

Directive 067

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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). 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.