REDA and the New Alberta Energy Regulator

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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• Energy Resources Conservation Act – repealed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 17\textsuperscript{th}, 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?