

**Via Email**

February 17, 2017

Groia &amp; Company

**Attention: Bonnie Roberts Jones**Calgary Head Office  
Suite 1000, 250 – 5 Street SW  
Calgary, Alberta T2P 0R4  
Canada[www.aer.ca](http://www.aer.ca)

Dear Ms. Jones:

**RE: Request for Regulatory Appeal  
“Equipment Direction” dated October 27, 2016**

The Alberta Energy Regulator (AER) has received your request dated February 16, 2017, made on behalf of Lexin Resources Ltd. (Lexin), for a regulatory appeal of the above-noted letter from the AER’s VP of Closure and Liability. When the AER considers a request for a regulatory appeal, it must decide if the request complies with section 38 of the *Responsible Energy Development Act (REDA)*, which states the test for a regulatory appeal as follows:

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

The test has three components, underlined above, all of which must be met in order for the AER to consider granting the request and holding a regulatory appeal hearing. In this case, the issue that arises is whether your client’s request is in relation to an “appealable decision.” Apart from that, the question whether the request was filed “in accordance with the rules” also arises.

“Appealable decision” is defined in section 36 of the *REDA* to include the following:

**36** In this Division,

(a) “appealable decision” means

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

The AER has concluded that your client’s regulatory appeal request is not made in relation to an appealable decision, and therefore it will not grant the request or hold a regulatory appeal hearing. The AER’s letter of October 27, 2016, does not result from or constitute a “decision” of the Regulator. What the letter communicates to your client is that the AER has an ongoing statutory lien on equipment and facilities at Lexin facilities and sites, and such equipment is not to be removed from those sites except as permitted by the AER. There is no AER decision involved in that communication: it simply states the AER’s lien rights under the law and Lexin’s resulting obligations. The AER has therefore decided that it will not be holding a regulatory appeal hearing or further considering your client’s request for a regulatory appeal of the Equipment Direction, because the Equipment Direction is not an appealable decision within the meaning of section 38 of the *REDA*.

In addition, the AER has also concluded that your client's regulatory appeal request is not made in accordance with the Alberta Energy *Rules of Practice*. The "Equipment Direction" was issued in October, 2016, and it references the AER's statutory lien under the *Oil and Gas Conservation Act*. The deadline for filing a regulatory appeal request for an appealable decision under that enactment is thirty calendar days after notice of the decision is issued, as provided in section 30(3)(m) of the *Rules*. Your client's request was made more than three months after the notice of decision was issued. Although the AER has discretion under sections 41 and 42 of the *Rules* to extend the time within which a person may request a regulatory appeal, the exercise of that discretion must have regard for established legal principles; a discretionary power does not convey an unfettered choice and it is not a substitute for considering recognized legal authorities that outline criteria for making that choice. The AER uses its authority to extend the time for filing a regulatory appeal in limited cases, where circumstances indicate that an extension is warranted to protect procedural fairness for all of the parties concerned. The onus is on the person requesting an extension to demonstrate special circumstances exist that support extending the filing deadline. He or she must show that a *bona fide* intention to file a regulatory appeal existed prior to the deadline passing, and that the failure to file on time was by reason of special circumstances that serve to excuse or justify such failure. None of those circumstances exist in the case of your client's regulatory appeal request.

In summary, the AER has decided that it will not hold a regulatory appeal hearing or further consider your client's request for a regulatory appeal of the Equipment Direction, because the Equipment Direction is not an appealable decision within the meaning of section 38 of the REDA.

Sincerely,

[original signed by:]

Helen Bowker  
Regulatory Appeals Coordinator