

BACKGROUND

October 4, 2019

Alberta Energy Regulator (AER) An Examination of the International Centre of Regulatory Excellence (ICORE)

KEY FINDINGS

- AER engaged in activities outside of its mandate and public money was spent inappropriately on ICORE activities.
- Controls and processes to protect against potential conflicts of interest failed.
- AER Board oversight was ineffective.
- Financial, information management, and human resource controls were ineffective.
- Controls to track and monitor expenses related to ICORE activities were at first non-existent and then poorly implemented.
- The tone at the top at AER did not support a strong control environment or compliance with policies.

AER engaged in activities outside of its mandate and public money was spent inappropriately on ICORE activities

- Through its ICORE activities, AER operated outside its statutory mandate.
 - ICORE activities lacked a credible benefit to AER.
 - ICORE activities focused on generating revenues from foreign jurisdictions.
 - AER management explored commercializing intellectual property for the benefit of ICORE.
 - AER management unsuccessfully sought \$30 million in federal funding for ICORE operations.
 - AER ignored the restrictions on what it could do with industry money collected by statutory authority in relation to ICORE activities.
- Executive and staff time spent on ICORE was significant and not aligned with AER priorities and risks.
 - At a time where AER had significant priorities related to its mandate, considerable time was spent on ICORE.
 - Many AER staff were involved in ICORE activities, from a few hours to full-time positions.
 - AER staff were concerned about the resources being redirected and used on ICORE.
 - The former AER CEO and others discussed staff moving from AER to ICORE once it was spun off and operating privately.

Controls and processes to protect against potential conflicts of interest failed

- Conflict of interest risks were not managed by AER processes.
 - The former AER CEO held multiple potentially conflicting roles.
 - The creation of multiple ICORE entities, the involvement of AER staff and the use of AER resources for ICORE activities resulted in conflict of interest risks that were not properly analyzed or mitigated.
 - The former AER CEO asked the former AER General Counsel to provide legal services for ICORE NFP and ICORE Dissolved, which undermined controls intended to protect AER's interests.
 - Negotiations with the external consulting firm ignored potential conflict of interest risks.
 - There is no evidence that AER controls existed to identify a potential conflict of pursuing ICORE-related revenues from oil and gas companies AER regulates.
- Control mechanisms, including the AER ethics committee, failed to protect the interests of AER.
 - The AER ethics committee was ineffective to protect the interests of AER.

AER Board oversight was ineffective

- The AER Board did not have a full complement of competencies between 2015 and 2018.
 - At times between 2015 and 2018 the AER Board had numerous vacancies.
 - The AER Board did not have all the skills, nor did they contract the required skillset, to conduct proper oversight.
- The former AER Board Chair was involved with ICORE activities.
 - Contrary to the AER Board process for all members to disclose potential conflicts prior to conducting AER Board business, the former AER Board Chair did not disclose his involvement with ICORE.
- AER management, led by the former AER CEO, provided updates to the AER Board about ICORE from 2016 onward; however the updates were sometimes incomplete and/or inaccurate.
 - Evidence shows there was misalignment between the former AER CEO and the AER Board on the importance of ICORE.
- AER Board oversight processes were lacking or not followed.
 - The AER Board did not ask management to provide critical ICORE-related information.
 - The AER Board did not include ICORE as a meeting agenda item for more than a year while ICORE activities ramped up.
 - In September 2018, the AER Board reasserted its support for ICORE, while outstanding allegations and concerns still existed.
- Ministerial oversight processes were ineffective.
 - The former Minister of Energy met regularly with the former AER CEO as opposed to AER Board and former AER Board Chair.
 - The former Minister of Energy indicated she did not want ICORE to be a provincial corporation, nor did she want industry levies collected by AER to be used on ICORE work, but no confirmation was ever sought concerning this.
 - Important information about ICORE was not reported to the former Minister of Energy.

Financial, information management, and human resource controls were ineffective

- AER management engaged in unusual information management practices.
 - Communication methods, particularly text messages, were used to restrict access to information.
 - A separate email domain “icoreglobal.ca” was set up outside of AER’s control environment.
 - ICORE email accounts were deleted in late 2018.
 - Confidential, and potentially privileged, AER information was transmitted via ICORE email accounts.
 - AER information technology processes and controls were ineffective in mitigating risk relating to ICORE.
- Controls intended to protect public money were ineffective.
 - With ICORE NFP lacking resources due to delayed revenues, an ICORE project was established within AER to access AER resources.
 - Travel referred to as "AER reputation building" was used to advance ICORE.
 - ICORE travel expenses lacked proper documentation and were coded to AER.
- Contracting practices related to ICORE did not comply with AER policies.
 - AER management developed a contract between ICORE NFP and the former AER VP of National and International Relations with unconventional contract terms.
 - AER management engaged an external consulting firm to build ICORE with no engagement letter, no contract, and directed ICORE NFP to pay the bill.
- ICORE activities often ran contrary to other AER processes.
 - The project charter for ICORE DP lacked many items required of other AER projects.
 - ICORE activities required the setup of bank accounts and signing authorities that were outside AER processes.

Controls to track and monitor expenses related to ICORE activities were at first non-existent and then poorly implemented

- We estimate the total financial impact of ICORE activities to be approximately \$5.4 million. Of this, AER recouped \$3.1 million from ICORE NFP, resulting in an uncollected amount of \$2.3 million.
- Prior to May 2017, no system was in place to track ICORE-related expenses and AER absorbed these costs — approximately \$1.1 million.
- After May 2017, AER had arbitrary and inconsistent approaches to calculate and bill for costs it incurred to build ICORE.
 - AER did not submit an invoice to ICORE NFP until more than a year after ICORE NFP was created.
- As of November 2018, AER only planned to bill ICORE NFP \$842,000.
- Beyond the \$3.1 million recovered by AER, we estimate an additional \$1.2 million in ICORE-related costs were incurred after May 2017 that AER did not appropriately bill to ICORE NFP.
- The amount of travel and hospitality expenses related to ICORE activities was significant.
 - Travel and hospitality expenses were not cost-effective.

The tone at the top at AER did not support a strong control environment or compliance with policies

- The culture at AER stifled concerns regarding ICORE activities.
 - Problems with culture at AER, described as a “culture of fear”, surfaced during our interviews.
 - Stakeholder relationships in the context of ICORE were not managed well.
- The internal whistleblowing process at AER was ineffective and not widely known by AER employees.
 - Many AER employees we interviewed were unaware of AER’s whistleblowing policies and process.
 - AER’s internal whistleblowing process – distinct from the processes involving the Public Interest Commissioner (PIC) – was not viewed as safe and effective.

The full report on *An Examination of the International Centre of Regulatory Excellence (ICORE)* is available at www.oag.ab.ca.

Appointed under Alberta’s Auditor General Act, the Auditor General is the legislated auditor of every provincial ministry, department, public post-secondary institution, and most provincial agencies, boards, commissions, and regulated funds. The audits conducted by the Office of the Auditor General report on how government is managing its responsibilities and the province’s resources. Through our audit reports, we provide independent assurance to the 87 Members of the Legislative Assembly of Alberta, and the people of Alberta, that public money is spent properly and provides value.

– 30 –

For more information, please contact:

Val Mellesmoen, Executive Director, Stakeholder Engagement
Telephone: 780.644.4806 | Mobile: 780.909.5841 | Email: vmellesmoen@oag.ab.ca

Follow us on Facebook, YouTube, LinkedIn, and on Twitter @AuditorGenAB