

By email only

June 4, 2024

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Carscallen LLP

Bennett Jones LLP

Attention: Michael Niven

Attention: Martin Ignasiak

Dear Parties:

**RE: Request for Regulatory Appeal & Stay Request by Municipal District of Ranchland No. 66
Northback Holdings Corporation (Northback)
Application Nos.: 1948547, A10123772 and 00497386 (Applications)
Locations: NW 24-8-4-W5 / 25, 26, 35 36, 8-4-W5M / 1-9-4-W5M / 6-9-3-W5M
Request for Regulatory Appeal No.: 1950645**

The Alberta Energy Regulator (AER) has considered the request of the Municipal District of Ranchland No. 66 (the MD), made under section 38 of the *Responsible Energy Development Act* (REDA) for a regulatory appeal of the AER's February 22, 2024 acceptance of the above-noted Applications, and request to the Chief Hearing Commissioner to conduct a hearing.

The AER has reviewed the MD's submissions, the submissions made by Northback, and also considered the MD's request for a stay of the Applications hearing pending the outcome of the request for Regulatory Appeal, and the outcome of the MD's application for permission to appeal the acceptance of the applications, filed in the Court of Appeal of Alberta (ABCA), and the final disposition of all ensuing appeals under s. 45(5) of REDA (the Stay Request).

For the reasons that follow, the AER has concluded that acceptance of the Applications, and request for a hearing, is not an appealable decision as defined in REDA. Therefore, the request for Regulatory Appeal is dismissed.

Relevant Legislation

The applicable provision of REDA in regard to regulatory appeals, section 38, states:

38(1) An eligible person may request a regulatory appeal of an appealable decision by filing a request for regulatory appeal with the Regulator in accordance with the rules.

[emphasis added]

The term “appealable decision” is defined in section 36 of REDA. To be an appealable decision, the decision must have been made under one of the listed acts, or an energy resource enactment without a hearing, or any other decision or class of decisions described in the regulations.

Section 1(1)(f) of REDA states that a decision of the AER includes an approval, order, direction, declaration or notice of administrative penalty made or issued by the Regulator. While this definition uses the word “includes” and describes certain types of decisions, the AER’s authority to accept applications and request a hearing, is not similar to the classes of decision referred to in section 1(1)(f).

The MD argues that because Northback’s Coal Exploration Applications were made pursuant to the *Coal Conservation Act*, which is an energy resources enactment, it is an appealable decision. However, the AER’s request to the Chief Hearing Commissioner to conduct a hearing was made pursuant to section 33(1) of REDA which states:

33(1) Where a statement of concern is filed in respect of an application, the Regulator shall decide, in accordance with the rules and subject to section 34, whether to conduct a hearing on the application.

As the acceptance of the Applications is not an “appealable decision” does not fall within any of the “appealable decisions” listed in s. 36(a) of REDA, it is not necessary to determine whether the MD is an eligible person.

Stay Pending Outcome of Request for Regulatory Appeal

The MD has also requested a stay of the Applications acceptance and request for hearing pending the outcome of the request for regulatory appeal, and if granted, the regulatory appeal.

Under section 38(2) of *REDA*, the filing of a request for regulatory appeal does not operate to stay an appealable decision. The AER may, however, grant a stay on the request of a party to the regulatory appeal under section 39(2).

As it has been determined that the acceptance of the Applications, and request for hearing, is not an “appealable decision”, and the request for Regulatory Appeal is dismissed, there is no need to consider the MD’s request for a stay pending the outcome of a Regulatory Appeal.

Stay Pending the Outcome of the Permission to Appeal Application

The AER will consider this request at a later date under separate letter.

Sincerely,

<Original signed by>

Paul Ferenowicz
Principal Regulatory Advisor

<Original signed by>

Gary Neilson
Senior Advisor, Crown Liaison

<Original signed by>

Elizabeth Grilo
Senior Advisor, Regulatory Enhancement

cc: Tara Wheaton, AER
Meighan LaCasse, AER
Alana Hall, AER