



The AER and You: Agreements, Commitments, and Conditions

This EnerFAQs explains the role of the Alberta Energy Regulator (AER) in landowner-company agreements, commitments, and conditions in oil and gas development and a companion to EnerFAQs *Proposed Oil and Gas Development: A Landowner's Guide*; the two should be read together.

Each year in Alberta, private landowners enter into agreements with oil and gas companies that allow for the construction and operation of oil and gas projects on their lands. In the majority of cases, landowner-company agreements are clear and each party understands its rights and responsibilities. Occasionally, misunderstandings arise in regard to these private agreements, and the parties seek the AER's assistance in resolving their concerns through the AER's Alternative Dispute Resolution (ADR) program.

» How are agreements between landowners and companies negotiated?

Landowner-company agreements may arise in a variety of circumstances. Often they are negotiated strictly between the landowner and the oil and gas company. Sometimes the AER may assist the parties in resolving their concerns through its ADR program. This program includes independent, third-party mediation to assist parties in resolving their concerns. Negotiated agreements reflect commitments made by both the company and the landowner.



» What is a commitment?

A commitment is a verbal or written promise made by an oil and gas company to a landowner. Generally, a commitment relates to activities or operations that are not strictly required by the AER's guidelines or regulations. For example, a company may commit to painting its compressor green to better blend in with the surroundings.

» Does the AER enforce commitments?

While the AER encourages parties to reach agreements to resolve outstanding issues and concerns, commitments are basically private arrangements between parties. The AER has no authority to enforce commitments between a landowner and a company that are not included in a written agreement.

The *Responsible Energy Development Act* contains provisions that allow landowners to register their private surface agreements with the AER's Private Surface Agreements Registry. If a landowner feels that a company is not meeting a term or condition of a registered agreement, they may ask the AER to determine whether they are or not. If the AER determines a company has failed to comply with a term or condition of a PSA, it may issue an order to comply. Please see EnerFAQs *How to Register a Private Surface Agreement* for more information.

» What is a condition?

A condition is a requirement of the AER that it includes in a licence, approval, or permit. A condition adds to or expands upon existing AER guidelines or requirements. Generally, conditions are imposed by hearing panels and listed in the related decision report.

An example of a condition is requiring an operator of a pipeline on private property to mark the pipeline locations at each existing fence line and provide the landowner with an accurate drawing showing all pipeline rights-of-way on the property and the location of the pipeline within the rights-of-way.

Since conditions typically form part of an AER approval and are an extension of the powers granted to the AER by government acts and regulations, the AER has the authority to enforce a breach of a condition. A company must comply with conditions or it will be in breach of its licence, approval, or permit and be subject to enforcement action by the AER. Enforcement of a licence, approval, or permit includes enforcement of the conditions of that approval.

» Why does the AER list conditions in some of its decision reports?

The AER lists additional conditions in decision reports to ensure that the decision and the reason why it made its decision are clear. If the AER decides to attach conditions to a licence, approval, or

permit, the decision report will explain the circumstances that led the AER to include these conditions. Similarly, if the commitments made by a party have influenced the AER's decision, it will record these commitments in the decision report.

» **How does the AER follow up on conditions that result from a hearing?**

A company is responsible for complying with conditions. The AER will develop an action plan to monitor compliance with the additional conditions attached to a licence, approval, or permit within the prescribed timeframes. Any supporting documentation submitted to or gathered by the AER as the result of a condition is available through the AER Information Product Services Section.

» **Should agreements that include commitments between a company and a landowner be written down?**

Yes. Parties should carefully document and ensure that each party receives a signed written copy of all commitments made. By recording the agreement in writing, each party will have a record of the commitments for reference in the event of a disagreement.

» **How much detail should be included in an agreement?**

Commitments should be written down so that each party clearly understands what rights and obligations the commitment creates. When drafting commitments, it is important to clearly reflect each party's expectations and to avoid any language that is vague or confusing.

For example, consider a simple commitment that states, "The company agrees to construct a fence around its well site." Each party may believe that it understands the obligation of the company in the commitment. However, because of the way the commitment is worded, it could be interpreted a number of ways. The company may interpret this commitment to mean that it must immediately construct a wooden fence around the wellhead only after it has completed all necessary testing and the associated pipeline is tied in. Whereas the landowner may expect a chain link fence to be erected around the entire lease site immediately after the well is drilled.

Commitments should be carefully drafted to ensure that they reflect each party's expectations. With respect to the above example, a well drafted commitment would describe the kind of fence to be built, the size of the fence, and the timing of its construction. Including this level of detail in an agreement builds awareness between the parties of what's expected of the other and reduces the potential for conflict significantly.

» **What information should generally be included in an agreement?**

An agreement should

- clearly identify which parties will be bound by it,
- clearly identify the related project, well, or facility,
- specifically address what will happen if the company sells or transfers the facility to another party,
- be very specific and clearly identify all expectations (parties should avoid ambiguous commitments that may lead to a misunderstanding),
- discuss how disputes about commitments will be resolved (see expanded discussion below),
- identify specific consequences and the exact steps that will be taken if a commitment is not met by one of the parties, and
- be dated and signed by each party.

» **What happens when parties have a dispute over a commitment?**

The best way to avoid disputes is to ensure that the original agreement is clearly worded and effectively addresses each party's expectations.

The agreement should include a company contact whom the landowner can contact if there is a dispute and state what steps the parties will take to resolve the dispute. The company contact should have the authority necessary to make decisions on implementing the agreement.

One option for resolving disputes about commitments involve using third-party mediator through the ADR process or an AER staff facilitator. Also landowners can register their agreements with the AER's Private Surface Agreement Registry. See EnerFAQs *How to Register a Private Surface Agreement* for more information.

» **Is compensation available to landowners for time spent negotiating agreements?**

The AER has no authority to require a company to compensate a landowner for his or her efforts in negotiating an agreement. However, a company may agree to compensate the landowner as part of its agreement with him or her.

The AER does have the authority to require that a company pay a party's costs if an application is considered at a hearing before the AER. The AER's usual practice (there are exceptions) is to acknowledge only those costs incurred after the AER has issued a notice of hearing. It is generally the AER's position that until a notice of hearing has been issued, there is no certainty that a hearing will be held. In many cases, interactions between a hearing participant and a company before the notice of hearing relate to compensation matters, which are outside of the AER's jurisdiction. However, the AER recognizes that it is sometimes necessary for participants to

incur costs before the notice of hearing and that such costs may be reasonable, necessary, and directly related to the participation in question.

For more information on costs, see *Directive 031: REDA Energy Cost Claims*.

» What is alternative dispute resolution?

The AER's ADR program was developed in response to requests from both the public and industry to be more directly involved and to have more control in resolving disputes on wells, pipelines, production facilities, and other facilities in the regulated by the AER. The three main components of the AER's ADR program are AER staff mediation, third-party assistance from ADR professional service providers and ADR lead by hearing commissioners. While it may not be the answer to every dispute, ADR has often been successful in reducing the number of issues needing to be addressed and, in some cases, eliminating the need for a formal hearing.

For more information, see the ADR page on the AER website www.aer.ca.

» Additional Information

For more information on the AER and its processes or if you wish to speak with your local field centre or have general questions about oil and gas in the province of Alberta, contact the AER Customer Contact Centre: Monday to Friday (8:00 a.m. to 4:30 p.m.) at 1-855-297-8311 (toll free).

This document is part of the EnerFAQs series, which explains the AER's regulations and processes as they relate to specific energy issues. Please visit www.aer.ca to read more of the EnerFAQs series.

Every year the AER collects, compiles, and publishes a large amount of technical data and information about Alberta's energy development and resources for use by both industry and the general public. This includes raw data, statistics, hearing materials, and information on regulations, policies, and decisions.

Publications may be either viewed at the AER library or obtained from the Information Product Services Section (IPSS). Both are housed on the tenth floor of the AER head office in Calgary. Publications may also be downloaded free of charge from the AER website www.aer.ca.

To obtain a print or CD copy of a specific publication, contact IPSS by phone (403-297-8190), fax (403-297-7040), or e-mail (infoservices@aer.ca).

The following agency provides supplementary information, assists in the resolution of disputes on matters relating to the farming community, and provides information on farming community matters:

The Farmers' Advocate Office

305, 7000 - 113 Street

Edmonton, Alberta T6H 5T6

Phone: 310-FARM (3276)

Fax: 780-427-3913

Website: www.farmersadvocate.gov.ab.ca

Head Office

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Calgary, Alberta T2P 0R4

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