Form 27

[Rules 6.3 and 10.52(1)]

Clerk's Stamp

CLERK OF THE COURT
FILED
MAY 02 2017
JUDICIAL CENTRE
OF CALGARY

COURT FILE NUMBER	1701-03460
COURT	COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE	CALGARY
APPLICANT/RESPONDENT	ALBERTA ENERGY REGULATOR
RESPONDENT/APPLICANT	LEXIN RESOURCES LTD.
DOCUMENT	**APPLICATION BY LEXIN RESOURCES LTD. FOR LEAVE TO AMEND THE STATEMENT OF DEFENCE AND TO PROCEED WITH A COUNTERCLAIM**
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	GROIA & COMPANY Professional Corporation ■ Lawyers 365 Bay Street, Suite 1100 Toronto, Ontario M5H 2V1 Fax: 416-203-9231 Joseph Groia, LSUC # 20612J Tel: 416-203-4472 Bonnie Roberts Jones, LSUC # 41265L Tel: 416-203-4476

NOTICE TO RESPONDENTS:

Alberta Energy Regulator,
Grant Thornton Limited as the Receiver of
Lexin Resources Ltd. and
Service List, Appendix "A" to this Application

This application is made against you. You are a respondent. You have the right to state your side of this matter before the master/judge.

To do so, you must be in Court when the application is heard as shown below:

Date:	**May 4, 2017**
Time:	**10:00 a.m.**
Where:	**Calgary, Alberta**
Before Whom:	**The Honourable Justice Jeffrey**

Go to the end of this document to see what else you can do and when you must do it.

Remedy claimed or sought:

1. Lexin Resources Ltd. ("Lexin") seeks an Order:

    a. permitting Lexin to amend its Statement of Defence in the within action in the form attached hereto as Schedule "A";

    b. lifting the stay of the proceedings for the limited purpose of permitting Lexin to commence and proceed with a counterclaim against the Alberta Energy Regulator ("AER") (the "Counterclaim") in the form attached hereto as Schedule "B";

    c. if the relief in (a) and/or (b) is granted, directing the receiver to pay to counsel for Lexin reasonable amounts from time to time on account of its fees incurred in connection with the defence of the action and/or prosecution of the counterclaim;

    d. declaring service of this Application good and sufficient and abridging the time for notice of this Application to the time actually given, if necessary;

    e. costs of this Application; and

    f. such further and other relief as counsel may advise and this Honourable Court may deem just.

Grounds for making this application:

2. On March 13, 2017, the AER filed an Amended Statement of Claim against Lexin in this proceeding;

3. On the same day, March 13, 2017, the AER filed an application for the appointment of a receiver over Lexin's property returnable on March 15, 2017;

4. In the morning of March 20, 2017, Lexin provided an unfiled copy of its Statement of Defence and Counterclaim to counsel for the AER;

5. In the morning of March 20, 2017, the Honourable Justice P.R. Jeffrey made an order appointing Grant Thornton Limited as the Receiver over all of Lexin's current and future assets, undertakings and properties (the "Receivership Order");

6. Paragraph 10 of the Receivership Order imposes a general stay of proceedings against

Lexin or its Property as defined in the Receivership Order "except with the written consent of the Receiver or with leave of this Court";

7. Lexin filed and served its Statement of Defence in this proceeding on March 20, 2017;

8. Lexin now applies to this Court seeking leave to lift the stay of the proceedings for a limited purpose of amending its Statement of Defence and permitting Lexin to proceed with its Counterclaim against the AER;

9. The AER will suffer no prejudice if the Statement of Defence is amended;

10. There are good grounds for Lexin's Counterclaim; the Counterclaim is not frivolous or vexatious;

11. If the stay is not lifted for this limited purpose, Lexin will suffer significant prejudice, including an inability to prosecute a significant claim and risks of dissipation of Lexin's assets;

12. The Receiver was appointed upon the application of the AER and as such has a conflict of interest in respect of the AER;

13. The Receiver has not yet consented to allow Lexin to proceed with its Counterclaim against the AER or to pursue the Counterclaim on behalf of Lexin but in any event, given the conflict, should not be involved in the litigation between Lexin and the AER, at whose behest it was appointed;

14. Fairness and equity requires that Lexin be represented by counsel it chooses in relation to its defence and counterclaim. Lexin is entitled to have legal fees incurred in connection with the defence and counterclaim paid out of the estate;

15. Such further and other grounds as counsel may advise and this Honourable Court may permit.

Material or evidence to be relied on:

16. Affidavit of Michael Smith, sworn May 2, 2017;

17. Statement of Defence of Lexin Resources Ltd, filed on March 20, 2017 and other pleadings and proceedings in this action;

18. Proposed Fresh as Amended Statement of Defence of Lexin Resources Ltd.;

19. Proposed Counterclaim of Lexin Resources Ltd.; and

20. Such further and other materials as counsel may advise and this Honourable Court may permit.

Applicable rules:

21. Rules 1.3, 3.56, 3.65, 6.3, 6.4, 11.27, 11.29 and 13.5 of the Alberta *Rules of Court*, AR

124/2010; and

22. Such further and other Rules as counsel may advise.

Applicable Acts and regulations:

23. Sections 5(3)(i) and 8 of the *Judicature Act*, RSA 2000, c J-2;

24. Such further and other Acts and regulations as counsel may advise.

Any irregularity complained of or objection relied on:

25. None

How the application is proposed to be heard or considered:

26. In person.

WARNING

If you do not come to Court either in person or by your lawyer, the Court may give the applicant(s) what they want in your absence. You will be bound by any order that the Court makes.

If you want to take part in this application, you or your lawyer must attend in Court on the date and at the time shown at the beginning of the form. If you intend to give evidence in response to the application, you must reply by filing an affidavit or other evidence with the Court and serving a copy of that affidavit or other evidence on the applicant(s) a reasonable time before the application is to be heard or considered.

APPENDIX 'A'

COURT FILE NUMBER	1701-03460
COURT	COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE	CALGARY
APPLICANT/ RESPONDENT	**LEXIN RESOURCES LTD.**
RESPONDENT/ APPLICANT	**ALBERTA ENERGY REGULATOR**
DOCUMENT	**SERVICE LIST**
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	GROIA & COMPANY Professional Corporation Lawyers 365 Bay Street, Suite 1100 Toronto, ON M5H 2V1 Facsimile: (403) 266-1395 Telephone: (416) 203-4476 Joseph Groia, LSUC #20612J Telephone: (416) 203-447232 Bonnie Roberts Jones, LSUC #41256L Counsels for the Applicants, Lexin Resources Ltd.

COMPANY	ADDRESSES	COMMENTS
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MFC Energy Finance Inc./ MFC Bancorp Ltd.	1860 - 400 Burrard Street Vancouver, BC V6C 3A6	Mr. Ronald will give me a call back to confirm whether they want documents.
Taqa North	Attention: Doreen Brown 2100-308 4 Avenue SW Calgary, AB T2P 0H7	Doreen.brown@taqa.ca
Marquinn Industries Ltd.	Attention: Harvey Martin 7115 Sparrow Drive Leduc, AB T9E 7L1	harveymartin@marquinn.com
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Her Majesty the Queen in Right of Alberta	c/o Service Alberta Crown Debt Collections, 1100-10830 Jasper Avenue, 8th Floor John E. Brownlee Building Edmonton, AB T5J 2B3	katherine.powers@gov.ab.ca
Deloitte Management Services LP	Thomas Gusa c/o Miller Thomson LLP 2700 Commerce Place 10155 102 Street Edmonton AB T5J 4G8 tgusa@millerthomson.com	
Municipal District of Ranchlands No. 66	PO Box 1060 Nanton, AB TOL 1RO	Send to both: Greg Brkich, C.A.O. cao@ranchland66.com Municipal District's solicitor as well at: Julie V. Shepherd jshepherd@mltaikins.com
Vulcan County	Greg Plester c/o Brownlee LLP 396 11 Ave SW Calgary, AB T2R OC3 gplester@brownleelaw.com	
Enerflex Ltd.	10121 Barlow Trail NE Calgary, AB T3J 3C6	sali@enerflex.com
Municipal District of Willow Creek No. 26	Attention: Joanne Hannah 26 Highway 520 W Claresholm, AB TOL OTO	Finance@mdwillowcreek.com
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AltaGas Processing Partnership	Attention: Isla Tejada 1700, 355-4 Avenue SW Calgary, AB T2P 0J1	Ilsa.tejada-oreilly@altagas.ca
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Alberta Treasury Branches	Attention: Alex Corbett 600-444 7 Avenue SW Calgary, AB T2P OX8 acorbett@atb.com	
MFC Acquisition Inc., As Administrative Agent	1000 925 W. Georgia Street Vancouver, BC V6C 3L2	Attention: Samuel Morrow smorrow@mfcint.com
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Caledonian Royalty Corporation (A684)	2200-300 5 Avenue SW Calgary, AB T2P 3C4 Attention: David.horn@caledonianrovalty.com Charles@selbypro.com	
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President Coastal Resources Limited (OPR1)	1400-520 5 Avenue SW Calgary, AB T2P 3R7 rlakhoo@coastal.ab.ca	
President ConocoPhillips Canada Resources Corp. (A5G3)	1600-401 9 Avenue SW Calgary, AB T2P 2H7 regulatoryaffairsmailbox@)conocophillips.com	
President Crescent Point Energy Corp. (A2J6)	2000-585 8 Avenue SW Calgary, AB T2P 1G1 regu latory@crescentpointenergv.com	
President Ember Resources Inc. (A1H9)	800-400 3 Avenue SW Calgary, AB T2P 4H2 tzuorro@emberresources.com	

President Encana Corporation (0026)	500 Centre Street SE Calgary, AB T2G 1A6 Dawn.cochrane@encana.com	
President Exxon Mobil Canada Ltd. (0057)	505 Quarry Park Boulevard SE Calgary AB T2C 5N1 Ashley.l.laycraft@esso.ca	
President Houston Oil & Gas Ltd. (A74H)	800-903 8 Avenue SW Calgary, AB T2P OP7 mark@houstonoil.ca	
President Husky Oil Operations Limited (OR46)	707 8 Avenue SW Calgary, AB T2P 3G7 PO Box 6525 Stn D Husky.regulatory@huskyenergy.ca	
Penner Interwest Petroleums Ltd.	Ms. Nancy Penner c/o Parlee McLaws LLP 3400-150 6 Avenue SW Calgary, AB T2P 3Y7	npenner@parlee.com Spoke with Nancy Penner of Interwest Pet. And she advised on April 28, 2017 that the wish not to receive any documents unless asked.
President Lochwest Resources Ltd. (OMG8)	700 9th Avenue SW, Suite 1900 Calgary, AB T2P 4B3	
President Murphy Canada Exploration Company (OMY7)	555 4 Avenue SW, Suite 2100 Calgary, AB T2P 3E7 Gaye_marshall@murphyoilcorp.com	
President New North Resources Ltd. (OCZ4)	320-700 4 Avenue SW Calgary, AB T2P 3J4 Pradeep@new-north.com	
President Omers Energy Inc. (A08E)	3000-520 3 Avenue SW Calgary, AB T2P OR3 Jessica.gregorash@omersenergy.com	
Mr. Paul Bothwell Pengrowth Energy Corporation (A5R5)	2100-222 3 Avenue SW Calgary, AB T2P OB4 Paul.bothwell@pengrowth.com	

President Penn West Petroleum Ltd. (OBP8)	200-207 9 Avenue SW Calgary, AB T2P 1K3 regulatory@pennwest.com	
President ConocoPhillips Canada Resources Corp. Formerly Phillips Petroleum Canada Ltd. (0945)	1600-401 9 Avenue SW Calgary, AB T2P 2H7	Attention: Sally (Executive Assistant) Sally.rotlisberger@conocophillips.com
President Pine Cliff Energy Ltd. (A1GR)	850-1015 4 Street SW Calgary, AB T2R 1J4 tmcneill@pinecliffenergy.com hisidoro@pinecliffenergy.com	
R.W. Berry Canada, Inc.	Pat Maguire c/o Bennett Jones LLP 840 7 Avenue SW, 1255 Calgary, AB T2P 3G2	
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President Prospex Resources Ltd. (A120)	c/o Paramount Resources Ltd. (04W4) 4700-888 3 Street SW Calgary, AB T2P 5C5	
President Signalta Resources Limited (OR89)	700-840 6 Avenue SW Calgary, AB T2P 3E5 Angela.meister@signalta.com	
President Southern Pacific Energy Ltd. (A5A6)	Rick Osuna 550 6 Avenue SW, 430 Calgary, AB T2P 0S2 rick.f.osuna@ca.owc.com c/o PricewaterhouseCoopers Inc. in its capacity as Court appointed Receiver of Southern Pacific Energy Ltd. and not in its personal capacity	
President Stockwork Properties Ltd. (OEN3)	501-888 4 Avenue SW Calgary AB T2P OV2 dmdixon@telus.net	
President Sutton Energy Ltd. (OM9E)	450-736 8 Avenue SW Calgary, AB T2P 1H4 B_gough@shaw.ca	

Michael Bolianatz TAQA North Ltd. (A2TG)	2100-308 4 Avenue SW Calgary, AB T2P OH7 regulatoryaffairs@taqa.ca	
President Tamarack Valley Energy Ltd. (A04N)	600-425 1 Street SW Calgary, AB T2P 3L8 Deb.kniss@tamarackvalley.ca	
President Trident Exploration (Alberta) Corp. (A663)	1000-444 7 Avenue SW Calgary, AB T2P OX8 phawke@tridentexploration.ca	
President Westhill Petroleum Ltd. (OEX2)	260-435 4 Avenue SW Calgary, AB T2P 3A8	
President Zargon Oil & Gas Ltd. (OMP9)	700-333 5 Avenue SW Calgary, AB T2P 3B6 rdoetzel@zargon.ca	
President 6058931 Canada Inc.	1650-801 6, Avenue SW Calgary, AB T2P 3W2 6058931_operations@questerre.com	
President Dauntless Energy Inc. (A6H3)	1410-606 4 Street SW Calgary, AB T2P 1T1	
President Freehold Royalty Trust	400-144 4 Avenue SW Calgary, AB T2P 3N4	reception@rife.com
President Bounty Developments Ltd. (OHP8)	1250-340 12 Avenue SW Calgary, AB T2R 1L5 Kelly@bountydev.com	
President The Paddon Hughes Development Co. Ltd. (OD74)	940-1122 4 Street SW Calgary, AB T2R 1M1 waldyk@paddonhughes.com	
President Bearspaw Petroleum Ltd. (ONL1)	5309-333 96 Avenue NE Calgary, AB T3K OS3 gschermers@bearspawpet.com	
President Canadian Freehold Consulting (1991) Ltd.	47 Edgehill Crescent NW Calgary, AB T3A 2X5	
President Chessor Holdings Ltd.	460 30 Ave Avenue NW Calgary, AB T2M 2N4	Greg Chessor – on April 28, 2017, don't want to receive documents in this matter as they sold and wish to be removed, as he was just an investor (5%) in the well.
President Copper Creek Gold Corp.	710 750 West Pender Street Vancouver, BC V6C 2T7	Spoke with Stan Loh on April 28, 2017, he doesn't want to receive any documents pertaining to this matter.

President Country Rock Resources Ltd. (A2BY)	79 Windmill Way Calgary AB T3Z 1H5 Not finding this company online – as at April 28,2017
President Direct Energy Marketing Limited (ORC3)	PO Box 4335 Stn C Calgary AB T2T 4K3 catherine.hiscocks@centrica.com
President Long Term Asset Management Inc. (A6JF)	925 Veterans Boulevard NW Airdrie, AB T4A 2G6 maugust@ltam.ca
President Newbert Petroleum Engineering Ltd. (OZ8W)	840 6 Ave Sw 300 Calgary, AB T2P 3E5 Cannot get through to the number on the internet
President Scotia Oils Limited (ODK9)	1164-7620 Elbow Drive SW, Calgary, AB T2V 1K2
President Roseland Development Ltd. (OM21)	602 25 Avenue SW Calgary, AB T2S OL6 The Contact detail on the internet is outdated as 403-245-5003 is home phone belonging to someone else.
President Westhill Resources Limited (OT49)	300 5 Richard Way SW Calgary, AB T3E 7M8 wrltd@telus.net
President 264646 Alberta Ltd.	4943 50 Street, 4th Floor Red Deer AB T4N 1Y1

Christa Nicholson Counsel for Alberta Energy Regulator	**The Alberta Energy Regulator** c/o JSS Barristers & Solicitors 304 – 8 Avenue SW, Suite 800 Calgary, Alberta T2P 1C2 **Attention: Christa Nicholson**		*nicholsonc@jssbarristers.ca*
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Sarah Gregory BC Oil & Gas Commission	BC Oil and Gas Commission PO Box 9331 Stn Prov Govt,		Sara.Gregory@bcogc.ca

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Patricia Johnston Keely Cameron Counsel for the AER	Alberta Energy Regulator 1000-250 5 Street SW Calgary AB T2P OR4	403-476-9381 Fax 403-297-7031	Patricia.johnston@aer.ca Keely.cameron(@aer.ca
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Schedule « A »

COURT FILE NUMBER	1701-03460
COURT	COURT OF QUEEN'S BENCH ALBERTA
JUDICIAL CENTRE	CALGARY
PLAINTIFF/DEFENDANT BY COUNTERCLAIM	ALBERTA ENERGY REGULATOR
DEFENDANT/PLAINTIFF BY COUNTERCLAIM	LEXIN RESOURCES LTD.
DOCUMENT	**FRESH AS AMENDED STATEMENT OF DEFENCE**
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	GROIA & COMPANY Professional Corporation • Lawyers 365 Bay Street, Suite 1100 Toronto, Ontario M5H 2V1 Fax: 416-203-9231 Joseph Groia, LSUC #20612J Tel: 416-203-4472 Bonnie Roberts Jones, LSUC # 41256L Tel: 416-203-4476

Statement of Facts Relied On:

1. The Defendant, Lexin Resources Ltd. ("Lexin" or the "Defendant") admits the allegations contained in paragraphs 1-2, 6-8, 11, 15-17, 30, 36 of the Amended Statement of Claim.

2. The Defendant has no knowledge or insufficient knowledge with respect to the allegations contained in paragraphs 14 and 20-21 of the Amended Statement of Claim.

3. Unless specifically admitted, the Defendant denies all other allegations contained in the Amended Statement of Claim.

4. As is set out in more detail below, the commencement of this action is just the last in a series of steps taken by the Alberta Energy Regulator ("AER") that are malicious, *ultra vires* its authority, in bad faith and designed to destroy Lexin.

5. Lexin states that it does not owe the AER $1,076.251.18 as alleged in the Amended Statement of Claim, or any other amounts by the AER.

6. Lexin disputes the AER's entitlement to the appointment of a receiver over all of its current and future assets, undertakings and properties, or at all.

Any Matters that Defeat the Claim of the Plaintiff:

History of the AER and the Regulation of the Oil Gas Industry in Alberta

7. The province of Alberta has been regulating the oil and gas industry for at least 75 years. The first regulatory body, called the Petroleum and Natural Gas Conservation Board, was created in 1938 and it has existed under several names since, including the Alberta Oil and Gas Conservation Board, the Alberta Energy and Utilities Board, and most recently, the Alberta Energy Resources Conservation Board.

8. In December 2012, the *Responsible Energy Development Act* (the "REDA") was passed by the Alberta Legislature. The REDA established the Alberta Energy Regulator (the "AER") and on June 17, 2013, all regulatory functions previously carried out by the Energy Resources Conservation Board were taken over by the AER, an entirely new organization with new regulatory functions and authority over energy-related applications and developments.

9. The AER is responsible for all energy projects in the province, from application to reclamation, with the authority to administer, among other enactments, the *Oil and Gas Conservation Act* (the "OGCA"), the *Pipeline Act*, the *Public Lands Act*, the *Environmental Protection and Enhancement Act*, the *Mines and Minerals Act* and the *Water Act*. The AER is now the single regulator for energy development in Alberta; it enforces environmental laws and issues environmental, oil and gas, pipelines and other permits for energy developments.

10. The mandate of the AER is to provide for the safe, efficient, orderly, and environmentally responsible development of energy resources in the province of Alberta. The Alberta government created the AER in response to concerns from stakeholders – in particular, oil and gas companies – who were experiencing inconsistent compliance response and uncertainty under the old regime. The AER was to effect change in terms of providing a more efficient, consistent and certain regulatory regime so as to ensure that stakeholders are given the best possible chance of success within this regime.

11. The AER regulates approximately 181,000 active wells, more than 50,000 oil and gas facilities, and 415,000 km (258,000 mi) of pipelines.

12. No one in Alberta can construct or operate a facility or drill a well without a license from the AER. A license can only be granted by the AER to a person or a company (a "Licensee") who complies with certain requirements under the OGCA and its regulations.

13. The AER is funded by the Alberta energy industry and it is authorized to collect funds through an administrative fee levied on oil and gas wells, oil sand mines, and coal mines. The AER's existence, therefore, depends upon the collection of these fees, as well as the fines it imposes upon Licensees for non-compliance.

14. In addition, an Orphan Fund Levy is assessed and collected by the AER from oil and gas industry participants in Alberta, who fund the majority of the costs incurred by the Orphan Well Association (the "OWA"). The OWA manages the abandonment of Alberta upstream oil and gas orphan wells, pipelines, facilities and the reclamation of their associated orphan sites. An "orphan" is a well, pipeline, facility or associated site which has no legally responsible or financially able party to deal with its abandonment and reclamation.

15. A Licensee's annual Orphan Fund Levy is based upon its proportionate share of sector liability as determined by the Licensee Liability Rating (the "LLR"), which reflects a ratio of the Licensee's deemed assets and liabilities.

Corporate Structure of the Defendant and other Related Parties.

16. 0989 Resources Partnership ("0989 Resource) is a partnership formed and registered under the laws of British Columbia.

17. Lexin is a partner of 0989 Resource. It is a company incorporated under the British Columbia *Business Corporations Act.* Lexin is extra-provincially registered in the Province of Alberta and is a Licensee under the OGCA and the *Pipeline Act* in relation to certain wells and pipelines and related infrastructure. 0989 Resource beneficially owns and Lexin is the licensed operator of natural gas and oil wells and related facilities in western Canada.

18. 0989 Resource is a limited partner of LR Processing Partnership ("LR Processing"), which is a limited partnership registered in Alberta. The general partner of LR Processing is LR Processing Ltd. ("LRP Ltd."), a company incorporated in Alberta.

19. On November 25, 2016, LR Processing and its general partner, LRP Ltd., were adjudged bankrupt. They have appealed the bankruptcy.

BACKGROUND AND SUMARY OF CURRENT FINANCIAL DIFFICULTIES

The Mazeppa Gas Processing Plant – Ownership and Operating Structure

20. LR Processing wholly owns and operates the Mazeppa Gas Processing Plant (the "Plant"), a natural gas processing plant located in High River, Alberta. LRP Ltd. owns the lands on which the Plant is located.

21. From June 2003 until January 2014, LRP Ltd., was the Licensee of the Plant. In January 2014, LRP Ltd.'s license was improperly transferred to Lexin by the AER, as is particularized below.

History of the Mazeppa Gas Processing Plant

22. There are over 6,000 sour gas wells and 18,000 kilometres of operating sour gas pipelines in Alberta. Sour gas is a natural, colourless and flammable gas containing

more than 1% hydrogen sulphide. It is processed at approximately 250 plants in Alberta, including more than 50 larger facilities that produce elemental sulphur. The Plant is one of these facilities.

23. The Plant was opened in 1986 and is located in the High River area. It processes both sweet and sour gas.

24. In June 2016, the pipelines at the Plant became temporarily shut in due to a mechanical issue at the Plant. Following an inspection of the Plant by the AER on June 14, 2016, the AER made an order prohibiting the lines from reopening.

25. As a result, the majority of the Plant's 24 employees had to be furloughed at the end of June 2016. The Plant remains shut in.

Improper Transfer of the License for the Plant to Lexin

26. For a number of years, Lexin has been a Licensee under the OGCA in relation to certain wells and pipelines. However, until it was made the Licensee of the Plant in January 2014, Lexin was not involved in and did not hold any license in relation to the Plant.

27. At some point in or before December 2013, certain representatives of the AER approached LRP Ltd. and Lexin and demanded that they submit a license transfer application by which LRP Ltd. would transfer its license for the operation of the Plant to Lexin. The AER threatened to revoke the Plant's license completely if Lexin did not consent to the transfer of the license to Lexin. The AER advised that it was its policy not to allow multiple licensees in the same corporate group when other entities held licenses under the OGCA. The AER took the position that the dual licensing structure which was in place was no longer appropriate purportedly on the basis that there was common management and directors between LRP Ltd. and Lexin.

28. This occurred despite the fact that since Lexin was not a working interest participant in the Plant, it was not legally entitled to hold a licence in relation to the Plant pursuant to the OGCA. Section 17(1) of the OGCA requires a Licensee for a facility in Alberta to be a "working interest participant" in relation to that facility. A "working interest

participant" is defined as "a person who owns a beneficial or legal undivided interest in a well or facility under agreements that pertain to the ownership of the well or facility".

29. Lexin reluctantly, under protest and under the fear of threat from the AER, was coerced by the AER into submitting an application for a license transfer. The license transfer process was undertaken by the AER arbitrarily and without proper consultation with Lexin.

30. At the time the license transfer was forced upon Lexin by the AER, LRP Ltd. was the legal owner of the lands on which the Plant is located and LR Processing owned the Plant. At all relevant times and, in particular, at the time of the Lexin license transfer in January 2014, Lexin did not own any beneficial or legal interest in the Plant. Lexin was not at any relevant time a "working interest participant" in the Plant. As a result, the purported transfer of the license to Lexin was illegal and void and therefore is of no force or effect.

31. The AER's improper and bad-faith conduct against Lexin has continued throughout 2016 and 2017. For example, in a meeting between Lexin and the AER in August 2016, AER staff took the extraordinary position that even if Lexin became fully compliant with all licensing requirements, it could not operate the Plant as it was not an owner or a "working interest participant" in the Plant. This assertion was made by the AER while it simultaneously continued to assert that Lexin was the proper Licensee.

32. Lexin has disputed its status as Licensee in relation to the Plant and the amount of its liability to the AER (the Dispute"). Lexin has repeatedly advised the AER that the Liability Management Rating ("LMR") attributed to Lexin is incorrect and improper as it is based on the flawed treatment of Lexin as the licensee of the Plant. Lexin has informed the AER that the resulting incorrect LMR calculation was damaging the company's business and "severely crippling" its ability to operate its business and execute its business plans. The Dispute has materially adversely affected Lexin's operations, liquidity and access to capital.

33. As a result of the AER's garnishment orders and other actions stemming from the improper treatment of Lexin as the Licensee of the Plant, Lexin has had cash flow difficulties and has been unable to pay its creditors and comply with the AER notices, directions and orders. The AER's deeming of Lexin as the licensee has also resulted in significant additional fees being charged by the AER in relation to its administrative and orphan well fund levies.

34. In connection with the Dispute, the AER has issued a number of notices and orders against Lexin and its directors and officers, including, but not limited to:

a) Notices of Garnishment in respect of Lexin's purported debt to the AER;

b) Closure Order suspending activities at all of Lexin's operational well, facility and pipeline licenses;

c) Environmental Protection orders pursuant to the *Environmental Protection and Enhancement Act*; and,

d) Declarations pursuant to section 106 of the OGCA naming Michael Smith, Robert Jennings and Jasmina Cezek as "persons directly or indirectly in control of a "licensee" that has failed to comply" with certain AER Orders (the "Declarations").

35. Lexin has attempted to engage in a constructive dialogue with the AER on a number of occasions, including:

a) On July 12, 2016, Lexin raised, among other things, the fact that the AER's calculation of Lexin's LMR was incorrect and that Lexin was not a "working interest participant" in the Plant, within the meaning of the OGCA, and was therefore not the proper Licensee of the Plant.

b) On August, 2, 2016, Lexin wrote to the AER and advised, among other things, that the Plant is owned by LR Processing, that LRP Ltd. holds title to the assets comprising the Plant on behalf LR Processing and has held title to the Plant continuously since 2003. Lexin asked the AER to recognize LRP Ltd. as the lawful Licensee of the Plant under the OGCA and to correct the LMR rating to remove the $26.8 million of liabilities incorrectly attributed to Lexin in connection with the Plant.

c) On September 22, 2016, while maintaining its position that it was not the proper Licensee, Lexin submitted to the AER a reasonable proposal for a payment plan in relation to the Orphan Well Levy and administrative fees that the AER claimed were owing.

d) On December 2, 2016, Lexin made a proposal to try and resolve the Dispute. The proposal contained 3 main components:

   a. the AER issue abandonment orders with respect to Lexin's sour gas wells;

   b. the AER release the garnishment orders issued with distribution of funds received from counterparties being split 70% to the AER on account of Lexin's purported liabilities and 30% to Lexin; and,

   c. Lexin be permitted to restart production on shut-in wells and distribute funds from such restarted production on the basis of 70% to the AER on account of Lexin's purported liabilities and 30% to Lexin.

e) On January 31, 2017, Lexin delivered a letter to the AER following up on the proposal set out in its December 2, 2016 letter. Lexin advised in this letter that because of the Dispute and the AER's actions, it was "not sure that [it] will be able to continue to provide proper health and safety overview and measures for the sour wells, particularly beyond February 15, 2017." Lexin expressed its concern that the situation created serious health and safety risks for all concerned.

36. On February 6, 2017, the AER responded to Lexin and rejected the proposals set out in the December 2, 2016 and January 31, 2017 letters. Instead, the AER, in breach of its statutory duties, has continued a course of conduct designed to destroy Lexin's ability to operate its business. This course of conduct includes, but is not limited to the issuance

of a Closure order issued February 14, 2017 suspending all of Lexin's operations and licenses, and has culminated in the AER's decision to commence the within proceeding.

37. The AER has acted *ultra vires* its authority under the OGCA, and in an arbitrary and high-handed manner. The AER's improper actions have impeded Lexin's ability to operate as a going concern.

Remedy Sought:

38. Lexin respectfully requests that the AER's claim be dismissed with solicitor and client costs of the action against the AER.

Schedule « B »

COURT FILE NUMBER	1701-03460
COURT	COURT OF QUEEN'S BENCH ALBERTA
JUDICIAL CENTRE	CALGARY
PLAINTIFF/DEFENDANT BY COUNTERCLAIM	ALBERTA ENERGY REGULATOR
DEFENDANT/PLAINTIFF BY COUNTERCLAIM	LEXIN RESOURCES LTD.
DOCUMENT	**COUNTERCLAIM**
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	GROIA & COMPANY Professional Corporation • Lawyers 365 Bay Street, Suite 1100 Toronto, Ontario M5H 2V1 Fax: 416-203-9231 Joseph Groia, LSUC # 20612J Tel: 416-203-4472 Bonnie Roberts Jones, LSUC # 41256L Tel: 416-203-4476

Statement of Facts Relied On:

1. Lexin Resources Ltd. ("Lexin"), the plaintiff by counterclaim, repeats and relies upon the facts pleaded in its Statement of Defence in the main action.

2. The Alberta Energy Regulator ("AER") and Lexin are engaged in a long-standing dispute with respect to, among other things, the proper licensee for the Mazeppa Sour Gas Plant (the "Plant") and the appropriate amount of Lexin's liability to the AER (the "Dispute"). In connection with the Dispute, the AER has issued a number of notices and orders against Lexin, including, but not limited to Notices of Garnishment in respect of Lexin's purported debt to the AER and a closure order suspending activities at all of Lexin's operational well, facility and pipeline licenses.

3. The AER has embarked on a course of action which has materially adversely affected Lexin's operations, liquidity and access to capital, including:

   a. Forcing Lexin to become the licensee of the Plant despite the fact that Lexin is not a "working interest participant", contrary to the requirements of the *Oil and Gas Conservation Act* ("OGCA");

   b. Refusing to remove Lexin as the licensee of the Plant despite repeated requests by Lexin to do so, and despite the AER's knowledge that Lexin is not a "working interest participant" in the Plant as required by the OGCA;

   c. Failing to properly calculate Lexin's Liability Management Rating ("LMR") and the related security deposit claimed owing by the AER from Lexin, contrary to AER Directive 006;

   d. Issuing Declarations pursuant to section 106 of the OGCA against Michael Smith, Jasmina Cezek and Robert Jennings, individuals related to Lexin, despite the AER's knowledge that Lexin is not the proper licensee;

   e. Garnishing Lexin's assets when the AER knew or ought to have known that Lexin was not the proper licensee and that such a garnishing process would make it difficult, if not impossible, for Lexin to carry on business;

   f. Seeking the appointment of a receiver over *all* of Lexin's current and future assets despite alleging a debt of only $1,076,251.18 owing by Lexin, which debt is denied;

   g. Demonstrating a complete unwillingness to issue "dual licenses" to Lexin and LR Processing Ltd. and forcing Lexin to hold the sole license for the Plant in circumstances where other similarly situated companies were treated differently;

   h. Refusing, despite repeated requests, to cooperate with Lexin in managing Lexin's alleged debts to the AER in a manner that would allow Lexin to operate as a going concern; and,

i. In general, exercising its authority in an unfair, high-handed and arbitrary manner in its dealings with Lexin.

4. The AER has acted unlawfully and with an intent to cause harm to Lexin. As a result of the AER's actions, Lexin has suffered damages to its business. In particular, it has been unable to execute its business plans, to properly operate its business, or to complete transactions in order to enhance its liquidity. The acts of the defendants have materially and negatively impacted and threatened Lexin's ability to operate as a going concern.

5. The AER's actions have been undertaken in bad faith, in breach of the AER's statutory duties, and constitute an unlawful interference with Lexin's economic relations.

6. Lexin requests that this counterclaim be tried together with the main action.

Remedy Sought

7. Lexin claims against the AER:

   a. Damages in the amount of $200,000,000, or such other amount to be determined prior to trial;

   b. Punitive and exemplary damages in the amount of $1,000,000 or such other amount as this Honourable Court deems fair and just;

   c. Costs of this action and counterclaim as between solicitor and client on a full indemnity basis; and,

   d. Such further and other relief as this Honourable Court may deem just.

NOTICE TO THE DEFENDANT(S) BY COUNTERCLAIM

You only have a short time to do something to respond to this counterclaim:

20 days if you are served in Alberta

1 month if you are served outside Alberta but in Canada

2 months if you are served outside Canada.

You can respond by filing a statement of defence or a demand for notice to counterclaim in the office of the clerk of the Court of Queen's Bench at Calgary, Alberta, AND serving your statement of defence or a demand for notice to counterclaim on the plaintiff(s) by counterclaim's address for service.

WARNING

If you do not file and serve a statement of defence or a demand for notice to counterclaim within your time period, you risk losing the law suit automatically. If you do not file, or do not serve, or are late in doing either of these things, a court may give a judgment to the plaintiff(s) by counterclaim against you after notice of the application has been served on you.

Schedule « C »

Clerk's Stamp

CLERK OF THE COURT
FILED
MAR 20 2017
JUDICIAL CENTRE
OF CALGARY

COURT FILE NUMBER	1701-03460
COURT	COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE	CALGARY
PLAINTIFF/DEFENDANT BY COUNTERCLAIM	ALBERTA ENERGY REGULATOR
DEFENDANT/PLAINTIFF BY COUNTERCLAIM	LEXIN RESOURCES LTD.
DOCUMENT	**STATEMENT OF DEFENCE**
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	GROIA & COMPANY Professional Corporation ■ Lawyers 365 Bay Street, Suite 1100 Toronto, Ontario M5H 2V1 Fax: 416-203-9231 Joseph Groia, LSUC # 20612J Tel: 416-203-4472 Bonnie Roberts Jones, LSUC # 4 Tel: 416-203-4476

Statement of Facts Relied On:

1. The Defendant, Lexin Resources Ltd. ("Lexin" or the "Defendant") admits the allegations contained in paragraphs 1-2, 6-8, 11, 15-17, 30, 36 and 37 of the Amended Statement of Claim.

2. The Defendant has no knowledge or insufficient knowledge with respect to the allegations contained in paragraphs 14, 20-21 and 31-32 of the Amended Statement of Claim.

3. Unless specifically admitted, the Defendant denies all other allegations contained in the Amended Statement of Claim.

4. As is set out in more detail below, the commencement of this action is just the latest in a series of steps taken by the AER that are malicious, *ultra vires* its authority, in bad faith and designed to destroy Lexin.

Any Matters that Defeat the Claim of the Plaintiff:

History of the AER and the Regulation of the Oil and Gas Industry in Alberta

5. The province of Alberta has been regulating the oil and gas industry for at least 75 years. The first regulatory body, called the Petroleum and Natural Gas Conservation Board, was created in 1938 and it has existed under several names since, including the Alberta Oil and Gas Conservation Board, the Alberta Energy and Utilities Board, and most recently, the Alberta Energy Resources Conservation Board.

6. In December 2012, the Responsible Energy Development Act (the "REDA") was passed by the Alberta Legislature. The REDA established that the Alberta Energy Regulator (the "AER") and on June 17, 2013, all regulatory functions previously carried out by the Energy Resources Conservation Board were taken over by the AER, an entirely new organization with new regulatory functions and authority over energy-related applications and developments.

7. The AER is responsible for all energy projects in the province, from application to reclamation, with the authority to administer, among other enactments, the Oil and Gas Conservation Act (the "OGCA"), the Pipeline Act, the Public Lands Act, the Environmental Protection and Enhancement Act, the Mines and Minerals Act and the Water Act. The AER is now the single regulator for energy development in Alberta; it enforces environmental laws and issues environmental, oil and gas, pipelines and other permits for energy developments.

8. The mandate of the AER is to provide for the safe, efficient, orderly, and environmentally responsible development of energy resources in the province of Alberta. The Alberta

government created the AER in response to concerns from stakeholders – in particular, oil and gas companies - who were experiencing inconsistent compliance response and uncertainty under the old regime. The AER was to effect change in terms of providing a more efficient, consistent and certain regulatory regime so as to ensure that stakeholders are given the best possible change of success within this regime.

9. The AER, which operates independently from the government of Alberta, regulates approximately 181,000 active wells, more than 50,000 oil and gas facilities, and 415,000 km (258,000 mi) of pipelines.

10. No one in Alberta can construct or operate a facility or drill a well without a license from the AER. A license can only be granted by the AER to a person or a company (a "Licensee") who complies with certain requirements under the OGCA and its regulations.

11. The AER is funded by the Alberta energy industry and it is authorized to collect funds through an administrative fee levied on oil and gas wells, oil sands mines, and coal mines. The AER's existence, therefore, depends upon the collection of these fees, as well as the fines it imposes upon Licensees for non-compliance.

12. In addition, an Orphan Fund Levy is assessed and collected by the AER from oil and gas industry participants in Alberta, who fund the majority of the costs incurred by the Orphan Well Association (the "OWA"). The OWA manages the abandonment of Alberta upstream oil and gas orphan wells, pipelines, facilities and the reclamation of their associated orphan sites. An "orphan" is a well, pipeline, facility or associated site which has no legally responsible or financially able party to deal with its abandonment and reclamation.

13. A Licensee's annual Orphan Fund Levy is based upon its proportionate share of sector liability as determined by the Licensee Liability Rating (the "LLR"), which reflects a ratio of the Licensee's deemed assets and liabilities.

14. With the recent 50% drop in oil prices, Licensees are facing a challenging economic environment. To ensure sustainability, many companies have been forced to cut the level of capital spending and the size of their workforce.

Corporate Structure of the Defendant and other Related Parties.

15. 0989 Resource Partnership ("0989") is a partnership formed and registered under the laws of British Columbia.

16. Lexin is a partner of 0989 Resource. It is a company incorporated under the British Columbia Business Corporations Act. Lexin is extra-provincially registered in the Province of Alberta and is a licencee under the OGCA in relation to certain wells and pipelines and related infrastructure. 0989 Resource and Lexin own and operate natural gas and oil wells and related facilities in western Canada.

17. 0989 Resource is a limited partner of LR Processing Partnership ("LR Processing"), which is a limited partnership registered in Alberta. The general partner of LR Processing is LR Processing Ltd. ("LRP Ltd."), a company incorporated in Alberta.

18. On November 25, 2016, LR Processing Partnership and its general partner, LR Processing Ltd. were adjudged bankrupt. They have appealed the bankruptcy.

BACKGROUND AND SUMMARY OF CURRENT FINANCIAL DIFFICULTIES

The Mazeppa Gas Processing Plant – Ownership and Operating Structure

19. LR Processing wholly owns and operates the Mazeppa Gas Processing Plant (the "Plant"), a natural gas processing plant located in High River, Alberta. LRP Ltd. owns the lands on which the Plant is located.

20. From June 2003 until January 2014, LRP Ltd., was the licensee of the Plant. In January 2014, LRP Ltd.'s license was improperly transferred to Lexin by the AER, as is particularized below.

History of the Mazeppa Gas Processing Plant

21. There are over 6,000 sour gas wells and 18,000 kilometres of operating sour gas pipelines in Alberta. Sour gas is a natural, colourless and flammable gas containing more than 1% hydrogen sulphide. It is processed at approximately 250 plants in Alberta, including more than 50 larger facilities that produce elemental sulphur. The Plant is one of these facilities.

22. The Plant was opened in 1986 and is located in the High River area. It processes both sweet and sour gas. It has a plant capacity of 90 MMcf/d of sour natural gas and 45 MMcf/d of sweet natural gas. In the High River area, there is approximately 270 km of pipeline infrastructure in place and gas compression capacity of 42.5 MMcf/d.

23. In June 2016, the pipelines at the Plant became temporarily shut in due to a mechanical issue at the Plant. Following an inspection of the Plant by the AER on June 14, 2016, the AER made an order prohibiting the lines from reopening.

24. As a result, the majority of the Plant's 24 employees had to be furloughed at the end of June 2016. The Plant remains shut in.

Improper Transfer of the License for the Plant to Lexin

25. For a number of years, Lexin has been a license holder under the OGCA in relation to certain wells and pipelines. However, until it was made the licensee of the Plant in January 2014, Lexin was not involved in and did not hold any license in relation to the Plant.

26. At some point in or before December 2013, certain representatives of the AER approached LRP Ltd. and Lexin and advised them that they were required to submit a license transfer application by which LRP Ltd. would transfer its license for the operation of the Plant to Lexin.

27. The AER threatened to revoke the Plant's license completely if Lexin did not consent to the transfer of the license to Lexin. This is despite the fact that since Lexin was not a

working interest participant in the Plant, it was not legally entitled to hold a licence in relation to the Plant, as set out below.

28. Lexin reluctantly, under protest and under pressure from the AER, submitted an application for a license transfer. The license transfer process was undertaken by AER arbitrarily and without proper consultation with Lexin.

29. To the knowledge of the AER and its officials, s. 17(1) of the OGCA requires a licensee for a facility in Alberta to be a "working interest participant" in relation to that facility. A "working interest participant" is defined as "a person who owns a beneficial or legal undivided interest in a well or facility under agreements that pertain to the ownership of the well or facility".

30. At the time that the license transfer was forced upon Lexin by the AER, LRP Ltd. owned the lands on which the Plant is located and the Limited Partnership operated the Plant. Lexin had no involvement in the operations of the Plant, nor did it take an active role in the business of the Limited Partnership. At all relevant times and, in particular, at the time of the Lexin license transfer in January 2014, Lexin did not own any beneficial or legal interest in the Plant. Lexin was not at any relevant time a "working interest participant" in the Plant.

31. As a result, the purported transfer of the license to Lexin was illegal and void and therefore is of no force or effect.

32. In January of 2014, LRP Ltd.'s total deemed assets were $0 and its total deemed liabilities were stated as $65,596.00 with a Liability Management Rating ("LMR") of 0, while Lexin's total deemed assets were $236,173,010.30 and its total deemed liabilities at that time were $141,975,129, resulting in a LMR of 1.66.

33. The AER's improper motivating factor in forcing Lexin to become the licensee of the Plant was this disparity in assets between the two companies.

34. Lexin has disputed its status as a licensee in relation to the Mazeppa Plant and the amount of its liability to the AER (the "Dispute").

35. Particularly, Lexin has advised the AER that it was not a "working interest participant" in the Mazeppa Plant, within the meaning of the OGCA, and therefore was not a proper "licensee" of the Plant under applicable legislation. Lexin also informed the AER that the resulting incorrect liability management rating calculation was damaging the company's business and "severely crippling" its ability to operate its business and execute its business plans, including negatively impacting Lexin's ability to complete transactions in order to enhance its liquidity and ability to continue to operate as a going concern.

36. The Dispute has materially adversely affected Lexin's operations, liquidity and access to capital. Among other things, the AER has issued invoices to Lexin and later garnishing orders to Lexin's commercial counterparts, which further materially undermined Lexin's liquidity.

37. Lexin raised its concerns with respect to the Dispute with the AER on a number of occasions, particularly in written correspondence by letters of July 12, 2016, August 2, 10 and 15, September 21, 2016, December 2, 2016 and January 31, 2017.

38. As a result of the AER's garnishment orders and other actions, Lexin has had cash flow difficulties and has been unable to pay its creditors and comply with the AER notices since approximately February of 2016. Further, and to the knowledge of the AER, its actions have made it impossible for Lexin to comply with AER's directions and orders, and to ensure that its licenced sites are maintained in compliance with the AER's requirements.

39. Further, since early 2016 the AER has repeatedly threatened Lexin with various regulatory actions and enforcement mechanisms resulting from the AER's error in the calculation of Lexin's LMR. By way of example, as a result of this miscalculation, the AER demanded on June 10, 2016 that Lexin pay a security deposit for the difference between its deemed assets and deemed liabilities in the amount of $3,107,665.02. The AER improperly threatened Lexin with remedial and enforcement actions if these monies were not paid.

40. AER's attacks on Lexin continued as follows:

41. On June 13, 2016, the AER issued a Notice of Garnishment against Lexin in relation to amounts that the AER claimed were owing.

42. Two days later, on June 15, 2016, the AER made an order preventing Lexin from restarting the Plant, even though Lexin was not the owner or operator of the Plant.

43. On numerous occasions in July and August of 2016, Lexin raised with the AER the issue of its having been wrongfully forced to be the licensee for the Plant. It also requested that the deemed liabilities incorrectly attributed to Lexin and the calculation of its LMR be corrected.

44. On July 21, 2016, the AER recognized its error in the calculations. It corrected Lexin's LMR (to be 1.03) and retracted its demand for a security deposit (because Lexin's LMR was above 1.0, no security deposit is required).

45. In early August 2016, however, the AER reverted back to its original position in calculating Lexin's LMR and, to date, has continually and incorrectly attributed an LMR of less than 1.0 to Lexin, insisting that Lexin pay a security deposit as a result.

46. Furthermore, in a meeting with Lexin in August 2016, the AER staff took the extraordinary position that even if Lexin became fully compliant with all licencing requirements, it could not operate the Plant as it was not an owner or a "working interest participant" in the Plant. This assertion was made by the AER while it simultaneously continued to assert that Lexin was the proper licensee.

47. On August 9, 2016, AER purported to issue an Order against Lexin requiring it to suspend and discontinue the operations of the Plant, to develop and submit an Incident Response Plan, to develop and submit an Ongoing Monitoring Plan, and to report to the Director and to the public through a weekly written report.

48. This Order was made against Lexin despite the fact that the AER knew that Lexin has no ownership or working interest in the Plant and was therefore not a working interest participant.

49. On August 10, 2016, the AER again asserted Lexin's liability for the Plant under the illegal license, despite acknowledging that Lexin was not a working interest participant and therefore not a proper licensee under the OGCA.

50. On September 22, 2016, while maintaining its position that it was not the proper licensee, Lexin submitted to the AER a reasonable proposal for a payment plan in relation to the Orphan Well Levy and administrative fees that the AER claimed were owing.

51. Despite the agreement regarding a payment plan, shortly thereafter, the AER improperly commenced a garnishing process against Lexin. Not only was the AER's discretion to do so exercised arbitrarily and unfairly, but it was based upon an inaccurate liability rating as described above, and was also based upon an overstatement of the fees that were allegedly owing by Lexin.

52. On October 25, 2016, the AER once again improperly issued an order against Lexin for a hydrocarbon spill at the Plant, despite the fact that AER was not the proper licensee for the Plant and was not in control of the Plant.

53. This continuing series of arbitrary and unfair steps taken by the AER against Lexin has made it difficult, if not impossible, for Lexin to operate as a going concern.

54. In October 2016, the AER issued orders and notices against Lexin, including a direction not to remove equipment from Lexin's Sites (the "Equipment Direction").

55. On December 2, 2016 and again on January 31, 2017, Lexin advised the AER that it was not able to provide "proper health and safety overview and measures for sour wells" beyond February 15, 2016. At the same time, Lexin made a proposal to the AER that would be in the best interests of the AER, the general public and Lexin.

56. The December 2, 2016 proposal contained 3 main components:

a) The AER issue abandonment orders with respect to Lexin's sour gas wells;

b) The AER release the garnishment orders issued with distribution of funds received from counterparties being split 70% to the AER on account of Lexin's liabilities and 30% to Lexin; and

c) Lexin be permitted to restart production on shut-in wells and distribute funds from such restarted production on the basis of 70% to the AER on account of Lexin's liabilities and 30% to Lexin.

57. On January 31, 2017, Lexin delivered a letter to the AER following up on the proposal set out in its December 2, 2016 letter. Lexin advised in this letter that because of the Dispute and the AER's actions, it was "not sure that [it] will be able to continue to provide proper health and safety overview and measures for the sour wells, particularly beyond February 15, 2017." Lexin expressed its concern that the situation created serious health and safety risks for all concerned.

58. On February 6, 2017, the AER responded to Lexin and rejected the proposals set out in the December 2, 2016 and January 31, 2017 letters.

59. On February 14, 2017, the AER issued an order suspending all of Lexin's operations and licenses (the "Closure Order").

60. On the same day, February 14, 2016, the AER also issued a Direction requiring Lexin to cooperate with any inspection of its sites and records (the "Inspection Direction").

61. Also, on the same day, the AER commenced an application against Lexin seeking an order to enforce the Equipment Direction and directing Lexin, its directors, agents and employees to comply with the Inspection Direction. The AER brought this application on an urgent basis, purportedly on the basis of health, safety and environmental concerns.

62. Interim Orders were granted on February 14 and 17, 2017, and another Order was granted on March 3, 2017 with respect to the Equipment Direction, and the application with respect to the Inspection Direction was adjourned sine die.

63. On February 15, 2017, the AER issued Environmental Orders against Lexin.

64. In late February 2017, Lexin sought a mandamus order directing the AER to take reasonable steps to remedy all health, safety and environmental issues and to issue abandonment orders for Lexin's sites which have been designated as orphans by the AER ("Lexin's Application"). The Court of Queen's Bench of Alberta will be asked to determine whether it has jurisdiction to hear these issues on March 22, 2017.

65. The AER acted *ultra vires* its authority under the Alberta Legislation and in bad faith.

66. The AER has undertaken a course of conduct that is ultra vires its constituting and governing legislation. Its improper conduct started in 2013 and continues to date, and includes:

a) making Lexin the licensee of the Plant when it is not a "working interest participant", contrary to the OGCA;

b) refusing to remove Lexin as a licensee of the Plant despite its illegality and despite repeated requests that they do so, contrary to the OGCA;

c) failing to calculate Lexin's LMR correctly, and therefore calculating Lexin's security deposit, which is based on its LMR, incorrectly, contrary to Directive 006;

d) after acknowledging the error in the calculation of the LMR, applying the incorrect LMR again in calculating the security deposit;

e) issuing Declarations against three individuals related to Lexin, despite the fact that, to the AER's knowledge, Lexin is not the proper licensee under the OGCA;

f) garnishing Lexin's assets when the AER knew or reasonably ought to have known that Lexin was not the proper licensee and that such a garnishing process would make it difficult, if not impossible, for Lexin to carry on business;

g) demonstrating a complete unwillingness to issue "dual licenses" to Lexin and LRP Ltd. and forcing Lexin, therefore, to hold the sole license for the Plant in circumstances where other similarly situated companies were treated differently; and

h) in general, exercising their authority in an unfair and arbitrary manner, and acting in bad faith when dealing with Lexin.

Section 106(1) of the OGCA is Unconstitutional

67. Where:

a) a licensee, permit holder or working interest participant is in contravention of or fails to comply with an order of the AER; or

b) a licensee, permit holder or working interest participant has an outstanding debt to the AER, or to the AER in account of the Orphan Well Fund

section 106 of the OGCA allows the AER make a declaration setting out the nature of the contravention, failure to comply or debt, and naming one or more directors, officers, agents or other persons who, in the AER's opinion, were directly or indirectly in control of the licensee, approval holder or working interest participant at the time of the contravention, failure to comply or failure to pay.

68. Before making a declaration under s. 106 of the OGCA, the AER must:

a) Believe that it is in the public interest to do so; and

b) Give at least 10 days' written notice of the intention to issue a declaration to anyone affected.

69. In making a declaration under s. 106 of the OGCA, the AER can, subject to any terms and conditions it considers appropriate, including inter alia:

a) Suspend any operations of a licensee or approval holder;

b) Refuse to consider an application to transfer a license or approval under the OGCA;

c) Require from the person subject to the declaration the submission of abandonment and reclamation deposits in an amount determined by the AER prior to granting any license, approval or transfer under the OGCA;

d) Require from the person subject to the declaration the submission of abandonment and reclamation deposits in an amount determined by the AER for any wells or facilities of any licensee or approval holder.

70. Between May of 2005 and September 2015, the AER and its predecessor named only 10 individuals under s. 106 as a person "in control" of a licensee that has contravened or failed to comply with an order of the AER or has an outstanding debt owed to the AER (a "Declaration").

71. Although there were 300 outstanding non-compliance issues listed on the AER's website in 2016, the AER issued no Declarations that year.

72. Declarations are rare for a reason: a Declaration is an extraordinary remedy that can and often does have a significant impact not only on the licensee who is allegedly non-compliant, but upon the named individual.

73. The effect of a Declaration, if issued, is that the person named in the Declaration cannot be involved in the operations of the licensee or of any licensee until the licensee at issue becomes compliant. It is a serious, potentially career ending issuance and can have a severe, negative impact on the named individual and the ability of the licensee to carry on business.

74. On January 19, 2017, the AER issued Declarations pursuant to s. 106 of the OGCA naming Michael Smith, Jasmina Cezek and Robert Jennings as persons in control of Lexin as a "licensee" that has failed to comply" with certain AER Orders (the "Declarations"). The AER provided no reasons for its decision. The Declarations were issued despite counsel's prior requests for information in relation to the AER's intention to issue the Declarations, including a breakdown of the fees and penalties allegedly owing by Lexin

to the AER. The AER provided no evidence upon which it relied in making the Declaration and did not hold a hearing despite counsel's request.

75. On February 14, 2017, Mr. Jennings and Mr. Smith made requests for a regulatory appeal of the AER decision to issue the Declarations and brought an originating application for judicial review of the AER decision to issue the Declaration, as did Lexin for review of the AER decision to issue the Declaration against Ms. Cezek. These appeals and applications for judicial review remain outstanding.

76. These Declarations were made based on incorrect, erroneous and/or intentionally wrongful information, including:

a) Lexin is not the proper licensee of the Plant; and

b) the AER Order of August 9, 2016 attributes the responsibility for the Plant to Lexin, even though the AER admitted that Lexin is not an owner or a "working interest participant" of the Plant;

77. The issuance of such Declarations, in addition to their detrimental effects against each of the individuals, has had a severe and negative effect on Lexin's reputation and ability to attract and maintain quality employees, and on its ability to carry on business in the normal course.

78. The Declarations are not in the public interest. They will have no deterrence effect, nor will they protect the public or the environment. The Plant operations have been and remain suspended and discontinued by the AER's August 9, 2016 Order

79. These Declarations will also encourage other individuals involved with oil and gas companies in Alberta facing challenging economic times to jump ship and avoid responsibilities owing to the licensees, the public and the environment.

80. Section 106(1) of the OGCA allows the AER to make a Declaration naming a director, officer, or agent of a licensee that has failed to comply with an order of the AER or has an outstanding debt to AER, to AER on account of the Orphan Fund, or any other person.

81. The effect of such a declaration is that the AER may for an indefinite and undefined period of time: (a) suspend operations of; (b) refuse to consider any applications from; or (c) require the payment of abandonment and reclamation deposits, which could amount to millions of dollars, from either the individual or any company controlled by him or her in the future, and subject to any terms it considers appropriate, so long as it considers it to be in the public interest to do so. This section is clearly penal in nature. Its purpose is to place a stigma upon and to punish an individual for the alleged acts of a licensee.

82. The punishment pursuant to s. 106(1) of the OGCA is of disproportionate magnitude. Its magnitude is determined in accordance with principals of criminal sentencing, making it punitive and therefore triggering constitutional protections such as the right to be presumed innocent, a right that is not protected in this legislation. As such, s. 106(1) of the OGCA is unconstitutional.

83. Section 106(1) of the OGCA also gravely interferes with the ability of an individual against whom a declaration is made to make a living. As such, it undermines the rights of life, liberty and security of the person protected by Section 7 of the Canadian Charter of Rights and Freedoms, Part I of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (UK), 1982, c 11 (the "Charter"). The reduced security of the person, which this legislation engenders, is not accomplished in a fashion that comports with the principles of fundamental justice and in the circumstances, is a denial of the rule of law and contrary to the Charter.

84. Section 106(1) of the OGCA is therefore unconstitutional and should be held to be of no force and effect.

85. The Parties' immediate financial difficulties and insolvency are primarily due to their lack of liquidity which flows from and is as a result of the Dispute, resulting garnishment orders of the AER, general market conditions in the oil and gas industry and the Parties' consequent inability to satisfy its short-term debt obligations.

86. Lexin's ability to obtain financing or complete any orderly sale of assets to improve its liquidity has been significantly affected by the Dispute and the ongoing AER proceedings,

the increasing demand from its creditors, the shutdown of its operations by the AER and its urgent need for cash have made it impossible for Lexin to preserve its business.

87. Lexin has sought to cooperate with the AER, including making proposals to the AER designed to repay the AER amounts claimed by it, while giving the Lexin the ability to generate cash flow necessary to meet its current liabilities. However, the AER has rejected such proposals. The AER's garnishment and other measures currently make it virtually impossible for the Parties to carry out any initiative to sell assets or otherwise in order to enhance their liquidity.

Remedy Sought:

88. The Defendant respectfully requests that the Plaintiff's claim be dismissed with costs of the action against the Plaintiff. Statement of Facts Relied On: