

## COURT OF APPEAL OF ALBERTA

Form AP-3

[Rule 14.53]

COURT OF APPEAL FILE NUMBER: 2501-0258AC

TRIAL COURT FILE NUMBER: N/A

REGISTRY OFFICE: CALGARY

APPLICANT: ALBERTA WILDERNESS ASSOCIATION and  
CANADIAN PARKS AND WILDERNESS  
SOCIETY, NORTHERN ALBERTA

STATUS ON APPEAL: APPELLANTS

STATUS ON APPLICATION: APPLICANTS

RESPONDENT: ALBERTA ENERGY REGULATOR and  
SUMMIT COAL INC.

STATUS ON APPEAL: RESPONDENTS

STATUS ON APPLICATION: RESPONDENTS

DOCUMENT: **APPLICATION FOR PERMISSION TO APPEAL**

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Registrar's  
Stamp

## NOTICE TO RESPONDENTS:

ALBERTA ENERGY REGULATOR and  
SUMMIT COAL INC.

### **WARNING**

If you do not come to Court on the date and time shown below either in person or by your lawyer, the Court may give the applicant what it wants in your absence. You will be bound by any order that the Court makes. If you intend to rely on other evidence or a memorandum in support of your position when the application is heard or considered, you must file and serve those documents in compliance with the Rules. (Rule 14.41 and 14.43)

## NOTICE TO RESPONDENTS:

You have the right to state your side of this matter before the Court.

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

Date:	TBA
Time:	TBA
Where:	Court of Appeal in Calgary, AB
Before:	A single judge of the Court (Rule 14.37)

### **Nature of Application and Relief Sought:**

1. The Applicants seek permission pursuant to section 45(1) of the *Responsible Energy Development Act*, SA 2012 c R-17.3 ("**REDA**") to appeal the August 21, 2025 decision of the Chief Executive Officer ("**CEO**") of the Alberta Energy Regulator ("**AER**") to reconsider the AER's July 23, 2025 decision denying Summit Coal Inc.'s ("**Summit's**") motion to cancel the public hearing in AER Proceeding 449.
2. Such further and other related relief as counsel may request and this Honourable Court may grant.

### **Grounds for making this application:**

#### Overview:

3. On October 3, 2024, Sean Sexton, the Executive Vice President Law and General Counsel of the AER wrote to the Chief Hearing Commissioner, Alex Bolton, advising Mr. Bolton that the AER's executive team had accepted Summit's Mine 14 project applications and directing Mr. Bolton to assign a panel of hearing commissioners to the matter and set it down for a hearing ("**Proceeding 449**").

4. On November 26, 2024, the AER panel of hearing commissioners assigned to Proceeding 449 ("**Hearing Panel**") issued a Notice of Hearing setting out how those interested could apply to participate.
5. On February 7, 2025, the Hearing Panel granted the Applicants full participant status to participate in Proceeding 449.
6. On June 27, 2025, Summit filed a motion requesting that the Hearing Panel cancel the public hearing in Proceeding 449 and proceed to render a decision on the applications.
7. On July 23, 2025, the Hearing Panel issued its decision denying Summit's motion to cancel the public hearing.
8. On July 28, 2025, the president of Valory Resources Inc. (Summit's parent company) wrote to the Minister of Energy and Minerals, Brian Jean, expressing disappointment with the Hearing Panel's decision and requesting a meeting to discuss its frustrations with the process.
9. On July 29, 2025, Summit filed a motion requesting that the Hearing Panel adjourn the public hearing in Proceeding 449 *sine die*, citing its inability to meet its upcoming filing deadline, its consideration of a possible reconsideration request, and uncertainty about whether it intended to proceed with the Mine 14 project.
10. On August 6, 2025, Summit submitted a request to the CEO to reconsider the Hearing panel's decision denying Summit's motion to cancel the public hearing under section 42 of *REDA* ("**Reconsideration Request**"). Although brought within Proceeding 449, Summit addressed the Reconsideration Request directly to the CEO.
11. On August 8, 2025, the Hearing Panel partially granted Summit's July 29<sup>th</sup> motion to adjourn by agreeing to adjourn the hearing to February 9, 2026. In its decision, the Hearing Panel reiterated its status as independent decision makers authorized under *REDA* to carry out Proceeding 449 and make a decision on behalf of the AER. The Hearing Panel reminded the parties that all correspondence in Proceeding 449 must be sent to the Hearing Panel. This was the last communication from the Hearing Panel to the parties.
12. On August, 11, 2025, the AER's Regulatory Appeals Coordinator issued a letter inviting full participants of Proceeding 449 to submit written submissions in response to Summit's Reconsideration Request. The Applicants submitted written submissions opposing the Reconsideration Request.
13. On August 21, 2025, the AER's CEO issued his decision determining that he had authority to decide Summit's Reconsideration Request. The CEO decided to reconsider the Hearing Panel's July 23, 2025 decision by cancelling the public hearing and transferring the applications to the AER Regulatory Applications

branch for a decision. It is from this decision that the Applicants seek leave to appeal to this Court.

14. Section 45(1) of the *REDA* provides that the Applicants may seek permission to appeal a decision of the AER on a question of jurisdiction or law.
15. The CEO's decision raises the following questions of law:
  - a. Whether the AER's CEO erred in law in interpreting *REDA* as authorizing him to intercede in an ongoing proceeding before a panel of the AER's hearing commissioners and reconsider a procedural decision of the panel in a manner that ended the proceeding and dismissed the panel.
  - b. Whether the AER's CEO breached his statutory authority, including sections 11(3) and 12(1)(c) of *REDA*, by conducting a written hearing in respect of a reconsideration request under section 42.
  - c. Whether the AER's CEO erred in law or acted unreasonably by misinterpreting and misapplying the AER's reconsideration test and departing from the AER's established interpretation and application of section 42 of *REDA* without justification.

Test for Permission to Appeal:

16. When deciding whether to grant permission, this Court considers: (i) whether the issues are of general importance; (ii) whether the issues are of significance to the decision itself; (iii) whether the appeal has arguable merit; and (iv) whether the appeal will delay the underlying proceeding.
17. The issues on appeal are of general importance to the practice. The CEO's unprecedented assumption of jurisdiction over reconsideration requests undermines the statutory division of authority under *REDA*, directly compromises the independence of the hearing commissioners in any future proceeding, and creates a precedent by which applicants can bypass the hearing process altogether. The implications extend well beyond this case and will affect how the AER administers all future applications.
18. The appeal also raises clear questions of statutory interpretation of *REDA* and its regulations that are of jurisprudential significance. The proper allocation of authority to hear and adjudicate applications before hearing panels, and hear and determine reconsiderations of hearing panel decisions, goes to the core of the AER's institutional framework and has never been squarely addressed by this Court.
19. The issues on appeal are significant to the decision itself. The CEO's intervention terminated Proceeding 449 in its entirety, extinguishing the Applicants' right to participate and causing them irreparable prejudice. As the CEO himself conceded,

the AER has never previously cancelled a hearing where a full participant had not chosen to withdraw. The Applicants have been deprived of their right to a hearing on Proceeding 449 granted by the Hearing Panel. Absent lawful authority to decide the Reconsideration Request, the CEO's decision cannot stand.

20. The appeal is *prima facie* meritorious and is not frivolous. *REDA* expressly prohibits the CEO from conducting hearings and reserves that authority exclusively to panels of hearing commissioners. Nothing in *REDA* empowers the CEO to overturn or dismiss those panels. By intervening to cancel the hearing, the CEO usurped the commissioners' exclusive jurisdiction and acted in clear breach of the statutory framework.
21. The proposed appeal will not unduly hinder the progress of the underlying proceeding. The CEO's decision cancelled all remaining procedural steps in the underlying proceeding.

**Material or evidence to be relied on:**

22. Affidavit of, Gloria Wozniuk, dated September 19, 2025.
23. Memorandum of Argument, to be filed.
24. Such further and other materials or evidence as counsel may advise and as the Honourable Court may permit.

**Applicable Acts, regulations and rules:**

25. *Alberta Rules of Court*, Alta Reg 124/2010.
26. *Responsible Energy Development Act*, SA 2012 c R-17.3.
27. *Responsible Energy Development Act General Regulation*, Alta Reg 90/2013.
28. *Alberta Energy Regulator Rules of Practice*, Reg 99/2013