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CEO of the Alberta Energy Regulator Denies Public Hearing Rights on a Coal Application

By: Nigel Bankes and Shaun Fluker

Decisions Commented On: [AER Panel Decision](#) (July 23, 2025 - Proceeding 449) and [AER Reconsideration Decision](#) (August 21, 2015)

This post comments on a recent interlocutory proceeding at the Alberta Energy Regulator (AER or Regulator) concerning a motion by Summit Coal Inc. (Summit) to cancel a scheduled public hearing on its coal mine project application. The basis for the motion was that all the directly and adversely affected persons who initially opposed the application, had subsequently withdrawn their opposition. Accordingly, Summit submitted there was no longer a need for a public hearing to consider the application. The AER panel assigned to the hearing dismissed Summit's motion on July 23, ruling that the hearing should proceed because two ENGOs with full participation status in the hearing remain opposed to the application. On August 21 the AER's Chief Executive Officer (CEO) Rob Morgan issued a reconsideration decision that reversed the panel's ruling and cancelled the public hearing. Two novel questions of law under the *Responsible Energy Development Act, SA 2012, c R-17.3* (REDA) arise from these decisions: (1) as a matter of law does the CEO have the authority to vary or reverse a decision of a panel of a hearing commissioners seized with an application to the AER and (2) what is the legal significance of being "directly and adversely affected" for the purposes of a hearing on an application before the AER.

The focus of our analysis is on the decision made the AER panel on standing to require a public hearing for Summit's coal application and CEO Morgan's decision to reverse the panel's decision. The subject of both decisions is standing to trigger an AER public hearing. This is important context, particularly given that post-REDA the AER essentially no longer holds public hearings for project applications. For readers who are not already familiar with the law on this topic, we have included a primer and overview as an Appendix at the end of this post.

AER Panel Decision: Motion to Cancel Hearing Denied

The AER panel received submissions from Summit, the MD of Greenview, Canadian Parks, and Wilderness Society Northern Alberta chapter (CPAWS-NAB) and the Alberta Wilderness Association (AWA), on the motion seeking a cancellation of the hearing. We note with some interest that the panel's summary of these submissions indicates that Summit argued CPAWS-NAB and the AWA were not "directly and adversely affected" because they did not establish an adversely affected right and had an insufficient connection to the project area (AER Panel Decision at 2 - 3). Both of these arguments appear to be based on bad law regarding standing determinations

because they fail to reflect on the changes to the law made by the Alberta Court of Appeal in *Normtek Radiation Services Ltd v Alberta Environmental Appeal Board*, [2020 ABCA 456 \(CanLII\)](#) (see the Appendix for further discussion of how *Normtek* changed the law on standing).

The panel sidesteps the “directly affected” argument by relying on sections 9 and 9.1 of the *Alberta Energy Regulator Rules of Practice*, [Alta Reg 99/2013](#), which grant the panel discretion to give any person full participation rights in a hearing if that participation will materially assist the panel in making its decision, even if that person is not “directly and adversely affected” by the application which is the subject of the hearing. The panel interprets these sections to mean that there is no distinction in law on the participatory status of a “directly and adversely affected” participant and other full participants, once a hearing has been established. The panel then observes that it had already assigned full participant status to both CPAWS-NAB and the AWA on the basis that their participation in the hearing would materially assist the panel (AER Panel Decision at 3 – 4). Accordingly, the Summit motion was denied.

The AER panel does not reference or otherwise appear to rely on judicial decisions to support its decision to deny Summit’s motion. However, we would submit the panel’s reasons are consistent with the direction provided by the Court of Appeal in its decisions over the past 15 years that eschew a strict and narrow reading of the AER standing test (see the Appendix for a discussion of those Court of Appeal decisions).

Political Pressure

Following the Panel’s decision to deny Summit’s request to cancel the hearings, Summit, and the owner of Summit, Valory Resources, went behind the Panel’s back to put political pressure on anybody who might be in a position to overturn this decision.

This campaign began with a [letter from Brian MacDonald](#), President of Valory Resources, to Minister Jean and members of Executive Council (i.e. cabinet, thus including Premier Smith) on July 28, 2025. MacDonald copied his letter to Duncan Au, Board Chair of the AER and Rob Morgan, Chief Executive Officer of the AER. The letter suggested that the project has the support of the local community and that neither AWA nor CPAWS-NAB have any connection to the community and that the delay hurts the community. At the same time, the letter argued that AWA and CPAWS-NAB had no expertise in metallurgical coal and no useful evidence to present: “The AER issues approvals every day without the benefit of ‘information’ from AWA or CPAWS.” (at 2) Valory went so far as to say that “This is something we expected from the previous federal government, and we are dismayed to see such a position taken by an Alberta regulator.” (at 1) We note these appear to be the same arguments that had already been rejected by the AER panel.

Summit followed up on this zinger the following day (July 29) with a [motion to adjourn](#) the proceedings and then on [August 6, 2025 filed a motion with the CEO of the AER](#) pursuant to section 42 of *REDA* asking the CEO to reconsider the Panel’s decision to deny Summit’s motion to cancel the hearing. Meanwhile, the hearing Panel, in a [decision rendered August 8](#) addressed itself to Summit’s July 29 request for adjournment and also put on record the Panel’s views as to the way in which Summit was conducting itself. These comments merit quoting in full:

As the panel of Alberta Energy Regulator (AER) hearing commissioners presiding over this proceeding (the panel), we write to you to provide our decision on Summit's July 29, 2025, adjournment motion (Motion for Adjournment) ... We are aware that Summit has filed a separate motion for reconsideration (Motion for Reconsideration) that is currently under review in a separate process and will not be put on the record of this proceeding at this time.

In our review of the materials submitted by the parties in response to the Motion for Adjournment, we note that the Chief Executive Officer (CEO) and Board Chair of the AER were copied on one submission, and a letter to Alberta's Minister of Energy was attached to another submission. It appears necessary to clarify for the parties our role in this proceeding.

We, the hearing commissioners constituting this hearing panel, are independent decision makers authorized under section 12 of the Responsible Energy Development Act (REDA) to carry out hearings of applications and make decisions in the name of and on behalf of the AER. (The Panel here referenced [O'Brien, Re, 2021 ABAER 3](#) at para 27)

The Alberta Legislature delegated to the AER the power, duty, and function to consider and decide applications under energy resource enactments in respect of mines for the recovery and processing of mineral resources, among other powers.

Where the AER is to conduct a hearing in respect of applications such as the Mine 14 Applications, the hearing must be conducted on behalf of and in the name of the Regulator by a panel of one or more hearing commissioners, and a decision of a panel of hearing commissioners on a hearing is a decision of the AER. Neither the CEO nor a director of the AER may be appointed as a hearing commissioner, and the board of directors of the AER may not authorize a person to carry out a power, duty or function of the Regulator that is prescribed by the regulations – in particular in this case, the conduct of hearings by hearing commissioners.

Accordingly, we, the panel of hearing commissioners, have been delegated the power, duty, and function to conduct this hearing of the Applications. The participants to this hearing are Summit, as applicant, the full participants CPAWS NAB, AWA, and the MD of Greenview, and the Limited Participants identified in the schedule to this decision. The panel reminds all participants that correspondence and submissions in this proceeding should be addressed to the panel and to the parties, and not to external persons. (at 1 – 2, some references omitted)

The Panel went on to grant Summit's application in part but rejected the suggestion that the proceedings should be adjourned indefinitely (*sine die*). That appears to have been the last communication from the Panel to the parties.

The next communication was from the AER's Regulatory Appeals Coordinator, Aimée Hockenhuill seeking comments from parties (CPAWS - NAB, AWA and the MD of Greenview)

as to Summit's request for reconsideration. [Ms Hockenull's August 11 letter](#) quoted section 42 of *REDA* with the following commentary:

As indicated by section 42, the AER has sole discretion to reconsider a decision made by it. That section does not provide an appeal mechanism that is designed to be applied-for and utilized by industry or members of the public: other provisions provide this opportunity. The AER will only exercise its discretion to reconsider a decision outside under extraordinary circumstances, where it is satisfied that there are exceptional and compelling grounds to do so.

Counsel for AWA and CPAWS-NAB did [reply](#) arguing, amongst other things, that the relevant rules "do not authorize an applicant to choose its decision-maker" by addressing the request for reconsideration to the CEO (at para 15).

AER Reconsideration Decision: Motion to Cancel Hearing Granted

On [August 21, 2025](#), Rob Morgan, the CEO of the AER decided to reconsider the Panel's July 23 decision not to cancel the scheduled hearing and to return Summit's applications to the AER Regulatory Applications branch for consideration and decision. In order to reach that conclusion, Mr. Morgan had to decide whether he had the statutory authority to deal with Summit's request for reconsideration and, if so, whether Summit had made out its application. Our focus here is on the first question, the question of whether, as a matter of law, Mr. Morgan, as CEO, had the power to make the reconsideration decision, or whether this power could only be exercised by the hearing commissioners on the panel charged with the responsibility to consider Summit's applications at the scheduled hearing. Our position is that the CEO had no statutory authority to act in relation to this matter.

The CEO's Authority to Entertain the Request

Mr. Morgan concluded that he had the authority to entertain the request. He did so on the basis that:

As CEO, I am responsible for the day-to-day operation of the business and affairs of the AER, per section 7(1)(a) *REDA*. This includes the proceedings of the hearing commissioners, as these are expressly part of the AER's day-to-day operations: section 13(1) of the *REDA*. Under the AER's General Bylaw, I also have authority and general supervision over the operation of the business and affairs of the AER. Through formal delegation of authority under section 6(2) of the *REDA*, the Board has authorized the CEO to carry out any power, duty or function of the AER under the *REDA* and other enactments. This includes the power to reconsider a decision of the AER, and to vary, confirm, revoke or suspend such decision. I am satisfied that I have proper authority to decide Summit's request for reconsideration, and this falls within my purview and discretion. (at 2)

Mr. Morgan did not expressly consider any of the relevant submissions made by counsel for AWA and CPAWS-NAB on this threshold question.

The question of whether or not the CEO has the authority to intercede (to use a somewhat neutral word) in a proceeding that is currently before an AER hearing panel, and to intercede in such a way as to effectively dismiss the panel, is a question of statutory interpretation with important implications for the conduct of all future applications before the AER. Mr. Morgan was evidently aware of the potentially far-reaching consequences of his decision, and did his best to temper the possibility that his office will, in the future, be routinely called on to intercede whenever a proponent objects to an interim or final decision by a hearing panel.

I recognize it is without precedent for a non-hearing commissioner decision maker to consider a reconsideration request of a procedural decision made by hearing commissioners. Except for the very unique circumstances in this situation, I am not inclined to exercise my discretion to reconsider decisions of hearing panels, out of respect for the hearing process and the autonomy and independence of hearing panels. Certainty, and finality in decision making is of fundamental importance to Alberta's energy regulatory system, to the participants involved, and Albertans generally. My decision should not be construed as a means by which parties can circumvent hearing or other AER decisions they disagree with. (AER Reconsideration Decision at 2)

The rules of statutory interpretation are well known. An interpreter must ascertain the meaning of a statutory provision using what the Supreme Court of Canada calls the “modern principle of statutory interpretation”: *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998 CanLII 837 \(SCC\)](#), [1998] 1 SCR 27 (at para 21), *Piekut v Canada (National Revenue)*, [2025 SCC 13](#) (at paras 42-50). The modern principle commands courts to consider text, context, and purpose. We draw this summary from Justice Feasby's recent judgment in *Chief Electoral Officer of Alberta v Sylvestre*, [2025 ABKB 476 \(CanLII\)](#) (at para 50).

Justice Feasby went on to offer the following guidance with respect to the three different elements of text, context, and purpose:

Text is the starting point for statutory interpretation because it “specifies ... the means chosen by the legislature to achieve its purposes” ... Attention to context is important because words take meaning from their surroundings. Context should be understood primarily to mean the scheme and structure of the statute itself ... The purpose of a statute and the purpose of a specific provision may be different. For example, a legislature may enact a statute to seek to achieve a broad purpose but contain within the statute certain limitations to protect countervailing interests. Use of the primary purpose of a statute in interpretation cannot be allowed to brush aside secondary purposes that may shape or limit how the primary purpose is to be achieved ... (*Sylvestre* at para 52).

The starting point for Mr. Morgan's analysis is the claim that since he has responsibility for “the day-to-day operation of the business and affairs of the AER, per section 7(1)(a) REDA” and since the proceedings of the hearing commissioners are part of the AER's day-to-day operations as per section 13, then he must have the “power to reconsider a decision of the AER, and to vary, confirm, revoke or suspend such decision.” This is a purely textual argument and so it is useful to locate sections 7 and 13 within the structure of *REDA* (i.e., context) and consider the purpose of the different provisions.

Both sections 7 and 13 are found in Part 1 of *REDA*, under the heading ‘Alberta Energy Regulator’. Part 1 has five divisions. Section 7 is in division 1 under the heading ‘Establishment and Governance of the Regulator’. Section 13 is found in division 2 under the heading ‘Hearing Commissioners’. The existence of two separate divisions in Part 1, one division dealing with the board and the CEO, and one division dealing with hearing commissioners suggests that the legislature contemplated a distinctive role for hearing commissioners. Indeed, we note that this separate structure was a distinct addition to the new energy regulator when *REDA* was enacted in 2013 (see [An Overview of Bill 2: Responsible Energy Development Act – What are the changes and What are the issues?](#)).

Sections 5 and 6 of *REDA* deal with the establishment of the board of the AER and indicate that the board is “responsible for the general management of the business and affairs of the Regulator”. By contrast, it is the chief executive officer under section 7 that is “responsible for the day-to-day operation of the business and affairs of the Regulator”.

Part 1, Division 2, ‘Hearing Commissioners’ comprises three sections. Section 11 indicates that the Lieutenant Governor in Council must establish a roster of hearing commissioners while section 11(3) stipulates that “Neither a director nor the Chief Executive Officer may be appointed to the roster.” This confirms that the legislature intended to maintain a separation of function and power between the board and the CEO on the one hand and the hearing commissioners on the other. Section 12(1) indicates that where the Regulator conducts a hearing in respect of an application, including an application for reconsideration, such a hearing “must be conducted on behalf of and in the name of the Regulator by a panel of one or more hearing commissioners selected by the chief hearing commissioner from the roster.” We return to the significance of this later. Section 12(3) establishes that “A decision of a panel of hearing commissioners on a hearing ... is a decision of the Regulator.” In sum, the hearing commissioners empanelled by the chief hearing officer constitute the Regulator for the purposes of applications that have been referred to a hearing. Part 2 of the *Alberta Energy Regulator Rules of Practice*, [Alta Reg 99/2013](#), confirms this interpretation.

Section 13 of *REDA* along with its heading provides in its entirety as follows:

Nature of hearing commissioners proceedings

13(1) The proceedings of the hearing commissioners are part of the day-to-day operations of the Regulator.

- (2) Without limiting the generality of subsection (1), the hearing commissioners
- (a) may participate in the development of the Regulator’s practices, procedures and rules, and
 - (b) are entitled to receive professional, technical, administrative and operational support from the Regulator to assist the hearing commissioners in the conduct of hearings and inquiries.

Section 13(1) is informed by the language of subsection (2) and, read in its entirety, the section suggests that “the day-to-day operations” language of the section is not adopted to make hearing commissioners subordinate to the CEO in respect of applications that have been referred to them, but rather to ensure that they are part of the AER for the purposes of access to resources and the

development of AER rules and practices. This interpretation is reinforced by the language of section 11(3) referenced above. If the legislature has stipulated that the CEO cannot be a hearing commissioner, that must counsel against any interpretation that allows general language, such as “day-to-day operations”, to be used to allow the CEO to effectively step into the shoes of hearing commissioners seized with particular applications and conduct his own hearing (albeit in this case a written hearing).

Furthermore, when we read section 13 in the context of the entirety of Division 2 it is apparent that there are two types of applications: applications that are dealt with routinely by AER staff without the need for a hearing, and those few applications that are dealt with by way of a hearing. Those applications that are dealt with by a hearing must be handled by hearing commissioners and those hearing commissioners constitute the Regulator for the purposes of those applications. The other sections of *REDA* that are essential to Mr. Morgan’s decision are the three sections of Part 2, Division 4 of *REDA*, ‘Reconsideration by Regulator’. These sections provide as follows:

Reconsideration of decisions

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

Hearing on reconsideration

43 Subject to the regulations, the Regulator may conduct a reconsideration with or without conducting a hearing.

Decision of Regulator on reconsideration

44(1) The Regulator shall, after the completion of a reconsideration, make a written decision, with reasons, on the reconsideration within the time prescribed.

(2) The Regulator shall publish or otherwise make the Regulator’s decision, with reasons, publicly available in accordance with the rules.

We have already emphasised that a hearing in respect of an application for reconsideration, like other hearings, must also be conducted by hearing commissioners (*REDA* section 12(1)).

We have established above that decisions in relation to applications that are referred to a hearing are to be made by hearing commissioners. We have also established that decisions of hearing commissioners are decisions of the Regulator. The question of statutory interpretation that arises therefore is this: who is the Regulator for the purposes of sections 42 – 44 of *REDA* when the decision to be reconsidered (either on application or of the Regulator’s own motion), is a decision of hearing commissioners seized with the application as Regulator? Is it the hearing commissioners seized with the application? Or is it, as Mr. Morgan would have it, the CEO?

Mr. Morgan does not directly address this issue. Instead, he seems to assume that he is the Regulator in these circumstances: see above where he indicates that his “day-to-day” powers include “the power to reconsider a decision of the AER, and to vary, confirm, revoke, or suspend such decision. I am satisfied that I have proper authority to decide Summit’s request for

reconsideration, and this falls within my purview and discretion.” He fails to address the possibility that he might not be the Regulator for applications that have been referred to hearing commissioners.

Mr. Morgan reaffirms this assumption when he asks whether he (“I”) should reconsider the decision. In the relevant part of his decision, he begins by quoting section 42 and then reasons as follows:

The AER has very broad discretion to choose to reconsider any decision made by it. The AER does not need a ‘request’ to exercise its authority under section 42. It can do so on its own initiative, if it becomes aware, by any means, of facts or circumstances that cause it to decide to reconsider a decision.

While I am of the view that Summit has met the test traditionally imposed on requesters to justify the AER exercising its reconsideration powers, I am also deciding to reconsider the decision based on my absolute discretion to do so, as I feel it is of sufficient importance to the AER, given the unique and unprecedented issues raised. (AER Reconsideration Decision at 2)

Again, Mr. Morgan fails to address the possibility that the undoubtedly broad discretionary powers of section 42 may be vested in the hearing commissioners for applications that have been remitted to those commissioners.

Mr. Morgan also fails to address the actual decisions that led to Summit’s applications being referred to a panel. We discuss those decisions in the next few paragraphs.

By [letter of October 3, 2024](#), under the signature of Sean Sexton, EVP Law & General Counsel, On behalf of the Executive Leadership Team, of the AER, Mr. Sexton informed Alex Bolton, the then Chief Hearing Commissioner, that the AER had “determined [that Summit’s applications] should be decided by a panel of hearing commissioners”. Mr. Bolton communicated that decision to counsel for Summit on [October 7, 2024](#) noting that:

A hearing will be held unless the issues are resolved in some other manner, such as by alternative dispute resolution (ADR). Hearings are led by hearing commissioners who are independent from the day-to-day operations of the AER. I assign one or more hearing commissioners to sit on hearing panels to decide matters sent to them by the AER. Their decisions may only be reviewed by the Court of Appeal of Alberta ... (at 1, emphasis added).

We also note that Mr. Morgan also claims that he can and has decided the matter, either of his own motion or on the application of Summit, and that he can and should do so “without a hearing”. It is obvious why he makes this latter claim for if he decided that this matter should be resolved by way of a hearing, then, as noted above, section 12(1) instructs that this should be done by hearing commissioners! One significant difficulty with Mr. Morgan’s claim however is that he has in fact held a hearing. After all, a hearing may be conducted “in writing, electronically or orally” (AER Rules of Practice, section 18). Insofar as Mr. Morgan had in front of him an application and invited and received comments on that application, we would submit that he has already conducted a

“hearing” – albeit in writing. In sum, not only did Mr. Morgan embark upon a reconsideration that he was not entitled to conduct, he has also unlawfully conducted a hearing on the reconsideration since s 12(1) of *REDA* expressly remits such a hearing to hearing commissioners.

Finally, we observe that Mr. Morgan does not address, or even reference, the panel’s reasons for denying the Summit motion. While Mr. Morgan faults CPAWS-NAB and the AWA for not providing any authorities to support the position that there should be no distinction between the participatory status of a “directly and adversely affected” participant and other full participants (AER Reconsideration Decision at 3), he fails to engage at all with the actual reasons and interpretation given by the AER panel on this point of law.

What are the Implications of Mr. Morgan’s Decision?

To this point we have argued that Mr. Morgan has misinterpreted *REDA* and that the general language of sections 7 and 13 of *REDA* do not allow Mr. Morgan to arrogate to himself the section 42 power of reconsideration of a decision made by hearing commissioners. But suppose that we are wrong. What are the implications if Mr. Morgan is correct on this threshold jurisdictional question?

The principal implication must be this. Every time a proponent whose application has been referred to hearing commissioners and who is unhappy with any decision made by those commissioners, whether a final decision or an interlocutory decision, may, in addition to seeking permission to appeal that decision to the Court of Appeal, also pursue an alternative remedy. That remedy has two prongs. The first prong is to bring political pressure to bear on the AER and specifically the CEO to have the matter reconsidered. The second prong is to do an end run around the hearing commissioners and make an application for reconsideration directly to the CEO, perhaps hoping that the political prong has helped make the CEO receptive to the application.

This does not of course mean that any such application will be successful. Mr. Morgan has offered the assurance that he will exercise this power sparingly and only in exceptional circumstances, but the point is that he claims to have this power as a matter of law and one can therefore expect others to follow in Summit’s footsteps. Consider this, if Mr. Morgan is correct, Benga could have applied directly to the then CEO of the AER to have it reconsider and redetermine the AER portions of the [joint review panel’s decision on Grassy Mountain](#). Continued use of this process would of course make a mockery of proceedings conducted by hearing commissioners and make it even easier for critics of the AER to make and sustain the claim that the AER is a captured regulator.

Surely part of Mr. Morgan knows this full well, for he writes in his decision that he is generally “not inclined to exercise my discretion to reconsider decisions of hearing panels, out of respect for the hearing process and the autonomy and independence of hearing panels. Certainty, and finality in decision making is of fundamental importance to Alberta’s energy regulatory system, to the participants involved, and Albertans generally.” But the point is this: Mr. Morgan has now opened the door and others will undoubtedly try to enter unless we can demonstrate that Mr. Morgan’s decision is wrong as a matter of law. We have endeavoured to make that case.

Appendix - Standing to Trigger an AER Public Hearing

ABlawg has followed the law on standing - the test to be met by a person seeking to trigger a public hearing on an energy project application - and the AER (and its predecessor Energy Resources Conservation Board) extensively over the years. These posts can generally be organized into three phases of commentary: (1) the law as it was prior to the enactment of *REDA* in 2013; (2) the changes made by *REDA* in 2013; and (3) the application of *REDA* by the AER since 2013.

The first phase of ABlawg commentary was in relation to the test for standing prior to 2013 and set out in section 26(2) of the now-repealed *Energy Resources Conservation Act*, [RSA 2000, c E-10 \(ERCA\)](#). A person who could establish that a decision on an application would directly and adversely affect their rights, was entitled to a public hearing. This so-called ‘directly and adversely affected’ test was the subject of many ABlawg posts, such as [The problem of Locus Standi at the Energy Resources Conservation Board: A Diceyan solution](#) and [Still More Questions about Standing before the ERCB](#). One of us also wrote on the history and development of this test in a 2015 Alberta Law Review article - [The Right to Public Participation in Resources and Environmental Decision-Making in Alberta](#). The upshot of most critical commentary was that the ‘directly and adversely affected’ standing test was applied very narrowly by the Board, such that it almost completely eliminated the ability of anyone to trigger a public hearing at the Board, other than another industry operator or someone who could establish that the decision on an application would directly and adversely affect their legal right (typically in relation to the use of affected land).

Phase two of ABlawg commentary was on changes to the standing test implemented by the enactment of *REDA* in 2013. In the Fall of 2012, the Alberta government proposed new legislation (which became *REDA*) to significantly overhaul the regulation of non-renewable energy resource development and create a new regulatory agency to oversee and administer that regulation – the Alberta Energy Regulator. ABlawg published a series of posts on these changes (see the overview [here](#)) including commentary on the (then) new standing rules at the AER in [Amended Rules of Practice for the Alberta Energy Regulator: More Bad News for Landowners and Environmental Groups](#). The primary changes to AER standing implemented by *REDA* in 2013 was that (1) a person seeking a public hearing would need to file a statement of concern with the Regulator that was accepted by the Regulator; and (2) the decision to conduct a public hearing is almost entirely within the discretion of the Regulator. To put the change another way: Under the prior *ERCA* regime, a person who established their legal rights were directly and adversely affected was legally entitled to a public hearing on the application, but under *REDA* there is no such legal entitlement to a hearing: a directly and adversely affected person does not have standing to trigger an AER hearing on an application. IF a hearing is conducted, the directly and adversely affected person has a statutory entitlement to participate in that hearing.

These legislative changes in 2013 came on the heels of a notable Alberta Court of Appeal decision in *Kelly v Alberta (Energy Resources Conservation Board)*, [2012 ABCA 19 \(CanLII\)](#) on AER cost awards that also emphasized the important contribution that a credible regulatory hearing process makes towards earning the [social license](#) to operate:

In the process of development, the Board is, in part, involved in balancing the interests of the province as a whole, the resource companies, and the neighbours who are adversely affected: *Re Suncor Energy Inc.*, Energy Cost Order 2007-001 at pp. 10-11. *Granting standing and holding hearings is an important part of the process that leads to development of Alberta's resources. The openness, inclusiveness, accessibility, and effectiveness of the hearing process is an end unto itself.* Realistically speaking, the cost of intervening in regulatory hearings is a strain on the resources of most ordinary Albertans, and an award of costs may well be a practical necessity if the Board is to discharge its mandate of providing a forum in which people can be heard. In other words, the Board may well be “thwarted” in discharging its mandate if the policy on costs is applied too restrictively. It is not unreasonable that the costs of intervention be borne by the resource companies who will reap the rewards of resource development. (*Kelly* at para 34, emphasis added)

At the time of *REDA*'s enactment in 2013, it seemed that the Legislature was responding to the *Kelly* decision by going the opposite direction and making it more difficult for the public to be granted a hearing on an energy project application. Accordingly, the third phase of ABlawg commentary was to assess the actual impact of the standing rule changes. In [Directly and Adversely Affected: The Actual Practice of the Alberta Energy Regulator](#) one of us examined a number of AER letter decisions made on two applications, demonstrating that in fact the AER was applying the *REDA* standing rules narrowly to deny hearings. The Regulator had established a very high threshold on “directly and adversely affected” to be met: essentially actual use of land in the proposed project area.

In 2020, the law on how to interpret ‘directly affected’ in Alberta’s energy and environmental legislation was fundamentally changed by the Alberta Court of Appeal in *Normtek Radiation Services Ltd v Alberta Environmental Appeal Board*, [2020 ABCA 456 \(CanLII\)](#). In *Normtek*, the Court of Appeal rejected a formalistic and rigid interpretation of ‘directly affected’ and ruled that while the phrase connotes some form of adverse effect in a “direct manner” the phrase must also be interpreted and applied in manner that reflects the wide range of concerns that may arise in relation to an energy, resources, or environmental decision, including environmental, social, economic, cultural, property, human health, safety, and regulatory. (the Faculty’s [Public Interest Law Clinic](#) was legal counsel for the appellant in *Normtek*). The *Normtek* decision reversed almost two decades of jurisprudence in Alberta on how to interpret ‘directly affected’ and has the potential to significantly broaden the entitlement for public participation in environmental and resource development decision-making – including in the context of AER standing determinations (see *Fort McMurray Métis Local Council 1935 v Alberta Energy Regulator*, [2022 ABCA 179 \(CanLII\)](#)).

A related subject of commentary in the early days of *REDA* was that the Regulator was not transparent in publishing its letter decisions issued to statement of concern filers, the large majority of which reject the statement of concern and thus deny a hearing. This changed in 2015 as noted in [The Alberta Energy Regulator Announces that It will Publish a Broader Range of Decisions](#), such that now you can see for yourself how frequently the AER denies hearings on project applications (see Participatory and Procedural Decisions on the AER website [here](#)).

Predictably, the number of public hearings conducted by the AER has drastically fallen in comparison to the pre-*REDA* days when a directly and adversely affected person had a statutory right to a hearing. A review of the AER website for [hearing decisions](#) on the merits of a project application shows just three decisions in 2021, one decision in 2022, one decision in 2023, three decisions in 2024, and two decisions thus far in 2025. The AER receives approximately [40,000 applications per year](#), and essentially the Regulator no longer conducts public hearings on any of them.

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