

*Via Email: MIgnasiak@osler.com*

**February 9, 2021**

Osler, Hoskin & Harcourt LLP

**Attention: Martin Ignasiuk, Counsel**

Dear Sir:

**RE: Coalspur Mines (Operations) Ltd (“Coalspur”)  
Applications No. CCA 1929395, 1929396, 1929397; EPEA 010-00301345;  
WA 007-00311969, WA 006-00311965 (the “Coalspur Applications”);  
Coalspur Request to Disregard Statement of Concern and Decline to set Applications  
down for Hearing**

Dear Sir,

The AER has considered your correspondence dated January 27, 2021 and February 2, 2021 on behalf of your client Coalspur Mines (Operations) Ltd. The AER has also considered correspondence received from counsel for the Louis Bull Tribe on January 28, 2021.

In your letters, you requested the following:

- a) ‘...pursuant to s. 6.2 of the *Alberta Energy Regulator Rules of Practice* (“**AER Rules**”) for the AER to disregard statement of concern (“**SOC**”) No. 31794 filed by Louis Bull Tribe #439 (“**LBT**”), and
- b) ‘...for the AER to not conduct a hearing on the Coalspur Applications, pursuant to s. 7 of the *AER Rules*’.

You have also requested in the alternative to (a) and (b) above, that the AER reconsider its decision to conduct a hearing on the Coalspur Applications, on the grounds set out in your letter dated January 27, 2020.

For the reasons below, the AER dismisses Coalspur’s requests under the *AER Rules* and its request for reconsideration.

**Calgary Head Office**  
Suite 1000, 250 – 5 Street SW  
Calgary, Alberta T2P 0R4  
Canada

[www.aer.ca](http://www.aer.ca)

### Sections 6.2 & 7 of the AER Rules

It is an indisputable fact that a decision was made under section 33 of the *Responsible Energy Development Act (REDA)* to conduct a hearing to decide the Coalspur Applications. A panel of AER hearing commissioners has been assigned and the initial phases of the hearing proceeding have already begun. Barring a reconsideration, the AER has no authority to again decide whether to conduct a hearing.

Regarding the request to now disregard LBT's SOC, the provisions in *REDA* and the *AER Rules*<sup>1</sup> clearly indicate that when SOCs are filed, they must be considered by the AER as part of its decision on whether to conduct a hearing. The decision to go to hearing on Coalspur's applications was inextricably linked to the AER's consideration of the SOCs before it, including LBT's SOC. The AER already considered these SOCs and decided to proceed to a hearing. It was open to the AER at the time it made the hearing decision to disregard LBT's SOC under section 6.2 of the *AER Rules*. It did not do so. Barring a reconsideration of the decision to go to a hearing (made based on the SOC's before it), the AER cannot now decide to disregard LBT's SOC.

### Reconsideration under Section 42 of REDA

Section 42 of *REDA* provides the AER with broad and singular discretion to decide to reconsider any decision made by it. Given the need for finality and certainty in AER decisions and processes, the AER will only exercise its discretion to reconsider a decision under extraordinary circumstances where it is satisfied that there are exceptional and compelling grounds to do so. The reconsideration power is not intended to by-pass other AER requirements or processes, nor should it be exercised in a manner inconsistent with *REDA* or the *AER Rules*.

In this case, there are no circumstances which justify the AER exercising its discretion to reconsider its decision. It is neither unusual nor exceptional for SOC filers to withdraw from a

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<sup>1</sup> See for example section 33(1) of *REDA* and section 7 of the *AER Rules*.

matter that has been sent to hearing, leaving only one SOC filer. Moreover, LBT's participation in the hearing is to be determined in accordance with section 9 of the *AER Rules*. Hence there is a specific process under the *AER Rules* that addresses Coalspur's main issue about LBT's 'standing' in relation to the Coalspur Application.

The AER is also mindful that a hearing on an application must be conducted by hearing commissioners under section 12 of *REDA*, and in accordance with the *AER Rules* as set out in Section 34(4) of *REDA*. Accordingly, once a hearing is to be conducted any hearing participation decision is to be decided by the assigned hearing panel through the request to participate process in section 9 of the *AER Rules*. If the AER were to now reconsider the decision to conduct a hearing on the basis of LBT's SOC, that would effectively short-circuit and override the request to participate process set out in the *AER Rules* and unduly interfere with the panel's authority to make hearing participation decisions.

Lastly, given that the request to participate process has been the typical practice of the AER in determining participatory rights where an application has been sent to hearing, parties who have an interest in the hearing (such as SOC filers) have a legitimate expectation that this process under the *AER Rules* will be followed.

### Conclusion

The AER cannot now disregard LBT's SOC or decide not to conduct a hearing under the *AER Rules* because a decision to conduct a hearing has already been made, which included a consideration of LBT's SOC. These requests are dismissed.

A reconsideration of the decision to conduct a hearing would operate as a bypass of the request to participate process in the *AER Rules*, and would be inconsistent with the provisions of *REDA* and the *AER Rules* regarding the conduct of hearings. There are also no unusual, exceptional or compelling circumstances warranting the AER reconsidering its decision. The request for reconsideration is therefore dismissed.

<Original signed by> \_\_\_\_\_

Laurie Pushor, CEO  
Alberta Energy Regulator

<Original signed by>

Charlene Graham, EVP Law & General Counsel  
Alberta Energy Regulator

<Original signed by>

Martin Foy, EVP Operations  
Alberta Energy Regulator

Cc: Louis Bull Tribe c/o Ms. Meaghan Conroy (Counsel), MLT Aikins LLP  
Alex Bolton, Chief Hearing Commissioner, Alberta Energy Regulator  
Perand Meysami, Hearing Commissioner Panel Chair (Application 1929395 et al), Alberta Energy Regulator  
Meighan LaCasse & Alison Doebele, Legal Counsel (Hearing Panel), Alberta Energy Regulator  
Sean Sexton, VP Law, Alberta Energy Regulator