Alberta Energy Regulator

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Reconsideration No.: 1958898
August 21, 2025

By email only

Summit Coal Inc.

Attention: Martin Ignasiak, KC

Canadian Parks and Wilderness Society & Alberta Wilderness Association

Attention: Adam Bordignon

The Municipal District (MD) of Greenview

Attention: Tyler Olsen

Dear Parties:

RE: Request for Reconsideration by Summit Coal Inc (Summit)
Application Nos.: 1945552, 1945553, 001-00496728, 001- 00496729, 001-00496730, 32212208, and 32900389 under the Coal Conservation Act, the Environmental Protection and Enhancement Act, the Water Act, and the Public Lands Act (Applications).
AER Proceeding 449

I have considered Summit's request under section 42 of the *Responsible Energy Development Act* (REDA) for a reconsideration of the July 23, 2025 decision in Proceeding 449 in which the Summit hearing panel decided not to cancel the hearing of the application (the Decision). I have reviewed Summit's submissions and the joint submission made by Alberta Wilderness Association and Canadian Parks and Wilderness Society, Northern Alberta Chapter (Collectively 'the Environmental Organizations'), as well as the submission from the Municipal District (MD) of Greenview

For the reasons that follow, I have decided to reconsider the Decision, without a hearing. I have also decided that the Decision should be varied such that the hearing in Proceeding 449 is cancelled and the applications returned to AER Regulatory Applications branch for consideration and decision.

Reasons for Decision

1. What is the scope of the Request for Reconsideration

I agree with the Environmental Organizations that the only matter before me is the July 23, 2025 decision in Proceeding 449 in which the Summit hearing panel decided not to cancel the hearing of the application (the Decision). I have not considered the other decisions or broader issues raised by Summit; nor am I making any

determination or direction in relation to the ultimate decision of whether the applications should be approved.

2. Authority to decide the Request

As CEO, I am responsible for the day-to-day operation of the business and affairs of the AER, per section 7(1)(a) REDA. This includes the proceedings of the hearing commissioners, as these are expressly part of the AER's day-to-day operations: section 13(1) of the REDA. Under the AER's General Bylaw, I also have authority and general supervision over the operation of the business and affairs of the AER. Through formal delegation of authority under section 6(2) of the REDA, the Board has authorized the CEO to carry out any power, duty or function of the AER under the REDA and other enactments. This includes the power to reconsider a decision of the AER, and to vary, confirm, revoke or suspend such decision. I am satisfied that I have proper authority to decide Summit's request for reconsideration, and this falls within my purview and discretion.

I recognize it is without precedent for a non-hearing commissioner decision maker to consider a reconsideration request of a procedural decision made by hearing commissioners. Except for the very unique circumstances in this situation, I am not inclined to exercise my discretion to reconsider decisions of hearing panels, out of respect for the hearing process and the autonomy and independence of hearing panels. Certainty, and finality in decision making is of fundamental importance to Alberta's energy regulatory system, to the participants involved, and Albertans generally. My decision should not be construed as a means by which parties can circumvent hearing or other AER decisions they disagree with.

3. Whether to Reconsider the Decision under s. 42 of the REDA

Section 42 states:

> **Reconsideration of decisions**
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> 42 The Regulator may, in its sole discretion, reconsider a decision made by it and may confirm, vary, suspend or revoke the decision

The AER has very broad discretion to choose to reconsider any decision made by it. The AER does not need a 'request' to exercise its authority under section 42. It can do so on its own initiative, if it becomes aware, by any means, of facts or circumstances that cause it to decide to reconsider a decision.

While I am of the view that Summit has met the test traditionally imposed on requesters to justify the AER exercising its reconsideration powers, I am also deciding to reconsider the decision based on my absolute discretion to do so, as I feel it is of sufficient importance to the AER, given the unique and unprecedented issues raised.

At least three related circumstances make this unique and exceptional: 1) The AER has not previously conducted a hearing with no directly and adversely affected parties participating, 2) The AER has never cancelled a hearing where parties granted full participation status have not withdrawn, 3) The request asks

the 'operational' arm of the AER, through its CEO, to reconsider a procedural matter that has been decided by the 'adjudicative' arm of the AER (i.e. a panel of hearing commissioners).

As an adjunct to 1) above, there are far more Participants in the hearing, albeit most are limited participants, that support the application; a further number of participants have withdrawn, but in doing so have indicated their support or non-objection to the application. This is another compelling reason for me to reconsider the Decision.

I have decided that this merits a reconsideration of the Decision, without a hearing as it would be quite impractical to do so and there is a need to deal with this expediently. The parties have also provided submissions on the substantive issue of whether to vary, confirm, revoke, or suspend the Decision.

4. Whether to Vary or Confirm the Decision

As Summit rightly points out, the REDA and its regulations draw significant connection between the potential for adverse effects of energy development and the corresponding right of people potentially directly affected by the development to have their say at a hearing about how it will impact them. Numerous decisions from the Alberta Courts confirm that the REDA and its Rules of Practice are intended to give hearing participatory rights to those potentially impacted by energy development. Adopting statements made in previous decisions about the AER's predecessor regarding 'directly and adversely affected' and the corresponding entitlement to participate in hearings, the Alberta Court of Appeal has applied this same guidance to participation in AER hearings, indicating:[1]

> As this Court has previously stated in *Kelly v Alberta (Energy Resources Conservation Board), 2012 ABCA 19 at para 33, 519 AR 284*:
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> > The development of Alberta's natural resources enriches the province as a whole, and provides significant economic benefits to the companies that develop those resources. Resource development can, however, have a disproportionate negative effect on those in the immediate vicinity of the development. The requirement for public hearings is to allow those "directly and adversely affected" a forum within which they can put forward their interests, and air their concerns. In today's Alberta it is accepted that citizens have a right to provide input on public decisions that will affect their rights [Emphasis Added].

While I understand the Environmental Organizations' position that they have been given participant status at the discretion of the panel, they have not pointed to any authority in REDA or the Courts which equates discretionary participation granted under section 9(1)(b)(ii) and (c) of the Rules, with the same weighty significance that REDA, its regulations, and the Courts recognize in relation to the participatory rights of potentially directly and adversely affected individuals. To that extent, I don't agree with the Environmental

[1] *Coulas v Ferus Natural Gas Fuels Inc*, 2016 ABCA 332 at para 10. The same statement is cited with approval in the more recent decision of *Fort McMurray Métis Local Council 1935 v Alberta Energy Regulator*, 2022 ABCA 179 at para 22.

Organizations' statement that there is no legal distinction between participants in a hearing who are directly and adversely affected and those who are not. It is clear that both the applicable legislation and the Courts place a high level of importance and significance on the former but not the latter.

Section 15 of the REDA, and section 3 of the *REDA General Regulation* also support this conclusion. These provisions emphasize the need to consider the interests of landowners, which I interpret to mean landowners with proximal connection to the project, as well as impacts to the specific landowners upon whose lands the project is located. Under section 3 of the *General Regulation,* socio-economic and environmental effects must also be considered.

As noted by Summit, the local community – comprised of landowners and others who live and work in the community proximal to the mine – overwhelmingly support the Applications. Twenty-three parties, all of whom live or conduct business in the Grande Cache area, expressed strong support for the timely approval of the Applications through requests to participate. The limited participants in the proceeding all support the project. Local Indigenous communities support and will receive benefits from the project. The four Indigenous Groups previously opposed to the project have withdrawn from Proceeding 449 and no longer object to the AER's approval of the Applications. The MD of Greenview, the municipality in which the project is located and a full participant in the hearing, fully supports the application and the advocates for the cancellation of the hearing via the reconsideration process. They state that proceeding with the hearing 'represents an unnecessary use of resources, creates long-term economic risk for the community, and undermines the principles of efficient and effective regulation'.

Having regard for the above, the social and economic effects of the project as well as the interests of local landowners strongly support that the Decision be varied, and the hearing be cancelled.

Turning to a consideration of the effects of the project on the environment, it is relevant that there is an existing mine permit for this project which the AER already monitors and regulates. This is an application for an underground mine, which is expressly permissible under the Government of Alberta's recent policy statements on coal industry modernization, which policy also limits other types of coal mining such as open pit and mountain top removal. There is now a fulsome application record before the AER filed by the parties in the hearing and in the Reconsideration submissions of the parties, including the table of environmental conditions and commitments filed by Summit.

I do not take issue with the Environmental Organization's statements that they have expertise in certain environmental matters including wildlife and habitat conservation. The information they have already provided in this regard in their hearing submissions will greatly assist AER staff subject matter experts in technical and environmental sciences with a comprehensive review of the applications. AER staff and decision makers have the requisite expertise and understanding to ensure that, should a decision be made to approve the application, any approval is protective of the environment with proper conditions put in place to minimize, mitigate, and monitor effects on the environment. Making this information available to AER staff and decision makers means that the Environmental Organizations procedural right are largely maintained as

they can still 'materially assist the Regulator in deciding the matter' (i.e. the applications), as contemplated in the Request to Participate provisions in section 9 of the *AER Rules of Practice*. Their submissions will still be 'heard' and considered by the AER, just not at an oral hearing.

This also allows the AER to start its application review and decision making process immediately. Based on the schedule in the Decision, the hearing would run until late October, meaning the Panel would not have begun to deliberate and decide the matter until the end of October, with 90 days to decide the applications after that. Given the foregoing, that delay does not seem reasonable.

Conclusion and Decision

The July 23, 2025 decision of the Summit hearing panel is hereby varied as follows:

1) Hearing Proceeding 449 is cancelled.

2) The application and all submissions on the record of Proceeding 449 are to be transferred to the AER's Regulatory Applications branch (Oil Sand Mining & Coal Division) for decision.

As indicated, submissions on this reconsideration request will also be forwarded to the Regulatory Applications staff and will be before the AER decision maker when deciding the applications.

Sincerely,

Rob Morgan,
Chief Executive Officer,
Alberta Energy Regulator

cc: Elaine Arruda, Hearing Coordinator
AER Hearing Panel, Proceeding 449