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<p style="text-align: center;">THE ALBERTA ENERGY REGULATOR PROCEEDING ID NO. 434</p> <p style="text-align: center;">IN THE MATTER OF the Regulatory Appeal of the Reasonable Care and Measures Order dated March 30, 2023 (Regulatory Appeal 1943516)</p> <p style="text-align: center;">AND IN THE MATTER OF the Regulatory Appeal of the Suspension Order dated June 5, 2023 (Regulatory Appeal 1943521)</p> <hr/> <p style="text-align: center;">AER PROCEEDING VOLUME 7</p> <hr/> <p style="text-align: center;">Calgary, Alberta December 1, 2023</p>	<p>1 TABLE OF CONTENTS</p> <p>2</p> <p>3 Description Page</p> <p>4</p> <p>5 December 1, 2023 Morning Session 1106</p> <p>6</p> <p>7 Discussion 1106</p> <p>8 Final Submissions by AlphaBow Energy Ltd. 1120</p> <p>9 Final Submissions by Ms. Ross 1160</p> <p>10 Discussion 1206</p> <p>11 Certificate of Transcript 1212</p> <p>12</p> <p>13</p> <p>14 EXHIBITS</p> <p>15</p> <p>16 Description Page</p> <p>17</p> <p>18 EXHIBIT 74.01 - 2023-11-30 - Undertaking 1116</p> <p>19 Response (Undertaking 6) Mar 24, 2023, HLA</p> <p>20 Meeting Attendees and Notes</p> <p>21 EXHIBIT 75.01 - 2023-11-30 - Undertaking 1117</p> <p>22 Response (Undertaking 8) FIS 2019-2713 Report</p> <p>23 EXHIBIT 76.01 - 2023-11-30 - Undertaking 1117</p> <p>24 Response (Undertaking 9) Date Range for</p> <p>25 22 Inspections</p> <p>26 EXHIBIT 77.01 - 2023-11-30 - Undertaking 1118</p>
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<p>1 Response (Undertaking 10) Emails between</p> <p>2 R. Ironside and E. Faryna</p> <p>3 EXHIBIT 78.01 - 2023-11-30 - Undertaking 1118</p> <p>4 Response (Undertaking 12) Peer Company</p> <p>5 Information</p> <p>6 EXHIBIT 73.02 - 2023-12-01 - Undertaking 1120</p> <p>7 Response (Undertaking 7) Compliance Update</p> <p>8 Email and Issues Tracker</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p>26</p>	<p>1 Proceedings taken at Govier Hall, Calgary, Alberta.</p> <p>2</p> <p>3 December 1, 2023 Morning Session</p> <p>4</p> <p>5 C.L.F. Chiasson Hearing Commissioner</p> <p>6 M.A. Barker Hearing Commissioner</p> <p>7 S.F. Mackenzie Hearing Commissioner</p> <p>8</p> <p>9 A. Huxley Counsel for the Panel</p> <p>10 C. Ross AER Counsel - CLM Branch</p> <p>11 M. Lavelle AER Counsel - CLM Branch</p> <p>12 A. Lung AER Staff</p> <p>13 D. Parsons AER Staff</p> <p>14 A. Stanislavski AER Staff</p> <p>15</p> <p>16 G. Stapon For AlphaBow Energy Ltd.</p> <p>17 K. Cameron For AlphaBow Energy Ltd.</p> <p>18</p> <p>19 R.M. Johanson, CSR(A) Official Court Reporter</p> <p>20 A. Porco, CSR(A) Official Court Reporter</p> <p>21</p> <p>22 (PROCEEDINGS COMMENCED AT 9:37 AM)</p> <p>23 Discussion</p> <p>24 THE CHAIR: So good morning, everyone.</p> <p>25 Welcome back to what we hope is our closing day on this</p> <p>26 hearing.</p>

<p style="text-align: right;">1107</p> <p>1 So, just to check, our first state of business, I 2 think, is to check on the state of the undertakings. 3 So, Mr. Stapon. 4 MR. STAPON: We are going to complete the 5 filing of the undertakings before the close of 6 proceedings today, but there are some matters that we 7 have to address in connection with the completeness of 8 them. We're prepared to proceed with final argument 9 before we finalize what gets filed and what does not. 10 THE CHAIR: Mr. Stapon, we made it clear 11 yesterday that the Panel is firm on not proceeding 12 until we close the evidence. We're not proceeding to 13 hear final argument. 14 MR. STAPON: All right. We are prepared, 15 then, on that basis. We would like to exclude the 16 undertakings of Mr. Callicott with respect to the 17 records which he considered, because all of those are 18 already in -- or all the material records are already 19 on the file. 20 With respect to the issue of the first contact 21 with the Orphan Well Association, we will withdraw that 22 request for an undertaking, because there is some 23 confusion as to when that occurred and what the nature 24 of the undertaking is. 25 With respect to the search for records of the 26 March 24th HLA meeting, we will accept that the AER has</p>	<p style="text-align: right;">1108</p> <p>1 provided what it can in that regard by way of notes, 2 and those can go in. 3 With respect to the PowerPoint presentation, we 4 have it. We understand, though, that the list of 5 outstanding issues is also -- was also sent to the AER, 6 and I don't expect that it will factor at all into the 7 argument today, but the Panel may want to see that this 8 was being addressed, and I'm told by Mr. Ben Li that we 9 can get a copy of it and the associated email which 10 sent it to the AER before the close of proceedings this 11 morning. If the Panel is not prepared to permit the 12 receipt of that document, that is, the response of 13 AlphaBow in connection with what was outstanding by way 14 of issues on March 7th, we'll withdraw that component 15 of the undertaking. 16 With respect to the incident report of 17 September 19th, we're told that that cannot yet be 18 available, but Mr. Ironside can file the materials 19 associated with the first two weeks of work associated 20 with that, and if the AER will accept that as a 21 detail -- or a response to the undertaking, we can get 22 that done. 23 With respect to the undertaking of the date with 24 respect to the Range 22 inspection, that's acceptable. 25 And the email exchange with AlphaBow's inspector, 26 Elise, of March 24 -- or April 24th, 2023, we've</p>
<p style="text-align: right;">1109</p> <p>1 already made arrangements to file that. 2 So, on that basis, the only two issues which I 3 submit should permit this Panel to proceed with 4 argument -- because we don't expect that there will be 5 any specific points raised with respect to those -- are 6 the content of the -- and the fact that the Alberta 7 Energy Regulator was provided on March 7th with a list 8 of outstanding issues; it was sent to them. It's just 9 not been produced, but we can put it in. And the 10 second issue is with respect to the spill report. We 11 can file that, and I don't believe there's any dispute 12 in connection with its accuracy because it was what was 13 provided to the AER. 14 THE CHAIR: Okay. Thank you, Mr. Stapon. 15 The Panel will have to give some thought to -- to the 16 one piece about the issues documents. 17 Ms. Lavelle, Ms. Ross? And, actually, if you 18 could come to the main mic, please, because we've been 19 having problems hearing. 20 MS. LAVELLE: Thank you, chair. 21 With respect to the identified issues spreadsheet, 22 if there -- if it -- we can stipulate that it was sent 23 to the AER. There's a -- if there is an email to that 24 effect, we just don't have it in our records. So we 25 don't have -- that's not a -- we're okay with that 26 proposal by Mr. Stapon.</p>	<p style="text-align: right;">1110</p> <p>1 And then just with -- and the rest of his -- just 2 with respect to the -- the 29 pipeline incident, we did 3 submit the -- the Cogen report, just not the AlphaBow 4 materials, and that's what you're referring to. 5 MR. STAPON: Yes, that's correct. 6 MS. LAVELLE: Yeah. So we have fulfilled 7 the portion that we are able to fulfill. 8 THE CHAIR: Okay. 9 MS. LAVELLE: There's just an additional 10 portion from AlphaBow's side. So I just wanted to be 11 clear. 12 THE CHAIR: So please -- actually, 13 Ms. Huxley -- go ahead. Sit down, Ms. Lavelle. 14 Ms. Huxley, can you remind us the -- of the -- 15 read us back the undertaking that relates to this piece 16 with the incident report, please? 17 MS. HUXLEY: Sure. Not a problem. So it 18 was listed as Undertaking 8, and it was an incident and 19 mediation efforts for FIS 2019-2713 from September 19th 20 of 2019, and there was a submission from Cogen and 21 AlphaBow Limited -- or ABE Limited, rather, which was 22 provided to the AER regarding sampling and delineation, 23 if I've got that right. 24 THE CHAIR: Okay. So that was the piece 25 out of Mr. Ironside's rebuttal material yesterday. 26 Okay. So then also can you read us back the</p>

<p style="text-align: right;">1111</p> <p>1 undertaking in relation to -- I believe it's the 2 PowerPoint and the -- it was the outstanding -- I think 3 it was the outstanding issues piece that -- 4 MS. HUXLEY: Yes. So there was a 5 PowerPoint presentation and outstanding issues 6 spreadsheet from March 7th, 2023, meeting which was 7 provided to the AER. 8 THE CHAIR: Okay. So whose undertaking is 9 that? Who gave the undertaking? 10 MS. LAVELLE: We took it under advisement, 11 chair. 12 THE CHAIR: You took it under advisement. 13 Okay. 14 MR. STAPON: Commissioners, it was, in 15 fact, provided. The AER can't find it. Although it 16 was an AER undertaking, we'll undertake to get it and 17 prove that it was sent and filed. We don't expect to 18 address it in argument. We just want the Panel to know 19 that, in fact, AlphaBow did, in fact, address all of 20 the outstanding issues that it understood to be in 21 place at March 7th, in their meeting with the 22 Regulator. 23 THE CHAIR: Okay. And counsel for CLM has 24 stipulated that they're -- they're agreeable in terms 25 that they have -- they have the email records to show 26 that it --</p>	<p style="text-align: right;">1112</p> <p>1 MS. LAVELLE: No -- 2 THE CHAIR: No? Okay. 3 MS. LAVELLE: -- we don't. 4 THE CHAIR: Please make it clear what -- 5 MS. LAVELLE: Sorry, chair. My apologies. 6 THE CHAIR: No, no. 7 MS. LAVELLE: My apologies. 8 If there is an email to the AER that attaches the 9 issues spreadsheet, then we'll stipulate that we 10 received it. We just do not have it in -- 11 THE CHAIR: You do not have the email, but 12 you're -- 13 MS. LAVELLE: A record of that. 14 THE CHAIR: Yeah. Of that. So you're 15 agreeable to say, Yes, the AER would have received 16 that? Okay. 17 MS. LAVELLE: Yes. 18 THE CHAIR: So I would say, given that, 19 unless you feel that it's absolutely necessary that the 20 Panel actually sees the email, Mr. Stapon -- I don't 21 think the Panel feels that it's necessary that we see 22 that email. We are prepared, I think, to accept the 23 word of both parties that that came and went? It's -- 24 it's otherwise referred to in the evidence? 25 MR. STAPON: That's agreed, commissioner. 26 And then we can withdraw that component of the</p>
<p style="text-align: right;">1113</p> <p>1 undertaking if the -- if the AER is prepared to 2 stipulate that it was, in fact, presented. And in 3 connection with the issue of the pipeline remediation 4 process, Mr. Ironside testified yesterday that there 5 was substantial work done within the first two weeks 6 surrounding the incident. There was a relatively 7 immediate response. And if the AER is prepared to 8 accept that as well, we can withdraw that undertaking 9 as well. 10 THE CHAIR: I think it was the Panel who 11 asked for that undertaking, Mr. Stapon, so ... 12 MR. STAPON: So we can provide -- if the 13 AER does not have that material, we can certainly 14 provide what we have and do it today. 15 THE CHAIR: Okay. Let us just -- let me 16 just confer with my colleagues. 17 Okay. So it appears that we're perhaps a little 18 confused on whose undertaking is what. So what we are 19 talking about here in terms of the one piece -- so this 20 is in relation to the pipeline report, the one that was 21 referred to where it was 115 pages or whatever that 22 was, and that was -- who had asked for that 23 undertaking? Who gave that undertaking, please? 24 MR. STAPON: Commissioner, it's my recall 25 that it was my request for that undertaking during the 26 course of the examination, that there was, in fact, a</p>	<p style="text-align: right;">1114</p> <p>1 very detailed report. The advice was that the AER had 2 that report. We can advise that if the AER doesn't -- 3 and we were focused in particular on the first couple 4 of weeks of work, the suggestion being that there was 5 no response. Our position was that there was a 6 substantial response. You heard from Mr. Ironside 7 yesterday that he was involved, and he has a lot of 8 that information. Even though it was the undertaking 9 of the AER, we can file that information with the Panel 10 and regard the undertaking as satisfied. 11 MS. LAVELLE: Chair, just to be clear, there 12 were -- there's -- it's Undertaking 8, I believe, and 13 my recollection does not differ from Mr. Stapon as to 14 who -- whose under -- who -- who initiated the request. 15 But I just wanted to clarify. There's two components 16 to it. There's the Cogen -- 2019 Cogen submission. 17 That's what we have provided. 18 THE CHAIR: Yes. 19 MS. LAVELLE: That's what we have. And then 20 there are a series of attachments which are AlphaBow's 21 own records, and that's what Mr. Stapon is referring 22 to. And -- and that -- what he has proposed is 23 acceptable to us, rather than -- to -- to complete that 24 undertaking. 25 Oh. Yeah. And -- sorry -- we do have them, but 26 we'd have to comb through. It would take days.</p>

1115	<p>1 THE CHAIR: Okay.</p> <p>2 MS. LAVELLE: Whereas if AlphaBow has them</p> <p>3 at the ready, that would be -- that would facilitate</p> <p>4 this proceeding.</p> <p>5 THE CHAIR: Okay. So my understanding is</p> <p>6 that the proposal is that AlphaBow would -- would</p> <p>7 provide those, then, to go on the record. Is that my</p> <p>8 understanding?</p> <p>9 MR. STAPON: That is correct. We will</p> <p>10 provide them, and then we'll do it today. It's not our</p> <p>11 anticipation that any of that will be addressed in</p> <p>12 argument; that is, the physical documents won't be</p> <p>13 referred to. It's just the fact that there was, in</p> <p>14 fact, an immediate response.</p> <p>15 THE CHAIR: Okay. All right. So --</p> <p>16 and -- so we -- and then, generally speaking, on the</p> <p>17 materials that are in the undertaking, are we</p> <p>18 anticipating any questions? Are the parties ...</p> <p>19 MR. STAPON: The answer is: No,</p> <p>20 commissioners, the advice that we gave yesterday is</p> <p>21 that we would file the undertakings if we found them</p> <p>22 acceptable, but we would proceed to argument this</p> <p>23 morning.</p> <p>24 THE CHAIR: All right. Thank you, then.</p> <p>25 So -- all right. So we'll proceed on that --</p> <p>26 we'll -- we will proceed on that basis. Let's get</p>	1116	<p>1 these -- we'll get Ms. Huxley to go through them and</p> <p>2 get all of these documents officially on the record.</p> <p>3 Once they are officially on the record, the Panel then</p> <p>4 wants to take a 10- to 15-minute break before argument</p> <p>5 so we can at least see what's actually on the record</p> <p>6 before we hear from -- from the parties.</p> <p>7 I will advise as well, to accommodate our court</p> <p>8 reporting, that the intention is that we will take a</p> <p>9 15- to 20-minute break between the two sets of -- the</p> <p>10 two sets of arguments, just to have people clear on the</p> <p>11 timing.</p> <p>12 So please go ahead, Ms. Huxley.</p> <p>13 MS. HUXLEY: Thank you.</p> <p>14 So it's my understanding from this morning that</p> <p>15 AlphaBow's counsel has essentially struck out</p> <p>16 Undertaking 5, so we won't enter that as an exhibit.</p> <p>17 MR. STAPON: That is correct.</p> <p>18 MS. HUXLEY: That would take us to</p> <p>19 Undertaking 6, which is the meeting notes from the</p> <p>20 March 2023 LARC meeting or HLA meeting, so that will be</p> <p>21 Exhibit 74.01.</p> <p>22 EXHIBIT 74.01 - 2023-11-30 - Undertaking</p> <p>23 Response (Undertaking 6) Mar 24, 2023, HLA</p> <p>24 Meeting Attendees and Notes</p> <p>25 MS. HUXLEY: And then the next undertaking</p> <p>26 would be Undertaking Number 8, which is the records of</p>
1117	<p>1 incident and remediation records associated -- I'll see</p> <p>2 what the exact word is here -- from FIS Report 2019-2713</p> <p>3 from September 19th, 2019. And, again, we have the</p> <p>4 submission from CLM that's the Cogen report, and</p> <p>5 AlphaBow's counsel has advised they will provide the</p> <p>6 documents associated with that that are in their</p> <p>7 possession, and that would be, then, under -- or</p> <p>8 Exhibit 75.01.</p> <p>9 EXHIBIT 75.01 - 2023-11-30 - Undertaking</p> <p>10 Response (Undertaking 8) FIS 2019-2713 Report</p> <p>11 MS. HUXLEY: Undertaking Number 9 --</p> <p>12 THE CHAIR: Actually, Ms. Huxley, before</p> <p>13 you go on, because there's two separate pieces.</p> <p>14 MS. HUXLEY: Would you like to split --</p> <p>15 would the Panel like to split those?</p> <p>16 THE CHAIR: Well, I'm just wondering if we</p> <p>17 can maybe we do 75.01 and 75 -- 75.02 so we know that</p> <p>18 it's related to the same undertaking, but it's not -- a</p> <p>19 little bit easier to work with the documents, then.</p> <p>20 MS. HUXLEY: Undertaking Number 9 was to</p> <p>21 provide the date range for the 22 inspections in</p> <p>22 relation to interim stay period for the June order.</p> <p>23 And that, I believe, has been provided by CLM and would</p> <p>24 therefore be Exhibit 76.01.</p> <p>25 EXHIBIT 76.01 - 2023-11-30 - Undertaking</p> <p>26 Response (Undertaking 9) Date Range for</p>	1118	<p>1 22 Inspections</p> <p>2 MS. HUXLEY: Undertaking Number 10 is an</p> <p>3 email from Elise Faryna, F-A-Y-R-N-A [sic], from</p> <p>4 Monday, April 24th, 2023. And that would be</p> <p>5 Exhibit 77.01.</p> <p>6 EXHIBIT 77.01 - 2023-11-30 - Undertaking</p> <p>7 Response (Undertaking 10) Emails between</p> <p>8 R. Ironside and E. Faryna</p> <p>9 MS. HUXLEY: Again, Undertaking 11 with</p> <p>10 respect to the background from Mr. Callicott's notes</p> <p>11 has been struck by counsel.</p> <p>12 So Undertaking Number 12, which was the peer</p> <p>13 company information from CLM, has been provided and</p> <p>14 would then be Exhibit 78.01.</p> <p>15 EXHIBIT 78.01 - 2023-11-30 - Undertaking</p> <p>16 Response (Undertaking 12) Peer Company</p> <p>17 Information</p> <p>18 THE CHAIR: That's everything?</p> <p>19 MS. HUXLEY: I believe that's everything.</p> <p>20 MR. STAPON: Commissioners, I'm not sure we</p> <p>21 addressed Undertaking Number 7, which was the</p> <p>22 PowerPoint presentation on the --</p> <p>23 MS. HUXLEY: Oh.</p> <p>24 MR. STAPON: -- 7th of March.</p> <p>25 MS. HUXLEY: My mistake. We had already</p> <p>26 listed that as Exhibit 73.01, as it was provided</p>

1119	<p>1 yesterday in PowerPoint but requested to be provided in 2 PDF. 3 MR. STAPON: That's fine. Thank you very 4 much. 5 THE CHAIR: I think as well, Ms. Huxley, 6 just to confirm that the undertaking in relation to 7 that first contact with the OWA was -- was struck. 8 MS. HUXLEY: Yes. That was Number 5. 9 THE CHAIR: Okay. Great. Thank you. 10 So -- and so then there's still the document to 11 come that -- the -- the issues resolution piece. Yes. 12 That's -- that -- that -- that -- 13 MR. STAPON: We expect to be able to 14 produce that -- 15 THE CHAIR: Today. 16 MR. STAPON: -- this morning. 17 THE CHAIR: This morning. So do we want 18 to assign a number to that or wait till it's provided 19 to hearing services? 20 MS. HUXLEY: Whatever the Panel would 21 prefer. 22 MR. STAPON: Commissioners, perhaps we can 23 do this, and that is we can assign it a ghost number. 24 If we can't get it this morning, we will withdraw the 25 suggestion that it should be, in fact, produced. We 26 expect we will be able to get it to the court reporters</p>	1120	<p>1 by -- oh, we have it? Okay. 2 We just -- we just need to get a PDF in some 3 format. We apparently have it now. 4 THE CHAIR: Okay. So -- yeah. 5 MS. HUXLEY: As it's supplementary to 6 Exhibit 73.01. I would suggest 02 when it comes in. 7 THE CHAIR: Yes. Thank you. Thank you. 8 That would -- that would be good. 9 EXHIBIT 73.02 - 2023-12-01 - Undertaking 10 Response (Undertaking 7) Compliance Update 11 Email and Issues Tracker 12 THE CHAIR: So, then, given that we have 13 that understanding with respect to -- to that document, 14 I would say, then, that we will say that the 15 evidentiary portion of this hearing is closed. 16 The Panel will take -- I'm going to say 17 15 minutes. The Panel will take a 15-minute break so 18 we can look -- take a quick look at all of these 19 materials that came in. So we will return back at 20 10:15. Thank you. 21 (ADJOURNMENT) 22 THE CHAIR: Thank you, all, for your 23 patience. There was a fair bit for us to have a look 24 at, but we're fine now, Ms. Cameron, to proceed, so 25 please go ahead with your argument. 26 Final Submissions by AlphaBow Energy Ltd.</p>
1121	<p>1 MS. CAMERON: Thank you, commissioners. 2 And just before I begin, for the sake of the 3 record, we will advise we have provided the last 4 outstanding documents under the undertakings. So 5 they've officially all been provided now. 6 THE CHAIR: Thank you very much. 7 MS. CAMERON: So thank you, commissioners, 8 court reporter, AER staff and counsel, and all the 9 witnesses who presented evidence this week. 10 The AER's mandate is set out in Section 2 of the 11 Responsible Energy Development Act, and it includes 12 providing for the efficient, safe, orderly, and 13 environmentally responsible development of energy 14 resources and mineral resources in Alberta through the 15 Regulator's regulatory activities. As part of the 16 mandate, that includes regulating throughout the full 17 life cycle, so taking sites from the start of 18 development through to their closure. 19 The mandate is further embodied through the 20 various legislation and directives provided to the 21 Alberta Energy Regulator by government, and this 22 includes the AER's liability management program. And 23 we've heard that program's in the process of being 24 replaced fully, but as set out in Directive 6 of the 25 AER, which provides the details regarding the historic 26 process, it provides that part of the goals and purpose</p>	1122	<p>1 of the liability management program is to prevent costs 2 to suspend, abandon, and reclaim oil and gas sites from 3 being borne by the public in the event a licensee 4 becomes defunct and unable to address those 5 obligations. Part of that is also to ensure that the 6 orphan well fund is protected. 7 So as mentioned, we've heard throughout this week 8 how that process is in -- is being replaced right now 9 through the holistic liability assessment, and certain 10 components of that system have already been enacted 11 with more to come. 12 As noted by Mr. Green in his testimony, the AER's 13 role is not to create policy. Rather, we submit the 14 AER's role is to implement the policy provided by 15 government. Now, in terms of some context as to what 16 that policy direction was around the March time period, 17 we note that, as set out at Exhibit 47, Tab 9, on 18 page 620, 622, there's a copy of the AER's compliance 19 assurance licensee tool kit. We had produced one 20 provided in the respect of another licensee, as the one 21 in respect of AlphaBow had not been provided. And on 22 that page, it notes that the purpose of collecting 23 security is to minimize the risks to the orphan fund. 24 It also notes that the Government of Alberta has been 25 given the discretion to accept a closure plan as a 26 substitute for security. And that, in fact, was what</p>

<p style="text-align: right;">1123</p> <p>1 was proposed by AlphaBow in response to the request for 2 security in the March order, that it carry out 3 additional closure work pursuant to a plan and provide 4 funds in trust for added security that the work would 5 actually be completed. 6 In addition to the direction or the guidance in 7 the compliance assurance licensee tool kit, as 8 mentioned in our submissions in these proceedings, the 9 Alberta Energy Regulator's part of its holistic 10 framework has introduced a mandatory spend requirement 11 to ensure that licensees are actively taking steps to 12 reduce their environmental liabilities and address 13 their inactive wells. 14 We submit that the mandatory spend program also 15 provides important guidance and a signal to the Alberta 16 Energy Regulator. In this holistic world where the 17 Alberta Energy Regulator now considers -- now has 18 access to companies' financials and considers their 19 level of financial distress, the Energy Regulator, 20 through its mandatory spend program, considers and 21 recognizes that struggling companies have less capital, 22 and, as such, they actually reduce the amount of spend 23 required to -- as part of the mandatory spend 24 requirement from what's required of other licensees. 25 And we've set out those percentages in terms of the 26 requirements in Exhibit 56 at page 6.</p>	<p style="text-align: right;">1124</p> <p>1 And so while we do acknowledge the mandatory spend 2 program is separate from the security program, it does 3 recognize that at least there's some guidance that when 4 you're considering financially distressed companies, 5 you're going to have to reduce some of the 6 expectations, given the financial impacts. 7 We also briefly touched on yesterday the 8 ministerial order that came out in March of this year, 9 and that ministerial order was in respect of municipal 10 taxes, again, signalling from government there needs to 11 be a new focus on ensuring those municipal taxes are 12 addressed given the arrears that existed. That's 13 addressed again in our original submission at 14 Exhibit 47. 15 And you'll also note there was an attempt to get 16 further information on municipal taxes through that 17 March order, as one of the requirements for the 18 reasonable care and measures plan was that the -- that 19 AlphaBow did have to advise as to what the extent of 20 its municipal taxes -- tax arrears were and what its 21 plan was to address those. 22 Also in March of this year, the government 23 provided another indication in terms of policy 24 direction that's relevant to these proceedings, and 25 that's through the Auditor General report. In the -- 26 and that report notes that there have been historical</p>
<p style="text-align: right;">1125</p> <p>1 issues with the pre -- previous liability management 2 program, the licensee liability rating program, in that 3 it intended to have the Regulator seek to collect 4 security late in the life cycle and when a company can 5 least afford it. 6 What the Auditor General noted is that in terms of 7 developments for the new program, that there needs to 8 be a consideration of timing and the amount of security 9 that's requested. In the report, it notes that in 10 requesting security -- that requests for security may 11 divert funds that could otherwise be spent on 12 reasonable care and measures. And that was also 13 something noted by Ms. Olsen in her options that she 14 provided to Mr. Callicott in respect of the March 15 order. 16 I also note that the Auditor General report at 17 page 20 stated that the government is working on a plan 18 for 2024 to provide guidance and proactive support for 19 individuals and/or distressed companies, which, again, 20 provides a signal that something's coming with the 21 expectation that the AER will be working with these 22 distressed companies. 23 Also in the report, it also references that 24 further clarity on security and the security program, 25 which we heard about earlier this week which is 26 currently under development, will also be coming next</p>	<p style="text-align: right;">1126</p> <p>1 year. 2 So while there's still policy that's under 3 development, the AER chose to proceed to issue their 4 March order, which we submit and note was a 5 discretionary decision. There was no obligation to 6 require security nor was there a requirement or 7 statutory obligation to issue the order. This was done 8 as part of the exercise of regulatory discretion. 9 Now, in terms of the need for the order, we heard 10 multiple things from the Regulator. One of the 11 concerns noted was that the field inspection rating was 12 decreasing. Respectfully, we question these ratings as 13 depending at what point in time you consider the 14 ratios, either side could suggest that the compliance 15 rating was improving or getting worse. We also heard 16 evidence of instances of multiple inspections on the 17 same day at the same sites. So, again, there's cases 18 where you're getting multiple noncompliances on the 19 same site rather than a single decision from a single 20 inspection. 21 We also heard that while there was a concern that 22 AlphaBow's compliance rating was below the industry 23 average, the industry average is just that. There's 24 companies that fall below it, and there's companies 25 that are above it. And we do not dispute that having 26 compliance is important and that improving that rating</p>

<p style="text-align: right;">1127</p> <p>1 is important, but what we do dispute is that the 2 actions undertaken in the order would do anything to 3 actually effectively improve that rating. Rather, it 4 made it further difficult to carry out reasonable care 5 and measures. 6 Also, when -- while we heard that AlphaBow's field 7 compliance rating was below the average and decreasing, 8 if you look at the licensee capability assessment, 9 which is included at Exhibit 8 on page 20, AlphaBow's 10 field noncompliance rating is TIER 2. So -- so it's 11 not in the worst TIER. And, actually, if you look at 12 their 2022 rating compared to their 2023 rating, it was 13 actually improving in terms of their operations under 14 their licensee capability assessment, and their 15 operations assessment is used to evaluate a licensee's 16 commitment to safe and responsible operations, which is 17 measured in terms of regulatory compliance and 18 responsiveness to addressing noncompliance -- 19 noncompliances. The licensee capability assessment 20 shows that they are more responsive than 60 percent of 21 their -- their peers. 22 Mr. Stapon yesterday, he also took the Panel 23 through the licensee incident history record report, 24 which is at Exhibit 8, page 17, which, again, it showed 25 AlphaBow was better than the industry average in 2022 26 for everything other than pipelines, which it was very</p>	<p style="text-align: right;">1128</p> <p>1 close to the industry average. And it's important to 2 note that those ratios are for all operations, 3 regardless of their size. So for that assessment, it's 4 not specific to just AlphaBow's peer group but, rather, 5 all of industry. 6 Another concern we heard was in respect of 7 inactive well numbers and the mineral expiries. The 8 evidence of the Alberta Energy Regulator at page 17 of 9 Exhibit 8 under "Inactive Wells" provides that there 10 are no high-risk wells. A number of the wells have 11 been inactive more than ten years, so this was prior to 12 when AlphaBow would have assumed them. 13 And the other evidence that's on the record is 14 that AlphaBow is actively working to address their 15 inactive well ratio and, in fact, had been granted a 16 three-year extension. Now, it is acknowledged that 17 three-year extension was revoked, but there had been a 18 three-year extension, which we submit signals this 19 wasn't a significant safety risk as the time period 20 could have -- had already been extended. We hadn't 21 past that three-year period. Rather, what happened is 22 when they carried out their voluntary spend outside the 23 time period, that work was then once again accelerated. 24 In any event, specific to the inactive wells and 25 the mineral expiries, the evidence on the record is 26 that AlphaBow's been working to actively address its</p>
<p style="text-align: right;">1129</p> <p>1 environmental obligations and has carried out work in 2 that regard. 3 Another big concern we heard with regards to the 4 need for the order was that AlphaBow has significant 5 liabilities and has been experiencing financially 6 distress -- and has been financially distressed. The 7 Alberta Energy Regulator's evidence is that they've 8 known about this until at least 2019. So, again, this 9 isn't a new factor. It's something that's been known 10 for a significant period of time. 11 But what the Regulator was hearing leading up to 12 March was that things were slowly improving. And the 13 record shows they were starting to address some of 14 their arrears. If you read through the meeting minutes 15 starting from 2019, you can actually follow the 16 trajectory where there's starting to be arrears. Then 17 things are getting addressed. 18 And while AlphaBow has been struggling, they're 19 not the only company, nor -- nor are they first and nor 20 will they be the last. The AER's own records at 21 page 11 of Exhibit 8 show 86 companies in the same 22 financially distressed group as the -- as AlphaBow. 23 But, as noted in Mr. Li's opening statement and as 24 acknowledged by Ms. Olsen, such distress is not always 25 permanent. 26 There are commodity swings, which can impact a</p>	<p style="text-align: right;">1130</p> <p>1 company's solvency. What happens in terms of drilling 2 the next well, whether it's a dry hole or whether it's 3 a gusher can have significant impacts on a company's 4 financials. And, similarly, changes in government 5 policy can also impact the financial drivers and 6 solvency of a company. 7 We heard about AlphaBow's plans this week, and, 8 for example, the new 'C' -- CO2 changes by the 9 government in terms of carbon credits have enabled a 10 number of companies, not just AlphaBow, to start 11 looking at opportunities to take reservoirs that have 12 dried up and use them now for injection, so taking what 13 was traditionally a liability and now creating 14 significant value out of it. 15 And it's been AlphaBow's position that their 16 efforts and the work being completed was starting to 17 pay -- pay off. As set out in the March 7th meeting, 18 AlphaBow was working on building up its staff. It 19 completed significant amounts of closure work, which 20 was now enabling it to change its focus on completing 21 further field compliance. 22 At the start of 2023, its compliance rating was 23 improving, and they had a plan to extract significant 24 value through their carbon credits. But they were also 25 realistic in terms of this plan. You heard from 26 Mr. Ironside this week that the next two years will be</p>

<p style="text-align: right;">1131</p> <p>1 tough for the company. So this isn't just a pipe 2 dream. They recognize there's challenges, but there's 3 also significant opportunity. And as a result of that 4 opportunity, we also heard from Mr. Ironside he's 5 willing to come back to the company and take over an 6 executive position should the company be allowed to 7 resume operations. 8 Now, we acknowledge the AER did not have the same 9 rosy outlook in terms of what's been happening at 10 AlphaBow. With respect to change in staffing, which we 11 would submit is common in a struggling company -- and 12 the evidence of Mr. Li was that some of the staffing 13 change was being undergone in order to staff up 14 operations. The AER viewed this change in staffing as 15 a risk factor for potential fraud. 16 Further, rather than acknowledging and focusing on 17 the significant progress being made to address closure, 18 the AER's focus has been on the work yet to be done and 19 that needs to be done in the future. And it's as a 20 result of those concerns and the outstanding risk that 21 the AER chose to accelerate AlphaBow's closure 22 obligations through demanding a significant amount of 23 security, which it knew AlphaBow could not pay and 24 created a risk to the ability to provide reasonable 25 care measures. 26 And these reasonable care measures are important</p>	<p style="text-align: right;">1132</p> <p>1 measures. They're to ensure the safe and 2 environmentally responsible operation. So, again, the 3 Regulator chose to prioritize the collecting of funds 4 over ensuring the reasonable care of AlphaBow's sites. 5 And when -- in response to the order that AlphaBow 6 demonstrated they could not pay, which, as noted in 7 Ms. Olsen's notes when she set out the options at 8 page 269 to 270 of Exhibit 8, which was anticipated -- 9 so it was anticipated prior to the issuance of the 10 order that AlphaBow may not be able to pay these 11 amounts, and yet in response to AlphaBow not being able 12 to do what the AER knew they couldn't do, the AER chose 13 to escalate enforcement and to shut in their 14 operations, cutting off their access to capital and 15 transferring care and custody of the sites to the 16 Orphan Well Association. And a copy of the decision 17 directing the sites to the Orphan Well Association are 18 included in our reply submissions that have been filed 19 in these proceedings. 20 And so in proceeding as the Alberta Energy 21 Regulator has, it has caused the very harm that it was 22 tasked at preventing. It has created a real risk that 23 industry, Albertans, and the Orphan Well Association 24 are going to have to assume the obligations of 25 AlphaBow. 26 And, now, our position today in these proceedings</p>
<p style="text-align: right;">1133</p> <p>1 is not that the AER shouldn't do anything. If there 2 are concerns about how a company is operating, we think 3 it's completely reasonable to require a company to take 4 steps to address those concerns. 5 And so, commissioners, today -- or in these 6 proceedings, you are tasked with affirming, varying, or 7 rescinding each of the two orders that were issued. In 8 making this decision, it's not an all-or-nothing 9 approach. For example, AlphaBow is not -- is not 10 opposed to directions aimed at creating confidence in 11 its ability to operate. Simply, its concern is with 12 imposing conditions that are unachievable. 13 In terms of the main concerns that have been 14 raised in these proceedings and in discussions with 15 Alberta Energy Regulator following the March order, the 16 main concerns that have been raised are the requests 17 for audited financial statements, given the significant 18 costs that would be associated with it. It's 19 AlphaBow's position that those costs would be better 20 spent on actually carrying out closure work. As was 21 noted in the testimony, there's no issues with the 22 financials; rather, the issue that was raised is with 23 respect to corporate governance of -- of AlphaBow, and 24 we would submit there's cheaper and more effective ways 25 for the Alberta Energy Regulator to get that 26 information, whether it's through finding out what</p>	<p style="text-align: right;">1134</p> <p>1 individual specific job descriptions are or requesting 2 policies that are in place. 3 In terms of the next and probably the largest 4 concern in terms of the conditions opposed by the 5 Alberta Energy Regulator, that relates to the security 6 deposit. We had heard from Mr. Callicott that he views 7 this amount as minimal. We dispute that. This is a 8 significant amount of funds that was requested by 9 AlphaBow and funds that, if provided, would prevent it 10 from carrying out the work that the Regulator's 11 requesting in terms of addressing those mineral 12 expiries, in terms of actually carrying out closure 13 work. And, more importantly, the evidence is clear 14 AlphaBow does not have those funds to provide. 15 This -- while the AER thought it may be possible 16 that shareholders would provide funds, the reality is 17 it's very difficult to find anyone willing to invest 18 money or provide funds to a company where that money is 19 not being used to generate returns and there is no 20 certainty that the funds will ever be repaid. 21 The other -- but -- but that's not saying that 22 AlphaBow's not willing to do more. In fact, in the 23 plan that was provided, AlphaBow advised that it was 24 willing to carry out additional closure work and 25 that to provide added comfort to the Regulator that 26 that work would occur, it would provide quarterly</p>

<p style="text-align: right;">1135</p> <p>1 amounts that would be held in trust to ensure the funds 2 were actually going towards that purpose. 3 The other significant concern in terms of the 4 orders that are issued is the suspension of AlphaBow's 5 operations. The suspension of AlphaBow's operations 6 have required it to lay off staff 'cause there's no 7 longer a role for them, and, more importantly, there's 8 no funds being generated by the company to enable it to 9 meet its obligations when it cannot operate. 10 And so in terms of the basis for our request that 11 the orders be rescinded, they fall into two main 12 buckets. We submit that the orders are unfair and that 13 they're unreasonable. 14 And so starting with the unfairness, yesterday -- 15 unfairness, I'm going to turn my focus to the timelines 16 and what occurred shortly prior to the issuance of the 17 March order. 18 So yesterday Mr. Stapon read from a letter that I 19 had sent to Mr. Callicott and requested his advice that 20 the March 30th order was going to be coming that 21 referenced the breaches of the AER's procedural 22 fairness obligations. 23 So the Alberta Energy Regulator has a public 24 manual that's posted on its website called "Manual 13, 25 Compliance and Enforcement Program", and that program 26 states on page 16 that: (as read)</p>	<p style="text-align: right;">1136</p> <p>1 AER staff are responsible for ensuring that 2 compliance and enforcement responses are 3 procedurally fair. The duty to be fair 4 requires the observance of fair procedures. 5 A general duty of procedural fairness is 6 imposed upon every decision-maker making a 7 statutory decision that is not legislative in 8 nature and that affects the rights, 9 privileges, or interests of a person. 10 The decisions at issue in these proceedings are not 11 legislative in nature, and they clearly impact 12 AlphaBow's rights, privileges, and interests, such that 13 these procedural fairness obligations apply. 14 Manual 13 goes on to provide that: (as read) 15 Generally, a person will be provided 16 information to enable them to act in their 17 best interests, and this includes reasons for 18 the allegation, accusation, or complaint made 19 against them. 20 None of that was provided. (as read) 21 Information or evidence on which the decision 22 will be based. 23 Again, that was not provided. (as read) 24 Notice of the impending decision. 25 You'll recall in the first email that was provided to 26 AlphaBow it simply provided that a regulatory action</p>
<p style="text-align: right;">1137</p> <p>1 was being considered. It wasn't until later emails in 2 the afternoon of that day that AlphaBow was even told 3 that the specific regulatory action, which the AER had 4 been working on at this point for a number of days, was 5 the issuance of an order. 6 Further, two other components in terms of the 7 notice that's to be provided are: (as read) 8 Relevant statutory provisions or authority. 9 Again, this was not provided. And: (as read) 10 Possible consequences or penalties. 11 This was also not provided. 12 The refusal to provide details was contrary not 13 only to AlphaBow's expectations under Manual 13, but 14 also their previous experience with the Alberta Energy 15 Regulator. 16 So at Exhibit 8, on page 30, there's notes from 17 AER's discussions with AlphaBow. And so there's a note 18 involving a June 28th call from the Alberta Energy 19 Regulator to AlphaBow regarding potential regulatory 20 action, and this potential regulatory action was the 21 restriction and limitation of AlphaBow's liability. 22 And the note specifically says: (as read) 23 Phone call to Jay Kleinsasser. Lonny advised 24 Jay that the AER was sending a letter this 25 afternoon and wanted to meet with -- meet the 26 week of June 11th [I think that actually</p>	<p style="text-align: right;">1138</p> <p>1 meant July 11th, given the timing of the 2 note. And it goes on to say] The letter 3 contains information that AlphaBow should be 4 prepared to discuss at the meeting. Lonny 5 will coordinate the exact meeting times with 6 Jay. [Jay then said] Email had arrived. 7 Would probably send some of the information, 8 including the reserves report, prior to the 9 meeting. Requested the compliance 10 spreadsheet provided prior to previous 11 quarterly meetings, which Lonny will provide. 12 This lack of notice and process with regards to the 13 March order is also contrary to the process provided 14 with respect to the June order. 15 Again, turning to Exhibit 9, at page 319, there's 16 AER notes which provide email from Tyler to Li sent 17 May 25th, 2023. It then goes on to provide from the 18 email: (as read) 19 Good afternoon, Mr. Li. In response to 20 AlphaBow Energy's failure to comply with the 21 March 30th, 2023, order, as the statutory 22 decision-maker for the order, I am 23 considering escalating enforcement action. I 24 have drafted a suspension order for 25 Alberta -- for AlphaBow Energy, and I would 26 like to offer you the opportunity to</p>

<p style="text-align: right;">1139</p> <p>1 participate in a due-process meeting where I 2 will review the draft order with you. I have 3 the following dates and times available. 4 So this email was sent on May 25th, and they offered 5 the dates of May 29th and May 30th. 6 Now, with respect to the March 30th order, while 7 Mr. Callicott may have been the [sic] view that 8 AlphaBow should have simply come to the meeting and 9 found out there what the meeting was about, that did 10 not satisfy the procedural fairness requirements. 11 AlphaBow asked at least twice to be advised what the 12 proposed regulatory action was about, and also AlphaBow 13 requested alternative times for the meeting. 14 Now, if you read closely the emails that went back 15 and forth -- and they are -- one of the key ones is 16 provided at Exhibit 8 on page 465 -- it's important to 17 note Mr. Li of AlphaBow did not say he could not meet 18 until after Easter vacation. He did not say he had to 19 wait and -- for 13 days before he could meet. He 20 simply inquired as to what the meeting was about and if 21 it could occur later. He did not say he would not meet 22 earlier. 23 And requesting information as to what the meeting 24 was about was not unreasonable. In fact, it followed 25 under the expectations and procedural fairness 26 obligations of the Energy Regulator.</p>	<p style="text-align: right;">1140</p> <p>1 Now, we also heard from Mr. Callicott that he 2 didn't feel he could wait in terms of issuing the order 3 'cause he was concerned about the insurance expiring, 4 and he was also concerned that Mr. Li and 5 Mr. Kleinsasser were currently away. Now, both of 6 these concerns were based on speculation and proved to 7 be unwarranted because AlphaBow had insurance in place 8 at the time and was able to demonstrate and provide a 9 copy of that renewal on March 30th. Similarly, the 10 company operated during that period without incident. 11 And, in any event, these concerns do not void the 12 procedural fairness obligations. 13 I'd also note that specific to the insurance being 14 in place -- so the insurance was in place until the 15 31st. So even with respect to issuing the order on the 16 30th, there was no need for it to be issued on that 17 specific date. There was still the 31st. And, in 18 fact, when you read the reasonable care and measures 19 order, the AER in its order actually provides until 20 April 1st to provide the insurance. So there was no -- 21 like, no urgency in terms of needing to have that proof 22 of insurance that day. And, in fact, in the records 23 leading up to the RCAM order, there is a note that 24 AlphaBow had actually advised that they had gotten the 25 quote for the insurance, and so the AER had that 26 information prior to issuing the RCAM order.</p>
<p style="text-align: right;">1141</p> <p>1 Similarly, with respect to the two AlphaBow 2 executives being away and planning their vacation, 3 again, when you read the reasonable care and measures 4 order, there's no suggestion of imminent urgency in 5 terms of needing to get that order out. In fact, the 6 order provides 30 days to come up with a plan. So this 7 isn't an order being issued on a urgent basis 'cause 8 there were some immediate steps that had to be taken, 9 but when you read the order, it provides deadlines into 10 the future in terms of what needed to be addressed. 11 So, again, we submit there's no reason that a meeting 12 couldn't have been held either later on the 30th or the 13 31st. And, again, AlphaBow never said they couldn't 14 meet; they simply asked for other times and what the 15 meeting would be about. 16 Now, in response to the lack of notice and details 17 prior to the order being issued, we have heard that 18 AlphaBow could have met with Mr. Callicott after the 19 order was issued. Respectfully, that's not how the 20 procedural fairness obligations work. The details of 21 what -- the proposed action to be undertaken have to be 22 provided before the decision is made so that there's a 23 full and fair right to be heard prior to the order 24 being issued. 25 And the reality is it's clear from the record that 26 even if AlphaBow had chosen to meet with Mr. Callicott</p>	<p style="text-align: right;">1142</p> <p>1 right after the order had been issued, his mind had 2 already been made up and was not going to change in 3 terms of the substantive issues with regards to this 4 order. 5 As set out in Exhibit 8, at page 485, 6 Mr. Callicott -- Mr. Callicott's notes state: 7 (as read) 8 I am not of the opinion that AlphaBow would 9 likely be able to provide any new information 10 that would change the need for the required 11 action in the order. 12 We also heard multiple times from Mr. Callicott that 13 there's not a lot of trust. Again, it was clear the 14 information that was going to be provided, not much 15 weight would be put on it. 16 Further, we also heard that the security that was 17 requested from AlphaBow was viewed as a minimal 18 starting point and that more security was likely to be 19 required. 20 In addition to not providing reasonable notice, 21 AlphaBow also could not have known what the AER was 22 proposing to do. When AlphaBow's eligibility was 23 limited in 2022, the decision limiting eligibility set 24 out the conditions for resuming -- or for resuming and 25 reacquiring general eligibility to assume 26 more licence -- more licences for wells and facilities.</p>

<p style="text-align: right;">1143</p> <p>1 And I think it's important to note -- 'cause we've 2 heard concerns about AlphaBow Energy's operations of 3 pipelines -- well, its ability to assume new pipelines 4 was excluded from that order. So AlphaBow's currently 5 allowed -- under the eligibility decision, they can 6 take on new pipelines. So it was wells and facilities 7 that they were limited from acquiring additional of. 8 And specific to the limiting of eligibility, this 9 was not a compliant action. There was no deadline in 10 which general eligibility had to be resumed. Rather, 11 the decision set out the criteria of what AlphaBow had 12 to do if it wanted to take on new licences. So, again, 13 that decision -- while we've heard AlphaBow should have 14 known the issues 'cause they were raised as part of the 15 licence eligibility decision, that decision does not 16 say, You have to do these things or we're going to shut 17 you down. It says, You have to do these things, 18 including improve your field compliance, if you want to 19 take on more well and facility licences. 20 Again, there was a meeting shortly prior to the 21 issuance of the order on March 7th. There was no 22 suggestion in that meeting that the AER was considering 23 any further regulatory action, even though 24 Mr. Callicott, on March 2nd, had asked that a new 25 licensee holistic assessment be carried out on a more 26 expedited basis. In the notes, there's no reference</p>	<p style="text-align: right;">1144</p> <p>1 that that was ever communicated to AlphaBow, nor was it 2 communicated to them that there's consideration of 3 taking further steps. 4 And when you look at the licensee capability 5 assessment, which we've heard a couple of times is the 6 public-facing document that AlphaBow had access to -- 7 and a copy of their most recent one is set out, again, 8 at Exhibit 8 on page 20 -- it did show a number of 9 TIER 1 and TIER 2 rankings. There is also a lot of red 10 in respect to financial health, as well as there was 11 some red in respect to closure work. But AlphaBow's 12 closure work for 2020 -- or for 2022 wasn't due to be 13 submitted yet until the end of the month, so that 14 information had not yet been included. And if you look 15 at their licensee capability assessment from the 2022 16 year, which had all of their closure work included, 17 you'll see they're actually TIER 1 for most of their 18 closure work. 19 So based on this publicly -- or this documentation 20 provided by the AER to AlphaBow, which is really their 21 report card in terms of how they're performing, it 22 would not have been clear to AlphaBow that there was 23 any emergent or urgent issue that was likely to cause 24 them to be shut down. And specific to the safety 25 issues, looking at operations, Directive 13: 26 NONCOMPLIANCE rate, that's TIER 1; field noncompliance</p>
<p style="text-align: right;">1145</p> <p>1 follow-up rate, TIER 2; field noncompliance rate, 2 TIER 2; pipeline incident rate, TIER 2; release and 3 spill rate, TIER 1. So there's a bunch of positive 4 indicators in this licensee capability assessment, and 5 it was actually improving from previous years. 6 And so even though AlphaBow clearly knew that 7 AER -- the AER had some concerns with inconsistency in 8 its reporting and wanted them to continue to be better, 9 there's no way it could have anticipated that it was 10 going to be asked for audited financials, to post 11 security, and that its operations were in imminent 12 threat of being shut down. 13 Specific to the collection -- or the requirement 14 for audited financials, we note Directive 67 does not 15 require companies to have financial -- or have audited 16 financials. The requirement is if you have them, you 17 have to provide them. And I also note that while the 18 AER's legislation authorizes the collection of 19 financial information, it is unclear as to whether this 20 authorization for the collection of financial 21 information actually extends to requiring companies to 22 create further information. So it's unclear whether 23 the requirement is they have to provide information 24 that they have or if it actually extends to requiring 25 companies to spend significant amount of money to 26 generate new reports in this regard.</p>	<p style="text-align: right;">1146</p> <p>1 Specific to the posting of security, even when 2 there was a statutory requirement for AlphaBow to post 3 security, the AER waived that requirement. They 4 allowed them to proceed with a payment plan. So, 5 again, while the 'A' -- AlphaBow would have had some 6 experience with the AER's ability to request security, 7 their experience was that the AER would consider 8 payment plans. 9 And while there's broad authority under the rules 10 for the AER to collect security, currently its only 11 programs that specifically provide guidance to industry 12 in terms of where security would be required from a 13 company such as AlphaBow is when its licensee liability 14 rating falls below 1. We've heard the licensee 15 liability rating's being phased out; it's not a 16 consideration now for its holistic assessment. So 17 that's not applicable. Where the company fails to meet 18 its mandatory closure spend, again, the evidence is 19 that AlphaBow met its mandatory spend or in the event 20 of a licence transfer. And, again, as a result of the 21 limitation on AlphaBow's eligibility, it was in the 22 process of seeking further transfer of licences. So, 23 again, none of those programs for the posting of 24 security applied. 25 And, in fact, as mentioned, the program in respect 26 to when and how security should be collected as part of</p>

<p style="text-align: right;">1147</p> <p>1 the holistic licensee capability assessment is 2 currently being drafted, so there's no documents out 3 right now that would provide guidance in terms of when, 4 outside of those circumstances, it'd be appropriate to 5 collect security and the timing of any collection and 6 the amounts. 7 So now moving from the unfairness of the decision, 8 we'll move to why we submit that the issuance of the 9 March order was unfair. So one of the first issues 10 that we raise is that the order appears to be based on 11 inaccurate, in some cases, exaggerated, and speculative 12 information. A couple of examples of this included the 13 AER's fear or suggestion that AlphaBow was not going to 14 renew their insurance, despite the fact that they'd 15 advised they were going to renew their insurance and 16 did, in fact, renew their insurance. 17 This follows another example that occurred with 18 respect to the limiting of AlphaBow's eligibility, 19 which, when you read the decision there which is 20 included in the materials, the AER had had a concern 21 that AlphaBow would not meet its mandatory spend, even 22 though they said they would meet it and did, in fact, 23 meet it. So there's multiple examples of the record 24 where the AER has not trusted what AlphaBow said, 25 despite its saying something and actually doing what 26 they said they're going to do.</p>	<p style="text-align: right;">1148</p> <p>1 Another issue that was raised were concerns that 2 AlphaBow's closure costs were too high. Now, again, 3 this was assessed based on work that occurred in the 4 winter, and it occurred in the winter because that's 5 when Mr. Green directed that the work be carried out. 6 And it's unclear in terms of what comparisons he did in 7 assessing those costs and determining that they were 8 too high or what the suggestion is in terms of their 9 spend being too high and why that would justify the 10 issuance of a suspension order. 11 And, actually, specific to operating costs being 12 too high, which was another concern raised, the 13 evidence that we heard is that only one company -- it 14 was a publicly traded company -- was reviewed in terms 15 of making that assessment. So that assessment wasn't 16 done looking at all of industry or all of the related 17 peers. One company was chosen to be assessed against 18 AlphaBow's operating costs, and on the basis of that 19 one assessment, a decision was found that AlphaBow's 20 costs were too high. 21 Now, again, it's unclear to us whether -- the fact 22 that AlphaBow's costs appear a bit high, what that was 23 intended to get to. It's not clear where that fits 24 within the AER's regulatory mandate or what suggestion 25 was being made here. 26 Similarly, another issue was the AER had found</p>
<p style="text-align: right;">1149</p> <p>1 that AlphaBow's crossover ratio had already passed. 2 Now, with respect to that crossover ratio, you've heard 3 from Mr. Ironside reasons why he believed it to be 4 inaccurate, and one of the reasons that factored into 5 that inaccuracy was the fact that the crossover ratio 6 was based on outdated reserve report, and the updates 7 that were made did not take into consideration nor did 8 they address the increases to carbon pricing, despite 9 the fact that the original report that was relied on in 10 making the AER's assessment did have some carbon 11 pricing in it. And while other factors were updated, 12 the -- the AER no longer seems to have the data that 13 was used. That component was not updated. 14 And this actually raises another procedural 15 fairness issue 'cause we have the Alberta Energy 16 Regulator relying on a crossover analysis that they 17 developed that was never shared with AlphaBow. It had 18 no notice that this crossover ratio was being prepared. 19 They had no notice what purpose their reserve report 20 was being utilized or what factors were going into that 21 assessment. 22 Again, probably one of the most significant 23 concerns in terms of exaggeration and speculation are 24 the multiple references to fraud. There is no evidence 25 whatsoever that AlphaBow was carrying out fraud. And 26 while it may -- the inference to fraud may have been in</p>	<p style="text-align: right;">1150</p> <p>1 there just to note, Well, when there's change to 2 executives and change to staffing, that could be a 3 factor in terms of fraud. Regardless of whether the 4 intent was to accuse AlphaBow of fraud, there can be no 5 doubt that when someone carelessly throws away -- 6 throws around that word, it causes concern. 7 Further, the concerns raised respecting safety and 8 environment are not reflective of the AER's records. 9 At page 17 of Exhibit 8, again, specific to inactive 10 wells, there's a note that there's no high-risk wells 11 in terms of their group of inactive well compliance. 12 On the same -- and, actually, it's on that same 13 page, that page 17, that the AER's notes state that 14 AlphaBow had advised they had their quote for insurance 15 in and that renewal would be coming the following week. 16 So, again, it goes to they already knew the insurance 17 was coming; they had been told it was coming but chose 18 not to listen to that information. 19 On page 17, again, the notes show, despite the 20 number of licences, AlphaBow's release rate is lower 21 than provincial average, and its liabilities are shown 22 to be clearly decreasing, which, again, is one of the 23 key components of requesting security, was to ensure 24 the environmental liabilities are being addressed. 25 When the AER moved to introducing a holistic 26 assessment, it's required to be fully holistic. So we</p>

<p style="text-align: right;">1151</p> <p>1 submit it's unreasonable for the AER to pick and choose 2 in terms of when it'll consider the holistic picture 3 and when it won't. Similarly, it's unreasonable and 4 unfair to not consider the impacts of orders that are 5 going to be issued and the risk of piling on. 6 What we've seen with respect to the RCAM order is 7 not only does it impose significant costs for security, 8 there are also costs for carrying out abandonment work 9 with the mineral expiries, which was to be carried out 10 within six months. In addition to that, the AER knew 11 the various levies were about to be issued. 12 So there's multiple cost impacts that are being 13 imposed by the Energy Regulator all at once, and this 14 is also at a period in time wherein AlphaBow advises in 15 its meetings with the AER that it has a plan that it's 16 working on to get its municipal taxes addressed and 17 those taxes being in the approximate amount of the 18 \$15 million. 19 Turning to the suspension order. This order is 20 similar ly unfair, unreasonable, and, in addition to 21 that, we submit it's not supported by the statutory 22 provision relied upon in terms of issuing that order. 23 It should be noted that it was while the 24 reasonable care and measures order was under appeal 25 before the -- before the Regulator that the AER chose 26 to escalate its enforcement and issue the suspension</p>	<p style="text-align: right;">1152</p> <p>1 order. And they chose to do that despite knowing that 2 AlphaBow had already raised concerns about the lack of 3 procedural fairness that had been provided and that 4 there was bias demonstrated by Mr. Callicott in terms 5 of his decision-making. And yet despite those concerns 6 and the fact that the AER was considering the 7 regulatory appeal, he decided to double down and 8 escalate to the suspension order. 9 And while we've heard at this hearing some 10 concerns about safety in the environment, we submit the 11 main reason that the suspension order is issued -- and 12 it's demonstrated by the "whereas" clauses in respect 13 of the suspension order -- it was issued not because of 14 concerns of safety and the environment, rather, it was 15 issued in response to the failure to post the 16 \$15 million. 17 And while AlphaBow had filed its regulatory appeal 18 in respect of the March order, AlphaBow was still 19 making efforts to address all of the components of the 20 March order. On the day the order was issued, it 21 provided its insurance renewal. Now, there's been some 22 suggestion that renewal may have only occurred as a 23 result of the order, but we would submit there's no 24 reality to that suggestion. Anyone who's gone through 25 insurance process would know it's very difficult to go 26 to a company on the day you need insurance and get it</p>
<p style="text-align: right;">1153</p> <p>1 issued for a -- or for sites of this type. And, in 2 fact, the AER's own records demonstrate that the 3 company had told them they had been in the process of 4 seeking a renewal long before. 5 On the day after the order was issued, AlphaBow 6 had provided its financial information, and this was 7 information that had been requested previously and that 8 the company had advised it was in the process of 9 preparing. 10 Specific to the reasonable care and measures plan, 11 the AER has submitted concerns that the materials 12 provided were not sufficiently detailed; however, the 13 level of details sought included who, when, and how 14 AlphaBow would carry out activities. And given the 15 scope of the plan sought and need to prepay contractors 16 and the fact that the plans would depend on access of 17 funds, which would depend on whether or not the 18 security deposits were rescinded, we submit that the 19 plan had sufficient and significant detail, and some of 20 that detail is set out in the various letters provided 21 by AlphaBow at Exhibit 9, including the May 12th letter 22 at page 239, the May 23rd letter at 291, the May 24th 23 letter at page 301, the May 28th letter at page 334, 24 the May 29th letter at page 348, and the June letter -- 25 the June 2nd letter on page 602, all of which are 26 provided at Exhibit 9. In addition to the plans</p>	<p style="text-align: right;">1154</p> <p>1 provided, when you look at that May 12th letter, it's 2 clear the -- AlphaBow's plans did not just address the 3 items identified by AER but also included, for example, 4 plans to fix and address tank inspections, which the 5 company had already made plans to do by a specific 6 date. 7 In addition to AlphaBow providing multiple plans 8 in order to ensure that all of the matters set out in 9 the March order were addressed, AlphaBow also sought 10 help from the AER in terms of ensuring that it was 11 addressing the requirements and details that AlphaBow 12 was requesting. 'Cause if you look at the March order 13 and specifically in respect of the RCAM order, while it 14 provides general guidance to provide information that 15 they say they want specific information, it doesn't 16 provide a ton of guidance in terms of what that 17 specific information is that was being sought. 18 And in respect of the security deposit, the AER 19 fully disregarded AlphaBow's plans, despite providing 20 information on how it was going to improve its 21 financial circumstances and ensure that it was 22 exceeding the mandatory spend and resulting in a 23 10 percent decrease of its inactive well liability. 24 This decision to not accept and consider AlphaBow's 25 plans or to seek answers to questions that it had 26 regarding AlphaBow's capabilities was unreasonable.</p>

<p style="text-align: right;">1155</p> <p>1 Further, we've heard, and it's uncontroverted that 2 AlphaBow, even prior to the order, had been making 3 references to its plans with respect to the CO2. These 4 plans to monetize and create value from its CO2 assets 5 are real. They're supported by both the provincial and 6 federal governments' commitments to climate change and 7 addressing emissions. These should not have been 8 summarily dismissed. The AER should have sought 9 details in terms of what AlphaBow's plans were and what 10 it could achieve. Even if the AER wanted and was 11 insistent on security, they should -- it was reasonable 12 to expect they would have sought a firm understanding 13 as to what AlphaBow could have afforded and when they 14 could have paid it. It was completely unreasonable to 15 simply expect that a third party -- that a shareholder 16 would simply come to the rescue and provide funds. 17 Further, turning to the provision and the 18 statutory authority for issuing the order, the AER 19 chose to issue the suspension order under Section 27 of 20 the Oil and Gas Conservation Act. There's also a 21 similar provision in the Pipeline Act that was relied 22 on. Under Section 27 -- you have to read it in its 23 whole -- the first provision provides that the AER may 24 require suspension or abandonment when authorized under 25 the rules or provided for in the legislation. When you 26 go down to (3), the order of Section 27, it provides</p>	<p style="text-align: right;">1156</p> <p>1 that suspension or abandonment can be ordered where 2 it's necessary to protect the public or environment. 3 It is clear this order as issued was not necessary 4 to protect the public or environment. The suspension 5 of Alberta's assets does nothing to protect the public 6 or environment. Rather, it prevents AlphaBow from 7 operating and has resulted in its assets going to the 8 Orphan Well Association. 9 Now, the AER does have authority, though, to shut 10 in operations of a company where that company fails to 11 comply with the AER's legislation or an order drafted 12 by the AER, and that's Section 44 of the Oil and Gas 13 Conservation Act. 14 Now, the AER, though, chose not to use that 15 provision despite the fact it is specific to shutting 16 down operations, and it provides for the shutdown or 17 closure. And we submit shutdown or closure is actually 18 more akin to the temporary nature in which the AER has 19 said their order was intended to be interpreted as, as 20 shutdown or closure would be less than suspension or 21 abandonment, it is literally that, the shutdown of a 22 well or the shut closure, the turning off of the 23 facility. 24 And why does it matter that -- given the AER has 25 two different authorities to shut down companies, why 26 does it matter that they chose to do Section 27 instead</p>
<p style="text-align: right;">1157</p> <p>1 of Section 44? And the reason it matters is because 2 under Section 44, the AER, had it issued the order 3 under that provision, was required to give AlphaBow an 4 inquiry within a set limited period of time. 5 And this entitlement to an inquiry reflects the 6 impacts on the operations, recognizing that a decision 7 to shut -- shut in operations impacts not only AlphaBow 8 and its partners, and it's something that should be 9 addressed quickly. The issuance of the order under 10 Section 27, we say, is an escalation from Section 44, 11 and it's unfair and unreasonable in the circumstances. 12 In this case, the AER has jumped from directing shut in 13 of the sites to requiring suspension. And you heard 14 from the AER panel that was part of suspension and the 15 inspections that occurred in late August. They were 16 concerned that sites did not fully have fluids removed 17 from sites and tanks emptied and that pipelines were 18 not discontinued. Again, that reflects a more 19 permanent nature in terms of what was being proposed in 20 Section 27 as opposed to the temporary and short-term 21 action that the AER has said was intended. 22 Now, while using the analogy of the plane provided 23 by Ms. Olsen, crashing the plane may have been an 24 easier thing to do than continue to deal with AlphaBow. 25 The Regulator's job is not meant to be easy; it's meant 26 to consider what is in the public interest. And as the</p>	<p style="text-align: right;">1158</p> <p>1 Auditor General has signalled, part of its duties, if 2 not now but what will be their duty come '24 -- 2024, 3 will be to work and help struggling companies, not to 4 close them and make them cease operations, the effect 5 of which is sites go to the Orphan Well Association 6 while some of them may be purchased, it's unlikely all 7 of them would be purchased. In the interim, there's no 8 municipal tax payments that being received, whereas the 9 evidence before the commerce commissioners is that 10 AlphaBow was making some municipal tax payments and, in 11 fact, it had a plan to address those municipal tax 12 payments. With regards to landowners, no payments are 13 made on surface leases, and obligations of AlphaBow 14 will fall on the rest of industry that funds the Orphan 15 Well Association as well as it'll create a further 16 burden on them through having to take on AlphaBow's 17 share of administration fees. 18 Further, it's also noted -- while working with 19 AlphaBow may not have always been easy, as there are 20 multiple meetings that were undertaken, as noted by 21 Ms. Olsen, it's not unusual to work with licensees. 22 So, in conclusion, we submit both these orders are 23 unfair and unreasonable. They are contrary to the 24 purpose of ensuring liabilities do not fall on the 25 Orphan Well Association or the Alberta public, 'cause 26 the effect of these orders is that these obligations</p>

<p style="text-align: right;">1159</p> <p>1 currently are with the Orphan Well Association, and if 2 these decisions are not revoked, that is where they're 3 going to stay. 4 This is not a company that wants to cease 5 operations. It's a company that -- while it's been 6 struggling since its creation, it's been working to 7 improve and wants to stick around and continue to 8 improve and do closure work. It's not asking to do the 9 bare minimum, but, as per the plans that have been 10 submitted, is willing to take additional steps to 11 ensure that it's addressing its significant liability 12 on an expedited basis. 13 Now, we acknowledge that this Panel has 90 days to 14 render its decision. We would like to ask, to the 15 extent possible, that the -- that the commissioners 16 consider expediting their decision. These assets have 17 been shut-in, some since June, the rest of which since 18 end of August, early September. The longer that these 19 assets stay with the Orphan Well Association, the 20 greater costs and challenges in terms of getting them 21 up and running and able to resume operations, so to the 22 extent possible, in addition to revoking these 23 decisions, we would ask that it be done on a timely 24 basis. 25 Thank you. 26 THE CHAIR: Actually, just hang on at the</p>	<p style="text-align: right;">1160</p> <p>1 microphone, Ms. Cameron. Actually, Ms. Cameron, have a 2 seat. The Panel wants to chat. We may have questions 3 for you. 4 MS. CAMERON: Thank you. 5 THE CHAIR: Thank you. 6 (ADJOURNMENT) 7 THE CHAIR: Okay. Go ahead. Have a seat. 8 So thank you, all. We have no questions at -- at 9 this time. Thank you, Ms. Cameron. 10 We were -- however, what we're going to do -- we 11 realize there was a bit of time we were out there. But 12 we are going to take a further ten-minute break to 13 allow our court reporters to make sure they're all set, 14 that type of thing. 15 Ms. Ross, is that -- 16 MS. ROSS: Can we actually still take the 17 15? We have to go up to our office -- 18 THE CHAIR: Yes, we'll -- we'll do 15, 19 then. 20 MS. ROSS: Thank you. 21 THE CHAIR: So we will look at to be back 22 at five to 12, then. Thank you. 23 (ADJOURNMENT) 24 THE CHAIR: Okay. Thank you. 25 Ms. Ross, Ms. Lavelle, are you ready to proceed? 26 Final Submissions by Ms. Ross</p>
<p style="text-align: right;">1161</p> <p>1 MS. ROSS: We are. 2 Chair Chiasson, Commissioner Barker, Commissioner 3 Mackenzie, I want to thank all of you for your careful 4 consideration of the evidence in this appeal. It's 5 been abundantly clear that you have put considerable 6 time and effort into reading the material filed in this 7 matter by all of the parties. As my friend Mr. Stapon 8 mentioned, this is not an uncomplicated appeal. 9 Thank you, Ms. Doebele and Ms. Huxley, and all of 10 the services for the support they provided to the Panel 11 and everyone else involved in the hearing. Thank you 12 to the court reporters for the long hours they've also 13 put in getting out rough transcripts within hours and 14 official transcripts in the morning. 15 Thank you to counsel from Bennett Jones for their 16 congeniality and reasonableness during this hearing. 17 Thank you to the representatives of AlphaBow. The AER 18 recognizes that no matter the outcome, it's important 19 for you to have an opportunity to have heard your 20 concerns. Thank you to members of the public who 21 attended in person or listened online. Your interests 22 reflects the importance of a transparent and open 23 hearing. To the AER staff members of our CL -- our CLM 24 team who I call our dream team, thank you for your 25 patience with Ms. Lavelle and me and in teaching us all 26 of your expertise. We're so grateful for your support</p>	<p style="text-align: right;">1162</p> <p>1 and collaboration, and you now know my breaking point 2 is turkey. 3 Finally, to my co-counsel, Maria Lavelle, as well 4 as Will McClary behind the scenes, thank you for your 5 endless hours throughout. You are also a dream team. 6 Compliance and liability management. That is the 7 name and the job of our clients. Their role is to 8 ensure that licensees act in accordance with all of the 9 regulatory requirements necessary to responsibly 10 produce oil and gas in this province. It is also their 11 role to ensure that the resulting liability from the 12 production of oil and gas in this province is managed 13 so that it's not left to the responsibility of the rest 14 of industry, the Orphan Well Association, and the 15 taxpayers of Alberta. 16 AlphaBow's responsibility as a licensee is to meet 17 the regulatory requirements of the AER and to ensure 18 that they are taking steps to limit their liability. 19 In the ordinary course, with a responsible 20 licensee, these two roles intersect and overlap so that 21 all that is required of the AER is general oversight; 22 however, when a company abuses its privilege to hold a 23 licence, the AER has no alternative but to take action 24 to mitigate the risk. That is what happened with 25 AlphaBow. The orders under consideration in this 26 appeal did not occur in a vacuum. CLM did not wake up</p>

<p style="text-align: right;">1163</p> <p>1 one morning and decide to pick on AlphaBow. To the 2 contrary, as far as we know, AlphaBow has been a 3 distressed company from the outset. AlphaBow 4 amalgamated with a previously distressed and insolvent 5 company, Sequoia Resources, to come into existence 6 in -- by 2018. 7 By October of 2019, under the old licence 8 liability rating program or LLR, AlphaBow's LLR had 9 fallen below 1 and had automatically triggered a 10 \$2 million call for security. At AlphaBow's request 11 for variance, CLM began working with AlphaBow, who, in 12 lieu of security, provided a licensee management rating 13 or LMR plan. 14 While there is no denying that AlphaBow has made 15 some progress with closure obligations, their 16 compliance continues to decrease. Incidents remained 17 open and unresolved. No groundwater monitoring had 18 been completed for over a year, and it was clear to CLM 19 that AlphaBow's management of its own sites posed a 20 risk to public safety and the environment. 21 Ultimately, after significant analysis and 22 consideration, the statutory decision-maker, or SDM, 23 determined that it was reasonable and appropriate to 24 issue the March order. As you are aware, the March 25 order set out a number of requirements for AlphaBow to 26 come into compliance, but it appears AlphaBow primarily</p>	<p style="text-align: right;">1164</p> <p>1 takes issue with the requirement that it provide a 2 reasonable care and measures, or RCAM, plan by 3 May 15th, 2023, as well as the requirement for AlphaBow 4 to provide audited financial statements and security in 5 the amount of approximately 15 million. 6 AlphaBow immediately requested a stay of the 7 March order and then sat on its hands and did nothing 8 to respond to the RCAM provisions. Only once the stay 9 had been denied, did AlphaBow finally consider the need 10 to respond with an RCAM plan on May 12th, three days 11 before that deadline. 12 As you heard, Mr. Callicott extended some of the 13 deadlines, and he carefully considered each response 14 from AlphaBow, but ultimately he determined that 15 AlphaBow could not -- could not -- either could not or 16 would not comply and would not or could not provide 17 reasonable care and measures to prevent impairment or 18 damage with respect to its sites. 19 THE CHAIR: Ms. Ross, can you just slow 20 down -- slow down a little bit for us. 21 MS. ROSS: A hundred percent. Sorry. 22 THE CHAIR: Thank you. Thank you very 23 much. 24 MS. ROSS: Apologies, court reporters. 25 The risk to public safety and the environment 26 became too great to allow sites for which RCAM was not</p>
<p style="text-align: right;">1165</p> <p>1 occurring to continue to operate. In order to protect 2 the public and the environment, it became necessary for 3 the decision-maker to order suspension under the June 4 order. 5 Now, AlphaBow would like you to believe that the 6 purpose of these orders was to "kill the company" and 7 "punt the assets to the Orphan Well Association". 8 However, this is just not the case. You heard from the 9 SDM that his hope for all licensees he interacts with 10 is that they are successful at coming into compliance 11 and continuing their operations. The SDM confirmed 12 that this was also his hope for AlphaBow Energy. You 13 also heard the SDM say that, to this day, if AlphaBow 14 would comply with the March order, he would rescind the 15 June order, much like he had done with other licensees. 16 Sadly, as Ms. Langlois also indicated, the 17 compliance and information provided by AlphaBow to the 18 AER has been garbage in; garbage out. No reasonable 19 care and measures plan has ever been submitted to 20 Mr. Callicott, and as a result, AlphaBow's assets 21 remain suspended and in the care and custody of the 22 Orphan Well Association. 23 The issues identified by the Hearing Panel for 24 this regulatory appeal can be summarized as: Was there 25 a breach of procedural fairness in issuing the March 26 and June orders, did the AER exercise its discretion in</p>	<p style="text-align: right;">1166</p> <p>1 a reasonable manner in issuing the March and June 2 orders, and did the AER fail to satisfy the requisite 3 elements of Section 27 of the OGCA in issuing the 4 suspension order to AlphaBow? It's important to 5 remember the burden of proof on each of these issues 6 lies with AlphaBow and not with CLM. 7 We submit that AlphaBow has failed to discharge 8 its onus as the appellant in this case to demonstrate 9 that there was any breach of procedural fairness by the 10 AER in issuing the March and June orders or that the 11 issuance of these orders was unreasonable. In other 12 words, AlphaBow has failed to make its case on these 13 issues. 14 With respect to the requisite elements of 15 Section 27 of the OGCA, CLM submits that AlphaBow has 16 failed to introduce any evidence whatsoever that the 17 AER did not satisfy the requirements of Section 27, and 18 it is the evidence of CLM witnesses that the suspension 19 order was necessary to protect the public and the 20 environment. 21 Acting within the AER's legislative framework, the 22 orders were a reasonable exercise of statutory 23 discretion to mitigate the risk posed by AlphaBow's 24 operation -- operations based on AlphaBow's declining 25 field compliance, failure to conduct monitoring and 26 remediation at contaminated sites as well as its</p>

<p style="text-align: right;">1167</p> <p>1 precarious financial position coupled with a concerning 2 crossover timeline and magnitude of liability. 3 Under the new liability management framework, a 4 holistic licensee assessment, or HLA, identified the 5 two primary risks posed by AlphaBow as AlphaBow's 6 inability to maintain assets, leading to impairment and 7 damage of licences, potentially resulting in public 8 safety and environmental and escalating liability 9 concerns and AlphaBow's inability to meet its 10 end-of-life obligations. 11 The regulatory actions that followed were 12 logically and rationally connected to mitigate these 13 significant risks. In broad terms, the actions taken 14 were an RCAM order to address the first risk and the 15 collection of security to address the second. 16 Despite AlphaBow's argument to the contrary, there 17 is simply no plausible evidence to support that the AER 18 issued these orders to force AlphaBow into 19 noncompliance or insolvency. 20 AlphaBow's insinuations and dire predictions serve 21 merely as distractions from the main point: The March 22 and June orders are valid orders issued for valid 23 reasons under valid legislation. AlphaBow would have 24 the Hearing Panel judge the decisions of CLM based upon 25 AlphaBow's ability to comply with the orders; however, 26 to do so would be in error. In essence, what AlphaBow</p>	<p style="text-align: right;">1168</p> <p>1 is asking for is that it be allowed to continue to 2 operate outside of the legislative framework 3 established by the Government of Alberta for the 4 regulation of the energy industry. 5 Furthermore, AlphaBow's character -- AlphaBow's 6 characterization of its own operations has been 7 inconsistently portrayed throughout this hearing. On 8 one hand, counsel for AlphaBow has suggested that it 9 was an error for CLM to disregard revenue streams they 10 claim were available to AlphaBow and ought to have 11 assuaged CLM's concerns about AlphaBow's liability and 12 the sustainability of its assets. 13 The suggestion on this side of the equation was 14 that CLM incorrectly and unfairly underestimated the 15 assets available to AlphaBow to satisfy end-of-life 16 obligations. 17 On the other hand, AlphaBow counsel has spent a 18 great deal of time in cross-examination trying to 19 suggest that CLM ought to have been more careful not to 20 overburden AlphaBow with requirements to post security 21 for a small percentage of AlphaBow's estimated closure 22 liability, the suggestion here being that the SDM ought 23 to have further reduced the amount of security required 24 based on AlphaBow's ability to fund the same. 25 Putting aside that this suggestion has no basis in 26 law, it simply cannot be the case that both portrayals</p>
<p style="text-align: right;">1169</p> <p>1 of AlphaBow's operations are simultaneously correct. 2 Either AlphaBow has the successful business plan that 3 contemplated how it planned to pay all of its 4 liabilities, including end-of-life obligations for its 5 AER regulated assets, or AlphaBow had not properly 6 accounted for its liabilities in its business plan, 7 meaning there was a strong likelihood that AlphaBow's 8 continued operation could result in unfunded liability, 9 precisely the kind of liability that the CLM are 10 mandated to prevent. 11 With all due respect to AlphaBow's management, CLM 12 submits that the evidence in this hearing supports the 13 conclusion that CLM was justified in its concerns about 14 AlphaBow's operations and their potential impacts on 15 the public or the environment. CLM was therefore 16 justified in taking the steps it took to prevent 17 potential negative outcomes from AlphaBow's ongoing 18 operations. 19 AlphaBow seeks to reconcile the tension between 20 these two alternative realities by suggesting that CLM 21 engaged in a targeted attempt to force AlphaBow into 22 insolvency, the results of which was that AlphaBow 23 Energy went from having a strong chance of sustainable 24 financial growth over many years to a situation where 25 AlphaBow was effectively crippled by the imposition or 26 a requirement to undertake reasonable care and measures</p>	<p style="text-align: right;">1170</p> <p>1 to protect its assets and for AlphaBow to post security 2 for a small portion of its overall liabilities, 3 something which you heard from Mr. Callicott is a 4 minimum standard expected of licensees. 5 AlphaBow has not suggested a credible explanation 6 for what is effectively a conspiracy theory about CLM's 7 conduct. AlphaBow effectively alleges that CLM says 8 one thing about how it exercises the AER's regulatory 9 authority but does something completely different. 10 AlphaBow asked this Panel to dismiss or disregard the 11 evidence it heard from CLM that the primary goal for 12 enforcement is for licensees to become compliant and 13 continue successful operations and, instead, trust 14 AlphaBow's claims that it would only have been able to 15 achieve compliance that -- sorry. Let me start 16 again -- and, instead, trust AlphaBow's claims that it 17 would have been able to achieve compliance and satisfy 18 all of its liabilities if only the AER hadn't conspired 19 to force AlphaBow into insolvency and punt its assets 20 to the Orphan Well Association. 21 I'm just going to take a pause and get some water. 22 AlphaBow's narrative in this regard is unsupported 23 by the evidence and would require significant adverse 24 findings about the evidence and conduct of the staff of 25 CLM. Importantly, there simply isn't a factual or 26 logical basis to support a claim that the CLM staff</p>

<p style="text-align: right;">1171</p> <p>1 have conducted themselves in the manner alleged by 2 AlphaBow. 3 To summarize these contrasting positions from a 4 high level, CLM puts forward a narrative that AlphaBow 5 came into existence with significant compliance issues 6 due to how its assets had been previously operated. 7 This is something that even AlphaBow must agree with 8 based on the evidence it presented about noncompliances 9 predating AlphaBow's ownership. 10 CLM attempted to work with AlphaBow, as it does 11 with all its licensees, to address these compliance 12 issues while also ensuring the costs of AlphaBow's 13 liabilities would not fall on others at the end of the 14 life of AlphaBow's assets. Only after numerous 15 interactions with the AER, including meetings and 16 requests meant to guide AlphaBow into compliance, did 17 the SDM feel it was necessary to issue the orders that 18 are the subject of this appeal. 19 By contrast, AlphaBow asks the Panel to accept an 20 unsupported narrative that CLM engaged in a targeted 21 campaign to undermine AlphaBow's operations by 22 exaggerated the importance of admitted compliance 23 issues and that CLM, either intentionally or 24 negligently, demanded security in an amount that CLM 25 should have known would result in AlphaBow being unable 26 to continue operations.</p>	<p style="text-align: right;">1172</p> <p>1 AlphaBow has failed to identify the legislative 2 and regulatory provisions that would render much of 3 these considerations relevant for CLM's 4 decision-making. Furthermore, the logical and 5 evidentiary basis for AlphaBow's version of the events 6 is nonexistent. To put it another way, there is simply 7 no credible evidence to support a finding that CLM 8 acted unreasonably or denied AlphaBow's sufficient 9 procedural fairness leading up to the orders or that 10 the orders were not justified under Section 27 of the 11 OGCA. 12 In deciding this regulatory appeal, the Panel must 13 look at the context and multiyear history leading up to 14 the issuance of the orders under appeal. The evidence 15 in the hearing demonstrates that the AER did not rush 16 into issuing these orders at the first sign of 17 difficulty on the part of AlphaBow or with the 18 intention of forcing AlphaBow into insolvency. Rather, 19 the evidence demonstrates that the AER worked 20 supportively with AlphaBow since 2019 and only issued 21 the orders after meeting with AlphaBow over 19 times 22 and after other compliance tools failed to adequately 23 mitigate the risks posed by AlphaBow. To say otherwise 24 ignores the factual evidence on the record. Over the 25 course of four years, the AER employed various tools 26 from the compliance assurance framework, including</p>
<p style="text-align: right;">1173</p> <p>1 education, requests for information, notices of 2 noncompliance, culminating in the limiting of 3 eligibility in July 2022 and ultimately when AlphaBow 4 was either unwilling or unable to show any improvement 5 and, in fact, had worsened, the March and June orders 6 in 2023. 7 Through questioning of CLM staff, AlphaBow counsel 8 suggested that the orders may have surprised AlphaBow 9 or that the timelines in the order may have been 10 unreasonably or unfairly short. This suggestion is not 11 supported by the evidence in the hearing. Many of the 12 requirements in the orders are simply based on 13 foundational requirements imposed on oil and gas 14 operations by the legislature of Alberta, and requiring 15 compliance with these requirements should never be 16 considered a surprise. Ignorance of the law is no 17 excuse, and as you heard from counsel for AlphaBow, 18 Alberta acknowledges this is a privilege and not a 19 right to be eligible to be an AER licensee. 20 I will address the fairness and reasonableness of 21 the nonstandard portions of the order in a -- in more 22 detail a bit later. 23 In this hearing, counsel for AlphaBow also 24 repeatedly asked meeting participants about how 25 meetings felt and what the tone of the meeting was, 26 presumably to suggest that a licensee should be able to</p>	<p style="text-align: right;">1174</p> <p>1 anticipate regulatory action being taken against them 2 based on their perception of how CLM were behaving in 3 meetings. Putting aside the obvious fact that there's 4 no legal basis for such a suggestion, an alternative 5 inference that can be drawn from this line of 6 questioning would be that when meeting with CLM staff, 7 AlphaBow's leadership was not at all concerned about 8 how they could bring AlphaBow's operations into 9 compliance but rather that their focus may have been 10 on -- not so much on noncompliance -- or -- sorry -- 11 their focus may have been on how much noncompliance the 12 AER would tolerate before suspending operations or 13 demanding security. 14 Furthermore, CLM submits that the evidence 15 demonstrates that its staff were cordial and 16 professional in their meetings with AlphaBow even in 17 the face of increasing compliance issues and concerns 18 about AlphaBow's liabilities because that is what is 19 required of them in their position. 20 Most importantly, the records of these meetings 21 and the correspondence between CLM staff and AlphaBow 22 are found in the record and speak for themselves. 23 Whether AlphaBow was taken by surprise by the orders 24 and whether the timelines to comply with the orders 25 were fair or reasonable should be assessed based on 26 AlphaBow's presumed knowledge of the regulatory regime</p>

<p style="text-align: right;">1175</p> <p>1 and the available evidence demonstrating the AER's 2 efforts to help bring AlphaBow into compliance and 3 certainly not based on how AlphaBow staff felt about a 4 given meeting. There's no dispute that AlphaBow is 5 entitled to procedural fairness in the issuance of the 6 orders that are the subject of the appeal. However, it 7 is equally evident that in issuing the March and June 8 orders, there was no such breach. While the precise 9 content of the duty to be fair varies from case to 10 case, the duty is generally held to be -- to -- to 11 consist of two main principles: The right to be heard 12 and the rule against bias.</p> <p>13 To establish a breach of procedural fairness, 14 AlphaBow must demonstrate either that CLM failed to 15 hear AlphaBow's side of the issue or that CLM 16 demonstrated bias in exercising its jurisdiction. 17 AlphaBow places the primary importance on the fact that 18 there was no pre-issuance meeting prior to the issuance 19 of the March order. However, a review of the evidence 20 demonstrates there was no denial of this element of 21 procedural fairness. Pursuant to Section 26.2 of the 22 OGCA and 22.1 of the Pipelines Act, reasonable care and 23 measures is a basic obligation of all licensees, and 24 the evidence from AER field inspectors was that 25 AlphaBow's field performance was deteriorating. An 26 AlphaBow employee had also advised the AER that</p>	<p style="text-align: right;">1176</p> <p>1 AlphaBow had not conducted environmental monitoring at 2 several contaminated sites for all of 2022, posing a 3 further risk to the environment and public safety. In 4 these circumstances, considering both the urgency and 5 ensuring that AlphaBow was capable of providing RCAM to 6 all its sites and the lengthy delay before AlphaBow 7 would make anyone available to meet with the SDM, not 8 holding a pre-issuance meeting is not a breach of 9 procedural fairness.</p> <p>10 You heard from Ms. Olsen that over the course of 11 four years CLM had met with AlphaBow 19 full times, the 12 most recent meeting having occurred less than three 13 weeks prior to the March order. AlphaBow knew what 14 CLM's ongoing concerns were and had been provided with 15 a further reminder that failures to meet time -- 16 deadlines would result in a -- in further regulatory 17 action. Despite the warnings, AlphaBow failed to 18 provide CLM with proof of insurance beyond March 30th, 19 2023.</p> <p>20 Mr. Callicott confirmed that, given the magnitude 21 of AlphaBow's liability as well as declining field 22 compliance, he was deeply concerned that AlphaBow would 23 not be able to respond to a major incident or spill 24 financially and that the risk was increased because it 25 was not insured -- or -- sorry -- would not be insured. 26 Ms. Olsen also stated that a failure to renew insurance</p>
<p style="text-align: right;">1177</p> <p>1 by a financially distressed company has historically 2 been an indicator of an intention to cease operations.</p> <p>3 Mr. Callicott was of the view that, save for the 4 security requirement, there was little in the March 5 order which AlphaBow was not already aware of. 6 AlphaBow was well aware of the noncompliances, having 7 received notices of noncompliance, and access to all 8 the field incidents are logged in FIS, which they have 9 access to.</p> <p>10 AlphaBow had also attended previous meetings where 11 these concerns as well as lack of timely responses were 12 outlined. Furthermore, Mr. Callicott viewed the order 13 to be primarily remedial in nature, the purpose of 14 which was to come into compliance with pre-existing 15 requirements.</p> <p>16 Most importantly, CLM did offer AlphaBow the 17 opportunity for a pre-issuance meeting as demonstrated 18 from the serious -- the series of emails reviewed in 19 both direct evidence and in cross-examination. 20 However, AlphaBow would not agree to meet in a 21 reasonable time frame. Once Mr. Li became aware that 22 an order was being considered, he and Jay Kleinsasser 23 were suddenly to be away on vacation that day and 24 indicated that they could only meet after the Easter 25 long weekend, some two weeks away.</p> <p>26 Given his concerns about the impending expiry of</p>	<p style="text-align: right;">1178</p> <p>1 insurance the following day, Mr. Callicott felt he 2 could not wait to issue the order, and on March 29th, 3 he advised Mr. Li he had made a decision to issue the 4 order. Nevertheless, he also advised Mr. Li that he 5 was still available to meet the following day. He kept 6 the time slot open in his calendar, and he waited until 7 the afternoon to actually issue the order.</p> <p>8 It came as quite a surprise in the hearing to 9 learn for the first time that Mr. Li had, in fact, been 10 in town on March 29th and 30th and could have met with 11 Mr. Callicott but chose not to.</p> <p>12 With respect to hearing its side of the issue with 13 respect to the June order, it appears that AlphaBow's 14 evidence on this are nothing more than assertions that 15 CLM did not agree with its position that it had 16 complied with the requirements of the March order and 17 that the CLM should have given more credence to its 18 speculative carbon capture plan.</p> <p>19 We also learned some surprising evidence yesterday 20 through a very astute question by Commissioner 21 Mackenzie. Although the Government of Alberta 22 announced updates to their TIER program and adopted the 23 2021 Government of Canada carbon pricing in late 2022, 24 Mr. Ironside, who proclaimed to be an expert on the 25 subject of carbon capture, admitted he was not aware of 26 the pricing until he attended a conference at the</p>

<p style="text-align: right;">1179</p> <p>1 U of C on March 8. Is it any wonder that CLM viewed 2 AlphaBow's carbon capture scheme as little more than a 3 hope? 4 Prior to issuing the June order, AlphaBow was 5 offered, accepted, and attended a pre-issuance meeting. 6 AlphaBow asked for the ability to provide a response by 7 June 2nd, and it did so. Mr. Callicott took that 8 submission into consideration and made several changes 9 to the draft order on the basis of the submission. 10 Moving on to bias. The test for bias in 11 administrative proceedings is whether an informed 12 person, viewing the matter realistically and 13 practically and having thought the matter through, 14 would have had a reasonable apprehension of bias. Bias 15 is a serious allegation and should not be taken lightly 16 or based on conjecture, speculation, or mere 17 impression. The burden of proof is on the applicant, 18 and there must be a real likelihood or probability of 19 reasonable apprehension of bias, not just a mere 20 suspicion. 21 The inquiry into whether a decision-maker's 22 conduct creates a reasonable apprehension of bias is 23 inherently contextual and fact-specific. Further, a 24 presumption of impartiality not easily displaced poses 25 a high burden on the party alleging bias. 26 Respectfully, the evidence in this hearing does not</p>	<p style="text-align: right;">1180</p> <p>1 meet the high bar to demonstrate bias on the part of 2 CLM. 3 AlphaBow was -- has repeatedly attempted to 4 portray CLM's enforcement steps as biased simply 5 because AlphaBow disagreed with the outcomes of the 6 decision-making process. AlphaBow's evidence is not 7 sufficient to displace the presumption that the -- that 8 CLM was acting without bias against AlphaBow. 9 AlphaBow's allegations of bias amount to little 10 more than baseless accusations or misstatements that 11 fall far short of the test for a reasonable 12 apprehension of bias. Much of AlphaBow's support of 13 its bias argument -- argument is derived by 14 misconstruing the context and comments of the team of 15 advisors supporting the statutory decision-maker, 16 Mr. Callicott. For example, AlphaBow suggests that a 17 comment by Ms. Olsen that the goal has shifted from 18 bringing the licensee into compliance to ensuring that 19 the licensee maintains RCAM for assets and reduces 20 liability for assets where possible as an indication 21 that the AER's biased against it and no longer pursuing 22 a compliance objective, when, in fact, what this 23 indicated was that as the risk posed by AlphaBow 24 increased, the objective moved from simply ensuring 25 compliance with the AER requirements, a reactive 26 approach, to one of providing RCAM to ensure the</p>
<p style="text-align: right;">1181</p> <p>1 assets, public, and the environment are protected and 2 the risks imposed by AlphaBow's financial distress are 3 mitigated. 4 RCAM is an obligation of all licensees, and an 5 order imposing RCAM does not indicate that the AER 6 wanted AlphaBow to fail, but, as a regulator, it had to 7 consider the possibility that this could occur. 8 AlphaBow suggests that Ms. Olsen's reference to 9 the potential for AlphaBow to cease operations is also 10 an indication of bias; however, one can't ignore that 11 ceasing operations is a step that AlphaBow would take 12 on its own. It also fell under Ms. Olsen's "do 13 nothing" option. 14 AlphaBow further points to a statement by 15 Ms. Langlois around whether they should assume AlphaBow 16 is a high risk or act on the basis of an interim 17 financial statement as demonstrating a bias towards 18 AlphaBow's failure. However, this statement is again 19 select -- selectively removed from all context. It is 20 indisputable that AlphaBow has been assessed at very 21 high financial distress for the last three of -- for 22 the last three of the last four years: 2018, 2020, 23 2021, and as of the most recent submission, Q1 2022, 24 which he's referring to is an internal policy not to 25 make decisions based on an assessment of the interim 26 financial statements because these are often variable</p>	<p style="text-align: right;">1182</p> <p>1 but, rather, to wait for year-end statement to assess 2 risk. This is a policy applied to all licensees and is 3 reflective of the cyclical nature of the oil and gas 4 industry rather than an indication of bias. 5 As we heard from Mr. Dahlgren, inspections were 6 conducted at AlphaBow because of its declining 7 compliance record and the risk that pose [sic] to 8 public safety and the environment. The same is true of 9 all licensees whose field performance is declining. 10 AlphaBow's field compliance rating declined from 11 61 percent in 2020 to 42 percent in 2023. The field 12 compliance rating is determined using a consistent 13 methodology applied to all licensees. 14 The evidence of Jason Dahlgren, a senior inspector 15 with the AER, is that rating is determined based on a 16 consistent methodology applied across all licensees and 17 was not based on multiple counting of the same 18 noncompliance. Sites are selected at random and 19 licensees targeted based on risk. This is not evidence 20 of bias. It's evidence of a regulator performing its 21 function as a regulator. 22 To assert that the actions of an independent third 23 party like the OWA booking a potential court date for 24 an insolvency proceeding are evidence of reasonable 25 apprehension of bias of the AER is simply unfounded. 26 The AER did not direct the OWA to bring a receivership</p>

<p style="text-align: right;">1183</p> <p>1 proceeding. Any decision of the OWA to commence 2 insolvency proceedings -- and, in this case, we note no 3 formal insolvency proceeding was commenced by the 4 OWA -- is a decision of the board of directors of the 5 OWA and does not reflect the intent of the AER. 6 Further, in June 2023, AlphaBow itself was 7 considering an insolvency process under the Company 8 Creditors Arrangement Act. AlphaBow contacted the AER 9 because it wanted the Regulator to allow AlphaBow to 10 continue to operate outside of its regulatory 11 requirements so that it would be able to finance the 12 process. The AER declined to participate, as it was 13 not within the AER's jurisdiction, and the AER did not 14 feel it could waive those regulatory requirements. 15 With respect to Mr. Callicott, the statutory 16 decision-maker, AlphaBow claims that he routinely 17 disregarded or mischaracterized information put forward 18 by AlphaBow. However, this claim ignores the extensive 19 evidence in the record, including the SDM's careful 20 consideration of proposals put forward by AlphaBow, the 21 proposed RCAM plans, financial statements, mineral 22 lease expired well abandonments as well as his 23 consultation with his advisors before making decisions. 24 Mr. Callicott also kept detailed notes outlining his 25 thought process and rationale. 26 Further, the evidence shows that while</p>	<p style="text-align: right;">1184</p> <p>1 Mr. Callicott considered the evidence -- or -- sorry -- 2 considered the advice of his subject matter experts, 3 his decisions were made independently and, on occasion, 4 such as accepting the abandonment plan with respect to 5 AlphaBow's mineral lease expired wells, were not always 6 the same as the advice provided. It also ignores the 7 evidence of the changes made to the orders as a result 8 of information provided by AlphaBow, including, for 9 example, the timeline for providing future interim 10 financial statements was extended from 30 days to 11 75 days at the end of each annual quarter after 12 considering -- considering AlphaBow's proposal. 13 Timelines for mineral lease expiry abandonments were 14 accepted, and the draft suspension order was revised 15 based upon the submissions of AlphaBow on June 2nd, 16 2023. 17 He also stated that the March order was intended 18 to be remedial, not punitive. The main focus of the 19 March order was for AlphaBow to provide a reasonable 20 RCAM plan. AlphaBow acknowledges that providing RCAM 21 is an obligation of all licensees but then chafes at 22 the requirement to provide the plan and demonstrate 23 that it is providing the reasonable care and measures 24 at all of its sites, the compliance tool that is 25 routinely used with other licensees as well. 26 We submit that there was no breach of procedural</p>
<p style="text-align: right;">1185</p> <p>1 fairness in either the issuance of the March or June 2 orders; however, in the alternative, even if this Panel 3 were to find there had been a breach of procedural 4 fairness in the decision reached by the SDM in issuing 5 these orders, this hearing affords AlphaBow a further 6 opportunity to be heard and to have a decision made by 7 a fair and impartial decision-maker. Accordingly, any 8 breach of procedural fairness is remedied by having 9 held this hearing. 10 I will now turn to the final issue or -- sorry -- 11 the second issue that is reasonableness in which the 12 SDM exercised its discretion in issuing the March and 13 June orders. 14 We submit that these orders were valid orders 15 supported by the underlying facts in law and that such 16 discretion exercised by the SDM in issuing these orders 17 was exercised in a reasonable manner. As we set out in 18 our written submissions, the law in relation to 19 reasonableness of a tribunal's decision was articulated 20 by the Alberta Court of Appeal in Moffat and is more 21 fulsomely set out at paragraph 59 of CLM's submissions. 22 Suffice it to say for the purpose of this oral 23 argument, a reasonableness decision is one based on a 24 chain -- a rational chain of analysis, it being 25 necessary to trace the decision-maker's reasoning 26 without encountering any fatal flaws in its overarching</p>	<p style="text-align: right;">1186</p> <p>1 logic such that one can be satisfied there is a line of 2 analysis within the given reasons that could reasonably 3 lead the Tribunal from the evidence before it to the 4 conclusion at which it arrived. 5 We submit that on the face of each order, one can 6 trace the rational chain of analysis of the SDM without 7 encountering any fatal flaw in overarching logic. 8 THE COURT REPORTER: If I could ask you to slow 9 down a bit, please. Thank you. 10 MS. ROSS: Yeah. 11 With respect to the March order, the rational 12 chain of analysis is apparent when reviewing the 13 constituent parts, namely, the recitals or the 14 "whereas" clauses followed by the operational 15 paragraphs of the March order. 16 In relation to the recitals, the factual basis for 17 the issuance of the March order is as stated in the 18 recital to the order itself, including the following: 19 AlphaBow had failed to maintain a field compliance 20 rating of 75 percent, the industry average, and 21 maintain improvement. As CLM's evidence demonstrated, 22 at the time of the March order, AlphaBow's field 23 compliance rating was below industry average and had 24 declined from a satisfactory 76 in 2019 to 64.15 25 percent in 2021 to 54 percent in 2022 to 42 percent at 26 the time the March order was being contemplated.</p>

<p style="text-align: right;">1187</p> <p>1 AlphaBow advised that it had failed to conduct 2 groundwater monitoring at a number of contaminated 3 sites in 2022, a potentially serious risk to public 4 safety and environment. 5 It is also noted that AlphaBow had a pattern of 6 not meeting reporting deadlines. For example, it 7 failed to report a pipeline leak and was generally 8 inconsistent in responding to requests from the 9 Regulator to provide information. A number of specific 10 noncompliances were noted, often resulting from either 11 a lack of knowledge of its regulatory obligations or a 12 lack of resources or funds. 13 While some of these noncompliances were rectified 14 by AlphaBow sometime after the order was issued, the 15 SDM became concerned that AlphaBow was relying on the 16 AER to identify compliance issues rather than 17 proactively identifying, rectifying, and preventing new 18 issues across its operations. 19 With respect to the operational paragraphs, the 20 only nonstandard operational paragraphs in the March 21 order were the requirements for AlphaBow to post the 22 security deposit and to provide audited financial 23 statements. The remainder of the operational 24 paragraphs in the March order are all standard 25 requirements of the AER with which AlphaBow should have 26 already been in compliance. Furthermore, these</p>	<p style="text-align: right;">1188</p> <p>1 standard requirements were set out in the prior 2 eligibility decision. 3 The fact that the eligibility decision was issued 4 in July 2022 and AlphaBow had done little to comply 5 with the expectations set out therein demonstrates that 6 AlphaBow either had an inability or unwillingness to 7 comply with even basic or standard AER operating 8 requirements. Each of the operational paragraphs in 9 the March order is rationally related to a risk posed 10 by AlphaBow's operations. 11 Under the new liability management framework, the 12 holistic licensee assessment performed by AlphaBow had 13 identified the two primary risks posed by AlphaBow, as 14 previously discussed. As we heard in the evidence, 15 AlphaBow left serious noncompliances such as failure to 16 complete the groundwater monitoring unaddressed, posing 17 a serious risk to public health and the environment. 18 Furthermore, there was a pattern of similar 19 recurring noncompliances such as high-risk 20 noncompliances related to AlphaBow's pipeline 21 operations and integrity management, leading to -- the 22 SDM to conclude that a more proactive approach was 23 warranted to ensure that reasonable care and measures 24 were in place for all AlphaBow sites. 25 It is evident from AlphaBow's submissions in the 26 testimony that the crux of AlphaBow's objection to the</p>
<p style="text-align: right;">1189</p> <p>1 reasonableness of the March order is the requirement to 2 pay security. The SDM has broad discretion under 3 Section 1.100 of the Oil and Gas Conservation 4 Regulations to request security, including at any time 5 where the Regulator considers it appropriate to do so 6 to offset the estimated costs of abandoning and 7 reclaiming a well. 8 AlphaBow has alleged that the AER had some 9 ulterior motive in the amount of security that was 10 directed, suggesting that it was designed to be an 11 amount that AlphaBow owed in municipal taxes. There is 12 no evidence to support this assertion, and, in reality, 13 the amount chosen was intended to be representative of 14 potential liability to the Orphan Well Association and 15 to Albertans. 16 The ministerial order referenced by AlphaBow 17 applies only to new well applications or well 18 transfers. There is no connection to view this 19 ministerial order in relation to AlphaBow. 20 At the time of calculation, AlphaBow's total 21 estimated liability was 266,407,915 million. Of this 22 amount, 153 million was represented by inactive wells 23 and facilities. The amount of the security deposit 24 directed in the March order was intended to represent 25 10 percent of the estimated liability of AlphaBow's 26 inactive well and facility inventory. The amount of</p>	<p style="text-align: right;">1190</p> <p>1 security requested far fell [sic] below the maximum 2 permitted under the liability framework of its total 3 estimated liability, far below that which would have 4 been required on a licence transfer and roughly equal 5 to that that would have been collected under the old 6 LMR program. 7 Furthermore, you heard the detailed consideration 8 Mr. Callicott made to the amount of security which he 9 believed would be a fair request. AlphaBow also claims 10 that the security requirement is unreasonable because 11 the SDM knew or ought to have known that AlphaBow could 12 not pay it. However, this was not the evidence of the 13 SDM. When pressed, his evidence remained steadfast 14 that he expected that AlphaBow may be able to comply 15 with the security requirement either through funds 16 through its parent company or that it was open for 17 AlphaBow to propose an acceptable payment plan or 18 request for extension. 19 While he acknowledged that it was a possibility 20 they would not be able to pay security, the primary 21 goal of the March order was in protecting public 22 safety, the environment, as well as preventing 23 impairment or damage to the sites. 24 AlphaBow has also put considerable emphasis on a 25 report of the office of the Auditor General to support 26 its position that it's not appropriate for the AER to</p>

<p style="text-align: right;">1191</p> <p>1 collect security from an already financially distressed 2 company. AlphaBow even goes so far as to infer that 3 the decision of the SDM to request security from 4 AlphaBow was made quickly in order to have the decision 5 made before the report was issued. 6 The SDM was clear in its testimony that the OAG 7 report had no bearing on his decision to request the 8 security from AlphaBow. 9 Further, contrary to AlphaBow's argument, the OAG 10 report did not direct the AER to collect security from 11 financially distressed licensees. The OAG report did 12 determine that insufficient security was not being 13 collected under the previous LLR program; however, the 14 request for security from AlphaBow was not made under 15 the LLR program but under the new liability management 16 framework. Furthermore, the Auditor General does not 17 set policy direction. That is done by the Government 18 of Alberta. 19 AlphaBow goes so far as to allege that in taking 20 the actions that it did against AlphaBow and two other 21 companies that the AER was targeting Chinese-owned 22 companies, ignoring the only plausible and admittedly 23 more boring explanation that AlphaBow and the other 24 companies referenced had invested in companies with 25 large liability issues and accordingly were at risk of 26 not meeting their end of life obligations.</p>	<p style="text-align: right;">1192</p> <p>1 With respect to the requirement for audited 2 financials, while the AER has at times accepted 3 unaudited financials from licensees, in the case of 4 AlphaBow, it had already indicated a number of signs of 5 financial distress, had been assessed as an 6 unreasonable risk, had its eligibility limited, and had 7 demonstrated an unwillingness to submit even interim 8 financial statements. Furthermore, as demonstrated at 9 the hearing, weak and often inconsistent 10 management-prepared financial statements further 11 supported the need for audited statements. 12 These facts combined with information received 13 from AlphaBow that it no longer had a chief financial 14 officer or director of finance and had a new financial 15 manager who was attempting to catch up with regulatory 16 filings led the AER to believe that the risk 17 demonstrated by AlphaBow required the provision of 18 audited financial statements. 19 It is also notable that audited financial 20 statements are the default requirement of Directive 67 21 with discretionary acceptance of management-prepared 22 financials. It is notable as well that several times 23 AlphaBow promised to make the -- promised to provide 24 the financials and then reneged on that promise -- 25 sorry -- promised to provide the audited financials. 26 AlphaBow also takes issue with a number of other</p>
<p style="text-align: right;">1193</p> <p>1 operational provisions in the March order, which they 2 assert are neither remedial nor standard. CLM 3 disagrees with AlphaBow's characterization of these 4 provisions. Furthermore, AlphaBow's criticism ignores 5 that Section 26.2(3) of the Oil and Gas Conservation 6 Act provides that: (as read) 7 As part of an RCAM order, the AER may impose 8 any terms or conditions that the Regulator 9 determines are necessary in the order. 10 The authority granted by Section 26.2(3) is broad in 11 order to allow the AER to correct situations where a 12 licensee is not fulfilling its obligation to provide 13 reasonable care and measures in respect of its assets. 14 AlphaBow's criticism of the March order on this 15 basis does not prove that the March order is 16 unreasonable. In fact, a logical connection can be 17 made between the information requests and the purpose 18 of the March order. 19 The requirement for an RCAM plan in Clause 1 and 2 20 is a very common requirement of AER orders. It is not 21 possible for the AER to go to every site to assess 22 whether RCAM is, in fact, being provided. So, instead, 23 a plan is asked for to assess whether the licensee has 24 the ability to provide the RCAM for its sites. 25 An abandonment plan for all of its mineral lease 26 expired wells logically required as no further -- was</p>	<p style="text-align: right;">1194</p> <p>1 logically required as no further extensions were 2 possible as AlphaBow had failed to meet its area-based 3 closure commitments in 2021. AlphaBow is required 4 under Section 3.0120 of the OGCR to abandon these 5 mineral lease expired wells. 6 Requiring proof of insurance by April 1st was 7 similarly reasonable as AlphaBow's insurance was set to 8 expire at the end of March, and a licensee must have 9 valid insurance. Requiring up-to-date working interest 10 participant information was similarly reasonable. As a 11 responsible regulator, the AER has to plan for the 12 possibility that AlphaBow might not continue to operate 13 as a going concern and in which case it would need this 14 information because if AlphaBow failed to continue 15 their closure obligations, they may fall to the -- the 16 working interest participants. 17 The June order, you heard, was an escalation of 18 compliance action following AlphaBow's failure to 19 comply with the March order. Notably, AlphaBow failed 20 to submit an acceptable RCAM plan to demonstrate that 21 it was, in fact, capable of providing reasonable care 22 and measures. And it failed to pay the security 23 deposit or submit an alternate -- acceptable alternate 24 proposal to mitigate the risks of AlphaBow's perceived 25 lack of capability to meet its regulatory and liability 26 obligations. AlphaBow failed to meet even the minimum</p>

<p style="text-align: right;">1195</p> <p>1 requirements to protect the public or the environment 2 by providing reasonable care and measures to their 3 sites and was at a high risk for not meeting their end 4 of life obligations. The suspension order was a 5 reasonable and necessary response to protect the public 6 and the environment. The SDM determined that 7 AlphaBow's operations should be suspended and remain 8 suspended until such time as it could demonstrate that 9 it could meet them.</p> <p>10 Turning to the final issue of the -- for the 11 hearing, as determined by the Panel, being whether or 12 not Section 27 of the Oil and Gas Conservation Act was 13 satisfied in the June order, CLM submits that it was 14 satisfied. Section 27 of the Oil and Gas Conservation 15 Act provides that the Regulator may direct the 16 suspension of wells and facilities. Section 23 of the 17 Pipeline Act is a similar provision that allows the 18 Regulator to direct the discontinuance of pipelines as 19 follows.</p> <p>20 Both Section 27 of the OGCA and Section 23 of the 21 Pipeline Act grant the AER the authority to either 22 suspend or discontinue or abandon the relevant 23 infrastructure if the AER considers it is necessary to 24 do so in order to protect the public or the 25 environment.</p> <p>26 Furthermore, both sections contemplate ordering a</p>	<p style="text-align: right;">1196</p> <p>1 temporary state of suspension or discontinuance in 2 accordance with applicable definitions. By virtue of 3 the language contained in the definition of the term 4 "suspension" in the OGCA, the temporary deactivation 5 ordered by the AER must also include any measures that 6 are required to ensure the operation is left in a safe 7 and secure condition.</p> <p>8 Subsection 27(3) of the OGCA provides in 9 particular that the Regulator may order that a well or 10 a facility be suspended or abandoned where the 11 Regulator considers it is necessary to do so in order 12 to protect the public or the environment.</p> <p>13 The June order met the requirements of Section 27 14 of the OGCA, as the suspension of the AlphaBow sites 15 was necessary to protect the public or the environment 16 until AlphaBow could demonstrate that it could provide 17 reasonable care and measures at its site. The 18 provision of reasonable care and measures involves 19 having the ability to respond to an incident, provide 20 ongoing site care, such as removing fluids, securing 21 the site, repairing infrastructure, and addressing site 22 concerns. The failure to provide RCAM poses risk to 23 public safety and the environment. Suspension ensures 24 that the sites are left in a safe state, both for the 25 public and the environment, until reasonable care and 26 measures can be provided. The recitals to the June</p>
<p style="text-align: right;">1197</p> <p>1 order expressly confirm that it was issued in order to 2 protect public safety and the environment.</p> <p>3 As the SDM testified, he did not intend the 4 suspension of the AlphaBow sites to be permanent. Had 5 this been his intention, he would have issued an 6 abandonment order, as he had done with other licensees. 7 Rather, he fully expected that AlphaBow would comply 8 with the suspension order and restart operations. In 9 contemplation of this eventuality, the June order even 10 provided for the submission of a reactivation plan to 11 be reviewed by the director.</p> <p>12 CLM was justified in considering that it was 13 necessary to suspend AlphaBow's sites to protect the 14 public or the environment. Under cross-examination, 15 the SDM explained that AlphaBow was over a hundred -- 16 has over a hundred contaminated sites. For many of 17 these sites, the AER has very limited information due 18 to the fact that AlphaBow has not provided updates on 19 the sites despite repeated requests from the AER.</p> <p>20 Furthermore, as the SDM indicated, AlphaBow has 21 failed to live up to its commitments to complete work 22 on some of these contaminated sites. AlphaBow's 23 failure to take steps to address its contaminated sites 24 demonstrates that AlphaBow is, again, either incapable 25 or unwilling to protect the environment from the 26 risk -- the risks posed by its contaminated sites.</p>	<p style="text-align: right;">1198</p> <p>1 Also under cross-examination, the SDM was asked 2 what his motivations and considerations were in support 3 of the June order, and he repeatedly confirmed that he 4 was motivated by upholding the AER's mandate, which 5 included preventing impacts to the safety of the public 6 or the environment from AlphaBow's operations.</p> <p>7 In its closing, counsel for AlphaBow argued that 8 the AER should not have relied on Section 27 of the 9 OGCA and submitted that Section 44 of the OGCA was the 10 more appropriate provision in these circumstances. 11 CLM's earlier written submission offers a response to 12 this argument and demonstrates, by Section 44 of the 13 OGCA, it is both outside the scope of this regulatory 14 appeal and not the appropriate section of the OGCA for 15 CLM's purposes.</p> <p>16 In closing and during question [sic], counsel for 17 AlphaBow sought to draw links between the orders and 18 AER programs that cover similar subject matter. For 19 example, the consideration of a licensee's finances in 20 a -- in setting mandatory closure spending as 21 suggesting CLM should have reduced the amount of 22 security requested from AlphaBow. In CLM's submission, 23 this is comparing apples to oranges. CLM's evidence 24 has consistently showed that its orders are based on 25 the specific factual context presented to it at the 26 time its orders are issued. This is CLM's practice and</p>

<p style="text-align: right;">1199</p> <p>1 this is how it was dealt with in AlphaBow's case. 2 Also in relation to AER programs more broadly, 3 counsel referred to a new government policy that was 4 referred to in the Auditor General report as "yet to 5 come, the licensee's special action". That is, in 6 fact, the licensee management program which is in place 7 and was described at length in these proceedings. 8 Counsel for AlphaBow expressed some concerns about 9 Mr. Callicott's responses to general questions about 10 orders that come out of CLM. Mr. Callicott's 11 specificity is justified because each compliance matter 12 he deals with is unique. While CLM is, of course, 13 aware of the mandatory closure spend program, it was 14 not obliged to apply the exact same principles in 15 drafting a specific order as are adopted by other AER 16 programs of a more general application. 17 Ms. Cameron also said in closing that the AER has 18 caused AlphaBow's business to fail due to the amount of 19 security that was ordered. She correctly pointed out 20 that \$15 million is a lot of money; however, AlphaBow 21 did not address the substance of CLM's evidence, which 22 was not that CLM -- it's a small amount -- rather, the 23 undisputed evidence is that 15 million is only a small 24 portion of the actual costs estimated to satisfy 25 AlphaBow's end of life obligations. 26 This is an obvious and important distinction.</p>	<p style="text-align: right;">1200</p> <p>1 What this distinction means is that AlphaBow would, in 2 fact, need to pay much more than 15 million to satisfy 3 its end of life obligations. AlphaBow claims that it 4 could not obtain 15 million to satisfy the security 5 requirement, but does not dispute that 15 million is 6 only a small portion of the actual anticipated costs to 7 retire its assets. 8 The fact that AlphaBow wasn't able to secure 9 financing to secure a small portion of its known 10 liabilities suggests that it wasn't the AER that caused 11 problems to AlphaBow's business, but, rather, that 12 potential sources of financing available to AlphaBow 13 agreed with the AER's assessment that there was a risk 14 that AlphaBow would not be able to meet its 15 commitments. 16 When discussing issues of fairness in closing, 17 Ms. Cameron focused only on a very narrow time frame 18 when assessing CLM's actions. The claims of unfairness 19 are a surprise relating to -- the issuance of the March 20 order obviously must consider all of the interactions 21 between CLM and AlphaBow that led up to the March 22 order, not just the final days before it was issued; 23 however, counsel's focus on this time frame highlights 24 an important point to be made about AlphaBow's 25 inability to find someone to meet with CLM on short 26 notice.</p>
<p style="text-align: right;">1201</p> <p>1 Mr. Callicott's evidence included his valid 2 concern that vacation plans for one or two individuals 3 would mean that there was nobody available to meet with 4 the AER on an urgent basis. There are numerous reasons 5 why licensees may need to meet with the AER on short 6 notice. It was reasonable for CLM to assume that 7 someone at AlphaBow should be made available to meet on 8 short notice to discuss the March order. CLM submits 9 that even without considering the timeline immediately 10 before it issued the March order, CLM has satisfied its 11 duties to AlphaBow by offering multiple meeting times 12 that were ultimately declined by AlphaBow. 13 In closing argument, counsel incorrectly claimed 14 that CLM was of the view that the crossover point had 15 passed. The AER sought out an updated reserve report 16 from AlphaBow, and, in response, AlphaBow provided a 17 report from 2020. Importantly, the AER found that 18 AlphaBow's report resulted in a crossover point that 19 was even more pessimistic than what was contained in 20 the AER's assessment. 21 This issue also highlights another theme from 22 AlphaBow's case. AlphaBow has repeatedly suggested 23 that the AER made decisions based on outdated and 24 insufficient information. CLM submits that the 25 information it relied on was accurate and sufficient 26 for its purposes at the time of reliance. If the</p>	<p style="text-align: right;">1202</p> <p>1 Panel digs deeper into AlphaBow's claims about the 2 information before the AER, these claims either relate 3 to the information that AlphaBow could have provided to 4 the AER but did not, or AlphaBow's claims are solely 5 based on AlphaBow disagreeing with the decision. 6 Also in its -- in her closing, AlphaBow's counsel 7 once again raised the claim that it was not fair to 8 escalate enforcement with the suspension order when the 9 RCAM order was under appeal. AlphaBow has raised this 10 argument at the Court of Appeal as well -- as well as 11 when AlphaBow previously requested a stay of the 12 suspension order from the AER. 13 Previously the AER denied AlphaBow's stay request, 14 and the reason that denial was included -- sorry. 15 Previously the AER denied AlphaBow's stay request and 16 in that reason included that the March order was 17 operational. AlphaBow's request to stay the suspension 18 order was denied on August 14th regarding compliance 19 with the decision; however, it's notable that AlphaBow 20 was still operating its sites on September 5th. In any 21 event, CLM submits that the Panel should not accept 22 AlphaBow's argument that has previously been denied by 23 other decision-makers. 24 When one consider -- when one considers in context 25 all the actions taken by the AER in relation to 26 AlphaBow, it is clear that, contrary to AlphaBow's</p>

<p style="text-align: right;">1203</p> <p>1 assertions, that the AER did not seek to push AlphaBow 2 into noncompliance or insolvency. Rather, the AER 3 sought, through regulatory action, to ensure it was 4 providing reasonable care and measures and took steps 5 to mitigate the risk that end of life obligations would 6 not be met if the company did fail. 7 It would be imprudent for the Regulator, when 8 faced with a company that has a high level of financial 9 distress and liability risk, who has self-reported 10 since at least 2019 that it has concerns about its own 11 ability to continue as a going concern and is showing a 12 declining -- further declining field compliance and 13 failure to monitor high-risk contaminated sites, not to 14 take action. This is being proactive. It is 15 consistent with Government of Alberta's policy, as 16 expressed in the new liability management framework. 17 It is not punitive. As the records of decision and the 18 testimony you've heard supports, it was considered a 19 course of action that was not taken lightly by the SDM 20 but only made after careful analysis and consideration 21 of all the available information. 22 There is simply no evidence to support the AER 23 sought to drive AlphaBow into insolvency. First, as we 24 heard at the hearing, far from giving up on bringing 25 AlphaBow into compliance, it chose to focus on 26 AlphaBow's efforts on providing reasonable care and</p>	<p style="text-align: right;">1204</p> <p>1 measures across all of its sites. RCAM is an 2 obligation of all licensees, and the requirement to 3 prepare, submit, and ultimately implement an RCAM plan 4 has been applied to numerous licensees. 5 Second, while acknowledging there are pros and 6 cons to requiring security, the SDM acted within its 7 statutory discretion to ask for security to mitigate 8 the risk of AlphaBow failing to meet its end of life 9 obligations. The amount of security requested was far 10 below the maximum provided for under the licensee 11 management framework, and while based on a percentage 12 of AlphaBow's inactive licences it corresponded with 13 the amount of security that would have been collected 14 under the previous LMR system, a system that the 15 Auditor General criticized as not collecting sufficient 16 security, and, further, had nothing to do with 17 AlphaBow's baseless allegations that it was designed to 18 thwart AlphaBow's efforts to repay the taxes owed to 19 municipalities. 20 In fact, as noted, not only has AlphaBow failed to 21 pay the required security to the AER, it has also 22 failed to repay the municipalities its tax arrears, 23 some now five months after the June order. 24 Third, at any time, even today, AlphaBow could 25 come into compliance with the orders and resume their 26 operations. Mr. Ironside sketched out a very</p>
<p style="text-align: right;">1205</p> <p>1 high-level resumption plan. As AlphaBow points out in 2 its reply submissions, it remains the licensee of all 3 of these assets. As AlphaBow failed to suspend its 4 sites as required by the June order, the AER's 5 direction to the OWA was a temporary measure necessary 6 to have the required suspension work completed prior to 7 winter freeze-up to avoid damage to the environment and 8 risk to public safety. 9 As the licensee, AlphaBow could continue to assess 10 these sites and, in fact, did so in order to receive 11 some records necessary to claim carbon tax credits. 12 The direction of OWA-controlled access was to avoid a 13 situation where, as happened here, the licensee sought 14 to take action that was inconsistent with the temporary 15 suspension of the sites. As the Responsible Energy 16 Development Act provides, the AER's legislation is in 17 place to ensure the efficient, safe, orderly, and 18 environmentally responsible development of energy 19 resources in Alberta. The dire picture that AlphaBow 20 paints in its conclusion to its submissions neglects 21 the possibility that AlphaBow operate in compliance 22 with the requirements. It suggests that AlphaBow be 23 allowed to pick and choose the requirements it complies 24 with and argues that some compliance is better than no 25 compliance. 26 But this isn't the regulatory regime we have in</p>	<p style="text-align: right;">1206</p> <p>1 place in Alberta, and any discussion as to what the 2 regulatory regime in Alberta ought to be instead lies 3 outside the scope of this appeal. 4 Ms. Cameron again raised the -- the plain analogy 5 that Ms. Olsen brought to light. She stated that it 6 might be easier to crash the plane. However, what she 7 has forgotten is that the AER is not the pilot. 8 AlphaBow is the pilot. We are the air traffic 9 controller, and the pilot refuses to take our 10 direction. When that happens, sometimes the plane does 11 crash. 12 CLM asks that you confirm the March orders -- 13 March and June orders as issued. Thank you. 14 THE CHAIR: Thank you, Ms. Ross. We're 15 just going to take a moment to confer. We're going to 16 step out for a couple of minutes. We'll be back 17 shortly. 18 (ADJOURNMENT) 19 Discussion 20 THE CHAIR: So, counsel, thank you both 21 for -- for your arguments. The Panel does have one 22 question. The same question that it would like to pose 23 to both parties. 24 So we've seen in -- in the submissions from both 25 parties to the hearing here and as well as hearing 26 final argument discussion around the -- the piece that</p>

<p style="text-align: right;">1207</p> <p>1 the June order was issued while AlphaBow was pursuing a 2 request for regulatory appeal in relation to the March 3 order. And so the question that the Panel has for both 4 parties is: Does an operator contesting a compliance 5 step or tool prevent a regulator from taking any 6 further compliance action, and what -- you know, what's 7 the authority for your position either way in relation 8 to that? 9 So that's the question we'd like to put. We'll -- 10 we're -- we're anticipating if we give you about ten 11 minutes to speak to that -- to -- to get -- to get 12 ready and then you can speak to that. 13 MS. CAMERON: Commissioners, subject to my 14 friends, we're happy to answer now, and I think our 15 answer will likely not be of concern to my friends, 16 although -- so if you would like us to answer and if 17 they need a break -- but otherwise we're happy to 18 proceed and keep -- keep this matter moving. 19 THE CHAIR: Ms. Ross, Ms. Lavelle? 20 MS. ROSS: If Ms. Cameron wants to give 21 her answer, and we can consider whether or not we agree 22 or need time to provide a different response. 23 THE CHAIR: Okay. So what you'd like to 24 do is hear her answer and then decide whether or not 25 you'd like -- you need any time? Thank you. Okay. 26 Go ahead, Ms. Cameron.</p>	<p style="text-align: right;">1208</p> <p>1 MS. CAMERON: Thank you, commissioners. 2 There -- there's no dispute -- once the stay is listed, 3 there -- the AER is free to pursue other enforcement 4 tools to the extent it deems necessary. That said, we 5 think it should be something that's factored into the 6 reasonableness and the necessity of an order. And 7 specifically in this case, part of the concern that's 8 been raised is the reasonable apprehension of bias in 9 terms of: The order was issued; why wouldn't the 10 Regulator wait and see what happens through the 11 regulatory appeal process prior to proceeding? And I 12 know my friend's submission said, Well, there were 13 concerns by -- with respect to environment and safety. 14 But, again, if you look at the actual suspension order, 15 it's focused on the payment of that security deposit 16 which needed to be paid to get the order lifted. 17 THE CHAIR: So just a follow-up question 18 to that on your position, then, that if there's a 19 concern about noncompliance, wouldn't that effectively 20 give the noncompliant party a stay during the course of 21 waiting for a review or appeal process to play out? 22 MS. CAMERON: Not necessarily. Right? 23 Because what -- what typically happens -- and this is 24 set out a bit in the compliance -- compliance manual -- 25 is you have a noncompliance. It's up to the AER 26 whether they escalate that noncompliance with issuance</p>
<p style="text-align: right;">1209</p> <p>1 of an order or take further steps. So it's not a 2 lock-step process where, You don't comply with the 3 order; we must escalate to shutting in operations. 4 So we're saying there's certainly discretion in 5 terms of what actions to take when a company fails to 6 comply with the order, but there was no requirement 7 that the security is not posted. We have to shut in 8 operations. Security is not posted. There is -- in 9 that compliance tool kit, there's a ton of tools 10 available to the AER, including, for example, the 11 garnishment of some production in order to collect some 12 of that security amount. 13 So there were lots of tools available that could 14 have been used, and so -- in escalating to the 15 suspension order to whether that was reasonable and 16 appropriate. 17 THE CHAIR: Thank you, Ms. Cameron. 18 Ms. Ross or -- if you're -- if you're prepared to 19 speak to it now, or would you like some time? 20 MS. ROSS: We agree with -- with 21 Ms. Cameron, except to the extent that the suspension 22 order dealt not just with the security but RCAM as 23 well. It basically wanted compliance with the -- the 24 whole of the March order, not just the security part of 25 it. So -- so that's -- that's where we say we differ, 26 but -- but other than that, yeah, we agree with</p>	<p style="text-align: right;">1210</p> <p>1 Ms. Cameron. 2 THE CHAIR: Thank you very much. That's 3 all the Panel has for questions, so I think we are set 4 to wrap up. 5 So we would like to -- to acknowledge and thank 6 the parties for your participation, for your dedication 7 to -- we know this was a long and brutal week for 8 everyone, and we appreciate your commitment to -- to 9 providing us with a lot of information to consider and 10 to -- to the timeliness of the process, and so thank 11 you very much for that. 12 We would like to, I think, acknowledge and thank 13 the efforts of our hearing services staff, and I should 14 point out to folks that we're very happy that Mr. Lung 15 was able to make it with us today. So there he is, for 16 those of you who may not have met him in person yet. 17 So thanks to them. And also thanks to our counsel, 18 Ms. Huxley and Ms. Doebele, for the support they've 19 given to the Panel throughout this process. And thank 20 you so much to the court reporters, who have done a 21 fantastic job, I think, in particularly getting us 22 the -- getting us the transcripts to be able to use. 23 So the Panel will review the evidence and the 24 submissions, and we will issue our decision on the 25 regulatory appeals, recognizing that we have two 26 regulatory appeals in this one hearing, and we will</p>

1 issue a written decision within 90 days of the close of
 2 this hearing. Each of the parties who have
 3 participated in this hearing will receive a copy, and
 4 the decision will be posted on the AER website, which
 5 is standard practice. And so this hearing is now
 6 closed. Thank you very much and safe travels to those
 7 who have to travel.

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9 PROCEEDINGS CONCLUDED

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1 CERTIFICATE OF TRANSCRIPT:

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3 We, Roxanne M. Johanson and Angela Porco, certify
 4 that the foregoing pages are a complete and accurate
 5 transcript of the proceedings taken down by us in
 6 shorthand and transcribed from our shorthand notes to
 7 the best of our skill and ability.

8 Dated at the City of Calgary, Province of Alberta,
 9 this 1st day of December 2023.

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14 R.M. Johanson, CSR(A)

15 Official Court Reporter

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20 A. Porco, CSR(A)

21 Official Court Reporter

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