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By email only

April 14, 2026

E3 Lithium Ltd.

Attention: Micheal Bolianatz /
Chris Doornbos

Blake, Cassels & Graydon LLP

Attention: Terri-Lee Oleniuk /
Jordan Prestie

Dear Parties:

**RE: Request for a Regulatory Appeal by E3 Lithium Ltd. (E3)
Enhance Energy Inc. (Enhance)
Application No.: 1956215 (Application);
CO₂ Sequestration Approval No.: 13463 (Approval)
Request for Regulatory Appeal No.: 1959099 (Request)**

The Alberta Energy Regulator (AER) has considered E3's request under section 38 of the *Responsible Energy Development Act (REDA)* for a regulatory appeal of the AER's decision to approve Application No. 1956215 and issue the CO₂ Sequestration Approval No. 13463 to Enhance on July 30, 2025 (the Decision). The AER has carefully considered E3's submissions and the submissions made by Enhance.¹ The absence of a reference to a particular aspect of a submission should not be construed as a failure by the AER to consider it. The entirety of all submissions was considered.

For the reasons that follow, the AER has decided that E3 is not eligible to request a regulatory appeal in this matter. Therefore, the request for a Regulatory Appeal is dismissed.

The starting point for considering E3's request is section 38 of *REDA* which 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]

¹ On August 28, 2025, E3 submitted a request for a Regulatory Appeal in relation to the Approval. On October 2, 2025, Enhance's response to the Request was submitted to the AER. On October 22, 2025, E3 submitted its reply submission to the AER.

The term “eligible person” is defined in section 36(b)(ii) of *REDA* to include:

a person who is directly and adversely affected by a[n appealable] decision ...

and “appealable decision” includes:

A decision of the Regulator that was made under an energy resource enactment [including the *Oil and Gas Conservation Act*], ... if that decision was made without a hearing. [*REDA* section 36(a)(iv)]

Background

In 2024, through an agreement the Government of Alberta granted Enhance the right to inject carbon dioxide (CO₂) into the Leduc Formation within the Woodbend Group (Sequestration Agreement). Enhance plans to inject CO₂ over its carbon capture and sequestration (CCS) project's estimated 17.5-year injection period. Enhance anticipates the sequestered CO₂ to result in a 4km plume radius, up to a maximum radius of 5.6km. Enhance refers to this CCS project as the Origins Project.

Subsequently, Enhance applied under the *Oil and Gas Conservation Act* (OGCA) to the AER for approval of a Class III Scheme in the Lacombe Field and surrounding areas, for sequestration of CO₂ in the Leduc Formation at 100/04-36-039-25W4/00 (the Application).

In January 2025, the AER received a Statement of Concern (SOC) from E3 in relation to the Application. E3 currently holds approvals permitting it to conduct exploration activities for brine-hosted minerals with plans to develop the Clearwater Project in the Bashaw area to extract lithium.

On July 30, 2025, the AER issued the Approval for the sequestration scheme and an associated well, located at 00/04-36-039-25W4/0 (the 04-36 Well). The 04-36 Well is the only one for which Enhance has approval to inject CO₂. By way of a letter of the same date, the AER advised E3 that it had determined a hearing was not required to consider the concerns raised in E3’s SOC (the SOC letter). Also in the SOC letter, the AER advised E3 that the Approval had been issued to Enhance and provided E3 with a copy of the Approval.

Submissions

E3’s Request for Regulatory Appeal and October 23, 2025 Submission

E3 submitted:

E3 is a brine-hosted mineral licence holder and developer of lithium resources in the Leduc and adjacent Nisku Formation. Despite saying it has approval to “extract” brine hosted lithium over a large area, including within the anticipated plume expected to emanate from the Origins Project,² E3 acknowledges the Crown licences it currently holds only give it the exclusive right to “explore”

² August 28, 2025 Letter page 1, paragraph 3; “licenses for brine-hosted lithium extraction covering 332,000 net hectares across the Leduc Formation, including within the anticipated CO₂ plume expected to emanate from Enhance’s proposed scheme.”

for brine-hosted metallic and industrial minerals in the subsurface strata. This activity includes the right to take samples as required. E3 has applied to the AER for approval for an extraction scheme (the Clearwater Project) and associated licences. The AER has granted E3 two well licenses related to the applied-for scheme. E3 has made and will continue to make substantial expenditures and investments in furtherance of the Clearwater Project and commercial production of lithium. This project will attract substantial investment and hosts large reserves of lithium carbonate equivalent.

E3 is directly and adversely affected by the Enhance scheme because CO₂ injection into pore space permanently adversely impacts brine-hosted lithium development from the same pore space; however, the converse is not true – the pore space remains available, after brine-hosted lithium extraction, for carbon sequestration development. This fact and resource conservation principles in Alberta’s legislative framework require that, where the two forms of development conflict, brine-hosted lithium development must be preferred.

Enhance’s injection of CO₂ has a material risk of sterilizing the economic recovery of brine-hosted lithium resources within the Leduc and Nisku Formations (which are hydraulically connected), in respect of which E3 holds brine-hosted mineral licences and has made substantial development investments over almost a decade. E3’s lithium activities will generate substantial royalties for Alberta, and its work will prove the opportunity for future investments in brine-hosted mineral development in Alberta.

Two-thirds of sequestered CO₂ will be mobile and co-produced in lithium production on primary production. This in turn will increase production costs and lead to recycling costs of non-mobile CO₂ in the Leduc Formation.

The SOC also raised what E3 considered to be deficiencies and concerns with the Application.

Enhance’s 04-36 Well is not geographically proximal to E3’s Clearwater Project location. However, E3 holds brine-hosted mineral licences within the Leduc and Nisku Formations overlying the Origins Project location, including within the 4.0 km plume radius.

Not only will Enhance’s injection of CO₂ directly and adversely affect development of brine-hosted minerals in the Leduc Formation, but if CO₂ migrates up into the adjacent Nisku Formation (which is hydraulically connected to the Leduc), development of brine-hosted minerals in that formation will also be directly and adversely affected. The monitoring program required in the Approval will only confirm and not prevent migration that would adversely affect mineral development in the Nisku Formation.

The Application was deficient for a number of reasons including because consultation with E3 was inadequate and because Enhance’s plume modelling methodology was inadequate.

The AER’s mandate to ensure orderly development of energy resources indicates that the Approval should not have been granted. The Approval is contrary to resource conservation principles

because injection of CO₂ will make mineral extraction from the Leduc and Nisku formations impossible or much more costly.

In its SOC, E3 asserts a number of physical impacts to the Leduc and Nisku Formation resulting from CO₂ injection, including: adverse changes to brine chemistry; adverse permanent changes to the dissolved gas characteristics of the brine; and, adverse impacts to the permeability of the formations. The SOC notes that CO₂ disposal will have “significant adverse impacts on the economics of recovering lithium... by substantially increasing the level of capital investment and operating costs that will be required to produce the brine, extract the lithium resource from the brine, deal with the additional CO₂ in the brine, and handle and dispose of the brine, and by likely sterilizing considerable lithium resources.”³

E3 has a number of concerns regarding the SOC letter including the focus on E3’s rights under a single well license to the exclusion of considering the broader adverse impacts to E3’s mineral rights, and the conservation and future recovery of brine-hosted minerals from the affected formations generally. This focus on sequencing of acquisition of licenses as opposed to leases for exploration is wrong and leads to a “race to file” contrary to orderly development. It is wrong to find that E3 does not hold rights sufficient to object to the Application because of conservation principles and the legislation purposes applied by the AER. Further, E3 was not obligated to conclusively demonstrate in its SOC impact to brine-hosted minerals – it only had to show it believed it was directly and adversely affected. E3 had provided sufficient information to warrant a hearing which would allow E3 to advance “full evidence” at a hearing.

The Enhance Scheme adversely impacts development of all brine-hosted lithium in Alberta, and it has demonstrated on both a *prima facie* and “reasonable possibility” basis that it, and the development of lithium in Alberta, will be directly and adversely affected by the Approval.

Enhance’s Response

Enhance submitted:

E3 has not demonstrated it is eligible for a regulatory appeal (per section 38 of *REDA*) because:

- E3’s Request contains no new information.
- E3 fails to demonstrate the Approval will impact its mineral interests.
- E3 fails to establish Enhance’s application was deficient in its risk management plans, modelling or consultation.

³ E3 SOC page 4.

Even if E3 has demonstrated it is eligible for a regulatory appeal because it may be directly and adversely affected by the Approval, the AER should dismiss the Request because it is without merit (per s. 39(4) of *REDA*).

Enhance has the approvals required to inject CO₂ into the 04-36 Well. However, E3 does not have any approval to commercially produce minerals. The brine-hosted mineral resources proximate to the Origins Project location are in the evaluation stage. The nearest E3 well is 60 km away. Its concerns are unsupported by evidence and speculative including the concern that its brine-hosted mineral interests will be impacted if CO₂ migrates from the Project into formations where E3 holds brine-hosted mineral Crown licences. There is very limited information to show there are brine-hosted mineral resources and even if there are brine-hosted mineral resources in the Leduc Formation, caprock separation of the Leduc and Nisku Formations is robust. E3 provides inconsistent information on how the formation may be sterilized referencing: impact to economics of lithium production; impairment of deliverability; and risk of mineral sterilization. There is no evidence that any of these impacts are “likely.”

Policy considerations do not demonstrate E3 is directly and adversely affected. Policy considerations demonstrate the reasonableness of approving the Project. Government approval has been granted for the Project which has undergone years of assessment. Economic recovery of brine-hosted minerals is speculative pending further technical and economic assessment. The Government made a policy decision to permit the Project “despite the potential impact of CCS [carbon capture and sequestration] injection on mineral resources.”

Reasons for Decision

As noted above, the first task in considering E3’s request for regulatory appeal is, per section 38 of *REDA*, to determine if E3 is “eligible” for a regulatory appeal because it is “directly and adversely affected” by an “appealable decision”.

Appealable Decision

The decision to approve the Application and issue the Approval was made pursuant to the *OGCA*, an energy resource enactment, without the AER holding a public hearing to consider the matter. This satisfies the definition of Appealable decision found in section 36(a)(iv) of *REDA*. As such, the Decision is an “appealable decision”.

Directly and Adversely Affected

To conclude E3 is or may be directly and adversely affected by the Decision, we must satisfy ourselves that there is a sufficient degree of location or connection⁴ with the Decision or its effects on E3⁴ and

⁴ *Dene Tha’ First Nation v Alberta (Energy Utilities Board)* 2005 ABCA 68 at paragraph 14. This decision includes a “first step” in the analysis which requires the party requesting “standing” demonstrate they have a “legal right” which may be affected. The requirement relates to the standing test in section 26 of the *Energy Resources*

we must conclude the impact is “direct”. This means harms that we find are indirect do not satisfy the section 38 test. Effect which will satisfy the test will almost always be prospective, but some types of harm may be too remote or too speculative.⁵

As noted by the Court of Appeal of Alberta:

... adverse effect is a *matter of degree*. At some point the Board must decide whether the *magnitude of risk* is such that the applicant has become “directly and adversely affected”.⁶

[emphasis added]

There is some conflict in the submissions that causes us to weigh whether we are satisfied that it is more likely than not that E3 will or may be directly and adversely affected by the Decision to grant the Application and issue the Approval or whether we merely need to reach that conclusion on a *prima facie* basis. Even applying a *prima facie* standard of proof that is lower than the balance of probabilities, we have concluded the information before us is insufficient to demonstrate E3 may be directly and adversely affected by the Decision.

The information before us demonstrates that E3 has Crown licences giving it the exclusive right to conduct exploration for subsurface brine-hosted metallic and industrial minerals, including lithium in the Leduc Formation. It is also clear that E3’s operations nearest to Enhance’s activities are 60 km from Enhance’s 004-36 Well. Given the location of Enhance’s 04-36 Well, which is the only one approved by the Approval, and the location of E3’s activities, we see no basis for concluding E3’s exploration activities will or may be harmed by the Approval. E3 submits it has licences which overlie what is modelled to be the potential plume for Enhance’s Orgin Project. However, E3 does not explain how this shows impact to its exploration activities and the information otherwise available does not demonstrate such direct harm.

With regard to E3’s assertion that its ability to eventually extract lithium will be directly and adversely affected by the Approval, we find such harm to be too speculative, too remote and not sufficiently direct to persuade us that such harm does or will exist. While E3 may have made what it describes as substantial investments, efforts and “advancement” to further its plans to commercially extract lithium from the Leduc Formation, at this time E3 only has aspirations and plans which can be described as preliminary to economically produce brine-hosted lithium. The only rights it holds for extraction are for exploration as described above. We recognize that E3 has filed Application No. 1958006 for approval under AER *Directive 065: Resources Application for Oil and Gas Reservoirs* (Directive 065) for the establishment of a new enhanced recovery scheme in the Leduc Formation

Conservation Act which specifically referenced an impacted right to meet that standing test. Section 38 of *REDA* does not contain the same requirement.

⁵ *Normtek Radiation Services Ltd v Alberta Environmental Appeal Board* 2020 ABCA 456 at paragraph 81.

⁶ *Kelly v Alberta (Energy Resources Conservation Board)* 2011 ABCA 325 at paragraph 26.

and that the AER has approved two well licenses in association with that proposed scheme “to advance the commercial production of lithium.”

Even if we accept, which we do not because of the paucity of information on the topic, E3’s assertion that Enhance’s activities will sterilize lithium production in the Leduc Formation, that does not demonstrate E3 will be impacted. The asserted harm to E3 is not only too remote but also not direct because E3’s scheme application, exploration activities and investment do not change the nature of E3’s plan. E3 suggests its commercial extraction of lithium is not a matter of speculation. However, before E3 will be commercially extracting lithium in the Leduc Formation in locations that could be impacted by the Origins Project, significant steps must occur. First, E3 will need to identify the existence of that resource. E3 will have to quantify the resource. It will need to obtain the technology to extract the lithium. E3 will need to find a market for the lithium resource and will have to establish extraction is economically viable. And finally, E3 will need to obtain a number of regulatory approvals from various agencies. Included in these significant steps will be completion of engineering and procurement to support a full-scale commercial project. We do not consider the alleged adverse impact, which will only occur if these significant hurdles are overcome by E3, to be a direct impact.

Similarly, E3 has not provided, nor do we have from any other source, information which demonstrates, even on a *prima facie* basis, that there are recoverable/developable brine-hosted minerals to which E3 holds the rights that are in proximity to Enhance’s operation such that it is foreseeable that their economic recovery would be directly impacted by the Approval.

While not determinative of the question of whether E3 is directly and adversely affected by the Approval, E3 has not pointed to any authority or policy that suggests that mineral exploration rights have priority over areas of overlapping valid CO₂ sequestration agreements, approvals and operations. In fact, the opposite is true. We note the absence of any clear statement in legislation that injection of CO₂ cannot interfere with recovery of minerals such as brine-hosted lithium.⁷ E3 also made submissions regarding orderly development and resource conservation; these are important concepts, but those considerations do not demonstrate that E3 is or may be directly adversely impacted by the Decision. Similarly, E3’s submissions about potential impact to development of lithium across the province/lithium industry, royalties paid to the Government of Alberta, the “race to file”/sequencing of acquiring licenses and leases for exploration versus production do not demonstrate direct and adverse impact to E3.

E3 made submissions regarding what it says are inadequacies in the Application. However, these submissions do not demonstrate E3 might be directly and adversely affected by the Approval. One

⁷ This is in contrast to section 39.1 of the OGCA which states that approval of a scheme for disposal of captured CO₂ into an underground formation cannot be approved by the AER unless the AER is satisfied the injection of the CO₂ will not interfere with recovery or conservation of oil or gas or an existing use of the underground formation for storage of oil or gas.

area of concern raised by E3 relates to migration of CO₂ from the Leduc Formation to the Nisku Formation as result of Enhance's sequestration activities. Given the geological characteristics of these formations as demonstrated by the well-known and decades long history of injection already occurring into the Leduc Formation, we do not consider such migration will occur. However, even if it did, it would not impact E3 for the same reasons described above regarding why sequestration into the Leduc Formation would not demonstrate direct harm to E3. Concerns about modelling methodology also do not demonstrate impact to E3 nor do concerns about Enhance's consultation with E3.

Conclusion

In light of the above, we conclude that E3 is not eligible to request a regulatory appeal of the decision to issue the Approval and therefore the Request is dismissed.

Sincerely,

On behalf of the AER Adjudicative Committee

< **Original signed by** >

Martin Foy

Chief Operations Officer