

Via Email

May 4, 2020

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Alberta Energy Regulator – Compliance and  
Liability Management

[www.aer.ca](http://www.aer.ca)

**Attention: Howard A. Gorman, Q.C.**    **Attention: Candice Ross, Counsel**

**RE:    Requests for Regulatory Appeal by Darren O’Brien and Jeffrey Young  
Alberta Energy Regulator – Compliance and Liability Management  
(formerly Closure and Liability)  
Declarations issued October 9, 2019 pursuant to Section 106(1) of the *Oil and Gas  
Conservation Act* against Darren O’Brien and Jeffrey Young  
Request for Regulatory Appeal Nos.: 1925604 & 1925605**

Dear Sir and Madam:

The Alberta Energy Regulator (AER) has considered the requests of Mr. O’Brien & Mr. Young (the Requesters) under section 38 of the *Responsible Energy Development Act (REDA)* for regulatory appeals of the decision of AER Compliance and Liability Management (formerly Closure and Liability) (CLM) to issue declarations under section 106(1) of the *Oil and Gas Conservation Act (OGCA)* naming the Requesters (the Decision).

Under section 1(j)(ii) of the *Alberta Energy Regulator Rules of Practice (Rules)*, the parties to a regulatory appeal include the requester and the decision maker of the decision appealed. Accordingly, the AER provided CLM with an opportunity to respond to the requests. CLM took no position on whether a hearing should be held.

For the reasons that follow, the AER has decided to grant the requests for regulatory appeal and set them down for a hearing.

### **Reasons for Decision**

Section 38(1) of *REDA* sets out the test for eligibility for a regulatory appeal. It provides that:

38(1) An eligible person may request a regulatory appeal of an appealable decision by filing a request for regulatory appeal with the Regulator in accordance with the rules.  
[emphasis added]

There are three parts to the test. First, the requester must be an “eligible person” as defined in section 36(b) of *REDA*. Second, the decision from which the requester seeks a regulatory appeal must be an “appealable decision” as defined in section 36(a) of *REDA*. Third, the request must have been filed in accordance with the *Rules*.

The requests were filed in accordance with the *Rules*, so the key questions to be answered are whether the Decision is an appealable decision and whether the Requesters are eligible persons.

*(a) Appealable Decision*

The term “appealable decision” is defined in section 36(a)(iv) of *REDA* to include:

a decision of the Regulator that was made under an energy resource enactment, if that decision was made without a hearing...

The Decision was made without a hearing under section 106(1) of the *OGCA*, an energy resource enactment, without a hearing.<sup>1</sup> It is, therefore, an appealable decision.

*(b) Eligible Person*

The term “eligible person” is defined in section 36(b)(ii) of *REDA* to include:

a person who is directly and adversely affected by a decision [made under an energy resource enactment without a hearing]...

Thus, to be eligible persons, the Requesters must be directly and adversely affected by the Decision.

The Requesters state that they are directly and adversely affected by the Decision because the declarations cause significant reputational harm and have the effect of preventing the Requesters from continuing business operations and investments in Alberta.

The declarations require the Requesters, or any regulated party directly or indirectly controlled by them, to, upon application to the AER, inform the AER that the declarations are in effect and that the Requesters have control of the licensee or approval holder. In accordance with subsections 106(3)(b) and (c), the AER may refuse to consider any application from the Requesters, or any other regulated party directly or indirectly controlled by them, or require the submission of abandonment and reclamation deposits prior to

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<sup>1</sup> *REDA*, s 1(1)(j)(iv).

granting any licence, approval, or transfer of a licence or approval to the Requesters or any regulated party controlled by them.

The declarations clearly limit the Requesters' ability to participate in the energy industry in Alberta. Moreover, if the Requesters intend to control, directly or indirectly, any company that is or would be regulated by the AER, they must disclose that the declarations are in effect. Further, the Requesters are included in a list of individuals named under section 106(1) of the *OGCA* that the AER maintains on its website. Thus, it is reasonable to conclude that the declarations may result in reputational harm to the Requesters.

Based on the foregoing, the AER has determined that the Requesters are directly and adversely affected by the Decision and there is some merit to the requested appeals. The AER notes that the issues raised by the Requesters have not yet been considered in a hearing, regulatory appeal or review. Accordingly, the AER has decided to grant the requests for regulatory appeal.

The AER acknowledges that, in their letter dated April 22, 2020, the Requesters asked the AER confirm the following:

1. That the matters shall proceed by way of a hearing before a three-person panel, and
2. That a pre-hearing meeting be held with the parties at a mutually convenient date in May 2020 in accordance with section 15 of the *Rules*.

The AER will request that the Chief Hearing Commissioner appoint a panel of hearing commissioners to conduct a hearing of the regulatory appeals. Pursuant to section 12(1) of *REDA* and section 32(1)(a) of the *Rules*, the Chief Hearing Commissioner has the sole discretion to determine the number of hearing commissioners on a panel for any hearing. Once selected, the panel will set the procedure for the hearing, including whether to hold a pre-hearing meeting in accordance with section 15 of the *Rules*.

Sincerely,

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Sean Sexton  
Vice President, Law

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