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Canadian Natural Upgrading Limited

Attention: Anne Umpleby

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Attention: John Olynyk

Re: Canadian Natural Upgrading Limited (CNUL) Application Nos.: 023-00153125, 019-00205433, 002-00329253, 011-00186157, and 002-00329252
Request for Regulatory Appeal No.: 1957608

I. Overview

1. The Athabasca River Basin (the "Athabasca") provides the following submissions in reply to the response by Canadian Natural Upgrading Ltd. ("CNUL"), dated July 3, 2025, to its Request for a Regulatory Appeal of the Alberta Energy Regulator's ("AER's") decision to renew five approvals and licenses (the "Renewal Decision") for the Jackpine Mine Oil Sands Processing Plant and Mine and the Jackpine Mine Expansion Project ("Jackpine Mine").

2. The Athabasca reiterates in its reply that CNUL's application was incomplete under the AER's policies and guidelines, with a failure to adequately assess the evidence regarding ecological risks and impacts associated with the river basin. Continued operations of the Jackpine Mine, without further monitoring and mitigation measures, will perpetuate these harmful risks and impacts.

3. Furthermore, the Athabasca was not granted standing for a hearing. As such, the AER was not presented with additional facts necessary to make a proper decision regarding the Renewal Application. For these reasons, the Athabasca maintains its request for the Renewal Decision to be reconsidered.

4. In its response, CNUL raises several issues, including the Athabasca's eligibility to request a regulatory appeal, the subject matter of the appeal, CNUL's alleged compliance with technical requirements, and environmental concerns. Each of these matters will be addressed in the reply below.

II. Reply to CNUL's response

CNUL's Interpretation of "Eligible Person" is Incorrect

The Athabasca River Basin is a "person" for procedural purposes

5. The Athabasca's assertion of its personhood is solely procedural, and therefore only applies in this narrow regulatory context. This submission does not request any substantive rights for the Athabasca, nor is the AER being asked to make any determination beyond the scope of the Renewal Decision or its mandate under the Responsible Energy Development Act ("REDA"). For this reason, CNUL's claim that the proposed procedural rights amount to a "fundamental legal change" with "massive legal, policy and procedural implications" is unfounded.[1]

6. The AER has been granted broad powers to determine who qualifies as an "eligible person" under REDA with respect to appeal rights, as no definition is provided in the legislation. Therefore, this interpretation is left to the administrator's discretion. Section 14 of REDA allows the AER to "do all things necessary" for carrying out its duties and functions.[2]

7. CNUL has arbitrarily asserted that recognizing the Athabasca's legal personhood, even for procedural matters, must be left to the legislature and binding judicial precedents. Yet, this assertion is at odds with CNUL's own statement that "the AER is well placed to interpret and apply its governing legislation."[3] Administrators have discretion to interpret their enabling statute when making decisions, and courts may in fact look to these decisions as an interpretive aid.[4] This means that administrators have significant interpretive powers, even to the extent that they could inform binding judicial precedents. These powers are not limitless, however there is nothing to suggest that the Athabasca's proposed interpretation conflicts with REDA, the *Interpretation Act* or any other relevant statute.

8. The Athabasca concurs with CNUL's submission that boards have no inherent jurisdiction. However, the *Alberta Wilderness Association* case cited by CNUL is disanalogous to the

[1] Canadian Natural Upgrading Limited, "Response to Ecojustice Request for Regulatory Appeal" (3 July 2025) at para 20 ["CNUL Response"].
[2] *Responsible Energy Development Act*, SA 2012, c R-17.3, s. 14 ("REDA").
[3] CNUL Response at para 39.
[4] Ruth Sullivan, *Statutory Interpretation*, 3rd ed (Irwin Law Inc., 2016) at 283-284.

present facts.[5] The issue highlighted in that case was a tribunal's jurisdiction to grant public interest standing. The tribunal's jurisdiction was rejected by the Court because the enabling statute did not expressly provide for this power.

9. Conversely, REDA expressly allows appeals from "eligible persons,"[6] a status asserted by the Athabasca. Unlike in the cited case, recognizing the Athabasca as an "eligible person" would not fundamentally alter the regulatory regime; rather, it would reflect an interpretation that is already well within the scope of REDA. CNUL incorrectly concludes that no Canadian precedent could allow for the Athabasca's proposed interpretation of "person."[7]

10. As noted in the original Statement of Concern, personhood has been recognized for natural entities in Canada and internationally. For example, the Magpie River's rights were recognized by a municipal resolution in Québec.[8] In *Reece v Edmonton*, Chief Justice Fraser, in her dissent, raised the possibility of standing as a procedural right for an elephant.[9] From a global standpoint, the Inter-American Court of Human Rights has detailed in a recent decision the growing trend that nature is being recognized as a subject of rights all over the world.[10] Personhood can be recognized for natural entities in a variety of legal contexts, including when procedural rights are being sought.

11. There is no objective in these submissions to affect fundamental legal changes, as the Athabasca is simply requesting a narrow recognition of personhood that attaches only to procedural rights. The request to recognize the Athabasca's personhood for procedural purposes is a reasonable avenue available for concerns about the Jackpine Mine to be heard.

12. As highlighted in the Statement of Concern, recognizing the Athabasca's personhood in this context also supports the purposes of the Environmental Protection and Enhancement Act ("EPEA") and Water Act. [11] The statutes' purpose statements demonstrate that both the EPEA and the Water Act have an objective of protecting the environment through public engagement.[12]

13. Indeed, REDA requires the AER to regulate the protection of the environment and its regulations require the AER to consider the social, economic, and environmental effects of

[5] CNUL Response at para 17.
[6] REDA, s. 36.
[7] CNUL Response at para 20.
[8] "Statement of Concern regarding EPEA and *Water Act* renewal applications for Jackpine Mine" (7 March 2024) at pp. 4-5 ["SOC"], citing Minganie Regional County Municipality (2021) *Résolution 025-21: Reconnaissance de la personnalité juridique et des droits de la rivière Magpie-Muteshekau Shipu*, accessed online; Conseil des Innu de Ekuanitshit (2021) Résolution 919-082, accessed online; Stuart-Ulin, C.R. (2021) *Quebec's Magpie River becomes first in Canada to be granted legal personhood,* National Observer, accessed online.
[9] *Reece v Edmonton (City)*, 2011 ABCA 238 at para 179, n 143.
[10] Inter-American Court of Human Rights, Advisory Opinion OC-32/25, 29 May 2025 at para 286.
[11] *Environmental Protection and Enhancement Act*, RSA 2000, c E-12 ["EPEA"]; *Water Act*, RSA 2000, c W-3; SOC at 6.
[12] SOC at p. 6.

an energy resource activity.[13] EPEA and the Water Act include public input into decision-making as one of their underlying purposes.[14] The courts have highlighted the importance of public participation in resource development.[15]

14. However, in practice, Alberta has extremely restrictive standing rules for participation in environmental reviews of natural resource projects. The "directly and adversely affected" test in REDA is narrowly interpreted by the AER and courts to exclude anyone who does not have a distinct right or interest that is discernable from that of the community.[16] This means that, in the remote parts of Alberta where oil sands projects operate and few people (outside the boundaries of the mines) live, work, or recreate, opportunities for public participation by concerned citizens and representatives of the environment are virtually non-existent. Legal scholars have concluded that "there is currently no legal right to public participation in resources and environmental project decision-making in Alberta."[17]

15. This narrow interpretation of "directly and adversely affected" deprives the AER of its ability to fulfill its statutory mandate, including of considering the social, economic, and environmental effects of this Application.

The Athabasca River Basin is "eligible" to request a regulatory appeal

16. CNUL incorrectly asserts that the Athabasca is unable to file a regulatory appeal, as the Athabasca satisfies each element of the legal test for eligibility. There is no dispute that section 36 of REDA, subsection 91(1) of the EPEA and section 115 of the Water Act require a requester to be "directly affected" by a decision.[18] However, CNUL improperly applied the present facts to the correct legal test.

17. CNUL cited the Alberta Court of Appeal's *Dene Tha'* decision, as well as an additional precedent from the Alberta Court of King's Bench, to demonstrate that there must be: a personal and direct effect from the AER's decision; a "degree of location or connection" between the Renewal Decision and the Athabasca's asserted rights; and a reasonable probability of harm, established on a prima facie basis.[19] Each of these criteria are met in the present circumstances.

18. First, CNUL notes that the direct and adverse impacts stated in the Athabasca's Request for a Regulatory Appeal are "general and vague."[20] However, the quoted submissions are specific and are highlighted in even more detail in the Athabasca's initial Statement of

[13] REDA, s.2(1)(a)(ii); *Responsible Energy Development Act General Regulation,* Alta Reg 90/2013*,* s.3.
[14] EPEA, s.2(g); *Water Act,* s.2(d).
[15] *Kelly v Alberta (Energy Resources Conservation Board)*, 2012 ABCA 19, paras 33-34; *Coulas v Ferus Natural Gas Fuels Inc*, 2016 ABCA 332, para 10; and *Fort McMurray Métis Local Council 1935 v Alberta Energy Regulator*, 2022 ABCA 179, para 22.
[16] *Kostuch* v. *Alberta (Director, Air and Water Amending Approvals Division, Environmental Protection)*, 1996 CanLII 10565 (ABKB), para 25.
[17] Shaun Fluker (2015) *The Right to Public Participation in Resources and Environmental Decision-making in Alberta*, Alberta Law Review 52:3, p.602.
[18] REDA, s. 36; EPEA, s. 91(1); *Water Act*, s. 115
[19] CNUL Response at paras 26-28.
[20] CNUL Response at para 30.

Concern.[21] For example, the Jackpine Mine withdraws water directly from the Athabasca River and diverts water from the surrounding watershed away from the river. Millions of cubic metres of water are lost, which affects the health of the river and its ecosystem. Hundreds of tonnes of contaminants are also released into the air and accumulate in the land, water, and living organisms in the Athabasca River Basin.[22] These examples are among several adverse impacts, all of which are detailed and specific.

19. Despite these impacts, CNUL asserts that there is no link between the Renewal Decision and the harm to the Athabasca.[23] The implication of their assertion is that any impacts would emerge from the Jackpine Mine itself, rather than from the renewed approvals. However, it is unreasonable and nonsensical to distinguish between the approvals and the Jackpine Mine for this purpose because the mine relies on these approvals to continue operating.

20. The AER had the opportunity to refuse the Renewal Application. By choosing to renew these approvals, any previous harms caused by the Jackpine Mine are perpetuated by the AER's decision, creating a contributory link between the Renewal Decision and the Mine's adverse impacts. CNUL states that "the Request does not draw any connection between the Renewal Decision and any impacts that were the not the result of prior regulatory decisions."[24] However, climate change continues to aggravate environmental conditions, while water bodies experience unique effects.[25] Thus, the Renewal Decision will cause novel and significant impacts on the Athabasca because of recent environmental changes.

21. While considering the "direct and adverse" impact requirement, CNUL also notes that activities of the Jackpine Mine have previously been assessed and approved.[26] However, the Renewal Application relied on data that is inapplicable to the present environment. For example, hydrology modelling was used from 2007 and 2008, leading to outdated waterflow predictions and a failure to consider the current impacts of climate change on hydrology systems.[27] Contrary to CNUL's assertions, the failure to consider updated conditions only heightens the risk of direct and adverse effects. This point is further addressed in the "technical requirements" section below.

22. Based on this information, the Athabasca is "directly affected" because the Renewal Decision, which was informed by insufficient data, perpetuates specific impacts caused by

[21] See SOC at pp. 7-8.
[22] SOC at p. 7.
[23] CNUL Response at para 31.
[24] CNUL Response at para 35.
[25] See, for example, Divya Nimma et al., "Implications of climate change on freshwater ecosystems and their biodiversity" (2025) 321 Desalination and Water Treatment, accessed online ["Climate and Freshwater Ecosystems"]; Mohammed Kazemi Garajeh et al., "Spatiotemporal monitoring of climate change impacts on water resources using an integrated approach of remote sensing and Google Earth Engine" (2024) 14 Scientific Reports, accessed online ["Climate Impacts on Water Resources"].
[26] CNUL Response at para 33.
[27] "Regulatory Appeal of Decision on Statement of Concern No. 32476" (8 April 2025) at p. 6 ["Regulatory Appeal"].

the Jackpine Mine. As the Athabasca qualifies as a "person" in this context, it is also personally affected by the renewed approvals. There is also a clear "degree of location or connection" between the Renewal Decision and the Athabasca's rights, both based on physical location and a causal link between the renewed approvals and continued impacts. Lastly, the specific evidence of the Jackpine Mine's adverse environmental effects demonstrates a reasonable probability of harm on a *prima facie* basis.

23. CNUL misconstrues the "directly affected" test. By asserting that the Athabasca's descriptions of specific impacts are general and vague, CNUL appears to require an anecdote that contains an exact chain of events leading to a specific harm.[28] This is not the legal test – nor is it even a reasonable request in the case of environmental impacts, which often entail a collection of harmful activities that amount to cumulative downstream effects. To fulfill the "directly affected" test, only a direct, non-speculative causal connection and reasonable probability of harm are required,[29] both of which are demonstrated by the environmental impacts outlined in this submission, the Statement of Concern and the Request for Regulatory Appeal.

24. The reasons provided demonstrate how the Athabasca qualifies as a "person" under REDA, while also being "directly affected" by the Renewal Decision. Therefore, the Athabasca is an "eligible person" for the purpose of filing an appeal under section 38(1).

CNUL wrongly attributes an error to the Athabasca regarding its Request for a Regulatory Appeal

25. CNUL is incorrect in submitting that the Athabasca made an error in its Request for a Regulatory Appeal.[30] The representatives of the Athabasca were clearly aware of the appeal's subject matter given that the Athabasca's original Statement of Concern outlines the Renewal Application as the core issue.[31] As set out in that submission, the Athabasca remains concerned about the impacts of the renewed licenses and approvals.

26. AER's determination that a hearing is not required was raised only to demonstrate that the Athabasca's procedural rights were disregarded in the context of the Renewal Decision. In other words, granting the Athabasca standing is necessary to ensure that the AER makes a proper decision regarding the Renewal Applications.[32]

27. Regardless, both parties now agree that the Renewal Decision is an appealable one.

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[28] See, for example, CNUL Response at paras 30-31.
[29] See *Normtek Radiation Services Ltd v Alberta (Environmental Appeals Board),* 2018 ABQB 911 at paras 45, 66, cited in CNUL Response at para 28.
[30] CNUL Response at para 12.
[31] SOC.
[32] CNUL also errs in concluding that decisions made under section 34 of REDA are not "appealable decisions" for the purpose of section 36. Section 36(a)(v) provides that "any other decision or class of decisions described in the regulations" are appealable. The decision of whether to hold a hearing and corresponding factors are outlined under section 7 of the Alberta Energy Regulator Rules of Practice ("Rules of Practice"), a regulation created pursuant to REDA. See CNUL Response at para 12.

CNUL fails to acknowledge the Athabasca's technical concerns about the Renewal Application

28. As noted in section 12 of the EPEA Guide to Content for Energy Project Applications (the "EPEA Guide"), it is obligatory for a renewal application to identify existing and emerging environmental pressures that affect environmental conditions in the area.[33] One of the most consequential and ubiquitous environmental pressures is climate change, notwithstanding its exclusion from CNUL's application and dismissal by the AER as a "general concern."

29. The omission of climate change as a consideration defeats the purpose of section 12. Due to recent climate trends, river systems have experienced specific and novel impacts such as altered water levels, flooding and disrupted aquatic ecosystems.[34] Fossil fuel projects like the Jackpine Mine are also among the leading causes of climate change.[35] The Athabasca raised this issue in its submissions by discussing the identifiable harms of climate change with sufficient clarity and specificity.[36]

30. Although climate change could be treated as a "general concern" in the context of some fossil fuel projects, this does not hold true when examining environmental pressures in the Athabasca region. The harms of climate change on rivers are specific and well-documented, particularly in Alberta, where drought has been a regular occurrence in recent years.[37] It is essential for the Renewal Application to consider all relevant circumstances when reporting on environmental conditions.

31. Further, the Athabasca's Request highlighted how treating climate change only as a "general concern" in this context creates a risk that the AER will continue to dismiss this matter with no available recourse for concerned parties.[38] This is not a vague assertion as claimed by CNUL,[39] but rather a legitimate concern that climate change will never be considered by the AER when assessing future projects that amplify climate-related impacts. Although the chart provided by CNUL demonstrates that the Application included some environmental considerations,[40] CNUL erred by excluding climate change, which is arguably the greatest "environmental pressure" that affects "environmental conditions in the area."

32. The exclusion of climate change is particularly harmful when conducting hydrologic assessments. CNUL claims there is no basis in law for the assertion that hydrologic models

[33] Alberta Energy Regulator (2014) *Environmental Protection and Enhancement Act – Guide to Content for Energy Project Applications*, accessed online ("EPEA Guide"), s. 12.
[34] See Climate and Freshwater Ecosystems, *supra* note 21; Climate Impacts on Water Resources, *supra* note 21.
[35] See Intergovernmental Panel on Climate Change, "Climate Change 2023 Synthesis Report," accessed online at pp. 43, 45.
[36] Regulatory Appeal at paras 26-32.
[37] Note that the Government of Alberta actively monitors and responds to droughts. See Government of Alberta, "Drought- Current conditions," accessed online; Government of Alberta, "Drought- What government is doing," accessed online.
[38] See Regulatory Appeal at para 27.
[39] CNUL Response at para 46.
[40] CNUL Response at p. 9.

must be updated from 2008, however it would be difficult to provide an appropriate hydrologic assessment with models that do not account for the more recent impacts of climate change. Although the Renewal Application contained a basic description of the setting and certain environmental conditions, updated modelling would be necessary to fulfill the "existing and emerging… environmental pressures" requirement of section 12, which forms the "basis in law" that is rejected by CNUL.[41] Excluding climate change developments from hydrology modelling will inevitably lead to an inaccurate assessment of the risks experienced by the Athabasca.

33. The Athabasca further expressed its concerns regarding excess contaminants being released into groundwater. Insufficient information is provided by CNUL on steps that are being taken to mitigate this issue. CNUL claims there is no basis in law for seeking more information,[42] however section 12 outlines the requirement to provide information on the setting and environmental conditions in relation to the proposed activities. Environmental conditions include information about groundwater, such as water quality and exposure to contaminants.

34. CNUL does not address this issue in its Response and rather states that the Athabasca's Request "[seeks] relief via a modification of the AER's approval process" while claiming that no harms are identified.[43] However, contaminants cause a direct and adverse effect on the river basin and overall ecosystem, and a failure to address this matter in the Renewal Application means that information about environmental conditions is not adequately provided pursuant to section 12.

35. CNUL also misinterprets subsection 13.3 in its Response. This subsection required the Renewal Application to discuss the impacts of the Jackpine Mine's air emissions on the environment. CNUL pointed to one general requirement of section 13.3 (to describe substances generated "in a typical operating day at a plant or facility") that it adhered to, while explaining that there will be no changes to emissions.[44] This assertion fails to address that CNUL did not follow the specific requirement of reporting environmental impacts.

36. Overall, CNUL's Renewal Application did not adhere to sections 12 and 13 of the EPEA Guide. Although some relevant information was provided, the Application did not adequately report on environmental pressures that have direct and harmful effects on the Athabasca River Basin. CNUL's lack of reporting is of particular concern given that it failed to discuss the impacts of climate change, which is among the greatest threats to every ecosystem.

[41] CNUL Response at para 50.
[42] CNUL Response at para 53.
[43] CNUL Response at paras 53-54.
[44] CNUL Response at paras 56-57.

III. Conclusion

37. It is within the AER's powers to recognize the Athabasca's personhood for procedural purposes under its enabling statute. Furthermore, there is a direct link between the renewed approvals, the Jackpine Mine's activities and negative impacts on the Athabasca. These determinations would allow the Athabasca to file a regulatory appeal of the Renewal Decision as a "directly and adversely affected" person under section 36 of REDA. Contrary to CNUL's concerns, this interpretation would have no bearing on the substantive rights of natural entities within the legal system.

38. Although CNUL's Renewal Application included some relevant information regarding environmental impacts, it fell short of meeting the distinct criteria under sections 12 and 13 of the EPEA Guide by omitting key considerations such as climate change, updated modelling and the impacts of contaminants and emissions originating from the Jackpine Mine.

39. For these reasons, the Athabasca reiterates its request for the AER to reconsider its Renewal Decision and conduct a hearing under section 40(1) of REDA that provides the Athabasca standing to participate as an eligible person.

40. Thank you for your consideration of these important issues.

Sincerely,

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Barrister & Solicitor

Adam Clasky
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cc. Debborah Donnelly, Alberta Wilderness Association
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