

**Proceeding 417**

January 16, 2024

**Hearing Commissioners' Office**

Suite 1000, 250 - 5 Street SW  
Calgary, Alberta T2P 0R4  
Canada

[hearing.services@aer.ca](mailto:hearing.services@aer.ca)

By email only

**Bennett Jones LLP**  
Attn: Daron Naffin

**Hayduke & Associates (2021) Ltd.**  
Attn: Michael Sawyer

**AER Regulatory Applications**  
Attn: Meighan LaCasse  
Amanda Huxley

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

Dear Parties:

The panel of Alberta Energy Regulator (AER) hearing commissioners assigned to Proceeding 417 (panel) writes to provide our decision on Mr. Judd's Notice of Motion dated December 14, 2023, filed pursuant to sections 44 and 46 of the *Alberta Energy Regulator Rules of Practice (Rules)*. The motion requests that we adjourn these proceedings indefinitely (*sine die*). For the reasons below, we partially grant Mr. Judd's motion and adjourn this proceeding for a period of time.

### **Motion**

Mr. Judd's motion, dated December 14, 2023, requests that we adjourn Proceeding 417 indefinitely on the following grounds:

- The Alberta Court of Appeal granted permission to Mr. Judd to appeal our procedural decision from May 19, 2023. That decision dismissed Mr. Judd's request for disclosure of information related to *Directive 067: Eligibility Requirements for Acquiring and Holding Energy Licences and*

*Approvals and Directive 088: Licensee Life-Cycle Management* in relation to Pipeline Licence No. 62559 and Pieridae's eligibility to acquire and hold a licence for energy development in Alberta.

- The appeal is framed as follows: “when the panel considered whether the information requested by Mr. Judd was relevant and material to the issues in the regulatory appeal did they err in law by effectively confining themselves to the information obtained by the AER under *Directive 056*?”
- The appeal will be argued before the Alberta Court of Appeal on April 10, 2024. If the hearing begins on February 27, 2024, as currently scheduled, Mr. Judd will be prejudiced by having to participate in the regulatory appeal while being potentially unlawfully denied access to information which is relevant and material to the issues of the regulatory appeal.
- The panel will bring the administration of justice into disrepute if it proceeds in advance of a Court of Appeal ruling on whether this panel has acted lawfully in these proceedings.

### **Motion Responses**

On December 15, 2023, we provided Pieridae and AER Regulatory Applications a deadline of December 20, 2023, to respond to Mr. Judd's motion. Mr. Judd was provided a deadline of January 3, 2024, to reply to Pieridae's and AER Regulatory Applications' responses.

On December 20, 2023, Pieridae provided a response to Mr. Judd's motion stating that:

- The panel should deny the motion and proceed with the hearing as scheduled.
- The Court of Appeal hearing date was delayed at Mr. Judd's legal counsel's request. If Mr. Judd's legal counsel had been available in January 2024, then the fast track appeal could have been heard prior to the scheduled hearing date.
- Pieridae would experience substantial prejudice if the motion is granted, as they were prepared to proceed with a fast track appeal alongside the ongoing regulatory appeal, and are currently engaged in hearing preparations.
- The four issues identified by this panel for this regulatory appeal do not concern Pieridae's broader ability to acquire or hold a licence for energy development in Alberta. The outcome of the appeal has no bearing on the panel's consideration of the issues identified as being within the scope of this proceeding.
- Mr. Judd can obtain additional materials relating to the licence from the AER under Alberta's *Freedom of Information and Protection of Privacy Act*.

Also on December 20, 2023, AER Regulatory Applications provided correspondence indicating it took no position and had no comments regarding Mr. Judd's motion.

On January 3, 2024, Mr. Judd replied that:

- The appeal date of April 10, 2024, was consensual amongst the parties.
- The repeated delays associated with this regulatory appeal are not the fault of Mr. Judd.
- Mr. Judd is not seeking to unnecessarily delay the hearing and is asserting his legal rights provided by the legislative framework.
- No legal authority has been provided by Pieridae to support its assertion that the access to information process established by the AER under the *Freedom of Information and Protection and Privacy Act* is a substitute for the disclosure of a full and complete Record of Decision in an adjudicative hearing.

### **Panel Decision**

Mr. Judd's request for an adjournment is granted, in part. Namely, the hearing dates for this matter (February 27- 29, 2024) are hereby vacated, along with any upcoming submission deadlines related to the February hearing. However, this matter is not adjourned indefinitely. We intend to hold this hearing as soon as possible, ideally, in early or late fall, 2024. As such, Mr. Judd's counsel is directed to notify the parties and the panel as to the Alberta Court of Appeal's decision relating to the appeal by no later than June 10, 2024, with a view to rescheduling the hearing later in 2024. If the Court of Appeal's decision with respect to this matter has not been released by June 10, 2024, Mr. Judd's counsel is directed to advise the parties and the panel as such and update the parties and the panel as soon as practicable once the Court of Appeal's decision is released. Conversely, Mr. Judd's counsel is expected to notify the parties and the panel if the Court of Appeal's decision is released before June 10, 2024, with a view to instigating planning discussions for a fall hearing. If necessary, the adjournment may be extended at that time. The parties are asked to maintain their availability for a hearing during any of the following months: September, October, and November 2024.

### **Reasons**

We are partially granting Mr. Judd's request for adjournment because it is in the interests of all parties to conduct this hearing only once. Given that the Alberta Court of Appeal granted permission to Mr. Judd to appeal our procedural decision from May 19, 2023, and no one is in a position to know the outcome of the

Court's deliberations, prudence dictates that we adjourn this matter until such time as the Court's decision is known, and a new hearing date selected that permits all the issues in play to be fairly adjudicated.

A key consideration was whether any of the parties will be significantly prejudiced by our decision to adjourn this matter. In our view, none of the parties are significantly prejudiced by this decision. Certainly, Mr. Judd is not prejudiced in that he requested the adjournment and although not granted indefinitely, he will be able to consolidate and prepare for any new issues that may arise as a result of the Court of Appeal decision. AER Regulatory Applications took no position on the matter. While this adjournment may be inconvenient, we note that Pieridae is not stayed by any of the proceedings from moving forward on Pipeline Licence 62559. To that extent we note that Pieridae has proceeded with constructing its pipeline.

For these reasons, we adjourn this matter for a period of time, as directed above.

Sincerely,

Cindy Chiasson, LL.B

Presiding Member

Harold Robinson, LL.B

Panel Member

Shona Mackenzie, C.Dir., P.Eng.

Panel Member

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

T. Myers, Bennett Jones LLP

B. Kapel Holden, AER Panel Counsel

S. Peddlesden, AER Panel Counsel