

**Proceeding 449**

March 3, 2025

To: Martin Ignasiak, KC Bennett Jones LLP

**For: Summit Coal Inc.**

[By email only]

**Re: Summit Coal Inc., Mine 14 Underground Coal Mine (Summit)  
Applications 1945552, 1945553, 001-00496728, 001-00496729, 001-496730,  
32212208 and 32900389 (the "Applications")  
Pre-hearing Meeting**

**Counsel:**

We are the Alberta Energy Regulator (AER) panel of hearing commissioners (the panel) presiding over proceeding 449. We are responding to your recent correspondence regarding a pre-hearing meeting prior to the scheduling of the hearing in this proceeding. For the reasons set out below, we are denying your request for a pre-hearing meeting.

**Background**

On February 11, 2025, Summit requested that we refrain from setting any further procedural steps to allow Summit to assess its next steps and consult with its investors and key stakeholders. On February 12, 2025, the panel granted Summit's request and required Summit to provide an update before 4:00 p.m. on February 25, 2025.

On February 25, 2025, we received a letter from Summit confirming that it remains committed to obtaining the remaining regulatory authorizations sought in the Applications. Summit's letter contained a request for a pre-hearing meeting, and what appears to be an informal or incomplete motion to set the process, provide submissions on that expected process, and seek rulings on certain issues that are not currently before us.

Over the balance of its 18-page letter, Summit argues in favour of a pre-hearing meeting under rule 15 of the *Alberta Energy Regulatory Rules of Practice (Rules)*. Summit's submissions with respect to the purpose of a pre-hearing meeting are that the pre-hearing meeting would be a forum in which the following are decided:

1. the scope of Indigenous and non-Indigenous law issues to be addressed at the hearing of the Applications;
2. the eligibility of certain full participants to recover costs;

3. a determination of whether the hearing will proceed in the event one, all, or several full participants withdraw their requests to participate; and
4. the schedule and steps to be included in the procedure leading up to the hearing.

Summit made submissions on the general background of the Applications, its consultations with Indigenous groups, its communications with Alberta Aboriginal Consultation Office (ACO), the participation of Indigenous groups and of what it calls “ENGOs” (the Canadian Parks and Wilderness Society (CPAWS) and the Alberta Wilderness Association (AWA)), and what it calls a lack of clarity on the subject matter of the as-yet unfiled evidence of the other full participants. Summit submitted that a pre-hearing meeting is necessary to set limits on what submissions can be made by the other full participants in proceeding 449.

## **Decision**

We are tasked with ensuring that the process for proceeding 449 is conducted efficiently and with procedural fairness to all parties. The *Rules* afford us discretion in how we will conduct a hearing on an application, including the discretion to hold a pre-hearing meeting. The discretion to hold a pre-hearing meeting is afforded to us to organize complex or overly technical matters and to ensure that the hearing is an efficient process. It is not an opportunity to argue or re-argue positions that have already been decided by the panel.

Although Summit set out its issues to fit into the purposes for a pre-hearing meeting set out in rule 15 of the *Rules*, the essence of the submissions in Summit’s letter do not present a sufficient reason to hold a pre-hearing meeting. The submissions of Summit seem to request efficiency on one hand, but add additional steps that will require significant planning, resources, and deliberation. There are multiple parties, some of whom were afforded full participation and others limited participation. Coordinating what essentially amounts to two hearings, one pre-hearing meeting and the later hearing on the merits, will overly complicate and delay this proceeding. A pre-hearing meeting in the context of the participation granted in this proceeding is an unreasonable delay of the proceeding.

Further, the submissions of Summit seem to indicate that the issues to be discussed at the pre-hearing meeting cannot be determined by the AER’s usual hearing processes. We disagree. The issue before us is to make a decision on the Applications in a manner that affords procedural fairness to all parties. That can be done in our usual hearing processes.

Summit’s letter proposed that we consider issues of future costs. AER *Directive 031: REDA Energy Cost Claims (D031)* governs costs claims made as part of a hearing. Summit’s submissions and request with respect to making pre-hearing costs arguments do not accord with the established procedure in *D031*, in addition to being premature because the panel will not have the requisite information to evaluate the factors set out in rule 58.1 until after the hearing. *D031* is accessible at <https://static.aer.ca/prd/documents/directives/Directive031.pdf>.

Another issue that Summit proposed is related to a future process and if some parties withdraw their participation. It would be inappropriate to predetermine a decision that we might make in the future on facts that we do not have in front of us today. If those withdrawals occur, we will address them when they occur.

Finally, it appears that the bulk of Summit's letter argues that we ought to reconsider our participation decisions, namely the participation of indigenous groups, the AWA, and CPAWS. A pre-hearing meeting is not an avenue for reconsideration or appeal of this panel's decisions.

We deny Summit's request for a pre-hearing meeting, because:

1. such a meeting would unnecessarily delay the proceeding,
2. the issues advanced by Summit are premature, relate to matters that have already been decided, or pertain to a costs application under *D031*, and
3. a pre-hearing meeting is not currently necessary for the purpose of setting the process for the hearing.

We do not accept Summit's proposed schedule. We will consider logistical arrangements and any necessary procedural matters, and we will release our direction regarding hearing process in due course. We acknowledge and concur with Summit's stated desire to continue with a hearing as expeditiously as possible.

If Summit wishes to rely on any of the submissions in its letter of February 25, 2025, Summit can re-submit them as part of its formal hearing submissions.

Lastly, all participants in proceeding 449 are directed to make further motions formally and in accordance with the section 44 of the *Rules*.

**Sincerely,**

**Parand Meysami**  
Presiding Hearing Commissioner

**M.A. (Meg) Barker**  
Hearing Commissioner

**Andrew MacPherson**  
Hearing Commissioner

cc: Shauna Gibbons and Bronwhyn Simmons, AER counsel for the panel  
Elaine Arruda and Andrew Lung, AER hearing coordinator  
Full Participants and Limited Participants, as identified in the attached 'Schedule of Participants for AER Proceeding 449'

## Schedule of Participants for AER Proceeding 449

### **Full Participants**

Driftpile Cree Nation

Louis Bull Tibe

Sucker Creek First Nation

Lac Ste Anne Metis Community Association

Alberta Wilderness Association

CPAWS – Northern Alberta Chapter

Municipal District of Greenview

### **Limited Participants**

Grande Cache Hotel

Grande Cache Golf and Country Club

Ridgeview Restaurant and Lounge

Willmore Wilderness Foundation

People and Peaks Productions Ltd.

Grande Cache Chamber of Commerce

Spruce & Bean

Eagle Rock Holdings

Busy Beez Play Zone Ltd.

Richard Riva Cambrin

Bob's Trucking Ltd.

Grande Industrial Ltd.

Macro Properties

McNeil Construction

C.C.'s Welding and Fabrication Ltd.

Grande Cache Automotive

Verity LLP