

Directive 068

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Security Deposits

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1 Introduction

1.1 Purpose of This Directive

Directive 068 provides information and direction regarding the cash and letters of credit (LOCs) provided to the AER to satisfy security deposit requirements under the [energy resource enactments](#), including their form, use, and refund. This directive does not apply to security programs administered under the specified enactments (e.g., the Mine Financial Security Program, which is a liability management program under the *Environmental Protection and Enhancement Act*).

For the purpose of this directive, the following terms are defined:

- “Cash” means both Canadian currency and a negotiable financial instrument payable in Canadian currency and includes a cheque, money order, or bank draft.
- “Eligible financial institution” means all federally regulated Schedule I and II banks, as set out in the *Bank Act* (Canada), the Alberta Treasury Branch, and Alberta-based credit unions.

Questions regarding this directive should be directed to Directive068@aer.ca.

1.2 AER Requirements

Following AER requirements is mandatory for the responsible duty holder as specified in legislation (e.g., licensee, operator, company, applicant, approval holder, or permit holder). The term “must” indicates a requirement, and terms such as “should,” “recommends,” and “expects” indicate a recommended practice.

Each AER requirement that is unique to this directive is numbered.

Information on compliance and enforcement can be found on the AER website.

1.3 What’s New in This Edition

The directive has been brought up to AER formatting standards. Outdated information and references have been updated, and each requirement unique to this directive has been numbered. References to the *Geothermal Resource Development Rules* have been added.

Section 2 has been updated, and a new form has been created for the licensee to submit with their financial instrument or letter of credit (LOC). This required form allows the licensee to specify program-specific information or the application number for which security is provided.

Section 6 has been updated to clarify requirements and process for licensees submitting a request for a refund.

2 General Provisions

The AER is entitled to collect security deposits in accordance with Parts 1.1 and 16.6 of the *Oil and Gas Conservation Rules* (OGCR) and section 11 of the *Geothermal Resource Development Rules* (GRDR).

The AER will accept only cash and LOCs meeting the requirements of this directive to satisfy its security deposit requirements under the OGCR and GRDR.

The AER will only accept a security deposit from the licensee required to submit the security deposit or from a trustee, receiver, or receiver manager acting on behalf of that licensee. The AER is unable to accept a security deposit provided by one licensee to satisfy the security deposit requirements of another licensee.

- 1) An LOC or financial instrument provided to the AER to satisfy a security deposit requirement must designate the AER as the beneficiary and include applicable information to designate which program or application the security deposit requirement is provided for.
- 2) The AER will accept either the letter of notification of security owed or the Security Deposit Submission form as acceptable for designating which program or application the security deposit requirement is provided for. (The Security Deposit Submission form can be found on the *Directive 068* homepage, aer.ca > Regulating Development > Rules and Directives > Directives > [Directive 068](#)).

A licensee may change the form of its security deposit from a cash deposit to a LOC or vice versa, provided that the requirements of this directive are met in full. An existing security deposit will only be returned to a licensee once the replacement security deposit has been received and processed by the AER.

3 Negotiable Instruments

The AER will only accept one of the following:

- a cheque drawn on the account of the licensee required to provide the security deposit
- a cheque drawn on a legal trust account in the name of the licensee required to provide the security deposit
- a money order identifying the licensee required to provide the security deposit as the payer or remitter
- a bank draft identifying the licensee required to provide the security deposit as the payer or remitter

The AER establishes a separate interest-earning trust account with a Canadian chartered bank for each licensee providing a cash deposit with the AER.

The bank is responsible for issuing monthly account statements and annual T-5 statements to a licensee having a cash deposit.

- 3) As these accounts are trust accounts, changes to a security provider's address or other administrative changes must be submitted through the AER's Finance Branch at SecurityDeposits@aer.ca.

4 Letters of Credit

- 4) The licensee must submit only renewable, irrevocable LOCs in the form prescribed by this directive issued by an eligible financial institution in the exact legal name of the licensee required to provide the security deposit.

A blank LOC form and a blank sample of the demand draft are in appendices 1 and 2.

4.1 Nonrenewal of LOCs

- 5) The LOC agreement must stipulate that the issuing financial institution must automatically renew the LOC without amendment.
- 6) The LOC agreement must stipulate that, should the issuing financial institution elect not to renew the LOC, the issuing financial institution must notify the AER of the nonrenewal of the LOC by registered mail addressed to the AER's Chief Financial Officer 60 days before the expiry date.

4.2 Cancellation of LOCs

- 7) If a financial institution wishes to cancel a LOC before its renewal date, it must notify the AER's Chief Financial Officer of its intention by registered mail 60 days before the proposed cancellation date.

4.3 Amending LOCs

A licensee may amend an existing LOC held by the AER to meet incremental security deposit requirements.

- 8) An amendment to an existing LOC must be received by the AER by the date stipulated in the letter advising the licensee of the increased security deposit requirement.

A licensee may also amend an existing LOC to reflect a lower security deposit requirement. However, it may elect to maintain a LOC in excess of its current security deposit requirements.

- 9) Within 30 days after any change that would affect an existing LOC (e.g., corporate name change or amalgamation), a licensee must provide the AER with an appropriate amendment to that LOC.

5 Use of Security Deposits

Security can be collected at any time and used for any of the intended purposes set out in section 1.100(2) of the *OGCR* and section 11(2) of the *GRDR*.

- 10) If the amount of security held by the AER to meet a security deposit obligation is reduced by costs incurred by the AER or the Orphan Well Association for any of the purposes for which the security was provided, the licensee must provide additional security as required by the AER.

If the financial security used by the AER or Orphan Well Association proves to be inadequate, the difference between the security deposit held and the cost incurred constitutes a debt payable to the AER or to the AER to the account of the Orphan Fund.

If a security deposit lodged with the AER to satisfy a liability management program requirement exceeds the amount of the requirement, and the amount of security required by a liability management program increases, the AER may allocate any portion of the excess security deposit to satisfy the increased security deposit requirement without the consent of the licensee providing the security deposit.

6 Refund of Security Deposits

The AER expects parties to maintain a record of their AER security deposits and to request a refund when eligibility criteria are met and all obligations are addressed.

The AER will refund security deposits in accordance with the rules and the policy or program-specific criteria contained in the rule or directive under which the deposit was required. Program-specific criteria for the refund of security deposits are contained in the directives implementing the liability management programs.

A licensee no longer required to provide a security deposit under any *OGCR* or *GRDR* liability management program or policy and that is compliant with AER requirements may request a refund of its security deposit.

- 11) A licensee must be compliant with AER requirements to be eligible for a refund of a security deposit in excess of any AER liability management program or policy.
- 12) The licensee must submit a written request for a refund by courier, mail service, or email addressed to Directive068@aer.ca.

- 13) The refund request must include the applicant's contact name, phone number, and email address, and must be submitted on company letterhead.
- 14) The licensee must describe in their refund request how they meet AER liability management program or policy-specific criteria for a security refund.

The AER will only consider a refund request from and refund a security deposit to the licensee that placed the deposit or, if appropriate, a trustee, receiver, or receiver manager. Only a director or senior corporate officer of a company may submit a request for a refund.

Where the AER is satisfied that all the eligibility criteria for refund are met (fully or partially), the AER will refund security deposits as follows:

For LOCs, when there are no remaining security deposit requirements, the AER will return the LOC to the licensee that provided the security deposit. If there are reduced but continuing security deposit requirements, the AER will permit the amendment or substitution of an LOC for a reduced amount equal to or exceeding AER security deposit requirements.

For cash deposits, when there are no remaining security deposit requirements, the AER will refund the full amount of any security deposit plus accumulated interest to the licensee that provided the security deposit. If there are reduced but continuing security deposit requirements, the AER will refund the difference between the security deposit held and the security deposit requirements or a lesser amount, if requested by the licensee. The AER will only refund accumulated interest when a licensee is eligible for a refund of its entire security deposit.

7 Viewing Security Deposits

A licensee can view information on the type and amount of any security deposit made to the AER in accordance with this directive through the Digital Data Submission (DDS) system. Details on interest earned on cash deposits is not available on DDS but can be obtained from financial statements provided by the financial institution administering the trust account.

Appendix 1 Sample Standby Letter of Credit

Issuing financial institution

(name and address):

Date of issue: _____

(Month day, year)

Letter of Credit No.: _____

Amount: (Up to \$ _____)

([amount in words] Canadian dollars)

Applicant (full legal name and address of the licensee providing the security deposit):

Beneficiary:

Alberta Energy Regulator

Suite 1000, 250 – 5 Street SW

Calgary, Alberta T2P 0R4

Attention: Manager, Financial Services

On behalf of our client (the “Applicant”), we hereby issue in your favour this Irrevocable Standby Letter of Credit (the “Credit”) for up to \$ _____.

([amount in words] Canadian dollars)

This Credit is available with the Financial Institution, by payment, against presentation of the following documents:

1) Beneficiary’s demand on the Financial Institution in the form attached hereto as Appendix “A”, indicating the amount to be drawn under this Credit, the number of this Credit, the date of issue of this Credit, and the name of our Financial Institution.

2) This Letter of Credit for endorsement by us of the amount drawn and on final drawing for cancellation.

This Letter of Credit is irrevocable and shall remain valid for one year up to and including

(date) _____. It is a condition of this Credit that it will from time to time be deemed to be automatically extended without amendment for one year from the present or any future expiration date unless

60 days prior to any such expiration date we shall notify the AER's Chief Financial Officer in writing by registered mail that we elect not to consider this Credit extended for any such additional period, at which time you can draw for the balance of the Credit, or

60 days prior to any proposed cancellation we shall notify the AER's Chief Financial Officer in writing by registered mail that we elect to cancel this Credit, at which time you can draw for the balance of the Credit.

Partial drawings are permitted.

We will honour each drawing made in conformity with the terms of this letter of credit without enquiring whether you have, as between you and the Applicant, the right to make such drawing and without recognizing any claim of the Applicant.

This Letter of Credit shall be governed by and construed in accordance with the Uniform Customs and Practice for Documentary Credits of the International Chamber of Commerce (the Publication) current at the time of issuance of this Letter of Credit, to the extent that such provisions are not inconsistent with this Letter of Credit, and engages us in accordance with the terms thereof. For matters not covered by the Publication, the laws of the Province of Alberta shall govern. To the extent of a conflict between the laws of the Province of Alberta and the Publication, the Publication will govern. Each of the Financial Institution and the Beneficiary hereby irrevocably and unconditionally attorns to the nonexclusive jurisdiction of the courts of the Province of Alberta and all courts competent to hear appeals there from.

Issuing Financial Institution
Authorized Signing Officer

Appendix 2 Sample Demand Letter

TO THE IRREVOCABLE LETTER OF CREDIT NO. (_____)

ISSUED BY _____ Financial Institution
(name of)

DEMAND DRAFT

Drawn Under Letter of Credit No.: _____
(insert Letter of Credit number and date)

To (name and address of issuing financial institution):

The undersigned hereby demands that (name of issuing financial institution) _____
_____ pay to the order of the undersigned the sum of
(Canadian \$ _____) under the Letter of Credit described above
([in words] Canadian dollars)

Dated: _____
(Month day, year)

Alberta Energy Regulator

Per: _____
Authorized Signing Officer