

AER Proceeding 444

By email only

September 27, 2024

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Attention: Alifeyah Gulamhusein

Vern Emard

**Re: Northback Holdings Corporation (Northback)
Applications 1948657, A10123772, and 00497386 (the Applications)
Panel Decision on Adjournment Motion of Municipal District of Ranchland No. 66
(Ranchland)**

Dear Parties:

We write to provide our decision on the motion brought by Municipal District of Ranchland No. 66 for an adjournment of this matter, *sine die*, pending the outcome of Ranchland's appeal in Court of Appeal Action No. 2401-0076AC (the Appeal).

Following our careful consideration of the submissions provided by Ranchland and Northback, as well as Blood Tribe/Kainai (Kainai), Piikani Nation, Siksika Nation, Stoney Nakoda First Nations, the Livingstone Landowners Group (LLG), Vern Emard, and the Municipality of Crowsnest Pass (Crowsnest Pass), we have decided to deny Ranchland's motion for the reasons set out below.

BACKGROUND

Northback submitted the Applications to the AER in August and September of 2023. On February 22, 2024, the AER's General Counsel advised the Chief Hearing Commissioner that the AER had determined that the Applications should be decided by a panel of Hearing Commissioners. The Chief Hearing Commissioner convened this panel, and we issued a Notice of Hearing on April 10, 2024.

On March 21, 2024, Ranchland applied to the Court of Appeal of Alberta for permission to appeal the AER's decision to accept the Applications. Ranchland also asked the AER to stay its decision to send the Applications to a hearing. That request was denied. Ranchland then applied to this panel on June 17, 2024, to stay the Applications and this proceeding. We denied that request on August 9, 2024.

The Court heard Ranchland's application for permission to appeal on August 1, 2024. On August 22, 2024, the Court issued its decision granting Ranchland permission to appeal.¹

On September 6, 2024, Ranchland submitted its motion requesting that we "adjourn the Proceeding, including all upcoming submissions deadlines and hearing dates, until ... [its] ... Appeal of the Decision is conclusively resolved by the Alberta Court of Appeal." Upon receipt of this adjournment request, we invited those parties granted full participation in this matter (full participants) and Northback to make submissions on the adjournment request. We received submissions from Kainai, Piikani Nation, Siksika Nation, Stoney Nakoda First Nations, Vern Emard, LLG, Crowsnest Pass and Northback. As well, Ranchland filed a reply to those submissions.

Some limited participants filed letters supporting and opposing Ranchland's adjournment request.² Limited participants are not entitled to fully participate in this matter³ and were not invited to respond to the motion. Therefore, their submissions were considered but were given little weight.

¹ *Municipal District of Ranchland No. 66 v Alberta Energy Regulator* 2024 ABCA 2024.

² Corb Lund, Pekisko Group, and Citizens Supportive of Crowsnest Coal.

³ Exhibits 38.01, 39.01 and 34.01, Participation decisions dated June 27, 2024

REASONS FOR DECISION

We, as the AER for the purposes of deciding the Applications, are the masters of our procedure. In determining procedural matters, we take guidance from the *Responsible Energy Development Act (REDA)* and its rules.

Of primary concern in all procedural decisions is that the hearing process be fair. Fairness includes ensuring that parties are provided with the applications, adequate notice of the hearing, and the opportunity to present and respond to evidence. Additionally, our procedure must be efficient and effective. As noted by the Supreme Court of Canada:

Legislatures delegate authority to administrative decision makers because of their proximity and responsiveness to stakeholders, their ability to render decisions promptly, flexibly and efficiently, and their ability to provide simplified and streamlined proceedings that can promote access to justice...⁴

We must have regard for the AER's mandate in considering Ranchland's request for adjournment for an unknown period of time. Section 2(1)(a) of *REDA* states our mandate in this proceeding is "to provide for the efficient, safe, orderly and environmentally responsible development of energy resources and mineral resources in Alberta through the Regulator's regulatory activities... in accordance with energy resource enactments and, pursuant to this Act and the regulations, in accordance with specified enactments." We note that efficient does not necessarily mean expedited.

Ranchland and others supporting the requested adjournment submit that the Court's decision to grant permission to appeal requires us to reconsider the hearing schedule.⁵ In particular, Ranchland states that should it succeed on the Appeal, the proceeding "will have been a waste of time and resources" and rendered a nullity. Ranchland submits that the delay incurred by an adjournment of the hearing is irrelevant to its request and that any arguments made by Northback and others opposing the requested adjournment because of economic loss are meritless.

⁴ *Law Society of Saskatchewan v Abrametz* 2022 SCC 29 at para 32 quoting *Canada (Minister of Citizenship and Immigration) v. Vavilov* 2019 SCC 65 at para 29.

⁵ *Municipal District of Ranchland No. 66 v Alberta Energy Regulator*, 2024 ABCA 274

Ranchland also says we should give no weight to the arguments opposing the adjournment which talk about potential future direction to the AER from the Government of Alberta. As stated by Ranchland in its September 20 reply:

this argument asks that the Panel resolve the Coal Exploration Applications based on what the law potentially could be, rather than what it actually is. The proponents of the Applications are essentially encouraging the AER to peer into a crystal ball and guess at what its own regulatory landscape might look like in the future, if Minister Jean decides to intervene in this process again. Such an argument would be rejected outright in any Court, and the AER should similarly pay no heed to it.

We agree with Ranchland that we must deal with matters as they stand now and not make decisions based on speculation about future direction from the Government of Alberta. Similarly, we do not consider it appropriate to alter the procedure or timelines for this hearing based on speculation about future direction from the Court of Appeal. Without a compelling reason to do otherwise, we should proceed to consider the Applications in a fair, prompt and efficient manner. We would not be doing that if we attempt to “peer into a crystal ball” and halt our process on a *sine die* basis because of something that might occur in the future, such as direction from the Court.

We note that while the Court’s permission to appeal decision discusses the potential impact a decision from the Court could have⁶, it contains no direction to this panel regarding the conduct of this hearing. Additionally, neither Ranchland nor the other parties supporting the adjournment have asked the Court to stay this hearing pending the outcome of the appeal.⁷ Deciding the adjournment request remains a discretionary decision for the panel considering fairness and prejudice to the parties.

Ranchland says it might be unnecessarily inconvenienced and put to expense depending on the outcome of the Court of Appeal process. However, that is not the type of impact which warrants halting our consideration of the Applications. We need to consider matters properly before us in a fair and efficient manner and at this time, the Applications are properly before us.

⁶ *Ibid* at para 25.

⁷ *Alberta Rules of Court* AR 124/210, Rule 14.48.

There is no unfairness to Ranchland or other parties supporting the adjournment request by continuing with the current hearing schedule. Neither Ranchland nor those supporting the adjournment have said they cannot attend the hearing as scheduled or that by proceeding they will not be able to adequately participate in it.

In terms of cost and inconvenience, we note that neither Ranchland nor any of the parties supporting the requested adjournment have applied for costs, but it is open to them to do so before or after the hearing, in accordance with the *Rules of Practice* and *Directive 031: REDA Energy Cost Claims*.

We agree with Ranchland that complaints about the extent and length of this proceeding to date do not determine the adjournment request. However, the general need to “render decisions promptly, flexibly and efficiently, and ...provide simplified and streamlined proceedings” is relevant. An adjournment of an indefinite period in the present circumstances does not promote those attributes. We also note that the Court of Appeal of Alberta may not be the final court to consider Ranchland’s appeal.

It has been suggested that the adjournment decision in Proceeding 417 should persuade us to grant Ranchland’s adjournment request. We do not agree. The adjournment decision in Proceeding 417 does not help us in regard to Ranchland’s request because of differing facts. The Court of Appeal decision related to Proceeding 417⁸, concerned the issues set by the hearing panel in that proceeding. The result of the Court’s decision could have required that panel to re-hear the evidence presented if an adjournment was not granted. The Proceeding 417 panel’s ultimate reason for granting an adjournment was to ensure the hearing “only occurred once”. There is no suggestion that the appeal in this matter will impact the hearing issues. We also note that unlike the appeal related to Proceeding 417, Ranchland’s pending appeal does not have a set date nor is it on an expedited timeline. The AER’s decisions do not create binding precedent for other AER matters. Nonetheless, consistency in decision making is a good thing. We are satisfied that there is no inconsistency between our decision on the requested adjournment and the adjournment decision of the panel in Proceeding 417.

⁸ *Judd v Alberta Energy Regulator*, 2024 ABCA 154.

CONCLUSION

While we have the discretion to grant an adjournment, we are not persuaded that doing so in this case is appropriate. Fairness does not require the requested adjournment. The requested adjournment, which would likely result in a lengthy delay, would make this proceeding less efficient.

Ranchland's request for an adjournment of Proceeding 444 pending the conclusion of the Appeal is denied.

The proceeding schedule set out in our August 23, 2024, letter remains in force.

Parand Meysami, Presiding Member

M.A. (Meg) Barker, Panel Member

Shona Mackenzie, Panel Member

cc: Thomas Machell, Bennett Jones LLP, counsel for Northback
Angela Beattie and Sarah Nossiter, Northback Holdings Corporation
Isabelle Lefroy, JFK Law LLP
Alison Gray, Gowling WLG (Canada) LLP
Michael Custer, Carscallen LLP
Jody Butt, Aboriginal Consultation Office
Meighan LaCasse, Alana Hall, Shauna Gibbons, AER counsel for the panel
Tara Wheaton and Elaine Arruda, AER hearing coordinators
Limited Participants, as identified in the attached 'Schedule of Participants for AER Proceeding 444'

Schedule of Participants for AER Proceeding 444

Full Participants

Blood Tribe/Kainai (“Kainai”)
Livingstone Landowners Group
Municipal District of Ranchland No. 66
Municipality of Crowsnest Pass
Piikani Nation
Siksika Nation
Stoney Nakoda First Nations
Vern Emard

Limited Participants

Josefine Singh
Kevin Watson
Chad Petrone
Kara Potts (Potts Painting Inc)
Pat Rypien
Clayton Bezzeg (Tig Contracting)
Don Forsyth (Tig Contracting)
Kim Cunningham
Gary Clark (Crowsnest Pass Quad Squad)
Rob MacGarva (Southwest Alberta Skateboard Society)
Monica Field
David McIntyre
Kurt Weiss (Blairmore Lions Club)
Troy Linderman (CNP EMS Industrial Safety Services)
Rick Sharma (Davis Dodge)
Lucas Michalsky (Darkhorse Services Inc.)
Kendall Toews (South West Waste Management)
Andy Vanderplas
Ken Allred
Brandy Fehr
John Clarke
Colt Lazzarotto
Brent Koinberg (Crowsnest Adventures Ltd)
Darcy Wakaluk (Diggers Bobcat Service)
Allan Garbutt
Dirk Gillingham
Koral Lazzarotto
Dale Linderman
Tanya hill
Jim Swag (Piikani Employment Services)
William (Randy) Cartwright
Shar Cartwright
Mitchell Withrow

Heidi McKillop
Katrina Shade (Piikani Resource Development Ltd)
Daylu Grier (Piikani Security Services Interest)
Liz Insley (Piikani Travel Center)
Alberta Wilderness Society
Canadian Parks and Wilderness Society
Citizens Supportive of Crowsnest Coal
Coal Association of Canada
Corb Lund
Crowsnest Conservation Society
Gold Creek Grazing Cooperative
Pekisko Group
Timberwolf Wilderness Society