

Proceeding 449

February 7, 2025

To: Kennedy Halvorson

For: Alberta Wilderness Association

[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 "Mine 14 Applications")
Participation Decision for Alberta Wilderness Association (AWA)**

Kennedy Halvorson:

We are the Alberta Energy Regulator (AER) panel of hearing commissioners (the panel) presiding over proceeding 449 and we write to inform you that AWA is granted full participation in the hearing.

Background

The AER will hold a public hearing to decide on an integrated application submitted by Summit. Summit made the application under the *Environmental Protection and Enhancement Act (EPEA)*, the *Water Act (WA)*, the *Coal Conservation Act (CCA)*, and the *Public Lands Act (PLA)*, to both update active approvals and for new approvals for the Mine 14 Underground Coal Mine (the Project).

On November 26, 2024, the panel issued a notice of hearing for proceeding 449 and set a filing deadline of December 17, 2024, for requests to participate. On December 17, 2024, the AWA filed its request to participate in the hearing. On January 6, 2025, Summit responded to requests to participate.

Submission of Parties

AWA opposes the Applications and requests full participation in the hearing. AWA stated the following:

- It is an Alberta-based conservation group with more than 7,000 members across the province.
- It seeks the good stewardship of Alberta's public lands, waters, and biodiversity.
- Its advocacy focuses on increasing protections for wild places and wildlife, improving habitat quality and quantity, and promoting the wise and informed management of important and significant ecosystems.

- Its mandate includes ensuring that development of public resources is regulated in a manner that is consistent with the maintenance of wilderness values.
- It seeks the completion of a connected, ecologically representative protected areas network in the province.
- It has identified Areas of Concern throughout the province, which are places of largely intact wilderness or critical corridors that still require formal protection, and
- The proposed mine site is close to its Kakwa Area of Concern (<1km) and Little Smoky Area of Concern (<15 km), and AWA has worked extensively to prevent their environmental degradation.

In AWA's view the outcome of this hearing directly affects their work and their membership. AWA submitted that it can speak on behalf of the region's air, land, and waters from a wilderness conservation perspective, and to its specific areas of concern, if AWA is allowed to participate.

Summit objected to the AWA's request to participate stating that the areas of concern raised by the AWA and are of no use to the AER in assessing and/or quantifying potential project-related impacts.

Summit submitted that AWA has failed to identify any specific or tangible interest in the project itself nor is it directly and adversely affected by the Applications. Summit argued that if the AWA is granted participation in this hearing, the AWA would then be permitted to participate in virtually any hearing for any proposed energy resource development in Alberta.

Panel Decision

Section 34(3) of the *Responsible Energy Development Act* states that: "... a person who may be directly and adversely affected by the application is entitled to be heard at the hearing". In addition, the *Alberta Energy Regulator Rules of Practice (Rules)* give the hearing panel discretion to permit participation of persons who have a tangible interest and whose participation will materially assist the panel in deciding the matter that is the subject of the hearing without unnecessarily delaying the proceedings or repeating or duplicating evidence. The participation provisions in the *Rules* are intended to ensure a fair and efficient process and the development of a complete record that enables the panel to decide Applications.

AWA provided information about its work related to Alberta's public lands, waters, and biodiversity with a link to areas near or adjacent to the project. AWA stated that it is interested in securing better protections for wildlife and water resources.

In our view, through its submissions AWA demonstrated that it has a tangible interest in the subject of the proceeding, specifically because of AWA's wildlife and wildlife habitat conservation work in the region, and its Kakwa and Little Smoky areas of concern, which are near the Project area.

In Summit's view, AWA is raising general concerns related to coal mining and does not explain what specific impacts Mine 14 will have. We note that AWA provided specific concerns about the project and

- stated that Grande Mountain, which is the site proposed for Mine 14, has factors that may indicate high-quality habitat for wildlife;
- provided some critique of Summit's water management plan and pointed to the potential negative impact on water quality in the area and the subsequent impact on the aquatic wildlife in nearby waterbodies from tributaries that flow through the proposed mine site; and
- stated its concern about the potential negative impacts of the Project on Grande Cache Lake, Victor Lake, the Smoky River, and other associated watersheds.

In bringing these concerns to our attention, AWA stated that its environmental knowledge and expertise can help inform the proceeding.

Moreover, AWA indicated its intention to assist the panel in deciding the Applications, by consolidating and presenting the peer-reviewed literature and demonstrating how the peer-reviewed literature is applied in the regulatory regime under which we have jurisdiction.

Based on what AWA has outlined in its submissions, in our view, AWA meets the criteria set out in the *Rules*. AWA may have information that can assist the panel in reaching its decision on the applications.

We disagree with Summit's assertion that granting participation to AWA in this proceeding, based on the relevant information that is before us, would lead to AWA being permitted to participate in any other hearing for a proposed energy resource development in Alberta. We are making our decision based on the facts in the submissions of AWA and Summit for this proceeding. Similarly, other AER decision makers decide matters before them based on relevant facts raised by the parties, to those matters. This panel has no authority over other decision-makers nor does it fetter their decision-making authority by granting AWA participation at this hearing.

Therefore, we permit AWA's full participation in the hearing. Full participation allows AWA to file written submissions according to the schedule to be set by the panel, speaking to those submissions at the hearing, being questioned by Summit, any other party that is adverse in interest and the panel, cross-examining Summit, and submitting final arguments.

Cost Claims

Hearing participants may be eligible to submit a cost claim to recover some of the costs of their participation under the Alberta Energy Regulator's *Directive 031: REDA Energy Cost Claims*. Section 58.1 of the *Rules* sets out the factors to be considered when deciding an application for costs. Those factors include whether a participant has attempted to consolidate common issues or resources with other parties (s. 58.1(f)) and whether the conduct of the participant tended to shorten or unnecessarily lengthen the proceeding (s. 58.1(m)).

It is our goal to have a process that is not only fair and transparent, but also efficient. Therefore, we encourage AWA to make efforts to collaborate with other parties when their interests align and avoid duplicating evidence provided by others in the proceeding.

Hearing Process

Summit stated that this panel should forego a hearing because the requests to participate of requestors who oppose the Project do not establish that any of them may be directly and adversely affected by the AER's decision on the Applications and contain no indication that they should otherwise be granted participatory rights with respect to the public hearing, and because requestors who stand to experience a demonstrable effect or impact arising from an approval of the Project are supportive of the Project.

Given our decisions on participation, we are not compelled by Summit's argument. An oral hearing will be held in this matter. Further direction from the panel regarding the hearing process, schedule, and timelines will be provided to participants in due course. If you have any questions, please contact hearing.services@aer.ca.

Sincerely,

Parand Meysami
Presiding Hearing Commissioner

M.A. (Meg) Barker
Hearing Commissioner

Andrew MacPherson
Hearing Commissioner

cc: Martin Ignasiak, KC and Thomas Machell, Bennett Jones LLP
Shauna Gibbons and Bronwyn Simmons, AER counsel for the panel
Elaine Arruda and Andrew Lung, AER hearing coordinators