

Proceeding 417

April 25, 2023

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By email only

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RE: Regulatory Appeal of the Decision to Issue Pipeline Licence No. 62559

Regulatory Appeal 1935549

Licence No. 62559

Michael Judd

Pieridae Alberta Production Ltd. (Pieridae)

Alberta Energy Regulator – Regulatory Applications (AER Regulatory Applications)

(collectively, parties)

Panel Decision on Request for an Information Request Process

Dear Parties:

The panel of Alberta Energy Regulator (AER) hearing commissioners assigned to Proceeding 417, write to provide our decision on Mr. Judd's request for an information request (IR) process.

Context

On April 12, 2023, Mr. Judd requested in writing that we revise the process schedule to provide at least one round of IRs between the parties. All parties to this proceeding had an opportunity to respond to Mr. Judd's request. For the reasons set out below, we have decided to direct an IR process for this proceeding.

Process: IR Framework

While the parties to a hearing may ask each other for information on an informal basis, the *Alberta Energy Regulator Rules of Practice* (the *Rules*) gives a hearing panel the discretion to include an IR process as part of the hearing.

Subsection 12(1) of the *Rules* provides that the AER may establish a process for the filing and serving of IRs between the parties to the hearing where “a party may request another party... to provide information necessary:

- (a) to clarify any documentary evidence filed by the other party,
- (b) to simplify the issues,
- (c) to permit a full and satisfactory understanding of the matters to be considered, or
- (d) to expedite the proceeding.”

Sections 12-14 of the *Rules* set out the framework for an IR process, including the purpose of IRs, the format for IRs and responses to IRs, and the options available to the parties should they contend that an IR or response to an IR that they receive is not satisfactory. Paragraph 5.6 of *Manual 003: Participant Guide to the Hearing Process*, provides information about the IR process.

Submissions

In reaching our decision, we reviewed and considered all submissions received on this matter. This includes Mr. Judd’s request of April 12, 2023, Pieridae’s response, dated April 13, 2023, and Mr. Judd’s reply received later the same day. AER Regulatory Applications did not provide a response to Mr. Judd’s request.

Mr. Judd requested the inclusion of an IR process based on the amount and complexity of new information provided by Pieridae on April 4, 2023. Pieridae filed the new information in response to our March 28, 2023, letter requesting further information. Mr. Judd stated that the opportunity for one round of information requests is necessary to ensure the fair and efficient conduct of the hearing.

Pieridae submitted that it was unreasonable and inappropriate for Mr. Judd to request an IR process be included in the schedule at this late stage. Pieridae also submitted that Mr. Judd’s request will likely delay the current hearing schedule and that this will further prejudice Pieridae. Mr. Judd replied that this proceeding has been a lengthy and protracted process through no fault of his own and that it is not fair or reasonable to condense the schedule now.

Reasons

Parties must have the opportunity to understand the issues and evidence filed in the proceeding and be able to speak to the issues and evidence. In this regard, the purpose of the IR process is to afford each party the opportunity to explore and clarify the documentation that has been filed on the record of this proceeding.

The question at hand is to determine whether an IR process is necessary in this proceeding. We are of the view an IR process is necessary for the following reasons.

We accept Mr. Judd's position that he should have the opportunity to ask IRs, particularly about the documents recently provided by Pieridae at our direction. Those documents are lengthy and technically complex, and it is reasonable to expect that Mr. Judd may request that Pieridae clarify some of the documents prior to the oral portion of the hearing.

The relationship between the parties appears to be contentious, and we believe that directing an IR process under the *Rules*, rather than leaving the parties to ask each other for information on an informal basis, will better support all parties in clarifying the documentary evidence. The filing of IRs and responses on the record will assist the parties and us in seeking a full and satisfactory understanding of the matters to be considered in this hearing.

While Pieridae submitted that it could be prejudiced if an IR process delayed the hearing schedule, it did not provide any specifics of anticipated prejudice. Due to the lack of specifics, it is not clear to us that Pieridae will suffer any prejudice. We note that Pieridae could proceed with the construction and operation of the pipeline, as the approval has not been suspended or stayed.

In summary, we direct an IR process be included in this proceeding due to the technical complexity and extensive nature of the submitted documents, and to improve the information exchange between the parties with a structured process.

Hearing Process Schedule

On April 14, 2023, we suspended the hearing submission filing dates that were established on April 3, 2023. We confirm that those filing dates and the hearing dates of June 20-22, 2023, are cancelled, because there will be insufficient time to accommodate an IR process and filing of hearing submissions ahead of June 20, 2023.

We will issue a schedule for the IR process after we decide on the motion filed by Mr. Judd on April 13, 2023. We have chosen to defer issuing the IR process schedule because there may be more evidence filed in this proceeding if the motion is granted. We will address further hearing process scheduling after the IR process schedule has been set.

Sincerely,

C.L.F. Chiasson, Presiding Hearing Commissioner

cc: S. Fluker, Public Interest Law Clinic (University of Calgary)
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