

AlphaBow Energy Ltd.
Regulatory Appeals of AER Orders
(Regulatory Appeals 1943516 and
1943521)

February 28, 2024

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Alberta Energy Regulator

Decision 2024 ABAER 001: AlphaBow Energy Ltd., Regulatory Appeal of Orders

February 28, 2024

Published by

Alberta Energy Regulator

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2024 ABAER 001**AlphaBow Energy Ltd.****Regulatory Appeals 1943516 and 1943521 of AER Orders****Decision**

[1] Having considered all of the evidence carefully, the Alberta Energy Regulator (AER) decided the following:

- The decision of the AER's Closure and Liability Management branch (CLM) to issue the order to AlphaBow Energy Ltd. (AlphaBow) on March 30, 2023 (the March Order) is confirmed.
- The decision of the CLM to issue the order to AlphaBow on June 5, 2023 (the June Order) is confirmed.

[2] In reaching this decision, we, the AER hearing panel presiding over this proceeding, considered all relevant materials properly before us, including each party's evidence and argument. Accordingly, references in this decision to specific portions of the evidence are intended to assist the reader in understanding our reasoning on a particular matter and do not mean that we did not consider all relevant portions of the evidence.

Introduction**Background**

[3] AlphaBow is a privately-owned oil and gas company operating in Alberta. In 2018, through a series of amalgamations, Sequoia Operating Corp. ultimately became AlphaBow Energy Ltd. In the fourth quarter of 2022, AlphaBow produced about 4500 barrels of oil equivalent per day, consisting of about 80% gas and 20% medium and heavy oil. AlphaBow has oil and gas sites across Alberta, mostly in central Alberta. It holds 8147 AER licences comprising 3785 wells, 322 facilities, and 4040 pipeline segments. The estimated liability for these licences is \$264 million, and the inactive portion equates to \$155 million (about 58% of AlphaBow's assets).

[4] From the information provided by both parties, it appears that AlphaBow has experienced financial challenges for much of its corporate life. The AER's CLM and AlphaBow met regularly since 2019 for operational and business updates by AlphaBow, education and information by CLM about regulatory requirements, and discussion of AER concerns about AlphaBow's compliance or liability status. Between 2019 and 2022, AlphaBow was active in asset retirement through site abandonment and reclamation. During that time, CLM grew concerned that AlphaBow's licensee capability was deteriorating.

[5] In July 2022, CLM determined that AlphaBow posed an unreasonable risk and needed to demonstrate it could consistently meet its regulatory obligations and maintain compliance. On July 28, 2022, the AER restricted AlphaBow's licence eligibility status from General Eligibility to Limited Eligibility. This change prevented AlphaBow from acquiring new well or facility licences and prohibited the transfer of licences without AER approval. AlphaBow could, at any time, reapply for General Eligibility if it demonstrated it met all eligibility requirements. *Directive 067: Eligibility Requirements for Acquiring and Holding Energy Licences and Approvals (Directive 067)* outlines the conditions to obtain General Eligibility, which include licensee residency requirements, adequacy of corporate insurance levels, provision of audited financial statements, and a comprehensive risk analysis by the AER that considers compliance history, financial health, and outstanding industry levies and debts owed to municipalities, landowners, and public land disposition fees or rental payments. In addition to meeting these standard licence eligibility conditions, AlphaBow was also expected to

- address outstanding noncompliances to improve field compliance to 75% and maintain that compliance level,
- demonstrate responsiveness to noncompliances and meet AER deadlines,
- provide a plan detailing how it would meet its 2022 mandatory closure spend target,
- provide a monthly written progress report, and
- supply quarterly financial statements.

[6] CLM stated that after AlphaBow's licence eligibility was restricted, there were no noticeable improvements in corporate performance (field compliance declined, reporting deadlines were not met, remediation work was not completed, and financial statements were not filed), increasing CLM's concerns about AlphaBow's capability to meet its regulatory and liability obligations. In March 2023, CLM shifted its focus from seeking that AlphaBow improve its compliance while incrementally decreasing liability to ensuring that AlphaBow provided reasonable care and measures for its assets.

[7] On March 29, 2023, CLM contacted AlphaBow to notify it of proposed regulatory action and offered a meeting to discuss the matter. No meeting occurred, and CLM issued the March Order to AlphaBow the next day (see appendix 1). The March Order compelled AlphaBow to do the following:

- Submit a reasonable care and measures (RCAM) plan within 30 days of the March Order and then implement the approved RCAM plan. The RCAM plan was to cover a range of operational matters, including addressing compliance issues, improving incident and emergency responsiveness, addressing sites needing environmental work, meeting AlphaBow's 2023 annual mandatory closure spend, and debt management.
- Submit an abandonment plan within 30 days that addresses all mineral lease expired wells, and then abandon those wells within six months of the March Order.

- Submit updated information about AlphaBow, including proof of corporate insurance, working interest participants associated with all licences, and names and contact details of all persons with direct or indirect control of AlphaBow.
- Submit interim quarterly financial statements from September 2022 to the present day and onwards and provide third-party audited financial statements within six months of the fiscal year-end.
- Post a security deposit of \$15 374 050 (representing 10% of AlphaBow's inactive liability) within 30 days of the March Order.

[8] Between March 30 and June 2, 2023, there was ongoing communication between AlphaBow and CLM regarding the March Order. From the issuance of the March Order through mid-May 2023, AlphaBow submitted much of the corporate information required and two management-prepared quarterly financial statements. From May 12 to 29, 2023, AlphaBow made eight written submissions to CLM focusing on proposals for the RCAM and abandonment plans, requirements for audited annual financial statements, and the security deposit. During that period, AlphaBow and CLM met once. CLM provided five written responses to AlphaBow's submissions. CLM's responses granted some timeline extensions and indicated willingness to consider alternative proposals, including a possible payment plan for the security deposit. CLM's responses also indicated in increasing detail that much of AlphaBow's proposals were unacceptable and set CLM's expectations for AlphaBow to meet the March Order's requirements.

[9] On May 25, 2023, CLM advised AlphaBow that it was considering escalating enforcement action against it due to its failure to comply with the March Order and offered a meeting to review a draft suspension order. On May 30, 2023, CLM and AlphaBow met to review and discuss the draft suspension order. On June 5, 2023, CLM issued the June Order (see appendix 2) directing AlphaBow to suspend and discontinue all licences in a safe manner. The June Order also stated that consideration would be given to lifting the suspension of operations if AlphaBow took the following actions:

- Comply with the March Order, including addressing the remaining noncompliances by providing a sufficiently detailed RCAM plan and paying the security deposit.
- Pay the AER 2023 administrative fee and the 2023 Orphan Fund Levy. These amounts had been due on May 4, 2023.
- Submit a reactivation plan for review and approval and then implement the approved plan.

[10] On September 6, 2023, the AER authorized the Orphan Well Association (OWA) to provide reasonable care and measures for all AlphaBow sites in accordance with the March and June Orders, and to suspend all sites as per the June Order. AlphaBow remains responsible for all costs and expenses incurred by the OWA concerning AlphaBow sites. The direction to the OWA is not under review in this proceeding.

Requests for Regulatory Appeals

[11] On April 21, 2023, AlphaBow filed a request for a regulatory appeal of the AER's decision to issue the March Order. On June 9, 2023, AlphaBow filed a request for a regulatory appeal of the AER's decision to issue the June Order, including requests for an inquiry and a stay of the June Order.

[12] On June 13, 2023, the AER granted an interim stay of the June Order pending a decision on AlphaBow's inquiry request. The AER granted the requests for regulatory appeals on June 28, 2023, and set the matters down for a hearing. On July 5, 2023, the AER denied AlphaBow's request for an inquiry and indicated that the interim stay of the June Order would remain in place while we decided the request to stay the June Order as part of this proceeding. On August 14, 2023, we dismissed AlphaBow's stay request and vacated the interim stay of the June Order.

[13] The AER issued a notice of hearing on August 16, 2023. On September 6, 2023, CLM and AlphaBow confirmed their participation in the hearing. The AER issued the notice of scheduling of hearing on November 17, 2023. We identified the following hearing issues:

- Regarding the March Order (Regulatory Appeal 1943516):
 - Did the AER breach procedural fairness in issuing the order?
 - Did the AER exercise its discretion to issue the order in a manner that was unreasonable?
- Regarding the June Order (Regulatory Appeal 1943521):
 - Did the AER breach procedural fairness in issuing the order?
 - Did the AER exercise its discretion to issue the order in a manner that was unreasonable?
 - Did the AER fail to satisfy the requisite elements of section 27 of the *Oil and Gas Conservation Act* in issuing the order?

[14] The AER held a public oral hearing for this proceeding from November 27 to December 1, 2023. Hearing participants are listed in appendix 3.

[15] Although AER hearings are typically open to the public, we determined that it was necessary to conduct part of the hearing in private to prevent the disclosure of the sensitive financial information filed in this proceeding and protected under section 12.152(2) of the *Oil and Gas Conservation Rules (OGCR)* and section 49(6) of the *Alberta Energy Regulator Rules of Practice*. As such, oral testimony about these materials was heard in camera. Parties attending this in camera session filed undertakings stating that the party will hold in confidence any evidence heard in private.

[16] Any information that could directly or indirectly reveal the content of the confidential information has been redacted and included in the confidential portions of this decision as have the confidential positions of the parties and our related findings. A separate confidential decision, without redactions, will be issued for parties who have signed confidentiality undertakings in this proceeding.

Regulatory Framework

Regulatory Appeals

[17] The AER’s mandate under the *Responsible Energy Development Act (REDA)* is to provide for the efficient, safe, orderly, and environmentally responsible development of energy and mineral resources in Alberta.

[18] Under section 38(1) of *REDA*, an eligible person may request a regulatory appeal of an appealable decision. An “appealable decision” is a decision made by the AER under an energy resource enactment and made without a hearing. An “eligible person” is defined in section 36(b)(ii) of *REDA* as a person who is directly and adversely affected by a decision made under an energy resource enactment without a hearing. Acting on behalf of and in the name of the AER, the statutory decision maker (SDM) within CLM issued the March and June Orders (the legislative authority to issue those orders is discussed in the sections on regulatory framework for the March and June Orders).

[19] The AER determined that the conditions set out in the March and June Orders were sufficient to establish that AlphaBow may be directly and adversely affected by the orders and the orders were appealable decisions, as both were issued under the *Oil and Gas Conservation Act (OGCA)*, an energy resource enactment, without a hearing. The AER granted AlphaBow’s requests for a regulatory appeal of both orders and set them down for hearing.

[20] The hearing commissioners constituting this hearing panel are authorized under section 12 of *REDA* to carry out hearings of regulatory appeals and make decisions in the name of and on behalf of the AER. Pursuant to section 41(2) of *REDA*, we must determine whether to confirm, vary, suspend, or revoke CLM’s decision to issue the March and June Orders.

[21] As set out in section 15 of *REDA* and section 3 of the *Responsible Energy Development Act General Regulation*, in conducting a regulatory appeal in respect of an energy resource activity under an energy resource enactment, we must consider (a) the social and economic effects of the energy resource activity, (b) the effects of the energy resource activity on the environment, and (c) the impacts on a landowner as result of the use of the land on which the energy resource activity is or will be located. In addition to these factors, section 15 of *REDA* requires us to consider the interests of landowners.

[22] In this proceeding, the onus was on AlphaBow as the regulatory appeal requester to persuade us that we should decide each issue in the way it advocated.

Liability Management Framework

[23] The events leading up to the issuance of the March and June Orders occurred in an environment where the regulatory framework for Alberta's oil and gas liabilities was undergoing several significant developments, including changes to how an operator's financial risk regarding liabilities is assessed.

[24] In July 2020, the Government of Alberta announced the new liability management framework for the province's oil and gas sector (see figure 1). The framework introduced a new approach for more actively managing the reclamation of oil and gas sites throughout their life cycle. The goal of the new framework was to reduce the inventory of inactive and orphaned wells and ensure more timely land restoration.

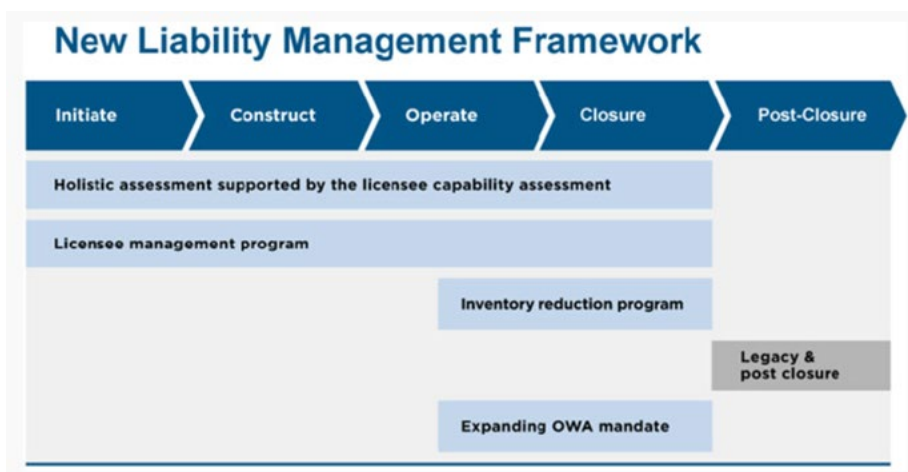


Figure 1. New liability management framework

[25] The AER was tasked with developing the programs, directives, and manuals to address each component of the new liability management framework. Ultimately, this involves replacing the licensee liability rating (LLR) system (historically shown not to be the best indicator of a company's risk of insolvency) and establishing a new broader framework for the collection of security deposits. Although this work is still in progress, the AER implemented the first changes in December 2021. These changes are described in detail in *Directive 088: Licensee Life-Cycle Management (Directive 088)* and the supplementary *Manual 023: Licensee Life-Cycle Management (Manual 023)* and include the following:

- A holistic licensee assessment of a company's capabilities and performance across the energy development life cycle, considering
 - risk assessment, documented in *Directive 067*,
 - financial health,
 - magnitude of liability,
 - remaining lifespan of resources,

- management and maintenance, including operational compliance,
 - rate of closure activities and expenditures, and
 - compliance with administrative regulatory requirements including management of debts.
- The Licensee Management Program, which assesses licensees who may be at risk of not meeting their regulatory and liability obligations, and the appropriate regulatory actions that can be taken to address the concerns.
 - The Inventory Reduction Program that sets annual mandatory closure spend quotas for industry and individual licensees. Each licensee has an annual mandatory closure spend and an optional supplemental closure spend. The mandatory component is a minimum financial obligation to abandon, remediate, and reclaim oil and gas sites. The AER announced on September 28, 2023, that the optional supplemental closure spend would be eliminated at the start of 2024.
 - Updates to application requirements related to the licence transfer process.
 - The first phase of improvements to security collection as part of the transition to a broader new framework, replacing the security collection method outlined in *Directive 006: Licensee Liability Rating (LLR) Program*. The amount of security required can be determined based on any combination of the following:
 - Value of liability calculated using *Directive 011: Licensee Liability Rating (LLR) Program: Updated Industry Parameters and Liability Costs*.
 - Value of site-specific liability under *Directive 001: Requirements for Site-Specific Liability Assessments*.
 - Future cash flows based on reserves and economic analysis.
 - Any other appropriate amount.

The March Order

Regulatory Framework for the March Order

[26] CLM issued the March Order under sections 26.2 and 27 of the *OGCA*, sections 1.100 and 12.152 of the *OGCR*, and section 22.1 of the *Pipeline Act*. Appendix 4 provides the text of these provisions.

Oil and Gas Conservation Act

[27] Section 26.2 of the *OGCA* requires licensees to provide reasonable care and measures to prevent impairment or damage related to oil and gas wells, facilities, and the sites on which they are located. If the AER is not satisfied that a licensee is providing reasonable care and measures, it can order a licensee, working interest participant, or delegated authority, such as the OWA, to provide reasonable care and measures. The AER can impose any terms and conditions it determines necessary in an order. Section 1(1)(aa.001) of the *OGCA* defines impairment or damage as “impairment or damage that results in or could reasonably be expected to result in harm to the integrity of a well or facility or harm to the environment, human health or safety or property.”

[28] Section 27 of the *OGCA* requires licensees to suspend or abandon wells or facilities when directed by the AER or required by the regulations or rules.

Oil and Gas Conservation Rules

[29] Section 1.100 of the *OGCR* addresses security deposits for wells and facilities. It sets out the circumstances in which the AER can require security deposits from licensees; the AER’s authority for administering security deposits and requiring additional security; acceptable forms of security; use of security by the AER; and return of security deposits to licensees.

[30] Section 12.152 of the *OGCR* gives the AER broad authority to direct licensees to provide financial and reserves information and establishes timeframes during which the AER must keep such information confidential.

[31] Section 3.012(a) of the *OGCR* requires a licensee to abandon a well when the mineral lease has terminated.

Pipeline Act

[32] Section 22.1 of the *Pipeline Act* imposes requirements for reasonable care and measures for pipelines, like those related to wells and facilities under section 26.2 of the *OGCA*. Licensees must provide reasonable care and measures to prevent impairment or damage to pipelines. If the AER is not satisfied that reasonable care and measures are being provided, it can order a licensee or delegated authority, such as the OWA, to provide reasonable care and measures for pipelines. The AER can impose any terms and conditions it considers appropriate in an order. Section 1(1)(k.1) of the *Pipeline Act* defines

impairment or damage as “impairment or damage that results in or could reasonably be expected to result in harm to the integrity of a pipeline, well or facility or harm to the environment, human health or safety or property.”

Was Procedural Fairness Breached For the March Order?

[33] The relevant hearing issue is whether the AER breached procedural fairness in issuing the March Order to AlphaBow.

[34] Throughout this proceeding, it was apparent that context would be an important element of this decision. AlphaBow maintained that the AER should judge it on its accomplishments, rather than what it needed to do in the future. CLM advocated that the hearing panel take a broad view and consider the ongoing context of AlphaBow’s operations, performance, and compliance record. Both parties referred to specific events in the history of AlphaBow’s regulatory life. The March and June Orders each flow from the AER’s July 2022 decision to restrict AlphaBow’s licence eligibility and its activities since then. It seems forced and artificial to look only at specific time points, especially since both parties referred to the broader context. Consequently, using a broader context is more consistent with the nature of the July 2022 decision and the March and June Orders because the regulatory actions deal with AlphaBow’s operations as a whole and its ability to maintain safe operations and financial responsibility over the energy development life cycle.

[35] AlphaBow alleged that CLM breached its procedural fairness entitlements in issuing the March Order by

- failing to provide notice of the proposed March Order,
- denying AlphaBow the opportunity to defend against the March Order,
- denying AlphaBow knowledge of the case against it,
- making a decision tainted by a reasonable apprehension of bias,
- not providing adequate or intelligible reasons that sufficiently justified the decision, and
- making a decision that did not align with AER norms, guidelines, and precedents.

[36] We decided to deal with AlphaBow’s allegations of failing to provide notice, denying opportunity to defend against the March Order, and denying knowledge of the case against it as one related issue. The reasonable apprehension of bias and the allegation of making a decision that did not align with AER norms, guidelines, and precedents are discussed individually. The allegation that CLM did not provide adequate or intelligible reasons that sufficiently justified the decision is discussed in the section on the reasonableness of the March Order.

[37] The concept of procedural fairness is “eminently variable” and its content must be “decided in the specific context of each case” (*Baker v Canada*, 1999 SCC 699, para 21 [*Baker*]). The purpose of participatory rights contained within the duty of procedural fairness is to ensure use of a fair and open procedure to make administrative decisions (*Baker* at para 22). The procedure should be appropriate for the decision and its context and must provide an opportunity for those affected by the decision to fully provide their views and evidence and have those considered by the decision-maker (*Baker* at para 22).

[38] Relevant non-exhaustive factors that inform the content of the procedural fairness owed in a particular case include (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 77 [*Vavilov*]; *Baker* at paras 23-28):

- The nature of the decision being made and the process followed in making it. The more the relevant process, the function of the tribunal, the nature of the decision-making body, and the determinations that must be made to reach a decision resemble judicial decision making, the greater the duty of procedural fairness.
- The nature of the statutory scheme and terms of the statute pursuant to which the body operates. Greater procedural protections are necessary where there is no statutory appeal process or the decision is determinative of the issue.
- The importance of the decision to the individuals affected. The more important the decision is to the lives of those affected and the greater its impact on that person or those persons, the more stringent the procedural protections will be. “The importance of a decision to the individuals affected, therefore, constitutes a significant factor affecting the content of the duty of procedural fairness.” (*Baker* at para 25)
- The legitimate expectations of the person challenging the decision, which does not create substantive rights. This factor considers promises or regular practices of administrative decision-makers and that it will generally be unfair for them to act in contravention of representations as to procedure.
- Considering and respecting the agency’s choices of procedure, particularly where the decision-maker has the ability under statute to choose its own procedures or has an expertise in choosing procedures appropriate to the circumstances. “While this, of course, is not determinative, important weight must be given to the choice of procedures made by the agency itself and its institutional constraints” (*Baker* at para 27).

[39] AlphaBow submitted that the breadth and depth of the procedural fairness obligations owed increases where the AER makes a decision that imposes significant consequences or is punitive in nature (*Vavilov* at paras 76-81; *Baker* at paras 31, 43; *Charkaoui v Canada*, 2007 SCC 9 at para 53; *Coulas v Ferus Natural Gas Fuels Inc.*, 2016 ABCA 332 at paras 13-16).

Lack of Notice, of Opportunity to Defend Against the March Order and of Knowledge of the Case Against AlphaBow

Parties' Positions

[40] Through submissions and evidence at the hearing, these allegations were tied to the lack of a pre-issuance meeting before CLM issued the March Order. As previously noted, CLM contacted AlphaBow on March 29, 2023, to notify it of proposed regulatory action and offer a meeting to discuss the matter. No meeting occurred, and CLM issued the March Order to AlphaBow the next day.

[41] There was extensive evidence about the interaction between the parties on March 29 – 30, 2023. Table 1 shows the sequence of communications about issuance of the March Order.

Table 1. Communications between CLM and AlphaBow (March 29 and 30, 2023)

Date and Time	Communication
March 29/23 (6:38 a.m.)	Email from CLM to AlphaBow CEO about possible regulatory action and request for meeting on March 30, 2023, to discuss
March 29/23 (10:43 a.m.)	Email from AlphaBow CEO to CLM requesting information about the proposed regulatory action.
March 29/23 (11:46 a.m.)	Email from CLM to AlphaBow CEO indicating that the proposed regulatory action and rationale will be “fully reviewed in the meeting”; asked whether AlphaBow wished to have counsel involvement and possibility of in-person meeting.
March 29/23 (11:55 a.m.)	Email from AlphaBow CEO to CLM indicating that he and the AlphaBow VP were leaving for vacation “tomorrow”; requested rescheduling to after Easter long weekend (13 days later); advised that he wanted AlphaBow counsel involved.
March 29/23 (1:16 p.m.)	Email from CLM to AlphaBow CEO offering meeting anytime March 29 or 30, 2023, for “an order he [SDM] is considering issuing,” indicated possibility of virtual meeting format.
March 29/23 (1:33 p.m.)	Email from AlphaBow counsel to CLM indicating the AlphaBow CEO was travelling today and anticipating a delayed response from him; requested additional meeting times and dates and further information.
March 29/23 (2:04 p.m.)	Email from CLM SDM to AlphaBow CEO advising of decision to issue order to be delivered March 30, 2023. SDM advised he is still available to meet at offered time on March 30, 2023, and will make himself available to answer AlphaBow questions regarding the order after it is issued.
March 29/23 (4:10 p.m.)	Email from AlphaBow counsel to CLM SDM advising she is seeking instructions and requesting CLM hold off issuing the order until further correspondence is received from AlphaBow counsel.
March 29/23 (4:37 p.m.)	Email from CLM staff to AlphaBow CEO, VP, and counsel requesting confirmation of who should receive the order when it is issued.

March 30/23 (7:52 a.m.)	Email from AlphaBow VP to CLM regarding recipients of order; "While travel may prevent attendance at a short notice meeting, it does not prevent us from receiving email or other communication."
March 30/23 (8:34 a.m.)	Email with letter from AlphaBow counsel to CLM SDM regarding procedural fairness, AER <i>Manual 013</i> , and the anticipated order: "AlphaBow respectfully requests that the AER remedy these deficiencies through providing AlphaBow with sufficient information regarding the allegation and proposed regulatory action, and an adequate opportunity to respond."
March 30/23 (12:14 p.m.)	Email from CLM to AlphaBow CEO, VP, and counsel issuing March Order to AlphaBow.
March 30/23 (1:06 p.m.)	Email from AlphaBow CEO to CLM confirming receipt of email and March Order.

[42] AlphaBow's CEO testified that when he was initially contacted on March 29, 2023, he felt that the regulatory action could be a very serious issue, even before he was aware of CLM's intent to issue an order. When asked under cross-examination how AlphaBow operations would run while he and AlphaBow's vice president were to be on vacation over spring break, he stated that AlphaBow had a strong operations team, including two production managers. In cross-examination, AlphaBow's CEO admitted that he did not go on vacation on March 29, 2023, stating he cancelled his vacation plans after receiving the SDM's email advising an order would be issued to AlphaBow. However, he did not advise CLM that he had decided to remain in Calgary. CLM testified that it was unaware of the CEO's change of plans until the CEO's testimony at the hearing.

[43] AlphaBow's CEO gave several reasons for not meeting with CLM about the proposed March Order:

- He indicated that the SDM had already made the decision to issue the order.
- English is not his first language; he preferred to meet in person rather than make a phone call to the SDM.
- He wanted to gather his team and know more about the regulatory action to be prepared to meet with CLM.

[44] The CEO indicated that AlphaBow's counsel had proposed an alternative date to CLM before the SDM stated he'd decided to issue an order. The record shows that AlphaBow's counsel asked CLM to provide alternative dates to meet, but there is no evidence that AlphaBow's counsel proposed alternative meeting dates.

[45] The SDM testified that he expected AlphaBow's CEO would contact him to discuss different dates and times for a pre-issuance meeting, but there was no such contact. When asked about hearing that AlphaBow's CEO cancelled his travel plans and was in Calgary March 29 and 30, 2023, the SDM stated that although he understood that the CEO would want others to accompany him to a pre-issuance

meeting, he was surprised that the CEO would not have met with him and was concerned that there was no one else the CEO could bring to a meeting, given that only one AlphaBow executive was on vacation at the time. The SDM also indicated that during March 29 and 30, he was concerned that there was no one available to meet with him, even if the AlphaBow CEO and vice president were both on vacation, stating: “Who was responsible for AlphaBow during that 13-day period if they couldn’t have a one-hour meeting with the Regulator about regulatory action... if there was an incident or anything major going on, who was going to handle it”?

[46] CLM provided the SDM’s record of his decision notes and supporting testimony. This included detailed discussion of the SDM’s thoughts and consideration about the email exchanges on March 29, 2023. The SDM felt that AlphaBow’s request to delay a pre-issuance meeting for almost two weeks was unreasonable and too great a risk, considering the evidence supporting the order and the order’s main focus being to ensure reasonable care and measures for AlphaBow sites. He indicated that it was reasonable to expect a licensee to have a responsible person available to meet with the AER for an hour, even by phone. The SDM also noted that he was not of the opinion that AlphaBow would be able to provide any new information to change the need for the required actions in the order. He stated that he considered the March Order’s requirements as primarily remedial in nature and that those requirements allow AlphaBow to submit acceptable plans to address the issues. The SDM also noted that he would always consider adjusting the order’s terms after the fact based on AlphaBow requests. CLM submitted that most of the March Order requirements were identical to those in the July 2022 letter restricting AlphaBow’s licence eligibility or documented in *Directive 067* for General Eligibility.

[47] The SDM’s record of decision notes and testimony also included detailed discussion of his thoughts and considerations on March 30, 2023, in determining to issue the March Order without a pre-issuance meeting. The SDM stated that he reviewed and considered the letter he received from AlphaBow counsel on March 30, 2023. His notes indicated that evidence supporting the decision and the March Order was information AlphaBow should have already been aware of and had previous chances to respond to prevent further action from being taken. The SDM considered that the requirements were primarily related to reasonable care and measures and normal operating requirements that any licensee is expected to meet and that AlphaBow had notice of most of the issues and expectations through the July 2022 decision to restrict its licence eligibility. He also noted that the AER internal order process states that a pre-issuance meeting is optional and that past decisions dealing specifically with security demands commonly did not have a pre-issuance meeting but provided a licensee direct notice of the decision to require security. CLM’s evidence indicated that the SDM had several concerns about the potential insolvency of AlphaBow, leading him to decide against postponing the pre-issuance meeting until after Easter, as proposed by AlphaBow. These concerns included information that AlphaBow was not paying some of its contractors, had not provided financial statements after multiple requests, nor provided proof of insurance renewal at that point in time.

[48] The SDM testified that AlphaBow did not contact him after issuance of the March Order to discuss concerns or request extensions and that the first meeting with AlphaBow after the March Order took place on May 18, 2023. The SDM stated that if he had been contacted, he would have considered AlphaBow's concerns and considered extending timelines in the March Order, if requested. AlphaBow did not request a meeting with CLM about the March Order until it received a letter from CLM dated May 16, 2023, advising that AlphaBow had failed to comply with the March Order and that the AER would be willing to consider proposals for achieving compliance, including a security payment plan and extended abandonment plan deadlines.

[49] AlphaBow cited *AER Manual 013: Compliance and Enforcement Program (Manual 013)* as creating a legitimate expectation that AlphaBow would be afforded its procedural fairness entitlements, including having an opportunity to know the case it needed to meet and the opportunity to fulsomely respond. Section 7 of *Manual 013* states:

Generally, a person will be provided with information to enable them to act in their best interests. A person should be provided with enough detail (this does not require disclosure of original documents or identification of confidential sources) about the allegation or complaint against them and about the impending decision affecting them to enable them to prepare a response or defence; detail might include

- reasons for the allegation, accusation, or complaint made against them;
- information or evidence on which the decision will be based;
- notice of the impending decision;
- relevant statutory provisions or authority; and
- possible consequences or penalties.

New evidence or information that might be relevant to a person's response or defence should also be provided if it arises after the initial information has been given. Procedural fairness includes providing a person with a reasonable opportunity to be heard or to respond to an allegation or complaint made against them.

[50] CLM submitted that *Manual 013* is a guideline for the AER and licensees but does not provide regulatory requirements. It also submitted that the AER's *Order Procedure Guide* indicates that a due process meeting is optional and gives examples of when such a meeting might not be required. Appendix 4 to the *Order Procedure Guide* states: "For example, orders that are being made in an emergency situation where time is of the essence, or that contain very clear direction, may not need a due process meeting." CLM submitted that the March Order is exactly the type of order that was contemplated as not necessarily requiring a due process meeting.

[51] CLM submitted that the lack of availability of an AlphaBow senior officer and no acting replacement to communicate with the AER for nearly two weeks increased the existing high risk presented by AlphaBow. CLM suggested delaying issuance of the March Order for the time requested by AlphaBow would have been contrary to the AER's mandate because of the potentially high consequences of a lack of reasonable care and measures for AlphaBow sites.

[52] AlphaBow also indicated that the SDM's statements created legitimate expectations for procedural fairness entitlements. It referred to meeting notes from July 13, 2022, in advance of the July 2022 decision restricting AlphaBow's licence eligibility, where the SDM noted: "If I decide to take any additional action I will provide AlphaBow notice and clearly outline all expectations with the goal of AlphaBow achieving compliance."

[53] Both parties referred to the process CLM used to issue the July 2022 decision restricting AlphaBow's licence eligibility, which included a pre-issuance meeting and subsequent submission by AlphaBow before the decision was issued. There was agreement about what process steps had occurred. AlphaBow submitted that the July 2022 process and *Manual 013* created legitimate expectations that the process should be followed for the March Order. CLM testimony suggested that AlphaBow would have known what to expect from the March 29, 2023, emails requesting a meeting about possible regulatory action, given its previous experience with restriction of its licence eligibility in July 2022.

[54] Both parties also discussed a regular quarterly update meeting between CLM and AlphaBow on March 7, 2023. The parties had been holding quarterly meetings since 2020. AlphaBow's CEO testified that he thought the March 7 meeting had been positive and that the AER was happy with AlphaBow's activities. Through cross-examination of CLM witnesses and in its final argument, AlphaBow submitted that CLM should have directly indicated to AlphaBow in the March 7 meeting that if their operations did not improve, an order would be forthcoming. CLM's evidence maintained that although the meeting was professional, it did not view the meeting positively and that AlphaBow should have been concerned by what CLM communicated at that meeting. CLM reminded AlphaBow at the meeting of the regulatory requirements and specifically warned that "all regulatory deadlines are firm, and failure to meet the deadlines could result in regulatory action." Notes from the March 7 meeting, which included the previous statement about regulatory action, were circulated to AlphaBow. AlphaBow added comments and edits to the meeting notes but did not appear to comment on that statement.

Analysis and Findings

[55] Case authorities refer to ensuring a fair and open procedure for administrative decisions, with an opportunity for those affected to present their views and evidence and have it considered by the decision-maker; they emphasize the importance of context in determining procedural fairness requirements.

[56] We considered the *Baker* factors for informing the content of the procedural fairness owed to AlphaBow in the context of the decision to issue the March Order. In this case, we considered the following factors to be interrelated: the nature of the decision being made and the process followed in making it, the nature of the statutory scheme and the terms of the statute under which the deciding body operates, and considering and respecting the agency's choices of procedure.

[57] Under *REDA* and the *OGCA*, the AER has a broad mandate to regulate energy and mineral resource activities in Alberta to ensure the efficient, safe, orderly, and environmentally responsible development of those resources. In issuing orders on behalf of the AER, the SDM has broad discretion regarding order terms and conditions, allowing the AER flexibility to effectively respond to varying circumstances and concerns regarding energy resource development. Neither *REDA*, the *OGCA*, nor relevant regulations legislate a process for issuing orders, but the AER provides process guidance through nonbinding guidance documents, such as *Manual 013* and the *Order Procedure Guide*.

[58] Although these guidance documents set out a structured process for the issuance of orders, the SDM has significant discretion and flexibility under the relevant statutes and rules. This includes the authority to choose between applicable compliance tools, a principle codified by section 69 of *REDA*, which empowers the AER to exercise any compliance or enforcement power or function under any of the enactments within its jurisdiction, and the ability to adapt regulatory actions and modify orders. The AER's issuance of an order is not a final or conclusive step. As mentioned, the SDM has the authority to modify and amend orders, and the March and June Orders are appealable decisions that were appealed by AlphaBow under *REDA*, resulting in this proceeding. The nature of the decision and process followed in making these orders does not warrant procedural obligations as high as those required in a court proceeding.

[59] Regarding the factor of the importance of the decision to the individual affected, the financial implications of both orders were significant to AlphaBow. Although the \$15 million security deposit was a small proportion of AlphaBow's liabilities, it was a large sum.

[60] Regarding the factor of legitimate expectations of the person challenging the decision, we considered the pre-issuance process used for the July 2022 decision restricting AlphaBow's licence eligibility and the AER's guidance for compliance actions, including *Manual 013* and the *Order Procedure Guide*. We note that AlphaBow had two previous experiences with the AER related to security deposit requirements and the SDM's evidence that past decisions dealing specifically with a security deposit requirement commonly did not have a pre-issuance meeting.

[61] In considering the applicable context for assessing the level of procedural fairness owed to AlphaBow, as discussed previously, we believe that we must look beyond what occurred on March 29 and 30, 2023, to consider the broad context and history and the ongoing relationship and interaction between the parties. Only focusing on those two days would be too narrow and would not present an accurate view of the circumstances and obligations of both parties and the concerns about AlphaBow's operations. The evidence showed an ongoing interaction between the parties, including quarterly update meetings since 2020 and nineteen meetings between AlphaBow and CLM from October 2019 to March 2023. These meetings consistently included activity updates by AlphaBow, education efforts about regulatory requirements by CLM, and a discussion of CLM concerns about AlphaBow operations and

noncompliance. CLM increasingly expressed and emphasized to AlphaBow the need for it to keep up with regulatory requirements, deadlines, and debt payments.

[62] We accept CLM's evidence that the March Order was based on evidence and information that AlphaBow should have already been aware of and that it had previous chances to respond to. We find that much of the March Order covered requirements that AlphaBow was already subject to and aware of either through the application of ongoing legislative requirements for licensees or the July 2022 licence eligibility decision. The July 2022 decision set out expectations that parallel many requirements of the March Order, including addressing outstanding noncompliances, improving AlphaBow's compliance rating, providing a plan to meet the annual mandatory closure spend target, and showing capability to respond to noncompliances and AER requests. AlphaBow would have received prior notices of noncompliance for all mineral lease expired wells, and abandonment of those wells is a legislated requirement. The AER had made multiple requests for financial statements previously, had requested confirmation of insurance renewal, and had communicated expectations for improved compliance and responses to AER requests.

[63] The security deposit required as part of the March Order was a significant concern to AlphaBow. The security deposit reflected a small proportion of AlphaBow's liabilities and was consistent with Alberta's liability management framework, but the \$15 million amount and 30-day payment deadline were significant for AlphaBow. However, the March Order was not AlphaBow's first experience with AER security deposit requirements. The evidence indicated that AlphaBow had been subject to a security deposit requirement of \$2.1 million in 2019 related to its declining AER liability rating and a security deposit requirement of \$3.8 million in 2022 related to a shortfall on AlphaBow's 2021 area-based closure program. In both instances, AlphaBow arranged with the AER for a variance of those requirements.

[64] We find AlphaBow's concerns surrounding the issuance of the March Order inconsistent with AlphaBow's actions at that time. AlphaBow's CEO acknowledged the seriousness of the matter even before he knew an order was intended and spoke positively of the AlphaBow team's experience and knowledge. However, once he decided to stay in Calgary, his failure to pursue other meeting dates with CLM that could involve an AlphaBow team was puzzling. This is particularly so given that AlphaBow took immediate steps following receipt of the March Order to submit various documents required under the order, including proof of insurance, some management-prepared financial statements, and corporate information. However, AlphaBow did not seek a meeting with CLM about the March Order until May 16, 2023.

[65] The evidence shows AlphaBow chose not to take CLM's offer to meet. Though the SDM advised AlphaBow on March 29 that he had decided to issue the March Order, in that same email he also indicated his availability to still meet on March 30 and willingness to answer any questions AlphaBow might have about the order after its issuance. AlphaBow's counsel subsequently sent a letter to the SDM before the March Order was issued, setting out procedural concerns and requesting further information

and opportunity to respond. We see this letter as an indication that AlphaBow did not see the SDM's earlier communication as a final decision. Although AlphaBow's counsel requested that CLM provide additional meeting times, AlphaBow gave no clear indication to CLM that there could be an intermediate timing for a meeting between March 29 – 30 and the post-Easter period, nor did it disclose, until this hearing, that its CEO had cancelled his vacation plans and remained in Calgary.

[66] In our view, CLM could have communicated more clearly to AlphaBow in its first March 29 email that an order was being considered and could have made further efforts to offer meeting dates to AlphaBow's counsel before issuing the March Order. However, we find the SDM's concerns about delaying issuance of the March Order were reasonable given the information available to him on March 29 and 30, including his concerns about reasonable care and measures for AlphaBow's sites, possible indicators of pending AlphaBow insolvency, his impression that no AlphaBow decision-makers were available to meet for nearly two weeks, and his unease regarding AlphaBow's ability to respond to any potential incidents during this time given the absence of the company's executives.

[67] AlphaBow advocated for an approach that would have effectively required CLM to ensure that AlphaBow acted on the opportunity to exercise its procedural rights but did not cite authorities that would impose such an obligation on the AER. CLM argued that it had provided AlphaBow with the opportunity for a pre-issuance meeting about the March Order that AlphaBow chose not to use. Although procedural fairness usually mandates a regulator to provide an opportunity for an affected person to learn about and make submissions about contemplated regulatory action, no authority was cited to us that would require a regulator to make the affected person take up that opportunity.

[68] The evidence shows that AlphaBow made several substantial submissions to CLM following issuance of the March Order and that the SDM altered the order in response to various AlphaBow requests. Alterations to the March Order included extending the timeline for completion of abandonment of mineral lease expired wells, extending the timeline for providing quarterly financial statements, and extending the timeline for providing the 2022 audited annual financial statement.

[69] AlphaBow failed to satisfy us that procedural unfairness resulted from the lack of a pre-issuance meeting. CLM offered AlphaBow the opportunity to have such a meeting and exhibited a willingness to adapt the meeting timing and format within the timeline CLM felt was necessary. As mentioned previously, the evidence and AlphaBow's actions are consistent with AlphaBow having made a choice not to take up the opportunity for a pre-issuance meeting in the timeframe CLM deemed appropriate in the circumstances.

[70] The evidence was clear that ongoing communications and meetings between the parties from 2019 through March 2023 sought to make AlphaBow aware of shortcomings in its regulatory responsibilities and encourage it to improve its compliance and operations. As such, we find that AlphaBow had awareness of the AER's ongoing concerns, though not necessarily the specific provisions

of the March Order. We note that many of the requirements in the March Order were already requested as part of the July 2022 decision on the licence eligibility restriction and would not have been a surprise to AlphaBow. Although AlphaBow did not have specific prior notice of the security deposit required in the March Order, it had dealt with two previous security deposit requirements related to financial capability and closure shortfalls. AlphaBow made several substantial submissions to CLM following the issuance of the March Order that CLM considered and replied to, resulting in changes to the March Order. As such, we are not satisfied that AlphaBow was deprived of notice, information, or the ability to defend against the March Order.

Reasonable Apprehension of Bias

[71] AlphaBow referred us to the legal test for reasonable apprehension of bias from *Committee for Justice & Liberty v Canada (National Energy Board)*, dissent of de Grandpré J., [1978] 1 SCR 369 at p. 394. It states:

...the apprehension of bias must be a reasonable one, held by reasonable and right minded persons, applying themselves to the question and obtaining thereon the required information....[T]hat test is ‘what would an informed person, viewing the matter realistically and practically – and having thought the matter through – conclude. Would he think that it is more likely than not that [the decision-maker], whether consciously or unconsciously, would not decide fairly.’ (restated in *Baker*, para 46)

[72] In *557466 Alberta Ltd v McPherson*, 2022 ABQB 23, a case cited to us by AlphaBow, the Alberta Court of Kings Bench stated that it is “trite law that a quasi-judicial fact-finder must both be, and appear to be, impartial (at para 65, citing *R v S* (RD), 1997 CanLII 324 (SCC), [1997] 3 SCR 484 at para 92).

[73] In *TransAlta v Alberta Energy Regulator*, 2023 ABCA 172, cited by CLM and not contested by AlphaBow, Kirker J. stated that the test to establish an apprehension of bias is a difficult one to meet (para 17). She further stated that the Supreme Court of Canada has indicated that an apprehension of bias must rest on serious grounds, “in light of the strong presumption of judicial impartiality,” and that such a determination is highly fact-specific, with the context and particular circumstances being of supreme importance (para 18).

[74] AlphaBow submitted that while individual incidents that raise the spectre of bias, considered in isolation, may not be determinative, their overall effect will tip an administrative proceeding into unfairness (*557466 Alberta Ltd. v McPherson*, 2022 ABQB 23 at para 117).

Parties’ Positions

[75] AlphaBow contended that the AER was more onerous on AlphaBow compared to other operators on inspections and it targeted AlphaBow for inspections to decrease AlphaBow’s compliance rating. AlphaBow provided examples from AER records indicating that it was subject to 63 targeted inspections and 7 internal request inspections from January 2021 to March 2023. AlphaBow’s testimony spoke to

internal analysis of its outcomes from routine inspections compared with targeted inspections and suggested that its compliance rate was higher when the number of targeted inspections were lower. Its CEO testified about examples of multiple unsatisfactory inspections at the same sites on the same dates.

[76] CLM submitted that AlphaBow's examples of bias appear to be baseless accusations supported by little or no evidence and stated that a higher-risk licensee would be subject to more inspections than a lower-risk licensee, particularly where noncompliance issues were already identified. CLM's testimony explained the AER's inspection system, including different types and categories of inspections and how inspections are recorded and a licensee's compliance rate is determined. CLM's evidence addressed serious incidents that AlphaBow cited as examples of successful compliance, namely a pipeline strike and a release from a sour gas plant.

[77] AlphaBow alleged that the AER discriminated against it by imposing conditions and requirements beyond those imposed on peer companies. It submitted a table titled "AER treatment of AlphaBow peers" that gave examples of other oil and gas operators subject to orders requiring reasonable care and measures or suspension, as well as security deposit requirements. CLM's response to this allegation and submission was that the table presented "an inaccurate and misleading picture." It stated that the table compared the compliance approach the AER took with small licensees with few assets, who had comparatively lower risk regarding their end-of-life obligations than a large licence holder like AlphaBow. CLM further submitted that the table included considerations that are irrelevant and immaterial to this proceeding's issues and omitted information about some operators listed in the table. The table mixed examples of security requirements from separate regulatory frameworks where the approach and analysis related to security collection was different.

[78] AlphaBow alleged that the specific requirements of the March Order extended beyond that which applied to the rest of industry and were therefore unreasonable in the following ways:

- Clause 1 and 2: While providing reasonable care and measures is an obligation of all licensees, providing a plan is not. Nor is there an obligation on licensees to maintain a compliance rating or provide a summary of all debts and plans to satisfy them.
- Clause 3: While all licensees are expected to address mineral lease expiries, it is routine for licensees to have the option of either reobtaining minerals or completing abandonment. The RCAM order required AlphaBow to abandon the wells. Further it imposed a deadline of six months. The AER has discretion regarding the amount of time to provide.
- Clause 4: Other than at the time that eligibility is sought, proof of insurance is only required upon request. This is not a standard requirement, nor is there any requirement to provide a certificate of renewal.

- Clause 5: The AER does not require licensees to keep working interest participant information up to date.
- Clause 6: *Directive 067* does not authorize the AER to collect contact information for shareholders, directors, and officers of a licensee. Further, it provides for 30 days to advise the AER of material changes including changes in control which the AER accelerated for AlphaBow.
- Clause 7: While the AER can request audited financial statements, there is not a requirement that licensees have them nor is there a requirement that licensees provide quarterly financial statements.
- Clause 8: While the AER has the discretion to request security, there is no requirement that licensees post 10% of their inactive liability.

[79] CLM explained that except for the requirements to post the security deposit and provide audited financial statements, all of the March Order requirements were standard AER requirements with which AlphaBow should have already been in compliance. CLM stated that these standard requirements were set out in the July 2022 licence eligibility decision. CLM argued that because AlphaBow had done little to comply with the expectations in that decision, it demonstrated that AlphaBow was either unable or unwilling to comply with these basic AER requirements.

[80] AlphaBow alleged that the AER predetermined issues and demonstrated a closed mind. It referred to two statements from the SDM's decision notes related to his thoughts and considerations on March 29, 2023: "I am not of the opinion that AlphaBow would likely be able to provide any new information that would change the need for the required actions in the order" and "My opinion is that AlphaBow could have made the effort to meet with me but was likely trying to delay." AlphaBow testified that in responding to the AER's concerns and the March Order, it felt like its responses "were falling on deaf ears."

[81] CLM stated that the SDM's statements cited by AlphaBow as indicating bias were taken out of context. It explained that the statements came from the SDM's detailed notes of meetings with AlphaBow and his decision-making thought process and suggested that those notes show a "thoughtful decision-maker who considered and weighed all of the evidence" before deciding to issue the March Order. CLM testimony discussed a comment in an AER compliance update document that stated: "Pro...AlphaBow may cease operations independent of AER actions." CLM indicated that the comment was from a summary document looking at pros and cons of regulatory options available concerning AlphaBow in the "do nothing" option, as an acknowledgement that AlphaBow corporate failure could be a consequence of the AER taking no regulatory action. CLM further stated that the AER did not want AlphaBow to fail.

[82] In response to AlphaBow's testimony that it felt its responses to the March Order were falling on deaf ears, CLM testimony spoke to what it found lacking in AlphaBow's proposed RCAM plan submitted on May 12, 2023. It stated that AlphaBow failed to provide detailed actions and identify changes to improve its behaviour and performance and did not demonstrate how it would proactively identify and

respond to its issues. The SDM testified: "...if you look at the file, there's a history of the AER identifying the issues for AlphaBow, AlphaBow fixing that one issue, and then we go out again and find the same issue...the intent is for that not to be happening. A responsible licensee is aware of the rules, is monitoring their own compliance, and taking their own steps to prevent noncompliance and to address them. I didn't see that in this plan."

[83] AlphaBow contended that the AER made assumptions or generalizations about AlphaBow "that have no basis in reality and are intended to cast AlphaBow in a negative light." AlphaBow stated that the AER "explicitly stated" it believed AlphaBow was either unwilling or unable to renew its insurance.

[84] Further to its contention about assumptions or generalizations by the AER about AlphaBow, AlphaBow referred to statements made by CLM related to its corporate governance. The first reference was to an internal CLM discussion about AlphaBow's lack of a chief operating officer or chief financial officer (CFO) and possible factors that could lead to a greater risk of fraud. The second reference was to a statement made during a meeting between CLM and AlphaBow that "there seems to be no corporate governance without a CFO or financial executive."

[85] CLM's evidence and testimony about corporate governance and risk referred to a licensee capability assessment of AlphaBow prepared by the AER, dated March 16, 2023. A summary section of that assessment discussed AlphaBow's high financial and liability risk and AER concerns about the high turnover rate within AlphaBow's financial department and at its executive level, including possible lack of financial oversight, governance, and segregation of duties, which could create a greater risk of fraud. The assessment covered in greater detail AlphaBow's executive and financial department staffing histories since 2018, including accounting risk factors relating to corporate internal controls and protection against fraud. The testimony indicated that the level of turnover within AlphaBow's senior management levels was concerning from an accounting perspective because it could create a higher risk of fraud.

[86] AlphaBow contended that the AER acted with intent or conspired to prevent it from complying with the March and June Orders to force it out of business and into insolvency. AlphaBow alleged that the March Order set a security amount (\$15 374 050) that the AER "knew was approximately equal" to AlphaBow's arrears in municipal taxes and that it had advised the AER of the status of its arrears and its plans to address them in meetings held in July 2022 and March 2023.

[87] CLM's testimony provided a detailed description of how the security amount was determined, indicating that it considered current regulatory requirements and parameters, then compared the amount to other possible calculations of security, including the AER's previous method of security calculation and the amount of security that would be required if licences were being transferred between licensees. CLM indicated that it wanted to focus on a fair starting point for requiring security from AlphaBow to support its end-of-life obligations and thus selected an amount that was 10% of AlphaBow's liability for its

inactive sites. CLM further testified that it was coincidence that the security amount might be similar to municipal taxes owed by AlphaBow.

[88] AlphaBow also alleged that the AER knew it lacked the funds to post \$15 million in security when the March Order was issued but provided no supporting evidence. The record shows that before issuing the March Order, CLM had AlphaBow's June 30, 2022, financial statements and its 2021 reserves report. CLM testified that AlphaBow communicated in summer 2022 that it expected increased cash flows of potentially \$1 million per month from the expiry of hedging arrangements and that CLM saw that as a fairly significant increase of AlphaBow's cash flow. CLM also testified that it heard mixed messaging from AlphaBow at the March 7, 2023, meeting, indicating that AlphaBow stated that money was not a problem but also argued that money was a problem.

[89] The SDM testified that it had never been his goal to push AlphaBow into insolvency; his goal is always to see a licensee comply. He indicated that he had previously required security from two other financially distressed licensees, both of which paid, and that his goal at the time of the March Order was to have AlphaBow meet all its obligations. In response to questioning about the possibility of AlphaBow ceasing operations, the SDM testified that he considered potential outcomes when making the decision to issue the March Order, including AlphaBow coming into compliance or ceasing operations. He stated that the possible outcomes did not change his assessment of why the March Order was needed or the necessary contents of the order: "I felt that the requirements of the order to prevent the impact to public health and safety, to prevent impairment or damage of the sites was necessary regardless of an outcome like ceasing operations." He also indicated that he regarded the reasonable care and measures requirements as the most important part of the March Order.

Analysis and Findings

[90] Case authorities indicate that the test to establish reasonable apprehension of bias is a high one, given the strong presumption of judicial impartiality. The test is highly fact-specific, and context is of extreme importance. The determination is "what would an informed person, viewing the matter realistically and practically – and having thought the matter through – conclude. Would he think that it is more likely than not that [the decision-maker], whether consciously or unconsciously, would not decide fairly." (*Committee for Justice & Liberty v Canada (National Energy Board)*; *Baker*).

[91] In relation to its allegations of bias concerning AER inspections of AlphaBow, AlphaBow's testimony spoke of internal analysis done comparing its compliance rate for routine and targeted inspections and suggesting a better compliance rate when there were fewer targeted inspections. However, AlphaBow did not reference any source document for this analysis nor provide calculations or other supporting documentation. AlphaBow did not provide any evidence comparing its inspection numbers or results to those of other oil and gas operators.

[92] In its testimony about inspections, CLM explained that the term “targeted inspection” does not refer to the AER targeting AlphaBow as a licensee but is a means of categorizing an inspection with a focus on a specific risk. CLM also provided context about why multiple inspections and noncompliances were recorded at the same site on the same date. In these instances, the inspections related to different licences and their associated inspection categories, for wells, facilities, and pipelines that can exist at the same geographic location. CLM evidence specifically addressed a pipeline strike and a release from a sour gas plant, two serious incidents that AlphaBow cited as examples of successful compliance. That evidence spoke to the findings of AER inspectors and gave further context about the severity of the incidents being much greater than portrayed by AlphaBow, including possible adverse effects on the environment and public safety.

[93] We were not convinced by the table submitted by AlphaBow titled “AER treatment of AlphaBow peers” that sought to establish AER discrimination based on unequal treatment of AlphaBow. We noted that the security requirements cited arose from two different regulatory systems used by the AER at different times. We also accept CLM’s submissions that the table presented information about other licensees with much smaller operations and fewer assets than AlphaBow. In addition, we note that the AER’s processes under *Directive 088*, *Manual 023*, and licence capability assessments rely on grouping similar companies into “performance groups” or “peer groups” and a tiering methodology designed to ensure individual companies are not singled out and treated differently from each other.

[94] Although AlphaBow alleged that the March Order requirements extended beyond those applied to the rest of industry, we find AlphaBow did not provide adequate evidence on every clause of the March Order:

- Clauses 1 and 2 relate primarily to submitting an RCAM plan that is satisfactory to the SDM and the implementation of that plan. AlphaBow did not provide evidence that expanded on their allegation that requiring such a plan was something that did not apply to the rest of the industry. We note that all licensees are subject to the requirement under section 26.2 of the *OGCA* to provide reasonable care and measures for their sites and to the possibility of an order where the AER is of the opinion that a licensee is not providing reasonable care and measures. Section 26.2 gives the SDM discretion to impose any terms or conditions he determines necessary in an order, including submitting and implementing an RCAM plan. The reasonableness of the requirement to provide an RCAM plan is discussed in detail in the section on the reasonableness of the March Order at paragraphs 118–126.
- Clause 1a required that the RCAM plan include specific actions and timelines to improve AlphaBow’s compliance rating to at least 75%. AlphaBow contended there is no obligation on licensees to maintain a compliance rating but did not provide evidence that CLM’s 75% compliance target was not applied to other operators where CLM had issued similar orders. CLM provided evidence that the 75% target is used as the industry average, based on annual industry performance data indicating average industry compliance of 73% to 78% over ten years. We note that compliance

history is a factor considered in the risk assessment process for General Eligibility of a licensee under *Directive 067* that applies to all licensees.

- Clause 1f required that AlphaBow provide a summary of all its outstanding debts. AlphaBow argued that this is not an obligation of licensees in general. AlphaBow suggested this requirement, particularly requiring information about municipal tax arrears, was prompted by the Government of Alberta's issuance of Ministerial Order 043/2023 on March 16, 2023, giving the AER direction on municipal tax arrears and well licences. However, the Ministerial Order's direction required the AER to consider outstanding municipal tax arrears when dealing with applications for a well licence to permit the drilling of a new well or for the transfer of a well licence. Neither of those circumstances applied to the March Order. We note that information about a licensee's outstanding debts is a factor considered in the risk assessment process for General Eligibility of a licensee under *Directive 067* that applies to all licensees.
- Clause 3 required AlphaBow to submit a satisfactory plan to abandon all its mineral lease expired wells. AlphaBow contended that this requirement treated it differently from the rest of the industry because it is routine for licensees to have the option of either reobtaining the mineral lease or completing abandonment. AlphaBow did not provide any evidence about the treatment of other licensees with mineral lease expiries. Section 3.012(a) of the *OGCR* requires a licensee to abandon a well when the mineral lease has terminated but does not address a licensee reobtaining that mineral lease.
- Clause 4 required AlphaBow to submit proof of insurance. AlphaBow contended that such proof is not a standard requirement and is only required on request. It did not provide evidence to address how the AER applies this requirement to the rest of the industry. We note that providing proof of insurance is a standard requirement to obtain or regain General Eligibility under *Directive 067* and that cancellation of or significant reduction to insurance coverage is also a factor considered in the risk assessment process under *Directive 067* that applies to all licensees. Section 4.2 of *Directive 067* directs that insurance coverage information must be provided to the AER when requested.
- Clause 5 required AlphaBow to provide updated working interest participant information. AlphaBow contended that licensees are not required to keep such information up to date but did not provide supporting evidence for its position that this requirement exceeded what the AER applies to other industry operators. Working interest participant arrangements, including participant information and proportionate shares, is a factor considered in the risk assessment process for General Eligibility of a licensee under *Directive 067* that applies to all licensees. *Directive 067* also obliges all licensees to keep this information on AER files accurate.
- Clause 6 required AlphaBow to maintain persons in control of its sites and corporation and to confirm names, titles, and contact information of all persons in direct or indirect control of AlphaBow. AlphaBow contended that *Directive 067* does not authorize the AER to collect contact information

for shareholders, directors, and officers of a licensee but did not provide supporting evidence of its position that clause 6 exceeded what the AER requires of other industry operators. All licensees are required to submit information under *Directive 067* to establish and support licence eligibility, including names and copies of current government-issued photograph identification for licensee directors and officers. *Directive 067* also obliges all licensees to keep this information on AER files accurate.

- Clause 7 required AlphaBow to provide quarterly financial statements and third-party audited annual financial statements. AlphaBow did not provide supporting evidence of its position that this requirement is beyond what the AER requires of other industry operators. The reasonableness of the requirement to provide financial statements is discussed in detail in the section on the reasonableness of the March Order at paragraphs 144–157.
- Clause 8 required AlphaBow to provide a security deposit of \$15 374 050, representing 10% of its inactive liability. AlphaBow contended that there is no requirement that licensees post 10% of their inactive liability as security but did not provide evidence to discuss amounts of security that the AER required of other licensees or otherwise support its position that clause 8 imposed a requirement beyond that of other industry operators. The security deposit, including the reasonableness of its requirement, is discussed in detail in the section on the reasonableness of the March Order at paragraphs 127–143.

[95] We note that the AER’s directives and manuals lay out the requirements or processes that operators must follow to comply with provincial legislation. The AER also uses bulletins to inform industry and Albertans about regulatory activities, such as new regulatory requirements, new programs, or new processes. These are public documents and operators are expected to be aware of changes to the regulatory regime and ensure that their operational practices incorporate these changes. In addition to this public information, the record demonstrates that CLM frequently reminded AlphaBow of relevant changes to the regulatory requirements.

[96] *Directive 088*, *Manual 023*, and *Directive 067* include industry requirements that pertain specifically to this proceeding. *Directive 067* states that an “application to amend licence eligibility will require reapplication under this directive.” This covers many of the items listed in the March Order that AlphaBow alleged were not applied to the rest of industry.

[97] In our view, AlphaBow sent conflicting messages of how it expected to interact with and be treated by the AER. On the one hand, AlphaBow stated the requirement for the RCAM plan was vague and appeared to expect the AER to provide detailed, prescriptive, site-specific direction about exactly what actions the AER wanted AlphaBow to use at each site to provide reasonable care and measures. On the other hand, missed or ignored AER deadlines for submission of information and stipulated actions appear to indicate that AlphaBow expected time extensions, variances, and exemptions from the requirements and wanted more time to continue operating as it had in the past.

[98] Regarding AlphaBow’s allegations that the SDM predetermined issues and demonstrated a closed mind, we find that the statements cited by AlphaBow have been taken out of their broader context. Both statements cited come from the SDM’s detailed notes recording his decision-making process. His statement, “My opinion is that AlphaBow could have made the effort to meet with me but was likely trying to delay” immediately follows a half-page of his notes discussing his concerns about AlphaBow’s request for a 13-day delay in meeting and AlphaBow’s capability to respond to an emergency during that time, if no responsible individual from AlphaBow were available to meet with him, as well as his willingness to accommodate a short meeting, including by telephone, during March 29 and 30. That context shows the reasons and basis for the SDM’s stated opinion, and we are not convinced that it amounts to predetermination or a closed mind.

[99] We provide below the full paragraph related to the other statement cited by AlphaBow, with the cited statement shown in italics:

Considering the delay and inability to hold a meeting I have considered all of the evidence for the order and the required actions of the Order. *I am not of the opinion that AlphaBow would likely be able to provide any new information that would change the need for the required actions in the order.* I also considered that the requirements of the order are primarily remedial in nature and allow AlphaBow to submit acceptable plans to address the issues. I will also always consider adjusting terms of the order after the fact based on requests from AlphaBow.

[100] We note that the SDM is not addressing the need for an order but that no new information would likely change the need for the required actions to achieve reasonable care and measures for AlphaBow’s sites. If anything, we find that his statement shows the SDM is firm on the outcome for reasonable care and measures that need to be met rather than an order as the contemplated tool to seek that outcome. We also find that the SDM’s comments about AlphaBow’s ability to submit plans to address the issues and his willingness to consider adjustments to the order’s terms contradict AlphaBow’s assertions of predetermination and a closed mind.

[101] Concerning AlphaBow’s contention that its responses to the March Order were falling on deaf ears, we are persuaded by the evidence that the SDM thoroughly reviewed and considered all eight AlphaBow submissions and the meeting materials presented by AlphaBow and provided feedback on the shortcomings in AlphaBow’s proposals. As previously discussed, the SDM made various timeline changes to order requirements in response to AlphaBow submissions.

[102] AlphaBow alleged that the AER made explicit statements that AlphaBow was unwilling or unable to renew its insurance. All references cited to support this statement were instances where CLM spoke of AlphaBow failing to provide insurance renewal information within timelines set by CLM. The reference cited that came closest to the explicit statement alleged by AlphaBow was “Communications between [AlphaBow’s CEO] and the insurance provider dated March 29 and March 30, 2023, appear to indicate that steps may not have been taken to obtain the renewal until it was communicated to AlphaBow

that CLM would be issuing an order.” This quote is an excerpt from an AER legal submission in response to AlphaBow’s request to stay the March Order that postdates the March Order by a month.

[103] We find that AlphaBow’s allegations of bias related to CLM references to corporate governance and risk of fraud are unfounded. The statements referred to are made in the context of advice provided to the SDM by an AER subject matter expert related to accounting standards and accepted indicators of financial risk. AlphaBow provided no evidence that the AER or SDM stated that AlphaBow or individuals involved with it had committed fraud.

[104] AlphaBow alleged that the AER knew the \$15 million security deposit in the March Order was “approximately equal” to AlphaBow’s municipal tax arrears. We find that AlphaBow did not provide clear supporting evidence for this allegation. Evidence from notes of a CLM-AlphaBow meeting in July 2022 indicate that AlphaBow’s property tax debt at that time was \$20 420 305. None of the notes or documents on the record related to a CLM-AlphaBow meeting in March 2023 provided any information specifying amounts of AlphaBow’s outstanding municipal taxes. An undertaking response provided by AlphaBow at the hearing showed as of November 23, 2023, it owed taxes to five specified municipalities totalling \$12 223 903.17.

[105] AlphaBow’s evidence regarding bias consisted primarily of allegations and very selective quotes or excerpts of documents, sometimes out of context or after the March Order was issued. It provided little convincing information, particularly set against the detailed context that emerged from CLM’s testimony at the hearing and a review of the full proceeding record. CLM provided clear and detailed information about the regulatory framework, including inspections and compliance activity, AlphaBow’s regulatory history, and the decision-making process and considerations undertaken by the SDM in deciding on and issuing the March Order. The evidence shows that the SDM carried out a thorough, thoughtful review of the circumstances, applicable legislation, and concerns in determining to issue the March Order. The SDM’s consideration of possible eventualities that might not be advantageous to AlphaBow was not bias; it was a practical and balanced approach to decision making and the AER mandate.

[106] We are not satisfied that AlphaBow provided adequate evidence in the context to convince us that a reasonable person would think that the SDM had decided unfairly in issuing the March Order. We are not convinced that any combination of AlphaBow’s allegations of bias cumulatively amounts to reasonable apprehension of bias. We find that AlphaBow has not met the test to establish reasonable apprehension of bias.

Decision Not Aligned With AER Norms, Guidelines, and Precedents

[107] AlphaBow alleged that its procedural fairness entitlements were breached because the March Order did not align with AER norms, guidelines, and precedents. Neither party addressed this allegation as a discrete matter over the course of this proceeding. We have chosen to interpret this allegation in relation to the consistency of the March Order and the process for issuing it with AER requirements in legislation and guidance documents.

[108] We have discussed this matter in other sections of this decision concerning

- *Manual 013* and the AER’s process for issuing orders,
- the *OGCA*, *Directive 088*, *Directive 067*, and *Manual 023* in relation to whether CLM had subjected AlphaBow to requirements beyond those imposed on the rest of the industry, and
- *Directive 067* in relation to reasonableness of the March Order in requiring audited annual financial statements.

[109] Based on the evidence discussed and our analysis and findings in those sections, we find that AlphaBow has not convinced us that the March Order did not align with AER norms, guidelines, and precedents. The legislation and guidance documents discussed give the AER the ability to apply discretion and flexibility in regulating energy development.

Was the March Order Unreasonable?

[110] The relevant hearing issue is whether the AER exercised its discretion to issue the March Order to AlphaBow in a manner that was unreasonable.

[111] AlphaBow cited *Vavilov* as an authority addressing how an administrative decision may be found to be unreasonable, either if the decision is based on internally incoherent reasoning or if the decision is not justified in relation to the relevant laws and facts. To be reasonable, a decision must be based on reasoning that is rational and logical (*Vavilov* at paras 102-104). CLM submitted that *Vavilov* does not apply to this proceeding because it is an internal review of a statutory decision, and the standard of review from *Vavilov* only applies to reviews by a court.

[112] As guidance to determining reasonableness of a decision, CLM cited *Moffat v. Edmonton (City) Police Service*, 2021 ABCA 183, in which the Alberta Court of Appeal, drawing guidance from *Vavilov*, stated, “Reasonableness review is concerned with ‘justification, intelligibility and transparency’ in the decision-making process” and “A reasonable decision is one based on a ‘rational chain of analysis.’” The Court in *Moffat* also stated that “the decision must also be justified ‘in relation to the constellation of law and facts that are relevant to the decision’” and “The party challenging the decision bears the burden of showing that a decision is unreasonable. A decision will not be set aside on this basis unless it can be shown that the purported flaws are ‘more than merely superficial or peripheral to the merits of the

decision’; they must be ‘sufficiently central or significant.’” AlphaBow did not contest *Moffat*’s applicability.

[113] We note that the Alberta Court of Appeal in *Moffat* draws from *Vavilov*, indicating that *Vavilov*, although in the context of an appellate review, provides guidance on the question of performing a reasonableness review. We see no inconsistency in the approach suggested here by the parties and will apply the guidance stated in *Moffat* as it deals with an internal review of a statutory decision.

[114] AlphaBow also alleged that its procedural fairness entitlements had been breached in relation to the March Order because the AER failed to provide adequate or intelligible reasons which sufficiently justified its decisions. We will consider this allegation in this section as its elements of justification and intelligibility coincide with the guidance from *Moffat*.

[115] AlphaBow alleged that the March Order was unreasonable for the following reasons:

- The order did not seek to protect against impairment or damage as required under section 26.2 of the *OGCA*.
- The order’s focus appeared to be predominantly financial in nature, and the AER issued the order with intent to worsen AlphaBow’s financial standing and impair it from meeting compliance requirements.
- The requirement to provide a security deposit was contrary to the Auditor General’s report and *Directive 088*.
- The order was unclear and ambiguous: it did not provide clarity about how AlphaBow could comply with the order.

[116] AlphaBow argued that the March Order’s requirements to provide an RCAM plan, a \$15 374 050 security deposit, and third-party audited annual financial statements were all unreasonable. We will address the allegations above in our discussion of each requirement.

[117] CLM was of the view that the AER exercised its discretion reasonably. CLM submitted that the AER’s record demonstrated a clear “rational chain of analysis” in relation to the issuance of the March Order. CLM explained that the March Order contained 31 separate Whereas clauses that clearly and distinctly outlined the rationale and basis for the decision. In CLM’s view, AlphaBow seemed to conflate unreasonableness with its general dissatisfaction with the terms of the March Order, particularly the requirement for a security deposit.

Requirement to Provide an RCAM Plan

Parties' Positions

[118] AlphaBow submitted that the requirement for an RCAM plan was unclear about how to meet the AER's expectations and what happens once compliance is reached. Because it was unclear, it set AlphaBow up for failure. AlphaBow stated that the March Order failed to provide sufficient clarity about how the field compliance rating is conducted and when and how a determination will be made that AlphaBow has achieved the necessary compliance rating.

[119] CLM explained that over the course of four years it had used various tools from the AER's Compliance Assurance Framework with AlphaBow, including education, requests for information, notices of noncompliance, limiting AlphaBow's licence eligibility in July 2022, and escalating to the March Order in 2023. As CLM explained, the requirements in the July 2022 decision later incorporated into the March Order are standard AER requirements.

[120] As described in paragraph 92, CLM explained the AER inspection system, including how inspections are recorded and licensee compliance rates determined. CLM's evidence also explained that the 75% compliance target is used as the industry average and based on annual industry performance data, which indicates an average industry compliance rate of 73% to 78% over ten years.

Analysis and Findings

[121] We are not satisfied that AlphaBow provided sufficient information to show us how the requirements for the RCAM plan were unclear. In our view, the wording of clauses 1(a) and (b) of the March Order is abundantly clear: "the **plan** must include, at a minimum, **specific actions**..." [emphasis added], and each clause describes what the specific actions need to include. The *Oxford English Dictionary* defines a plan as "a set of things to do in order to achieve something, especially one that has been considered in detail in advance." The *Merriam-Webster Dictionary* defines a plan as "a detailed formulation of a program of action."

[122] Considering the plain and ordinary meaning of the word "plan," the RCAM plan required as part of the March Order is a detailed formulation of a program of specific actions that would demonstrate that reasonable care and measures are being provided at all of AlphaBow's sites. In our view, the requirement for AlphaBow to provide an RCAM plan is clear and reasonable, and it allows AlphaBow the opportunity to decide and implement the specific actions it will use that are appropriate and achievable for it, albeit to the director's satisfaction. It is reasonable to assume that allowing companies, especially those with large numbers of assets, to design and implement their own company-specific corporate-wide plans to achieve compliance that are tailored to their own capacities, timeline, and systems, will lead to a higher likelihood of compliance with orders for achieving reasonable care and measures.

[123] We note that several actions required to be in the RCAM plan were previously listed in the July 2022 decision restricting AlphaBow's licence eligibility as actions it needed to take to regain General Eligibility, including the following:

- March Order clauses 1(a)–(c) involved addressing all outstanding noncompliances, actions to attain and maintain an overall field compliance rating of at least 75%, and responding to noncompliances, incidents, and information requests within required deadlines.
- March Order clause 1(e) pertained to providing specific actions, or as listed in the July 2022 decision, a detailed plan for how AlphaBow will meet the annual mandatory closure spend target under *Directive 088*. We find it notable that this clause is very similar in the two documents but pertains to mandatory closure spend targets for different years (2022 and 2023). As of the hearing, AlphaBow had not provided specific actions or a detailed plan for 2023.

[124] Although the wording of the respective actions stipulated in the July 2022 decision and the March Order are not identical, we are of the view that the expected actions listed in the July 2022 decision (read in their entirety and in the context of the entire July 2022 decision) provided a sound basis and were incorporated into the list of required actions that must be included in the RCAM plan required by the March Order. Therefore, we are of the view that the action items from the July 2022 decision that were incorporated into the March Order were known to AlphaBow.

[125] The record clearly shows that CLM interacted and worked with AlphaBow on numerous occasions over four years in accordance with AER's Compliance Assurance Framework. The March Order required AlphaBow to submit an RCAM plan, which would compel ongoing compliance and alignment with the AER's Compliance Assurance Framework. As such, AlphaBow has not convinced us that the AER's exercise of its discretion to require the submission of an RCAM plan was unreasonable. The requirement to submit an RCAM plan in the March Order was clear and flowed from a rational chain of analysis and was justified in relation to the relevant facts and law.

[126] In relation to the requirement for an RCAM plan, AlphaBow has not provided sufficient evidence to support its allegation that its procedural fairness entitlements were breached due to a failure by the AER to provide adequate or intelligible reasons which sufficiently justified its decision. As discussed above, most of the elements to be incorporated in an RCAM plan flowed from requirements imposed in the July 2022 decision restricting AlphaBow's licence eligibility. The March Order's Whereas clauses, which provide the reasons and basis for the order's requirements, include a discussion of the July 2022 decision and its requirements and provide examples of AlphaBow's operational shortcomings and noncompliances since July 2022. These examples include AlphaBow's declining field compliance rating, failures to provide information and reporting within required timelines, the inability to carry out required remediation and groundwater monitoring at contaminated sites, and noncompliance with requirements to abandon nearly 300 wells with expired mineral leases. These Whereas clauses and reasons clearly link to,

support, and justify the requirement for an RCAM plan and the expected elements of the plan. We find that AlphaBow has not established that it suffered any breach of procedural fairness concerning the reasons and justification for requiring an RCAM plan in the March Order.

Requirement to Provide a \$15-Million Security Deposit

Parties' Positions

[127] AlphaBow acknowledged that the AER is tasked with ensuring the safe, efficient, orderly, and environmentally responsible development of Alberta's energy resources, and the AER has broad discretion to seek and collect security under the *OGCA* and corresponding rules. AlphaBow submitted that the exercise of discretion needs to be reasonable and in accordance with the direction provided by government, and the AER's actions in respect to AlphaBow were wholly irresponsible.

[128] AlphaBow contended that it was clear that the AER knew AlphaBow lacked the funds to post security of over \$15 million when the March Order was issued. It submitted that the AER knew that posting such an amount would divert funds from operations, creating a risk to AlphaBow's ability to carry out closure work and complete reasonable care and measures. Accordingly, the March Order was not remedial but punitive, intended to create further noncompliances. In AlphaBow's view, the required security deposit of \$15 374 050 was a discretionary amount that would divert funds being used to address municipal tax arrears and conduct closure work. AlphaBow contended it was an excessive amount that the SDM knew it could not afford and was, therefore, intended to cause its insolvency.

[129] AlphaBow also submitted that the AER's decision to request security was contrary to the Auditor General of Alberta's guidance of March 2023, where the Auditor General specifically stated that requesting security when a company lacked the resources and requiring security in such circumstances may divert resources for cleanup work are fundamental flaws in the AER's process. AlphaBow commented that it does not take the position that it is never appropriate to collect security from already financially distressed companies but submitted that the AER failed to heed the warning contained in the Auditor General's report by seeking to collect security when a company lacks the resources and that the report encouraged the AER to consider both the timing and the amount of security sought.

[130] AlphaBow referred to the AER's mandatory closure spend requirement and argued that because the AER sets a lower mandatory closure spend for licensees with a high level of financial distress, the AER should apply this same approach to eliminate or reduce the amount of security deposit required by the March Order.

[131] CLM testified that the mandatory closure spend program is designed to ensure operators spend a minimum amount annually to abandon, remediate, and reclaim their inactive oil and gas sites. In contrast, security deposits are designed to mitigate against a company's longer-term financial risk and provide

some level of financial protection for the public if a licensee were unable to meet its end-of-life obligations.

[132] CLM further explained that not requiring security and relying solely on closure work is appropriate in some circumstances. However, this requires an assessment that the licensee will continue as a going concern for the foreseeable future to be able to complete all its closure and liability obligations. In CLM's view, given AlphaBow's financial health, the magnitude of its liability, and evidence of financial distress, it was entirely reasonable for the SDM to require a security deposit in addition to mandatory annual closure spends to mitigate the environmental and liability risks posed by AlphaBow's licences.

[133] CLM indicated that, as acknowledged by AlphaBow, the AER has broad discretion to request a security deposit under section 1.100(2) of the *OGCR*, including before approving a licence transfer, whenever a licensee fails an AER licensee liability rating assessment or liability management rating assessment, and whenever the AER considers it appropriate to offset estimated costs of suspending, abandoning, or reclaiming wells or facilities, providing care and custody of wells or facilities, or of carrying out necessary activities to ensure protection of the public and the environment.

[134] CLM explained that security is collected to offset the risk that a licensee will not meet its future liability and closure obligations. CLM stated that the amount of the security deposit, while it was a large sum of money, represented only 10% of AlphaBow's total inactive liability. As such, CLM felt that there was nothing unreasonable about the AER exercising its discretion to request AlphaBow to post the security deposit.

[135] CLM submitted that AlphaBow, with over 58% of its assets inactive, is ranked 27 out of 382 licensees in Alberta for total liability and is responsible for the eighth largest inactive liability. CLM explained that, as stated in clause 8 of the March Order, the requirement to "post a security deposit in the amount of \$15,374,050.00...represents 10% of AlphaBow's inactive liability, to offset the estimated costs of abandoning and reclaiming a well or facility and of carrying out any other activities necessary to ensure the protection of the public and environment." It stated that the request for security followed the letter of the law as set out in section 1.100(2)(c) of the *OGCR* and clearly outlined the reasoning for such a request. As such, in CLM's view, there was nothing unreasonable about the security requirement.

[136] Responding to AlphaBow's submissions about the Auditor General's report on AER security requirements, CLM stated that AlphaBow had taken excerpts from the report out of context and used them to support its position that it was inappropriate for the AER to collect security from an already financially distressed company. The key findings from the report were that the AER's previous financial security system was inherently flawed, had historically failed to identify risks properly, and did not ensure the collection of sufficient security. The report did not provide a recommendation to stop collecting security from financially distressed licensees but rather it recommended "that the Alberta Energy

Regulator determine how much security needs to be collected, when it will be collected, and how collection will get enforced with the transition away from the Licensee Liability Rating Program.” CLM commented that the AER is now collecting more information to better evaluate licensee risk, and the new Licensee Management Program attempts to correct this historical problem.

[137] The SDM testified that he knew from CLM’s assessment that AlphaBow was financially distressed. He considered the possibility that AlphaBow might not be able to pay the security deposit amount and that a security deposit may divert funds away from reasonable care and measures. However, he felt strongly that taking at least partial steps to ensuring some end-of-life obligations could be met would reduce the risks presented by AlphaBow not being able to address all its end-of-life obligations. He believed there was a real possibility that if AlphaBow’s owners felt strongly about continuing operations and benefiting from operating in Alberta, they would fund everything that was required, be it security, actions for reasonable care and measures, ongoing closure obligations, or other measures.

[138] The SDM explained how the security amount of \$15 374 050, which represented 10% of AlphaBow’s inactive liability, was determined. He began by considering the parameters for how to assess and collect security outlined in *Directive 088*. Because the SDM wanted to establish what he felt was a fair starting point, he only looked at AlphaBow’s inactive liability of about \$153 million and selected 10%, approximately \$15 million, as a small percentage. The SDM indicated that he compared this amount with other calculations, such as the old Liability Management Rating Program, which would have yielded about the same amount of required security. He felt the security amount was fair, and if anything, it was inadequate. The SDM also reviewed the framework and risk factors for licence transfers as if AlphaBow assets were transferred to another licensee. The result under that framework would have been a significantly larger security deposit in the order of 90% to 95% of AlphaBow’s liability. The SDM, therefore, felt comfortable that \$15 million was a reasonable starting point for a security deposit.

[139] The SDM testified that it is common for financially distressed licensees to request additional time to pay the security or request a payment plan. He expected AlphaBow to approach him to request a payment plan for security, but it did not.

Analysis and Findings

[140] We find the SDM conducted a very thorough review of AlphaBow’s operational, compliance, and financial situation, and, before deciding to issue the March Order, carefully considered the potential impacts. Rather than simply assigning a percentage of AlphaBow’s liabilities that would be required as a security deposit, the SDM reviewed two other frameworks for calculating security, considered similar situations with other distressed licensees, and selected an amount he felt represented a fair and achievable starting point, which he expected AlphaBow’s owners would be able to fund. Considering the magnitude of AlphaBow’s total liability, the required security of \$15 million is a small proportion, which we note AlphaBow did not refute. All of this was done pursuant to the AER’s broad discretion to require a

licensee to provide a security deposit under section 1.100(2) of the *OGCR*. As previously noted, AlphaBow acknowledged this broad discretion. We accept that the security deposit was necessary and appropriate to offset the potential costs of managing AlphaBow's obligations for end-of-life closure of its sites.

[141] We did not find AlphaBow's references to the Auditor General's report about security deposits useful or persuasive. The report, published March 23, 2023, acknowledged that the AER was in the process of transitioning away from the previous Licensee Liability Rating, which inadequately calculated deemed liability and resulted in insufficient security collection, to the new Liability Management Framework. We find that the report did not recommend the AER to stop collecting security from financially distressed licensees but instead recommended that the AER determine the amount, timing, and enforcement of security collection necessary under the new Liability Management Framework.

[142] In light of the preceding factors, AlphaBow has not convinced us that the AER's exercise of discretion to require AlphaBow to provide a security deposit in the amount of \$15 million was unreasonable. The decision followed a rational chain of analysis and was justified in relation to the relevant facts and law.

[143] Concerning the requirement for a security deposit, AlphaBow has not provided sufficient evidence to support its allegation that its procedural fairness entitlements were breached due to a failure by the AER to provide adequate or intelligible reasons which sufficiently justified its decision. The March Order's Whereas clauses provide information about AlphaBow's estimated inactive liability and its total liability and set out the AER's legislative authority to require a security deposit at any time to offset estimated costs of abandoning and reclaiming wells or facilities and of carrying out other necessary activities to ensure environmental and public protection. The SDM's detailed testimony of his process for determining the amount of the security deposit also supports and justifies the requirement for a security deposit. We find that AlphaBow has not established that it suffered any breach of procedural fairness in relation to the reasons and justification for requiring a \$15 million security deposit in the March Order.

Requirement to Provide Third-Party Audited Annual Financial Statements

[144]

[REDACTED]

Parties' Positions

[145] AlphaBow testified that third-party audited financial statements were very expensive and unnecessary, especially since it was struggling financially. It suggested a review engagement of the management-prepared financial statements would suffice and that funds required for a third-party audit could be better spent conducting closure work.

[146] CLM explained that third-party audited annual financial statements were required because audited financial statements are the default requirement of *Directive 067*, with the AER having discretion to accept management-prepared financial statements as an alternative.

[147] CLM further explained that reviewed financial statements provide no third-party opinion as to the quality or accuracy of the financial statements. On the other hand, audited financial statements assert that detailed tests have been performed and there is a high level of assurance that the financial statements are free of material misstatement.

[148] [REDACTED]

[149] [REDACTED]

[150] [REDACTED]

[151] [REDACTED]

[152] After the issuance of the March Order, CLM agreed in a letter dated May 31, 2023, to extend the deadline for submission of the audited annual financial statements from 180 days of fiscal year-end (June

30, 2023) to August 31, 2023. In a letter dated June 2, 2023, AlphaBow committed to starting third-party audited financial statements for year-end 2022 and providing them once finalized. It also committed to provide future third-party audited annual financial statements within 180 days and provide quarterly statements within 75 days. In a letter dated May 26, 2023, CLM accepted AlphaBow's requested revision and agreed to extend the timeline for submission of quarterly interim financial statements to within 75 days of the end of the respective fiscal quarter.

Analysis and Findings

[153] [REDACTED]

[154] [REDACTED]

[155] We appreciate that as a private company AlphaBow is not required to meet the same financial reporting requirements as public entities. However, it remains puzzling to us, given the number of assets and complexity of AlphaBow's operations, that standard planning tools such as an annual operational plan and budget, company reserves, financial statements, and cash flow projections were not readily available. Given the unavailability of standard reports, staff turnover, and [REDACTED], it is not surprising that CLM remained insistent on the need to provide independently reviewed financial statements. Because of the magnitude of AlphaBow's liabilities and number of licences, our view is that third-party audited annual financial statements are necessary.

[156] Considering these factors, AlphaBow has not convinced us that the March Order's requirement that AlphaBow submit third-party audited annual financial statements was unreasonable. The decision followed a rational chain of analysis and was justified in relation to the relevant facts and law. The March Order's Whereas clauses referred to the AER's authority to require financial information from licensees under section 12.152(1) of the *OGCR* to assess licensee eligibility and ensure the safe, orderly, and environmentally responsible development of energy resources in Alberta. *Directive 067* requires all licensees to submit a complete financial summary annually, accompanied by full audited financial statements.

[157] Regarding the requirement to submit third-party audited annual financial statements, AlphaBow has not provided sufficient evidence to support its allegation that its procedural fairness entitlements were breached due to a failure by the AER to provide adequate or intelligible reasons which sufficiently justified its decision. Both parties' testimony indicated that AlphaBow's submission of financial information had not been consistent or timely. We find that AlphaBow has not established that it suffered any breach of procedural fairness in relation to the reasons and justification for requirement of submission of third-party audited annual financial statements in the March Order.

March Order Findings and Decision

[158] We find that the AER did not breach procedural fairness in issuing the March Order to AlphaBow. As previously discussed, we are not satisfied that AlphaBow was deprived of notice, information, or the ability to defend against the March Order. Also, AlphaBow did not meet the test to establish reasonable apprehension of bias. We are not satisfied that AlphaBow provided adequate evidence in the context to convince us that a reasonable person would think that the AER acted unfairly in issuing the March Order.

[159] We find that AlphaBow has not established that it suffered any breach of procedural fairness in relation to adequate and intelligible reasons and justification for the March Order, including the requirements of an RCAM plan, a \$15 million security deposit, and third-party audited annual financial statements.

[160] We find that AlphaBow has not convinced us that the March Order did not align with AER norms, guidelines, and precedents.

[161] We also find that the AER did not exercise its discretion to issue the March Order to AlphaBow in a manner that was unreasonable. Consequently, we are not satisfied that the AER's exercise of discretion to require AlphaBow to submit an RCAM plan, security deposit, and third-party audited annual financial statements was unreasonable.

[162] We confirm the March Order, which the AER issued to AlphaBow on March 30, 2023.

The June Order

Regulatory Framework for the June Order

[163] CLM issued the June Order under the authority of section 27 of the *OGCA* and section 23 of the *Pipeline Act*. Appendix 5 provides the text of these provisions.

[164] The discussion in paragraph 34 of our approach to considering the broader context in making this decision applies equally to our discussion and determinations below about the June Order.

Oil and Gas Conservation Act

[165] Section 27 of the *OGCA* requires a licensee to suspend or abandon a well or facility when directed by the AER or required by the regulations or rules. The AER is authorized to order suspension or abandonment where it considers it necessary to protect the public or the environment.

[166] Section 1(1)(xx) of the *OGCA* defines suspension as “the temporary cessation of operations at a well or facility in the manner prescribed by the regulations or rules and includes any measures required to ensure that the well or facility is left in a safe and secure condition.” Abandonment is defined in section 1(1)(a) of the *OGCA* as “the permanent dismantlement of a well or facility in the manner prescribed by the regulations or rules and includes any measures required to ensure that the well or facility is left in a permanently safe and secure condition.”

Pipeline Act

[167] Section 23 of the *Pipeline Act* requires a licensee to discontinue or abandon a pipeline when directed by the AER or required by the regulations or rules. The AER is authorized to order discontinuation or abandonment where it considers it necessary to protect the public or the environment.

[168] Section 1(1)(g) of the *Pipeline Act* defines discontinuation as “the temporary deactivation of a pipeline or part of a pipeline.” Abandonment is defined in section 1(1)(a) as “the permanent deactivation of a pipeline or part of a pipeline in the manner prescribed by the rules, whether or not the pipeline or part of the pipeline is removed.”

Was Procedural Fairness Breached for the June Order?

[169] The relevant hearing issue is whether the AER breached procedural fairness in issuing the June Order to AlphaBow.

[170] AlphaBow alleged that CLM breached its procedural fairness entitlements in issuing the June Order by

- the lack of an impartial decision-maker,
- failing to provide AlphaBow opportunity to know the case against it in relation to the June Order,

- failing to provide AlphaBow opportunity to adequately respond and make fulsome submissions about the June Order,
- being unresponsive to AlphaBow’s submissions,
- providing inadequate reasons in the June Order,
- providing incoherent reasoning in the June Order, and
- being patently unreasonable.

[171] The allegations of lack of an impartial decision-maker and being unresponsive to AlphaBow’s submission have been dealt with separately below. The allegations of failure to provide opportunity to know the case against it, failure to provide opportunity to adequately respond and to make fulsome submissions are dealt with together. The allegations of inadequate reasons and patent unreasonableness are discussed in the section on the reasonableness of the June Order at paragraphs 206–236, and the allegation of incoherent reasoning is discussed in the section on application of section 27 of the *OGCA* at paragraphs 237–261.

Reasonable Apprehension of Bias

[172] We have equated the allegation of lack of an impartial decision-maker to reasonable apprehension of bias. The previous discussion of the applicable case authorities for the March Order in paragraphs 71–74 applies equally to this section of our decision.

Parties’ Positions

[173] AlphaBow’s testimony discussed the various submissions it made to CLM about the plans required under the March Order. AlphaBow generally felt it was complying with the March Order by submitting the proposed RCAM and abandonment plans, even though the AER had replied that it did not consider the proposals to be plans because they contained insufficient detail. Referring to a CLM response dated May 23, 2023, indicating AlphaBow’s proposed plans were unacceptable and consisted primarily of continuing existing programs, AlphaBow testified that its immediate reaction was “that it didn’t seem to matter what we said. It was unacceptable. We had been very careful to address every concern, been very careful when we were asked to provide specific plans and timelines to make sure that we had done so, and we were being told that we hadn’t done that, but we had.”

[174] CLM’s testimony discussed AlphaBow’s various submissions about the plans required under the March Order and CLM’s responses to those submissions. CLM indicated that in previous years, AlphaBow had provided more detailed abandonment plans than its submissions in response to the March Order. The SDM testified that he sent progressively more detailed responses to each AlphaBow submission, explaining why the submissions were inadequate. He stated that AlphaBow chose not to

address those comments by providing more detail but instead chose to dispute the contents of the CLM responses.

[175] In response to cross-examination suggesting the SDM issued the June Order knowing AlphaBow would not be able to pay the security required by the March Order, the SDM testified that he issued the June Order because “my obligation in my role is to uphold the mandate of the Alberta Energy Regulator, not to ensure that AlphaBow Energy remains operating. My mandate is to ensure that they were preventing potential impact to the environment, public safety, to ensure that they were maintaining and looking after obligations for their sites, to make sure that they were able to look after their end-of-life obligations.”

[176] CLM submitted that AlphaBow provided no evidence to support its allegation of bias related to the June Order. It stated that the record of the decision-maker for the June Order provided evidence of the SDM’s impartiality, particularly about revisions made to drafts of the June Order in response to AlphaBow submissions.

Analysis and Findings

[177] Case authorities indicate that the test to establish reasonable apprehension of bias is a high one, given the strong presumption of judicial impartiality. The test is highly fact-specific and context is of extreme importance. The determination is “what would an informed person, viewing the matter realistically and practically – and having thought the matter through – conclude. Would he think that it is more likely than not that [the decision-maker], whether consciously or unconsciously, would not decide fairly.” (*Committee for Justice & Liberty v Canada (National Energy Board)*, dissent of de Grandpré J., [1978] 1 SCR 369 at p. 394; restated in *Baker* at para 45).

[178] We find that AlphaBow has not met the legal test to establish reasonable apprehension of bias because it has not provided evidence to convince us that a reasonable person would think that the AER had decided unfairly in issuing the June Order. AlphaBow’s testimony addressed the various submissions it made about the plans required under the March Order and that it felt it was not being heard by the SDM.

[179] The evidence shows that CLM replied repeatedly and in detail to AlphaBow’s submissions under the March Order, providing reasons to support where it found AlphaBow’s proposals unacceptable. We note that the content of AlphaBow’s submissions about the plans required under the March Order is consistent with the SDM’s evidence that AlphaBow chose to dispute the contents of CLM responses rather than provide further detail requested by the SDM.

[180] AlphaBow provided nothing further in its testimony or submissions that spoke to potential bias or lack of impartiality by the SDM in relation to the June Order.

Failure to Provide Opportunity to Know Case Against It, to Provide Opportunity to Adequately Respond and to Make Fulsome Submissions

[181] The discussion of the applicable case authorities on procedural fairness for the March Order in paragraphs 37–39 applies equally to this section of our decision.

Parties' Positions

[182] AlphaBow alleged that it was not provided with the record it required to be able to appropriately respond to the AER until after the June Order was issued. It did not elaborate as to what record that would be. Nothing in AlphaBow's testimony addressed the alleged failure to provide it opportunity to know the case against it in relation to the June Order.

[183] CLM submitted that there was no basis to this claim and that the record of the decision-maker showed various communications between CLM and AlphaBow, making clear why the June Order was being considered. It listed various AlphaBow submissions and CLM responses about the March Order that predated the escalation in enforcement, including a notice of noncompliance sent to AlphaBow on May 16, 2023, a meeting between CLM and AlphaBow on May 18, 2023, where CLM advised that more information would be needed for a satisfactory RCAM plan, and the review and consideration of several AlphaBow proposals.

[184] The SDM emailed AlphaBow's CEO on May 25, 2023, advising that he was considering issuing the June Order due to AlphaBow's failure to comply with the March Order and inviting AlphaBow to a pre-issuance meeting. CLM's evidence indicated that AlphaBow was provided a draft of the June Order before the pre-issuance meeting. The SDM testified that he reviewed the draft order in full with AlphaBow at the pre-issuance meeting and agreed to AlphaBow's request for more time to review the draft order and provide a submission to CLM.

[185] Following the pre-issuance meeting for the June Order, CLM provided AlphaBow a revised draft order and an opportunity to provide information for the SDM's consideration. The CLM email providing that material mentioned that the order was draft, no decision had yet been made, and listed possible decisions the SDM could take. The SDM emailed AlphaBow on the same day advising that it could ask him any questions about the March Order and the draft June Order.

[186] In response to the allegation about the timing of the record, CLM submitted that it was unclear what record AlphaBow was referring to and suggested that the allegation appeared to relate to production in this proceeding of the decision-maker's record about the March Order. CLM stated that it was unclear how this would be a procedural flaw regarding the June Order since AlphaBow's requests for a regulatory appeal, stay, and inquiry, the AER's granting of the request for the regulatory appeal, and AER Hearing Services' request in this proceeding for the decision-maker's record were all independent of the SDM and occurred after the June Order was issued.

Analysis and Findings

[187] AlphaBow’s allegation on this point was unclear and not supported by any clear evidence.

[188] The evidence that was provided shows a thorough exchange of submissions and replies between AlphaBow and CLM related to March Order requirements, including CLM responses on the shortcomings of AlphaBow submissions and proposed plans. AlphaBow was provided a draft of the June Order before the pre-issuance meeting. During the pre-issuance meeting, the SDM reviewed the draft order with AlphaBow. The SDM revised the draft order after the pre-issuance meeting and allowed an opportunity for AlphaBow to provide submissions for the SDM’s consideration. AlphaBow provided a submission about the revised draft order on June 2, 2023, which the SDM considered, leading to some further revisions to the June Order issued on June 5, 2023.

[189] Significant challenges would arise in administering Alberta’s energy regulatory system if the AER were required to produce a full record of the decision-maker before issuing any order. This action would be burdensome and could cause the compliance and enforcement processes to grind to a halt, which would be inappropriate in situations where pressing matters of public safety and environmental protection are at issue. *REDA* provides an appeal mechanism for that purpose, and a record of the decision-maker is produced in that forum. We note that although *Manual 013* discusses procedural fairness, it does not suggest that a full record of the decision should be provided. It states, “A person should be provided with enough detail (this does not require disclosure of original documents or identification of confidential sources) about the allegation or complaint against them and about the impending decision affecting them to enable them to prepare a response or defence.”

[190] We find that AlphaBow has not established that the AER was procedurally unfair in relation to AlphaBow’s ability to know the case against it, have opportunity to adequately respond, and make fulsome submissions.

Unresponsiveness to Submissions

[191] The discussion of the applicable case authorities on procedural fairness for the March order in paragraphs 37–39 applies equally to this section of our decision.

Parties’ Positions

[192] AlphaBow submitted that “while AlphaBow was afforded the opportunity to discuss the significant impact of the shutting-in of its operations with SDM, AlphaBow’s submissions were wholly ignored.” The record shows that on May 29, 2023, AlphaBow wrote to CLM outlining negative economic impacts to AlphaBow resulting from the March Order and referred to anticipated impacts of possible enforcement escalation. On June 2, 2023, AlphaBow sent CLM a seven-page submission with multiple attachments in response to the draft order discussed on May 30, 2023.

[193] During the hearing and in communications with CLM, AlphaBow referenced its future business plan for its existing carbon dioxide-enhanced oil recovery schemes. AlphaBow proposed to take advantage of the annual escalating price of carbon to provide it with a pathway to improved financial health and use this revenue stream to address existing inactive well liabilities. In addition, AlphaBow indicated that if its enhanced oil recovery projects were converted to carbon capture, utilization, and storage projects, this would further increase the quantity of stored carbon dioxide and the associated extra carbon credits would enable AlphaBow to potentially fund the asset retirement obligations associated with their active assets.

[194] CLM submitted that AlphaBow acknowledged it was given opportunity to make submissions on the draft June Order, which it did. CLM noted that AlphaBow did not request any time extensions to provide submissions on the draft June Order. In response to AlphaBow's allegation that the June Order was unresponsive to AlphaBow submissions, CLM stated that "procedural fairness does not require that the SDM agree with AlphaBow's submissions, only that they be considered."

[195] The SDM's notes addressing his thought process in deciding to issue the June Order set out his consideration of AlphaBow's submission on the draft order and indicated areas where he was willing to make changes in response to the submission. When the June Order was served on AlphaBow, the covering correspondence indicated changes made to the June Order compared with the draft orders, including reference to AlphaBow's June 2, 2023, submission, acceptance of the abandonment plan for mineral lease expired wells, a varied timeline for site suspension and discontinuation, and changed reporting requirements.

[196] CLM testified that it considered AlphaBow's future business plan and viewed it as a future opportunity that did not have a guaranteed outcome due to the required regulatory steps, regulatory approvals, and contractual arrangements for the carbon dioxide.

[197] In its submissions on plans to comply with the March Order, as an alternative to paying the security deposit, AlphaBow proposed to pay \$1 921 756 quarterly for two years in escrow with a Calgary legal firm and use these monies for supplemental voluntary closure spend purposes to be paid directly to contractors performing abandonment and reclamation work. AlphaBow alleged that the AER was unreasonable to reject this proposed alternative to the security deposit. In AlphaBow's opinion, security serves no useful purpose; it is better for a licensee to spend annually on closure work than for the AER to hold funds from that licensee as security.

[198] In response to AlphaBow's argument that the AER should have accepted closure work over time as an alternative to holding security for end-of-life obligations, CLM explained that closure work and security are not alternatives to one another. Closure work and the collection of security serve two different purposes. Closure work removes liability from the landscape and is intended as an ongoing licensee obligation. Security is collected to offset the risk that a licensee will not meet its future liability

and closure obligations. CLM suggested that AlphaBow had conflated closure work and posting security. Closure work actively reduces liability now; security offsets the risk of closure work not occurring in the future.

[199] CLM indicated that the AER's rejection of AlphaBow's proposed alternative to posting security does not support AlphaBow's contention that the AER intended to drive it into insolvency. Rather, CLM was concerned about the assessed high risk that AlphaBow would fail to meet its end-of-life obligations. AlphaBow's proposal to replace the security with voluntary closure work over time did not provide sufficient detail to satisfy the SDM that this risk would be adequately mitigated. The proposal to hold security funds in escrow with a legal firm was not acceptable as it was contrary to the requirements for security under *Directive 068: Security Deposits*, and as such, the SDM did not have the authority to accept such a proposal.

Analysis and Findings

[200] AlphaBow did not provide sufficient evidence to support its allegation that CLM was unresponsive to its submissions. It appears much of AlphaBow's concern related to CLM's non-acceptance or lack of direct support of AlphaBow's future business plan. However, the testimony and decision-maker's record show that the SDM considered AlphaBow's submissions, including obtaining a review of the existing enhanced oil recovery schemes by an AER subject matter expert, reviewing the carbon dioxide contractual arrangements provided by AlphaBow, and gathering information from the carbon dioxide supplier directly. The SDM's testimony was that he felt AlphaBow's future business plan was speculative and uncertain, as it was dependent on gaining new regulatory approvals, and the carbon dioxide supplier could cancel the contract with prior notice.

[201] AlphaBow did not provide evidence regarding how these carbon dioxide sequestration projects could be successfully executed in a timely manner, given AlphaBow's Restricted Eligibility status, ongoing financial challenges, history of noncompliance, and the required regulatory steps. We also note that AlphaBow commented that the proposed business plan would not resolve its financial difficulties in the short term as it would continue to struggle for two to three years until carbon pricing reached higher levels. The AER does not have the latitude to waive regulatory requirements while AlphaBow improves its financial situation. Also, the AER is unable to comprehensively assess or approve a licensee's business plans.

[202] Concerning AlphaBow's proposed alternative to a security deposit, we note that AlphaBow's proposal to hold funds in escrow is contrary to the requirements for security deposits under *Directive 068*. We find that the SDM did not have the authority to accept such a proposal and note that AlphaBow did not direct us to provisions in the legislation that would allow any party other than the AER to hold security deposits. Although the evidence showed that CLM can and has previously accepted payment plans from financially challenged licensees, we cannot characterize AlphaBow's proposed alternative to

security as a security payment plan because the AER has no authority to accept those arrangements as valid security.

[203] We accept CLM’s explanation of the difference between closure work and security deposits and find that they are not interchangeable and serve different purposes. Consequently, we find AlphaBow did not provide enough information to demonstrate that its proposed alternative would achieve the purpose of reducing the risk that it might not complete future end-of-life closure work.

[204] AlphaBow opposed the security deposit requirement, suggesting it would be preferable for the AER to permit AlphaBow to use those funds to either pay its creditors, including municipalities and taxpayers, or complete abandonment and reclamation work. Yet throughout this proceeding, AlphaBow claimed that paying the security deposit would force it into insolvency. In our view, this is a contradiction: AlphaBow could afford to place \$15 million, as it suggested, in escrow and use it to conduct supplementary closure work but was unable to pay the same amount to the AER as a security deposit with a payment plan. We note that the security deposit would be refundable, and its payment would contribute to lifting the March and June Orders. We are unclear why AlphaBow could afford to pay the security deposit amount if held in escrow at a legal firm but not as a security deposit held by the AER.

[205] The evidence clearly shows that AlphaBow had the opportunity to respond to the draft June Order, providing an extensive submission to CLM on June 2, 2023, and that the SDM varied the June Order from its draft form in response to AlphaBow’s submission. Because CLM did not agree with all of AlphaBow’s submissions, it does not mean that there was procedural unfairness in relation to the June Order. AlphaBow was able to know the case for the June Order, make submissions, and have those submissions considered by the SDM. We find that AlphaBow did not establish that the AER was unresponsive to its submissions about its business plan, its proposed alternative to the security deposit, or the June Order.

Was the June Order Unreasonable?

[206] The relevant hearing issue is whether the AER exercised its discretion to issue the June Order to AlphaBow in a manner that was unreasonable.

[207] Our previous discussion of the legal guidance on reasonableness of administrative decisions for the March Order applies equally to this section of our decision.

[208] AlphaBow alleged that its procedural fairness entitlements had been breached because the June Order was patently unreasonable but did not elaborate on this allegation or clearly link any of its evidence to this allegation. We note that patent unreasonableness is a standard of review applied by a court, and that this standard has been replaced by the courts with the reasonableness standard. As this is an internal

review of a statutory decision, we will take the approach outlined for the March Order and conduct a reasonableness review in this context.

[209] AlphaBow alleged that CLM exercised its discretion to issue the June Order unreasonably for the following reasons:

- The June Order did not specify the risk from AlphaBow's operations nor how the order provided protection to the public or the environment, and that suspension of AlphaBow's sites would not protect the public or the environment but instead cause harm.
- CLM intended to prevent AlphaBow from meeting its obligations by depriving it of access to capital and forcing it into insolvency.

[210] AlphaBow also alleged that its procedural fairness entitlements had been breached in relation to the June Order because the AER had provided inadequate reasons in the order. We will consider the allegation in this section.

Link to the Protection of the Public or the Environment

Parties' Positions

[211] AlphaBow contended that CLM exercised its discretion unreasonably in deciding to issue the June Order, forcing it into insolvency by cutting off its cash flow, shutting in and closing its facilities, thereby leading to staff layoffs and preventing payments owed to municipalities, and damaging the environment. AlphaBow submitted that suspending its assets does not protect the public or the environment but harms them. Also, suspending AlphaBow's assets has prevented AlphaBow from operating, and resulted in its assets going to the OWA.

[212] In AlphaBow's view, the June Order lacked a rational connection to the requirement that the order was necessary to protect the public or the environment. AlphaBow argued that the June Order did not specify what risk, if any, its operations presented to the public or the environment, nor did it set out how the order provided the required protection. Rather, the June Order was stated to be in response to AlphaBow's alleged failure to fully comply with the March Order and certain other alleged breaches of the *OGCA*.

[213] CLM submitted that issuing the March and June Orders was within the AER's legislative framework. The orders were a reasonable exercise of statutory discretion to mitigate the risk posed by AlphaBow's operations based on its declining field compliance, its failure to conduct monitoring and remediation at contaminated sites, its precarious financial position, and the magnitude of its liability.

[214] CLM stated that the June Order was an escalation of compliance action following AlphaBow's failure to comply with the March Order. Notably, AlphaBow failed to submit an acceptable RCAM plan to demonstrate that it was capable of providing reasonable care and measures. Consequently, AlphaBow failed to meet the minimum requirements to protect the public or the environment by providing reasonable care and measures to its sites. In CLM's view, the June Order was a reasonable and necessary response to protect the public and the environment. The SDM determined that AlphaBow's operations should be suspended and remain suspended until such time as AlphaBow could demonstrate that it could meet the minimum requirements to protect the public and the environment.

[215] Under cross-examination, the SDM explained that AlphaBow has over a hundred contaminated sites. For many of these sites, the AER has very limited information because AlphaBow has not provided updates on the sites despite repeated requests. Furthermore, AlphaBow failed to live up to its commitments to complete work on some of those contaminated sites. CLM contended that AlphaBow's failure to take steps to address its contaminated sites demonstrated that AlphaBow was either incapable or unwilling to protect the environment from the risks posed by those sites.

[216] CLM explained that in issuing the June Order, the SDM exercised his discretion to protect the public and the environment and did so in a manner that was reasonable and entirely consistent with the AER's regulatory requirements. The record of the decision-maker demonstrates a rational chain of analysis leading up to the issuance of the June Order, and the 37 Whereas clauses in the June Order adequately articulate the rationale and basis for its issuance.

[217] CLM stated that the outcome of the June Order was clearly focused on public safety and the environment and expressly stated so in its recitals. Whereas clause 36 stated, "Whereas the Director believes that issuing this order is necessary, as a result of AlphaBow's failure to comply with the March Order, to safeguard the public interest by preventing AlphaBow from continuing to breach AER requirements and orders, and in order to protect public safety and the environment." The Whereas clauses to the June Order confirm that it was necessary as "AlphaBow is not providing reasonable care and measures to prevent impairment or damage in respect of the Sites"; and, as AlphaBow "poses a risk for being unable to fulfil its end-of-life closure responsibilities for the Sites."

[218] CLM explained that the issuance of the June Order did not occur in a vacuum. It was a result of AlphaBow's failure to comply with AER requirements over many years. AlphaBow was declared an unreasonable risk and had its eligibility to acquire new licences restricted in July 2022. Following that restriction, AlphaBow had over eight months to improve its compliance, but instead, it worsened, resulting in the March Order. CLM submitted that to avoid further escalation of CLM's compliance efforts, AlphaBow could have simply chosen to comply with the March Order, but it did not.

[219] CLM explained that had AlphaBow complied with the June Order, the result would have been the safe suspension of all AlphaBow sites, which would protect public safety and the environment; the provision of reasonable care and measures, which is directly related to public safety and the environment; the ability for AlphaBow to reactivate those sites once reasonable care and measures could be demonstrated; and security to ensure that AlphaBow could address its end-of-life obligations.

Analysis and Findings

[220] We find that the June Order was an escalation of compliance action following AlphaBow's failure to comply with the March Order, particularly failing to submit an acceptable RCAM plan to demonstrate that it could provide reasonable care and measures to all its sites.

[221] We heard evidence that AlphaBow's field compliance rating was deteriorating. The testimony and proceeding record provided several examples that support the need for public and environmental protection, including the following:

- The AER had received information from AlphaBow staff and contractors that environmental monitoring and remedial work was not being performed on its sites, in some instances arising from AlphaBow's inability to pay contractor invoices.
- CLM's witnesses explained that AlphaBow failed to live up to its commitments to carry out groundwater monitoring and complete work on some contaminated sites.
- Following a 2019 incident where one of its pipelines was struck, AlphaBow did not shut down production immediately, causing risk of harm to people and the environment in the immediate vicinity.
- AlphaBow was not actively addressing contamination at some locations, indicating that it was leaving the contamination to resolve itself through time.
- The Hastings Coulee sour gas plant was incorrectly suspended in May 2023.
- A 2023 inspection showed inconsistency between AlphaBow's reporting of a well's status as suspended. The well was actually producing with flow lines open.
- There are a large number of wells for which mineral leases have expired and abandonment is needed. A related challenge is AlphaBow's plan to successfully reacquire the mineral rights in a competitive land sale process and then either operate or abandon those wells.
- AlphaBow had defaulted on payments owing for municipal taxes, surface rights holders, and royalties to private mineral rights owners.

[222] In our view, the risks to the environment and the public presented by AlphaBow not complying with the March Order, specifically regarding the RCAM plan, warranted the suspension of its operations by the issuance of the June Order.

[223] We find that AlphaBow did not provide sufficient evidence to support its allegation that the June Order harms the public and the environment and was an unreasonable exercise of the AER's discretion. As outlined above, there is abundant evidence on the record that the June Order requiring the suspension and discontinuation of AlphaBow's sites was necessary to protect the public and the environment and was a reasonable escalation of enforcement in the circumstances based on a rational chain of analysis and justified in relation to the relevant facts and law. Furthermore, we agree that AlphaBow's operations should remain suspended until such time as it can demonstrate that it can meet the requirements of the March Order.

[224] We also find that AlphaBow has not provided sufficient evidence to support its allegation that its procedural fairness entitlements were breached because the AER had provided insufficient reasons in the June Order. As discussed previously, the June Order was an escalation of compliance action in response to AlphaBow's failure to submit a satisfactory RCAM plan and to address the risk posed by its end-of-life obligations. The Whereas clauses of the June Order spoke clearly to the shortcomings of AlphaBow's proposed plans regarding expected protection for the public and the environment. This proceeding's record also provides ample evidence of the risks from AlphaBow operations, meriting requirements to protect the public and environment. We find that AlphaBow has not established that it suffered any breach of procedural fairness concerning the sufficiency of reasons in the June Order.

Forcing AlphaBow Into Insolvency

Parties' Positions

[225] AlphaBow alleged that the AER, with knowledge of AlphaBow's financial difficulties, proceeded to request a significant amount of money that it knew AlphaBow could not pay, and when the AER failed to receive the funds, it proceeded to shut down AlphaBow's operations, ensuring that AlphaBow had no access to capital. AlphaBow emphasized that the June Order was not meant to prevent further noncompliance and did nothing to prevent harm to the public or the environment. Rather, the June Order was intended to prevent AlphaBow from meeting its obligations by depriving it of access to capital and denying it access to its sites.

[226] AlphaBow was of the view that the suspension of its assets does nothing to protect the public or the environment. Rather, it prevented AlphaBow from operating and resulted in its assets being transferred to the OWA. Instead of protecting the environment and the public, the June Order is causing harm.

[227] CLM argued that the regulatory actions taken by the SDM logically and rationally connected to mitigate the significant risks presented by AlphaBow's operations. In broad terms, they included requiring an RCAM plan to address the current risks to the public and the environment and the collection of security to address the liability concerns and end-of-life obligations. CLM submitted that despite

AlphaBow's argument to the contrary, there is no evidence that the AER issued the orders to force AlphaBow into noncompliance or insolvency.

[228] As noted above, CLM stated that the June Order was an escalation of compliance action following AlphaBow's failure to comply with the March Order. AlphaBow failed to pay the security deposit or submit an acceptable alternative proposal to mitigate the risks of its perceived lack of capability to meet its regulatory and liability obligations. Consequently, AlphaBow was at a high risk of not meeting its end-of-life obligations. In CLM's view, the June Order was a reasonable and necessary response to protect the public and the environment. The SDM determined that AlphaBow's operations should be suspended and remain suspended until such time as AlphaBow could demonstrate that it could meet the minimum requirements to protect the public and the environment.

[229] CLM submitted that the two primary risks revealed by the AER's holistic liability assessment of AlphaBow were its inability to maintain assets—leading to impairment and damage of assets, potentially resulting in risk to public and environmental safety—and AlphaBow's escalating liability concerns and its inability to meet its end-of-life obligations.

[230] CLM explained that the June Order provided for the temporary cessation of operations at AlphaBow sites to ensure that they were left in a safe and secure condition until AlphaBow demonstrated that it could provide reasonable care and measures. The June Order did not require the permanent shutting in and closing of facilities, as claimed by AlphaBow. Suspension of a site includes isolating wellheads and pipelines and depressurizing and emptying all tanks, vessels, pipelines, lease piping, sumps, drains, tubs, containers, pits, or containment rings. Suspension leaves a site in a safe state, reducing the likelihood of harm to the environment or public safety. For example, removing fluid from tanks prevents freeze-up over the winter months, which could lead to leaks and a risk of injury.

[231] CLM stated that the AER did not shut down AlphaBow's operations, transfer its assets to the OWA, or prevent AlphaBow from accessing its sites. Rather, AlphaBow was ordered to safely suspend its sites to protect the public and the environment. Leading up to winter freeze-up, the AER directed the OWA to provide reasonable care and measures and safely suspend AlphaBow's sites until AlphaBow complied with these essential requirements. However, AlphaBow remains the licensee of its sites and as such, is responsible for the cost of these actions.

[232] CLM further explained that, like the March Order, the June Order was not punitive but remedial and specified the terms and conditions for the SDM to consider lifting it. AlphaBow must come into compliance with the March Order, pay its 2023 AER administrative fee and Orphan Well Fund levy, submit a plan to safely reactivate its sites for review by CLM, and implement the reactivation plan as approved by the director. If at any time AlphaBow was to comply with the terms of the June Order, the March Order would be lifted.

Analysis and Findings

[233] We have addressed AlphaBow’s allegation that CLM intended to force it into insolvency through issuance of the March Order at paragraphs 75–106. We found no compelling evidence that CLM intended to force AlphaBow into insolvency.

[234] AlphaBow alleged that suspension and discontinuation of its sites under the June Order would push it into receivership, result in many sites added to the OWA’s inventory for cleanup, and stop the payment of government and freehold royalties, municipal property taxes, surface lease and access charges to landowners, and staff and trade payables. However, it did not provide evidence to support these claims, particularly that insolvency would be a given result.

[235] We note that compliance with the March Order would have prevented escalated enforcement action, namely the June Order. As explained above, we agree that the June Order was necessary to protect the public and the environment and a reasonable escalation of enforcement action.

[236] We find that AlphaBow has not provided sufficient evidence to support a finding that, by issuing the June Order, the AER intended to force AlphaBow into insolvency or to prevent it from meeting its obligations by depriving it of access to capital. AlphaBow has not convinced us that the AER was unreasonable in requiring the suspension and discontinuation of AlphaBow’s sites by issuing the June Order.

Application of Section 27 of the *Oil and Gas Conservation Act*

[237] The relevant hearing issue is whether the AER failed to satisfy the requisite elements of section 27 of the *OGCA* in issuing the June Order to AlphaBow.

[238] The June Order was issued under the authority of section 27 of the *OGCA* and section 23 of the *Pipeline Act*. These provisions are very similar, but AlphaBow focused on contesting the AER’s use of section 27 of the *OGCA*. The provisions of section 27 relevant to this proceeding state:

27(1) Subject to subsection (2), a licensee or approval holder shall suspend or abandon a well or facility when directed by the Regulator or required by the regulations or rules.

and

(3) The Regulator may order that a well or facility be suspended or abandoned where the Regulator considers that it is necessary to do so in order to protect the public or the environment.

[239] The Supreme Court of Canada has declared that the modern principle of statutory interpretation is the preferred approach (*Rizzo & Rizzo Shoes Ltd. (Re)*, 1988 CanLII 837 (SCC), [1988] 1 SCR 27). This principle indicates that “the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament.” This principle was cited by AlphaBow and was not disputed by CLM.

[240] The provincial *Interpretation Act* is also applicable to interpretation of all Alberta legislation. For this proceeding, relevant provisions include section 10: “An enactment shall be construed as being remedial, and shall be given the fair, large and liberal construction and interpretation that best ensures the attainment of its objects,” and section 26(3): “In an enactment, words in the singular include the plural, and words in the plural include the singular.”

Parties’ Positions

[241] AlphaBow submitted that the AER could order suspension or abandonment of particular wells or facilities, but only as necessary to protect the public or the environment, as provided in section 27(3). It suggested that the AER was incorrect in asserting that the June Order was issued under section 27 generally rather than specifically under section 27(3) and that such an interpretation is inconsistent with the modern principle of statutory interpretation and would render section 27(3) meaningless.

[242] AlphaBow stated that the provisions relied on in the June Order require that a suspension order’s reasons consider each well, facility, or pipeline and explain and justify on a case-by-case basis why the suspension is necessary to protect the public or the environment. It submitted that the June Order was not issued because of site-specific concerns about the risks to the public or the environment posed by individual wells or facilities, but it was to respond to AlphaBow’s alleged failure to fully comply with the March Order and other alleged breaches of the *OGCA*.

[243] AlphaBow argued that the June Order does not protect the public or the environment but harms them instead by diverting efforts away from preventing harm. It argued that the June Order would drive AlphaBow into receivership, with adverse financial consequences to the OWA, municipalities, and Alberta taxpayers, which would be a markedly worse outcome than maintaining the status quo.

[244] AlphaBow also submitted that because the June Order was stated to be in response to its alleged failure to fully comply with the March Order and other alleged noncompliances, the order should have been issued under section 44 of the *OGCA* and section 29 of the *Pipeline Act*, which authorize shutdown and closure of wells and facilities and the suspension of pipelines where a licensee has contravened the acts or an AER order. AlphaBow submitted that section 44 of the *OGCA* would also have provided it with the benefit of an inquiry and that the AER chose to issue the June Order under section 27 as part of a consistent and concerted effort to deprive AlphaBow of its procedural fairness entitlements. AlphaBow also argued that shutdown or closure under section 44 would be more akin to the temporary nature that the AER said it intended for the June Order and that issuing the June Order under section 27 was an escalation from section 44, reflecting a more permanent nature in relation to the steps required and taken under that order.

[245] AlphaBow also alleged that its procedural fairness entitlements had been breached in relation to the June Order because the order has incoherent reasoning due to improperly setting out the authority under which it was issued.

[246] CLM submitted that AlphaBow failed to introduce any evidence that the AER did not satisfy the requirements of section 27 and that the evidence of CLM witnesses showed that the June Order was necessary to protect the public and the environment. CLM noted that in cross-examination, the SDM repeatedly confirmed that his motivation in issuing the June Order was to uphold the AER's mandate, which included preventing impacts on the safety of the public or the environment from AlphaBow's operations.

[247] In response to AlphaBow's position that the June Order could only be issued under section 27(3) and not under section 27 generally, CLM indicated that it did not dispute that the June Order was issued at least partially under section 27(3) as it was necessary to do so to protect the public and the environment. CLM stated that this is expressly confirmed by the June Order's recitals and that the June Order would remain in effect until AlphaBow could demonstrate it could provide reasonable care and measures for its sites. CLM explained the various elements of reasonable care and measures and its necessity to protect public safety and the environment.

[248] In response to AlphaBow's argument that section 27(3) requires that an order must consider each site being suspended and justify each suspension, CLM submitted that the June Order did so and referred to a recital in the order: "Whereas the Director is of the opinion that AlphaBow is not providing reasonable care and measures to prevent impairment or damage in respect of the Sites, based in part on AlphaBow's failure to provide an acceptable RCAM [reasonable care and measures] Plan, and finds it is necessary to suspend the wells and facilities and discontinue the pipelines listed in Appendix 1," and also referred to Appendix 1 to the June Order, which lists every AlphaBow site in Alberta. CLM also indicated that issuance of the June Order should be considered in the context of the meetings between CLM and AlphaBow to discuss the shortcomings of the proposed RCAM plan for all AlphaBow sites, the written review of the proposed plan, and the offer to assist AlphaBow in developing the plan.

[249] The SDM testified that the suspension of AlphaBow's sites under the June Order was intended to be a temporary measure. CLM submitted that it was entirely appropriate that the June Order was issued under section 27 of the *OGCA* and section 23 of the *Pipeline Act* because both sections are concerned with a temporary state of suspension or discontinuation, consistent with the legislative definitions of those terms. These definitions are provided in paragraphs 166 and 168. The June Order required AlphaBow to safely suspend its wells and facilities and discontinue its pipelines, temporary steps that would allow for those sites' reactivation if AlphaBow were to comply with the March Order and submit an acceptable reactivation plan.

[250] CLM submitted that the courts have long concluded that a regulator has the right to choose its process, and this principle is codified by section 69 of *REDA*, which empowers the AER to exercise any compliance or enforcement power or function under any of the enactments within its jurisdiction. CLM also submitted that consideration of whether the June Order should have been issued under section 44 rather than section 27 of the *OGCA* is out of the scope of the issues in this proceeding.

[251] CLM argued that AlphaBow presented a false dichotomy in asserting that section 27 of the *OGCA* can only be relied on where an order is needed to protect the public and the environment and that section 44 of the same Act must be used to deal with compliance issues, noting that many noncompliances with AER regulatory requirements also pose a risk to public safety and the environment. CLM suggested that the difference between sections 27 and 44 is better understood as a distinction between suspension, a temporary state, and shutdown and closure, a permanent state warranting an inquiry. It argued that it is well-known in the oil and gas industry that closure is intended to be permanent and referred to various AER initiatives related to closure, all of which are intended to be permanent.

[252] CLM pointed out that AlphaBow was provided a pre-issuance meeting before the June Order was issued and the opportunity to provide additional information and submissions about why the June Order should not be issued, which AlphaBow did. CLM submitted that these steps provided AlphaBow the due process that it would have received by an inquiry in relation to an order under section 44 of the *OGCA*, before the June Order was issued.

Analysis and Findings

[253] The AER has a broad mandate and legislated responsibility to regulate a vast range of energy and mineral resource activities. Its mandate is to provide for the efficient, safe, orderly, and environmentally responsible development of energy and mineral resources in Alberta through its regulatory activities. The *OGCA* and *Pipeline Act* both empower the AER to regulate oil and gas wells, facilities, and pipelines from inception and development to closure, effectively from cradle to grave. The *OGCA*'s purposes include the following:

- Secure the observance of safe and efficient practices in the locating, spacing, drilling, equipping, constructing, completing, reworking, testing, operating, maintenance, repair, suspension, and abandonment of wells and facilities and in operations for the production of oil and gas or the storage or disposal of substances (section 4(b)).
- Provide for the economic, orderly, efficient, and responsible development in the public interest of the oil and gas resources of Alberta (section 4(c)).
- Provide for the responsible management of a well, facility, well site, or facility site throughout its life cycle (section 4(c.1)).

- Control pollution above, at or below the surface in the drilling of wells and in operations for the production of oil and gas and in other operations over which the Regulator has jurisdiction (section 4(f)).

[254] To carry out its mandate and these responsibilities, the AER must be able to use and apply its regulatory tools in a flexible and legally sound fashion.

[255] We heard no dispute from the parties about the potential applicability of section 27 of the *OGCA* as authority for issuance of the June Order. Where the parties primarily differed was whether section 27(3) was met concerning the necessity of the June Order to protect the public or the environment. Because of this consensus in focus on section 27(3), we do not need to address whether section 27 gives the AER general authority to order suspension or abandonment of wells and facilities.

[256] AlphaBow argued that section 27(3) must be applied on a site-by-site basis so that a suspension order affecting multiple sites must address and justify the suspension for each site individually. CLM submitted that the June Order did so, based on a recital related to AlphaBow's failure to provide an acceptable RCAM plan for its sites and the appendix to the order listing all AlphaBow sites.

[257] In this proceeding's circumstances, we disagree with AlphaBow that section 27(3) obliges the AER to address each of AlphaBow's sites individually regarding the need for suspension to protect the public and the environment. Collectively, AlphaBow's sites are subject to over 8000 AER licences. Applying section 26(3) of the *Interpretation Act*, we interpret section 27(3) of the *OGCA* as enabling the AER to address wells and facilities in a suspension order on a collective basis where it considers it necessary to do so to protect the public or the environment. To do otherwise would render the AER's regulatory function unwieldy and nonsensical in situations where an operator's overall record indicates a need for regulatory action across its operations to protect the public and the environment. However, this does not mean that the AER gets a free pass when seeking to address multiple sites in one order under section 27(3); it is still necessary for the AER to establish the need to suspend those multiple sites to protect the public or the environment.

[258] AlphaBow submitted that the June Order was not issued because of site-specific concerns about risks to the public or the environment by individual wells or facilities but in response to alleged noncompliances by AlphaBow with the March Order and the *OGCA*. We heard testimony from both parties about noncompliances, unsatisfactory inspections, and incomplete actions; generally, CLM highlighted its concerns about increasing cumulative risk, and AlphaBow tended to minimize concerns and focus on specific instances of eventual, albeit delayed, compliance. We prefer CLM's evidence and testimony about these matters because it was clear, explained potential environmental and safety consequences, and linked directly to regulatory requirements. We were concerned that AlphaBow's evidence was often inconsistent and seemed to downplay the potential severity of situations, particularly in relation to outstanding requirements and missing groundwater monitoring for a range of contaminated

sites. We are convinced by CLM's evidence and testimony that AlphaBow's record of unsatisfactory operations, unresolved remediation work and noncompliances support the need for the June Order to suspend all AlphaBow sites to protect the public and the environment.

[259] AlphaBow also argued that the noncompliance grounds for issuing the June Order coincide with the AER's authority under section 44 of the *OGCA* and that the June Order should have been issued under section 44 rather than section 27 of the Act. CLM argued that the courts have long supported a regulator's ability to choose its process and cited section 69 of *REDA* as codifying that ability for the AER.

AlphaBow did not dispute those arguments. The AER is able to choose from a range of regulatory tools available to it if the legislative requirements related to the chosen tool are met. The evidence shows that the AER chose to suspend AlphaBow's sites as a temporary measure under section 27 of the *OGCA*, and we find that the AER met the requirements of section 27, as discussed above. Given this, we do not need to discuss the potential applicability of section 44 of the *OGCA* or weigh the merits of that section as compared to section 27.

[260] AlphaBow has not convinced us that the AER failed to satisfy the requisite elements of section 27 of the *OGCA* in issuing the June Order. We have decided that the AER met section 27's requirements when it issued the June Order.

[261] Given this finding, we also find that the June Order did not have incoherent reasoning by improperly setting out the authority under which it was issued. The June Order satisfied the requirements of section 27 of the *OGCA*, which was cited in the order as an authorizing legislative provision. We find that AlphaBow has not established that it suffered any breach of procedural fairness concerning the coherency of reasons in the June Order related to the authority for issuing the order.

June Order Findings and Decision

[262] We find that the AER did not breach procedural fairness in issuing the June Order to AlphaBow. AlphaBow has not met the test to establish reasonable apprehension of bias. We are not satisfied that AlphaBow provided adequate evidence in the context to convince us that a reasonable person would think that the AER had decided unfairly in issuing the June Order. Also, we are not satisfied that the AER was procedurally unfair concerning AlphaBow's ability to know the case against it, have opportunity to respond and make fulsome submissions, nor concerning the AER's consideration of and response to AlphaBow's submissions. We find that AlphaBow has not established that it suffered any breach of procedural fairness concerning the sufficiency of reasons in the June Order. AlphaBow has not established that it suffered any breach of procedural fairness concerning its allegation of incoherent reasons in the June Order about the AER's authority for issuing the order. AlphaBow has not established its allegation that the June Order was patently unreasonable.

[263] We also find that the AER did not exercise its discretion in an unreasonable manner in issuing the June Order to AlphaBow. We find that the AER was justified in issuing the June Order as a reasonable and necessary response to protect the public and the environment. We are not satisfied that there is evidence to support that the AER intended to force AlphaBow into insolvency or prevent it from meeting its obligations by issuing the June Order or that requiring suspension and discontinuation of AlphaBow's sites was unreasonable or harms the public and the environment.

[264] AlphaBow has not convinced us that the AER failed to satisfy the requisite elements of section 27 of the *OGCA* in issuing the June Order.

[265] We confirm the June Order, which the AER issued to AlphaBow on June 5, 2023.

Conclusion

[266] The actions taken by CLM from March to June 2023 cannot be viewed in isolation. This was a continuum of events that began potentially as early as the inception date of AlphaBow and gathered momentum in 2022 with declining regulatory compliance, resulting in restrictions being placed on AlphaBow's licence eligibility. The March Order was issued because of AlphaBow's inability to address compliance and its unresponsiveness to AER requests, many of which were documented in the July 2022 licence eligibility decision.

[267] Over a four-year period, the AER transitioned from promoting compliance to enforcing compliance in the light of AlphaBow's deteriorating performance and worsening financial health. The escalation should not have been a surprise to AlphaBow given the regular meetings with CLM and the discussion items summarized in the meeting notes, indicating that deadlines were not being met and compliance remained problematic.

[268] The broad extent of AlphaBow's holdings and activities in Alberta raises concerns due to the potential magnitude of risk to the public and the environment if regulatory requirements are not met. AlphaBow is responsible for oil and gas sites across the province and holds 8147 AER licences (3785 wells, 322 facilities, and 4040 pipeline segments). Its estimated company liability is \$264 million, with nearly 60% of that related to inactive assets (\$155 million).

[269] As raised by AlphaBow in this proceeding, we must consider the factors set out in section 3 of the *Responsible Energy Development Act General Regulation*. In addition to these factors, section 15 of *REDA* requires us to consider the interests of landowners.

[270] Throughout this proceeding, both parties made submissions that touched on these factors. AlphaBow spoke to the financial contributions it has provided through employment and contracts, property taxes, surface lease and access payments, and royalties, and anticipated negative economic impacts that could flow from the requirements of the March and June Orders. It also highlighted the

progress it made over the years in abandoning and closing inactive well sites. CLM made submissions about the AER's mandate, emphasizing its responsibility to ensure efficient, safe, orderly and environmentally responsible development of oil and gas resources, including those operated by AlphaBow.

[271] It is clear from our reasons above that we have considered social and economic effects, effects on the environment, and impacts on landowners from AlphaBow's operations in making our decision to confirm these orders. Our consideration of these factors demonstrates that confirming the orders is in the public interest.

[272] Based on our findings above, we decide that the decisions of the AER's Closure and Liability Management branch to issue the order to AlphaBow Energy Ltd. on March 30, 2023, is confirmed, and the decision of CLM to issue the order to AlphaBow Energy Ltd on June 5, 2023, is confirmed.

Dated in Calgary, Alberta, on February 28, 2024.

Alberta Energy Regulator

Cindy L.F. Chiasson, LL.B

Presiding Hearing Commissioner

M.A. (Meg) Barker, P.Geol

Hearing Commissioner

Shona Mackenzie, C.Dir., P.Eng.

Hearing Commissioner

Appendix 1 The March Order

This appendix provides the main body of the order issued by the AER to AlphaBow Energy Ltd. on March 30, 2023. For brevity, an appendix to the order listing all AlphaBow AER licences has not been included. The full order, including its appendix, can be accessed at in Exhibit 09.01 of the hearing record, starting on PDF page 18.

Made at Edmonton, in the Province of Alberta, on March 30, 2023	ALBERTA ENERGY REGULATOR
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Under sections 26.2 and 27 of the *Oil and Gas Conservation Act (OGCA)*, sections 1.100 and 12.152 of the *Oil and Gas Conservation Rules (OGCR)*, and section 22.1 of the *Pipeline Act*

AlphaBow Energy Ltd.

Suite 300, 708 – 11 Ave SW
Calgary, AB T2R 0E4

(AlphaBow or the Licensee)

WHEREAS AlphaBow is the holder of Business Associate (BA) code A7H2, and holds licences granted by the Alberta Energy Regulator (AER or Regulator) under the *OGCA* and *Pipeline Act* as listed in Appendix 1 (collectively, the Licences);

WHEREAS there is physical infrastructure associated with the Licences, including wells, well sites, facilities, facility sites, and pipelines (collectively, the Sites);

WHEREAS on July 28, 2022, as a result of finding that AlphaBow posed an unreasonable risk, the AER restricted AlphaBow's licence eligibility status to Limited due, in part, to a below industry average (and decreasing) field compliance rating; compliance history; assessed capability to meet their regulatory and liability obligations throughout the energy development life cycle; contradictory indications from AlphaBow regarding their ability to meet the 2022 mandatory closure spend target; and, outstanding debts including municipal taxes, surface lease payments, et cetera (LE Letter);

WHEREAS in the LE Letter, AlphaBow was expected to maintain a satisfactory field compliance rating of 75% and maintain improvement;

WHEREAS AlphaBow's field compliance rating remains below industry average and has been declining from 76% satisfactory in 2019 to 54% satisfactory in 2022, with 2023 preliminary results indicating a further decline to 42% satisfactory;

WHEREAS the AER is aware of a number of instances where AlphaBow failed to provide requested information prior to deadlines, including attestations and declarations under *Directive 067: Eligibility Requirements for Acquiring and Holding Energy Licences and Approvals*, inspections, releases, and updates per the LE Letter;

WHEREAS on October 25, 2022, the AER issued a notice of noncompliance to AlphaBow for not immediately notifying the AER of a pipeline leak, as required under the *Pipeline Act*;

WHEREAS in a November 22, 2022, meeting with AlphaBow the AER shared concerns regarding AlphaBow's inconsistency in responding to the AER's information requests and meeting regulatory deadlines;

WHEREAS regarding releases FIS 20202316, 20220010, 20221771, 20222035, and 20222332, AlphaBow informed the AER that spill remediation, including not submitting remedial action plans, has been delayed or not completed due to failure to pay an environmental contractor(s);

WHEREAS in a January 31, 2023, email regarding contravention reporting under the *Environmental Protection and Enhancement Act (EPEA)* (FIS 20230280), AlphaBow informed the AER of a contravention with *EPEA* Approval 11796 air and groundwater requirements, indicating the causes of the contravention as lack of funds, resources, and staffing issues;

WHEREAS in a February 15, 2023, email regarding a release (FIS 20192713), AlphaBow informed the AER that it was unable to complete the remediation plan in 2022 due to lack of resources and funds;

WHEREAS in a March 9, 2023, email, AlphaBow informed the AER that no groundwater monitoring was completed in 2022 at a number of contaminated sites;

WHEREAS the AER requested the interim quarterly financial statements for September 2022 at the November 22, 2022, meeting and in emails dated December 6, 2022, March 1, 2023, and March 27, 2023, and as of the date of this Order, AlphaBow has not submitted them;

WHEREAS in an email dated March 21, 2023, the AER requested insurance coverage information (i.e., insurance renewal for 2023) in accordance with *Directive 067*. AlphaBow responded, "We should have quotation finalized this Friday and the renew should be done early of next week". As a result of AlphaBow's response, the AER extended the deadline to March 28, 2023. As of the date of this Order, no response from AlphaBow has been received;

WHEREAS the AER has issued notices of noncompliance to AlphaBow regarding the abandonment of 296 wells due to mineral lease expiries (see Appendix 2);

WHEREAS as of the date of this Order, the deadlines in the notices of noncompliance for 24 of the mineral lease-expired wells have passed without coming into compliance (Overdue MLE Wells), see Appendix 2;

WHEREAS as of March 28, 2023, the Inactive Well List, available on the AER website, has identified 748 wells as noncompliant with *Directive 013: Suspension Requirements for Wells* requirements;

WHEREAS as of March 28, 2023, the Liability Assessment Report in OneStop shows approximately \$153 million in estimated inactive liability, which is equal to approximately 58% of AlphaBow's total liability;

WHEREAS as of the date of this Order, AlphaBow remains on Limited Eligibility as AlphaBow has not demonstrated that it no longer poses an unreasonable risk and has not demonstrated improvement;

WHEREAS in section 2 of *Directive 088: Licensee Life-Cycle Management* the licensee capability assessment assesses the capabilities of licensees to meet their regulatory and liability obligations across the energy development lifecycle;

WHEREAS the AER assessed the following capabilities of AlphaBow: financial health; management and maintenance of regulated infrastructure and sites, including compliance with operational requirements; rate of closure activities and spending and pace of inactive liability growth; and compliance with administrative regulatory requirements, including the management of debts (LCA Factors);

WHEREAS the licensee capability assessment identifies AlphaBow as highly financially distressed with a high liability magnitude;

WHEREAS the AER has reviewed the LCA Factors and is of the opinion that AlphaBow does not have the capability to meet its regulatory and liability obligations across the energy development lifecycle;

WHEREAS per section 1.100(2) of the *OGCR*, the Regulator may require a licensee to provide a security deposit at any time where the Regulator considers it appropriate to do so to offset the estimated costs of abandoning and reclaiming a well or facility and of carrying out any other activities necessary to ensure the protection of the public and environment;

WHEREAS per section 12.152(1) of the *OGCR*, a “licensee shall provide financial and reserves information to the Regulator as and when directed by the Regulator for the purposes of (a) assessing licensee eligibility, ... or (c) otherwise to ensure the safe, orderly and environmentally responsible development of energy resources in Alberta including closure;

WHEREAS per section 27(1) of the *OGCA*, “a licensee or approval holder shall...abandon a well or facility when directed by the Regulator or required by the regulations or rules”;

WHEREAS Tyler Callicott, Director, Enforcement and Emergency Management (Director), has authority to issue orders under the *OGCA* and *Pipeline Act*;

WHEREAS based on the above, and in particular, AlphaBow’s compliance history and indications of financial distress, the Director is of the opinion that AlphaBow is not providing reasonable care and measures in a manner satisfactory to the Regulator and finds it necessary to impose terms and conditions to prevent impairment or damage in respect of the Sites;

WHEREAS the Regulator (Director) considers it appropriate to require AlphaBow to provide a security deposit to offset the estimated costs of abandoning and reclaiming a well or facility and of carrying out any other activities necessary to ensure the protection of the public and environment;

WHEREAS the Regulator (Director) considers it appropriate to direct AlphaBow to provide financial information to ensure the safe, orderly and environmentally responsible development of energy resources in Alberta including closure;

WHEREAS the Director is of the opinion that the mineral lease-expired wells require abandonment according to the regulations and rules and finds it necessary to further direct the abandonment of these wells;

Therefore, I, Tyler Callicott, Director, Enforcement and Emergency Management, under sections 26.2 and 27 of the *OGCA*, sections 1.100 and 12.152 of the *OGCR*, and section 22.1 of the *Pipeline Act*, do hereby order the following:

Reasonable Care and Measures

1. **By 30 days from the date of this Order**, submit a Reasonable Care and Measures Plan (RCAM Plan), to the satisfaction of the Director, to demonstrate that reasonable care and measures are being provided at the Sites. The RCAM Plan must include, at a minimum:
 - a. Specific actions, including timelines, to improve AlphaBow's compliance rating to at least 75%, and actions that will be taken to address all outstanding noncompliances.
 - b. Specific actions to ensure AlphaBow will respond to noncompliances, incidents, information requests, and required reporting by the deadlines set by the AER.
 - c. Specific actions that will be taken to ensure AlphaBow is able to respond in the event of an incident or emergency, including actions and timelines to address all previous releases (e.g., release reporting and remedial action plans).
 - d. Specific actions, including timelines, to monitor already identified sites requiring monitoring and/or remedial work, including groundwater and soil monitoring (e.g., contaminated site monitoring, sites that require monitoring as an approval condition)
 - e. Specific actions, including timelines and resourcing details, to ensure that the 2023 annual mandatory spend, under *Directive 088*, is met.
 - f. A summary of all outstanding debts including municipal taxes, surface lease payments, outstanding royalties, and public land disposition fees, and specific actions, including timelines, to satisfy these debts.
2. AlphaBow must implement the RCAM Plan as approved by the Director.

Other Terms and Conditions

3. **By 30 days from the date of this Order**, submit an Abandonment Plan with specific actions and timelines, to the satisfaction of the Director, to abandon all mineral lease-expired wells, including the abandonment of the Overdue MLE Wells within **six (6) months** from the date of this Order, if not

already managed under the January 11, 2023, approved Closure Plan as part of the Alternative Payment Plan for Security Owing in relation to the 2021 ABC Program.

4. **By April 1, 2023**, submit proof of insurance as required under section 4.2 of *Directive 067*.
5. **By 30 days from the date of this Order**, electronically update working interest participant information on OneStop for the wells and facilities licenced to AlphaBow.
6. AlphaBow must maintain persons in control of the Sites and corporation in order to ensure reasonable care and measures to prevent impairment or damage in respect of the Sites, and must:
 - a. confirm in writing the names, titles, and contact information of all persons in direct or indirect control of AlphaBow (e.g., directors, officers, and shareholders) no later than **five (5) calendar days** from the date of this Order.
 - b. immediately inform the AER in writing of any changes to the persons in direct or indirect control.
 - c. immediately inform the AER in writing of any other material changes, as described in section 5 of *Directive 067*.
7. AlphaBow must submit:
 - a. the interim quarterly financial statements for September 2022 within **2 (two) days** of the date of this Order;
 - b. future interim quarterly financial statements within **30 days** of the end of the respective annual quarter;
 - c. third-party audited annual financial statements and a financial summary (Directive 067, Schedule 3), **once finalized, or within 180 days of fiscal year end**.
8. **By 30 days from the date of this Order**, post a security deposit in the amount of \$15,374,050.00, which represents 10% of AlphaBow's inactive liability, to offset the estimated costs of abandoning and reclaiming a well or facility and of carrying out any other activities necessary to ensure the protection of the public and environment.

General

9. All Plans and information required in this Order shall be submitted to compliancecoordination@aer.ca and tyler.callicott@aer.ca.
10. If requested by the Director, AlphaBow shall submit, within **two (2) business days**, any records pertaining to this Order.

11. All submissions of work related to reasonable care and measures, or the completion of abandonment or reclamation shall be submitted in the format, and to the appropriate AER system, as required by AER regulations.
12. Where a deadline has been specified in this Order, the AER may authorize in writing a different deadline or reporting frequency as applicable.
13. In carrying out the requirements of this Order, AlphaBow shall obtain and comply with all required federal, provincial, or municipal permits and governing legislation and provide to the AER all authorizations obtained immediately upon receipt.
14. All applicable regulatory requirements are to be followed and complied with in the undertaking of any actions or direction prescribed under this Order.

Dated at the City of Edmonton in the Province of Alberta, the 30th day of March, 2023.

<original signed by>

Tyler Callicott
Director, Enforcement and Emergency Management
Alberta Energy Regulator

In complying with this order, the party or parties named must obtain all approvals necessary, notwithstanding the above requirements.

This order in no way precludes any enforcement actions being taken regarding this matter under the *OGCA*, *OGCR*, or *Pipeline Act* or any other provincial or federal legislation, or by any other regulator with jurisdiction.

All enforcement actions issued by the AER may be subject to a follow-up review to confirm previous commitments have been completed and measures have been implemented, to ensure similar noncompliances are prevented in the future. The AER may request any information that demonstrates steps have been taken to prevent repeat noncompliances from occurring.

Under the *Responsible Energy Development Act*, an eligible person may appeal decisions that meet certain criteria. Eligible persons and appealable decisions are defined in section 36 of the *Responsible Energy Development Act* and section 3.1 of the *Responsible Energy Development Act General Regulation*. If you wish to file a request for regulatory appeal, you must submit your request according to the AER's requirements. You can find filing requirements and forms on the AER website, www.aer.ca, under Regulating Development: Project Application: Regulatory Appeal Process.

Appendix 2 The June Order

This appendix provides the main body of the order issued by the AER to AlphaBow Energy Ltd. on June 5, 2023. For brevity, an appendix to the order listing all AlphaBow AER licences has not been included. The full order, including its appendix, can be accessed at in Exhibit 06.01 of the hearing record, starting on PDF page 22.

Made at Edmonton, in the Province of Alberta, on June 5, 2023	ALBERTA ENERGY REGULATOR
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Under section 27 of the *Oil and Gas Conservation Act (OGCA)*, and section 23 of the *Pipeline Act*

AlphaBow Energy Ltd.

Suite 300, 708 – 11 Ave SW

Calgary, AB T2R 0E4

(AlphaBow, or the Licensee)

WHEREAS AlphaBow is the holder of Business Associate (BA) code A7H2, and holds licences granted by the Alberta Energy Regulator (AER or the Regulator) under the *OGCA* and *Pipeline Act* as listed in Appendix 1 (collectively, the Licences);

WHEREAS there is physical infrastructure associated with the Licences, including wells, well sites, facilities, facility sites, and pipelines (collectively, the Sites);

WHEREAS on July 28, 2022, the AER found that AlphaBow posed an unreasonable risk and restricted AlphaBow's licence eligibility status to Limited, due in part to AlphaBow's decreasing field compliance rating, compliance history and its assessed lack of capability to meet its regulatory and liability obligations throughout the energy life cycle;

WHEREAS on March 30, 2023, the AER issued an Order (the March Order) to AlphaBow under sections 26.2 and 27 of the *OGCA*, sections 1.100 and 12.152 of the *Oil and Gas Conservation Rules (OGCR)*, and section 22.1 of the *Pipeline Act*, due in part to concerns that AlphaBow was not providing reasonable care and measures to prevent impairment or damage in respect of the Sites, and to mitigate the risks of AlphaBow's assessed lack of capability to meet its regulatory and liability obligations throughout the energy life cycle;

WHEREAS the March Order required AlphaBow to submit a Reasonable Care and Measures Plan (RCAM Plan) to the satisfaction of the Director within thirty (30) calendar days to demonstrate that reasonable care and measures were being provided at the Sites;

WHEREAS the March Order required AlphaBow to submit an Abandonment Plan to the satisfaction of the Director to abandon all mineral-lease expired wells within six (6) months if not already managed under the January 11, 2023, approved Closure Plan as part of the Alternative Payment Plan for Security

owing in relation to the 2021 Area Based Closure Program;

WHEREAS the March Order required AlphaBow to electronically update the working interest participant (WIP) information on OneStop for the wells and facilities licenced to AlphaBow within thirty (30) days;

WHEREAS the March Order required AlphaBow to post a security deposit in the amount of \$15,374,050.00, representing 10% of AlphaBow's inactive liability, to offset the estimated costs of abandoning and reclaiming a well or facility and of carrying out any other activities necessary to ensure the protection of the public and the environment within thirty (30) days;

WHEREAS the AER extended the thirty-day deadline for clauses 1, 3, 5, and 8 of the March Order until May 15, 2023;

WHEREAS on May 12, 2023, AlphaBow made a submission to the AER indicating it had attempted to update its WIP information but experienced difficulties with AER systems;

WHEREAS the AER acknowledges that AlphaBow had updated some of its WIP information and was complying with the WIP requirement in the March Order;

WHEREAS the May 12, 2023, submission included an RCAM Plan and a statement that AlphaBow was committing to bringing every mineral lease-expired well (MLE wells) into compliance within 12 months by March 31, 2024;

WHEREAS the AER reviewed the RCAM Plan and informed AlphaBow that it was not sufficient for approval due to several deficiencies, including but not limited to, lacking specific actions and timelines, failure to provide actions and identify changes that would result in improvement in AlphaBow's overall compliance with AER regulations, failure to specifically address how AlphaBow would change its programs to improve its field compliance rating to the industry average, failure to address outstanding noncompliances, lack of detail regarding how and when the medium risk type 6 wells would be brought into compliance, no details on how AlphaBow will meet its 2023 annual mandatory spend, and insufficient details regarding all outstanding debts and the actions and timelines to satisfy these debts;

WHEREAS on June 2, 2023, in an email to the AER, AlphaBow stated that "This last action of shutting in 60% of its sites is AlphaBow's final action to address stated AER concerns to ensure proper custody and care of its sites, protect the environment and ensure safety.";

WHEREAS on May 23, 2023, AlphaBow submitted a proposal regarding the payment of the required \$15,374,050.00 security deposit, proposing that it would not provide the security deposit but would continue to meet or exceed its annual minimum mandatory spend;

WHEREAS on May 23, 2023, the AER informed AlphaBow that its proposal regarding the security deposit was not acceptable to the Director as it did not contain a plan or proposal for meeting the requirement in the March Order;

WHEREAS on May 29, 2023, AlphaBow submitted a proposal stating it would "... put \$1,921,756 in

escrow with a Calgary legal firm for the sole purpose of AER Manual 23 voluntary spend” every 3 months over eight quarters, with the option to reduce the amount, as an alternative to the required security deposit of \$15,374,050.00;

WHEREAS the alternative proposal does not meet the requirements of sections 3 and 4 of *Directive 068: Security Deposits*, which states the AER will only accept either a cheque drawn on the account of the licensee, a cheque drawn on a legal trust account in the name of the licensee, a money order identifying the licensee, a bank draft identifying the licensee, or a renewable irrevocable letter of credit issued by an eligible financial institution in the exact legal name of the licensee;

WHEREAS on May 25, 2023, AlphaBow made a submission of an abandonment plan to the AER;

WHEREAS the AER reviewed the Abandonment Plan and informed AlphaBow that it was not sufficient for approval due to several deficiencies, including but not limited to, lacking the month and year abandonment activities were planned for each well, no dates and commitments to abandon each well, a timeline was not provided for reacquiring mineral rights to 53 wells and an alternative plan for abandonment if AlphaBow is unable to obtain the mineral rights was not provided, and 94 of the MLE wells were not listed in the plan;

WHEREAS on June 2, 2023, AlphaBow made a submission to the AER titled “Exhibit 1” regarding the Abandonment Plan for the MLE wells;

WHEREAS the Director has reviewed the Abandonment Plan and is of the opinion it is acceptable, and that AlphaBow has complied with Clause 3 of the March Order;

WHEREAS in the May 24, 2023, submission, AlphaBow proposed, beginning with the quarter ending June 30, 2023, to provide third party “Review Engagement” statements, and would provide the “Review Engagement” for beginning with the year ended December 31, 2023, in lieu of audited financial statements;

WHEREAS on May 26, 2023, the AER informed AlphaBow that its proposal to provide “Review Engagement” statements in lieu of audited annual year-end statements was not acceptable;

WHEREAS on May 29, 2023, AlphaBow made a submission to the AER stating it was not possible to comply with the deadline for audited 2022 year-end financial statements and proposed a Review Engagement Report for the 2022 year-end financial statements;

WHEREAS on May 31, 2023, the AER voluntarily granted an extension until August 31, 2023, for submission of third party audited 2022 year-end financial statements;

WHEREAS on June 2, 2023, AlphaBow made a submission to the AER and stated it would commence audited financial statements for the 2022 year-end and provide them once finalized and would provide future annual third party audited financial statements with 180 days or once finalized;

WHEREAS on April 4, 2023, the AER issued invoices to AlphaBow for the 2023 Administration Fee and

the 2023 Orphan Fund Levy (OFL), with payment due prior to May 4, 2023;

WHEREAS on May 15, 2023, the AER issued two Notices of Noncompliance including a 20% penalty for late payment for failure to pay the 2023 Administration Fees for a total amount owing of \$619,787.79;

WHEREAS on May 15, 2023, the AER issued a Notice of Noncompliance including a 20% penalty for late payment for failure to pay the 2023 OFL for a total amount owing of \$1,442,184.94;

WHEREAS as of the date of this Order, AlphaBow has failed to pay both the 2023 Administration Fees and the 2023 OFL;

WHEREAS on June 2, 2023, AlphaBow made a submission to the AER, and regarding the 2023 Administration Fee and 2023 OFL stated “AlphaBow will pay these amounts shortly after the March 30 Order is lifted or rescinded as this will up deposit amounts being required due to the Order.”;

WHEREAS Tyler Callicott, Director, Enforcement and Emergency Management (the Director), has authority to issue orders under the *OGCA* and the *Pipeline Act*;

WHEREAS based on the above, the Director is of the opinion that AlphaBow is noncompliant with clauses 1 and 8 of the March Order;

WHEREAS the Director is of the opinion that AlphaBow is not providing reasonable care and measures to prevent impairment or damage in respect of the Sites, based in part on AlphaBow’s failure to provide an acceptable RCAM Plan, and finds it is necessary to suspend the wells and facilities and discontinue the pipelines listed in Appendix 1;

WHEREAS the Director believes that issuing this order is necessary, as a result of AlphaBow’s failure to comply with the March Order, to safeguard the public interest by preventing AlphaBow from continuing to breach AER requirements and orders, and in order to protect public safety and the environment;

WHEREAS the Director is of the opinion that AlphaBow poses a risk for being unable to fulfil its end-of-life closure responsibilities for the Sites;

Therefore, I, Tyler Callicott, under section 27 of the *OGCA*, and section 23 of the *Pipeline Act* do hereby order the following:

Required Actions- Suspension/Discontinuation

1. All of the AlphaBow Licences in Appendix 1 are hereby suspended.
2. All AlphaBow Sites must be suspended in a safe manner that is acceptable to the AER within **fourteen (14) calendar days** from the date of the Order.
 - a. All wells and facilities listed in Appendix 1 must be suspended following safe industry recognized practices.

- b. AlphaBow must risk rank all pipelines listed in Appendix 1, and as such those with the highest potential for failure and adverse effect to the environment must be of the highest priority when conducting the discontinuation work.
 - c. All pipelines listed in Appendix 1 must be discontinued according to AlphaBow's internal pipeline operations and maintenance manual (POMM) and AlphaBow's pipeline integrity and management program (PIMP), and in accordance with the *Pipeline Act* and the *Pipeline Rules*.
- 3. Any hazards on the Sites that present a risk to public safety or the environment, must be immediately reported to the AER and addressed in a manner acceptable to the AER no later than **fourteen (14) calendar days** from the date of this Order.
 - 4. Within **ninety (90) calendar days** from the date of this Order, AlphaBow must ensure all its wells meet the suspension requirements set out in *Directive 013: Suspension Requirements for Wells*.
 - 5. Any containment devices or equipment including, but not limited to, tanks, vessels, pipelines, lease piping, sumps, drains, tubs, containers, pits, or containment rings on any of the AlphaBow Sites must be depressurized, emptied (with all fluids removed from site and disposed of in a manner acceptable to the AER), and rendered safe in a manner acceptable to the AER no later than **ninety (90) calendar days** from the date of this Order;

Reporting

- 6. AlphaBow must provide in writing to the Director, within **fourteen (14) calendar days** from the date of this Order, confirmation that all AlphaBow Sites, wells, and pipelines have been suspended and discontinued in accordance with Clause 2 of this Order.
- 7. Beginning **fourteen (14) calendar days** from the date of this Order, AlphaBow must provide written updates every two (2) weeks to the Director with details on the progress of the work required under Clauses 4 & 5 of this Order.
- 8. AlphaBow must provide in writing to the Director, within **ninety (90) calendar days** from the date of this Order, confirmation that all AlphaBow Sites have been suspended and the pipelines discontinued per Clauses 2, 4, and 5 of this Order, to the satisfaction of the Director.

Additional Terms and Conditions – Reactivation Plan

- 9. In addition to the requirements of this Order, prior to the Director considering lifting the suspension of operations, AlphaBow must:
 - a. Come into compliance with the March Order.
 - b. Come into compliance with the 2023 Administrative Fee and the 2023 Orphan Fund Levy.

- c. Submit a Reactivation Plan to the Director for review and approval. At a minimum, the Reactivation Plan must include details of actions and timelines for completion of these actions, to safely reactivate the AlphaBow Sites, including verifying the integrity of AlphaBow's wells, facilities, and pipelines prior to resumption of operation.
- d. Implement the Reactivation Plan as approved by the Director.

General

- 10. All plans and information required in this Order shall be submitted to ComplianceCoordination@aer.ca and Tyler.Callicott@aer.ca.
- 11. If requested by the Director, AlphaBow shall submit, within **two (2) business days**, any records pertaining to this Order.
- 12. All submissions of work related to reasonable care and measures, or the completion of abandonment or reclamation shall be submitted in the format, and to the appropriate AER system, as required by AER regulations.
- 13. Where a deadline has been specified in this Order, the AER may authorize in writing a different deadline or reporting frequency as applicable.
- 14. In carrying out the requirements of this Order, AlphaBow shall obtain and comply with all required federal, provincial, or municipal permits and governing legislation and provide to the AER all authorizations obtained immediately upon receipt.
- 15. All applicable regulatory requirements are to be followed and complied with in the undertaking of any actions or direction prescribed under this Order.

Dated at the City of Edmonton in the Province of Alberta, the 5th day of June, 2023.

<Original signed by>

Tyler Callicott
Director, Enforcement and Emergency Management
Alberta Energy Regulator

In complying with this order, the party or parties named must obtain all approvals necessary, notwithstanding the above requirements.

This order in no way precludes any enforcement actions being taken regarding this matter under the *OGCA* or *Pipeline Act*, or any other provincial or federal legislation, or by any other regulator with jurisdiction.

All enforcement actions issued by the AER may be subject to a follow-up review to confirm previous commitments have been completed and measures have been implemented, to ensure similar noncompliances are prevented in the future. The AER may request any information that demonstrates steps have been taken to prevent repeat noncompliances from occurring.

Under the *Responsible Energy Development Act*, an eligible person may appeal decisions that meet certain criteria. Eligible persons and appealable decisions are defined in section 36 of the *Responsible Energy Development Act* and section 3.1 of the *Responsible Energy Development Act General Regulation*. If you wish to file a request for regulatory appeal, you must submit your request according to the AER's requirements. You can find filing requirements and forms on the AER website, www.aer.ca, under Regulating Development: Project Application: Regulatory Appeal Process.

Appendix 3 List of Hearing Participants

Principals and Representatives

(Abbreviations used in report)

Witnesses

AlphaBow Energy Ltd. (AlphaBow)

G. Stapon, Legal Counsel

K. Cameron, Legal Counsel

B. Li

R. Ironside

W. Pederson

K. Serginson

A. Zhang

AER Compliance and Liability Management

(CLM)

C. Ross, Legal Counsel

M. Lavelle, Legal Counsel

T. Callicott

J. Dahlgren

L. Olsen

A. Lewis

R. Green

K. Langlois

Alberta Energy Regulator staff

A. Doebele, AER Counsel

A. Huxley, AER Counsel

A. Lung

D. Parsons

A. Stanislavski

T. Wheaton

E. Arruda

Appendix 4 Regulatory Provisions: March Order

Appendix 4

Regulatory provisions relevant to the March Order

Oil and Gas Conservation Act (OGCA)

Reasonable care, measures to prevent impairment or damage

26.2(1) A licensee or approval holder shall provide reasonable care and measures to prevent impairment or damage in respect of a well, facility, well site or facility site.

(2) If, in the opinion of the Regulator, a licensee or approval holder has failed or is unable to provide reasonable care and measures to prevent impairment or damage in respect of a well, facility, well site or facility site, the working interest participants in the well, facility, well site or facility site shall provide reasonable care and measures to prevent impairment or damage in respect of the well, facility, well site or facility site.

(3) If reasonable care and measures to prevent impairment or damage in respect of a well, facility, well site or facility site are not being provided in a manner satisfactory to the Regulator, the Regulator may order the licensee, a working interest participant or a delegated authority under Part 11 to provide reasonable care and measures to prevent impairment or damage in respect of the well, facility, well site or facility site and may impose any terms or conditions that the Regulator determines are necessary in the order.

(4) The provision of reasonable care and measures to prevent impairment or damage in respect of a well, facility, well site or facility site must be carried out in accordance with the rules and any terms or conditions imposed by the Regulator.

Suspension and abandonment

27(1) Subject to subsection (2), a licensee or approval holder shall suspend or abandon a well or facility when directed by the Regulator or required by the regulations or rules.

(2) Notwithstanding subsection (1),

(a) if the Regulator so directs, a well or facility must be suspended or abandoned by a working interest participant other than the licensee or approval holder, and

(b) with the consent of the Regulator, a well or facility may be suspended by a working interest participant other than the licensee or approval holder.

(3) The Regulator may order that a well or facility be suspended or abandoned where the Regulator considers that it is necessary to do so in order to protect the public or the environment.

(4) A suspension or abandonment must be carried out in accordance with the regulations or rules.

Oil and Gas Conservation Rules (OGCR)

1.100(1) In this section “facility” does not include an oilfield waste management facility.

(2) The Regulator may require a licensee to provide a security deposit

(a) before approving a transfer of a licence,

(b) at any time the licensee fails a licensee liability rating assessment conducted by the Regulator,

(b.1) at any time the licensee fails a liability management rating assessment conducted by the Regulator,

(c) at any time where the Regulator considers it appropriate to do so to offset the estimated costs of suspending, abandoning or reclaiming a well, facility, well site or facility site,

(d) at any time where the Regulator considers it appropriate to do so to offset the estimated costs of providing care and custody for a well, facility, well site or facility site, and

(e) at any time where the Regulator considers it appropriate to do so to offset the estimated costs of carrying out any other activities necessary to ensure the protection of the public and the environment.

(3) The Regulator may require an applicant for a transfer of a licence who is not a licensee to provide a security deposit for any purpose referred to in subsection (1)(c), (d) or (e).

(4) The Regulator may require a security deposit to be provided, and may administer a security deposit,

(a) relative to a particular well, facility, well site or facility site, or

(b) relative to the operations of the licensee generally, and may convert a security deposit from one such basis to the other.

(5) Where the Regulator determines that a security deposit currently held by the Regulator is inadequate for the purposes provided for in subsection (2), the Regulator may require the licensee to provide any additional amounts that the Regulator considers necessary.

(6) A security deposit must be in one of the following forms, as determined by the Regulator:

(a) cash;

(b) an irrevocable letter of credit in a form acceptable to the Regulator.

(7) The Regulator may require that a security deposit be provided all at the same time or in portions in the amounts and at the times specified by the Regulator.

(8) Where a licensee fails to meet an obligation or carry out an activity in respect of which the security deposit was provided, the Regulator may,

(a) in the case of a cash security deposit, apply all or part of the security deposit held in the name of the licensee and any earned interest towards the costs required to meet the obligation or carry out the activity;

(b) in the case of a security deposit in the form of a letter of credit, cash the letter of credit and apply any or all of the cash towards the costs required to meet the obligation or carry out the activity.

(9) Where a person other than the licensee does anything for the purposes of meeting the obligation or carrying out the activity in respect of which the security deposit was provided, the Regulator may distribute any or all of the security deposit to that person for that purpose.

(10) On the request of a licensee the Regulator shall return a security deposit, together with earned interest, where the Regulator is satisfied that the licensee

(a) has fully met all of the obligations and carried out all of the activities in respect of which the security deposit was provided, and

(b) has met the other eligibility requirements of the Regulator for a full refund of the security deposit.

(11) On the request of a licensee the Regulator may return part of a security deposit where the Regulator is satisfied that the licensee

(a) has partially met the obligations and carried out the activities in respect of which the security deposit was required, and

(b) has met the other eligibility requirements of the Regulator for a partial refund of the security deposit.

Abandoned Wells

3.012 A licensee shall abandon a well or facility

(a) on the termination of the mineral lease, surface lease or right of entry,

(b) where the licensee fails to obtain the necessary approval for the intended purpose of the well, if the licensee does not hold the right to drill for and produce oil or gas from the well,

(c) if the licensee has contravened an Act, a rule, a regulation or an order or direction of the Regulator and the Regulator has suspended or cancelled the licence,

(d) if the Regulator notifies the licensee that in the opinion of the Regulator the well or facility may constitute an environmental or a safety hazard,

(e) if the licensee is not or ceases to be a working interest participant in the well or facility,

(e.1) if the licensee

(i) is not or ceases to be resident in Alberta,

(ii) has not appointed an agent in accordance with section 91 of the Act, and

(iii) does not hold a subsisting exemption under section 1.030 from the requirement to appoint an agent,

(f) if the licensee is

(i) a corporation registered, incorporated or continued under the Business Corporations Act whose status is not active or has been dissolved or if the corporate registry status of the corporation is struck or rendered liable to be struck under any legislation governing corporations, or

(ii) an individual who is deceased,

(g) if the licensee has suspended the well in contravention of the requirements established by the Regulator under section 3.020,

(g.1) when required by the Regulator pursuant to timelines set out in Directives related to closure published by the Regulator, or

(h) where otherwise ordered to do so by the Regulator.

12.152(1) A licensee shall provide financial and reserves information to the Regulator as and when directed by the Regulator for the purpose of

(a) assessing licensee eligibility,

(b) administering the liability management programs set out in Directives published by the Regulator, or

(c) otherwise to ensure the safe, orderly and environmentally responsible development of energy resources in Alberta including closure.

(2) The information provided under this section must be kept confidential by the Regulator as follows:

(a) in the case of financial information, for a period of 5 years;

(b) in the case of reserves information, for a period of 15 years.

Pipeline Act

Reasonable care, measures to prevent impairment or damage

22.1(1) A licensee shall provide reasonable care and measures to prevent impairment or damage in respect of a pipeline in accordance with the rules.

(2) If reasonable care and measures to prevent impairment or damage in respect of a pipeline are not being provided in a manner satisfactory to the Regulator, the Regulator may order a licensee or a delegated authority under Part 11 of the Oil and Gas Conservation Act to provide reasonable care and measures to prevent impairment or damage in respect of the pipeline on any terms or conditions that the Regulator considers appropriate.

(3) Reasonable care and measures to prevent impairment or damage in respect of a pipeline shall be provided in accordance with the rules.

Appendix 5 Regulatory Provisions: June Order

Appendix 5

Regulatory provisions relevant to the June Order

Oil and Gas Conservation Act (OGCA)

Interpretation

1(1) In this Act,

(a) “abandonment”, subject to section 68(a), means the permanent dismantlement of a well or facility in the manner prescribed by the regulations or rules and includes any measures required to ensure that the well or facility is left in a permanently safe and secure condition;

(xx) “suspension”, subject to section 68(f), means the temporary cessation of operations at a well or facility in the manner prescribed by the regulations or rules and includes any measures required to ensure that the well or facility is left in a safe and secure condition;

Suspension and abandonment

27(1) Subject to subsection (2), a licensee or approval holder shall suspend or abandon a well or facility when directed by the Regulator or required by the regulations or rules.

(2) Notwithstanding subsection (1),

(a) if the Regulator so directs, a well or facility must be suspended or abandoned by a working interest participant other than the licensee or approval holder, and

(b) with the consent of the Regulator, a well or facility may be suspended by a working interest participant other than the licensee or approval holder.

(3) The Regulator may order that a well or facility be suspended or abandoned where the Regulator considers that it is necessary to do so in order to protect the public or the environment.

(4) A suspension or abandonment must be carried out in accordance with the regulations or rules.

Pipeline Act

Interpretation

1(1) In this Act,

(a) “abandonment” means the permanent deactivation of a pipeline or part of a pipeline in the manner prescribed by the rules, whether or not the pipeline or part of the pipeline is removed;

(g) “discontinuation” means the temporary deactivation of a pipeline or part of a pipeline;

Discontinuation and abandonment

23(1) A licensee shall discontinue or abandon a pipeline when directed by the Regulator or required by the rules.

(2) The Regulator may order that a pipeline be discontinued or abandoned where the Regulator considers that it is necessary to do so in order to protect the public or the environment.

(3) A discontinuation or abandonment must be carried out in accordance with the rules.