

Proceeding 417

May 19, 2023

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By email only

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AER Regulatory Applications

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**RE: Regulatory Appeal of the Decision to Issue Pipeline Licence No. 62559
Regulatory Appeal 1935549
Licence No. 62559 (Licence)
Application No. 31097955 (Application)
Michael Judd
Pieridae Alberta Production Ltd. (Pieridae)
Alberta Energy Regulator – Regulatory Applications (AER Regulatory Applications)
(collectively, parties)
Motion Decision**

Dear parties:

The panel of Alberta Energy Regulator (AER) hearing commissioners assigned to Proceeding 417 (panel), writes to provide our decision on Mr. Judd's Notice of Motion (motion) filed pursuant to section 44 of the *Alberta Energy Regulator Rules of Practice (Rules)* on April 13, 2023. For the reasons below, we deny Mr. Judd's motion.

Background

Mr. Judd's motion requests an order from the panel granting him:

...disclosure and access to all information collected, received, assessed, compiled or produced by the AER under *Directive 067 - Eligibility Requirements for Acquiring and Holding Energy Licences and Approvals* and *Directive 088 – Licensee Life-Cycle Management*, in relation to Application No. 31097955 and Pipeline Licence No. 62559 and in relation to a holistic licensee assessment of Pieridae Alberta Production Ltd. and its associated companies... and its eligibility to acquire and hold a licence for energy development in Alberta....

In support of the motion, Mr. Judd submitted an affidavit dated October 11, 2022.

The panel provided an opportunity for Pieridae and AER Regulatory Applications to make response submissions. AER Regulatory Applications did not provide a response to Mr. Judd's motion. On May 1, 2023, Pieridae filed its response. Mr. Judd filed a reply submission on May 10, 2023.

Submissions

In reaching our decision, we reviewed and considered all submissions received in respect of this matter.

Mr. Judd submitted that the duty of procedural fairness requires the AER to implement a fair, open and transparent process which provides a directly and adversely affected person, such as him, a full and complete opportunity to know and meet the case against them. Mr. Judd submitted that he does not have access to the information he has requested, and therefore cannot fully exercise his procedural rights in this hearing. Mr. Judd submitted that the purpose of this hearing is to determine whether the AER should confirm, vary, suspend, or revoke its decision to issue the Licence, and accordingly all financial, capability, and compliance information collected, received, assessed, compiled or produced by the AER in relation to its holistic licensee assessment of Pieridae and its eligibility to acquire and hold a licence for energy development in Alberta, is relevant information in this hearing.

Mr. Judd further submitted that the disclosure and access to the information requested is relevant and material evidence in the proceeding, and the financial and other capabilities of an applicant for a licence are a relevant and material consideration for the AER insofar as it pertains to the matters that the panel must consider under section 3 of the *Responsible Energy Development Act General Regulation (General Regulation)*.

In response, Pieridae submitted the motion should be dismissed on the basis it seeks relief with respect to matters which the AER has already determined extend beyond the scope of this proceeding. Previously, Mr. Judd suggested four issues to be included in the issues for this hearing, including the disclosure of information received by the AER under *Alberta Energy Regulator Directive 067: Eligibility Requirements for Acquiring and Holding Energy Licences and Approvals (Directive 067)* and *Alberta Energy Regulator Directive 088: Licensee Life-Cycle Management (Directive 088)* in relation to the Application for the pipeline and the AER's evaluation of that information. Pieridae submitted that, in our letter of March 14, 2023, we found all four issues suggested by Mr. Judd not to be applicable to the regulatory appeal and the proposed issues were not included in the issues for the hearing. As a result, the motion is not properly before the AER under section 44(1) of the *Rules* because it does not relate to a matter that requires a decision or order from the AER, and that, as a decision has already been made, the motion relates to matters which are outside of the subject proceeding.

Pieridae submitted that the content of the motion represents a clear departure from the legislative framework for regulatory appeals, which requires the AER to consider factors specific to a particular project as indicated under section 3 of the *General Regulation*. Pieridae noted that under section 31.1 of the *Rules*, the AER may allow for the submission of new information in a regulatory appeal “if the information is relevant and material to the decision appealed from and was not available to the person who made the decision at the time the decision was made.” Pieridae submitted that the panel’s March 14, 2023 decision concerning the list of issues for this proceeding is determinative of whether the information sought through the motion is relevant and material. As the panel rejected a proposed issue that relates to precisely the same information requested in the motion, it can be logically concluded that such information is not relevant or material.

Pieridae further submitted that the matters related to licensee eligibility and the assessment of its financial and operational capabilities are not germane to this regulatory appeal because the AER’s oversight of licensees is separate and distinct from the legislative and regulatory requirements applicable for pipeline licences under *Directive 056: Energy Development Applications and Schedules (Directive 056)*. The information received by the AER is not directly related to Pieridae’s Application for the pipeline Licence and is instead the subject of entirely separate regulatory filings made by Pieridae. The materials sought through the motion are irrelevant to the AER’s decision of whether to confirm, vary, suspend or revoke the decision to issue the Licence to Pieridae.

Reasons for Decision

To decide Mr. Judd’s motion, we will consider whether the information requested by Mr. Judd is relevant and material to this proceeding.

This proceeding is the regulatory appeal of the decision to issue the Licence to Pieridae. On March 14, 2023, we decided the following issues for the hearing:

1. The determination of the Emergency Planning Zone for the pipeline, including methodology used and the applications of AER Modelling requirements;
2. Emergency preparedness and proposed public protection measures;
3. The construction and operation of the pipeline, including the design and monitoring of the pipeline and the pipeline Integrity Management Program; and
4. The potential effects of the pipeline on the environment.

Not before us in this regulatory appeal and not included in the issues for the hearing are the AER's decision to grant Pieridae licence eligibility, Pieridae's ongoing license eligibility requirements or related regulatory filings with the AER, or any application currently or previously before the AER or a regulatory appeal of any AER decision issued in respect of the transfer of licences to Pieridae.

Licence Eligibility under Directive 067

Determination of licence eligibility under *Directive 067* is a separate regulatory process from deciding an application for a new licence under the *Pipeline Act*. A licensee's licence eligibility is not determined anew with every application for a new licence. Licence eligibility must be obtained pursuant to the eligibility application process set out in *Directive 067* before a prospective licensee can make any application to the AER in respect of a licence under, among other enactments, the *Pipeline Act*. Section 2.2.1 of *Directive 056* provides that "the AER cannot consider a licence application unless the applicant and all consultants have a valid BA code and the applicant has obtained licensee eligibility from the AER (see Directive 067)". Once obtained, licence eligibility must be maintained, and is subject to regulatory processes separate from deciding an application for a licence. We note that the copy of the Application on the record of this proceeding includes Pieridae's BA code.¹

This regulatory appeal is not in respect of the decision to grant Pieridae licensee eligibility, and nor is the determination of Pieridae's licence eligibility an issue for the hearing on the regulatory appeal. This regulatory appeal is in respect of the decision to issue the Licence; what is required in respect of licence eligibility in this matter is that Pieridae hold a valid BA code and have obtained licensee eligibility.

Assessment Under Directive 088

The holistic licensee assessment referred to under *Directive 088* is a separate regulatory process from deciding an application for a new licence under the *Pipeline Act*. While a licence transfer application will trigger a holistic licensee assessment of both the transferor and transferee, this is not the case for an application for a new licence. No licence transfer application or regulatory appeal of a decision on a licence transfer application is before this panel.

Regulatory Appeal

Pursuant to sections 36 and 38 of the *Responsible Energy Development Act (REDA)*, to be granted a request for a regulatory appeal of a decision of the AER made under an energy resource enactment, such as the *Pipeline Act*, without a hearing, the requester of the regulatory appeal must be a person who is directly and adversely affected by the decision that is the subject of their request.

¹ Exhibit 2.02, pdf 2.

This regulatory appeal is being held because Mr. Judd requested a regulatory appeal of the decision to issue the Licence and his request was granted. The AER determined that Mr. Judd had demonstrated that he may be directly and adversely affected by the decision to issue the Licence due to the possibility that he may have to shelter-in-place should an emergency come to pass, and, because in the event of evacuation, his evacuation route passes through the pipeline emergency planning zone, which may put him in harm's way in the event of a sour gas release.²

A regulatory appeal is an appeal to the AER of a specific decision it has issued; it is not the opportunity to appeal other decisions of the AER for which requests for regulatory appeal were not granted, or to obtain on the record of a regulatory appeal information that is not related to the decision which is the subject of the regulatory appeal.

While the record of a regulatory appeal is not limited to only the record of what was before the person who made the decision that is the subject of the regulatory appeal, information submitted to the record of the regulatory appeal must be relevant to the proceeding. We will not require the disclosure of information that is not relevant and material to the matter before us.

Relevancy of the Requested Information to the Regulatory Appeal

Mr. Judd's motion seeks the disclosure of information on the record of this regulatory appeal that is in respect of Pieridae and other regulatory processes concerning Pieridae, but not in respect of the decision to issue the Licence. Mr. Judd asserted that the information he requests is relevant to this proceeding, but has not explained to us how it is relevant. Mr. Judd has not explained how the information he requests relates or may relate to the direct and adverse effect to him of the decision to issue the Licence, or how it may assist us in making our decision on the regulatory appeal of the decision to issue the Licence.

Mr. Judd's affidavit relates largely to different applications previously before the AER in respect of the transfer of licences to Pieridae and does not address any direct and adverse effect to him of the decision to issue the Licence. The panel notes that Mr. Judd's affidavit states that it is made in support of his motion:

...for disclosure and access to all information collected, received, assessed, compiled or produced by the [AER] under [Directive 067] in relation to the [Application] and [Licence], or otherwise, in relation to a financial/capability assessment and compliance history of [Pieridae] and its associated companies... and its eligibility to acquire and hold a licence for energy development in Alberta. (underlining added)

² Decision by the AER on the Request for Regulatory Appeal by Michael Judd of the Decision to issue Pipeline Licence No. 62559, January 19, 2022, pages 9-10

It appears to us that the information Mr. Judd seeks extends far beyond the Application, the Licence, and this proceeding. We do not see the relevance of this information to the issues for the hearing or our decision on this regulatory appeal. Mr. Judd has not convinced us that the information he seeks to have disclosed on the record of this regulatory appeal is relevant and material to this regulatory appeal.

Factors to Consider

Pursuant to section 15 of *REDA* and section 3 of the *General Regulation*, when the AER is “to conduct a regulatory appeal... in addition to any other factor it may or must consider in conducting the regulatory appeal... [it] shall consider

- (a) the social and economic effects of the energy resource activity,
- (b) the effects of the energy resource activity on the environment, and
- (c) the impacts on a landowner as a result of the use of the land on which the energy resource activity is or will be located.”

Mr. Judd submitted that the information he requests:

...is relevant and contributes towards a determination of: (1) the social, economic and environmental effects of [the Application and Licence]; (2) whether [the Application and Licence] constitute efficient, safe, orderly and environmentally responsible development of energy resources in Alberta; and (3) the impacts created and risks imposed on the Applicant as a landowner who is directly and adversely affected by [the Application and Licence]....

For this proceeding, the energy resource activity is the pipeline licensed by the Licence. Given that Mr. Judd has failed to address how the information he requests relates or may relate to the direct and adverse effect to him of the AER’s decision to issue the Licence or to our decision on this regulatory appeal, we are not convinced that the information he requests is relevant and material to our consideration of the factors set out in section 3 of the *General Regulation*.

When deciding this regulatory appeal, we will consider the factors set out in section 3 of the *General Regulation* in respect of the pipeline licensed by the Licence in light of the record before us at that time, including any submissions by the parties about the economic effects of the pipeline.

Conclusion

For the reasons above, the panel denies the motion filed by Mr. Judd on April 13, 2023.

Sincerely,

C.L.F. Chiasson, Presiding Hearing Commissioner

cc: M. Sawyer, Hayduke & Associates (2021) Ltd.
T. Myers, Bennett Jones LLP
B. Kapel Holden, AER Panel Counsel
L. Mosher, AER Panel Counsel
E. Arruda, AER Hearing Coordinator