OFFICE OF THE ETHICS COMMISSIONER
PROVINCE OF ALBERTA

Report

of the Investigation under the Alberta Energy Regulator Conflict of Interest Policy and Procedures

by

Hon. Marguerite Trussler, Q.C.,
Ethics Commissioner

into allegations involving

Jim Ellis

June 14, 2019

Alberta Energy Regulator Conflict of Interest Policy and Procedures

On August 9, 2018 and September 17, 2018, I received anonymous e-mails from a person who is or was at all material times an Alberta Energy Regulator (AER) employee. The emails asked for an investigation into the conduct of the then Chief Executive Officer of the AER, Jim Ellis, relating to his dealing with CORE, ICORE and, subsequently, ICORE Energy Services, a federally incorporated and provincially registered not-for-profit.

Allegations

The relevant allegations for this review are:

> Spending of public and industry funds in support of ICORE for the personal benefit and gain of certain senior officials, including the CEO Jim Ellis.
>
> Using considerable time and staff resources on ICORE causing a significant negative impact on the organization.
>
> AER executive time spent securing funding for ICORE and potential future lucrative employment opportunities.
>
> Travelling at the expense of the AER to further ICORE's financial interests

Jurisdiction

The AER Conflict of Interest Policy and Procedures provides in section 19:

> ...
>
> A member or employee may also apply to the Ethics Commissioner for a review of the conduct of the Chair, the CEO, or a member under the AER Conflict Policy.

The policy does not say that the person making the complaint has to be identified. In this case, there is good reason not to identify this person, given threats of reprisals if the person became known, as shown in a text to Mr. Ellis from his close confidant at the AER, Martin Krezalek, sent on 11/02/2018.

> Jesus! Brutal is an understatement. If it is Corey I will crucify him on the private side with everything in my possession in response to this.

In addition, Sheila O'Brien, Chair of the AER Board, during an interview advised that, after Mr. Ellis left the AER, the Board hired Grant Thorton to do a review, which found a culture of intimidation, an authoritarian tone at the top and a situation where no dissent was allowed.

Mr. Ellis has knowledge of the allegations against him as a result of an investigation into his conduct under the Conflicts of Interest Act, R.S.A. 2000, c.C-23. Nothing turns on the identity of the complainant.

Review

This review pertains to the conduct of Mr. Ellis during his employment at the AER.

Investigation

The following people were interviewed under oath:

Jim Ellis – former Chief Executive Officer of the Alberta Energy Regulator;

Hon. Margaret McCuaig-Boyd – Minister of Energy;

Marcia Nelson – Deputy Minister of Executive Council;

Coleen Volk – Deputy Minister of Energy;

Gerry Protti – former Chair of the Board of the Alberta Energy Regulator;

Sheila O'Brien – current Chair of the Board of the Alberta Energy Regulator;

Gordon Lambert – former member of the Board of the Alberta Energy Regulator and now Interim President and Chief Executive Officer of the Alberta Energy Regulator;

Patricia Johnston - former Executive Vice-President, Law and General Counsel of the Alberta Energy Regulator;

Jennifer Steber – former Executive Lead, ICORE and, prior to that, Executive Vice-President, Stakeholder and Government Engagement at the Albert Energy Regulator;

Martin Krezalek – former Lead, ICORE Development Project reporting to Jennifer Steber and Jim Ellis, former Chief of Operations and Administration and Innovation Lab Director, ICORE and, prior to that, Chief of Staff to Jim Ellis at the Alberta Energy Regulator;

As part of my investigation under the Conflicts of Interest Act, I received numerous documents from the AER as well as Mr. Ellis' emails and text messages from his cell phone.

AER Conflict of Interest Policy and Procedures

The AER Conflict of Interest Policy and Procedures was revised in June, 2014. There have been subsequent revisions but they are not material to this review.
The relevant provisions are:

> S. 5.1 Impartiality and Disclosure of Conflicts
>
> Members and employees must conduct their duties with impartiality at all times. It is critical that the members and employees disclose all real or perceived conflicts of interest between their AER-related duties and their personal interests and/or relationships. Further, these parties also have a responsibility to avoid real and perceived conflicts of interest and to take all steps necessary to remove themselves from any conflict. Disclosure, while necessary and important, does not itself remove a conflict of interest. …
>
> As a general rule, members and employees must disqualify themselves from any application, proceeding, file inspection, or other matter involving an entity in which they, their spouse, or minor child has a financial interest or with which they have a relationship that may bring, or be perceived to bring, their impartiality into question.

s. 5.3 Furthering Private Interests

Members and employees may be in a conflict of interest and in violation of this Conflict Policy if they

- participate or might reasonably be perceived to participate in a decision in the course of carrying out their duties knowing that the decision might further a private, personal, or financial interest of theirs or of a relative's;
- use their public role or might reasonably be perceived to use their public role to influence or seek to influence an AER or government decision that could further a private interest of theirs or of a relative's; or
- use or communicate information or might reasonable be perceived to use or communicate information not available to the general public that was gained in the course of carrying out their duties to further or seek to further their own private interest or that of a relative.

s. 9 Limited Personal Use of AER premises and Equipment

AER members and employees are permitted limited personal use of AER premises and equipment for non-AER-related purposes providing such use involves minimal additional expense to AER, is performed on the member's or employee's non-work time, does not interfere with the mission of the AER, does not support a personal business interests and complies with the Conflict Policy.

Facts

The facts are the same as those found in my report under the Conflicts of Interest Act.

Mr. Ellis became the Chief Executive Officer of the Alberta Energy Regulator at the time of its formation under the Responsible Energy Development Act, S.A 2013, c.R-17.3, in 2013. He had previously been the Deputy Minister of Energy for Alberta. A Board of Directors was appointed, which he indicated during his interview was purely a governance board and not an operational board. As a result, it was reliant on management for

information. Also, Mr. Ellis indicated that he, rather than the AER Board Chair, had most of the contact with Government. Other people directly involved with Mr. Ellis in the ICORE venture were Jennifer Steber, Zeeshan Syed and Martin Krezalek. They all joined the AER shortly after it was created. Ms. Steber joined the AER as Executive Vice President of Stakeholder and Government Engagement and later became Executive Lead, ICORE. Mr. Syed was Vice President of National/International Stakeholder and Government Relations and reported to Ms. Steber. Mr. Krezalek started as Chief of Staff to Jim Ellis and later became Lead, ICORE Development Project, reporting to Jennifer Steber and Jim Ellis.

1. Centre of Regulatory Excellence (CORE)

The idea behind ICORE (initially CORE) started out, quite legitimately, in 2014 as a way to make the AER a world class regulator. A 'best in class' project was undertaken around November, 2014, after a request for proposals, with a professor at the University of Pennsylvania. The idea was initially to provide training to staff members of the AER.

In August of 2015, the concept of CORE within the AER was articulated. A meeting was held with the Chief of Staff to the Minister of Energy in November, 2015 to brief him about CORE and to explore how to fund it. It was estimated that the cost to develop the program would be around $2 million. The Alberta Energy Regulator was requested to submit a business case for the Minister to take to Treasury Board. In January of 2016, it was learned that, as the submission had not been part of the original AER budget request, any funding request would not be able to be considered until May or June of 2016. However, it was indicated that a request for funding from the AER's surplus could be made to the Minister. There is no indication that either request proceeded.

The Minister was briefed in December, 2015 and given arguments about why CORE had to be external to the AER. The Minister made it clear that levy money could not be used for the project and that it had to be self-sustaining. It is apparent, even at this point, that there was an intention to not be fully forthcoming. This continuing intention is shown in a

text (06/16/2016) from Jim Ellis to Zeeshan Syed: "I think it is close to time for me to brief the Minister again on ICORE – carefully". Another such indication is found in a text (11/08/2016) from Zeeshan Syed to Jim Ellis:

> "Please be very careful in the Mexico meeting, consider anything you say there to be heard by the Consul and spilled in multiple direction, especially the GoA. What I have told the Consul is that Core is internal for now, we are working through the kinks. Ambassador does not need to know all the details about ICORE yet either."

In January, 2016, Treasury Board and Finance possibly was briefed on a request for $2 million funding for CORE but that request does not appear to have been moved forward. Mr. Ellis believes that his Chief of Staff may have briefed the Chiefs of Staff of Energy and Treasury Board and Finance. Mr. Ellis stated in his interview that it was his decision not to go to either Cabinet or Treasury Board for any approvals or funding.

In May of 2016, Mr. Ellis knew that his salary was going be substantially cut. In texts to Martin Krezalek, he stated "as usual I will maneuver something". It appears that the salary cut became an ongoing issue for him. (In January of 2017, he was told the extent of the cut and that he would be brought down to a Deputy Minister level.)

2. <u>International Centre of Regulatory Excellence (ICORE)</u>

In June of 2016, Mr. Ellis made the decision to take CORE external to the AER. He stated during in his interview that it was an operational change that was his to make. The Board was apprised of this move.

Also, at about this time, the legal branch of the AER confirmed that funding of the AER CORE via third party funds was not permitted under the Responsible Energy Development Act, S.A. 2013, c.R-17.3 without Government of Alberta Cabinet approval, whether under the AER or a subsidiary. There is no indication that that route was even

considered, nor was there any request to change the AER's legislation to allow the AER to make a profit from training.

It is not clear when the decision was made to use CORE to train other jurisdictions but it appears that it was during this period. The name was changed to ICORE at some point.

In a text sent on 09/26/2016 from Martin Krezalek to Jim Ellis, Martin Krezalek raised the possibility of Jim Ellis being brought under the Conflicts of Interest Act:

> "if you are designated as an "office holder" it looks to get into Ethics Commissioner Review where you are in affiliation and/or memberships with corporations (ICORE being incorporated) and open to Ethics Commissioner review. We'll need Patty to review this thoroughly and provide advice as to the setup of ICORE I think."

3. Deloitte Phase

Deloitte was chosen in June of 2016 to do the work to make ICORE an independent entity. This fact was shared with the AER Board of Directors. Surprisingly, there was no request for proposals by the AER and no contract between Deloitte and the AER. Supposedly, there was a vague idea to partner with Deloitte and have secondments through Deloitte to ICORE. Deloitte, through its Toronto office, federally incorporated the first 'not for profit' entity, which was later dissolved. The directors were Jim Ellis and two Deloitte employees. A considerable amount of time and effort appears to have been put into the project by both sides. By January or February, 2017, the relationship had broken down. One issue was the salary to be paid to Mr. Ellis, who would join Deloitte to work on ICORE. In the latter stages of discussions, some senior partners at Deloitte appeared to have expressed some reservations with respect to a conflict of interest involving Mr. Ellis.

The plan seems to have been to have Jim Ellis retire from the AER and move to Deloitte to run ICORE. Zeeshan Syed would also move to Deloitte, which is evidenced in a text from Jim Ellis to Martin Krezalek on 12/31/2016:

"Just sent a gmail to your acct. Ref my discussion with Deloitte that is to take place sometime in Jan I hope. No guarantees there though. They know what they need to do. Gerry is aware and supportive. Kirk is now aware I will be the first CEO if Deloitte can put something together – not sure how supportive he is but I don't really care and is not important. Once he leaves the AER he will also be off the ICORE board by governance rules.

For timings-Zee needs to get in there ASAP. You then need to move to VP NIP. I would like to announce I am retiring from AER by end of Jan with effective date no later than May. As for Kirk, I think they should look to bring him in as a general Advisor. I will decide his eventual role in IcoRE later. Therefore his move is not a critical initial move. He will not be interim CEO AER.

Lots of pieces in this maneuver so may not work out completely as planned. Will need to remain flexible. As I look back on what I was thinking a month ago, there has already been significant flexibility shown here. All still good though. Going to explain as a Deloitte initiative where they have hired a few former AER employees."

Further texts show not only the results of discussion with Deloitte but also Jim Ellis' intentions:

Text (01/28/2017) from Jim Ellis to Zeeshan Syed: "finally is Administration. We need to get Deloitte working on this ASAP. Our group will need initial support with office space…"

Text (02/02/2017) from Jim Ellis: "on me and ICORE. I am ready to go. Need new challenges. I would love to just GO tomorrow and start 'doing' but understand there is a sequence and process that needs to be fulfilled"

A further text (02/10/2017) from Jim Ellis:

> "My contract is causing them concern because of a perceived conflict of interest. ICORE CEO on the Deloitte payroll awarding contracts to Deloitte. I can see this. Looks like we landed on the company being lead by a management team and a board that is paid like a non- profit. Still looking at this. I would fill the roll of EX Chair therefore able to influence the direction of the organization without getting into the detail and signing contracts. Therefore there is no real requirement of a CEO yet until this expands to more than a start up.
>
> I would actually be hired on a contract providing Executive advice to Deloitte (and probably filling a Global Chair) as well as advisor to ICORE after I finish as Chair. This will allow me to retire from AER, state that I intend to consult on my own or in partnership and maintain my positions on the numerous boards I am currently associated with - including ICORE. This should satisfy those that think I am heading into ICORE immediately to run it. When asked by the Feds, Mexico, etc I will state that I am still in the game with ICORE. Complicated but it will work better in the end and should be more beneficial tax wise."

As previously indicated, at some point the relationship with Deloitte begins to break down, as shown in a text (02/28/2017) from Jim Ellis to Martin Krezalek:

> "I am thinking we need to relook at all of this. Take Deloitte right out of the picture and start again. We need to start ICORE up. That means hiring some people in. ...We work hard at getting more money in. Need to rethink all of this."

A text on April 12, 2017, summarizes the issues that arose with Deloitte. They were a bill from Deloitte that was rendered for $422,358 and the decision by Deloitte to cut the salary offer to Jim Ellis by half given the cuts being implemented by the Government with respect to provincial agencies, boards and commissions. The issues between the parties were later reiterated in a text (12/04/17) with Mr. Syed.

In December of 2017, to jump ahead, Deloitte resent the $422,358 bill to the AER. Jim Ellis took the position that there was no contract with the AER. While Deloitte had incorporated a 'not for profit' company for ICORE, it did not know that Jim Ellis had incorporated a 'for profit' company and a subsequent 'not for profit' company in respect of ICORE and any funding would flow into one of those entities.

Text (12/20/2017) from Jim Ellis to Zeeshan Syed:

> "...I spoke with James last time when I really blasted him. This time will be ultra professional. ICORE NFP is a new entity with a new corporate structure and not tied to ICORE FP. Also the Chair is the former AER Chair who was well aware of the unprofessional, disrespectful nature of Deloitte . He hates Deloitte and is now demanding all contracts (I will confirm Gerry is happy with this). I will also state that I used to run the old ICORE. Now I am CEO of AER who is a partner of ICORE. I have influence but not Control. This is not correct but if you check the website I am not there...
>
> As CEO of the AER I could offer them $75K, the highest I can go without an RFP."

In a further text from Jim Ellis to Zeeshan Syed (03/20/2017):

> "let me know when you want me to engage. Let Shawn know that I am taking a personal interest in this as ICORE is my project. Although I am always professional, they should not push me or take as a weakness. I can pivot very quickly against them. They have just seen me do it.
>
> I will do it but in true snake style, they will not see it coming nor will they know it's happening. They can spend lots of time and money in proposals and get nothing here as I will speak to GOA too. Again make it clear to Shawn how connected I am..."

Eventually, the Deloitte bill was settled for $175,000 in May of 2018 and was paid by ICORE Energy Services (NFP). The Executive Vice President, Law and General Counsel

of the AER, Patricia Johnston, was used to negotiate and finalize the settlement, including releases and the transfer of the federally incorporated 'not for profit' entity that was set up by Deloitte. She indicated in her interview that, while she was doing ICORE work on AER time, she was trying to also protect the AER, as she was concerned that Deloitte would commence action against the AER.

Jim Ellis, Jennifer Steber, Martin Krezalek and Zeeshan Syed were all aware of the interactions with Deloitte, that Zeeshan Syed was to leave to work there and the fact that the Deloitte relationship terminated.

4. ICORE moves into the AER under a Memorandum of Understanding

The plan then changed, as evidenced in a text dated 03/11/2017 from Jim Ellis to Martin Krezalek: "Been thinking about ICORE and how this could role out now that Deloitte is gone. Not sure I am happy with an annual $125k pay cut. I am okay with the risk of one year though. I am going to need this to be relooked."

In March of 2017, Field Law LLP was engaged by Jim Ellis to incorporate a 'for profit' entity, ICORE Energy Services Ltd. Then, on May 5, 2017, the 'not-for-profit' entity, ICORE Energy Services (NFP), was incorporated federally and registered in Alberta on June 20, 2017. The reason given for the 'for profit' entity was to obtain loans and the reason given for the 'not for profit' entity was to be able to receive grants, particularly from government. The 'not for profit' appears to be the only entity used. Jim Ellis and Zeeshan Syed were named as the directors for both companies.

Some of the thinking that was behind the change in direction is set out in the text messages.

Text (03/03/2017) from Jim Ellis to Zeeshan Syed:

> "This is what I sent Kirk

Thinking further about your comments on the business plan. I am wondering if we shouldn't look at moving to a for-profit model sooner than later. I will get Martin to reconfirm why we have gone with the not-for-profit model. No one seems to be clear. If it is the assumption we will be able to access grant money then that needs to be tested. There could be a hybrid model here also.

When I look at our Mexico deal, deal with U of A, EY and WP work with AER I don't recall any discussion about not-for-profit or for-profit status. Everyone was just interested in what can be delivered and for what price. Again though there may be advantages when looking at grant money.

The partnership model (with other firms) needs to be looked at further. WP is interested because they worked with the AER and may have recognized a market that we can help access with them. Their expertise on Operational Process Excellence is something required by mature regulators and something we probably don't want to get into. This is where the other consultants will be as well. We will need to think about what we get for this relationship because I am not sure we need anyone to break into new markets for us. Advantages could be as simple as back room support or simply having a broader suite of offerings where we get some sort of "finders fee".

Finally WRT the business planning model including one/three/five year budget I think you and I need to think about what we would personally need out of this. There could be a partnership model based on two or three initial partners along with employees in the company. The question will be, what is the amount of money we need to take out of the company as a minimum annually to pay our bills. That could be us deciding on a figure for two or three partners and budgeting for that. Bonuses or extra shares would be based on profit above this number. The third partner, Zee, is actually an employee of ICORE now and this would need to be looked at. As the smoke clears on the Deloitte deal, Zee is actually the only one of us that is still whole with a $350K salary and a bonus structure we still need to determine. He may decide to stay as an employee however an assured draw from the company may be appealing for him."

And a text (03/11//2017) from Jim Ellis to Martin Krezalek:

"Sent this to ZEE

... After what I experienced in Mexico again this time (extremely positive) I am clear what my role is and what I can do. Argentina, UK, QC, and NRCan know what my role is as the senior lead of AER and also ICORE. I know other jurisdictions will be there too quite quickly.

The question coming from people in the know on this are stating that I should actually be the Executive Chair and the Managing Partner. All partners would have a vote but there is only one Managing Partner. There needs to be a clear lead. I am just a bit concerned with Kirk and me being at the same level. I have experienced him just before Christmas and don't want to work in that environment in future. If he doesn't agree we actually don't really need him. I think though that ICORE needs you and me and some other workers.

The other option is that if this doesn't resonate then I could step away and try this on my own. I don't think the Mexicans would be keen on this though.

Received back from Zee

Jim - I've also been thinking about all this and have some new thoughts. Instead of Kirk at such a heavy price, we could use that same money to employ Martin, Courtney, Brad, Steve - all at 200K. We use them as secondees for the first while to ensure enough money is in the bank. Then, you and I take the lead role, you at 650 and me at 500. We don't need to worry about bonus, but we can look into the profit sharing model in this option. We each make more and actually have more help. This is just one option, I don't mean to totally cut out Kirk if you don't want,

we can look at something there too. We need to solve this asap though, even this week all finalized. Happy to chat on the phone."

The project was brought in house at the AER with an intention to use AER resources to develop ICORE and then take it external as soon as possible. As stated in a text (04/01/2017) from Jim Ellis: "agree. I need to move out and focus on this FT. May still my announcement target. Early June starts my post retirement employment."

To deal with some internal push back to bringing ICORE in house as a project, it was decided to have a Memorandum of Understanding between ICORE Energy Services (NFP) and the AER. It was prepared by Martin Krezalek and reviewed by Patricia Johnston.

The time of AER employees was to be recorded and the AER was to eventually be repaid or receive services 'in kind". Curiously, Jim Ellis took the position that he was not part of the ICORE project, notwithstanding he spent many hours on it, and did not record any of his time.

In a text (03/14/2017), the issue of the Memorandum of Understanding was raised by Jim Ellis to Martin Krezalek:

"May need to think about signing something that outlines the agreement between ICORE and AER. AER receives free training for a period in exchange to standing up ICORE-IN KIND SERVICES that way anyone looking at the three of us moving over would have to see that our initial time was in AER in kind service..."

An issue arose as to whether the Chair of the AER Board, Gerry Protti, would sign the Memorandum of Understanding on behalf of the AER. Text from Jim Ellis to Martin Krezalek on (05/15/2017):

"shaking my head. Gerry is quite the guy. Good with MOU because Patty told him to be comfortable. Said he needed to brief the Minister on it and hold a special Board meeting to inform them. Doesn't sign anything without their approval. I told him both were unnecessary but he cannot make a decision. Good grief. So, Carol will sign as Strategy EVP for the AER and I will sign for ICORE. Gerry is very comfortable with this."

Eventually, in May, 2017, Patricia Johnston signed the Memorandum of Understanding for the AER and Jim Ellis, the CEO of the AER, signed for ICORE Energy Services (NFP).

In May of 2017, the ICORE Development Project was formally launched in the AER. Martin Krezalek and Zeeshan Syed were seconded to the project. Three other people were also seconded and a fourth was added in June, 2017.

It appears from the minutes of ICORE-DP leadership team that in May of 2017, Jim Ellis met with the Minister of Energy about ICORE. He reported that the Minister wanted ICORE to be set up independently with a post-secondary institution partner. The Minister also reportedly agreed that is was okay for the AER to start it but that grant money should be sought to fund it.

There are a number of texts during this period which show that Mr. Ellis was not forthcoming about his role in ICORE and the use of AER resources.

Text (06/01/2017) between Jim Ellis, Martin Krezalek and Zeeshan Syed: "Re: my expenses, they are all clean, there is no mention of CORE or Icore, we had changed to AER reputation meetings."

Text (06/15/2017) from Jim Ellis to Zeeshan Syed and Martin Krezalek: "Yes and remember that the accounting for ICORE started at the signing of the MOU. Before that date it was all AER and RegX reputation"

Text (06/11/2017) from Jim Ellis to Martin Krezalek: "...We will stay in AER offices or home offices until grant/service delivery money comes in as Finance is nervous."

Text (06/30/2017) from Jim Ellis to Martin Krezalek: "I think I should update my profile to include President of ICORE"

Text (07/05/2017) from Jim Ellis: "That's a better timing. Between you and me- Mark and I are meeting privately late Judy (sic) when he gets back. The Discussion is ICORE and AER. Basically what is the best way to sequence all of this. Multiple options but the key is to continue to push ICORE out ASAP. Both of us have the same outcome_ a successful ICORE and an AER that continues down its current path. Mark wants the CEO. I want to slide out. The question is timing."

5. ICORE moved fully internal to the AER to be stood up because Mexican money was slow in arriving

Then there seems to have been a change of plan. The new plan was a major change of direction to bring ICORE back closer to AER to avoid having costs accumulate under the Memorandum of Understanding.

This change was noted in ICORE-DP leadership team minutes dated July 21 and July 28, 2017, and in a text:

Text (07/18/2017) from Jim Ellis to Martin Krezalek: "As there is no money in sight, we will focus on this as an AER project. Jennifer and I will be Exec. Leads."

A text (07/20/2017) from Jim Ellis to Zeeshan Syed and Martin Krezalek further summarizes the thinking:

"Initial plan was for ICORE to be legally established external to GOA and AER – this has been done... 'We have two options. We can stop and wait for Mexican

money to trickle in or Government grant money to emerge. The grant money will take time to work through and even when done, will probably not materialize until sometime next fiscal year. The second option is for the project to actually accelerate by having AER re-engage and continue to support this until the base funding is in place to allow ICORE to establish itself as a true self-funding, stand alone entity.

So, the AER will continue the stand up of ICORE as a project. It will have dedicated secondments – this has been done but more are needed. As a project, it will stop tracking hours and will have a dedicated budget, mostly for travel…

The project will appear on the project list but won't be treated as another project with ECC oversight as this is being run from the top…"

Jim Ellis was still planning to be involved with ICORE post-employment with the AER. It was also clear that, as with the Deloitte plan, Jim Ellis was to have a remunerated role with ICORE.

Text (07/31/2017) from Jim Ellis to Martin Krezalek: "Very disappointed in ICORE and CAPP but just reminds me I am done with AER and ready for next challenge. Not sure what that is. For sure ICORE but maybe other things too. I may need to announce that I am going. Work in ICORE for much lower salary to get it going then who knows."

Text (08/15/2017) from Jim Ellis to Martin Krezalek: "As for work, I will need to continue to think through options. Right now I am looking to finish as CEO end May 2018. If all works I would announce as soon as end of this year. Hopefully hired by the ICORE Board as President and CEO. Prior to this I would hold the interim President's position. Once the money comes we will be able to hire management, pay the bills and hopefully enough money to allow me to announce and then leave. I will need to cut back from earlier salary expectations to something in the area of what I make now or there won't be enough in the bank."

Jim Ellis was also using the AER's reputation to build ICORE, as evidenced in an email from him on September 7, 2017. There was also discussion at this time of eventually taking ICORE outside of Alberta. The business plan that was developed showed a large amount for executive salaries. In October, 2017, ICORE made a major funding request of the Government of Canada for $30 million to be paid over three years, which included funding the executive salaries. A considerable amount of AER employee time was used to develop the business plan and proposal. ICORE development team meetings took place during AER office hours.

An ICORE Development Project (IDP) was put together for a project to run within the AER from August 10, 2017 until March 31, 2018. It was amended from time to time. It showed projected costs of $989,000 for the project.

However, the plan was always to take ICORE external as soon as feasible, which meant when funding was available.

Text (08/08/2017) from Zeeshan Syed to Jim Ellis and Martin Krezalek: "So we need to add some names to the Board of other people. This also may camouflage our control of it."

Throughout, Gerry Protti, former AER Board Chair, was out looking for people of significance to sit on the ICORE board, first as a governance board for the 'for profit' corporation and then as an advisory board for the 'not for profit'. It appears from the texts that Mr. Protti was initially fully engaged with creating ICORE, but at some time in 2018, he seems to have fallen into Mr. Ellis' disfavour. I interviewed Mr. Protti but he was not very forthcoming.

It was Jim Ellis' plan to have someone succeed him at the AER who was supportive of ICORE and would accept what had been done.

> Text (09/07/2017) from Jim Ellis to Martin Krezalek: "I am also personally disappointed I can't do India. Need to be closer to home as I can't afford industry to start whining about my travel. You guys can do that under cover....Finally my next maneuver is my replacement. It is, in my opinion, Mark. He is also very loyal and will be supportive of ICORE and RegX. He needs time to get ready and it will be a stick handle to get him in..."

Throughout, there was an awareness of possible further ethics restrictions that might apply to Mr. Ellis:

> Text (11/08/2017) from Jim Ellis to Martin Krezalek: "He got word of an urgent call from Ceci this morning to all ABC Chairs giving them a heads up of more controls coming down. Looks to probably mean that they will be bringing me in in the senior official list next. That means one year cooling off period along with other controls. Will mean I can't work in ICORE so I may have to leave before it comes into effect in a few weeks."

> Text (12/01/2017) from Jim Ellis to Martin Krezalek: "Have had some personal clarity on how I can make ICORE work and work with it without the perception I am in it. Huge maneuver to make it happen but a number of pieces in play now."

> Text (12/01/2017) from Jim Ellis to Martin Krezalek: "Am maneuvering the new Chair. When she is comfortable and I am good that ICORE will be supported I will move on the next CEO...Also have clarity on a change to ICORE governance that will allow me to work there without any perception issues. Basically the advisory services should be outside ICORE but with a clear linkage. I could build this out as a boutique advisory company."

In late 2017, the plan for ICORE continued, as evidenced by a text (10/11/2017) from Jim Ellis to Martin Krezalek: "No worries on Jennifer. My intent is to continue to keep her as the champion for ICORE. Keeps my public separation."

It is of interest to note that, in December, 2017, Jim Ellis stopped attending ICORE-DP leadership team meetings, just at the point in time when he became subject to s.23.925 of the Conflicts of Interest Act.

And, as further shown in a Jim Ellis text (02/25/2018): "As I've said I am completely onside with your preferred plan for a CEO Money coming in slowly so decided to do in house development ICORE Development team project AER to backstop ICORE until money to be independent."

Over a period from December of 2017 to March of 2018, the AER and SAIT were engaged in an agreement to develop two courses. The two courses were licensed to ICORE Energy Services (NFP) by the AER for $337,530 in April, 2018. The agreed upon amount was to be paid by December, 2018 and was paid in September, 2018. Jennifer Steber signed the agreement on behalf of the AER and Jim Ellis signed for ICORE Energy Services (NFP).

In February of 2018, Mexico and ICORE Energy Services (NFP) contracted that ICORE Energy Services (NFP) would provide training to Mexico and these two courses were used in that training. The funds owing under the Mexican agreement were paid to ICORE Energy Services (NFP) between April 13 and September 19, 2018 and totalled $2,321,925.18. While the licensing fee, owing by ICORE Energy Services (NFP) to the AER, was paid after the funds were received, there do not appear to have been any other payments for the AER time and resources used and the ICORE Energy Services (NFP) financial statements show no liabilities to the AER.

In early 2018, Jim Ellis explored two other approaches to his involvement with ICORE while waiting for the Mexican and other funding.

One idea was to have Mark Taylor transition to COO of the AER, working on day-to-day operations, with Jim Ellis to remain as the CEO of the AER, working on strategy and the international file.

Another idea that surfaced was for Jim Ellis to retire as CEO, have Mark Taylor appointed as CEO but Jim Ellis stay on contract with the AER as an Executive Advisor to deal with international work, including ICORE.

> Text (02/25/2018) from Jim Ellis to Mark Taylor: "...Two options- move you up as COO to do the day job and I retain CEO to do the strategic and national/international level. Other option is to step back from CEO and focus outside Alberta in support of CEO and AER. You know the option I am pushing is option 2."

In February of 2018, the AER legal branch lawyers were beginning to raise objections to doing ICORE Energy Services (NFP) legal work. This continued until April, 2018, by which time Patricia Johnston was doing the work herself, as her staff would not. She was already doing all the corporate documents, including the minute book, for ICORE Energy Services (NFP).

> Text (02/09/2018) from Patricia Johnston to Jim Ellis: "Jim after today I cannot continue to dedicate the same level of time I have to this file. As you know this has consumed many many hours of my time. I have tried to delegate down ICORE project related tasks down only to have it delegated back up for reasons I will share in person. This file has been the most stressful, difficult and unenjoyable I have encountered in a very long time."

The AER had a program called ONESTOP. ONESTOP is an AER hosted platform that includes underlying software and hardware. It includes software from third parties. It was said to be "an integrated risk-informed regulatory approach". Jim Ellis and the others closely associated with ICORE Energy Services (NFP) wanted to license ONESTOP to the Ukraine. In doing so, they wanted it first licensed to ICORE Energy Services (NFP), which would allow ICORE Energy Services (NFP) to make the arrangements with the Ukraine, resulting in income to ICORE Energy Services (NFP).

It was mentioned in a text regarding ONESTOP sent by Jim Ellis in November of 2017: "I am not going to give it away to the world or GOA".

An email from Jennifer Steber to Jim Ellis on November 25, 2017 indicates that the idea was to commercialize ONESTOP and have it marketed and sold by ICORE Energy Services (NFP) under a revenue sharing agreement.

Text (02/14/2018) from Jim Ellis to Martin Krezalek: "key was to recognize ICORE as the third party agent and that we don't want AER running around monetizing this. Key will be to keep this away from GOA."

The AER legal department was asked to do a legal opinion on commercializing ONESTOP. It took the position that the AER did not own the underlying intellectual property of ONESTOP and could not license it. Jim Ellis was not satisfied with the answer and asked the AER legal department to get an outside opinion. That opinion agreed with the assessment of the legal department. There is no indication that the legal department knew of the plan to have ICORE Energy Services (NFP) do the commercialization of ONESTOP. Jim Ellis was of the view that the AER law branch was an impediment or obstacle. Members of the law branch were concerned that not supporting ICORE would have adverse career consequences.

When the AER legal department started to push back on doing ICORE Energy Services (NFP) legal work and said ONESTOP could not be commercialized, Jim Ellis approached Patricia Johnston and, under the guise of succession planning, suggested she step down as Executive Vice President, Law and General Counsel of the AER at the end of June, 2018. It was well known that she intended to retire in January, 2019. She pushed back and finally an arrangement was made that she would step down at the end of August, 2018 but would stay working until her preferred retirement date.

Jennifer Steber was seconded to work on ICORE as an AER employee on May 2, 2018, as the Executive Lead, ICORE.

Zeeshan Syed left the AER and became a full time contractor of ICORE Energy Services (NFP) in July of 2018. He moved to Toronto and invoiced ICORE Energy Services (NFP) on a monthly basis. In September, 2018, ICORE transferred some of the money from the Mexican contract into a separate account to guarantee two years' payments for Mr. Syed.

6. Questions raised about ICORE

Jim Ellis met with Marcia Nelson, Deputy Minister, Executive Council on August 18, 2018, on other issues. He briefed her on ICORE and told her to ignore any complaints that she heard. He emphasized that it was a not-for-profit and not funded by government. She had not heard of ICORE before that meeting. Jim Ellis mentioned that he possibly would be retiring by Christmas and thought that he might consult.

On August 21, 2018, the Chair of the AER Board, Sheila O'Brien, met with the Minister of Energy, Hon. Margaret McCuaig-Boyd. The meeting had been called for other purposes but the Minister raised an anonymous communication she had received about ICORE. After the meeting with the Minister, Sheila O'Brien had a two-hour meeting with Jim Ellis, Patricia Johnston and Mark Taylor to discuss ICORE. She asked that the Board be given an extensive briefing on ICORE.

In early September, 2018, Zeeshan Syed was still optimistic about the future of ICORE, as evidenced in a text (09/04/2018) from him to Jim Ellis: "...As you said the other day AER doesn't own the ICORE brand, worst case we spin it off but I'm sure we'll be good. ..."

An AER Board meeting was held on September 13, 2018 to discuss ICORE. After a presentation and discussion, the following resolution was passed: "On motion by Mr. Lambert and seconded by Mr. Fleck, the board unanimously confirmed its support to continue efforts to develop the ICORE concept/model and business strategy regarding

training, peer to peer learning, and innovation/research and development. Staff will report the results of ICORE strategy session and to come back to the board in December."

There was no mention to the Board that Mr. Ellis was the sole director of ICORE Energy Services (NFP) or of his plans for a future with that entity in some way or other.

Text (09/28/2018) from Jim Ellis to Mark Taylor: "Just finished long day on ICORE. Getting very complicated on a good way. Told Jennifer I can't do both. She is thinking I am giving up ICORE for the AER. You know it's the opposite. I told her I would figure all this out by end Oct."

In October, 2018, the AER Board Chair, Sheila O'Brien, advised Jim Ellis that an ethics complaint had been made and that he was going to be subject to an investigation.

His response is found in a text (10/09/2018) to Zeeshan Syed "... this is very disappointing for me personally as it might impact my relationship with ICORE initially going forward. You can't mention this to anyone as there are lawyers involved. Fuck..."

Mr. Ellis was in discussions with McKinsey, a management consulting firm, at this time. While he stated, during his interview, that any discussion of future employment with them did not involve ICORE, the texts tell another story:

> Text (10/23/2018) from Jim Ellis to Zeeshan Syed: "Does McKinsey see this opportunity and do they think they can work in this space. The regulatory work we have succeeded in is applicable across all sectors. I am a known commodity for leading these initials. You need to get them to understand your role as the relationship builder and maintainer-ExMexico and what happened with Deloitte. They should get this. I will, also push this from my perspective..."
>
> Text (10/23/2018) from Zeeshan Syed to Jim Ellis: "...first move into McKinsey should be you – you are centrepiece, then hopefully I can slide in behind you, I'm

already outside AER so forgotten there which is good - can move with speed. Once we ensure McKinsey understands the idea and they are good with building this practice out, we can leverage other folks like them and Bras etc to. I would keep all McKinsey talk very quiet until then."

By the end of October, 2018, it seemed to become apparent that ICORE could no longer be pursued. In a text sent on 10/27/2018 from Jim Ellis to Zeeshan Syed:

"If they get interested and offer you something, I would drop ICORE. I think in the end that Kim's actions may have killed it in the medium term, not the next couple of years. You have two years of guaranteed salary to wait to get this next opportunity going. I really think again McKinsey will be moving fast to capitalize on this so if they get it they will come calling."

On November 4, 2018, Jim Ellis indicated to Sheila O'Brien that he was leaving the AER right away, rather than at the end of January, 2019, as he had previously given notice. He stated that Mark Taylor was going to be acting CEO. Sheila O'Brien responded that Mr. Ellis had no authority to determine the interim CEO and that the Board would make any such appointment. As previously noted, Mr. Ellis' plan had been for Mark Taylor to succeed him so that there would be internal continuing support in the AER for ICORE.

It is clear from numerous comments throughout the text messages about FOIP and sanitizing emails and expense accounts that there was an intention to not be forthright about the roles of Jim Ellis, Zeeshan Syed and Martin Krezalek with respect to ICORE. For example, text (11/12/2018) from Jim Ellis to Zeeshan Syed: "For the BS on Corey, I looked at my ICORE email. Absolutely nothing there. We did a good job using phone and text to discuss things…"

Findings

It is clear from the facts that Mr. Ellis, from the inception of ICORE forward, was in conflict of interest and that he failed to disclose that conflict. The primary motivation behind ICORE Energy Services (NFP) was to create future employment or remuneration for Mr. Ellis. He thus furthered his private interests in breach of s.5.3 of the AER Conflict of Interest Policy and Procedures.

He also used significant AER resources to carry out his plan contrary, to s. 9 of the AER Conflict of Interest Policy and Procedures.

Recommendations

As Mr. Ellis has resigned from the AER, I make no recommendations with respect to him,

However, the Ethics Committee of the AER should investigate all members of the ICORE-DP leadership team and Mark Taylor, Martin Krezalek, Stacey Schorr and Tyson Flynn to ascertain if any of them were in breach of the AER Conflict of Interest Policy and Procedures in respect of their conduct related to ICORE, in general, and ICORE Energy Services (NFP).

Hon. Marguerite Trussler, Q.C.
Ethics Commissioner