

Outstanding Recommendations

Assessment of Implementation Report

Alberta Energy Regulator

An Examination of the International Centre of Regulatory Excellence

(October 2019)

Summary of Recommendations

In June 2021, we completed our assessment of implementation from our October 2019 examination of the International Centre of Regulatory Excellence (ICORE) recommendations. We found that the Alberta Energy Regulator (AER) implemented the four recommendations:

IMPLEMENTED Recommendation:
AER Board to improve its oversight processes

IMPLEMENTED Recommendation:
Perform sufficient due diligence to assess the risk of further waste of public resources not already identified in context of ICORE

IMPLEMENTED Recommendation:
Evaluate whether any additional funds expended on ICORE activities are recoverable

IMPLEMENTED Recommendation:
AER staff are made aware of, and are sufficiently trained on, AER's whistleblowing process, consistent with Section 6 of Alberta's *Public Interest Disclosure (Whistleblower Protection) Act*

Introduction

In August 2018, our office received a complaint alleging a number of serious concerns with activities related to the International Centre of Regulatory Excellence (ICORE) at the Alberta Energy Regulator. We completed a comprehensive examination to determine the effectiveness of AER's controls and processes to manage risks surrounding this business venture. Our examination identified critical failures including ineffective controls and override of controls that led to four recommendations we included in a separate October 2019 report titled *Alberta Energy Regulator—An Examination of the International Centre of Regulatory Excellence*.

ICORE was an organization within AER that started from the 2014 “Best in Class” initiative and then evolved to develop approaches and activities, including training to enhance skills and competency of staff. When originally conceived, it was an AER-focused training program aligned with AER's strategic direction. The ICORE concept idea expanded to include international work when the venture started focusing on generating revenue from countries around the world through delivery of services, like training and consulting.

The prevalent findings from our 2019 examination were:

- AER engaged in activities outside 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

The AER Board prioritized the implementation of the recommendations and publicly reported on their status. We were informed by the board when AER was ready for our assessment. In June 2021, we concluded our assessment of implementation of the outstanding ICORE recommendations. Our assessment found that AER implemented all four of our 2019 recommendations to:

- improve board oversight over AER's activities, including corporate culture, senior executive performance and compliance with internal controls
- perform sufficient due diligence to assess the risk of further waste of public resources not already identified
- evaluate whether any additional funds expended on ICORE activities are recoverable
- AER staff are made aware of, and are sufficiently trained on, AER's whistleblowing process, consistent with Section 6 of the Alberta's *Public Interest Disclosure (Whistleblower Protection) Act*

Recommendation: **AER Board to improve its oversight processes**

IMPLEMENTED

Context

Our 2019 examination found that the AER Board lacked both the extent of skills and full complement it needed to properly oversee ICORE activities. Our report highlighted that an overreliance on management, particularly with respect to legal matters, contributed to a lack of proper oversight. In addition, the AER Board, as well as the former Minister of Energy, did not receive complete and accurate information about ICORE. Notably the former AER Board Chair's failure to disclose his involvement in ICORE further aggravated challenges experienced by the board.

Our current findings

The AER Board implemented our recommendation to improve oversight processes by enhancing its governance practices. There was changeover in the board since our 2019 examination. The new board that replaced the interim board in April 2020 continued work to implement this recommendation. The board focused on business operations, risk management and building AER's reputation. It established processes to hold AER's senior executives accountable for performance and instilling an improved culture.

Processes to evaluate corporate culture, and senior executive performance and establishment of processes to engage with executive staff to gain awareness that significant matters are brought to the board's attention

We confirmed that the AER Board put in place effective processes and policies to evaluate and closely monitor corporate culture and senior executive performance. The processes included staff engagement sessions, setting formal performance expectations for the leadership team, evaluation for the new CEO, and approving updates to internal policies including the code of conduct. The incumbent CEO has a performance contract that lays out expectations of the board. The board hosted monthly meetings to receive regular CEO updates and held CEO only in camera meetings to gain insights on performance and culture matters. The CEO in interacting with his team set the tone for leadership expectations through planning sessions and weekly meetings with the executive leadership team. The AER completed a culture survey engaging its staff in 2020 to assess shifts in its corporate culture. The regulator had scheduled a similar diversity, equity and inclusion/employee engagement survey to be completed between November 2021 and January 2022 to gather further insights on the corporate culture.

The board set terms of reference for its committees and governed through four committees.¹ In particular, the board established a separate governance committee to provide consultation, advice, and recommendations to the board with respect to the board fulfilling its oversight responsibilities regarding the effectiveness of AER's governance policies and procedures. Notably, the full board instead of a committee took responsibility to oversee risk management.

¹ The committees include Audit and Finance, Governance, Human Resources, Health and Safety, and the Regulatory Review Committee.

In September 2019, the board chair communicated to all staff in an email encouraging any member to reach out directly to the board. Between October 2019 and January 2020, at the time of attending board meetings the board hosted open house sessions with staff in Calgary, Edmonton, Red Deer and Grand Prairie and sought feedback from the staff who attended the sessions.

We reviewed AER's Mandate and Roles document (approved by two ministers), minutes of board meetings and other documentation obtained through our financial statement audits. Collectively, the evidence supported strong board oversight and monitoring of the CEO and other senior executives.

Formal and periodic assertions from management

AER designed and implemented formal processes for key management and executive staff that allow them to detail for the board how activities within the organization comply with existing legislation and AER policies, particularly policies related to conflict of interest. For example, an annual disclosure survey was sent out to all employees in early January 2021 asking for declarations by January 29, 2021. The submissions were reviewed by the Chair of AER's Ethics Committee.

Officers in key risk management, compliance and internal control roles are well positioned and supported

The board established forums for officers in key risk management, compliance, and internal control roles to engage directly with the board. For example, the board provided in camera time with the Vice-President of Finance; Vice-President of People, Culture and Learning; General Counsel; and the Director of Internal Audit. The board also supported these officers through its committees. AER's General Counsel attends every board meeting and meets monthly with the board chair. The Director of Internal Audit reports directly to the CEO and the Chair of the Audit and Finance Committee.

Reviewing and approving travel expenses

We tested executive expense claims and found no issues or deviations from policy. For the CEO's expenses we sampled, we found that the board chair had appropriately approved the expenses during the fiscal year. A management audit process led by the Finance Branch was put into place by AER to routinely review CEO travel and expenses to check for compliance with policies.

Primary channel of communication to responsible ministers

We observed that the board had established proper communication protocols with the responsible Ministers as the primary channel between the Ministers and AER. AER requires all communication, oral or written, from AER to the responsible Ministers be through the board chair. We noted that the board chair and the CEO jointly met with the Minister of Energy and Minister of Environment and Parks on regular basis.

Recommendation:

Perform sufficient due diligence to assess the risk of further waste of public resources not already identified in context of ICORE

IMPLEMENTED

Context

In relation to ICORE, our examination found that AER financial, information management and human resource controls were ineffective. In particular, ICORE activities at AER were pursued without regard to existing controls in place at the regulator. Our key findings included:

- AER management engaged in unusual information management practices
- controls intended to protect public money were ineffective
- contracting practices related to ICORE activities did not comply with AER policies
- ICORE activities often ran contrary to other AER processes

Our current findings

AER implemented our recommendation by taking steps centered on ICORE activities to assess the risk of further waste of public resources.

Our previous report noted that ICORE activities ceased in December 2018 when the board approved the resignation of AER as sole governing and operating member. Since that date, there were no ongoing ICORE related contracting, consulting and information practices and controls for AER to maintain hence operational risks surrounding ICORE have been mitigated. The AER focus remained on closing its relationship with ICORE, assessing what funds it could recover and taking actions to recover funds.

One of the early steps management completed for control improvements within operations of the regulator was updating the AER travel and subsistence expenses policy to include provisions noting tighter control to reduce costs. AER improved measures to enforce compliance, reduce costs and improve on its controls to guard against any waste of public money. For example, AER's Finance Branch completed expense claim audits to seek assurance that employees are complying with the Travel and Subsistence Policy and expense claims received the appropriate approvals. At the direction of the board, AER's Internal Audit Services performed reviews of controls. In addition, Internal Audit was directed by the board to include, where appropriate, the assessment of waste of public resources in the scope of future internal audits. As part of the fiscal 2020 and 2021 audits, we tested the controls over travel and subsistence expenses and found no deviations.

We examined the minutes of board and management meetings during the year and noted that cost reduction opportunities and monitoring activities was a standing item on their agendas.

We obtained copies of reports prepared by Internal Audit Services and observed that the reports incorporated a value for money component. In a sample of reports, we also saw recommendations to management and the board noting process improvements to reduce waste of funds.

Recommendation:

Evaluate whether additional funds expended on ICORE activities are recoverable

IMPLEMENTED

Context

Our 2019 examination found that controls to track and monitor expenses related to ICORE activities were at first non-existent and then poorly implemented. At the time of the examination, we prepared our own assessment and estimated that AER did not collect \$2.3 million of out-of-pocket and in-kind AER resources used on ICORE work. We estimated and reported that the total financial impact of ICORE activities to be \$5.4 million.

Our current findings

AER implemented our recommendation by taking a series of steps to evaluate whether it could recoup additional funds beyond the amounts it previously collected from ICORE NFP. AER reported \$3.1 million as revenue from ICORE NFP in its fiscal 2019 financial statements. The AER Board sought advice from external and internal legal counsel to complete assessments. Management explored legal avenues to recover funds and kept the board apprised on the results. The board authorized taking legal action against ICORE NFP to recover amounts outstanding.

AER completed its assessments and pursued a series of legal steps to successfully recover funds from ICORE NFP. AER concluded all steps it deemed appropriate to recover funds from ICORE NFP. We confirmed that AER filed a second statement of claim in March 2020 for \$472,000 against ICORE NFP. In relation to the ICORE venture, for the fiscal year 2021, AER successfully recovered \$232,000 of additional funds.

Recommendation:

AER staff are made aware of, and are sufficiently trained on, AER’s whistleblowing process, consistent with Section 6 of Alberta’s *Public Interest Disclosure (Whistleblower Protection) Act*

IMPLEMENTED

Context

In 2019, our examination found that the tone at the top at AER did not support a strong control environment or compliance with policies. In particular, we found that culture at AER stifled concerns regarding ICORE activities. In addition, the internal whistleblowing process at AER was ineffective and not widely known by AER employees.

Our current findings

AER implemented our recommendation to sufficiently train staff and make staff aware of recent enhancements to AER’s whistleblowing process, consistent with Section 6 of Alberta’s *Public Interest Disclosure (Whistleblower Protection) Act*.

To verify the implementation of the recommendation, we performed the following:

- We examined AER’s updated Whistleblower Protection Policy to confirm revisions to sections of the policy. For example, the prescribed requirement for the designated officer (the person who investigates the disclosures) to share disclosures involving the CEO and members of the executive leadership team with the board. We saw that the designated officer is accountable to the board chair and CEO, in contrast to the previous policy that required the designated officer to send complaints only to the CEO. The policy also covers processes when allegations involve the board.
- We obtained information to corroborate that the board hosted formal sessions with AER employees to gather feedback on culture and corporate structure.
- We observed that AER now has e-learning courses on the conflict of interest and Whistleblower Protection Policy included as part of its learning management system (LMS), and all AER’s employees are mandated to take the courses on an annual or bi-annual basis.
- We confirmed that all employees completed the courses and mandatory training for the fiscal year 2021 as at the due date.