

In the Court of Appeal of Alberta

Citation: Alberta Wilderness Association v Alberta Energy Regulator, 2026 ABCA 82

Date: 20260317
Docket: 2501-0258AC
Registry: Calgary

Between:

**Alberta Wilderness Association and Canadian Parks and
Wilderness Society, Northern Alberta**

Respondents
(Appellants)

- and -

Alberta Energy Regulator and Summit Coal Inc.

Respondents
(Respondents)

- and -

Sturgeon Lake Cree Nation

Applicant

**Reasons for Decision of
The Honourable Justice Jolaine Antonio**

Application for Permission to Intervene

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Introduction

[1] The applicant, Sturgeon Lake Cree Nation, applies for permission to intervene in an appeal. The decision under appeal was made by the chief executive officer of the Alberta Energy Regulator (AER). Relying on section 42 of the *Responsible Energy Development Act*, SA 2012, c R-17.3 [REDA], the chief executive officer reconsidered a decision made by an AER hearing panel and cancelled a public hearing regarding a coal mine project. The status of the project itself is not under appeal.

Background

[2] Summit Coal Inc applied to the AER to approve its Mine 14 coal project near Grande Cache. A panel of the AER invited interested parties to participate in a hearing. Four Indigenous groups responded and were granted full participation rights; the applicant was not among them. Subsequently, the four groups notified the panel that they no longer objected to Summit Coal's application. The appellants, the Alberta Wilderness Association and the Canadian Parks and Wilderness Society, Northern Alberta, had full participation rights and continued to oppose the application.

[3] Summit Coal asked to have the hearing cancelled. The hearing panel denied this request. Summit Coal asked the chief executive officer to reconsider the panel's decision pursuant to section 42 of the REDA. The chief executive officer did so. He cancelled the remaining procedural steps, including the hearing, and transferred the proceedings record to the Regulatory Applications branch for a decision.

[4] The applicant seeks to intervene. It asserts inherent, aboriginal, and treaty rights under Treaty 8 and section 35(1) of the *Constitution Act, 1982*. The coal mine project is on or near lands that the Nation says its people have traditionally used for cultural purposes and activities such as fishing, hunting, and trapping. The applicant intends to make submissions on two issues that have not been raised by the parties:

- a) the critical role that the AER's hearing processes play in enabling the AER to identify and mitigate the impacts of energy resource development on the rights of Indigenous people; and
- b) the negative impacts that the AER's and Summit's proposed interpretation of section 42 of the REDA will have on the independence of the AER's hearing commissioners and the Regulator's ability to fulfill its constitutional obligations to Indigenous people in a manner that upholds the honour of the Crown.

[5] The respondent Summit Coal argues that allowing the Nation to intervene would improperly expand the issues. It submits the narrow issue on appeal is whether the chief executive officer has the statutory authority to reconsider a hearing panel decision and cancel a hearing when there are no longer any parties who are directly and adversely affected by, and opposed to, a project.

[6] The appellants and the respondent AER have not taken a position on this application.

Analysis

[7] A single justice of this Court may grant permission to intervene and impose conditions on the intervention: *Alberta Rules of Court*, Alta Reg 124/2010, Rules 14.37(2)(e), 14.58(1). Unless otherwise ordered, an intervenor may not raise or argue new issues: Rule 14.58(3).

[8] As explained in *Papaschase Indian Band (Descendants of) v Canada (Attorney General)*, 2005 ABCA 320 at para 2:

... as a general principle, an intervention may be allowed where the proposed intervenor is specially affected by the decision facing the Court or the proposed intervenor has some special expertise or insight to bring to bear on the issues facing the court. As explained by the Supreme Court of Canada in *R. v. Morgentaler*, 1993 CanLII 158 (SCC), [1993] 1 S.C.R. 462 at para. 1: “[t]he purpose of an intervention is to present the court with submissions which are useful and different from the perspective of a non-party who has a special interest or particular expertise in the subject matter of the appeal.”

[9] The applicant’s affidavits provide a sufficient basis on which to conclude it will be affected by the court’s interpretation of section 42 of *REDA* and that it can bring unique expertise to the analysis. I make no finding on the substance of the applicant’s proposed arguments, as that is a matter for the appeal panel to determine.

[10] I recognize the risk that the intervention could expand the issues before the Court, but I have concluded that risk can be managed through the imposition of conditions.

[11] The applicant is granted permission to intervene, subject to the following conditions:

- a) The applicant’s submissions may address only the first question stated in the order granting permission to appeal.
- b) The applicant shall not adduce evidence or supplement the record.
- c) The applicant shall file and serve a factum not exceeding 10 pages on or before the appellants’ deadline for filing and serving their factum or factums.

d) No costs shall be awarded to or against the applicant in relation to the appeal.

[12] At this time, I do not grant the applicant permission to make oral submissions at the appeal hearing. It remains open to the panel to grant such permission at any time before the hearing.

[13] No costs are awarded for this application.

Application heard on February 26, 2026

Reasons filed at Calgary, Alberta
this 17th day of March, 2026

Antonio J.A.

Appearances:

A. Bordignon

for the Respondent, Alberta Wilderness Association and Canadian Parks and Wilderness Society, Northern Alberta

P.J. Faulds, KC (no appearance)

G. Wong

E. Carbonaro (no appearance)

for the Respondent, Alberta Energy Regulator

M.K. Ignasiak, KC

T. Machell (no appearance)

J. Eadie

for the Respondent, Summit Coal Inc

E.P. Murphy

F. DeLuca

R. Garrett

for the Applicant