

REDA and the New Alberta Energy Regulator



Presented by:

Brad Gilmour

Bennett Jones LLP

403 298-3382

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Overview

- Provisions that came into force on June 17th.
- What's new and what has stayed the same.
- Transitional issues.
- Review of applications, regulatory appeals and reconsiderations.
- Appeals.



Changes on June 17th

- Alberta Energy Resources Conservation Board ("ERCB") replaced by the Alberta Energy Regulator ("AER")
- AER will provide "full-lifecycle" regulation of energy resource developments in Alberta
- AER is a corporation with a CEO, Board of Directors and Hearing Commissioners
- *Energy Resources Conservation Act* – repealed
- *Responsible Energy Development Act* ("REDA") – in force with some exceptions



Changes on June 17th

- All parts of the REDA in force **except**
 - Part 3 – enforcement of private surface agreements
 - Generally most of the provisions that will eventually transfer jurisdiction to the Alberta Energy Regulator for matters under the EPEA, *Public Lands Act*, *Water Act* and Part 8 of the *Mines and Minerals Act*.
- Jurisdiction over specified enactments will be phased in.
- New regulations released include the following (not complete):
 - *Responsible Energy Development Act Transition Regulation*
 - *Responsible Energy Development Act General Regulation*
 - *Alberta Energy Regulator Rules of Practice*



Transitional Issues

- Every "proceeding" commenced under the ERCA that has not been completed before June 17th, shall be completed under the REDA.
- This includes every:
 - Inquiry, study, report or recommendation under section 21 of the ERCA
 - Hearing, inquiry or other proceeding under section 22 of the ERCA
 - Hearing under section 26(2) of the ERCA
 - Proceeding under section 39, 40(1) or 40(2) of the ERCA
 - Application for leave to appeal and every appeal under section 41 of the ERCA



Transitional Issues

- Most of the primary statutes, regulations and directives that were formerly administered by the ERCB remain generally unaffected, but are now under the AER (e.g. *Oil and Gas Conservation Act, Pipeline Act, Oil Sands Conservation Act*).
- Recent hearings.
- Previous standing test under Section 26 of the ERCA:
 - . . . if it appears to the Board that its decision on an application *may* directly and adversely affect the *rights* of a person, the Board *shall* . . .



Hearing on Applications

- *Rules*, s.16 – Regulator may direct the parties to participate in ADR.
- *REDA*, s.30 – All applications under energy resource enactments and eventually specified enactments to be made to the Regulator.
- *REDA*, s.31 – Regulator must provide public notice on receiving an application [**not yet in force**]
- *REDA*, s. 32 – A person "who believes" they *may* be directly and adversely affect by an application may file a statement of concern (SOC).
- *REDA*, s. 33 – Where a SOC is filed in respect of an application, the Regulator *shall* decide, in accordance with Rules and subject to s.34, whether to conduct a hearing on the application.
- *REDA*, s.34(3) – If Regulator conducts a hearing on an application, a person who *may* be directly and adversely affected by the application is entitled to be heard at the hearing.



Hearings on Applications

- *REDA*, s.34(1) – Subject to s. 34(2), Regulator *may* make a decision on an application with or without conducting a hearing.
- *REDA*, s.34(2) – Regulator *shall* conduct a hearing on an application (a) where required to under an energy resource enactment; (b) where required under the Rules; or (c) where required under the regulations.
- *Rules*, s.7(2) – Regulator *may* make a decision without a hearing if
 - The person filing a SOC has not demonstrated that the person *may* be directly and adversely affected by the application,
 - The Regulator considers the SOC to be frivolous, vexatious or without merit, or
 - The Regulator determines that the objection raised in the SOC has been addressed.
- *REDA*, s.21 – Regulator has no jurisdiction to assess adequacy of Crown consultation with aboriginal groups.



Regulatory Appeals

- *REDA*, s. 38(1) – An "eligible person" may request a regulatory appeal of an "appealable decision" .
- "appealable decision" – means a decision of the Regulator under an energy resource enactment and eventually under *EPEA*, *Water Act* and *PLA* – provided the decision was made **without** a hearing.
- "eligible person" – means a person who *is* directly and adversely affected by a decision under an energy resource enactment and eventually any person who would be entitled to submit a notice of appeal under *EPEA*, *Water Act* and *PLA* (i.e. any person who *is* directly affected . . .)
- *REDA*, s.38(2) & 39(1) – No automatic stay of an "appealable decision"
- *REDA*, s. 39(4) - Regulator may dismiss if (a) frivolous, vexatious or without merit; (b) eligible person did not file an SOC; or (c) for any other reason the Regulator concludes that the request is not properly before it.



Regulatory Appeals

- *REDA*, s. 40(1) – Subject to regulations, Regulator *may* conduct a regulatory appeal with or without a hearing.
- *REDA*, s. 40(2) – If a hearing is held for a regulatory appeal, any "eligible person" is entitled to be heard at the hearing.
- *REDA General Regulation*, s. 4 – The Regulator *shall* conduct a regulatory appeal with a hearing if it appears to the Regulator that the concerns of "eligible person" have not be addressed through ADR or otherwise resolved by the parties.
- Regulatory appeals conducted in accordance with the Rules – request must be filed within 30 days after the date of the decision.



Reconsideration

- *REDA*, s.42 – Regulator may, in its sole discretion, reconsider a decision made by it and may confirm, vary, suspend, or revoke the decision.
- *REDA*, s.43 – Subject to regulations, Regulator may conduct a reconsideration with or without a hearing.
- Regulatory appeal and reconsideration combined appear to replace sections 39 and 40 under the *ERCA* – review and variance



Appeal

- s. 45 Appeal with leave on question of law or jurisdiction
 - filed and served within one month or as judge allows
 - returnable within two months of filing
 - decision not suspended by Appeal
- Only evidence on appeal is what had been submitted to Regulator



Questions?