

Legal update

Alberta tightens eligibility requirements for oil and gas licences

December 2017

Energy

Environmental

The Alberta Energy Regulator (AER) has significantly tightened the eligibility requirements for individuals and companies to hold oil and gas licences and approvals. Under a re-issued *Directive 067: Eligibility Requirements for Acquiring and Holding Energy Licences and Approvals*, the AER will now give greater scrutiny to potential and existing licensees of oil and gas wells, pipelines and facilities to determine if they pose an unreasonable risk of failing to meet the requirements and obligations as a licensee or approval holder.

The AER has firmly stated that having an oil and gas licence or approval is a privilege, not a right. The new rules are designed to prevent people who have led companies in the past that have had significant non-compliance issues from operating again in Alberta's oil and gas industry.

Eligibility

The AER has created three types of eligibility for individuals and companies:

- No eligibility – where they are not eligible to hold any AER licences or approvals.
- Limited eligibility – where they may hold only certain types of licences or approvals or where their eligibility is subject to certain terms and conditions, such as providing extra security.
- General eligibility – where they are eligible to hold all types of AER licences and approvals.

Existing licensees and approval holders must apply for an eligibility determination by January 31, 2018. If they fail to apply or are deemed to have no or limited eligibility, their existing licences and approvals may be revoked.

In addition to the previous requirements as to registration or residency in Alberta, proof of insurance and the payment of a fee, an applicant for eligibility must consent to the release and collection of compliance information from other jurisdictions and regulators and agree to be bound to the Alberta courts.

Unreasonable risk

In assessing eligibility the AER will determine if the applicant poses an unreasonable risk. The AER may consider, among other things:

- the compliance history of the applicant in Alberta and elsewhere, including the compliance history of its directors, officers, shareholders and any current or former AER licensees that are or have been directly or indirectly associated or affiliated with the applicant or its principals;
- the applicant's experience, including the experience of its directors, officers and shareholders;
- the applicant's corporate structure;
- the financial health of the applicant;
- outstanding debts owed by the applicant or current or former AER licensees that are or have been directly or indirectly associated or affiliated with the applicant or its directors, officers or shareholders; and
- involvement of the applicant's directors, officers or shareholders in entities that have been subject to bankruptcy or receivership proceedings.

At this point it is not clear where the line will be drawn between individuals and corporations that the AER feels pose an unreasonable risk and those it feels do not.

Material changes

The licence eligibility requirements must be met on an ongoing basis and licensees and approval holders must ensure that the eligibility information provided to the AER is kept accurate. An updated eligibility application form must also be provided to the AER within 30 days of any material change.

A material change includes:

- a change to legal status and corporate structure;
- an addition or removal of a related corporate entity;
- an amalgamation, merger, or acquisition;
- changes to directors, officers, or control persons, being persons that hold or control more than 20% of a licensee's outstanding voting securities;
- the entering into of a plan of arrangement or the appointment of a monitor, receiver or trustee over the licensee's property;
- the entering into of any transaction that results in a material change to the operations of the licensee;
- the sale of all or substantially all of the licensee's assets; or
- the cancellation of insurance coverage.

A material change may result in the AER revoking a licensee's eligibility or restricting eligibility by imposing terms and conditions where in the AER's opinion the material change creates an unreasonable risk.

Before undergoing a material change, licensees may request an advance ruling on whether the AER will consider the change to be an unreasonable risk.

Future changes

Changes to the AER's licensing eligibility requirements are not unexpected given the AER's inability to stop a receiver or trustee from disclaiming oil and gas properties following the *Redwater* case and the significant increase in AER-regulated assets falling to the Orphan Well Association.

Further changes to the AER's licensing and approval schemes are also anticipated, including changes to the security requirements and the requirements on the transfer of AER-regulated assets.

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