

Proceeding 417

June 27, 2024

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

Dear Parties:

I am writing to you on behalf of the Alberta Energy Regulator (AER) panel of hearing commissioners assigned to proceeding 417 (the panel).

On May 13, 2024, the Alberta Court of Appeal issued its decision in *Judd v Alberta Energy Regulator*, 2024 ABCA 154. The Court decided that the panel had erred in our decision on May 19, 2023, that denied Mr. Judd's motion requesting information. The Court indicated that we had erred by confining our consideration of Mr. Judd's motion to information received under the pipeline licensing process and *Directive 056*. Its decision indicated that we should have considered how the information requested by Mr. Judd could be relevant and material to the hearing issues, regardless of which AER regulatory process generated such information. The Court referred the matter to us for further consideration and redetermination, in accordance with section 45(7)(c) of the *Responsible Energy Development Act*.

After reviewing the Court's decision, we invited Mr. Judd to amend his motion. He filed the amended motion on May 31, 2024. Pieridae responded to the amended motion on June 7, 2024. On June 14, 2024, Regulatory Applications advised that it took no position and had no comments on the amended motion. We gave Mr. Judd the opportunity to file a final reply; he did not do so.

Having considered the Court's decision, the amended motion, supporting affidavit, and response, we have decided to partially grant the amended motion. Our decision and reasons follow.

The amended motion and response

The amended motion requested an order granting disclosure of information “collected, received, assessed, compiled or produced” by the AER under *Directive 067* and *Directive 088* in relation to a holistic licensee assessment of Pieridae Alberta Production Ltd. and its associated companies that is relevant and material to the hearing issues set in this proceeding. The amended motion discussed the duty of procedural fairness and submitted that Mr. Judd does not have access to information that is essential to fully evaluate the extent of direct and adverse impact on him of Pipeline Licence 62559.

The amended motion referred to the hearing issues we set for this proceeding on March 14, 2023 (the Scoping Decision):

- i. the determination of the Emergency Planning Zone ("EPZ") for the pipeline, including methodology used and the application of AER modelling requirements;
- ii. emergency preparedness and proposed public protection measures;
- iii. the construction and operation of the pipeline, including the design and monitoring of the pipeline and the pipeline Integrity Management Program; and
- iv. the potential effects of the pipeline on the environment.

Mr. Judd submitted that the requested information is relevant and material to issues ii, iii and iv above. He argued that determinations made by the AER under *Directive 067*, *Directive 088* and *Manual 023* and reflected in Pieridae's licensee capability assessment, relate to “a pipeline carrying highly sour gas near the residence of the Applicant”. He submitted that this information includes:

- the assessed level of financial distress and ability of Pieridae to meet its regulatory and liability obligations throughout the energy development lifecycle;
- Pieridae's commitment to safe and responsible operations, history of regulatory compliance, responsiveness to addressing noncompliances and recent incidents; and
- the ability of Pieridae to provide reasonable care and measures to prevent impairment or damage in respect of a pipeline.

Mr. Judd also relied on his affidavit dated October 11, 2022, which was filed in support of the original motion. The affidavit provided information regarding previously discontinued regulatory proceedings involving licence transfers of Foothills Assets from Shell Canada to Pieridae, financial information and assessments about Pieridae that may have been generated in relation to those proceedings, and concerns about Pieridae's involvement with those licensed assets and Pieridae's licence eligibility status.

Pieridae submitted that the amended motion clearly extends beyond the established scope of this proceeding and Mr. Judd seeks production of records that are not relevant and material to this regulatory appeal. It submitted that if we were to grant the amended motion to any extent, we should narrow the granted relief in accordance with the guidance from the Court's decision and tailor the relief to the issues set out in our Scoping Decision. Pieridae requested that if we grant the amended motion, we should limit the scope of records produced to those "which have a clear and direct connection to the scoped issues in respect of the subject pipeline".

Pieridae referred to the Court's decision and submitted that we must address the amended motion in light of the findings in the Scoping Decision and considering Mr. Judd's suggested issues that we excluded from the Scoping Decision. It also submitted that the Court's decision confirms that we must assess the relevance and materiality of information Mr. Judd seeks in accordance with the Scoping Decision and the four hearing issues we identified.

Pieridae contended that the amended motion seeks overly broad disclosure and does not explain how the requested information relates to the hearing issues we set. It submitted that the requested information is more plainly directed at two issues that we excluded from the Scoping Decision, namely disclosure of information received by the AER under *Directives 067* and *088*, and Pieridae's financial capability related to the proposed pipeline and associated infrastructure, and is thus beyond the scope of the established hearing issues.

Panel Decision

We note that the Court's decision confirmed that we were entitled to limit this regulatory appeal's parameters in the Scoping Decision. The Court stated:

When considering whether information is relevant and material to the regulatory appeal, the Panel is entitled to consider the issues that have been included, as well as those that were expressly excluded. For the purposes of record production, the issues that were specifically excluded from the Scoping Decision are as important as the issues included.

We interpret the Court's decision as meaning that we must determine whether the information sought by the amended motion is relevant and material to the four hearing issues set in the Scoping Decision and does not primarily relate to the issues that were excluded by the Scoping Decision. We are also mindful of the Court's comments about the "unduly broad" nature of Mr. Judd's original motion and that the AER should not be subject to unnecessary "fishing expeditions". We interpret this to indicate that we should seek a level of specificity in Mr. Judd's amended motion and supporting affidavit.

The issues we excluded in the Scoping Decision were:

- A. Liability – legal uncertainty on the allocation of liability in the case of an H₂S release event, as well as abandonment, reclamation and other clean-up costs.
- B. *Directive 067* Information – disclosure of information received by the AER under *Directives 067* and *088* in relation to the application for the Pipeline, and the AER's evaluation of that information.
- C. Pieridae's Financial Capability – Pieridae's financial capacity to safely and responsibly manage the proposed Pipeline and the associated infrastructure or to address the current and future abandonment and reclamation liabilities associated with the Foothills Assets and their other assets.
- D. Shell – Pieridae Sale Agreement – consent from Shell to construct and operate the pipeline.

For the following reasons, we decline to make any order related to the amended motion's reference to information about the AER's assessment of Pieridae's financial capability to meet its regulatory and liability obligations throughout the energy development lifecycle. While the amended motion suggested that this would relate to integrity monitoring, emergency response, and public protection related to incidents, we note that those aspects would be covered through disclosure of information related to safe and responsible operations, compliance history and responsiveness, and providing reasonable care and measures for the pipeline.

We find that the request for disclosure of information received by the AER under *Directives 067* and *088* and Pieridae's assessed financial capability related to the proposed pipeline and associated infrastructure is directly relevant and material to the excluded issues B and C. The AER uses information about an operator's financial status and ability as a key element of determining licence eligibility. The Court acknowledged that we had decided the regulatory appeal would proceed on the assumption that Pieridae was eligible to hold a licence and noted that "the appellant confirmed during oral argument that he does not intend to revisit Pieridae's eligibility to hold a pipeline licence in the regulatory appeal."

The AER had advised the Court that Pieridae holds general licence eligibility, and licence eligibility information is publicly available on the AER's website.

Mr. Judd has not convinced us that disclosure of information about Pieridae's financial status and any AER assessment of Pieridae's financial capability to meet its regulatory and liability obligations is sufficiently relevant and material to outweigh the fact that we excluded those issues in the Scoping Decision. As such, we will not direct any disclosure related to details regarding Pieridae's financial information.

We accept that the two other elements referred to in the amended motion, listed below, may be relevant and material to the hearing issues set in the Scoping Decision:

- Pieridae's commitment to safe and responsible operations, history of regulatory compliance, responsiveness to addressing noncompliances and recent incidents; and
- the ability of Pieridae to provide reasonable care and measures to prevent impairment or damage in respect of a pipeline.

The amended motion requested disclosure of information held by the AER under *Directives 067* and *088*, which directly relates to the excluded issue B concerning disclosure of information received by the AER under *Directives 067* and *088*. However, we believe that the potential risk posed by transporting natural gas with 32% hydrogen sulphide in the pipeline weighs in favour of disclosure of corporate-level information related to safe operation, regulatory compliance and response, and reasonable care and measures. While we are willing to direct disclosure related to these matters, we will limit such direction to matters we feel are directly related to the proposed pipeline and this regulatory appeal.

As the panel only has access to the materials filed on the public record of this proceeding, we direct that AER Regulatory Applications disclose to the panel any current licensee capability assessments or holistic licensee assessments prepared by the AER about Pieridae Alberta Production Ltd. (BA Code A5C4), together with any information used by the AER to prepare such assessments related to the following operational, compliance and pipeline related parameters set out in *Manual 023: Licensee Life-Cycle Management*:

- Field noncompliance follow-up rate (Table 4)
- Field noncompliance rate (Table 4)
- Pipeline incident rate (Table 4)
- Pipeline abandonment rate (Table 5)

This disclosure must be submitted in electronic format to Hearing Services by **4:00 pm on July 17, 2024**. We request that AER Regulatory Applications identify the general types of information it is providing to us in a cover letter and also identify any information that is subject to claims of confidentiality and why. AER Regulatory Applications should note, in a general manner so as not to disclose the exact information, what information the panel should redact before the information is released. AER Regulatory Applications is to copy the other parties on the cover letter only (not the information).

The panel will enable the parties to comment on the confidentiality claimed by AER Regulatory Applications over the information before the panel determines what information will be disclosed to Mr. Judd.

Future steps

As we indicated previously to the parties, we intend that this regulatory appeal proceed to hearing in a timely way. Following submission of the disclosure, we anticipate consulting the parties on whether they need to supplement their hearing submissions in relation to the disclosed information only. If no supplementary submissions are necessary, it remains for Mr. Judd to file his reply hearing submission.

The only 2024 dates suitable to the hearing team for a 3-day hearing of this regulatory appeal are in the period of November 19 - 22, 2024. We ask all parties to advise Hearing Services by **4:00 pm on July 4, 2024**, about their availability for these dates. If the parties are not available for these dates, a hearing would not be held until 2025.

Sincerely,

C.L.F. Chiasson, Presiding Hearing Commissioner

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