the policy objective that an applicant seeking a licence for energy development in Alberta must demonstrate an ability to meet regulatory obligations, as recently expressed by the Minister of Energy in his direction to the Regulator in [Ministerial Order 043/2023](#):

Acquiring and holding a licence or approval for energy development in Alberta is a privilege and not a right.

Albertans expect assurance that companies that obtain licences are able to meet their obligations for the entire life cycle of the development, including during operation and up to and including the end-of- life of the projects.<sup>15</sup>

31. The Regulator also describes Directives 067 and 088 as integral components of its holistic assessment of the financial and operational capacity of applicants and licensees to meet their regulatory obligations throughout the entire development life-cycle:

The licensee capability assessment (LCA) is the backbone of our holistic assessment of companies throughout the energy development life cycle in the oil and gas sector. Introduced through Directive 088: Licensee Life-Cycle Management, the LCA considers a variety of factors to help us evaluate a company, including their financial and liability risk, their performance compared with similar companies, and other operations, closure, and administrative factors, with compliance history being considered throughout.

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<sup>15</sup> [Ministerial Order 043/2023](#) at Appendix C, attached to this Factum.

The information that feeds into the LCA comes from several sources, including financial information that companies are required to provide us through Directive 067.<sup>16</sup>

32. The Regulator’s conclusion that eligibility is not determined anew with every application for a new licence is inconsistent with, and frustrates the purpose of, evaluating companies in the oil and gas sector throughout the entire life-cycle of an energy development.
33. The foregoing demonstrates clear legislative intention that licence eligibility under Directives 067 and 088 is a continuing and ongoing determination applicable to a licensee.

**The holistic licensee assessment under Directive 088 applies to all regulatory decisions applicable to the licensee, and it is not restricted only to licence transfer applications**

34. The Regulator’s statement that the holistic assessment undertaken pursuant to Directive 088 will only be triggered by a licence transfer is inconsistent with the purpose of Directive 088, a literal reading of section 1.2 of the *Pipeline Regulation*, and any plausible understanding of the meaning of ‘holistic’.
35. The word ‘holistic’ connotes a broad, complete, and all-encompassing assessment, which is contrary to an assessment broken down into separate parts.
36. The Regulator describes the purpose of Directive 088 as follows:

It outlines how information, particularly financial, reserves, closure, and compliance information, will be used to enable the AER to assess the capabilities of licensees to meet their regulatory and liability obligations throughout the energy development life cycle; administer our liability management programs; and ensure the safe, orderly, and environmentally responsible development of energy resources in Alberta throughout their life cycle”.<sup>17</sup> (emphasis added)

37. Section 2.1 of Directive 088 states that the eligibility assessment informs regulatory decisions regarding a licensee, and the wording does not restrict this to licence transfers:

The licensee capability assessment (LCA) assesses the capabilities of licensees to meet their regulatory and liability obligations across the energy development life cycle. The

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<sup>16</sup> “Holistic assessment and Licensee Capability Assessment” (accessed 6 February 2024), online: Alberta Energy Regulator <https://www.aer.ca/regulating-development/project-closure/liability-management-programs-and-processes/holistic-assessment-and-licensee-capability-assessment>.

<sup>17</sup> “Directive 088: Licensee Life-Cycle Management” (accessed 6 February 2024), online: Alberta Energy Regulator <https://www.aer.ca/regulating-development/rules-and-directives/directives/directive-088>.

results from the LCA will feed into the broader assessment of the licensee, which will inform regulatory decisions regarding the licensee, including licence eligibility under Directive 067 and decisions under the programs described in this directive. (emphasis added)

38. Section 1.2(1) of the *Pipeline Regulation* states that a licensee shall comply with Directive 088. This section does not include words which limit this obligation to a licence transfer: “A licensee shall comply with the requirements of Directive 077 and Directive 088.”
39. The Regulator’s conclusion that a holistic assessment only applies to licence transfers has no support in a literal reading of applicable enactments and it is clear there is no basis in the *Pipeline Act* or the *Pipeline Regulation* for the Regulator’s position that a holistic assessment under Directive 088 applies to a licence transfer but not an application for a licence.

**The Regulator erred in law by effectively confining itself to the information obtained by the Regulator under Directive 056 and not all of the information obtained and assessed by the Regulator under Directives 067 and 088**

40. The Regulator provides no reasons, or any legislative interpretation whatsoever, in the Motion Decision to justify its decision to restrict itself to information collected under Directive 056 in denying the Appellant’s Motion.<sup>18</sup>
41. When a statutory decision-maker fails to grapple with the broader purpose of the legislative framework, they risk landing upon an incorrect interpretation of their statutory authority.<sup>19</sup>
42. A decision made by a statutory decision-maker must reveal proper and sufficient accounting for those considerations that are required by law,<sup>20</sup> accord with constraints imposed by the governing legislative framework,<sup>21</sup> and include information that is required by law to be applied in the decision-making process.<sup>22</sup>

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<sup>18</sup> Appeal Record at 8 – 14.

<sup>19</sup> *Ontario (Attorney General) v Ontario (Information and Privacy Commissioner)*, [2024 SCC 4](#) at paras [7](#), [21](#), [58](#).

<sup>20</sup> *Safe Food Matters Inc v Canada (Attorney General)*, [2022 FCA 19](#) at paras [47](#) - [57](#).

<sup>21</sup> *Safe Food Matters Inc v Canada (Attorney General)*, [2022 FCA 19](#) at paras [47](#) - [57](#).

<sup>22</sup> *Canada (Minister of Citizenship and Immigration) v Vavilov*, [2019 SCC 65](#) at para [108](#).

43. When a statutory decision-maker provides no reasons or description of an interpretive approach to justify its conclusion, this is indicative of an unreasonable decision. A decision devoid of the hallmarks of reasonableness is also indicative that the decision is incorrect.<sup>23</sup>
  44. The role of this Court pursuant to the standard of correctness is to undertake its own interpretation of the applicable legislative framework.<sup>24</sup>
  45. The proper approach to statutory interpretation involves deciphering the intent of the legislator by reading the words of an enactment in their entire context and according to their grammatical and ordinary sense, harmoniously with the scheme and purpose of the legislation and the intention of the legislator.<sup>25</sup>
  46. The Appellant submits that a literal, contextual and purposive reading of the applicable legislative framework for Regulatory Appeal 1935559 and the Motion Decision demonstrates conclusively that a decision by the Regulator to grant or deny an application for a pipeline licence includes, and is integrated with, a licence eligibility determination and holistic assessment under Directives 067 and 088.
  47. The law stipulates that every application for an energy development licence includes an eligibility determination and a holistic assessment under Directives 067 and 088. Therefore, the Regulator could not as a matter of law conclude that the Appellant's Motion was not relevant and material to Regulatory Appeal 1935559.
- B. The Regulator erred in law by failing to comply with its duty of procedural fairness owed to the Appellant whose rights, privileges or interests are directly affected by the decision to issue Pipeline Licence 62559, to ensure that the Appellant has a full and complete opportunity to know and meet the case against him in an adjudicative hearing.**

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<sup>23</sup> *Ontario (Attorney General) v Ontario (Information and Privacy Commissioner)*, [2024 SCC 4](#) at [73](#) - [74](#).

<sup>24</sup> *Dunsmuir v New Brunswick*, [2008 SCC 9](#) at para [50](#).

<sup>25</sup> *Rizzo & Rizzo Shoes Ltd (Re)*, [\[1998\] 1 SCR 27](#) at para [21](#).

48. This Court has previously observed that a regulatory hearing is an essential component of responsible energy development in Alberta where such development may have a disproportionate negative impact on those residing in the vicinity:

The development of Alberta's natural resources enriches the province as a whole, and provides significant economic benefits to the companies that develop those resources. Resource development can, however, have a disproportionate negative effect on those in the immediate vicinity of the development. The requirement for public hearings is to allow those "directly and adversely affected" a forum within which they can put forward their interests, and air their concerns. In today's Alberta it is accepted that citizens have a right to provide input on public decisions that will affect their rights.<sup>26</sup>

49. The ability of a directly affected person to put forward their interests and air their concerns about a decision to issue an approval for energy development is entirely dependent on the Regulator's legal obligation to provide that person with all information considered in making its decision to issue the licence.<sup>27</sup>
50. As indicated above, the applicable legislative framework governing the Regulator demonstrates that a decision by the Regulator to issue a pipeline licence under the *Pipeline Act* includes, and is integrated with, a determination of the continued eligibility of the applicant to hold a licence.
51. In deciding to grant or deny a pipeline licence application, the Regulator must undertake an eligibility determination and a holistic assessment of information collected and assessed in accordance with Directives 067 and 088; however, this information was never made available to the Appellant.
52. The Regulator produces a company-specific<sup>28</sup> holistic assessment of risk in accordance with Directive 088.
53. The Appellant submits that by denying him access to the Regulator's eligibility determination and holistic assessment of Pieridae under Directives 067 and 088, the

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<sup>26</sup> *Kelly v Alberta (Energy Resources Conservation Board)*, [2012 ABCA 19](#) at para [33](#); *Fort McMurray Métis Local Council 1935 v Alberta Energy Regulator*, [2022 ABCA 179](#) at para [22](#).

<sup>27</sup> *May v Ferndale Institution*, [2005 SCC 82](#) at para [92](#).

<sup>28</sup> Appellant's Extracts of Key Evidence at 14, which was attached as Exhibit "F" to an affidavit of the Appellant dated October 11, 2022 and filed with the Appellant's Motion.

Appellant is deprived of the opportunity to fully evaluate the extent of the direct and adverse impact of Application No. 31097955 and Pipeline Licence No. 62559 on him and to meaningfully provide input on a decision that affects his rights and interests.

**PART 5 – RELIEF SOUGHT**

54. The Appellant seeks an Order:
- a. granting this Appeal;
  - b. quashing the Motion Decision;
  - c. directing that the Regulator disclose and provide the Appellant with access to information collected, received, assessed, compiled or produced by the Regulator under AER Directives 067 and 088 in relation to Application 31097955 and Pipeline Licence 62559, and in relation to a holistic licensee assessment of Pieridae and its eligibility to acquire and hold a licence for energy development in Alberta;
  - d. granting costs to the Appellant.

**The estimated time for oral argument is 45 minutes.**

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 14TH DAY OF FEBRUARY 2024.



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Shaun Fluker  
Counsel for the Appellant

## TABLE OF AUTHORITIES

### Legislation

1. [AER Directive 056](#) *Energy Development Applications and Schedules*
2. [AER Directive 067](#) - *Eligibility Requirements for Acquiring and Holding Energy Licences and Approvals*
3. [AER Directive 088](#) - *Licensee Life-Cycle Management*
4. *Responsible Energy Development Act*, [SA 2012, c R-17.3](#)
5. *Pipeline Act*, [RSA 2000, c P-15](#)
6. *Pipeline Regulation*, [Alta Reg 91/2005](#)
7. Ministerial Order [043/2023](#)

### Judicial Decisions

8. *Judd v Alberta Energy Regulator*, [2023 ABCA 296](#)
9. *Canada (Minister of Citizenship and Immigration) v Vavilov*, [2019 SCC 65](#)
10. *Ontario (Attorney General) v Ontario (Information and Privacy Commissioner)*, [2024 SCC 4](#)
11. *Safe Food Matters Inc v Canada (Attorney General)*, [2022 FCA 19](#)
12. *Dunsmuir v New Brunswick*, [2008 SCC 9](#)
13. *Rizzo & Rizzo Shoes Ltd (Re)*, [\[1998\] 1 SCR 27](#)
14. *Kelly v Alberta (Energy Resources Conservation Board)*, [2012 ABCA 19](#)
15. *Fort McMurray Métis Local Council 1935 v Alberta Energy Regulator*, [2022 ABCA 179](#)
16. *May v Ferndale Institution*, [2005 SCC 82](#)



# **APPENDIX A**

# Directive 067

Release date: April 13, 2023

Effective date: April 13, 2023

Replaces previous edition issued April 7, 2021

## Eligibility Requirements for Acquiring and Holding Energy Licences and Approvals

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## 1 Introduction

Acquiring and holding a licence or approval for energy development in Alberta is a privilege, not a right. The *Oil and Gas Conservation Act*, *Pipeline Act*, *Geothermal Resource Development Act*, *Mineral Resource Development Act*, *Oil and Gas Conservation Rules*, *Pipeline Rules*, *Geothermal Resource Development Rules*, and *Brine-Hosted Mineral Resource Development Rules* contain requirements related to eligibility for acquiring and holding licences and approvals. This directive expands on those requirements.

This new edition complements new functionality in OneStop for submitting the required financial information (Schedule 3). New requirements have been added to clarify process and timing for licensees and parent companies.

To support the expansion of the AER's mandate into the regulation of geothermal resources and mineral resources, the directive was also amended to incorporate references to the various acts and rules.

## 2 Business Associate Codes

The *Oil and Gas Conservation Act*, *Pipeline Act*, *Geothermal Resource Development Act*, and *Mineral Resource Development Act* require that a person (which includes a corporation) hold a subsisting identification code in order to apply to the AER for a licence or approval under those acts. The AER has referred to these as business associate (BA) codes. The AER no longer issues BA codes. These are issued through Petrinex.

- 1) Any party that seeks to apply for and hold AER licences or approvals must first apply for and obtain a BA code through Petrinex ([www.petrinex.ca](http://www.petrinex.ca)). Parties who hold a BA code are not permitted to hold AER licences or approvals unless the AER has determined they are eligible to do so.

## 3 Licence Eligibility Types

The AER may grant licence eligibility with or without restrictions, terms, and conditions, or it may refuse to grant licence eligibility. There are three eligibility types:

- **No Eligibility:** Not eligible to acquire or hold licences or approvals for wells, facilities, or pipelines.
- **General Eligibility:** Eligible to acquire or hold licences and approvals for all types of wells, facilities, and pipelines.
- **Limited Eligibility:** Eligible to acquire or hold only certain types of licences and approvals, or eligibility is subject to certain terms and conditions.

Restrictions, terms, and conditions may include

- the types of licences or approvals that may be held,
- the number of licences or approvals that may be held,
- additional scrutiny required at time of application for or transfer of a licence or approval,
- requirement to provide security,
- requirements regarding the minimum or maximum working interest percentage permitted,
- a requirement to address outstanding noncompliances of current or former AER licensees that are directly or indirectly associated with the applicant or its directors, officers, or shareholders, and
- anything else the AER considers appropriate in the circumstances.

#### **4 Obtaining General Licence Eligibility**

Once a person has a BA code, they may apply to the AER for licence eligibility by submitting schedules 1 and 3 (and 2, if applicable) through the designated information submission system. Upon review of the information provided, the AER may request additional information, including reserves information. The AER may audit the information provided for accuracy and completeness at any time before or after granting eligibility.

Requests for licence eligibility that do not contain all the information required will be summarily closed.

The AER will assess the information provided in the application, along with any other relevant information, and will determine whether the applicant meets the eligibility requirements for acquiring and holding AER licences or approvals.

- 2) An applicant must be an individual or a corporation that meets the requirements of section 20 of the *Oil and Gas Conservation Act*, section 21 of the *Pipeline Act*, section 7(2) of the *Geothermal Resource Development Act*, or section 9(2) of the *Mineral Resource Development Act*.
- 3) An applicant must sign a declaration attesting to the truth and completeness of the application, consenting to the release and collection of compliance information regarding the applicant from other jurisdictions and regulators as applicable, and attorning to the jurisdiction of Alberta (Schedule 1).

#### 4.1 Residency Requirements

- 4) An applicant must
  - a) be resident in Alberta, as defined in section 1.020(2.1) of the *Oil and Gas Conservation Rules*, section 1(6) of the *Pipeline Rules*, section 2 of the *Geothermal Resource Development Rules*, and section 2 of the *Brine-Hosted Mineral Resource Development Rules*; or
  - b) appoint an agent that is resident in Alberta (schedule 2) and have that appointment approved by the AER, as required by section 91 of the *Oil and Gas Conservation Act*, section 19 of the *Pipeline Act*, section 20 of the *Geothermal Resource Development Act*, and section 49 of the *Mineral Resource Development Act*; or
  - c) be exempt from the resident/agent requirement (granted under specific circumstances set out in section 1.030 of the *Oil and Gas Conservation Rules*, section 1.1 of the *Pipeline Rules*, section 5 of the *Geothermal Resource Development Rules*, and section 6 of the *Brine-Hosted Mineral Resource Development Rules*).

For these purposes, “resident” means,

- in the case of an individual, having their home in and being ordinarily present in Alberta or,
  - in the case of a corporation, having a director, officer, or employee that has their home in and is ordinarily present in Alberta and is authorized to make decisions about the licensing and operating of the well, pipeline, or facility and about implementing the directions of the AER regarding the well, pipeline, or facility.
- 5) Both the applicant and the agent (if appointed) must meet all the licence eligibility requirements set out in this directive.

#### 4.2 Insurance

- 6) At the time of applying for licence eligibility, applicants must have and maintain comprehensive general liability insurance with minimum coverage of \$1 000 000.
- 7) Applicants must submit a certificate of proof of insurance or a statement of the insurer describing the coverage, effective date, and termination date of the insurance.
- 8) Should eligibility be granted, the licensee or approval holder must maintain reasonable and appropriate insurance coverage for the operations of the company, including
  - a) pollution coverage sufficient to cover the cost of removal and cleanup operations required as a result of an incident, and
  - b) sufficient coverage for loss or damage to property or bodily injury caused during operations.

9) Unless otherwise authorized, an applicant, licensee or approval holder must have insurance issued from a company registered in Alberta to provide insurance in Alberta.

10) Upon request, information regarding coverage and content of the insurance must be provided.

The AER may require the licensee or approval holder to obtain additional insurance; at all times the licensee is solely responsible for maintaining appropriate levels of insurance given the nature and scope of operations.

#### 4.3 Fee

For most licence eligibility types, a fee is required. The amount of the fee is prescribed in section 17.010 of the *Oil and Gas Conservation Rules*, Schedule 1 of the *Geothermal Resource Development Rules*, and Schedule 1 of the *Brine-Hosted Mineral Resource Development Rules* and may be waived or varied by the AER if circumstances warrant.

Applications that do not include the required fee will be summarily closed.

#### 4.4 Financial Information

Financial statements and financial summary (Schedule 3) will be used by the AER to

- assess licensee eligibility,
- assess the capabilities of licensees and approval holders to meet their regulatory and liability obligations throughout the energy development life cycle,
- administer our liability management programs, and
- ensure the safe, orderly, and environmentally responsible development of energy resources in Alberta, throughout their life cycle.

11) An applicant must submit a complete financial summary (Schedule 3) through the designated information submission system.

- a) Full audited financial statements must be submitted when available, matching the totals in Schedule 3. If audited statements are not available, those prepared by management may be acceptable.
- b) In the case of an applicant that is a new company with no financial history, details of financing must be provided (Schedule 3).
- c) If the financial records of the applicant are consolidated into another corporation's consolidated financial statements (the "parent corporation"), then a financial summary (Schedule 3) for the parent corporation and its consolidated financial statements must also be submitted.

Upon review of the information provided, the AER may request additional information. Financial information provided to the AER under this requirement will be kept confidential for the time period outlined in section 12.152(2) of the *Oil and Gas Conservation Rules*, section 94 of the *Geothermal Resource Development Rules*, and section 102 of the *Brine-Hosted Mineral Resource Development Rules*.

#### 4.5 Unreasonable Risk

12) An applicant must not, in the AER's opinion, pose an unreasonable risk.

In assessing whether the applicant, licensee, or approval holder poses an unreasonable risk, the AER may consider any of the following factors:

- failure to maintain in Alberta persons who are authorized to make decisions and take actions on behalf of the licensee or approval holder to address any matters or issues that arise in respect of the wells, pipelines, facilities, well sites, and facility sites of the licensee or approval holder
- the compliance history of the applicant, licensee, or approval holder, including its directors, officers, and shareholders in Alberta and elsewhere
- the compliance history of entities currently or previously associated or affiliated with the applicant, licensee, or approval holder or its directors, officers, and shareholders
- outstanding noncompliances of current or former AER licensees or approval holders that are directly or indirectly associated or affiliated with the applicant, licensee, or approval holder or its directors, officers, or shareholders
- the experience of the applicant, licensee, or approval holder and its directors, officers, and shareholders
- corporate and ownership structure
- working interest participant arrangements, including participant information and proportionate shares
- the financial health of the applicant, licensee, or approval holder and entities currently associated or affiliated with the applicant, licensee, or approval holder or its directors, officers, and shareholders
- the assessed capability of the applicant, licensee, or approval holder to meet its regulatory and liability obligations throughout the energy development life cycle, including financial capability
- the assessed ability of the applicant, licensee, or approval holder to provide reasonable care and measures to prevent impairment or damage in respect of a pipeline, well, facility, well site, or facility site

- outstanding debts owed to AER or the Orphan Fund by the applicant, licensee, or approval holder, or by current or former AER licensees or approval holders that are directly or indirectly associated or affiliated with the applicant, licensee, or approval holder, or its directors, officers, or shareholders
- outstanding debts owed for municipal taxes, surface lease payments, or public land disposition fees or rental payments by the applicant, licensee, or approval holder, or by current or former AER licensees or approval holders that are directly or indirectly associated or affiliated with the applicant, licensee, or approval holder, or its directors, officers, or shareholders
- being or having been subject to or initiating insolvency proceedings (which includes bankruptcy proceedings, receivership, notice of intention to make a proposal under the *Bankruptcy and Insolvency Act*, proceedings under *Companies Creditors Arrangement Act*)
- involvement of the applicant, licensee, or approval holder's directors, officers, or shareholders in entities that have initiated or are or have been subject to insolvency proceedings
- cancellation of or significant reduction to insurance coverage
- naming of directors, officers, or shareholders of the applicant, licensee, or approval holder in a declaration made under section 106 of the *Oil and Gas Conservation Act*, section 51 of the *Pipeline Act*, section 25 of the *Geothermal Resource Development Act*, and section 24 of the *Mineral Resource Development Act*
- any other factor the AER considers appropriate in the circumstances

## 5 Maintaining Eligibility

- 13) All existing licensees or approval holders must meet licence eligibility requirements (section 4) on an ongoing basis and ensure that the information the AER has on file is kept accurate.
- 14) Licensees and approval holders must annually submit financial statements (audited or management-prepared) for both the licensee and parent corporation (if applicable) and a financial summary (Schedule 3) through the designated information submission system. These are due the earliest of the following dates:
- a) once finalized,
  - b) within 180 days of fiscal year end, or
  - c) as directed by the AER.

Licensees are responsible for ensuring that submissions are received before the deadlines.

Licensees should verify that the data has been received by checking OneStop before the deadlines.



- 15) Licensee and approvals holders must have and maintain at all times an official regulatory email address that is frequently monitored for regulatory communication with the AER.
- 16) Licensees and approval holders must notify the AER immediately in any of the following cases:
- a) General or emergency contact information has changed (submit updated Schedule 1, sections A and B).
  - b) Insurance coverage is cancelled or significantly reduced.
  - c) They are ceasing their operations.
  - d) They initiate or are subject to insolvency proceedings, liquidation, or dissolution.

The AER encourages any licensee considering ceasing its operations, initiating insolvency proceedings, liquidation, or dissolution to contact the AER and to engage their working interest participants in their plans.

- 17) Licensees and approval holders must notify the AER within 30 days of defaulting on debt or violating debt covenants.
- 18) An updated Schedule 1 and any associated documents must be provided within 30 days of any material change, which includes the following:
- a) changes to legal status and corporate structure
  - b) addition or removal of a related corporate entity
  - c) amalgamation, merger, or acquisition
  - d) changes to directors, officers, or shareholders directly or indirectly holding 20 per cent or more of the outstanding voting securities of the licensee or approval holder
  - e) plan of arrangement or any other transaction that results in a significant change to the operations of the licensee
  - f) the sale of all or substantially all of the licensee's assets
  - g) a significant change to working interest participant arrangements, including participant information and proportionate shares
  - h) the licensee or approval holder has initiated or is subject to liquidation, dissolution, or insolvency proceedings, or has ceased their operations
  - i) cancellation of or significant reduction to insurance coverage

Before effecting a material change, a licensee or approval holder may request an advance determination on whether the AER would consider the proposed change to result in the licensee or approval holder posing an unreasonable risk (see section 4.5).

The AER may request additional information following a material change to assess whether a licensee or approval holder poses an unreasonable risk (see section 4.5).

## **6 Restriction of Licence Eligibility**

There are three main circumstances in which the AER may revoke or restrict licence eligibility:

- Failure to provide complete and accurate information, or to update that information, as required and within the prescribed timelines.
- A finding by the AER that the licensee or approval holder poses an unreasonable risk.
- The licensee fails to acquire or hold licences or approvals within one year following granting of licence eligibility.

If a party already holds licences or approvals, licence eligibility will be restricted. If the party had general eligibility, this will be changed to limited eligibility, and additional terms or conditions may be imposed. If the licensee or approval holder has limited eligibility, licensee eligibility may be further restricted to impose additional terms or conditions.

If a party does not hold licences or approvals, licence eligibility will be revoked. The party will have to reapply under this directive for licence eligibility.

## **7 Application to Amend Eligibility**

Application to amend licence eligibility will require reapplication under this directive, which may include payment of an additional fee, and may result in the imposition of restrictions, terms, or conditions.

# **APPENDIX B**

# Directive 088

**Release date: February 13, 2023**

**Effective date: February 13, 2023**

**Replaces the previous edition released on December 1, 2021**

## Licensee Life-Cycle Management

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## 1 Introduction

This directive applies to energy infrastructure and sites regulated under the *Oil and Gas Conservation Act* and *Pipeline Act*.

This directive

- introduces a holistic assessment of a licensee’s capabilities and performance across the energy development life cycle, which will be supported by the licensee capability assessment (LCA);
- introduces the Licensee Management Program, which determines how licensees will be managed throughout the energy development life cycle;
- introduces the Inventory Reduction Program, which includes closure quotas and closure nomination;
- updates application requirements related to the licence transfer process; and
- describes security collection under this directive.

In this directive, closure means the phase of the energy resource development life cycle that involves the permanent end of operations, and includes the abandonment and reclamation of wells, well sites, facilities, facility sites, and pipelines.

This directive is being developed in phases and will replace *Directive 006: Licensee Liability Rating (LLR) Program*. Elements in *Directive 006* will remain in effect until that time.

This is one of several directives published by the AER that sets out liability management programs. The directive describes how information, particularly financial, reserves, closure, and compliance information, will be used to enable the AER to

- assess the capabilities of licensees to meet their regulatory and liability obligations throughout the energy development life cycle;
- administer our liability management programs; and
- ensure the safe, orderly, and environmentally responsible development of energy resources in Alberta throughout their life cycle.

### 1.1 AER Requirements

Requirements are mandatory. The term “must” indicates a requirement. When licensees are referenced in this directive it also includes approval holders. For ease of reference, requirements are numbered. Information on compliance and enforcement can be found on the AER website.

## 1.2 What's New in This Edition

This edition introduces the closure nomination component of the Inventory Reduction Program (see section 4.2). A number of administrative changes and clarifications were also made. Additional clarity on requirements for licensees, including guidance and processes, for components of the Inventory Reduction and Licensee Management Programs was provided throughout the directive.

## 2 Holistic Licensee Assessment

The AER will comprehensively assess the licensee to inform regulatory decisions regarding the licensee. This assessment uses a multifactor approach to assess the capabilities of licensees to meet their regulatory and liability obligations throughout the energy development life cycle: initiate, construct, operate, and close. This includes the following:

- the factors listed in section 4.5 of *Directive 067: Eligibility Requirements for Acquiring and Holding Energy Licences and Approvals* for determining whether a licensee poses an unreasonable risk
- licensee capability assessment factors (described in section 2.2)
- any other factors as appropriate in the circumstances

The AER may also consider additional information provided by the licensee throughout the life cycle, including applications, amendments, reports, and other submissions to the AER.

This assessment is to ensure the responsible management by the licensee of their liability from their collective wells, facilities, pipelines, and sites. The holistic licensee assessment will reoccur at various times as the licensee moves through the energy development life cycle.

### 2.1 Licensee Capability Assessment

The licensee capability assessment (LCA) assesses the capabilities of licensees to meet their regulatory and liability obligations across the energy development life cycle. The results from the LCA will feed into the broader assessment of the licensee, which will inform regulatory decisions regarding the licensee, including licence eligibility under *Directive 067* and decisions under the programs described in this directive.

#### 2.1.1 LCA Factors

The LCA uses various factors to identify risks posed by a licensee:

- financial health
- estimated total magnitude of liability (active and inactive), including abandonment, remediation, and reclamation

- remaining lifespan of mineral resources and infrastructure and the extent to which existing operations fund current and future liabilities
- management and maintenance of regulated infrastructure and sites, including compliance with operational requirements
- rate of closure activities and spending and pace of inactive liability growth
- compliance with administrative regulatory requirements, including the management of debts, fees, and levies

Each factor consists of various parameters (see *Manual 023*).

The data that feeds into the LCA are drawn from numerous sources available to the AER, including the financial information submitted under *Directive 067*.

The LCA will continue to evolve over time as the AER is able to enhance business intelligence and access more structured data. It is intended to be adaptive and remain relevant.

Each licensee will have access to their own LCA information. Financial and reserves information provided to the AER will be kept confidential for the period specified in section 12.152(2) of the *Oil and Gas Conservation Rules*.

- 1) Licensees must provide complete and accurate information as required by the AER for the holistic licensee assessment.

### **3 Licensee Management Program**

Under the Licensee Management Program, the results from the holistic licensee assessment will be used to identify those licensees that are or are likely to be at risk of not meeting their regulatory and liability obligations throughout the energy development life cycle. The AER will specifically engage and use appropriate regulatory tools or conduct compliance assurance activities with the licensee to address the risk. This may involve providing education or recommendations to follow industry best practices and, where appropriate, initiating specific regulatory actions.

- 2) When directed by the AER, the licensee must conduct and submit a site-specific liability assessment in accordance with *Directive 001: Requirements for Site-Specific Liability Assessments in Support of the ERCB's Liability Management Programs* or as otherwise directed.

Section 3 of *Manual 023* provides further details on the Licensee Management Program.

## 4 Inventory Reduction Program

The purpose of inventory reduction is to increase the amount of closure work occurring in Alberta, reduce liability, and to increase the amount of land being returned to equivalent capabilities. To do this, the AER has introduced two components under the inventory reduction program: closure quotas and closure nomination.

### 4.1 Closure Quotas

In the *Oil and Gas Conservation Rules (OGCR)* and the *Pipeline Rules*, the AER has the authority to establish “closure quotas,” meaning set minimum required amounts of closure work, money to be spent on closure activities, or both. The AER will set the following closure quotas for each licensee annually: mandatory closure spend and supplemental closure spend for each licensee.

The AER will annually publish industry-wide closure spend requirements. Licensee-specific mandatory and supplemental spends will be calculated and released through OneStop each year.

When an amalgamation of licensees occurs during a calendar year, the successor licensee will be provided an updated closure quota which will be the combined quotas of the separate licensees. This updated closure quota becomes the mandatory spend for the successor licensee.

- 3) Each licensee must meet their annual mandatory spend, and supplemental spend if applicable, as directed by the AER.
- 4) Each licensee must report to the AER in OneStop all its closure activities and closure spends for the previous calendar year by March 31 of every year, unless otherwise specified by AER requirements or as directed by the AER.
- 5) Each licensee must keep complete and accurate records of its closure activities and spending.
- 6) Licensees must provide information to the AER as requested for closure quotas.

The AER will determine a threshold for when licensees may elect to provide a security deposit in the full amount of their mandatory spend instead of achieving the mandatory spend through closure work (security deposit in lieu). This threshold will be assessed annually and identified in OneStop.

- 7) A licensee who meets the threshold and elects to provide a security deposit in lieu for a calendar year must provide the deposit (in the amount of the mandatory spend) to the AER by December 31 of the same calendar year.

If a licensee fails to meet requirements 3, 4, or 7, the licensee will be required to provide a security deposit in an amount determined by the AER based on the holistic licensee assessment. The AER may also take other regulatory actions to ensure compliance and achievement of outcomes.



## 4.2 Closure Nomination

Under section 3.016 of the *Oil and Gas Conservation Rules (OGCR)*, if a well or facility has been in an inactive or abandoned state for five or more years, an “eligible requester” can make a request to the AER for the licensee of the well or facility to prepare a closure plan.

As defined by section 3.016(2) of the *OGCR*, an “eligible requester” is one of the following:

- the landowner (if the well or facility is on private land)
- the minister or holder of certain *Public Lands Act* dispositions (if the well or facility is on public land),
- the Indian reserve as represented by the council of the band (if the well or facility is on an Indian reserve)
- the Métis settlement (if the well or facility is on a Métis settlement)
- the municipality (if the well or facility is on land owned by a municipality)

A well or facility that has been in an inactive or abandoned state for five years or more is considered eligible for the purpose of closure nomination. The AER will notify the licensee if a request for closure of a well or facility is received by the AER.

- 8) If an eligible requester requests closure of an eligible site, the licensee of the eligible site must prepare a closure plan, unless the AER directs otherwise.
- 9) The licensee must notify the AER and provide evidence within 30 calendar days of licensee notification if either the well or facility nominated for closure or the requester does not meet the eligibility criteria.

The AER has the authority under section 3.015 of the *OGCR* to require that a licensee submit its closure plan, and the AER can define the terms and conditions when approving a closure plan.

- 10) A closure plan must include a timeline to complete each closure activity described in table 1.

A licensee is required to choose one of three options for providing its closure plans to the AER once it has been prepared: “baseline closure plan,” “non-baseline closure plan,” or “proposal to defer the closure plan.”

It is expected that most licensees will be able to meet the closure activities and timelines of a baseline closure plan. The baseline closure plan will be the default approved closure plan that a licensee must meet unless and until the AER approves an alternative (e.g., non-baseline closure plan, proposal to defer closure plan).

If a licensee identifies circumstances that prevent them from meeting the prescribed baseline closure timelines, the licensee may select a non-baseline closure option that requires approval by

the AER. Examples of such circumstances might include a site requiring more than three years to complete remediation or a large site with more complex closure needs (e.g., facility). A licensee is required to provide justification to the AER's satisfaction why the baseline closure timelines cannot be met with the submission of their non-baseline closure plan.

Non-baseline closure plans must be approved by the AER for the alternative closure activity and timelines to apply. The approval of a non-baseline closure plan will specify dates for the completion of each closure activity. Non-baseline closure plans may require additional reporting. The baseline closure plan continues to apply to the site until the non-baseline closure plan is approved unless otherwise directed by the AER.

In rare cases, a third option of proposing to defer a closure plan may be selected. Selection of the "proposal to defer the closure plan" option is only available for wells and facilities that are transitioning to another purpose (e.g., geothermal, monitoring) or are attached to an active site. The licensee must justify to the AER's satisfaction why deferring the closure plan is appropriate. The baseline closure plan continues to apply to the well or facility until the proposal to defer a closure plan is approved or unless otherwise directed by the AER.

Section 4.3.3 of *Manual 023* describes the closure plan options in more detail, including the process for informing the AER of the licensee's selected option, the information required to support the licensee's chosen option, and process for reporting.

- 11) Within 90 calendar days of receiving a closure nomination notification for a well or facility, the licensee must select one of the closure plan options described above (baseline, non-baseline, or proposal to defer) and, if non-baseline or proposal to defer is selected, must provide evidence to support its selection.
- 12) A licensee who selects a baseline closure plan must complete the closure activities within the specified timelines as described in table 1.
- 13) A licensee who selects a non-baseline closure plan must submit its proposed closure plan at the time of selection. The plan must describe the circumstances of the site and propose alternative timelines to bring the closure activities defined in table 1 to completion. In some circumstances such as complex remediation, the AER may allow a licensee to use annual licence-specific closure quotas in lieu of timelines if there is appropriate evidence to show progress of the site to full closure.
- 14) A licensee who select a non-baseline closure plan must complete each closure activity within timelines defined in their approved closure plan and satisfy any other terms and conditions of approval.

**Table 1. Timelines for baseline closure plan closure activity**

Closure activity	Description	Maximum time to complete <sup>1,2</sup> (years)
Total well or facility abandonment	Well abandonment is completed per <a href="#">Directive O20: Well Abandonment</a> . Facility abandonment is complete.	3
Phase 1 environmental site assessment <sup>3</sup>	Completion of a Phase 1 environmental site assessment that satisfies the <i>Remediation Regulation</i> .	
Phase 2 environmental site assessment (if required) <sup>3</sup>	Completion of a Phase 2 environmental site assessment that satisfies the <i>Remediation Regulation</i> .	1 (if required)
Remediation (if required)	Complete remediation activities and submit a report that satisfies the <a href="#">Remediation Regulation</a> . <sup>3</sup>	2 (if required)
Revegetation Initiated	All reclamation activities prior to revegetation have been completed as required, including pre-reclamation assessments, replacement of soils, and recontouring.  The revegetation (e.g., seeding, tree planting) of the site has been started. The first seed application or planting cycle is complete, as required.	2
Reclamation certificate or letter of closure	A reclamation certificate application has been submitted to the AER, or a letter of closure has been provided.	5
Total time (from date of closure plan approval)		10-13 <sup>1</sup>

1 Total time may vary based on the results of environmental site assessment and the status of the licence when nominated.

2 The maximum time to complete each closure activity will be used to calculate a licence-specific date for completion of that activity based on the date a baseline closure plan is selected by the licensee.

3 If contamination is identified, a remedial action plan may be required under section 2.2(2) of the *Remediation Regulation*.

If a licensee identifies the potential for contamination through the completion of their Phase 1 environmental site assessment the licensee will be provided additional time to complete a Phase 2 environmental site assessment as per table 1. The results of the Phase 2 assessment may trigger section 2.2(1) of the *Remediation Regulation*; if so, the licensee must meet the associated requirements. If the site cannot be remediated in accordance with section 2.2(2) of the *Remediation Regulation* and within the baseline timeline, the licensee may be directed to use the non-baseline closure plan option. If unforeseen circumstances or a change in scope arises (e.g., the discovery of gas migration, necessary changes to contamination management), a licensee must provide evidence to support a request to change from the baseline closure option to an alternative option. The change from a baseline closure plan to a non-baseline closure plan, or proposal to defer closure, requires AER approval.

15) To request a change from a baseline closure plan to an alternate option, the licensee must submit a non-baseline closure plan or proposal to defer the closure plan, including evidence to support the change.

16) Licensees must report on the completion of each closure activity for the previous calendar year by March 31 of every year, unless otherwise specified by AER requirements or as directed by the AER.

17) Licensees must provide information to the AER as requested for closure nomination.

The AER has the authority to direct timing and priority of site closure work. The AER may direct closure if closure plans are not adhered to or if closure work is not progressing within baseline or otherwise approved closure timelines. In these cases, the new closure timelines ordered/approved by the regulator supersede any previously prepared closure plans.

18) If a well or facility with an eligible closure request or approved closure plan is transferred to another licensee or an amalgamation occurs, the new licensee of record must meet the requirements and associated timelines of the closure plan.

## 5 Licence Transfers

Agreements for the purchase and sale of AER-licensed wells, facilities, and pipelines do not result in a transfer of the associated licences until a licence transfer application is submitted to and approved by the AER.

AER licences with a licence status of Issued, Amended, Discontinued, Suspension, Abandoned, RecCertified, or RecExempt are eligible to be transferred. Licences with a licence status of Cancelled or Re-Entered are not eligible to be transferred.

A licence transfer application will trigger a holistic licensee assessment of both the transferor and transferee. This assessment will include reviewing abandoned, reclaimed, and reclamation-exempt sites to ensure they are held by a responsible party that can address, manage, and monitor current conditions or future issues related to public safety or the environment should they arise.

The AER will consider the entire application package of licences to be transferred and may reject a licence transfer application that does not include licences that have received reclamation certification or that are abandoned and classified as “reclamation exempt.” The AER will consider the results of this assessment and any other factors determined appropriate in making the decision to approve, approve with conditions, or deny a licence transfer application. The AER will process licence transfer applications as they are received.

For licences that have a public lands disposition that needs to be assigned or transferred, if either party has arrears in respect of any debt to the Crown or of any taxes owing to a municipality, the AER will reject the public lands application for assignment or transfer of the disposition as described in the *Public Lands Administration Regulation*, section 153.

A licence transfer application can be submitted by the transferor, the transferee, or an authorized agent or consultant acting on behalf of either party. The party initiating the submission is responsible for notifying the other party that the application has been submitted; the application must be accepted by both parties before it can be processed.

The AER will not accept a licence transfer application unless both the transferor and transferee have AER identification codes that permit the holding of all licence types contained within the licence transfer application. For further information regarding agent appointments, identification code requirements, and other eligibility requirements, refer to *Directive 067*.

It is the transferor's responsibility to ensure that all information relevant to the licences contained in a transfer application is updated in AER systems before the application is submitted.

- 19) An applicant must apply for a licence transfer and submit the numbers of all the licences proposed for transfer through the designated information submission system.
- 20) The application must include the BA code and contact information (including both an email address and phone number) for both the transferor and transferee.
- 21) If a licence transfer application includes inactive licences, the transferor must update their reported closure activities and spends in the designated information submission system before submitting the application.

The AER will not adjust a licensee's mandatory spend or retroactively adjust the closure spend reporting after a transfer is approved.

- 22) Before a licence transfer application will be accepted by the AER, both parties must make the declarations provided in appendix 1.
- 23) As part of a licence transfer application, parties must provide current information regarding each working interest participant, including the following:
  - a) full legal name of each working interest participant (which cannot be a partnership)
  - b) contact information for each working interest participant, including an email address
  - c) the percentages of working interest, totalling 100 per cent, for every well and facility included in the application
- 24) For licence transfer applications that include problem sites (see appendix 6 of *Directive 006*) or 10-well, 20-well, and 40-well equivalent non-sulphur recovery gas plants (see section 2.3 of *Directive 006*), any site-specific liability assessments submitted must have been completed within the previous three years, unless otherwise directed by the AER, and must be accompanied by an evaluation of cost changes that have occurred since the assessments were completed.

25) If one or both parties wish to withdraw a transfer application, they must submit a written request to the AER. Upon receipt of the request, the AER will process the application as withdrawn and will notify the licensees.

26) Licensees must provide information to the AER as requested for the transfer application.

The holistic licensee assessment is used to determine whether security deposits are required from the transferor or transferee and the amount of security as per section 6. To offset any potential increase in risk that may arise from a licence transfer, a transferor or transferee may be required, as a condition of approval, to provide a security deposit to the AER.

The AER does not provide a preliminary determination of expected security requirements. Security cannot be determined until the licence transfer application has been received and reviewed. Section 6.1.2 of *Manual 023* provides the ranges of security that may be required at time of transfer.

If a required security deposit is not received by the due date identified by the AER, the licence transfer application will be closed, and the transferor will remain the licensee.

The AER will convey its decision regarding a licence transfer application to both the transferor and the transferee. If a transferor or transferee is represented by an agent or uses the services of a consultant, the AER will also provide notice of its decision to the agent or consultant.

The licensee of record (transferor) remains responsible to comply with all applicable regulatory requirements for any well, facility, or pipeline in a licence transfer application until the AER approves the transfer. On approval of a licence transfer application, the new licensee of record (transferee) becomes responsible for all applicable regulatory requirements associated with any well, facility, or pipeline in the application as of the effective date of the transfer.

## 6 Security Deposits

Section 1.100 of the *OGCR* gives the AER broad authority to require security deposits across the energy development life cycle. Where security deposits are required under this directive, the AER will direct a licensee to provide security, specifying the amount and date due.

27) Security deposits must be provided as directed by the AER.

When considering whether to require security deposits and when determining the amount of security, the AER will consider the holistic licensee assessment. As a result of the assessment, the AER will apply further scrutiny on the potential need for security to mitigate the potential risks with a focus on the following LCA factors:

- financial health

- estimated total magnitude of liability
- remaining lifespan of mineral resources and infrastructure
- rate of closure activities and spending and pace of inactive liability growth

When security is determined to be required, the following factors may be used for calculating the amount of security that the AER could require:

- value of liability under *Directive 011*
  - marginal wells (wells producing 1.59 cubic metres of oil equivalent per day [ten barrels of oil equivalent per day] or less)
  - inactive wells (defined in *Directive 013*)
  - inactive facilities (defined as facilities with no activity for 12 months)
- value of *Directive 001* site-specific liability
- present value of future cash flows based on the reserves and economic analysis
- any other amount that AER considers appropriate in the circumstance

The maximum amount of security that may be required is the licensee's total liabilities, including the cost of providing care and custody and the cost to permanently end operations, which includes the abandonment and reclamation of the site.

A request for a refund of security collected under this directive will trigger a holistic assessment of the licensee. If the holistic assessment of the licensee indicates there is a risk and security is still required to offset the risk, security will not be refunded. If the holistic licensee assessment indicates that the risk has been sufficiently reduced, a refund or partial refund of security may be warranted.

For further information on the processes that apply when a security deposit is required or can be refunded, refer to *Directive 068: ERCB Security Deposits*.

## Appendix 1 Transfer Application Declaration

In submitting this application as **transferor** or **transferee**, you hereby declare the following:

- Your use of the confidential identification code and password<sup>1</sup> for submission of this application has been duly authorized by your company (transferor/transferee), and the confidential identification code and password used are equivalent to and have the same binding effect as a signature executed by a duly authorized representative of the transferor/transferee company.
- You have the authority to make these (and the following, if transferee) statements and thereby bind your company.
- The information in the application is complete and accurate.

In submitting this application as **transferee**, you declare that the transferee

- holds valid surface access rights for all wells, pipelines and, facilities included in this application;
- holds valid mineral rights for all licensed producing and inactive wells included in this application;
- has the right to produce, inject, or dispose of fluids for all licensed active and inactive wells included in this application;
- is a working interest participant in all wells and facilities included in this application; and
- will ensure that all applicable AER signage requirements are met as required, including erecting or changing signs to accurately reflect the new licensee name and contact, and accepts and assumes the responsibilities and obligations of a licensee as provided for in law, including but not limited to, the *Oil and Gas Conservation Act*, *Oil and Gas Conservation Rules*, *Pipeline Act*, *Pipeline Rules*, and AER directives and requirements.

For pipeline licence transfers only:

- The **transferor** hereby confirms that it has collected and retained all records required under the *Pipeline Rules* and *Canadian Standard Association Z662: Oil and Gas Pipeline Systems*. The transferor confirms that it has provided these records to the transferee by the effective date of the licence transfer.

The **transferee** hereby confirms that it has received all records required to be collected and retained under the *Pipeline Rules* and *Canadian Standard Association Z662: Oil and Gas Pipeline Systems* from the transferor. The transferee is responsible for producing these records on request by the AER. Failure to do so constitutes a noncompliance of AER requirements.

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<sup>1</sup> Used by authorized business associates to access the AER's designated information submission system.



# **APPENDIX C**



Office of the Minister

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**GOVERNMENT OF ALBERTA**

**DEPARTMENT OF ENERGY**

***RESPONSIBLE ENERGY DEVELOPMENT ACT***  
**S.A. 2012, c. R.17.3**

**MINISTERIAL ORDER 043/2023**

I, **PETER GUTHRIE**, Minister of Energy, pursuant to section 67 of the *Responsible Energy Development Act*, make the Municipal Tax Requirements for Approving Licences Direction, in the attached Appendix.

**DATED** at Edmonton, in the Province of Alberta, this 16 day of March, 2023.

A handwritten signature in blue ink, appearing to read "P. Guthrie".

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Honourable Peter Guthrie  
Minister of Energy

**APPENDIX**  
**LICENCES AND UNPAID MUNICIPAL TAXES**  
**PURPOSE**

The Minister of Energy is authorized by section 67 of the *Responsible Energy Development Act*, S.A 2012, c. R-17.3 (“REDA”) to give directions to the Alberta Energy Regulator (“the AER”) for the purpose of:

- a. Providing priorities and guidelines for the AER to follow in the carrying out of its power, duties and functions; and
- b. Ensuring the work of the AER is consistent with the program, policies and work of the Government of Alberta in respect of energy resource development, public land management, environmental management and water management.

Acquiring and holding a licence or approval for energy development in Alberta is a privilege and not a right.

Albertans expect assurance that companies that obtain licences are able to meet their obligations for the entire life cycle of the development, including during operation and up to and including the end-of-life of the projects.

Albertans expect that these obligations should not be avoided by transferring licences to companies to the effect that risk is transferred onto members of the public, including municipalities and taxpayers.

There is an unreasonable risk to members of the public, including municipalities and taxpayers, in the AER granting an application for, or a transfer of, a licence where the applicant or transferee has unpaid municipal taxes.

**DIRECTION TO THE AER**

When considering an application for approval of a well licence to permit the drilling of a new well, or the transfer of a well licence, under applicable energy resource enactments as defined in the REDA, the AER must also consider whether the applicant for the licence (“applicant”), the proposed transferor of a licence (“transferor”), or the proposed transferee of a licence (“transferee”) has outstanding municipal tax arrears exceeding the threshold amount established by the AER in consultation with the Assistant Deputy Minister responsible for energy resources policy at the Ministry of Energy and the Assistant Deputy Minister responsible for property tax policy at the Ministry of Municipal Affairs (“the threshold”). The AER shall require evidence and take reasonable steps to confirm that an applicant, transferor, or a transferee has no outstanding municipal tax arrears exceeding the threshold or has adopted a payment plan acceptable to the municipality or municipalities that are owed the outstanding municipal taxes.

If the transferor has outstanding municipal tax arrears exceeding the threshold, the AER shall require evidence that the payment of the outstanding municipal taxes exceeding the threshold be a condition of the transferor and transferee’s agreement for sale of the licence. The evidence and reasonable steps referred to in the preceding paragraphs shall include:

- a) reviewing a list compiled by Municipal Affairs of licensees known to have outstanding municipal tax arrears exceeding the threshold in the fiscal year preceeding the application, and confirming the applicant, transferor, or transferee is not listed,

- b) if the applicant, or transferee is listed, the applicant, transferor, or transferee must provide satisfactory evidence to the AER that arrears exceeding the threshold have been paid or an alternative repayment arrangement with the municipality or municipalities to which the arrears are owed has been made,
- c) if the transferor is listed, obtain evidence satisfactory to the AER that payment of municipal taxes owing exceeding the threshold by the transferor in Alberta is a condition of the agreement for purchase and sale of the licences that are the subject of the transfer.
- d) conducting routine compliance audits under the usual AER standard operating procedures and applying regulatory enforcement tools available to the AER if the applicant, transferor, or transferee provides false or misleading information about a payment or payment arrangement.

The AER shall implement this direction within a reasonable time and shall have all necessary operating procedures and business systems in place no later than close of business April 30, 2023.