



**PUBLIC INTEREST  
COMMISSIONER**

**A report of the Public Interest Commissioner  
in relation to wrongdoings within the  
Alberta Energy Regulator**

Case: PIC-18-02777

October 3, 2019





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**This is a public report. Generic language has been used to protect the identity of witnesses.**

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### Foreword

An effective public service depends on the commitment of everyone who works in it to maintain the highest possible standards of honesty, openness and accountability. The *Public Interest Disclosure (Whistleblower Protection) Act* (the Act) creates a confidential avenue for public servants to speak out about wrongdoings or make complaints of reprisal. Employees of public entities can choose to report within their organization or directly to the Public Interest Commissioner (the Commissioner). Whether the matter is investigated by the public entity or the Commissioner, Albertans expect the investigation will be thorough, objective and complete. Whistleblowers have the same expectation, and must have confidence their concerns will not be met with reprisal. Individuals with leadership or management responsibilities within a public entity need to ensure this and should embrace whistleblowing as an opportunity to make positive change.

### Mandate

The Act came into force June 2013, and facilitates the disclosure and investigation of wrongdoing or reprisals occurring in government departments, offices of the Legislature and public entities (including provincial agencies, boards and commissions, post-secondary academic institutions, school boards, charter schools, accredited private schools that receive grants and public sector health entities).

The Commissioner is an independent Officer of the Legislature, who reports to the Legislative Assembly as a whole. The purpose of an investigation by the Commissioner is to bring the wrongdoing to the attention of the affected department, public entity or office of the Legislature and to recommend corrective measures. This promotes confidence in the administration and encourages whistleblowers to come forward without fear of reprisal. Our larger aim is to promote a culture in the public sector where employees and managers share a common goal of reporting, investigating and remedying wrongdoings.

The Act stipulates the Commissioner must prepare a report upon completion of an investigation that sets out the findings, reasons for those findings, and any recommendations considered appropriate relating to the alleged wrongdoing(s), the complaint of reprisal, or both. This report fulfills that requirement.



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## Summary of the Matter

- 1 My office initiated this investigation as the result of an employee coming forward to report what they believed to be serious wrongdoing occurring within the Alberta Energy Regulator (AER). The employee remains anonymous to the employer and to all other persons, and shall remain so. The protections afforded to employees under the *Public Interest Disclosure (Whistleblower Protection) Act* (the Act) include confidentiality.
- 2 This report outlines wrongdoing that occurred within the AER through the establishment of the International Centre of Regulatory Excellence, generally referred to as ICORE. Substantial AER financial and human resources were utilized to establish and operate ICORE outside the AER's legal mandate.
- 3 This wrongdoing occurred under the authority of the former AER President and Chief Executive Officer, Jim Ellis. His actions demonstrated a reckless and wilful disregard for the proper management of public funds, public assets, and the delivery of a public service, which under the Act constitutes gross mismanagement.
- 4 My investigation of this matter was extensive. My office interviewed executives and employees of the AER, and analyzed over 5,700 records in addition to thousands of electronic communications regarding ICORE.
- 5 In keeping with the principles of natural justice and procedural fairness, my office provided Mr. Ellis with fair opportunity to respond to the allegations and draft analysis. In completing my investigation into Mr. Ellis' actions, I have carefully considered and weighed all information received through the course of the investigation, including his response.
- 6 The wrongdoer named in this report is no longer employed with the AER.



## The Party Involved

James (Jim) Ellis was the first president and chief executive officer appointed to the AER at the inception of the regulator in June 2013. In this role, Mr. Ellis was responsible for the day-to-day operations of the AER.

## The Allegations Investigated

My investigation was based on the following allegations:

- 1) Whether the use of public funds or public assets to establish and support the operations of ICORE constitutes a gross mismanagement of public funds or a public asset, a wrongdoing as defined in section 3(1)(c)(i) of the Act;
- 2) Whether public funds or public assets have been misappropriated through the establishment and implementation of ICORE, constituting a gross mismanagement of public funds or a public asset, a wrongdoing as defined in section 3(1)(c)(i) of the Act;
- 3) Whether AER human resources were used to support ICORE, and whether this use constitutes a gross mismanagement of the delivery of a public service, a wrongdoing as defined in section 3(1)(c)(ii) of the Act;
- 4) Whether the implementation of ICORE within the AER constitutes a gross mismanagement of the delivery of a public service, a wrongdoing as defined in section 3(1)(c)(ii) of the Act;
- 5) Whether AER employees were directed or counselled to commit wrongdoing, as defined in section 3(1)(d) of the Act.

## Findings

My findings in relation to the investigation are provided below. The specifics of these findings are detailed in the *Analysis and Conclusions* section of this report.

- *In relation to the first allegation* – Mr. Ellis grossly mismanaged public funds in establishing and supporting the operations of ICORE.



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- *In relation to the second allegation* – Mr. Ellis grossly mismanaged public assets by misappropriating or by attempting to misappropriate the intellectual property of the AER.
- *In relation to the third and fourth allegation* – Mr. Ellis grossly mismanaged the delivery of a public service through the diversion of AER resources to support ICORE.
- *In relation to the fifth allegation* – There were insufficient grounds to support a finding that Mr. Ellis knowingly directed or counselled an individual to commit a wrongdoing as defined by the Act.

The Act affords me the ability to investigate other wrongdoings found during the course of an investigation. My investigation found Mr. Ellis committed other wrongdoings as defined in section 3(1)(a) of the Act, specifically:

- Mr. Ellis contravened section 28 of the *Responsible Energy Development Act*; and
- Mr. Ellis contravened section 80 of the *Financial Administration Act*.

## Facts of the Investigation

### The authority of the Alberta Energy Regulator

- 1 The AER is a public agency as defined in the *Alberta Public Agencies Governance Act* and is governed by that statute and the *Financial Administration Act*.
- 2 The AER is also a corporation established under, and subject to, the *Responsible Energy Development Act* (REDA). The AER is the single regulator of energy development in Alberta, with a legislated mandate to provide efficient, safe, orderly and environmentally responsible development of energy resources in the province, through its regulatory activities. Its mandate as well as its powers, duties and functions are set out in section 2 of REDA.
- 3 Section 14(2) of REDA gives the AER broad power to take action it considers necessary to carry out its mandate and the purposes of REDA but does not permit such steps to be taken unilaterally, and without cabinet approval. Sections 28 and 29 of REDA state that the AER must fund its annual expenditures either through funds provided by the Legislature for that purpose, or through the administration of industry fees and penalties.
- 4 The governance structure of the AER is intended to provide strong corporate oversight and independent adjudication. The AER Board of Directors (the Board) heads the organization and sets the general direction of its business affairs, but is not involved in the day-to-day operations and decisions of the AER. The Board approves regulatory changes and sets performance expectations for the regulator and the AER's CEO. The








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CEO is responsible for the day-to-day operations of the AER and reports directly to the board chair. The AER’s Executive Leadership Team oversees the regulator’s various divisions and branches, and is composed of its CEO and other executives.

### **Timeline of the Evolution of ICORE**

- 5 ICORE underwent a series of transformations and name variations as it progressed from an internal initiative to a not-for-profit company supported through a program within the AER. It was generally referred to throughout this progression as “ICORE”. This transformation is detailed later in this report. The following is a general timeline of the history and progression of ICORE:

<b>March 2015</b> 	<b><i>Centre of Regulatory Excellence (CORE)</i></b> <i>CORE was an initiative of Mr. Ellis and the AER’s Executive Leadership Team to establish an internal education centre for training AER employees. CORE was later abandoned in favor of creating an external entity to meet that goal.</i>
<b>July 2016</b> 	<b><i>International Centre of Regulatory Excellence</i></b> <i>The International Centre of Regulatory Excellence was registered under the Canada Not-for-profit Corporations Act. Mr. Ellis and two individuals from a private consulting firm were directors of the corporation. Mr. Ellis dissolved the corporation in May 2018 following the breakdown of the business relationship.</i>
<b>March 2017</b> 	<b><i>ICORE Energy Services Ltd (ICORE Ltd.)</i></b> <i>Mr. Ellis and another individual registered ICORE Energy Services Ltd as an Alberta Corporation. ICORE Energy Services Ltd was not actively engaged in business, but it remains a registered corporation in Alberta.</i>
<b>May 2017</b> 	<b><i>ICORE Energy Services NFP (ICORE [NFP])</i></b> <i>ICORE (NFP) was established as a not-for-profit extra-provincial corporation under the Canada Not-for-profit Corporations Act with Mr. Ellis as a director. ICORE (NFP) solicited business and earned income by providing regulatory training to foreign entities.</i>
<b>May 2017</b> 	<b><i>ICORE Development Project (IDP)</i></b> <i>The ICORE Development Project was created within the AER. Employees were recruited to help build, develop and deliver services for ICORE (NFP). The AER ended the IDP in November 2018.</i>





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### Centre of Regulatory Excellence (CORE)

- 6 In 2014, Mr. Ellis first promoted the concept of developing the AER into a world-class regulator, and received the support of the Board. Through 2015, Mr. Ellis continued to pursue an initiative to develop and retain expertise within the AER. In conjunction with the AER's Executive Leadership Team, this concept evolved into a strategy to create the Centre of Regulatory Excellence (CORE), an internal education centre for training AER employees.
- 7 As part of Mr. Ellis' efforts to fund the CORE initiative, the AER law branch produced a legal memorandum in June 2015 stating third-party funding of operations and expenditures for CORE would not be permitted under REDA without Government of Alberta cabinet approval, whether under its own name or through a subsidiary corporation. The memorandum further advised that the creation of a subsidiary corporation to support CORE may not be permitted because it would not be tied to the AER's statutory mandate under REDA and, even if it were, it would require the approval of the Lieutenant Governor in Council under section 80 of the *Financial Administration Act*.
- 8 Mr. Ellis was aware that industry levy money could not be used for CORE, and an organization would need to be established outside of the AER in order to receive third party funding. AER records show the Executive Leadership Team discussed the issue of funding at a meeting on November 15, 2015. They specifically addressed how the AER's governing legislation may limit the extent to which funding from the AER (i.e., industry levies) could be used to fund CORE.
- 9 The concept of CORE was introduced to the Board as a training initiative for AER staff in February 2016. However, by that time, Mr. Ellis was reportedly meeting with Mexican officials about the delivery of regulatory training in Mexico.
- 10 Mr. Ellis updated the Board about CORE and associated risks on June 1, 2016. According to Board meeting minutes, he advised that the AER had concluded that it was constrained by both its legislation and Treasury Board and Finance restrictions in its ability to provide external training products and services. He advised the AER was proceeding with a plan to deliver staff training internally with the ultimate goal of establishing the entity as an independent training provider for both AER staff and other regulators, noting that even that option presented legal and financial constraints under their legislation.
- 11 The 2015/2016 Annual Report for the AER states, "the board strongly supported and endorsed both the Regulatory Excellence Project and the Centre of Regulatory Excellence (CORE) over the last year. The Board received briefings on the Regulatory Excellence Project, and provided comments on the project and the recommendations, as well as on AER action plans and development plans for CORE."



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### **The International Centre of Regulatory Excellence**

- 12 On July 20, 2016, the International Centre of Regulatory Excellence was registered under the *Canada Not-for-profit Corporations Act*. Mr. Ellis, a partner with an international private consulting firm (hereafter referred to as the consulting firm) and a senior employee for the same firm were named as the directors of the corporation.
- 13 According to Board meeting minutes, an AER executive informed the Board on February 2, 2017, that the International Centre of Regulatory Excellence had been established with a board consisting of AER staff. The Board was further advised that, although the intention was to eventually transfer ownership to an independent third party, the AER would remain a founding member. It was not disclosed that Mr. Ellis was the only AER member on the board, or that Mr. Ellis had been discussing the prospect of future employment with the consulting firm.
- 14 Mr. Ellis received an employment offer from the consulting firm in late February 2017. However, Mr. Ellis was reportedly dissatisfied with the salary proposed by the consulting firm, and the relationship between the two parties subsequently ended. This prompted an invoice from the consulting firm for its work on the International Centre of Regulatory Excellence. The invoice was eventually settled with funds paid by its successor, ICORE Energy Services (NFP).

### **ICORE Energy Services Ltd, ICORE Energy Services (NFP) and the ICORE Development Project**

- 15 Mr. Ellis then began strategizing with another individual about creating ICORE as a separate entity supported from within the AER.
- 16 Mr. Ellis and the other individual registered ICORE Energy Services Ltd. as an Alberta corporation on March 24, 2017. They quickly abandoned the concept of a private, for-profit corporation and established ICORE Energy Services NFP (ICORE NFP) under the *Canada Not-for-profit Corporations Act* as an extra-provincial non-profit corporation on May 12, 2017, with Mr. Ellis as a director.
- 17 ICORE (NFP) subsequently established classes of members. ICORE (NFP) issued membership certificates to the AER as both a governing and operating member. This gave the AER the right to elect all members of the board of directors and effectively gave the AER control of the corporation.
- 18 The relationship between the AER and ICORE (NFP) was formalized through the terms of a Memorandum of Understanding (MOU) effective May 15, 2017. The terms of the MOU referred to facilitating the development and delivery of regulatory training to AER staff.
- 19 The MOU established that the AER would provide services in the form of human resource and technical expertise to ICORE (NFP) on an “in-kind,” rather than a fee-for-service, basis. The MOU identified the



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AER board chair and the president of ICORE as the parties responsible for implementing the terms of the agreement. While ICORE (NFP) President Ellis signed on behalf of ICORE (NFP) (despite also being the president and CEO of the AER), the AER's former general counsel, not its board chair, signed on behalf of the AER.

- 20 The MOU stipulated that ICORE (NFP) would compensate the AER through either reimbursement in cash at the hourly rate of AER subject matter experts and for out-of-pocket expenses, or through the provision, at no charge, of training to AER employees.
- 21 Under the MOU, AER employees could be formally seconded to ICORE (NFP). Soon after the execution of the MOU, however, individuals on the Executive Leadership Team began questioning what costs would be covered under the MOU from an operational expense perspective. Following those questions, Mr. Ellis decided to create a project within the AER to support ICORE (NFP) - the ICORE Development Project (IDP).
- 22 Board meeting minutes contained no board approval for the creation of the International Centre of Regulatory Excellence, ICORE Ltd., or ICORE (NFP). Rather, the meeting minutes indicated the Board was informed after the creation of the corporations, and learned of ICORE (NFP) after the signing of the MOU. A former member of the Board claimed to be unaware Mr. Ellis had incorporated ICORE (NFP) and ICORE Ltd with himself as a director of both.

## **ICORE and the Management of the Delivery of a Public Service**

### **AER Human Resources**

- 23 As an internal AER project, AER employees could be (and were) re-assigned to the IDP to build ICORE (NFP).
- 24 Effective June 1, 2018, the AER's Executive Vice-President, Stakeholder and Government Engagement left her position to become the executive lead for the IDP, and Mr. Ellis' Chief of Staff became the project lead. Both reported regularly to Mr. Ellis regarding matters relating to the IDP and ICORE (NFP). As President and CEO of the AER, Mr. Ellis had oversight of the IDP, but he was also a director and the executive chairman of ICORE (NFP).
- 25 Between August 2016 and December 2018, calendar entries indicate that Mr. Ellis was invited to over 30 internal meetings relating to ICORE and approximately two dozen meetings with external parties relating to ICORE. However, this time was not tracked for cost recovery purposes. Weekly, 90-minute IDP team meetings began on November 3, 2017.
- 26 According to records, 12 other AER employees were reassigned from their regulator duties and dedicated to the IDP, two former AER employees were contracted specifically to work on the IDP, and 11 additional AER employees provided course delivery in Mexico for ICORE (NFP).



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- 27 Some AER staff had difficulty distinguishing between their AER work and ICORE work, and senior staff were concerned about AER staff and budgets being used for ICORE purposes.
- 28 During a September 13, 2018 Board meeting, the AER's former general counsel advised the Board of concerns regarding the use of AER staff and funds to support ICORE (NFP) while asserting no levy money was being used. Advice was provided to either absorb ICORE (NFP) into, or completely separate it from, the AER. When questioned by the Board as to the propriety of the relationship between AER, IDP and ICORE, Mr. Ellis repeatedly assured the Board that "everything" had been vetted and approved by an external law firm. However, the law firm had been retained to act on behalf of Mr. Ellis and ICORE, not the AER.

## **ICORE and the Management of Public Funds**

### **Salary and Other Operating Expenses**

- 29 For the period April 1, 2017, to March 31, 2019, the AER reported it incurred approximately \$3.14 million in ICORE-IDP costs. This included \$2.19 million for salaries and benefits for 14 AER employees dedicated to the IDP and \$950,000 in operating costs for the project. These and other employees were involved with IDP activities including the development of course material and travel to Mexico to deliver ICORE (NFP) training.
- 30 Mr. Ellis travelled to various countries including the USA, Mexico, Argentina, Columbia, and the UK for ICORE-related purposes. Mr. Ellis' expense reports between April 2015 and December 2018 were reviewed and compared to electronic communications and calendar entries. In reporting his expenses to the AER, Mr. Ellis only allocated approximately \$1,500 towards ICORE-related purposes.
- 31 In the following electronic communication on August 2, 2017, Mr. Ellis and a senior AER employee discussed steps taken by that employee to conceal Mr. Ellis' ICORE expenses:

**Mr. Ellis:** "We need to be very aware of stuff like this too. With the focus coming on ICORE I will need to be careful. The trip to Oman may cause some issue. The (World Petroleum Council) thing should be OK. For Oman should focus it on the follow up to their long visit to us."

**[Redacted]:** "Yes - I took lots of time today reviewing ICORE expenses - all very 'generic' - all good."

**Mr. Ellis:** "Hopefully mine as well."

**[Redacted]:** "Yes. Multiple scrubbers behind the scenes on your expenses."

**Mr. Ellis:** "Thx"



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- 32 The same senior AER employee instructed staff members to remove references to ICORE in their expense reports. The reported purpose of this directive was to avoid attracting attention when the expense reports were posted on the AER website.

**Business Development – Mexico**

- 33 Between 2015 and 2018, Mr. Ellis marketed the International Centre of Regulatory Excellence and its successor, ICORE (NFP). He communicated with entities from multiple countries about developing a business relationship with ICORE. With the exception of Mexico and Ukraine, there was no reference in board meeting minutes regarding Mr. Ellis' communications with the foreign entities or the extent of his marketing.
- 34 Mr. Ellis met with high-ranking Mexican officials regarding the delivery of regulatory training. This resulted in an agreement for ICORE (NFP) to provide training to regulators in Mexico. A formal agreement on academic collaboration between ICORE (NFP) and a university in Mexico was then signed in February 2018. The agreement described ICORE (NFP) as a corporation committed to supporting and providing technical training to industry regulators around the world to achieve regulatory excellence. Under its terms, ICORE (NFP) would combine efforts and resources with the university to deliver programs and training on energy resource and economic regulation. Mr. Ellis signed the agreement as the executive chair of ICORE (NFP).
- 35 Through IDP, AER staff worked to develop curriculum and deliver training in Mexico, pursuant to the agreement. Between May 2018 and December 2018, ICORE (NFP) invoiced over \$4.1 million to the university in Mexico for these services. However, during this period the AER invoiced ICORE (NFP) only \$570,000 (approximately) for AER staff time.

**Business Development – Inter-American Development Bank**

- 36 In March 2017, ICORE (NFP) entered into a contract with the Inter-American Development Bank that would provide funding for ICORE (NFP) to train national hydrocarbon regulators throughout Latin America and the Caribbean. Mr. Ellis signed this agreement as the Executive Chairman of ICORE (NFP), but the address used in the agreement was the AER's corporate address.
- 37 Between March and September 2018, ICORE (NFP) invoiced the Inter-American Development Bank approximately \$80,000 for services relating to the development of a work plan and delivery of four training sessions. The services were provided by AER staff. In response to my investigation, the AER advised that through the tracking of salaries of IDP staff, together with travel, supplies, equipment rental and external consulting, it recovered payment from ICORE (NFP) for third party costs and the salaries of four AER staff members dedicated to the IDP. It acknowledged, however, that there was no record of the AER having billed ICORE (NFP) for other AER staff's time, noting two staff members who had incurred travel costs in



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relation to work related to the Inter-American Development Bank, but whose time was not recorded on the project.

- 38 With the exception of its contracts with the Mexican university and the Inter-American Development Bank, ICORE (NFP) did not enter into any other agreements that generated revenue for the corporation.

## **ICORE and the Management of Public Assets: The Use of AER Intellectual Property**

### **AER regulatory training material**

- 39 In January 2018, the AER signed a consulting service agreement with a technical institute to develop a curriculum for ICORE (NFP). The agreement required that the intellectual property rights for the curriculum be the sole property of the AER.
- 40 ICORE (NFP) and the AER signed a licensing agreement in relation to the curriculum. The respective signatories were Mr. Ellis (as President of ICORE [NFP]) and an AER employee. The agreement described ICORE (NFP) as a corporation providing training, innovation, and advisory services to regulatory and international organizations in Canada and internationally. The agreement gave ICORE (NFP) rights to use, market, distribute, and deliver the training curriculum and course materials relating to stakeholder engagement and regulation of unconventional energy development that was developed jointly with the technical institute. The agreement recognized the AER as the legal owner of this intellectual property.
- 41 Under the terms of the licencing agreement, the AER levied a “licence fee” in exchange for the rights to use, market, and distribute the intellectual property. ICORE (NFP) agreed to pay the sum in excess of \$300,000 as consideration for the license. The AER invoiced ICORE (NFP) the licence fee amount on September 11, 2018, and the amount was later paid in full.
- 42 The Board did not approve this licencing agreement or, in general, licencing the intellectual property owned by the AER to ICORE (NFP). The AER terminated the licencing agreement in December 2018 following the resignation of Mr. Ellis.

### **The OneStop software application**

- 43 In late 2016, the AER began building the “Integrated Decision Approach” model to expedite industry applications related to energy resource activity (e.g., pipeline applications). As part of this model, a web application called “OneStop” was developed by the AER that would allow companies to submit integrated applications for activities over the life of a project.
- 44 Mr. Ellis considered transferring OneStop out of the AER in order to market the product to international clients through ICORE (NFP). In September 2017, Mr. Ellis wrote to a senior member of the Ukrainian government requesting a partnership to assist the Ukrainian Government in regulatory reform through



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ICORE (NFP). The letter was signed by Mr. Ellis as the CEO of the AER and by a senior employee on behalf of ICORE (NFP). In an electronic communication dated November 24, 2017, Mr. Ellis wrote:

“Ref One-Stop, this is a discussion we need to have at Executive Leadership Team to confirm how we can move this out of the AER and try to monetize it internationally.”

- 45 In February 2018, the AER’s Law Branch considered the legal framework required to enable a commercial relationship between ICORE (NFP) and the AER that would allow ICORE (NFP) to license or sell OneStop. In a February 8, 2018 legal memorandum addressed to the IDP project lead, the Law Branch stated that it was their understanding that it had been proposed that the AER enter into a contract with ICORE (NFP) for the purpose of allowing ICORE (NFP) to license or sell the AER developed technology platform (i.e., OneStop) to third parties including governments and other regulators, and in doing so, earn a percentage of revenue generated by ICORE (NFP) in connection with those transactions. The Law Branch outlined a number of threshold issues and risks in doing so. It questioned whether the AER had the required ownership rights over OneStop intellectual property, whether the AER could legally receive remuneration from ICORE (NFP), and whether the proposed remuneration reflected fair market value for the use of AER resources. Concerns also arose about the real and perceived conflicts of interest for the individuals involved, and the legal ramifications of using AER resources for an “improper purpose.” Ultimately, the Law Branch recommended that if the AER had ownership of a resource in OneStop that could be a source of self-funding for the AER, then the AER should work toward using it to augment that funding directly rather than through ICORE (NFP), and seek the required legislative changes or approval of the Lieutenant Governor in Council.
- 46 The Law Branch also highlighted that AER senior management and staff had been heavily involved in setting up ICORE (NFP) and continued to be involved in potential commercial arrangements between the two entities, including the proposed arrangement for licensing the OneStop technology.
- 47 Mr. Ellis subsequently considered options to send AER personnel, through ICORE (NFP), to Ukraine to build the OneStop system as opposed to selling the actual program. In electronic communications dated March 28 and May 17, 2018, Mr. Ellis wrote:

“There is a big issue with One Stop we will need to discuss. Looks like legally we can't even give it away. ... There may be other options like sending in experts to build it from scratch for Ukraine. This would be a service delivery contract.”

“One Stop is actually useless without AER/ICORE experts to help the jurisdictions use it. ... Also the jurisdiction needs to actually build its regulatory system as each reason is different... Perfectly legal for AER to charge and ICORE to manage the work - for a sizable fee.” “ICORE will be able to offer IDA/ONE STOP very soon. They will act as a connector between the technical AER teams and clients for a significant fee.”





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Mr. Ellis later wrote:

“There must be another option. Take the experts out of the AER and recreate it. Call it something else”

- 48 Communication and negotiations occurred between ICORE (NFP) and representatives of the Canadian and Ukrainian governments between September 2017 and June 2018 that laid the groundwork for a trilateral agreement. A Letter of Intent was drafted as the basis for a future relationship with the stated purpose being “to promote the strengthening of the regulatory and technical cooperation in the area of regulation of upstream energy resource activities between Ukraine and Canada through ICORE NFP.”
- 49 In the draft Letter of Intent, the term “OneStop” was absent. Instead, the document included the language: *“Modernization of Ukraine’s regulatory authorization system used by subsoil users for the granting of permits for extraction of energy resources, including the adoption of modern IT technology.”* On June 27, 2018, ICORE (NFP) and the government of Canada and Ukraine signed a formal Letter of Intent.
- 50 There is no indication the terms of the Letter of Intent with the Government of Ukraine was further actioned.

### **ICORE and the Management of Employees**

- 51 This investigation was undertaken because my office received a disclosure of wrongdoing from an employee through the confidential disclosure process. The contents of that disclosure and the identity of the employee remain confidential. However, an anonymous complaint submitted to another authority was made available to Mr. Ellis. This resulted in Mr. Ellis and senior AER staff, including the AER’s designated officer under the Act, attempting to determine who had submitted the complaint.
- 52 Other AER employees also attempted to raise concerns regarding ICORE, both internally and through parties other than my office.
- 53 My investigation confirmed that some AER employees reported being fearful of disagreeing with, or being unsupportive of, Mr. Ellis. There were concerns within the Law Branch about ongoing ICORE-related requests for advice and there was the impression that refusing to assist, providing adverse advice or being critical of ICORE could result in adverse consequences, including termination of employment.





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## **The Dissolution of ICORE and the Recovery of Funds by the AER**

- 54 On November 20, 2018, the Board directed a halt to all ICORE activities, except two remaining contracted programs in December 2018, and that no new work commence. The acting CEO was directed to oversee the decommissioning of the IDP.
- 55 Mr. Ellis resigned from ICORE (NFP) effective November 30, 2018 and, as of September 2019, neither corporation had any directors. My investigation did not find that Mr. Ellis financially benefited from ICORE (NFP) during his employment at the AER.
- 56 Following the severance of ties between the AER and ICORE (NFP), in January 2019 the AER Executive Leadership Team decided that the AER would pursue cost recovery for in-kind services provided to ICORE (NFP).
- 57 After serving Notices of Termination of the MOU and Licence Agreement, the AER served two invoices for payment on ICORE (NFP) under the terms of those agreements. The invoice issued under the MOU reflected in-kind contributions for the period of May 2017 through December 2018 amounting to \$2,391,791.01. The invoice under the licence agreement set out staffing and disbursements for the period of April through December 2018 totaling \$279,450.07.
- 58 In March 2019, the AER launched a civil debt claim against ICORE (NFP) and obtained a default judgement. The AER subsequently received \$2,680,637.37 pursuant to a garnishee summons, in payment of the outstanding invoices and the AER's costs and disbursements.

## **Analysis and Conclusions**

### **Contravention of an Act**

#### *Financial Administration Act*

- 59 In 2015, the AER Law Branch prepared a legal memorandum advising that the acquisition of a subsidiary corporation to support CORE may not be permitted because it would not be tied to the AER's statutory mandate under REDA, and in any event, would require the approval of the Lieutenant Governor in Council under section 80(4) of the *Financial Administration Act*.
- 60 The *Financial Administration Act* applies to all provincial corporations and their subsidiaries. This includes the AER. "Subsidiary" is not defined within the *Financial Administration Act*, however the *Canada Not-for-profit Corporations Act* defines a subsidiary as a body corporate controlled by another body corporate.
- 61 Mr. Ellis incorporated ICORE (NFP) contrary to legal advice and the legislative framework. Shares were then issued that established the AER as the sole operating and governing member of the corporation, thereby giving the AER (of which he was CEO) control of ICORE (NFP) (of which he was a director and



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the executive chairman). As he did not receive the approval required by law, Mr. Ellis acted *ultra vires* (i.e., outside his authority) as CEO of the AER in acquiring ICORE (NFP) as a subsidiary on behalf of the AER, in contravention of the *Financial Administration Act*.

### *Responsible Energy Development Act*

- 62 As noted above, the AER is responsible for regulating energy development in Alberta. Its mandate is legislated through section 2 of REDA, which grants the AER powers, duties and functions relating exclusively to regulation for the efficient, safe, orderly and environmentally responsible development of energy resources in Alberta.
- 63 Although the concept of CORE was introduced as an internal training program for AER employees, in practice ICORE (NFP)'s target clientele was foreign governments and regulators. By leveraging AER staff expertise to provide training, by establishing the IDP as an internal AER project to support ICORE (NFP), and through the licencing agreement that allowed ICORE (NFP) to use, market, distribute and deliver AER intellectual property, AER resources were allocated to supporting the activities of ICORE (NFP).
- 64 As CEO of the AER, Mr. Ellis authorized business activities of ICORE (NFP) that fell outside the legislated mandate of the AER and the allocation of AER resources to support ICORE (NFP) in contravention of REDA.

### **The gross mismanagement of public funds**

- 65 The AER's operating and capital expenditures are funded through industry levies (administration fees) as authorized under REDA. While the AER does not receive its funding through an appropriation of the General Revenue Fund, public funds are considered by my office to be all revenue held by a public body regardless of source.
- 66 Mr. Ellis incorporated ICORE (NFP) in his personal capacity but its business activities were supported almost entirely by AER resources that resulted in significant salary and expenses costs, despite the fact these support activities fell outside the AER's mandate.
- 67 The AER reported that approximately \$3,000,000 in costs were incurred for the salaries of AER employees involved in the IDP and ICORE (NFP), as well as associated expenses (including foreign travel). The AER invoiced and received payment relating to services provided pursuant to ICORE (NFP)'s agreements with a Mexican university and the Inter-American Development Bank. This investigation has determined that time and expenses devoted to ICORE-related initiatives were not always reported, and were in some instances concealed. The AER has acknowledged that it is aware of two employees who claimed travel costs associated with the Inter-American Development Bank, but whose time was not recorded on the project. As such, estimates of the monetary value of services rendered and expenses paid are not an accurate reflection of actual costs incurred, and so efforts at cost recovery have been less than actual expenditures.



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- 68 Through the creation of the IDP and execution of the MOU with ICORE (NFP), Mr. Ellis was responsible for diverting AER funds (i.e., salaries and budgets) intended to support the AER in fulfilling its regulator duties. Moreover, as CEO of the AER, Mr. Ellis had overall responsibility for ensuring the AER's ICORE-related financial costs were not concealed, but rather tracked accurately and transparently. Therefore, Mr. Ellis' actions constitute a wilful and reckless disregard for the proper management of AER funds.

### **The gross mismanagement of public assets**

- 69 Mr. Ellis received legal advice that the AER was not permitted under REDA to receive remuneration from ICORE (NFP) through a licencing agreement regarding intellectual property developed by the AER. In addition, under the AER's Conflict of Interest policy, an employee may not sell, trade, market, or distribute any product or technology unless authorized by the Ethics committee.
- 70 Despite the foregoing, Mr. Ellis executed the licencing agreement between the AER and ICORE (NFP), signing it himself as President of ICORE (NFP). The licencing agreement gave ICORE (NFP) rights to use, market, distribute and deliver AER intellectual property in the form of training curriculum and course materials, which it then did.
- 71 ICORE (NFP) then formalized its intention to assist a foreign government to "modernize its regulatory authorization system," notwithstanding that the AER Law Branch advised against permitting ICORE (NFP) to license or sell the AER's technology platform for industry applications to the regulator. While the Letter of Intent was not further actioned, it represented an attempt by Mr. Ellis' private corporation to sell, or profit from the transfer of, AER intellectual property to a foreign government.
- 72 Based on the foregoing, Mr. Ellis demonstrated a wilful and reckless disregard for the management of the public assets (i.e., intellectual property) of the AER.

### **The gross mismanagement of a public service**

- 73 The assignment of AER employees to the IDP and ICORE (NFP) represents not only a diversion of their associated salaries, but their knowledge, time and effort as well. Fourteen employees hired by the AER to support its regulatory functions were re-assigned to devote their efforts entirely to the IDP in support of ICORE (NFP). The expertise of other AER employees was also engaged in specific ICORE (NFP)-related initiatives. My investigation also determined that Mr. Ellis devoted a substantial amount of time and effort to the IDP and ICORE (NFP), though his role as the AER's CEO was to oversee the day-to-day operations of the regulator.
- 74 All staff of the AER, including Mr. Ellis, were employed in furtherance of a public service; namely to provide for the efficient, safe, orderly and environmentally responsible development of energy resources in Alberta.



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In overseeing the diversion of AER staff from their duties (and himself from his own duties), Mr. Ellis demonstrated a wilful and reckless disregard for the delivery of a public service.

### **The management of employees**

- 75 My investigation found that some AER employees were fearful about raising concerns about ICORE. Further, when an anonymous complaint to another authority was shared with Mr. Ellis, he and other AER executives attempted to determine the identity of the complainant. This development fell short of meeting the threshold of a pattern of behaviour or conduct of a systemic nature that indicates a problem in the culture of the organization relating to bullying, harassment or intimidation that would support a finding of a gross mismanagement of employees under the Act. However, it has raised serious concerns regarding the management of employee complaints in the AER.
- 76 An effective public service depends on the commitment of everyone working within it to maintain the highest possible standards of honesty, openness and accountability. The identity of the whistleblower who submitted the disclosure to my office that led to this investigation remains confidential, and details of that disclosure that could identify the individual have not been disclosed.
- 77 As CEO of the AER, Mr. Ellis was the chief officer as defined under the Act. This role involves promoting a culture that is supportive of whistleblowers and where management and employees share a common interest in detecting and remedying wrongdoing, and preventing reprisal against whistleblowers. Unfortunately, the anonymous complaint provided to Mr. Ellis was not made under the Act, and so the complainant was not afforded the legislated protections of the Act. It is still of concern, however, that the chief officer would engage in efforts to reveal the identity of a complainant. This concern is compounded by the fact that the person then acting as the designated officer for the AER, and therefore responsible for providing advice and receiving disclosures from employees, also participated in these efforts. As such, the two individuals responsible for managing employee complaints and protecting confidentiality engaged in behaviour contrary to the ideals of an open and accountable public service. Though not, in itself, a wrongdoing under the Act, such conduct legitimizes staff concerns about speaking out against ICORE, and was not conducive to an environment where public servants feel protected in speaking out about wrongdoings.

### **The AER Board**

- 78 ICORE's promise of internal training garnered Board support. However, the Board may not have appreciated the risks of the international commercialization of AER regulatory expertise and intellectual property by ICORE (NFP), a private corporation with operations embedded within the regulator and headed by the AER's president and CEO.



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- 79** It is not clear the AER Board had the expertise, focus, or detachment required to oversee a president and CEO who was engaged in:
- i. conflating the responsibilities of his position with his personal priorities for ICORE;
  - ii. withholding, filtering or delaying the flow of information to the Board concerning ICORE; and,
  - iii. operating outside his authority in advancing ICORE, particularly when AER resources were involved.
- 80** However, within weeks of notifying the AER and the Ministers of Alberta Energy, and Alberta Environment and Parks in November 2018 of my investigation into this matter, the Board halted nearly all ICORE-related activities.

## Recommendations

- 81** At the conclusion of an investigation, I may make recommendations for corrective measures in the interest of promoting public confidence in the administration of the public service. I have decided to make no recommendations regarding the AER's financial oversight and accountability in relation to operating expenses incurred in support of ICORE given the involvement of the Office of the Auditor General of Alberta. As a result of this investigation, I make the following recommendations:
- 1) The wrongdoer has departed the AER, however my recommendation is that the wrongdoer not be permitted to obtain future employment or contracts with the AER.
  - 2) While the AER has taken steps to recover payments for services and expenses it made under its formal agreements with ICORE (NFP), my investigation confirmed that deliberate efforts were made to underreport and conceal both the time devoted by AER employees to ICORE-related matters, and the expenses incurred in advancing ICORE (NFP) and its objectives. It is further noted the AER did not seek to recover costs incurred prior to the date of the MOU. As set out in this report, substantial AER resources were devoted to the initial development of ICORE prior to the signing of the MOU. Based on the foregoing, the AER has not been appropriately reimbursed and it is therefore recommended that the AER undertake a thorough internal review of actual time and resources expended on ICORE. Subsequently, the AER is urged to take whatever legal steps are required to collect any amounts outstanding.
  - 3) The AER should take any necessary measures to protect its intellectual property related to the training curriculum and the OneStop application.
  - 4) My investigation found a culture within the AER that discouraged employees from voicing concerns. This report is part of a continuing process for the organization, not an end to this matter. Now that wrongdoing has been confirmed and detailed, steps must be taken to repair its effects and to prevent any future recurrence.



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As chief officer under the Act, the CEO of the AER has the responsibility of promoting an environment where employees are supported and encouraged to report their concerns and disclose wrongdoing without fear of reprisal. To this end, I recommend that the new chief officer oversee a full review of the AER's whistleblower policy and procedures to ensure compliance with the Act. I also recommend that the chief officer confirm that the designated officer is knowledgeable about, and prepared to pursue, their responsibilities under the Act. I would remind the AER that the chief officer is required under the Act to ensure its employees are aware of the organization's internal whistleblower policy and procedures. I also recommend that the chief officer brief the Board in that regard. I require that the AER update my office on the status of these recommendations within six months of the date of this report. My office is available to assist should the AER require assistance in reviewing its whistleblower policy and procedures, or educating employees about the Act.

The regulator of Alberta's energy resources plays a vital role in the responsible development of Alberta's energy resources. The regulator can and must do better for Albertans.

## Coda

- 82 Reporting wrongdoing in the workplace can be a difficult choice for any employee acting in good faith. Knowing of a safe avenue through which to disclose wrongdoing is vital to enabling whistleblowers to come forward with their concerns. I strongly encourage employees in the regulator and the rest of Alberta's public sector to familiarize themselves with the *Public Interest Disclosure (Whistleblower Protection) Act* and its protective provisions so they can have confidence in the Act as the primary mechanism for reporting wrongdoing. I am pleased to report that the actual whistleblower in this case remains anonymous and has suffered no adverse action in relation to their disclosure. Our whistleblower and the other employees of the AER who sought to draw attention to this matter are commended for their integrity and for acting in the public interest.

END



## Appendix - Statutory References

### *Responsible Energy Development Act, SA 2012, c R-17.3*

#### **Mandate of Regulator**

**2(1)** *The mandate of the Regulator is*

- (a) *To provide for the efficient, safe, orderly and environmentally responsible development of energy resources in Alberta through the Regulator's regulatory activities, and*
- (b) *In respect of energy resource activities, to regulate*
  - (i) *The disposition and management of public lands,*
  - (ii) *The protection of the environment, and*
  - (iii) *The conservation and management of water, including the wise allocation and use of water,*

*In accordance with energy resource enactments and, pursuant to this Act and the regulations, in accordance with specified enactments.*

**(2)** *The mandate of the Regulator is to be carried out through the exercise of its powers, duties and functions under energy resource enactments and, pursuant to this Act and the regulations, under specified enactments, including, without limitation, the following powers, duties and functions:*

- (a) *to consider and decide applications and other matters under energy resource enactments in respect of pipelines, wells, processing plants, mines and other facilities and operations for the recovery and processing of energy resources;*
- (b) *to consider and decide applications and other matters under the Public Lands Act for the use of land in respect of energy resource activities, including approving energy resource activities on public land;*
- (c) *to consider and decide applications and other matters under the Environmental Protection and Enhancement Act in respect of energy resource activities;*
- (d) *to consider and decide applications and other matters under the Water Act in respect of energy resource activities;*
- (e) *to consider and decide applications and other matters under Part 8 of the Mines and Minerals Act in respect of the exploration of energy resources;*
- (f) *to monitor and enforce safe and efficient practices in the exploration for and the recovery, storing, processing and transporting of energy resources;*
- (g) *to oversee the abandonment and closure of pipelines, wells, processing plants, mines and other facilities and operations in respect of energy resource activities at the end of their life cycle in accordance with energy resource enactments;*





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- (h) to regulate the remediation and reclamation of pipelines, wells, processing plants, mines and other facilities and operations in respect of energy resource activities in accordance with the Environmental Protection and Enhancement Act;*
- (i) to monitor energy resource activity site conditions and the effects of energy resource activities on the environment;*
- (j) to monitor and enforce compliance with energy resource enactments and specified enactments in respect of energy resource activities.*

**Powers of Regulator**

**14(1)** *The Regulator, in the carrying out of duties and functions imposed on it by this Act or any other enactment, may do all things that are necessary for or incidental to the carrying out of any of those duties or functions.*

**(2)** *The Regulator, with the approval of the Lieutenant Governor in Council, may take any action and may make any orders and directions that the Regulator considers necessary to carry out the mandate of the Regulator and the purpose of this Act or any other enactment that are not otherwise specifically authorized by this Act or any other enactment.*

**Regulator's funds and expenditures**

**28(1)** *All expenditures incurred by the Regulator must be charged against money provided in accordance with this section.*

**(2)** *In each fiscal year, funds equivalent to the estimated net expenditures to be incurred in the year by the Regulator, if not provided from money voted by the Legislature for that purpose, shall be provided under Section 29.*

**29(2)** *The Regulator may, in respect of any fiscal year, impose and collect an administration fee with respect to any facility, oil sands project, coal project or well on a basis that it will produce a sum sufficient to defray a portion or all of the estimated net expenditures of the Regulator in that fiscal year.*

**Financial Administration Act, RSC 1985, c F-11**

***Incorporation***

**80(1)** *No person shall incorporate a Provincial corporation or Crown-controlled organization without the approval of the Lieutenant Governor in Council.*

**(4)** *A Provincial corporation or crown-controlled organization shall not acquire a subsidiary corporation without the approval of the Lieutenant Governor in Council.*