

Draft Directive 067 (released April 2021)

Stakeholder Feedback and AER Response



Stakeholder Feedback – Issue	Stakeholder	AER Response
1. Licence eligibility		
Section 3, Licence Eligibility Types		
It is not clear in the directive if general eligibility is free from all restrictions, terms and conditions?	Industry Financial institution	The AER may impose restrictions, terms, or conditions on general or limited eligibility as appropriate. For clarity, we moved the following statement to the beginning of the section: “The AER may grant licence eligibility with or without restrictions, terms, and conditions, or it may refuse to grant licence eligibility.” This statement is also outlined in section 1.300 (2) of the <i>Oil and Gas Conservation Rules (OGCR)</i> .
Provide more information on the details / specifics on what is proposed for full or partial security.		The AER can require security as part of a term or condition to eligibility per section 1.100 of the <i>OGCR</i> . Therefore, we changed “full or partial” to “requirement to provide full or partial security.”
The ability for the AER to apply restrictions, terms, and conditions is very general and implies very broad discretion. Can this be defined further?		Restrictions, terms, and conditions are defined broadly to allow the AER discretion when determining eligibility based on conditions appropriate for individual circumstances.
Provide more information on what is implied by “additional scrutiny would add value.”		“Additional scrutiny” means the AER can request additional information under the directive for a new licence eligibility application or for maintaining eligibility.

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Section 4, Obtaining General Licence Eligibility		
Clarify requirements of financial statements for parent corporation and subsidiaries of another corporation. If the applicant is a subsidiary of a public traded international corporation, they may not have a separately available information to complete the financial summary (Schedule 3) or separate audited financial statements to submit.	Industry Municipalities Environmental group	We acknowledge that full financial statements may not be prepared for the licensee entity itself. However, the AER regulates the licensee or approval holder only, and therefore financial information must be provided for that legal entity as per section 4.4 of the directive.
Can there be exemptions to eligibility requirements for small operators or new operators?		Basic requirements for eligibility, such as residency and unreasonable risk, cannot be waived for small operators. The AER understands that small operators and new licensees or approval holders may not have financial statements available at time of application, therefore financing details may be provided in lieu, as outlined in Schedule 3.
Can local municipalities be notified when there is a licence eligibility application?		All eligibility applications for new licensees or approval holders and eligibility amendments are posted to the AER’s Public Notice of Application page, during which time the public can voice concerns through the statement of concern process.
What is the application fee for licence eligibility?		A \$10 000 application fee is prescribed in section 17.010(1.1) of the <i>OGCR</i> .
What is the mechanism for security under the directive?		The AER can collect security at any time it deems appropriate, as outlined in section 1.100(2) of the <i>OGCR</i> . Security calculation and collection are addressed in other AER directives (e.g., <i>Directive 068</i>).
How does AER ensure compliance with the residency requirements considering modern technologies?		Section 4.1, “Residency Requirements,” remains unchanged and is aligned with the <i>OGCR</i> requirements. The AER can audit residency requirements as part of compliance measures for current licensees and approval holders.

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Section 5, Maintaining Eligibility		
The AER should be notified in an event of insolvency or a significant reduction in insurance coverage	Industry Law firm	Section 5 of <i>Directive 067</i> was updated to require licensees or approval holders to notify the AER immediately if going into insolvency or insurance coverage is cancelled or significantly reduced.
Can a deadline be provided for the “immediate” notification requirement in the directive?	First Nation	The word “immediately” means that the licensees and approval holders should notify the AER without any delay.
Section 6, Restriction of Licence Eligibility		
Can interested parties (e.g., secured lenders) be notified and/or provide input to the AER if licence eligibility is or should be revoked or restricted?	Financial institution Industry	The directive outlines minimum requirements for licensees and approval holders to maintain licence eligibility (licence eligibility is a privilege, not a right). As outlined in the part 3, section 1.300 (6) of the <i>OGCR</i> , “The Regulator may restrict a licensee’s or approval holders’ eligibility to hold a licence or approval if a licensee or approval holder does not meet the licence eligibility requirements of Directive 067.” Licensees and approval holders are required to understand and adhere to licence eligibility requirements with regard to operation of their business. The licensee or approval holder is responsible to notify interested parties if their eligibility has been revoked or restricted.
The sudden restriction or imposition of terms and conditions of a current licensee or approval holder could present significant challenges to business and specifically operations.		The AER engages with licensees and approval holders before restricting eligibility or imposing any terms or conditions (see section 6 of the directive). The terms and conditions are intentionally broad to mitigate risks depending on the licensee or approval holder’s individual circumstances.

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Section 7, Application to Amend Eligibility		
Will an application to amend licence eligibility under this directive require payment of an additional fee, or result in the imposition of additional or restrictions, terms, or conditions?	Financial institution	<p>There is a \$10 000 fee for an applicant who has not held a licence before (section 17.010(1.1) of the <i>OGCR</i>). We may waive or vary a prescribed fee as per section 17.010(3) of the <i>OGCR</i>, but no fee is prescribed for applications to amend eligibility.</p> <p>The AER may impose restrictions, terms, or conditions on general or limited eligibility as appropriate. For clarity, we moved the following statement to the beginning of the section: “The AER may grant licence eligibility with or without restrictions, terms, and conditions, or it may refuse to grant licence eligibility.” This statement is also outlined in section 1.300 (2) of the <i>OGCR</i>.</p>
2. Assessed capability		
What are the specific indicators that will be used to detect the lack of capability by a licensee or approval holder prior to a problem occurring?	Industry Environmental group Financial institution Academia First Nation	<p>The new Liability Management Framework was announced by the Government of Alberta in July 2020. The licensee capability assessment (LCA), is a foundational piece of the new framework. The LCA requirements are still being developed by the AER and will be available for public comment later this year. Once the LCA requirements are in place, they will be used to assess eligibility under <i>Directive 067</i> to determine the capabilities of licensees and approval holders to meet their regulatory and liability obligations.</p>
3. Financial information		
Section 4, Obtaining General Licence Eligibility		
The submission of financial statements should be extended from 120 days to 180 days to align with tax filing deadlines.	Environmental group Industry	<p>In section 5, we extended the timeline from 120 to 180 days to align with tax filing deadlines.</p>

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Can the AER require all financial statements submitted by licensees or approval holders to be prepared according to International Financial Reporting Standards?	Consulting firm	Providing audited financial statements that include annual asset retirement obligation evaluations and reserves reports, may be burdensome for many licensees or approval holders, so no changes to the directive were made.
What is the frequency of reporting financial information?		We determined that providing financial statements more than once a year may be burdensome for many licensees or approval holders. Therefore, we will only request more frequent financial statement reporting where needed.
What is the “designated information submission system?”		Submission systems for financial information is currently via email (FinancialSubmissions@aer.ca). This process is detailed in our instructions on how to use the new Schedule 3 form , as announced in Bulletin 2021-11 .
Will the AER set standards for the discount periods, discount rates and inflation rates to be used by applicants, licensees, and approval holders?		Discount periods and discount rates are audited and subject to accounting and auditing standards and vary by corporation.
Reclamation costs are underestimated and are in a different directive. Liability costs need to be reassessed and expanded upon in <i>Directive 067</i> or in coordination with other directives.		Reclamation cost estimation is out of scope for this directive. As part of the implementation of the new liability management framework, the AER will be assessing <i>Directive 011: Licensee Liability Rating (LLR) Program; Updated Industry Parameters and Liability Costs</i> , which includes reclamation costs. Upon completion of that assessment, the AER will determine how closure and liability costs should be estimated, including reclamation costs.
Schedule 3		
Can the AER list the comments and instructions embedded in the PDF file in an attached guide, and provide description or definition for each line item in Schedule 3?	Industry	A “how to” document, including descriptions of each line, has been created.
Will the AER consider third-party credit ratings in Schedule 3?		A field for the licensees or approval holders to provide a third-party credit rating was added.

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Will the AER allow applicants, licencees, and approval holders to provide audited financial statements without having to fill out Schedule 3?		All applicants, licencees, or approval holders must complete Schedule 3.
How long is the period covered by the requested financial information in Schedule 3?		Annual financial statements are required; however, if required, we may request additional financial information or more frequent financial submissions.
How will the AER use financial information requested in Schedule 3 and financial statements?		<p>The financial summary (Schedule 3) and financial statements will be used by the AER to</p> <ul style="list-style-type: none"> • assess licence eligibility, • assess the capabilities of licencees and approval holders to meet their regulatory and liability obligations throughout the energy development life cycle, • administer our liability management programs, and • ensure the safe, orderly, and environmentally responsible development of energy resources in Alberta throughout their life cycle. <p>The financial information will also be integrated into the licensee capability assessment (LCA). Regulatory requirements are being updated to further outline the LCA, which will be available for public comment later this year.</p>
Will the AER allow Schedule 3 to be completed in the same currency as the audited financial statements?		Financial information provided in Schedule 3 must be in Canadian currency.

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4. Unreasonable risk		
Section 4.5, Unreasonable Risk		
Can the AER provide more explanation for the description and factors of unreasonable risk?	Consulting firm Financial institution Industry Environmental group	The AER assesses what constitutes unreasonable risk within the context of its mandate and the purposes of the acts that it administers. Section 4.5 outlines the key factors that we may consider in assessing unreasonable risk; however, there may be other factors that we could consider appropriate in the circumstances when assessing the eligibility of the application, licensee, or approval holder.
Could you provide some guidelines or expectations for corporate structure? Could you clarify whether the AER wishes to assess “corporate structure,” “ownership structure,” or both?	First Nation	Corporate structure refers to the corporate and ownership structure of the company. We added “ownership” to “corporate structure” under factors of unreasonable risk in section 4.5. As stated in section 20 of the <i>OGCA</i> and section 21 of the <i>Pipeline Act</i> , the applicant, licensee, or approval holder must be an individual or a corporation registered with Alberta Corporate Registries. Entities such as partnerships and joint ventures cannot hold licenses and approvals.
Does the AER require a corporate officer to be responsible for all correspondence with the AER?		The AER is not requiring a corporate officer to be specifically identified. Under Schedule 1, a designated contact for the licensee and approval holder is required for all correspondence with the AER.
What “experience” of the applicant, licensee, or approval holder and its directors, officers, and shareholders does the AER require?		At least one director or officer must have experience relevant to their business or corporate model. We carefully review a company’s capability to hold licences and approvals as well as operational and compliance history of any previously affiliated companies. Applicants must include in Schedule 1 their five-year history of experience from time of the application. We may request additional information, including relevant experience and past affiliations of the directors, officers, or shareholders of the corporation.
Will the AER consider monetary thresholds or lookback timelines for outstanding noncompliance?		We did not define monetary thresholds nor lookback timelines for outstanding noncompliance. The AER will determine unreasonable risk based on individual circumstances.

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How can the AER ensure transparency of the process and public input?		Applications for licence eligibility and for eligibility amendments are posted to the Public Notice of Application page for 30 days, at which time stakeholders and the public may file a statement of concern.
5. Working Interest Participant (WIP)		
Can the AER provide an objective definition or thresholds for “a significant change to WIP arrangements”?	Financial Institution Industry	<i>Directive 067</i> does not provide an objective definition nor thresholds for “a significant change to working interest participant (WIP)” at this time. The statement is purposely broad to allow the AER to interpret WIP changes on a case-by-case basis.
How will the share of costs of defaulting WIPs be reimbursed from the Orphan Fund?		Reimbursement of costs from the orphan fund is regulated through the <i>OGCA</i> and <i>OGCR</i> .
What is the minimum or maximum working interest participation for restricting eligibility?		Restriction of eligibility is on a case-by-case basis. We are unable to indicate a fixed range of minimum to maximum WIP holdings.
6. Material Change		
Section 5, Maintaining Eligibility		
What is the reporting frequency of material change?	Industry Financial institution	Both the previous edition and this new edition of the directive require material changes to be reported within 30 days of the change.
Reporting all changes to directors and officers seems to be a very high standard.		As outlined in the section 5 of the directive, changes to directors, officers, or shareholders directly or indirectly holding 20 per cent or more of the outstanding voting securities of the licensee or approval holder must be reported within 30 days.
What are the reporting requirements related to changes to directors and officers?		Both the previous edition and this new edition require that changes to directors and officers be reported within 30 days (see section 5).

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<p>What is the additional information the AER may require from a licensee or approval holder to assess eligibility?</p>		<p><i>Directive 067</i> does not detail what specific additional information may be required because there are many factors that can be considered depending on the circumstances of the individual applicant, licensee, or approval holder.</p>
<p>7. Insurance</p>		
<p>Section 4.2</p>		
<p>Does the AER accept surety bond as a form of security to cover pollution costs?</p>	<p>Consulting firm Industry Environmental group</p>	<p>The AER does not accept surety as a form of security at this time. <i>Directive 068: ERCB Security Deposits</i> describes that cash and letters of credit are required to satisfy security deposit under the <i>OGCR</i> and information on the forms of security, use, and refund of security deposits.</p>
<p>Can the AER provide more specific requirements on insurance?</p>	<p>Financial institution First Nation Municipalities</p>	<p>Insurance requirements remain unchanged. The requirements are broad as they will vary significantly depending on the scope of the licensee or approval holder’s operations. The AER expects licensees and approval holders to obtain adequate insurance to meet the needs of their business. Additionally, a licensee or approval holder may be required to obtain additional insurance if warranted, as described in section 4.2.</p>
<p>Are there requirements for insurance coverage for operational risks such as a spill?</p>		<p>Section 4.2 has a requirement for sudden and accidental pollution coverage.</p>
<p>Does the AER require annual verification of insurance?</p>		<p>Adding an annual insurance verification requirement is unnecessary. The directive already specifies that licensees and approval holders must notify the AER immediately of cancelation of insurance (section 5) and that we may request insurance certificates at any time to confirm compliance (section 4.2).</p>
<p>Is there a requirement for a security deposit to the AER that would be returned upon the completion of reclamation?</p>		<p>A security deposit specifically for reclamation purposes is managed through programs outside of <i>Directive 067</i>. However, for obtaining and maintaining eligibility, we may require security to be provided as a term or condition (section 3).</p>

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8. Unpaid municipal taxes and surface lease payments		
<p>Section 4.5 should be amended to include unpaid municipal taxes and surface lease payments as a factor to be considered by the AER in determining whether an applicant for a licence or a licensee or approval holder poses an unreasonable risk to the granting or holding of a licence.</p>	Municipalities	<p>There are variety of factors that the AER may consider when assessing unreasonable risk of an applicant, licensee or approval holder, including financial health (see section 4.5). Section 4.5 of the directive was updated to include that outstanding municipal taxes and surface lease payments may be considered by AER as factors in assessing unreasonable risk as part of determining licence eligibility.</p> <p>Requirements for the submission of financial information are outlined in section 4.4 of the revised directive. Municipal taxes are captured as an expense in the financial statements and are considered a financial liability.</p> <p>The AER may consider unpaid municipal taxes as an indicator of financial capacity to ensure applicant’s, licensees or approval holders are able to address their regulatory and liability obligations.</p> <p>When requested by the AER, an applicant, licensee, or approval holder must disclose if they have any unpaid municipal taxes or surface lease payments and the amount they owe.</p> <p>We will not be collecting unpaid municipal tax information directly from municipalities at this time. We will work with the Government of Alberta to determine how unpaid tax data can be provided to the AER from municipalities through a formalized one-window process that ensures accuracy.</p> <p>A municipality may submit a statement of concern about unpaid municipal taxes for an eligibility application, while landowners may submit a statement of concern about unpaid surface lease payments.</p> <p>Applications appear on our Public Notice of Application page.</p> <p>The AER is not involved with the collection of unpaid municipal taxes and does not have jurisdiction to implement compliance or enforcement actions related to unpaid municipal taxes. Municipalities remain responsible for the collection and enforcement of their municipal taxes.</p>

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9. Miscellaneous		
What is the AER’s appeal mechanism?	Individual	Decisions on eligibility are appealable decisions under <i>REDA</i> (see sections 36 through 41, and Part 3 of the <i>AER Rules of Practice</i>).
What is AER’s audit process?	Environmental group	If a licensee or an approval holder is selected for an audit, they will receive a letter via email requesting information under <i>Directive 067</i> . The AER will use the information submitted to ensure information on file is kept accurate and up to date on an ongoing basis, and review for compliance under <i>Directive 067</i> . As for resubmission of a <i>Directive 067</i> application, if an application were closed or denied for any reason, applicants may resubmit.
Will financial information remain confidential?	Industry	Financial and reserves information is confidential as per sections 12.152(2)(a) and (b) of the <i>OGCR</i> .
What is AER’s capacity to manage a complex new system considering financial information.	Industry	We continue to assess the capacity needs and expertise required for the AER to implement the new liability management framework.
What are the OWA’s hiring practices?	Industry	The Orphan Well Association (OWA) is financially and legally separate from the AER. For information on their hiring practices, visit https://www.orphanwell.ca/ .
Will tenure holders be responsible for completing reclamation?	Environmental group	Licenses and approval holders are responsible for closure obligations, including reclamation related to their licences and approvals. Additional responsible parties (defined as “operator” under Part 6 of the <i>Environmental Protection and Enhancement Act</i>) also have reclamation obligations, which includes working interest participants. More information about closure obligations can be found on the Reclamation and Liability Management Programs and Processes pages of our website.
Will there be timelines for when reclamation needs to be completed?		Reclamation timelines are outside of the scope of <i>Directive 067</i> . The Government of Alberta announced an inventory reduction program as part of the new liability management framework to help reduce inactive inventories.

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Can the requirements in the directive be numbered?	Industry	We numbered the requirements in the directive.
Can terminology in the directive be less ambiguous? For example, the word “significant” occurs multiple times throughout the draft document; what does significant mean?	Industry Environmental group	The AER deliberately chose terminology used in the directive to allow the AER to use its discretion in order to make appropriate decisions on a case-by-case basis when assessing the applicant, licensee, or approval holder.
Can you explain the meaning of “energy development life cycle?”		The AER is committed to building programs, systems, and processes to help industry reduce liability in the oil and gas sector. We will do this through a holistic approach that applies at all different phases of energy development – rather than focusing late in the life cycle. The energy development life cycle includes exploration, production, inactive and suspended, closure, and post-closure.
Can the language in the directive be gender neutral language, e.g., “their home” instead of ‘his or her home.’?		We made changes in the directive to use gender neutral language.
It appears that other creditors receive preferential treatment ahead of reclamation obligations during insolvency process.	First Nation	In January 2019, the Supreme Court of Canada overturned the Redwater Decision , determining that receivers and trustees of insolvent oil and gas companies cannot avoid end-of-life obligations. The ruling means these obligations must be addressed before creditors are repaid.
Could MyAlberta Digital ID for Business (MADI-B) be used to provide an identification code?	Environmental group	Business Association codes, referred to as AER identification or operator codes in section 21(1) of the <i>Oil and Gas Conservation Act</i> , are obtained only from Petrinex .