

Via Email

February 19, 2019

Calgary Head Office
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www.aer.ca

O'Chiese First Nation
Consultation Office
Attention: Andrew Scott

Teck Coal Limited
Attention: Marc Symbaluk

Dear Mr. Scott and Mr. Symbaluk:

**RE: Request for Reconsideration by O'Chiese First Nation (OCFN)
Teck Coal Ltd. (Teck)
Cardinal River Coal Ltd. (CRC)
Application No.: 1909318
Cheviot Coal Mine**

The Alberta Energy Regulator (AER) received a letter from O'Chiese First Nation (OCFN) on December 7, 2018. In the letter, OCFN made requests of the AER to reconsider and allow OCFN's late filed Statement of Concern (SOC) against Application 1909318 (the Application).

The AER has considered OCFN's request and the response filed by Teck on behalf of CRC, and for the reasons that follow has decided there is no basis for conducting a reconsideration in this matter.

The Reconsideration Power

Section 42 of the *Responsible Energy Development Act* (REDA) sets out the authority for the AER to reconsider its decisions:

42 The Regulator may, in its sole discretion, reconsider a decision made by it and may confirm, vary, suspend or revoke the decision. [underlining added]

Given the appeal processes available under REDA, and the need for finality and certainty in its decision, the AER will only exercise its discretion to reconsider a decision under the most extraordinary circumstances where it is satisfied that there are exceptional and compelling grounds to do so. The reconsideration power in section 42 of REDA should be used sparingly, and only in the most compelling cases where no other review power exists to address a situation that is in obvious need of remediation.

The Reconsideration Sought

In its December 7, 2018 letter, OCFN requests “a reconsideration of O’Chiese First Nation’s SOC by the AER.” Section 42 grants the AER the ability to reconsider its decisions. The SOC is not an AER decision and there is no basis for “reconsidering” it under section 42.

Reconsideration of the AER’s Decision to Disregard OCFN’s Statement of Concern

The AER disregarded OCFN’s SOC. The AER has considered whether it should reconsider its decision to disregard to the SOC and has concluded it should not.

In considering that question, the AER notes the following facts:

- On May 15, 2018 CRC filed its application against which OCFN attempted to file an SOC, Application No. 1909318 (the Application).
- Immediately after the Application was filed, public notice of it was posted on the AER website as required by section 31 of REDA and sections 5 and 5.1 of the *Alberta Energy Regulator Rules of Practice* (Rules). The notice advised that SOCs were to be filed with the AER by June 15, 2018.
- On November 16, 2018, OCFN submitted an SOC to the AER regarding the Application.
- On November 26, 2018, the AER advised OCFN that it was disregarding the SOC because it was filed outside the time for filing SOCs. In disregarding the SOC, the AER was exercising its authority under section 6.2 of the Rules to disregard an SOC.
- On December 7, 2018, OCFN wrote to the AER requesting its SOC be reconsidered.

Public notice of the Application was issued by the AER which included a clear date by which SOCs were to be filed. OCFN failed to meet that deadline by five months. The fact OCFN did not have a copy of the Notice sent directly to it is not an extraordinary circumstance. There was no requirement to provide direct notice to OCFN.

It is not an extraordinary circumstance that OCFN might be directly and adversely affected by the application. Even those who may be directly and adversely affected are required to follow the time lines for filing an SOC set out in Notices of Application.

OCFN’s concerns related to other applications and matters do not justify a reconsideration in this matter. Additionally in considering the Application, the AER will review all information submitted by CRC and will determine if it meets requirements. If the AER approves the Application, those who are directly and

adversely affected by the approval may be eligible to seek a regulatory appeal of the approval decision under Part 3 of the Rules.

Finally, allegations about the adequacy of the Crown's consultation with OCFN are outside the jurisdiction of the AER and therefore do not create a need for the AER to reconsider its decision to disregard OCFN's SOC. The AER notes that it cannot decide the Application until it has received advice from the ACO that the Crown's consultation with OCFN is adequate.

As there are no extraordinary or compelling grounds to justify a reconsideration, the AER will not reconsider its decision to disregard the SOC submitted to the AER on November 16, 2018.

Sincerely,

<original signed by>

Paul Ferensowicz, Senior Advisor, Industry Operations

<original signed by>

Scott Fallows, Senior Advisor, Authorizations

Cc: Connie Tuharsky, O'Chiese First Nation
Phyllis Whitford, O'Chiese First Nation
Kurt Borzel, Aboriginal Consultation Office
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Corey MacGarva, Alberta Energy Regulator
Janet Stewardson, Alberta Energy Regulator
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