

THE ALBERTA ENERGY REGULATOR

PROCEEDINGS ID NO. 417

IN THE MATTER OF the Regulatory Appeal by
Michael Judd of the AER's decision to approve
Application No. 31097955 and issue
Pipeline Licence No. 62559 to
Pieridae Alberta Production Ltd.
on August 16, 2021
(Regulatory Appeal 1935549)

AER PROCEEDING

VOLUME 4

Calgary, Alberta
November 22, 2024

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1 Proceedings taken at Govier Hall, Calgary,
2 Alberta

3

4 November 22, 2024

Morning Session

5

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3 (PROCEEDINGS COMMENCED AT 9:32 AM)

4 Opening Remarks

5 THE CHAIR: Please be seated.

6 So good morning, everyone. Welcome back to
7 the hearing. So today we are into closing
8 argument. We closed the evidentiary portion
9 yesterday.

10 So just the usual reminders. Please make
11 sure your electronics, phones, laptops,
12 et cetera, are set to silent. And once again,
13 today the hearing is being video cast, and so
14 anyone who's in the room, including people who
15 are in the audience, not the active
16 participants, may be shown on the video cast;
17 so if you have concerns about this, please
18 approach our hearing coordinator, Ms. Arruda.

19 So are there any matters that we need to
20 address before we proceed to argument? All
21 right. I'm seeing shaking heads. So that's
22 good. And we will then proceed.

23 Mr. Sawyer, we'll start with you.

24 Submissions by M. Sawyer

25 M. SAWYER: Good morning,
26 commissioners. I want to thank you just for

1 allowing me that extra half hour this morning.
2 It made my morning much more relaxing. Thank
3 you.

4 Good morning, Members of the Panel. I'm
5 here to present the final argument of Michael
6 Judd with respect to the subject pipeline, and
7 as part of this regulatory appeal, AER granted
8 Mike Judd's request for regulatory appeal of
9 the AER's decision to approve the pipeline
10 licence dated January 19th, 2022. At that time
11 AER found that Judd met the eligibility
12 requirements for requesting a right for appeal
13 as set out in the REDA and that they found that
14 Mr. Judd was a person who may be directly and
15 adversely affected by the decision to issue the
16 pipeline licence.

17 Mr. Judd is requesting that the Panel
18 revoke Pipeline Licence 62559, and I'm going to
19 refer to that for the rest of my argument as
20 the pipeline that was issued to Pieridae
21 Alberta Production Limited, and I'll refer to
22 them as Pieridae by the Alberta Energy
23 Regulator in 2021.

24 This proceeding has been long and fairly
25 complicated. I mean, it's gone over -- spanned
26 a number of years. Normally one wouldn't

1 expect a hearing for a 640-metre pipeline to
2 be -- take this long. And there were lots of
3 discussions about what issues were relevant or
4 not to the Panel's determination, you know,
5 before the hearing in -- and then during the
6 hearing, and, you know, potentially this
7 morning.

8 But one of those issues that Judd continues
9 to believe is important and relevant is the
10 Pieridae purchase of the Shell's Foothills
11 assets and the subsequent failed Shell/Pieridae
12 application to transfer the licence to
13 Pieridae.

14 Now, I'm not going to argue about those
15 matters because those are clearly not within
16 the scope of the hearing, but I raise it
17 because it creates an important context for my
18 other arguments that are within the scope.

19 To put that into context, in its
20 January 4th, 2021, letter to the AER regulatory
21 applications with respect to the Shell Pieridae
22 transfer -- this is after the Board had denied
23 the first application -- Shell wrote that
24 Pieridae and Shell submit that the continued
25 operations of Foothills assets with the current
26 split between ownership, operatorship, and

1 licencee would result in uncertainty,
2 duplication, and inefficiency, and confusion.
3 Judd submits that Proceeding 417 continues to
4 demonstrate that that separation of assets
5 between ownership and licence responsibility
6 with respect to the Foothills asset continues
7 to cause both regulatory uncertainty as to what
8 the applicable rules and uncertainty about --
9 for those like Judd who must live their daily
10 lives amidst all this activity.

11 Now, you know, conventionally, I would get
12 up here and argue about the many issues that we
13 take with the application, whether it be the
14 emergency response plan or environmental
15 impacts, and I could go on in some length about
16 all of these details, but I'm not going to.
17 I'm -- I'm going to skip most of that, and I
18 don't want the Panel to misconstrue that those
19 issues aren't important to Mr. Judd. What I'm
20 going to focus in are on the issues that we
21 think will have the most impact on the Panel's
22 decision. And so just because I don't mention
23 something doesn't mean Mr. Judd isn't concerned
24 about it. It's just for sake of efficiency and
25 trying to be -- having the best final argument,
26 we're going to focus on the things that we

1 think will matter to you.

2 And I think the things that we think will
3 matter are mostly legal issues, and they're
4 mostly just statutory interpretation questions
5 of law that are relevant to this application.

6 And so I had a number of questions as we've
7 gone through this process that popped up in my
8 mind, and one of the questions was: Is there a
9 need for the pipeline? And for there to be a
10 need for the pipeline, there has to be the
11 ability for Pieridae to produce natural gas
12 from the Waterton 61 wells. The -- the
13 pipeline itself needs to deliver that gas to
14 the existing Shell pipeline and that existing
15 Shell pipeline has to deliver that gas
16 eventually through the Carbondale system to the
17 Waterton gas plant.

18 And yesterday when I had the regulatory
19 applications panel on the stand, I asked the
20 question about how they assessed need. And,
21 you know, essentially the answer was that we
22 make the assumption that if the applicant is
23 applying for something, that there is a need.
24 And I don't think that was a -- that might be
25 how they approach it, but I don't think that's
26 the real question of how this Panel has to

1 address the question of need.

2 And I think that what really is at issue in
3 terms of the question of need is what are
4 they -- the -- your statutory requirements
5 under your governing legislation, and
6 particularly I would refer you to
7 Section 12.2(1)(a) of the Responsible Energy
8 Development Act that states the mandate of the
9 regulator is to -- and I quote: (as read)

10 To provide for the efficient, safe,
11 orderly, and environmentally
12 responsible development of energy
13 resources and mineral resources in
14 Alberta through the regulator's
15 regulatory activities.

16 Judd submits that the REDA requires that the
17 Panel put its mind to the need for the pipeline
18 and the assessment must include the
19 requirements of REDA and should include the
20 requirements of all the other relevant
21 legislation, for example, the Oil and Gas
22 Conservation Act or the Pipeline Act, the
23 various rules and directives.

24 We believe that Pieridae must demonstrate
25 the source of gas in the context of the needs
26 based assessment for the pipeline. And I

1 submit that they haven't done that. The
2 Pipeline Act is an enabling legislation for
3 rules and regulations related to pipelines in
4 Alberta. Section 3(1) of the Act provides
5 rule-making authority to the AER in respect of
6 the application under review under the Act.
7 This is the source of the AER's responsibility
8 and authority to issue binding rules set out in
9 the various directives referenced throughout
10 this submission. It is also the enabling
11 legislation for the Alberta pipeline. And when
12 we go to the Alberta pipeline regulation,
13 Section 3(1), it requires that an application
14 for a licence to construct and operate a
15 pipeline including any applicable installation
16 must be in accordance with the requirements of
17 Directive 056. (as read)

18 Energy development application
19 schedules require that the AER as the
20 approving body is required to evaluate
21 the need for projects that are
22 proposed for any new gas facility or
23 pipeline.

24 And that's Section 5.6.4 in the directive.
25 Directive 056 further establishes that AER's
26 sour gas proliferation requirements are set out

1 in ID2001-03, and those are relevant in terms
2 of ensuring that we do not have pipelines that
3 are not necessary.

4 Now, Pieridae is presumably satisfied with
5 the business case for the pipeline, or they
6 wouldn't have advanced the application and
7 ultimately built the pipeline, but there is a
8 separate public interest concern, and it is not
9 in AER's interest to approve pipeline
10 application for an applicant that has not
11 established that there is sufficient systemic
12 need for incremental infrastructure that is in
13 the broader public interest.

14 Judd submits that Pieridae's pipeline
15 licence fails to meet the requirements under
16 Directive 056, and it is not in the AER's
17 interest to award pipeline licences to
18 proponents that fail to meet that requirement.
19 And when I say "award", I mean in the context
20 of this regulatory appeal, you know, you have a
21 number of options. You know, you can reaffirm
22 the licence, you can revoke the licence, and
23 there's a number of other things. So when I
24 use that language, I'm thinking in the context
25 of this appeal you have a number of options in
26 front of you.

1 So to demonstrate the need for the new
2 pipeline proposed under the application and to
3 comply with the regulatory framework set out
4 above, Judd submits that Pieridae must
5 demonstrate either that the applicant is the
6 properly licenced owner of the source of the
7 gas that would supply the sour gas to the
8 proposed pipeline or that the applicant has
9 entered into an arrangement in -- with the
10 properly licenced owner of the source of gas
11 that would supply sour gas for the proposed
12 pipeline. Pieridae has submitted that it
13 intends to produce natural gas from the
14 Waterton 61 and the Waterton 10-7 wells --
15 collectively, I refer to it as the Waterton 61
16 wells -- to transport that natural gas to the
17 Waterton gas plant via the pipeline and the
18 system of existing pipelines and facilities.

19 These wells were drilled well over a decade
20 ago and have been shut-in since 2007, and
21 they're currently shut-in, and Shell is the
22 licencee for both wells and the existing
23 pipelines and facilities.

24 As a result of the 2019 sale, Pieridae is
25 now the owner of those wells but not the
26 licencee. Pieridae has stated that the sole

1 purpose of the pipeline is to transport natural
2 gas from the Waterton 61 wells to an
3 interconnect with an existing Shell pipeline.

4 And there is evidence on -- on -- in the
5 record it's very clear that while Pieridae is
6 the owner, they are not the licensee of this
7 pipeline or the wells. Judd further submits
8 that because of the legislative requirements,
9 and I'm specifically referring to Section 3.012
10 of the Oil and Gas Conservation Regulations,
11 and notwithstanding that Pieridae may own the
12 wells, it has no authority to produce gas from
13 that -- from those wells. For example, the Oil
14 and Gas Conservation Regulation states that a
15 licensee shall abandon a well or a facility on
16 a number of criteria, but I'm just going to go
17 right to the one that matters here, and that
18 is in that (e) of that clause, which says:

19 (as read)

20 If a licensee is not or ceases to have
21 a working interest participant in the
22 well facilities.

23 And why that's relevant -- I mean, clearly
24 Pieridae's not the licensee, so you might say
25 well, Why is he bringing it up? We're bringing
26 it up because yesterday -- sorry -- the day

1 before, the Pieridae expert panel confirmed in
2 their testimony that no one else other than
3 Pieridae has a working interest in those wells.

4 So it follows, then, that Shell no longer
5 has a working interest in those wells, and it
6 follows, then, under that provision of the Oil
7 and Gas Conservation Act -- and I quote again:
8 (as read)

9 If a licensee is not or ceases to have
10 a working interest participant in the
11 well ... [they cannot produce it]

12 And Pieridae can't produce it because they're
13 not the licensee, and Shell can't produce it
14 because they no longer have a working interest
15 in the well. So this -- this -- this goes
16 right to the question of need. If they can't
17 produce the wells, there's no need for the
18 pipeline.

19 So with respect to the Waterton 61 wells
20 that will produce gas that may be transported
21 to the subject pipeline, again, Pieridae has
22 confirmed it is not the licensee of record and
23 that Shell remains the licensee of record, but,
24 as I've indicated, they may not have -- they
25 don't have a working -- they're not a working
26 interest participant in that well.

1 So Judd submits that Section 3.012(e) of
2 the Oil and Gas Conservation Regulations
3 requires that the licensee, that being Shell,
4 abandon the Waterton 61 wells. And -- and if
5 you read that clause in the Act, it's not a
6 discretionary thing. It's -- the clause say,
7 They shall abandon the well.

8 And I'm a bit reluctant to -- to take the
9 focus away from Pieridae's efforts, but I think
10 a lot of the responsibility at the end of the
11 day for this confusion has to lie on the Board
12 or the Board staff who -- who have not been
13 enforcing the -- the mandatory requirements of
14 their governing legislation.

15 So additionally to reenter -- let's assume
16 they survive that challenge and -- and they're
17 going to reenter an abandoned or suspended gas
18 wells -- and -- and those wells are currently
19 suspended according to the record -- and given
20 that Pieridae is not the licensee of the
21 Waterton 61 wells, as a result, Judd submits
22 that Pieridae is therefore ineligible to -- to
23 make an application to reenter the Waterton 61
24 wells or to receive authorization from the AER
25 to reenter the Waterton 61 wells. If they
26 can't do those, you know, workover activities,

1 they can't produce the gas, and then therefore
2 there's no need for the pipeline.

3 Directive 013 requires that a licensee must
4 complete -- and, again, the key term here is a
5 "licensee" -- must complete a number of
6 procedures to reactivate suspended -- a well.
7 Pieridae is not the licensee. Further,
8 Section 23(1) of the Oil and Gas Conservation
9 Act states: (as read)

10 When the regulator -- when the records
11 of the regulator indicate that a well
12 or facility is suspended or abandoned,
13 no person other than, (a), the
14 approved holder or licensee or, (b), a
15 person acting under the direction or
16 the consent of the regulator shall
17 undertake operations with respect to
18 that well or facility until that
19 person applies for and obtains a
20 license or approval.

21 It's very clear from that section that in the
22 absence of being a licensee and making that
23 application, Pieridae cannot do work on that.

24 Now, you might say, Well, it's five years
25 into this and they have been doing work on that
26 well, and I would propose to you that work has

1 been illegal if we look at it in terms of the
2 overall regulatory scheme here, and just
3 because no one's enforced the law doesn't mean
4 it's lawful.

5 Section 23(1) of the Oil and Gas
6 Conservation Act also states that: (as read)
7 A licensee means the holder of a
8 licence according to the records of
9 the regulator and could include a
10 receiver, receiver-manager, trustee,
11 or liquidator of property of the
12 licensee and, for greater certainty,
13 includes a person who is a licensee
14 for the purposes of this Act under
15 Section 3(3).

16 Again, I don't want to sound like a broken
17 record, but Pieridae is not the licence holder,
18 and the -- the record of this proceeding
19 indicates that it's Pieridae's intention to
20 reenter Waterton 61 wells prior to production,
21 and Judd's submission is that they -- they
22 can't legally do that.

23 Well, let me just be clear on that. They
24 can't legally do that until they become the
25 licensee of the well, and -- and there's
26 nothing -- you know, we're five years into this

1 now. There's nothing to indicate that's
2 imminent.

3 So I'm going to move along to the -- the
4 question of do Pieridae's emergency response
5 planning comply with Directive 071? And I have
6 to say before I get into this that Mr. Judd has
7 numerous concerns about the ability of
8 Pieridae's emergency response plans to
9 effectively protect him in the event of an
10 emergency. But, again, I'm not going to get
11 into all those details. I'm just going to
12 stick to the high level issues that I think
13 are -- are most likely to influence your
14 decision.

15 So the ARP -- AER -- sorry -- has a single
16 directive relating to ERPs, and that's
17 Directive 071, and the directive applies to
18 activities under the Oil and Gas Conservation
19 Act, the Pipeline Act, the Oil Sands
20 Conservation Act, and the Geothermal Resource
21 Development Act, and that's specifically
22 Section 1.1.

23 And Directive 071 emphasizes that the duty
24 holder must have a comprehensive plan and thus
25 must be one that integrates ERP matters across
26 different interconnected activities. Now,

1 there's a potential you might misconstrue the
2 term "duty holder", but I would point to the
3 fact that -- because this Directive 071 applies
4 to a number of different legislative schemes,
5 the duty holder is defined in each one of the
6 subsequent legislations.

7 So in the Pipeline Act, the duty holder is
8 the licensee. In the Oil and Gas Conservation
9 Act, the duty holder is the licensee. So I --
10 I would encourage you not to get thrown off the
11 scent by that term.

12 So a comprehensive ERP for a network of
13 wells, feeder pipelines, and other pipelines
14 that may carry raw gas must be one that
15 addresses all of these activities. An ERP that
16 consists of an ERP for all facilities licenced
17 to Shell and a stand-alone ERP for the --
18 the -- the pipeline -- the subject pipeline,
19 you know, should not be confused as being a
20 comprehensive ERP.

21 Now, granted, Pieridae has produced a --
22 a -- an ERP for the pipeline that they are
23 licenced, and they are entitled to do that.
24 The problem becomes when we look at the -- the
25 broader corporate ERPs or the ERPs relating to
26 other elements of their operation that are

1 currently licenced to Shell.

2 And the -- it's also true that each of the
3 Pipeline Rules and the Oil and Gas Conservation
4 Rules impose separate obligations and
5 potentially on different duty holders, but the
6 AER must interpret these separate obligations
7 in an integrative way to achieve a
8 comprehensive approach to the Directive 071
9 demands.

10 And while the Pieridae -- the Pipeline
11 Rules refer exclusively to pipelines, there is
12 some overlap between the Pipeline Rules'
13 requirements and the Oil and Gas Conservation
14 Rules' provisions that require a licensee to
15 prepare a corporate ERP, which means a general
16 ERP that applies to all wells, pipelines, and
17 facilities of the licensee.

18 So I would -- Judd would submit that the
19 AER cannot allow Pieridae to hide behind the
20 fact that it is only a licensee in -- of the
21 pipeline segment to evade the broad
22 requirements for a comprehensive ERP that
23 covers all of the integrative sour gas
24 operations for its operator.

25 Now, I'm pretty confident that Pieridae
26 will get up and say, you know, We've submitted

1 all of those plans. We responded to numerous
2 information requests. We have all of that in
3 place. The unfortunate problem is that the
4 submission of those plans to the AER is -- is a
5 requirement on the licensee of those
6 facilities. Pieridae is not the licensee.

7 So we would submit -- Judd would submit
8 that generally Pieridae's ERPs are inadequate
9 and do need -- not meet the AER's requirement.
10 So just to go over that a bit, 'cause it's
11 important, Directive 071 emphasizes that the
12 duty holder must have a comprehensive plan and
13 thus must be one that integrates ERP management
14 across different interconnected activities.

15 The term "duty holders" defined in each of
16 the relevant legislation, for example, in the
17 Pipeline Act, the Oil and Gas Conservation
18 Rules state in Section 8.001: (as read)

19 A "corporate ERP" means a general ERP
20 that applies to all wells, pipelines,
21 and facilities of a licensee. [And]
22 (d) "ERP" means a comprehensive
23 emergency response plan to protect the
24 public that includes criteria for
25 assessing an emergency and procedures
26 to mobilize response personnel and

1 agencies and to establish
2 communications to ensure coordination
3 of the emergency response. [And it
4 goes on to define]
5 "Gathering system" means a network of
6 pipelines, pumps, tanks, and other
7 equipment that carries oil and gas to
8 a processing plant or to another
9 separation equipment.

10 If we look at Section 8.002(1) of the Oil and:
11 Gas Conservation Rules, it states: (as read)

12 A licensee of a well or facility shall
13 prepare a corporate ERP in accordance
14 with Directive 071.

15 And if -- if we look at 8.002(1), it says
16 something similar. It says a licensee of a
17 well or facility should prepare a corporate ERP
18 in a Directive 071.

19 And if we go on to oh three -- 8.003 and
20 8.004, they say essentially the same thing with
21 respect to different types of facilities, so
22 pipelines, wells, et cetera, and on all four of
23 those subclauses, it -- it has a (2) which
24 says: (as read)

25 The licensee referred to in (1) shall
26 submit a specific ERP for each [of the

1 sour production facilities] to the
2 regulator for approval as required by
3 Directive 071.

4 So the record on this proceeding has -- has --
5 confirms that at several points during the
6 proceeding, the AER and specifically this Panel
7 has requested updated, improved ERPs from
8 Pieridae. And so the -- it's clear that --
9 that there has been some requests from the
10 Panel for that information. And Judd would
11 submit that given that there's a clear and
12 mandatory obligation on -- on the licensee,
13 which in this instance is Shell and not
14 Pieridae, to prepare and submit those ERPs, and
15 given that Pieridae is not the licensee of the
16 Foothills assets, there's no evidence on the
17 record of these proceedings that the licensee
18 has prepared and submitted the required ERPs.

19 Notwithstanding that Pieridae has filed
20 various ERPs, because Pieridae is -- Pieridae
21 is not the licensee, I submit that those
22 filings are irrelevant. The ERPs required
23 under Directive 071 must be filed by the
24 licensee. It's a mandatory requirement.
25 There's no wiggle room on that.

26 And going back to my opening statements, I

1 would -- Judd submits that the confusion caused
2 by the sale of the Foothills assets and the
3 failed licence transfer that both Pieridae and
4 the AER have misunderstood the legal
5 obligations for filing ERPs, specifically who
6 must file those ERPs. As a result, Judd
7 submits there are no ERPs that are properly for
8 this Panel, and because of that, this Panel has
9 no other option than to revoke the pipeline
10 licence.

11 Additionally, Section 11(1) of the Pipeline
12 Rules state: (as read)

13 In this section, "emergency response
14 plan" means a comprehensive plan to
15 protect the public that includes
16 criteria for assessing an emergency
17 and procedures for mobilizing response
18 personnel agencies, establishing
19 communications and ensuring
20 coordinations.

21 So that's somewhat redundant from the oil and
22 gas, but it shows that that requirement
23 transcends across the border between those
24 different pieces of legislation.

25 Section 11(2) of the Pipeline Rules state:
26 (as read)

1 A licensee of a pipeline must prepare
2 and maintain an emergency response
3 plan in accordance with Directive 071.

4 I hate to sound like a broken record, but
5 Pieridae is not the licensee of the pipeline
6 system. They are the licensee of their
7 pipeline, that 640 metres, but they are not of
8 the bigger system.

9 So the reason I bring that up is that I
10 just want to make it clear that there are
11 several different of these pieces of
12 legislation under, you know, the REDA, the
13 Pipeline Act, the Oil and Gas Conservation Act,
14 et cetera, and each one of those has a very
15 similar requirement, and -- and they -- the --
16 it imposes a mandatory duty on the licensee to
17 provide these ERPs, and -- and that's not the
18 case.

19 So there is no evidence on this proceeding
20 that would support the proposition that a
21 licensee has prepared and submitted emergency
22 response plans in -- according to requirements
23 to Objective 71. Shell is not a participant
24 here. We've had no information from Pieridae
25 that would indicate that anyone other than they
26 prepared the ERPs, and those ERPs simply don't

1 meet the legal requirement that is specified
2 explicitly in multiple legislations that are
3 relevant to this decision.

4 Considering all of the above, Judd submits
5 that Pieridae is not in compliance with the
6 mandatory provisions of the Oil and Gas
7 Conservation Rules, the Pipeline Rules, the
8 requirements of the AEDR, Directive 071, and as
9 a result, Judd submits that on this basis
10 alone, this Panel has no other option than to
11 revoke the licence.

12 So the next thing I would like to turn to
13 is -- you know, I'm sure you've detected sort
14 of a theme to my presentation. So I'm going to
15 go on to the receiving pipeline. That would be
16 the Pipeline 23800, Segment 65, 64, 63, and 62.

17 So Pieridae's undisputed evidence in this
18 proceeding is that the reactivation of the
19 existing pipeline -- that, again, is Licence
20 23800 -- is a necessary condition to connect
21 the Carbondale pipeline system so that the
22 natural gas produced in the Waterton 61 wells
23 can be transported to the Waterton gas plant
24 and eventually to market. And our proposition
25 is that they can't use that pipeline for some
26 legal arguments I'm going to get into. And

1 that goes back to the question of do we need
2 this pipeline if they can't either produce the
3 gas or ship the gas to market? Is there any
4 need for this?

5 And, you know, I -- the concept of stranded
6 assets came to mind. And I thought, you know,
7 maybe at the end of the day, if the Panel
8 decides the way I think they ought to decide,
9 we'll refer to this as a ghost pipeline. It
10 starts nowhere, and it ends nowhere.

11 And there was some discussion earlier on
12 whether the discussion of Pipeline 23800 is
13 relevant to whether the Panel should vary,
14 rescind, or revoke the pipeline licence. And I
15 think that that was never clearly resolved in
16 the hearing. We -- you know, we -- we went
17 back and forth a few times, but I don't think
18 it was ever fully resolved because I make the
19 submission that how could it not be relevant?
20 You know, it was included in Pieridae's
21 application. They provided engineer reports
22 about the state of that. They provided a
23 constant flow of information back to the Panel
24 about that pipeline. Their pipeline that they
25 have licenced couldn't possibly exist in the
26 scheme that they're proposing without that

1 downstream pipeline, and I would say that that
2 pipeline is highly relevant to this matter.
3 And if it is highly relevant -- bear with me
4 one moment, Panel Members.

5 So the key point here is that once again,
6 Pieridae is not the licensee of the existing
7 pipeline. The Shell is the licensee of the
8 existing pipeline. And the existing pipeline
9 is a pipeline as defined by the Pipeline Act,
10 and Section 16(1) of the Pipeline Act states
11 very clearly: (as read)

12 No person shall operate a pipeline for
13 any purpose unless the purpose --
14 person is a licensee.

15 So I'm going to move on briefly to another
16 matter that -- that has stuck in Mr. Judd's
17 craw since the beginning of these proceedings
18 and again through the hearing, and that's the
19 issue of the confidentiality of Pieridae's
20 financial information. And I'm not going to go
21 down that rabbit hole very far at all because
22 it's been ruled that we can't, but I just want
23 to make the point that if we go back to the
24 August 2nd, 2024, letter from regulatory
25 affairs to the Panel where regulatory affairs
26 stated that it believed that Rule 12.152 sub --

1 of the Oil and Gas Conservation Rules that the
2 AER is legally required to keep a licensee's
3 financial information and reserve information
4 confidential for five years. And I raised this
5 matter yesterday with the Panel, and I believe
6 their counsel jumped up and said, That's a
7 legal question. Best save that for final
8 argument. And so I am going to save that for
9 this final argument.

10 And here's the issue, is that there's been
11 no disagreement from any parties that Pieridae,
12 being a publicly traded company on the Toronto
13 Stock Exchange, has a legal obligation to
14 publicly disclose its financial reports and
15 that those financial reports are therefore
16 public. And our view -- Judd's view is that
17 because those are public documents, there's no
18 need to maintain the confidentiality.

19 And, you know, it was interesting that, you
20 know, when the Pieridae panel was up, they --
21 they tried to throw me off the scent by -- by
22 talking about the different cooperate
23 structures that were involved. And, you know,
24 it's very clear that the -- the regulations and
25 directives require that if a company is a
26 subsidiary of a parent company, they have to

1 file the parent company's financial documents.

2 And, you know, I wasn't able to pull out
3 from the regulatory applications panel
4 yesterday whether, you know, what actually was
5 the source of that information. But I would
6 just submit to you that -- that that
7 interpretation of Section 12.152(1) is actually
8 incorrect, being that they're already in the
9 public and cannot be subject to claims of
10 confidentially -- confidentiality. And a
11 result of this, Judd has been deprived of
12 access to financial information that Pieridae
13 energy has submitted to the AER which would
14 have made a very significant difference in
15 terms of how this proceeding unfolded because
16 we would have had the tools in our toolbox to
17 properly challenge. So, I mean, I don't think
18 you can do anything with this in terms of your
19 decision, but I think that was an error, and I
20 think that it was unfair to Mr. Judd, and I'll
21 leave it at that.

22 So the record in this hearing, it
23 unequivocally demonstrates that while Pieridae
24 may be the owner of the assets in the Waterton
25 field, it is not the licensee of those assets
26 with the only exception being the pipeline that

1 they are licenced, which is subject to our
2 hearing today.

3 And in summary, while Judd may not address
4 the many flaws that he's identified inherent in
5 Pieridae's evidence, Judd has identified
6 several legal impediments to Pieridae
7 successfully operating the pipeline as well as
8 the ability to produce from the well as well as
9 the -- the issues around having not had the
10 proper party file ERPs. Judd submits that any
11 one of these legal issues should be sufficient
12 on its own to allow the Panel to decide to
13 revoke the pipeline licence.

14 Taken cumulatively, Judd submits that the
15 legal barrage to the Panel affirming the
16 pipeline licence are near insurmountable.
17 Those legal issues include whether or not to
18 allow Pieridae -- is legally allowed to produce
19 gas from the Waterton 61 wells, whether
20 Pieridae can legally reactivate and operate the
21 existing Shell wells, and whether there are any
22 ERPs, other than Pieridae's pipeline-specific
23 ERP, that are properly before this Panel, and I
24 would say the evidence on the record here
25 overwhelmingly supports my proposition.
26 Considering all of the foregoing, Judd believes

1 the Panel has no other option than to revoke
2 the licence.

3 And I would say although not directly
4 relevant to your decision, I'd like to politely
5 send a message back to the Board that this all
6 could have been avoided if the Board had
7 properly managed the failed licence transfer.
8 We're five years into this. We've got a
9 massive amount of assets and liabilities that
10 are hanging out there without a proper
11 licencee. And much of the confusion around
12 this -- this proceeding has been generated by
13 the fact that that issue has been left hanging,
14 and I -- I would just encourage that you take
15 note of that in your decision and go back to
16 your colleagues and say, you know, This is
17 something we really need to sort out because
18 it's not in the public interest. And this is
19 going to happen over and over again until these
20 types of issues get solved.

21 So I -- I would say, you know, subject to
22 any questions, those are my final submissions
23 for Mr. Judd.

24 THE CHAIR: Thank you,
25 Mr. Sawyer. If you just wait a moment while I
26 check with my colleagues.

1 Thank you, Mr. Sawyer. The Hearing Panel
2 has no questions for you, so we will proceed on
3 to Pieridae's argument.

4 And, Mr. Naffin -- sorry -- Mr. Naffin.
5 Just down the -- a ballpark in terms of where
6 we've been running the schedule, 11-ish would
7 probably be around where we would be looking to
8 take a break, not only for the court reporters,
9 but certainly we don't want to truncate your
10 argument either. So perhaps I'll check in with
11 you then and see -- see where you're at.

12 D. NAFFIN: Yeah. Commissioner
13 Chiasson, I would be hopeful that I would be
14 concluded by 11:00 or thereabouts.

15 THE CHAIR: Oh.

16 D. NAFFIN: I think I'll be in
17 the order of an hour --

18 THE CHAIR: All right.

19 D. NAFFIN: -- which was our
20 estimate.

21 THE CHAIR: Okay. Thank you.
22 That helps me in keeping an eye on the time;
23 so --

24 D. NAFFIN: Sure.

25 THE CHAIR: -- please proceed.

26 D. NAFFIN: And there may be a

1 natural break point --

2 THE CHAIR: Yes. Okay.

3 D. NAFFIN: -- as well. So I'm

4 happy to work with you, and I'm in your hands.

5 THE CHAIR: All right. Proceed
6 for now, and we'll see how your argument flows.
7 Thank you.

8 D. NAFFIN: Thank you.

9 Submissions by D. Naffin

10 D. NAFFIN: Commissioner
11 Chiasson, Panel Members.

12 At the outset I'd like to thank the Panel,
13 the AER counsel and staff, and the court
14 reporters for facilitating an organized and
15 efficient hearing process.

16 My closing remarks are going to be quite a
17 contrast from those of Mr. Sawyer. Rather than
18 focussing on entirely irrelevant, scoped-out,
19 sometimes inflammatory matters, I'm going to
20 focus on the four issues that are in scope.

21 So, first, I'll start by providing a brief
22 overview of the key facts and issues within the
23 scope of this regulatory proceeding. Second,
24 I'll discuss the concept of onus, and I will
25 also provide a summary of the legal framework
26 that governs the regulatory appeal process as

1 well as the applicable legislative and
2 regulatory regime in Alberta as it relates to
3 the construction and safe operation of sour gas
4 pipelines. After that, I'll go over the
5 evidence submitted by Pieridae in this
6 proceeding which clearly demonstrates and shows
7 support for the Panel's confirmation of
8 Pipeline Licence 62559, which I'll refer to
9 simply as "the licence" throughout my remarks
10 as issued and the dismissal of the subject
11 regulatory appeal. I'll then address the
12 various flaws and deficiencies in Mr. Judd's
13 approach to and evidence in this proceeding,
14 and before concluding, I'll also have some
15 additional comments in response to what we
16 heard from Mr. Sawyer this morning in his
17 closing remarks.

18 Panel Members, it's not my intention to
19 repeat the context -- contents -- pardon me --
20 of Pieridae's written submission and other
21 filings on the record of this proceeding;
22 however, Pieridae continues to rely on these
23 materials and the positions advanced therein.

24 So starting with the key facts and issues
25 I'd like to speak to this morning. As noted at
26 the commencement of this hearing and as set out

1 in the Panel's scoping decision of March 14th,
2 2023, which is Exhibit 80.01, this regulatory
3 appeal is to be decided on the basis of four
4 issues: first, the determination of the
5 emergency planning zone, or EPZ, for the
6 pipeline including methodology used and the
7 application of AER modelling requirements.
8 Second, emergency preparedness and proposed
9 public protection measures. Third, the
10 construction and operation of the pipeline,
11 including the design and monitoring of the
12 pipeline and the pipeline integrity management
13 program. And, fourth, the potential effects of
14 the pipeline on the environment.

15 Not surprisingly, given that these four
16 issues are the only issues properly addressed
17 in this proceeding, as I indicated at the
18 outset, that's what I'm going to focus on today
19 in contrast to Mr. Sawyer.

20 This proceeding has a lengthy history. As
21 Mr. Sawyer indicated, Pieridae submitted its
22 application for the licence on February 19th,
23 2021, nearly four years ago. The AER granted
24 the subject regulatory appeal on January 19th,
25 2022, almost three years ago. Pieridae applied
26 for a licence to construct and operate a

1 0.64-kilometre-long sour natural gas pipeline
2 within the Screwdriver Creek valley near Beaver
3 Mines, Alberta.

4 Regulatory applications made the decision
5 to issue the licence to Pieridae. In this
6 decision by regulatory applications, which the
7 Panel must confirm, vary -- or pardon me. It
8 is this decision by regulatory applications
9 that the Panel must confirm, vary, suspend, or
10 revoke at the conclusion of this proceeding.

11 While Pieridae has put forward a
12 substantial amount of evidence beyond that
13 contained in its initial application for the
14 licence, Pieridae submits that the record
15 produced by regulatory applications, which is
16 Exhibit 2.02, clearly indicates that the
17 licence was properly issued to Pieridae in the
18 first instance.

19 Pieridae's application was also audited
20 through Supplemental Information Request
21 Number, or SRI, 1 dated April 1st, 2021, and
22 that's Exhibit 2.02, PDF page 149.

23 The Panel has before it a robust record
24 which demonstrates Pieridae's ability to safely
25 construct, operate, and maintain the subject
26 pipeline and which provides further support for

1 this Panel's confirmation of the decision to
2 issue the licence.

3 In Pieridae's respectful submission, what
4 the Panel can gather from Pieridae's evidence
5 and submissions, as well as the broader record
6 of this proceeding to date, are the following
7 key facts: First, this pipeline has already
8 been constructed by Pieridae, and the Northern
9 Resource Analysts' environmental monitoring
10 report, or EMR, at Exhibit 134.06 shows
11 conclusively that construction was carried out
12 with minimal environmental impact.

13 The subject pipeline is only 610 metres
14 long as built and as reflected in the amended
15 licence -- pardon me -- the amended licence at
16 Exhibit 216.3, and more than half of this
17 length was constructed using horizontal
18 directional drilling, or HDD, methods with the
19 remainder being placed in a previously cleared
20 existing right-of-way.

21 From this perspective, Panel Members, it is
22 difficult to imagine a pipeline project that is
23 less intrusive from an environmental
24 perspective, and I think it's telling that
25 Mr. Mayhood commenced his testimony when he
26 appeared virtually by congratulating Pieridae

1 on a job well done.

2 Pieridae has designed and constructed the
3 pipeline in accordance with all applicable
4 legal, regulatory, and technical requirements
5 and has incorporated learnings gathered from
6 other pipelines in the area to ensure that the
7 subject pipeline operates safely and
8 effectively.

9 I'll respond to Mr. Sawyer's comments about
10 emergency response planning in due course, but
11 Pieridae has detailed Directive 071 compliant
12 emergency response plans, or ERPs, which are
13 regularly updated and tailored to the
14 surrounding area and its residents.

15 Unlike Pieridae, Mr. Judd has presented
16 absolutely no expert or independent evidence in
17 relation to three of the four issues within the
18 scope of this proceeding. The only piece of
19 arguably relevant independent evidence filed by
20 Mr. Judd relates to environmental matters, an
21 issue which Pieridae submits is entirely moot
22 given that the pipeline is already fully
23 constructed.

24 With respect to the other three issues
25 before the Panel, all that Mr. Judd has
26 provided is anecdotal accounts of historical

1 pipeline failures involving another operator
2 and speculative statements regarding a
3 potential future release from the subject
4 pipeline, which should be assigned no weight,
5 in Pieridae's respectful submission.

6 When viewed in totality, the key facts and
7 evidence in this proceeding clearly point to
8 the conclusion that the licence was properly
9 issued and should be confirmed.

10 I'll now provide a high-level overview of
11 the applicable legal principles and the
12 legislative regulatory framework that relates
13 to this regulatory appeal, which is set out in
14 detail in Section 2(b) of Pieridae's written
15 submission at Exhibit 134.01.

16 Under Section 2 of the AER's enabling
17 legislation, the Responsible Energy Development
18 Act, or the REDA, the AER's mandate is to
19 provide for the efficient, safe, orderly, and
20 environmentally responsible development of
21 energy resources in Alberta.

22 In deciding an application on a regulatory
23 appeal -- pardon me -- an application or a
24 regulatory appeal, Section 15 of the REDA and
25 Section 3 of the REDA general regulation
26 require the AER to consider, one, the social

1 and economic effects of the energy resource
2 activity; two, the effects of the energy
3 resource activity on the environment; and,
4 three, the impacts on a landowner as a result
5 of the use of the land on which the energy
6 resource activity is or will be located,
7 importantly.

8 With respect to this proceeding, I'd submit
9 the consideration of the economic effects of
10 the pipeline is entirely distinct from
11 Pieridae's financial capability, the latter of
12 which was expressly beyond the scope of this
13 proceeding, notwithstanding Mr. Sawyer's
14 efforts to keep that matter before the Panel
15 inappropriately, in my view.

16 A regulatory appeal is a hybrid de novo
17 hearing in which Panel has before it both the
18 record of the original decision-maker and any
19 relevant and material new information filed by
20 the parties that was not before the original
21 decision-maker. The AER has previously held
22 that it's unnecessary to apply a standard of
23 review in regulatory appeal hearings.

24 For example, in its 2020 decision regarding
25 a regulatory appeal of an approval issued to
26 Pure Environmental Waste Management Ltd. -- and

1 that's 2020 ABAER 004 -- the AER held that
2 little purpose is served in deciding if the
3 original decision was reasonable or correct
4 when it was made based on a different record
5 than the one before the current Panel, and
6 that's at paragraph 19 of that decision.

7 It follows that this Panel must simply
8 decide whether to confirm, vary, suspend, or
9 revoke the licence based on the record that is
10 before it in this proceeding, which includes
11 the original record produced by regulatory
12 applications, again, at Exhibit 2.02 and all
13 subsequent filings to date.

14 What is consistent between the regulatory
15 appeal process and other forms of appeal
16 proceedings is the concept of onus, and that's
17 a very important concept. As the Panel
18 confirmed at the outset of the hearing,
19 Mr. Judd bears the onus in this proceeding.
20 This is consistent with several AER decisions,
21 including its recent decision of 2024
22 ABAER 001, and that's the AlphaBow decisions.

23 And I'd like you to keep in mind the onus
24 in terms of both my remarks and Mr. Sawyer's
25 based on what we heard from Mr. Sawyer this
26 morning and thinking about whether or not he's

1 discharged the onus on the four issues in scope
2 in this proceeding.

3 So Mr. Judd bears the burden of providing
4 sufficient evidence to justify the revocation
5 of the licence. In Pieridae's submission it is
6 abundantly clear that Mr. Judd has failed to
7 meet his evidentiary onus in this proceeding.

8 As for the legislative and regulatory
9 framework that applies to sour gas pipelines in
10 general, there are a number of key regulatory
11 instruments which are germane to the subject
12 matter of this proceeding.

13 First, the AER's Directive 056 establishes
14 specific form and content requirements for
15 pipeline licence applications.

16 Second, the AER's Directive 071 contains
17 detailed requirements for emergency response
18 plans. Information Letter 939, or IL 939, as I
19 may refer to it, sets out additional
20 expectations for oil and gas developments along
21 the southern portions of Alberta's eastern
22 slopes.

23 And, lastly, CSA Z662 is the industry-wide
24 standard -- pardon me -- safety standard
25 applied to all oil and gas pipeline systems in
26 Canada.

1 As I'll explain in a moment, Pieridae has
2 fully complied with all of these requirements
3 as they relate to the subject pipeline and its
4 associated licence, and I'll speak to
5 Mr. Sawyer's comments later on, as I said.

6 Moving long to Pieridae's evidence --
7 pardon me -- position in evidence of this
8 proceeding, I'll discuss the key conclusions
9 arising out of Pieridae's evidence with respect
10 to the issues properly before this Panel, which
11 are the four issues I mentioned.

12 So Issue Number 1, the determination of the
13 emergency planning zone, or EPZ, for the
14 pipeline, including methodology used and the
15 application of AER modelling requirements.
16 Beginning with the EPZ for the subject
17 pipeline, Pieridae has calculated the EPZ in
18 accordance with the requirements of
19 Directive 071 and has properly employed the
20 AER's modelling the software, the ERCB H2S
21 model, in doing so. The calculation of the EPZ
22 was not challenged by Mr. Sawyer during
23 cross-examination or by any other party.

24 Absent to any specific evidence or support,
25 Mr. Judd has simply taken the contrasting view
26 that Pieridae's calculation of the EPZ is

1 "incorrect and inadequate" as he indicated very
2 broadly in his written submission. That's
3 Exhibit 126.01 in paragraph 6.

4 In Pieridae's submission the record of this
5 proceeding clearly shows that EPZ was
6 calculated correctly and with an appropriate
7 level of rigor considering internal and
8 external factors present within the operating
9 environment for the subject pipeline.

10 In the context of this proceeding, Pieridae
11 undertook additional calculations using the
12 ERCB H2S software to further increase the
13 accuracy of the EPZ. Pieridae reran the ERCB
14 H2S model and determined that the EPZ for the
15 subject pipeline is 680 metres, a 20-metre
16 reduction from the EPZ size included in
17 Pieridae's application materials. And
18 Pieridae's updated ERCB H2S input page is
19 located at Exhibit 124.15. Notwithstanding the
20 fact that the EPZ has been further delineated
21 to a size of 680 metres, Pieridae has rounded
22 this value back up to 700 metres for emergency
23 planning purposes.

24 As noted by Mr. Scheirer in his testimony
25 during the hearing, Pieridae's EPZ calculations
26 are also based on the actual closing time for

1 the associated emergency shutdown valves, or
2 ESDs, an incorporated a conservative value for
3 the pipeline's low pressure setting. Mr. Judd
4 has not put forward any credible evidence to
5 challenge Pieridae's determination of the EPZ.
6 Any difference between the EPZ previously
7 calculated by Shell that was referenced in
8 Mr. Judd's materials and that calculated by
9 Pieridae is fully explained by the fact that
10 Pieridae has properly accounted for the reduced
11 internal diameter of the pipeline resulting
12 from the HDPE liner.

13 Mr. Judd also alleges that Pieridae made
14 changes to the EPZ without consulting him and
15 has therefore failed to satisfy the
16 requirements of Directive 056 and Directive
17 071. These allegations are simply false. And
18 I would note as well, Panel Members, that what
19 I'm referring to are Mr. Judd's purported
20 positions in everything filed in this
21 proceeding up to the present time, and it
22 appears Mr. Sawyer this morning has decided to
23 take a sharp contrast from what has actually
24 been filed on the record to date in this
25 proceeding. I think that would give me some
26 pause about the bona fides around the entire

1 positions by Mr. Judd.

2 In any event, as I said, the allegations I
3 mentioned are simply false. In Pieridae's
4 submission the record is very clear that
5 Pieridae consulted with Mr. Judd in full
6 compliance with these directives. Specifically
7 and in addition, Pieridae notes that Mr. Judd's
8 residence is well within the Waterton complex
9 EPZ and the changes to the EPZ for the subject
10 pipeline have no impact on whether Mr. Judd is
11 included within Pieridae ERP. Further to this
12 point, Mr. Judd's residence has never been
13 within the calculated EPZ for the pipeline as
14 applied for by Pieridae. Mr. Judd's residence
15 was intentionally included within the EPZ as an
16 expansion to the overall EPZ due to his egress
17 through a small portion of the calculated EPZ.
18 And I think, Commissioner Chiasson, you had a
19 question, I think, around some of the testimony
20 and inclusion in the emergency planning zones.
21 So the distinction to be drawn is the
22 calculated emergency planning zone arising out
23 of the ERCB H2S model versus Pieridae's
24 decision to include him even though he's
25 technically not included in the calculated EPZ,
26 so I just wanted to be clear on that.

1 Lastly, even though Pieridae is not
2 required to consult with Mr. Judd with respect
3 to the reduction in EPZ size from that
4 previously calculated by Shell, Pieridae's
5 participant involvement records are clear that
6 the change in EPZ size was communicated to
7 Mr. Judd, who then asked questions and received
8 further responses from Pieridae on this topic.
9 And you can see that at Exhibit 2.02 PDF
10 page 340.

11 While Mr. Judd has attempted to create an
12 issue based on the difference in EPZ sizes
13 calculated by Pieridae and Shell, there are
14 clear and justifiable reasons for this
15 difference, and these reasons have been
16 communicated to Mr. Judd, and it appears this
17 morning that all of the concerns raised up
18 until 9:30 this morning may no longer be the
19 position of Mr. Judd in any event based on what
20 we heard this morning.

21 Turning to Issue 2, emergency preparedness
22 and proposed public protection measures. I
23 want to first emphasize the highly unlikely
24 nature of a release occurring with respect to
25 the subject pipeline. As a safe and
26 responsible pipeline operator, Pieridae's

1 primary focus is to completely avoid release
2 events all together.

3 Pieridae accomplishes this through its
4 design and implementation of a robust pipeline
5 integrity regime, which I will detail later on
6 in my closing remarks. In other words,
7 Pieridae's primary means of protecting the
8 public is through its operation and maintenance
9 of the pipeline and the numerous measures
10 designed to keep products safely within the
11 pipeline at all times. Pieridae submits these
12 measures should give the Panel great comfort
13 that Pieridae has done everything in its power
14 to minimize the risk of a sour gas release.

15 The other thing that should give the Panel
16 comfort is that Pieridae and, before it, Shell
17 have been operating pipeline assets in the
18 Waterton area without incident for at least the
19 past 15 years as confirmed by the Pieridae
20 witness panel.

21 While Mr. Sawyer and Mr. Judd have narrowed
22 their focus to historical integrity issues
23 which have occurred in the Screwdriver Creek
24 valley in the late 1990s and early 2000s, those
25 issues have been resolved and the learnings
26 from them have been incorporated in Pieridae's

1 operating procedures and its pipeline integrity
2 management program to ensure that they do not
3 arise again.

4 Before I get into the details of Pieridae's
5 ERPs and other emergency planning matters, I
6 think it's important to provide some context
7 regarding the location of Mr. Judd's residence
8 in relation to the emergency planning zone for
9 the subject pipeline. Mr. Judd's residence is
10 approximately 970 metres away from the nearest
11 section of the subject pipeline. Mr. Judd
12 testified that it was roughly a kilometre, so
13 it seems we're on the same page there. The map
14 contained in Pieridae's site-specific ERP at
15 Exhibit 1.02.02, PDF page 394 provides a visual
16 representation of the location of Mr. Judd's
17 residence relative to the pipeline and its
18 emergency planning zone.

19 Notably, as I've already mentioned,
20 Mr. Judd's residence is not located within the
21 calculated EPZ. Rather, a small section of
22 Mr. Judd's egress route along Range Road 25 and
23 7 Gates Road traverses the edge of the EPZ,
24 which necessitated the inclusion of Mr. Judd's
25 residence within the site-specific ERP under
26 Directive 071 as I noted previously.

1 It follows that only when Mr. Judd is at a
2 specific point in his journey to or from his
3 residence is he actually within the calculated
4 EPZ for the pipeline. With respect to the
5 location of Mr. Judd's residence, which, again,
6 is well outside the calculated EPZ for the
7 subject pipeline, Pieridae submits that
8 sheltering in place is an entirely effective
9 public protection measure for Mr. Judd when he
10 is at or near his home in the highly unlikely
11 event of an emergency.

12 Regardless of these facts, Pieridae
13 acknowledges that a portion of Mr. Judd's
14 egress road lies within the calculated EPZ for
15 the pipeline and that his residence is located
16 within Pieridae's broader EPZ for the Waterton
17 complex. Accordingly, Pieridae has a detailed
18 plan in place to protect Mr. Judd in the
19 unlikely event of a release.

20 The safety of Mr. Judd as well as all
21 others living in proximity to Pieridae's
22 operations is something that Pieridae takes
23 extremely seriously. Pieridae's ERP materials
24 are extensive. Hundreds of pages of ERP
25 materials have been filed in the record in this
26 proceeding. While there are simply too many

1 safeguards and procedures for me to mention in
2 my closing remarks, I submit that the following
3 elements of Pieridae's ERPs confirm without a
4 doubt that Pieridae is well-equipped to
5 effectively and efficiently respond to any
6 event associated with the pipeline however
7 unlikely such an event would be.

8 First, Pieridae monitors the pipeline as
9 well as the conditions of its infrastructure in
10 the Screwdriver Creek valley through multiple
11 channels at all times. These channels include
12 Pieridae's supervisory control and data
13 acquisition, or SCADA, system, air monitoring
14 devices, and regular operator checks. Pieridae
15 staff are also available 24/7 in the Waterton
16 control room to take calls from area residents
17 in the event that any odours or other
18 conditions indicating the possibility of a
19 release are observed.

20 Second, where Pieridae has identified
21 conditions which warrant further investigation,
22 its ERP contains detailed criteria for how to
23 classify and respond to a situation depending
24 on the nature and scope of an emergency.

25 Mr. Archibald provided a brief overview of
26 those criteria and the decision-making matrix

1 that is followed if the ERP is activated, all
2 of which are detailed in the emergency response
3 plans.

4 Second, where Pieridae has identified --
5 oop, pardon me. Wrong spot. Let's go to the
6 third.

7 Pieridae's ERP incorporates a significant
8 number of resources both in the form of
9 relationships with third parties as well as
10 physical equipment that is kept and maintained
11 by Pieridae's operations personnel.

12 These resources include contacts for
13 surrounding municipalities, public emergency
14 services, specialized contractors, and other
15 operators who can provide further assistance in
16 the event of an emergency. And Mr. Sawyer
17 asked some questions about the existence of
18 written mutual aid agreements in the emergency
19 response plans. I would note that that is not
20 a requirement of Directive 071, that there be
21 written mutual aid agreements. That's
22 evidenced by looking at Directive 071 itself,
23 and that was, of course, spoken to by
24 Mr. Foote, who indicated that the mutual aid
25 understandings were documents in the emergency
26 response plans in accordance with

1 Directive 071.

2 Standard safety equipment, including fire
3 extinguishers, self-contained breathing
4 apparatus, and radios carried in each
5 operator's vehicle are also aspects of the
6 physical equipment included in the emergency
7 response plan to ensure safety. And additional
8 safety and emergency response breathing
9 apparatuses, personal H2S monitors, can also be
10 easily deployed in the event of a sour gas
11 release. Last, Pieridae ensures that its staff
12 are properly trained with respect to its ERP
13 and are ready to respond in the unlikely event
14 that a release occurs.

15 Pieridae's personal involvement in the ERP
16 implementation have, at a minimum, ICS-100
17 training, with many Pieridae employees having
18 ICS-200 training, and that's in Exhibit 129.02,
19 PDF page 22.

20 Pieridae also conducts regular tabletop
21 exercises for the implementation of its ERP as
22 well as major field-based exercises at least
23 every three years in accordance with
24 Directive 071. Indeed, Pieridae's responses to
25 Mr. Judd's information requests show that major
26 IR field-based exercises are sometimes

1 undertaken even more frequently than required
2 under Directive 071, with major exercises being
3 carried out back to back in 2021 and 2022.
4 That's at Exhibit 124.16.

5 Despite the foregoing, Mr. Judd has raised
6 a number of concerns with respect to the design
7 and implementation of Pieridae's ERP, including
8 an alleged lack of performance standards,
9 concerns regarding Pieridae's ability to locate
10 individuals within the EPZ, and concerns with
11 its ability to respond to emergencies that
12 might occur at night or in adverse weather
13 conditions. And, again, potentially these
14 current concerns have been dispensed with based
15 on what we heard from Mr. Sawyer this morning.

16 In response to these concerns, Pieridae
17 submits as follows: With respect to the
18 suggestion that Pieridae's ERP lacks
19 performance standards, Pieridae first notes
20 there is no such requirement under
21 Directive 071. That said, Pieridae submits
22 that the results of its regular tabletop and
23 field-based training exercises provided clear
24 indication of its performance in implementing
25 the ERP and service of means through which
26 Pieridae can continually improve its ability to

1 respond to an emergency.

2 In response to Mr. Judd's suggestion that
3 time-based performance standards are needed,
4 Pieridae's standard is to provide an immediate
5 response in each case. Pieridae understands
6 that time is of the essence in an emergency and
7 has designed its ERP to ensure that no time is
8 wasted in identifying and responding to an
9 emergency.

10 Lastly, regarding Pieridae's ability to
11 respond to an emergency in the dark or
12 inclement weather, it is abundantly clear that
13 Pieridae's response will not be impacted by
14 such conditions. Pieridae's operators are
15 properly trained and its vehicles are equipped
16 with lights, four-wheel drive, winter tires,
17 and a variety of safety equipment that I
18 mentioned a moment ago.

19 In addition, Pieridae's operations team has
20 the benefit of years of experience operating in
21 the Waterton area. You heard from Mr. Simon,
22 Mr. Archibald that they have been operating in
23 this field for a very long time and have a
24 great deal of experience.

25 Inclement weather is not something that
26 would arise in the context of an emergency

1 only. It is something that Pieridae's
2 operators deal with routinely. The Panel can
3 look to the Energy Resources Conservation
4 Board's previous findings in Decision 2013
5 AB ERCB 009, which I will simply refer to going
6 forward as the "2013 decision", for guidance on
7 the issues Mr. Judd has raised with respect to
8 emergency response planning and preparedness,
9 and that decision actually forms part of the
10 record -- the evidentiary record in this
11 proceeding at Exhibit 2.02, PDF pages 468 to
12 504.

13 In the 2013 decision, the Board expressly
14 supported the use of sheltering in place as the
15 appropriate default emergency response measure
16 in situations where there's a short duration
17 emergency or in situations where people cannot
18 be safely evacuated, even in cases where a
19 building is not entirely airtight, and that's
20 at paragraph 50 of that decision.

21 Ultimately, the Board in the 2013 decision
22 concluded that sheltering in place would
23 provide adequate protection for Mr. Judd in the
24 unlikely event of a release. That's at
25 paragraph 52 of the 2013 decision.

26 Pieridae submits that the evidence in this

1 proceeding supports the Panel arriving at the
2 same conclusion. Mr. Judd also testified that
3 Shell paid for certain upgrades to make his
4 house more airtight, which in Mr. Judd's
5 opinion "helped considerably", and that's at
6 Volume 1 of the transcript, page 91, lines 5
7 to 8.

8 Also, for additional context, Pieridae
9 notes that a large sour gas release associated
10 with a catastrophic pipeline failure would be
11 over very quickly, within approximately
12 77 seconds, as determined by Pieridae in its
13 response to Mr. Judd's IR Number 28A, and
14 that's Exhibit 124.02, PDF page 27.

15 From this perspective Mr. Judd's concerns
16 regarding Pieridae's arrangements for ancillary
17 support such as helicopters, mutual aid
18 responders, and additional equipment are not
19 realistic, although Pieridae does have the
20 reference resources available in the very
21 unlikely event of a protracted incident.

22 While Pieridae has fulsome measures in
23 place with respect to ancillary support under
24 its ERP, the fact is that the circumstances
25 requiring such support would exist for only a
26 matter of seconds in the case of a catastrophic

1 failure of the subject pipeline.

2 In contrast, a small pinhole leak, as it's
3 called, while resulting in a release that is of
4 a longer duration, would impact only a small
5 area and would present a much lower level of
6 danger to Mr. Judd and other members of the
7 public.

8 For clarity, Pieridae's ERP contains
9 measures that are appropriate for both of these
10 scenarios, and Pieridae submits that no two
11 emergency events will warrant the exact same
12 response. Pieridae's ERP is specifically
13 designed to account for this inherent
14 variability.

15 To summarize, Pieridae submits that any
16 release of gas from the subject pipeline is
17 highly unlikely, and it has demonstrated its
18 capability with respect to both keeping the
19 product contained within the pipeline and being
20 prepared to respond to any releases that might
21 occur.

22 Moving along to Issue Number 3, the
23 construction and operation of the pipeline,
24 including the design and monitoring of the
25 pipeline and the pipeline integrity management
26 plan. With respect to this third issue,

1 Pieridae respectfully submits that the matter
2 of pipeline construction is settled given the
3 fact that the pipeline was successfully
4 constructed in the fall of 2023. Section
5 (v)(c)(i) of Pieridae's written submission
6 provides a detailed overview of these
7 construction activities, which I will not
8 repeat.

9 With respect to the operation of the
10 subject pipeline, including its design and
11 monitoring and the pipeline integrity
12 management program, Pieridae submits that it
13 has implemented sound practices and procedures
14 which either meet or exceed industry standards
15 and will ensure the safe operation of the
16 pipeline.

17 The pipeline was designed in full
18 compliance with CSA Z662 together with
19 associated wells and other connected
20 infrastructure and includes safe -- several
21 safeguards which both reduce the likelihood of
22 a release occurring and limit the severity of
23 any release that may occur, however unlikely.

24 These safeguards include the following:
25 Emergency shutdown devices, or ESDs, and
26 pressure control valves, or PCVs, at both wells

1 to which the subject pipeline is connected; an
2 additional subsurface safety valve at the
3 Waterton 61 wellhead; a cathodic protection
4 system which protects against external
5 corrosion; and an HDPE liner which in addition
6 to mitigating internal corrosion, reduces the
7 internal diameter of the pipeline, thereby
8 lowering the volume of any release in the
9 unlikely event that the pipe wall is
10 compromised.

11 Pieridae also notes that the installation
12 of an HDPE liner was previously endorsed as an
13 appropriate means of mitigating internal
14 corrosion in the 2013 decision at paragraph 40
15 of that decision.

16 The subject pipeline will also not be
17 subject to continuous methanol injection. This
18 operational decision was made based on
19 learnings from prior historical pipeline
20 incidents. In rare circumstances where
21 methanol is required, Mr. Archibald explained
22 that such use must be approved by the area
23 superintendent, and the pipeline must be
24 subsequently pigged within 24 hours. And
25 that's at Volume 2 of the transcript, page 189,
26 lines 10 to 18.

1 As Mr. Scheirer explained in his testimony,
2 the pipeline has been designed, built, and
3 licenced for a maximum operating pressure, or
4 MOP, of 13,000 kPa while Pieridae will operate
5 the pipeline at only 1,500 kPa. The
6 significant difference between the licenced MOP
7 and the actual operating pressure within the
8 pipeline represents a large safety factor in
9 yet another design characteristic that lowers
10 the risk of a release.

11 Beyond the physical safeguards that
12 Pieridae has installed, there are several
13 monitoring systems and instruments that are
14 designed to detect issues within Pieridae's
15 pipeline network.

16 These include Pieridae's SCADA system,
17 which I mentioned previously, which includes
18 devices at the Waterton 61 well site which the
19 pipeline is -- is connected and provides
20 Pieridae's operations team with realtime data
21 regarding the conditions of the pipeline;
22 pressure transmitters installed at both ends of
23 the subject pipeline; Pieridae's lease
24 perimeter H2S monitoring system at the nearby
25 6-12 compressor site; and Pieridae's air
26 monitoring trailer located at LSD13 of

1 8-06-02-W5.

2 In addition to the physical safeguards and
3 monitoring equipment that I've discussed,
4 Pieridae has a robust system in place for
5 ensuring the integrity of its pipelines over
6 the long term. This system is governed by
7 Pieridae's pipeline integrity management
8 program manual found at Exhibit 90.05, which
9 includes detailed requirements for personnel
10 training, hazard identification and control,
11 risk management, inspections, and other matters
12 pertinent to effective pipeline maintenance.

13 In accordance with its pipeline integrity
14 management program, Pieridae engages in
15 consistent monitoring efforts which include
16 visual expectations, in-line inspections, leak
17 detect and surveys, and checks on cathodic
18 protection system components, all of which are
19 conducted at set intervals.

20 Based on the foregoing, Pieridae submits
21 that the subject pipeline was designed and will
22 be operated and maintained in a manner which
23 ensures its integrity and Pieridae's ability to
24 identify and properly address any issues that
25 may arise.

26 While not relevant to this proceeding --

1 and I'll get into this a little more later --
2 in his questions for Pieridae's witness panel,
3 Mr. Sawyer focused heavily on Pipeline 23800,
4 which is the separately licenced downstream
5 pipeline to which this pipeline is connected.

6 With respect to the current condition of
7 Pipeline 23800 and the integrity thereof,
8 Mr. Kunkel clearly explained that Pieridae will
9 not operate this line until it's appropriate to
10 do so, both from a health and safety
11 perspective as well as a regulatory
12 perspective. And that's at Volume 2 of the
13 transcript, page 171, lines 9 to 12.

14 You also heard from Mr. Archibald that he
15 and his operations team will not start up a
16 pipeline until a proper statement of fitness
17 has been prepared to ensure that the pipeline
18 can be safely brought into service. And
19 that's, again, at Volume 2 of the transcript,
20 page 190, lines 23 to 26 and page 191 of the
21 transcript, lines 1 to 4.

22 The record is clear that Pieridae
23 understands the conditions and operating
24 parameters of Pipeline 23800 and the internal
25 corrosion mechanisms that can occur in this
26 operating environment and has plans in place to

1 ensure the integrity of Pipeline 23800 before
2 it is put back into service. As noted by
3 Mr. Kunkel in his testimony, Pieridae also has
4 other options available if this downstream line
5 is somehow deemed unfit for operation.

6 Moving on to Issue Number 4, the potential
7 effects of the pipeline on the environment. I
8 would submit to you, Panel Members, that this
9 issue is effectively moot. The pipeline was
10 constructed in full during the fall of 2023
11 with negligible environmental impacts as
12 confirmed by the northern environmental
13 monitoring report and by Ms. Redburn in her
14 testimony. Ms. Redburn also explained in her
15 testimony that Pieridae's environmental
16 protection plan, or EPP, was implemented
17 effectively during pipeline construction. That
18 and various mitigation measures such as
19 relocating the HDD entry point were used to
20 minimize any associated impacts on the
21 surrounding environment.

22 Most notably, and as Ms. Redburn confirmed
23 during the hearing, the installation of the
24 pipeline via HDD, or horizontal directional
25 drilling, was completed with zero observed
26 impacts to fish or fish habitat. That's

1 Exhibit 134.06, PDF page 9. While Pieridae is
2 of the view that the Panel can dispense with
3 this issue entirely, I'll provide a brief yet
4 fulsome discussion of Pieridae's environmental
5 assessment and monitoring efforts as they serve
6 as yet another example of Pieridae's commitment
7 to safe and responsible pipeline development.

8 The potential effects of the subject
9 pipeline on the environment were evaluated
10 several times beginning in 2017, with the first
11 iteration of the Trace environmental
12 assessment, or EA. And that's found at
13 Exhibit 129.03. I think it's on the record
14 twice, but that's one of the exhibit
15 references.

16 In accordance with IL 939, the 2017 EA
17 included a baseline analysis of environmental
18 conditions and areas of concern, consideration
19 of potential impacts arising out of the project
20 and cumulative effects, potential mitigation
21 measures to address such impacts and effects,
22 and plans to monitor the success of these
23 mitigation measures.

24 In short, the 2017 EA determined that the
25 predicted effects associated with the pipeline
26 were negligible, including cumulative effects

1 on the scale of the local study area and the
2 regional study area, and potential effects may
3 be mitigated through the implementation of the
4 mitigation measures provided within the
5 2017 EA. And that's found at Exhibit 129.03,
6 PDF page 3.

7 The original environmental assessment was
8 refreshed in 2021 for the purpose of Pieridae's
9 application. Trace's 2021 assessment came to
10 precisely the same conclusion, that Pieridae's
11 construction and operation of the pipeline
12 would have a negligible impact on the
13 surrounding environment, and that's at
14 Exhibit 2.02, PDF page 39.

15 The environmental aspects of pipeline
16 construction and operation were again revisited
17 in Trace's 2023 EA update at Exhibit 124.17,
18 which was prepared in the context of this
19 regulatory appeal. Among other things, the
20 scope of the EA update was included -- or
21 pardon me -- the scope of the EA update
22 included a further visit by Trace personnel to
23 conduct a fresh evaluation of the baseline
24 environmental conditions and consider any
25 potential impacts to sensitive environmental
26 resources in the area.

1 The EA update concluded that there have
2 been no change to the baseline environmental
3 conditions since 2021 and that Pieridae's
4 proposed mitigation measures need not change.
5 The small, unnamed permanent watercourse within
6 the pipeline right-of-way was unaltered from
7 its condition in 2017 with the exception of
8 small changes to bank condition resulting from
9 the presence of cattle, and given negligible
10 differences in cumulative effects since 2021,
11 the results of the 2021 cumulative effects
12 assessment for the pipeline were still valid.

13 And just to pause there for a moment.
14 Mr. Judd, through Mr. Sawyer, were critical in
15 their submissions of Ms. Redburn's cumulative
16 effects assessment as it related to the
17 regional study area and suggested that she had
18 somehow missed a portion of private logging
19 that had taken place.

20 You'll recall Ms. Redburn explained in her
21 testimony that she did not miss that private
22 timber clearing activity, but, rather, the
23 aerial telemetry that she used in preparing her
24 report was the -- at a particular date just
25 before her report was prepared and issued, it
26 was subsequently updated; so it didn't show

1 that timber clearing when she did her reports.
2 There was no miss.

3 And Ms. Redburn confirmed in her testimony
4 that had she have -- considered the private
5 logging -- which, by the way, is across the
6 mountain range to the north of the pipeline
7 across the Castle River in one area of
8 clearing, and the other is down by Beaver Mines
9 to the southeast -- even if she'd considered
10 those private timber clearing activities, it
11 would not have changed her conclusion as she
12 provided in her testimony.

13 In addition to the updated environmental
14 assessment, Pieridae also directed Trace to
15 prepare an updated EPP, or environmental
16 protection plan, for the purposes of this
17 proceeding. That's Exhibit 134.04, which
18 includes the same environmental protection
19 measures included in Pieridae's original EPP,
20 as well as provisions for active water quality
21 monitoring during watercourse crossing
22 activities. The measures outlined in
23 Pieridae's EPP were fully implemented during
24 construction of the subject pipeline in the
25 fall of 2023.

26 Overall, the potential environmental

1 impacts associated with the construction and
2 operation of the pipeline have been fully
3 assessed three times between 2017 and 2023. In
4 Pieridae's submission this iterative assessment
5 should instill confidence that no environmental
6 aspect of the project has been overlooked.

7 With respect to Mr. Mayhood's report of
8 October 2022, Exhibit 126.09, which Pieridae
9 submits is the only piece of potentially
10 relevant independent evidence that Mr. Judd has
11 filed in this proceeding, Pieridae submits as
12 follows: Mr. Mayhood's report, which was
13 authored more than two years ago and prior to
14 the construction of the subject pipeline, is
15 essentially of no value, in Pieridae's
16 respectful submission, as it contains
17 hypothetical and speculative statements that
18 concern events which have already happened.

19 Pieridae submits that the only useful
20 statements contained in Mr. Mayhood's report
21 are those which confirm repeatedly that
22 Pieridae follows best practices. Again, this
23 is consistent with Mr. Mayhood's congratulatory
24 remarks at the outset of the hearing. And
25 those remarks are at Transcript Volume 1, page
26 39, lines 22 to 25.

1 Mr. Mayhood also acknowledged that
2 horizontal directional drilling is "a great
3 improvement over open-cut pipelines". That's
4 at Transcript Volume 1, page 37, lines 7 to 11.
5 More specifically, Mr. Mayhood's report focuses
6 on potential impacts to fish arising from
7 Pieridae's construction of the subject
8 pipeline, none of which came to pass largely as
9 a result of Pieridae's use of horizontal
10 directional drilling.

11 Mr. Mayhood's report also inappropriately
12 contains purported legal analysis and
13 conclusions with respect to the Species at Risk
14 Act and incorrectly states that the subject
15 pipeline could produce a sour gas condensate
16 spill. There is, in fact, little to no
17 condensate in the subject pipeline as confirmed
18 by the material on the record generally and by
19 Ms. Redburn's response to Mr. Mayhood's report
20 at Exhibit 134.05, PDF page 2.

21 In addition to these points, Trace's
22 response to Mr. Mayhood's report, again at
23 Exhibit 134.05, provides full answers to the
24 various incorrect and unsubstantiated
25 allegations set out in his report, which I will
26 not repeat.

1 On the basis of the Trace response and
2 considering the fact that the subject pipeline
3 is already fully constructed, Pieridae submits
4 that the Panel can disregard Mr. Mayhood's
5 report. In contrast to Pieridae's highly
6 credible and detailed evidence on this issue
7 being the environmental issue -- sorry -- let
8 me go back. In contrast to Pieridae's highly
9 credible and detailed evidence on this issue
10 being the environmental issue, Mr. Judd has put
11 forward only two-year-old evidence from
12 Mr. Mayhood, which has been entirely
13 discredited by the successful construction of
14 the subject pipeline.

15 I don't have a lot longer, Panel Members,
16 but this is probably an appropriate time for me
17 to break before I move on, if that's
18 acceptable.

19 THE CHAIR: What's your --
20 what's your ballpark on how much more time do
21 you need?

22 D. NAFFIN: I would say it's in
23 the order of 20 minutes, 20 -- something of
24 that nature, but a break would be helpful.

25 THE CHAIR: All right. Let's
26 break, then. I'm sure the break would be

1 helpful for the court reporters as well. So we
2 will break now and come back at 11:15. Thank
3 you.

4 (ADJOURNMENT)

5 THE CHAIR: Mr. Naffin, continue
6 on, please.

7 D. NAFFIN: Thank you,
8 Commissioner Chiasson

9 Submissions by D. Naffin

10 D. NAFFIN: I'm going to move on
11 to Pieridae's comments on Mr. Judd's approach
12 to this proceeding and his evidence in this
13 proceeding.

14 First and foremost, Pieridae submits that
15 Mr. Judd's evidence and his testimony regarding
16 his extensive list of objections to other
17 energy development projects in the Waterton
18 area support the conclusion that Mr. Judd is
19 completely entrenched in his opposition to the
20 subject pipeline and that it's simply not
21 possible for Pieridae to address his concerns.

22 It is also clear that Mr. Judd's
23 purportedly independent witnesses also harbour
24 strong, negative views with respect to the oil
25 and gas industry. Mr. Mayhood testified that
26 natural gas wells, pipelines, and other

1 infrastructure "pose unacceptable risks and
2 should not be built". And that's Transcript
3 Volume 1, page 42, lines 1 through 5.

4 Dr. Finn's testimony also confirmed that he is
5 opposed to oil and gas development in general,
6 as I will get into more in a moment.

7 None of Mr. Judd, Mr. Mayhood, or Dr. Finn
8 have presented any reliable objective evidence
9 that is capable of informing the Panel's
10 determination in this proceeding in Pieridae's
11 respectful submission. In Pieridae's
12 submission it is also significant that
13 Mr. Judd, the applicant and requestor of this
14 regulatory appeal, often declines to
15 participate in Pieridae's stakeholder
16 engagement efforts per Mr. Archibald's
17 testimony and as referenced in the 2013
18 decision on the record. And I would note did
19 not even attend this hearing beyond appearing
20 virtually on the first day.

21 In terms of the consistent focus on
22 out-of-scope issues in this proceeding, which
23 Pieridae maintains was entirely inappropriate,
24 we've raised our concerns with the relevance of
25 the financial capability issue to the four
26 issues within the scope of the hearing. And I

1 don't intend to repeat those submissions, other
2 than to say that it was specifically scoped out
3 of this hearing in the Panel's March 2023
4 scoping decision, and on that basis, it is
5 irrelevant to its -- to the Panel's
6 determination in this proceeding.

7 Absolutely no credible evidence has been
8 presented by Mr. Judd to demonstrate that
9 Pieridae lacks the financial capacity to safely
10 and responsibly construct, operate, and
11 maintain the subject pipeline. To the
12 contrary, as confirmed by Mr. Kunkel during his
13 opening statement, Pieridae has already
14 constructed the pipeline and has already
15 developed the required emergency response plans
16 and emergency preparedness procedures, the
17 environmental assessments, and protection
18 plans, and the pipeline integrity management
19 program necessary to satisfy all applicable
20 regulatory requirements. Mr. Kunkel also
21 confirmed that Pieridae has already paid for
22 all of those items in full. There's no
23 credible evidence before the Panel that
24 Pieridae lacks the financial wherewithal to
25 safely and responsibly operate the pipeline and
26 to address the four issues within the scope of

1 this hearing in doing so.

2 You also heard from Mr. Kunkel that the
3 incremental cost of constructing, operating,
4 and maintaining the subject pipeline is not at
5 all significant in the context of the hundreds
6 of kilometres of pipelines and other assets
7 that Pieridae operates in the Waterton area and
8 Alberta more broadly. Additional information
9 regarding Pieridae's financial capability was
10 provided in Pieridae's supplemental submission,
11 which fully addresses the unsubstantiated
12 assertions by Mr. Sawyer and Dr. Finn regarding
13 Pieridae's financial situation. This
14 information, along with Mr. Kunkel's testimony,
15 is the best and only credible evidence before
16 the Panel with respect to Pieridae's financial
17 capacity to address the four issues within the
18 scope of this proceeding.

19 Mr. Kunkel also highlighted Pieridae's
20 positive financial impact on the broader
21 Waterton area, including its support with
22 community initiatives and its significant
23 contributions to the local tax base. And I
24 believe he referenced that Pieridae's payments
25 of municipal taxes were some 32 percent of the
26 MD of Pincher Cree Number 9.

1 So, again, as I said, in terms of weighing
2 the economic aspects of the project per the
3 Responsible Energy Development Act and your
4 mandate, I would submit that those are the
5 economic factors that you should be looking at
6 in addition to the ongoing production of
7 Waterton area oil and gas assets and the
8 Waterton complex generally.

9 In addition, regulatory applications
10 confirmed during their cross-examination that
11 Pieridae has consistently satisfied its
12 mandatory closure spending requirements since
13 they were introduced. Regulatory applications'
14 disclosure similarly confirms that Pieridae is
15 current in its orphan fund levy payments, and
16 that's at Exhibit 171.02, PDF page 2.

17 Regulatory applications also explained that
18 Pieridae's closure parameter rankings in the
19 LCA cannot be viewed in isolation or used to
20 "draw an extended extravagant conclusion" as
21 Mr. Lloyd put it. The reason for Pieridae's
22 rankings in this regard is that a significant
23 portion of its assets are operating and do not
24 yet require abandonment or closure. So I think
25 that's very clear looking at the LCA. And,
26 indeed, regulatory applications confirmed that,

1 for context, when requested by Mr. Sawyer,
2 Pieridae was -- and these are my words, not
3 regulatory applications' words -- but in the
4 middle of the pack or in the middle of their
5 peer group in terms of where they were
6 positioned. So hardly a company that's in any
7 measure of financial distress as suggested or
8 inappropriately referred to given the scoping
9 decision.

10 I'd also suggest to you that Pieridae's
11 participation in this proceeding and the
12 resources that it put into preparing evidence
13 responding to numerous information requests and
14 seating a witness panel of qualified internal
15 personnel and independent experts is also
16 reflective of its financial capacity. It also
17 demonstrates Pieridae's commitment to this
18 project.

19 You also heard from Mr. Archibald Pieridae
20 executed a significant plant turnaround at the
21 Waterton complex over a 60-day period in
22 September and October of this year during the
23 same period in which Pieridae was preparing for
24 this hearing, and that's Transcript Volume 2,
25 page 161, lines 16 to 23.

26 With respect to Dr. Finn's evidence

1 specifically, when you allowed him to present
2 that evidence on Tuesday over our objections,
3 you were clear about your expectation that the
4 focus be on the four hearing issues and how the
5 material relates to those four hearing issues.
6 In my respectful submission, you heard nothing
7 of the sort from Dr. Finn, other than him
8 reciting what the four in-scope hearing issues
9 are. He failed to draw any link whatsoever
10 between his analysis and the four relevant
11 issues. On that basis alone, I submit that you
12 can and should disregard his evidence in its
13 entirety.

14 Even if you were inclined to consider
15 Dr. Finn's evidence, it ought not be given any
16 weight on the basis that it is fundamentally
17 flawed and unreliable, in my respectful
18 submission. Indeed, as was made clear during
19 cross-examination, Dr. Finn confirmed that his
20 LCA is incomplete on the basis that it only
21 focused on one of the six factors contemplated
22 under Manual 23. He confirmed that he relied
23 upon a 2022 version of Manual 23 provided to
24 him by Mr. Sawyer, notwithstanding he undertook
25 his assessment in November of 2024.

26 He confirmed that he also relied upon the

1 holistic licensee assessment criteria related
2 to geothermal, and Brian hosted mineral
3 developments contained in Manual 12, none of
4 which is applicable to the subject pipeline,
5 and he confirmed that the publicly available
6 financial information he relied upon related to
7 Pieridae Energy Limited, not the licensee of
8 the subject pipeline, which is Pieridae Alberta
9 Production Ltd.

10 Put very simply and with respect,
11 Dr. Finn's evidence is of no probative value in
12 my respectful submission, and should be
13 disregarded by the Panel. In addition to these
14 reasons, it cannot be said that Dr. Finn's
15 evidence, however deficient and flawed it may
16 be, is the evidence of an independent,
17 objective expert, in Pieridae's respectful
18 submission. Dr. Finn confirmed that he had no
19 experience with matters before the AER, Manual
20 23, or licensee capability assessments. It was
21 Mr. Sawyer that pointed him to Manual 23. The
22 fact that Mr. Sawyer had already summarized
23 Dr. Finn's conclusions and Judd's supplemental
24 submission prior to Dr. Finn preparing his
25 two-page LCA analysis also brings the
26 credibility of those conclusions into question.

1 Indeed, one of Dr. Finn's conclusions as
2 summarized in the Judd supplemental submission
3 related to liability magnitude wasn't even a
4 conclusion that Dr. Finn actually reached in
5 his own report.

6 When describing his extensive involvement
7 with BC-based environmental non-governmental
8 organizations, Dr. Finn described himself as an
9 activist, confirmed that he celebrates delays
10 to projects caused by his organizations, and
11 confirmed that he's opposed to further fossil
12 fuel development anywhere, which is
13 fundamentally at odds with the mandate of this
14 regulator with respect to the efficient, safe,
15 orderly, and environmentally responsible
16 development of energy resources in Alberta.

17 Dr. Finn's role in this proceeding is more
18 akin to that of an advocate than an
19 independent, objective expert, in my respectful
20 submission, which significantly detracts from
21 his credibility as well as the value of his
22 evidence in Pieridae's respectful submission.

23 In contrast to the comprehensive,
24 impartial, and highly credible evidence that
25 Pieridae has filed in this proceeding, Mr. Judd
26 effectively produced no substantial evidence on

1 the following topics: the calculation of the
2 emergency planning zone, the design
3 specifications for the pipeline where
4 Pieridae's practices, procedures -- pardon
5 me -- and procedures for operating and
6 maintaining the pipeline or the development or
7 implementation of Pieridae's ERP or the
8 effectiveness of the ERP in the unlikely event
9 of a release from the pipeline.

10 Instead of providing evidence on these
11 issues, Mr. Judd has simply taken the approach
12 of advancing alleged and unproven errors and
13 inconsistencies in Pieridae's evidence which
14 Pieridae submits is entirely ineffective and
15 wrong. In the context of the 2013 decision,
16 the Board noted that Mr. Judd provided no
17 technical or expert evidence. That was at
18 paragraphs 43 and 73, and these shortcomings
19 were ultimately fatal to his position. Mr. Judd
20 has made the same error in this proceeding,
21 despite being the applicant and bearing the
22 onus, which was not the case in the 2013
23 decision. He did not bear the onus in that
24 proceeding but does here, so I'd suggest
25 there's a higher standard to be met here than
26 when he was intervening in 2013.

1 Similar to the vast majority of Mr. Judd's
2 written evidence and the testimony given by
3 Mr. Judd, Mr. Mayhood, and Dr. Finn, much of
4 Mr. Sawyer's cross-examination of regulatory
5 applications also focused on irrelevant,
6 generic, hypothetical, and sometimes
7 inflammatory topics and failed to draw any link
8 between the LCA and the four issues within the
9 scope of this hearing.

10 And I will now respond to some of the
11 remarks that Mr. Sawyer made this morning. And
12 forgive me. This will be a little more free
13 form, Panel Members, given that we just heard
14 it.

15 So Mr. Sawyer's remarks this morning in his
16 closing argument I would first say are entirely
17 out of scope in this proceeding. They all
18 relate to what were called Issues A and D in
19 the Panel's initial scoping decision. So
20 notwithstanding that decision has been around
21 since 2023 and has been articulated very
22 clearly by this Panel repeatedly, Mr. Sawyer,
23 on behalf of Mr. Judd, continues to focus on
24 inappropriate, out-of-scope issues, and the --
25 or virtually, the entirety of his closing
26 remarks this morning were directed to those

1 out-of-scope issues.

2 Mr. Sawyer talked about the Shell transfer
3 issues. He talked about how there's
4 uncertainty and confusion around Shell in --
5 in -- as it relates to this proceeding.
6 Indeed, that was one of the specific issues
7 that was scoped out of this proceeding. So,
8 again, I think you can readily dispense with
9 those remarks as being out of scope.

10 Mr. Sawyer spoke about the need for the
11 pipeline, and I'll speak about that first
12 generally, and then I'll get into some of his
13 detailed submissions.

14 So, first of all, need is not an issue that
15 was brought into the scope of this hearing. It
16 is often in -- in scopes of hearings, but here
17 it's not within the four issues. But, in any
18 event, the need for this pipeline has been
19 clearly established. It is to connect stranded
20 facilities that have been capable of producing
21 gas since 2007 to the broader gathering
22 network. So that's the need for the pipeline.

23 Mr. Kunkel has spoken in length -- at
24 length -- pardon me -- in his evidence about
25 the importance of getting continued product to
26 the Waterton complex and so on. So the need is

1 fairly straightforward and, again, is not
2 specifically in scope in this proceeding.

3 Sorry. I'm just trying to interpret my
4 scrawl.

5 Indeed, there was commentary about the
6 agreements in place with Shell, various pieces
7 of legislation and so on, and issues raised by
8 Mr. Sawyer with respect to the Waterton 61
9 wells and the 23800 pipeline which ultimately
10 is tied into the subject pipeline. Now, of
11 course, at present the licences for all of
12 those facilities are in good standing. Those
13 are licenced facilities before the AER and in
14 the eyes of the AER, and, indeed, there's no
15 evidence that that's not the case.

16 Now, even if there were some sort of delay
17 or issue -- whether on the basis of
18 Mr. Sawyer's arguments or otherwise, if there
19 were a delay in producing from the subject
20 wells and transporting production in the
21 downstream pipeline, that's still in no way
22 eliminates the need for the subject pipeline.

23 The subject pipeline is clearly needed to
24 connect long, stranded infrastructure to the
25 gathering system. So if there are delays
26 somehow, which I would suggest Mr. Sawyer's

1 remarks and interpretation of the legislation
2 is entirely inaccurate -- but even if he were
3 right, that doesn't change the need for this
4 project. It would simply delay the operation
5 of the project potentially, but the project is
6 absolutely clearly needed as a vital tie to get
7 stranded production since 2007 transported to a
8 place where it can be used for the benefit of
9 all Albertans.

10 And, indeed, Mr. Sawyer referenced stranded
11 assets and so on. The only assets that would
12 be stranded if you were to deny or rescind the
13 pipeline licence, as he suggests, are the wells
14 at Waterton 61, which would continue to be
15 stranded as they have been since 2007, as I
16 indicated. Oh, and -- pardon me. And the
17 subject pipeline would also be stranded
18 obviously, as Mr. Myers kindly reminds me.

19 And Mr. Sawyer was moving quickly at
20 certain points, but he seemed to indicate that
21 Pieridae was ineligible to do workover work at
22 the Waterton 61 wells. Well, that workover
23 work has been completed, and there's an
24 exchange of letters between Mr. Sawyer and
25 Pieridae's counsel, I believe.

26 Mr. Sawyer had raised concerns that

1 construction work was being done within the
2 wildlife closure windows in the area, and the
3 response was, No, it's -- it was a workover
4 being done, which is not construction; so,
5 indeed, that has been accomplished, and that's
6 in Exhibit 138.01. And, indeed, it was, of
7 course, lawful work because it's all in good
8 standing with the Alberta Energy Regulator and
9 in accordance with licences and other necessary
10 instruments in place.

11 Mr. Sawyer made the -- made the comment
12 that you have to be the licensee of wells and
13 pipelines to operate them. I would suggest
14 that's not correct. It's certainly commonplace
15 in the industry to have operator agreements for
16 certain facilities, and so that -- that comment
17 struck me as a little bit odd.

18 He then made comments about Directive 071
19 and emergency response plans and tried to draw
20 the suggestion between duty holders and
21 licensees and so on. I think the complete
22 answer to that is that Pieridae is the licensee
23 for the subject pipeline. So, indeed, Pieridae
24 has prepared the emergency response plans per
25 Directive 071 as the licensee for the pipeline
26 associated with this project, and, of course,

1 that pipeline is included in some of the
2 broader emergency response plans. So, in fact,
3 it is the licensee in -- who's generating the
4 emergency response plans pursuant to
5 Directive 071.

6 But importantly, if you go back and look at
7 the reference Mr. Sawyer was citing, it doesn't
8 say "the licensee". It says "a licensee". And
9 what that entails is, again, it takes us back
10 to the question of eligibility to hold a
11 pipeline licence. Once you're eligible, you're
12 a licensee, and, of course, Pieridae is
13 eligible. So Mr. Sawyer's interpretation
14 around Directive 071, I would suggest, is
15 incorrect.

16 And, of course, emergency response planning
17 for the subject pipeline is what's relevant and
18 what we're here to talk about, not a broader
19 discussion of emergency response plans in the
20 field more broadly.

21 Mr. Sawyer suggested that if -- if -- let
22 me say first Pieridae doesn't accept the
23 proposition that there's anything problematic
24 with either the physical condition or the
25 licencing status of Pipeline 23800, which is
26 the downstream pipeline, but, again, even if

1 there were problems, Mr. Sawyer was talking
2 about a necessary condition or words to that
3 effect that if that pipeline couldn't be used,
4 there was no need for the project.

5 Well, first of all, that's inaccurate based
6 on the evidence in this proceeding. There's
7 nothing wrong with the pipeline or its
8 licensing and so on, and, indeed, Mr. Kunkel,
9 as I said in my prior remarks, referenced that
10 there were other options potentially available
11 to get this production transported.

12 And, as I said, even if there were some
13 major obstruction to the use of 23800, there is
14 still an obvious need for the subject pipeline
15 even to get that piece completed as it relates
16 to the broader gathering system.

17 In terms of Pieridae not being the operator
18 of the 23800 -- pardon me -- the licensee of
19 the 23800 pipeline, the whole 23800 pipeline is
20 out of scope. In our respectful submission,
21 it's a separate licenced facility. We've said
22 that on the record repeatedly, and that remains
23 Pieridae's position in this proceeding.

24 Notwithstanding some of the
25 cross-examination and some of the discussion in
26 this proceeding went that way, Pieridae

1 maintains that that is out of scope and not
2 relevant to the subject pipeline or to this
3 proceeding.

4 Mr. Sawyer talked about the LCA and the
5 confidentiality decision that was made. Again,
6 he's simply trying to reargue something that is
7 moot, and those are the rulings of this Panel,
8 about confidential information, what was to be
9 redacted in the LCA, and the reason it's
10 redacted is because the Panel decided that that
11 information that was redacted should be
12 redacted and held confidential.

13 So there's no other reason or rationale
14 behind it. That decision has been made, and
15 Mr. Sawyer is again revisiting it, and I think
16 that and his remarks more broadly this morning
17 evidence the true purpose of the intervention
18 in this proceeding. It does not relate to
19 genuine, bona fide concerns with the subject
20 pipeline but rather some sort of broader
21 interest in out-of-scope matters that are
22 irrelevant and improper in this proceeding.

23 So, again, there are no insurmountable
24 issues that would cause this Panel to rescind
25 the pipeline licence. To the contrary based on
26 all of the evidence that you've heard from

1 Pieridae on the record of this proceeding which
2 relates to in-scope issues. I would suggest
3 you have ample evidence to uphold the pipeline
4 licence.

5 And before I conclude, I just want to make
6 some comments of what it would look like if
7 despite all of the evidentiary shortcomings
8 that I mentioned the Panel were to grant
9 Mr. Judd's requested relief and rescind the
10 licence. Pieridae submits that such an outcome
11 would be completely contrary to the AER's
12 statutory mandate of providing for the
13 economic, orderly, efficient development of
14 energy resources in the province, which is
15 enshrined in Section 2 of the Responsible
16 Energy Development Act, as I said.

17 From a practical perspective, rescinding
18 the licence would also strand Pieridae's
19 investment in the subject pipeline and prevent
20 it from producing the associated resource. In
21 my respectful submission, this would simply be
22 an absurd and unreasonable outcome, and there's
23 no support for such an outcome based on record
24 of this proceeding.

25 On this topic the 2013 decision also notes
26 that if an operator can satisfy regulatory

1 requirements -- and we need to get back to a
2 focus on that, I would suggest, meeting
3 regulatory requirements -- conduct itself in an
4 environmentally responsible manner, and protect
5 public safety, it should have a reasonable
6 opportunity to recover some or all of its
7 investments made in -- in drilling a well or
8 constructing a pipeline. That's at
9 paragraph 27 of that decision.

10 Based on the evidence presented in this
11 hearing and throughout this proceeding, the
12 Panel's decision in this regard should be
13 straightforward. In closing, Pieridae
14 respectfully submits the Panel should confirm
15 without conditions or variations regulatory
16 applications' decision to issue the licence.

17 Pieridae reiterates that its --
18 reiterates -- I'll try that one again -- that
19 its evidence in this proceeding, including that
20 of Pieridae's independent expert witnesses, is
21 the most credible, reliable evidence before the
22 Panel and ought to form the basis of the
23 Panel's decision.

24 With that, thank you, Panel Members. I was
25 maybe a little longer than I anticipated, which
26 is not out of keeping for me, sadly.

1 THE CHAIR: Well, Mr. Naffin, if
2 you can just hold for a moment while I check
3 with my colleagues.

4 So, Mr. Naffin, I have one quick question
5 for you, and it's just to clarify my
6 understanding of Pieridae's position on this.
7 So relatively early on in your presentation,
8 you spoke to the evidence provided by
9 Mr. Judd's witness panel and indicated that
10 there was no evidence on three of four issues.

11 You mentioned Mr. Mayhood's report and then
12 said other evidence was anecdotal and that we
13 should not give it weight. And what I'm
14 looking to understand, then, is it Pieridae's
15 position that this Hearing Panel should not be
16 giving weight to Mr. Judd's testimony of his
17 lived experience in relation to impacts of
18 energy development on him?

19 D. NAFFIN: Yeah. And I -- what
20 I think I would say is that, you know, Pieridae
21 certainly welcomes the Panel to consider that
22 evidence. I think that would be appropriate.
23 I mean, Mr. Judd is the stakeholder in this
24 particular circumstance, and, indeed, you know,
25 Pieridae is familiar with Mr. Judd, as are
26 predecessors of Pieridae, in terms of his

1 activities in the valley and a lot of
2 consultation that's taken place between the
3 parties. What I was referring to is more the
4 fact that there isn't really any substantive
5 evidence put forward even. From Mr. Judd in
6 his testimony, it was historical experience and
7 so on and so forth, which I think is certainly
8 something that the Panel should hear.

9 But as it relates to this specific pipeline
10 in this specific proceeding, I would just
11 suggest to you that it's not particularly
12 germane or relevant to this particular pipeline
13 because Mr. Judd didn't speak a heck of a lot
14 to this particular pipeline and, rather, spoke
15 to the broader context, which I think is
16 something you should certainly hear and
17 consider, but I wouldn't suggest you give it a
18 great deal of weight as it relates to this
19 specific pipeline and the four issues that are
20 in scope in this proceeding.

21 THE CHAIR: Thank you for your
22 response. We have nothing else for you; so --

23 D. NAFFIN: Thank you.

24 THE CHAIR: -- we'll move on
25 from there.

26 So I can't particularly see because of the

1 way the podium -- Ms. Brezina, yes, there you
2 are. So I anticipate that you would be up
3 next.

4 D. BREZINA: We have no final
5 argument. Thank you.

6 THE CHAIR: All right. Thank
7 you.

8 So, Mr. Sawyer, you do have the opportunity
9 to provide reply to what Pieridae has raised,
10 if you would like to do so.

11 Submissions by M. Sawyer (Reply)

12 M. SAWYER: Yes. Thank you.

13 So there's a number of things that I want
14 to address in my reply. One of them is the --
15 the notion that my learned colleague has put
16 forward, that, you know, the pipeline is
17 constructed, and therefore, you know, all of
18 the issues that have been raised previously are
19 moot, and -- and particularly in terms of
20 the -- the concept of stranded assets, he's
21 saying, Well, it's -- it's constructed.

22 Well, the problem with that is that -- that
23 given the length of this process and the twists
24 and turns that it has taken -- you know, for
25 example, when this regulatory appeal was -- was
26 authorized, it wasn't constructed; and when

1 Mr. David Mayhood filed his report over two
2 years ago, it was not constructed; and when
3 Pieridae constructed the pipeline, even though
4 they knew that there was a regulatory appeal,
5 they did that at their risk.

6 They knew that if they built a pipeline and
7 it was subsequently revoked -- so for them to
8 now use that as an argument saying why -- why
9 it shouldn't be revoked, It's because the
10 pipeline's there, I find to be disingenuous
11 at -- at best.

12 And the other thing that repeatedly showed
13 up in -- in Mr. Naffin's argument is he -- he's
14 impugning Mr. Judd's motives. He basically
15 said, Well, he -- you know, he's -- he's just a
16 troublemaker. He's done this before. And
17 there were -- that's my words, not his, but,
18 you know, he did -- he did many times mention
19 that, you know, Mr. Judd has, you know, a
20 pattern.

21 Well, the problem with that is that
22 Mr. Judd has lived in this area his entire
23 life, and it's Mr. Judd that has had the
24 consequences of four previous pipeline leaks
25 that seriously put his life at risk, and -- and
26 he had to be evacuated on -- on at least two

1 occasions, in one case where he had to
2 self-evacuate while holding his breath, as --
3 as he mentioned. I mean, those are not trivial
4 matters, and -- and that sets the context for
5 his long-standing concern about sour gas
6 development in his valley.

7 And what's interesting is that, you know,
8 Mr. Judd had participated in, I think, five
9 hearings in the Screwdriver valley over the
10 course of the -- you know, the life of these
11 infrastructure, and every time the applicants
12 get up and say, you know, We're following all
13 the rules. The likelihood of a leak is very
14 low. It's not going to happen. We're doing
15 the best job possible. We're meeting all the
16 right -- and yet in every previous case with
17 Shell, it resulted in a number of leaks.

18 And every time a leak happens, they say,
19 Well, we've learned from this leak. You know,
20 We -- we understand the mechanisms of
21 corrosion. It's not -- never going to happen
22 again. Everything's great. And then the next
23 one happens, and they repeat the same story
24 over and over again.

25 Well, what we heard this morning was the
26 same story. You know, We've -- we run our

1 systems perfectly. It's never going to happen.
2 And what I thought was interesting is that
3 conversation about, you know, Mr. Judd's
4 residence not being in the emergency response
5 zone, and Mr. -- Daron made a great deal of
6 focus on that.

7 It wasn't in the emergency response zone in
8 their application. It was only put into the
9 emergency response zone after the fact that
10 Mr. Judd raised the issue, that it wasn't in
11 it. And -- and -- and the record's clear. It
12 wasn't -- they didn't do it on their own
13 volition as -- as a -- you know, an advanced,
14 you know, progressive company. They did it
15 because they recognized the regulatory risks
16 they were going to have if they went into the
17 hearing with the original EPZ, and that was the
18 response from Mr. Judd.

19 And -- and, you know, he downplays it
20 saying, you know, To egress his house, he only
21 has to go a few metres into the emergency
22 response zone for a few hundred yards. You
23 know, that -- that was an attempt to trivialize
24 Mr. Judd's long-standing concerns based on a
25 25-year history of dealing with sour gas
26 development that has failed that impinges on

1 his life on a daily basis.

2 And I think one thing the Board and -- and
3 clearly Pieridae doesn't understand is that the
4 stress on a person who lives with the constant
5 threat of the next time they take a breath
6 they're going to fall over dead is not a
7 trivial matter. And, you know, I think -- so
8 for them to trivialize Mr. Judd's concerns is
9 not fair, and it's not reasonable.

10 I think the other thing that warrants
11 talking here is that, you know, Team Judd
12 unfortunately is a team of one person, and --
13 and we come to this hearing without any
14 funding. Mr. Judd is not a man of means; so he
15 can't afford to hire multiple lawyers and
16 multiple experts, and -- you know, so to -- to
17 suggest that somehow the fact that -- that
18 Pieridae managed to field, I think, 12 people
19 here today, including three lawyers, as well as
20 their expert witnesses, as well as the number
21 of people in the background -- and it's
22 probably support -- somehow trivializes
23 Mr. Judd's effort as being inadequate.

24 And, yes, I would concede to Mr. Naffin's
25 point that, in this case, Mr. Judd does have
26 the onus, but I want to point out that I think,

1 if I -- my memory's correct, in the request
2 from the Panel about hearing time required, I
3 had requested nine hours to cross, and if had
4 that nine hours to cross, I would have dug into
5 the details of -- the minutia of the
6 application more. But we were given three
7 hours, and we had to decide on how do we -- how
8 do we make the most ground given those three
9 hours that we were given.

10 And so I don't want the Panel to think that
11 in any way that Mr. Judd is not concerned about
12 the minutia about emergency response planning,
13 Pieridae's capabilities which -- and the
14 impacts on the environment. It's quite the
15 contrary. He's deeply concerned about those
16 things, but he had to make some strategic
17 decisions in terms of how he focused in
18 participating in this hearing. It doesn't mean
19 those other issues are not important to him.

20 So having said that, I want to get into a
21 few things. So I want to just talk a little
22 bit about the scoping decision. And Judd
23 respects the Board's scoping decision. That
24 may not be apparently obvious to everyone, but
25 he does. And -- and, you know, it's probably
26 obvious to the Panel and others that Judd was

1 also employing a backdoor logic to -- to try to
2 bring some of those issues into scope, and the
3 logic is this, that if a -- if a -- you know,
4 if we look at the four scoping issues, that
5 every one of those issues requires that a
6 company have the capability to properly address
7 the regulatory or public safety or concerns
8 about the environment.

9 And so, yeah, I mean we -- we don't make
10 any bones about it. We -- we think that --
11 that some -- we should've had more latitude in
12 terms of arguing those. We didn't -- we
13 weren't given that -- well, we were given some
14 latitude, but we didn't go as far as that as we
15 could have. And ironically, Pieridae's been
16 allowed to submit financial information of
17 their choosing, but, you know, like, talking
18 about, you know, things like -- oh, Mr. Naffin
19 mentioned a few this morning. So I think
20 there's some -- there's a bit of a double
21 standard there.

22 Let me talk about the -- the Mayhood
23 report. First of all, Mr. Naffin says that you
24 should disregard it because, you know, it's two
25 years ago, and now the pipeline's built. So I
26 think it's important to recognize that at the

1 time Judd made that submission according to the
2 schedule set up by the Panel, the pipeline was
3 not constructed, and -- and that report, which
4 is a very thorough science-based report, was --
5 was based on the best evidence that Mr. Mayhood
6 could put forward.

7 It's not Mr. Mayhood's fault and it's not
8 Mr. Judd's fault that the company went ahead
9 and built the pipeline, and -- and so I --
10 while there are some implications of that in
11 terms of how you would interpret what
12 Mr. Judd's concerns are, it doesn't -- it
13 doesn't eliminate them, and it doesn't change
14 the -- the fact that it's useful.

15 The other thing I would say is that one of
16 the things that Mr. Judd -- sorry --
17 Mr. Mayhood mentioned in his testimony was that
18 there is still a -- there's two issues that he
19 mentioned and that -- one is that there's
20 always the potential that a pipeline failure in
21 that valley -- in that vicinity of that creek
22 crossing would have an impact on the stream.

23 And what's important about Mr. Mayhood's
24 evidence is that he was talking about fish
25 species that are federally protected under
26 the -- the Species at Risk Act and that these

1 streams have been identified as -- as critical
2 habitat. So the cumulative effects of human
3 activity in that Screwdriver Creek valley are
4 very significant already. And it's interesting
5 that, you know, when we look at the -- the
6 environmental assessment report that was done,
7 there is virtually no consideration of that
8 until after Mr. Judd raised it -- or
9 Mr. Mayhood raised it.

10 So notwithstanding that Mr. Mayhood's
11 report was written two years before today and
12 before the pipeline was constructed, it still
13 contains very valuable information about --
14 about the environmental -- the potential
15 environmental impacts of this pipeline.

16 I want to move on to the question of
17 calculation of the ERP and -- and Mr. Naffin
18 raising the issue that Mr. Judd did not make
19 any submissions on that. The -- the -- what I
20 find interesting about that is that one of the
21 overarching issues here has been Pieridae's
22 argument that the downstream receiving pipeline
23 is not relevant, and what I find interesting
24 about that in the context of the ERPs is that
25 when they do their -- their ERCB H2S modelling
26 and make their submission about their zones,

1 they're actually using the gas volumes from the
2 downstream pipeline as part of their input for
3 their ERPZ calculations.

4 And -- and so, you know, if you take that
5 and in combination with the fact that it was
6 their application that they included the
7 Waterton reactivation reports, they -- it was
8 their response to Panel information requests
9 that, you know, specifically address issues
10 around that, I find that absolutely
11 inconceivable that a reasonable person would
12 look at this story and conclude that the
13 downstream pipeline was not relevant to this
14 decision. And it could easily fit under, you
15 know, Issue 3 of the issues and that is, you
16 know, can they operate this pipeline properly
17 and safely according to regulatory
18 requirements? And if we roll the downstream
19 pipeline into it, I would say that that's a
20 valid question.

21 The other thing to keep in mind is, you
22 know, Mr. Naffin talks about the implications
23 of you denying the application, and, you know,
24 he talks about, Well, you know, we haven't
25 decided what we're going to do. What they have
26 told us is they have some corrosion problems in

1 that pipeline and they had corrosion problems
2 historically, and what their most recent
3 position is: We have not completed the
4 engineering report, and it's not our intention
5 to do it now because of -- if my recollection
6 is -- operational and market -- no. I can't
7 remember, but they -- they said they're not
8 going to do this analysis now.

9 And so it makes me wonder, like, you know,
10 if we're talking about the potential impacts,
11 they cannot produce the gas into this pipeline
12 until they solve that problem, and their
13 current position is, We're not moving forward
14 on that. We're holding off because of some
15 undisclosed reasons. And they also talked
16 about -- on their panel they talked about
17 having options. Well, you know, one of the
18 options would be to build a new pipeline to
19 replace the old pipeline that's rotten to the
20 core, and -- and the other option might be to
21 tie it directly into the 8-inch Carbondale
22 pipeline, but those options are not on the
23 table here. There's no evidence about what
24 those options are, and the only thing that this
25 Panel can deal with is the evidence on the
26 table with respect to the pipeline licence and

1 the pipeline that's already been built. So
2 Mr. Naffin can throw up the smoke screens and
3 suggest that there are options, but there --
4 none of those are in the evidence of this -- in
5 this proceeding.

6 Another thing I want to point out is that
7 Mr. Naffin made great information about all of
8 Pieridae's systems and their -- their SCADA and
9 their emergency response valves and their many
10 years of experience, but one thing that's --
11 and he also said that if there is a
12 catastrophic leak, it would be, like,
13 seven seconds. I don't know where he pulled
14 that number from. Sorry. Seven minutes.
15 Maybe I misheard him. But it was a short time.

16 And the -- the problem with that is that if
17 a catastrophic leak would happen in one of
18 their pipelines and would have a very short
19 period of -- of time that it was an issue, it
20 basically implies that regardless of how well
21 they've put their emergency response plans
22 together, it wouldn't make any difference
23 because by the time they mobilize -- and -- and
24 looking at the time that they've -- on the
25 record that they said it would take to
26 mobilize, the event would be over. And if

1 there were members of the public that were
2 exposed because of their misfortune to be at
3 that location, the risk response time wouldn't
4 make any difference.

5 Now, the other side of that coin is that
6 the majority of the leaks that have occurred
7 historically in this area have actually been
8 internal corrosion-related pinhole leaks that
9 released a small amount of gas, and the -- the
10 pressure drop was insufficient to trigger the
11 emergency shutdown valves, and those leaks were
12 not discovered in the one case until a rancher
13 approached and saw his two dead cattle on the
14 right-of-way.

15 Now, if that had been a person hiking or
16 that rancher had not had the state of mind to
17 say, Okay. There's a danger, and I should back
18 away, that could have been a person just as
19 easily as two cattle.

20 And the breach that happened in front of
21 Mike Judd's house, the original breach, which
22 happened, like, less than two months after the
23 pipeline was commissioned, wasn't noticed until
24 a Shell employee saw the -- the yellow staining
25 on the snow, and he phoned it in. So on that
26 end of the spectrum, their emergency response

1 plans don't really help if you happen to be the
2 unfortunate person who is located close by or
3 walks into a plume of sour gas. So it sort of
4 undermines the whole credibility of their
5 emergency response plan.

6 I also want to point out that the -- for
7 all the -- all the praise that Mr. Naffin wants
8 to put on the -- the -- the Pieridae ERP
9 planning, the fact is they have never conducted
10 a blind exercise. And the record's very clear
11 on that. And the problem with that is that a
12 blind exercise is an exercise where the
13 participants don't know about it in advance and
14 aren't -- well, the way they do their major
15 exercises, they tell all their people in
16 advance, Oh, we're going to have a major
17 exercise tomorrow. Get ready.

18 And so it really undermines the -- the
19 credibility that we have to put in in major
20 exercises. Yes, there are going to be some
21 learnings, but it's not really a test of their
22 system because everyone was alerted in advance.
23 The real test would be if they had a blind
24 exercise that didn't alert their staff in
25 advance to see then how they responded, and I
26 think you'd see quite a different outcome.

1 Now, Mr. Naffin did mention at one point
2 that -- that Mr. Judd had entrenched views.
3 And Mr. Judd would concede to the Panel that he
4 does have entrenched views, but those
5 entrenched views were hard-earned after 20-plus
6 years of living in a sour gas complex that has
7 resulted in multiple leaks. So, absolutely, he
8 has entrenched views. Why wouldn't he? What
9 reasonable person wouldn't have entrenched
10 views about opposing sour gas? So I just
11 encourage the Panel not to hold that against
12 Mr. Judd because those are very legitimate
13 views that are based on real, lived experience,
14 not some hypothetical ... I mean, Mr. Naffin
15 can say that because he doesn't live within a
16 couple kilometers of a half dozen sour gas
17 wells and pipelines that have a history of
18 exploding. Or leaking. Let me say leaking.

19 So I just want to encourage you to not
20 judge Mr. Judd's participation here as being
21 somehow a result of entrenched views or biases
22 about the oil and gas industry because the fact
23 is he does have entrenched views, and I don't
24 think you should hold that against him.

25 And that raises the question of Mr. Judd
26 not attending. You know, Mr. Judd is -- you

1 know, he lives a -- probably a three-hour drive
2 from Calgary, and we determined that with the
3 exception of his first day where he couldn't
4 attend and -- and your staff made a very
5 generous accommodation in terms of remote
6 appearance, there actually is no requirement or
7 any need for him because he would have just sat
8 in the back as a spectator because he has no
9 active role. And so I don't think the Board
10 should interpret his lack of attendance here as
11 a lack of interest, and I happen to know that
12 Mr. Judd is at home watching the proceedings on
13 the remote link. And so I -- I would dismiss
14 Mr. Naffin's comments that somehow that, you
15 know, reduces the credibility of his concerns
16 because he's not here. Absolutely not the
17 truth.

18 I want to mention a comment when Mr. Naffin
19 was talking about Dr. Finn's submission. He
20 talked about Dr. Finn incorrectly identifying
21 the source of the manual that he used. And,
22 yes, that was true. Dr. Finn did incorrectly
23 identify that during cross, but he did correct
24 that. He said, I made a mistake, and actually
25 the manual I used was 023. So I think for
26 Mr. Naffin to bring that up is really not fair,

1 and it's also not to the point. The point is
2 that Dr. Finn did use the manual. And I -- so
3 I don't think that the fact that he stated
4 incorrectly under the pressure of being
5 cross-examined that he -- and then corrected
6 it. I don't think that that should be used to
7 undermine him.

8 So Mr. Naffin referred to the need for the
9 pipeline, and I think, if I recall, he -- he
10 did point out that -- that the need was not one
11 of the issues that was established by this
12 Panel going into this, and I would say that the
13 question of need is -- is inherent in your
14 government legislation, and it doesn't have to
15 be explicitly laid out in -- in the issues.
16 It's inherent in the governing legislation.

17 Commissioner Chiasson, I -- I note you
18 looking at the -- at the clock, and I just want
19 to advise you that I probably have five minutes
20 left.

21 THE CHAIR: Yes. I'm sorry.
22 It's more so that I have to say that my stomach
23 is growling, but --

24 M. SAWYER: No need to
25 apologize. I just wanted --

26 THE CHAIR: But --

1 M. SAWYER: -- to let you know
2 that I'm --

3 THE CHAIR: -- I have no
4 intention to rush you, Mr. Sawyer.

5 M. SAWYER: No, I'm not rushing.

6 THE CHAIR: I appreciate --

7 M. SAWYER: I just wanted out of
8 courtesy to let you know that I have roughly
9 five minutes left.

10 THE CHAIR: Thank you for that
11 information.

12 M. SAWYER: So back to the
13 question of need. I think that the -- the --
14 the issue of need is -- is a chain of causal
15 events here. We have a gas supply, we have the
16 pipeline that's been built, and we have the
17 downstream connection to an existing pipeline.
18 And in the absence of either one of those
19 external factors, it eliminates the need for
20 this pipeline. If it wasn't for the gas, the
21 pipeline wouldn't exist. If it wasn't for the
22 downstream connection, the pipeline wouldn't
23 exist. So to -- you know, if not but for
24 logic, it would say that these things are
25 relevant.

26 And while we didn't wrestle that issue to

1 the ground about the upstream gas supply during
2 the hearing, I think there's sufficient
3 discussion on the record, you know, that the --
4 whether it's the original application or the
5 multiple times the Panel referred to the
6 pipeline in terms of their information requests
7 and the information they got back, I think that
8 it -- there's very clearly -- a reasonable
9 person would conclude that there may not have
10 been a formal ruling from the Panel, but the --
11 the downstream pipeline in all of its
12 complications is -- is relevant to this.

13 Mr. Naffin mentioned at one point that --
14 the -- the Shell Foothills assets, and I just
15 want to say, you know, he did criticize my
16 comments at the front of my final argument
17 today that I raised that issue. As I said in
18 my -- my argument, I'm not here to argue the
19 Foothills assets. That's not on the table, and
20 that's not what I was doing. I was -- I was
21 raising that in the context of -- of the Panel
22 understanding the kind of complications that
23 situation brings in to the issues that I talked
24 about. So I'm not arguing the Foothills assets
25 one way or the other. That might be for
26 another day but not -- that's not what I'm

1 doing here.

2 And then he also said that the Foothills
3 assets are licenced, and -- and, of course,
4 yes, they are. They -- they're licenced to
5 Shell. And, you know, he -- Mr. Naffin used
6 a -- some creative statutory interpretation to
7 somehow imply that, Well, Pieridae's licenced;
8 so therefore it could be the same thing. Well,
9 that -- that's clearly not the facts here.
10 The -- the Shell assets are licenced to Shell,
11 not to Pieridae, and I think that was a -- not
12 a particularly effective argument.

13 And then he also mentioned about the
14 workover and somehow implied -- he threw a red
15 herring in there 'cause he -- he referred to
16 the workover as being part of the issue of
17 working within a wildlife timing window, and
18 that's not the point here. And the fact that
19 Shell -- or that Pieridae has done workovers on
20 that well and has operated the -- the Shell
21 assets that are licenced to Shell doesn't
22 undermine the argument that they shouldn't
23 have. So I think the -- you know, this idea
24 that they did workover in the wildlife is
25 completely irrelevant to the point, and it was
26 an attempt by Mr. Naffin to throw up a bit of a

1 smoke screen.

2 So a couple of quick things. I've spoken
3 about the -- the 23800 line being in -- in
4 scope. I've spoken about the -- Naffin's
5 characterization that there's nothing wrong
6 with that pipeline, and I've mentioned that
7 they've deferred to doing the engineering
8 report to some point in the future, and there's
9 no indication about when that's going to
10 happen.

11 The other options, there's no evidence on
12 the table. Mr. Judd, I've spoken about him
13 having a bona fide interest here in spite of
14 Mr. Naffin's comments.

15 And I want to bring up one last point. It
16 is the -- the 2013 decision that Mr. Naffin has
17 referenced, I would say that, you know, he's --
18 he's cherry-picked comments out of that that --
19 that work for him, and for the sake of brevity,
20 I'm not going to go through that 'cause there
21 were some aspects of it that were -- supported
22 Mr. Judd's position.

23 But what I would say in terms of how you
24 consider that report is that that decision was
25 made under a different regulatory scheme. That
26 decision was made before the Responsible Energy

1 Development Act was put in place, and therefore
2 that panel -- that board that made that
3 decision would've had different -- different
4 considerations that would've gone into their --
5 their report.

6 So I'm going to say, Commissioner Chiasson
7 and Panel Members, thank you very much for --
8 to the extent that you've indulged me and
9 Mr. Judd over the last four days, and those are
10 my comments.

11 Discussion

12 THE CHAIR: Thank you very much,
13 Mr. Sawyer.

14 So we are now at a close. So I would like
15 to thank all the parties very much for their
16 participation.

17 Before I officially close it, I would also
18 like to acknowledge the support of our staff,
19 in particular our hearing services staff and
20 the tech support provided to us by Fahad and
21 Miriam. Greatly appreciate it. And this
22 wouldn't happen without all that support, so
23 it's important for us to acknowledge that.

24 So the Hearing Panel will review the
25 evidence and the submissions, and we will issue
26 our decision on the regulatory appeal. A

1 written decision will be issued within 90 days
2 of the close of this hearing. Each of the
3 parties who participated in this hearing will
4 receive a copy, and the decision will be posted
5 on the AER website. And so this hearing is now
6 closed.

7 Mr. Sawyer, I also wanted to thank you
8 because I know it's not been the easiest
9 commute back and forth this week given the
10 weather conditions and that. So thank you
11 for -- for the travel and also for making us
12 aware of how we could make it a little easier
13 for you today on that. And we wish you safe
14 travels back.

15 M. SAWYER: Thank you for that,
16 Commissioner Chiasson. I also was negligent
17 in -- when I was up, I should have thanked the
18 Board staff. They have been very helpful in
19 navigating the records and bringing files up,
20 and so I just want to extend my appreciation to
21 everyone that did help me. Thank you.

22 THE CHAIR: Thank you,
23 Mr. Sawyer.

24 And last but not least, I also want to
25 acknowledge our court reporters who are there
26 and work very hard for us and make the

1 difference as well. So thank you to our court
2 reporters.

3 So, otherwise, the hearing is now closed,
4 and thank you all for your involvement.

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6 PROCEEDINGS CONCLUDED

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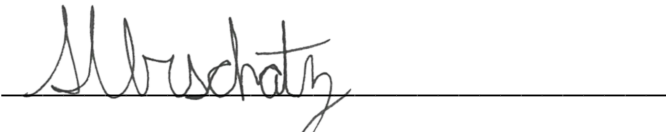
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CERTIFICATE OF TRANSCRIPT:

I, S. Urschatz, certify that the foregoing pages are a complete and accurate transcript of the proceedings taken down by me in shorthand and transcribed from my shorthand notes to the best of my skill and ability.

Dated at the City of Calgary, Province of Alberta, this 22nd day of November 2024.



S. Urschatz, PSR(A)
Official Court Reporter
Commissioner for Oaths Appointee No. 0771438
ASRA Membership No. 655
NCRA Membership No. 1003890

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