

Proceeding 417

By email only

March 14, 2023

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Canadahearing.services@aer.ca**Bennett Jones LLP**
Attn: Daron Naffin**Hayduke & Associates (2021) Ltd.**
Attn: Michael Sawyer**AER Regulatory Applications**
Attn: Meighan LaCasse
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**RE: Regulatory Appeal of the Decision to Issue Pipeline Licence No. 62559
Regulatory Appeal 1935549
Application No. 31097955 (Application)
Licence No. 62559 (Licence)
Michael Judd
Pieridae Alberta Production Ltd. (Pieridae)
Alberta Energy Regulator - Regulatory Applications (Regulatory Applications)
(collectively, parties)
Decision on Hearing Issues and Request for Comments on Hearing Dates, Format and
Location**

Dear Parties:

The panel of Alberta Energy Regulator (AER) hearing commissioners assigned to Proceeding 417 (the Panel) writes to provide our decision on the hearing issues for this regulatory appeal. We also request comments from the parties regarding their availability for hearing dates proposed below, and the hearing format and location.

Decision on Hearing Issues

For the reasons below, the Panel has decided that the issues for the hearing of this regulatory appeal will be those previously proposed by the Panel:

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

On February 1, 2023, the Panel requested the parties' views on the proposed hearing issues. In making our decision, we have reviewed and considered the submissions received from Regulatory Applications, Michael Judd and Pieridae on February 13, 14 and 15, 2023 respectively, and response submissions received from Regulatory Applications, Mr. Judd and Pieridae on February 22, 2023.

Party Submissions

Mr. Judd submitted that proposed issues 1, 2, and 4 should be included in the issues for the hearing. He also provided submissions on the merits of those proposed issues. Mr. Judd indicated that he does not intend to give evidence on proposed issue 3 and suggested four additional issues for the hearing.

Pieridae submitted that the "list of hearing issues proposed by the Panel is appropriate and sufficient for the AER to render a determination on the subject regulatory appeal", but that proposed issue 3 should not be included because Mr. Judd does not plan to address it in his evidence. Pieridae submitted that "the Panel need not consider this issue where Mr. Judd, as the party who initiated the regulatory appeal process, has confirmed in writing that he does not have any concerns with respect to this proposed hearing issue."

Pieridae submitted that it was inappropriate for Mr. Judd to advance substantive submissions on proposed hearing issues 1, 2, and 4 at this stage of the regulatory appeal process. Pieridae submitted that Mr. Judd will have later opportunity to make submissions on the issues the Panel decides for the hearing, and that the reasons provided by Mr. Judd in support of proposed hearing issues 1, 2, and 4 should be disregarded by the Panel.

Pieridae provided response submissions on Mr. Judd's four suggested hearing issues. It submitted that all four "are irrelevant to the Panel's determination of whether the Licence should be confirmed, varied, suspended or revoked, and therefore should be dismissed".

Regulatory Applications made no comments on the proposed hearing issues but commented that two of the four additional issues suggested by Mr. Judd were requests for documents, not issues.

Issue 3, Construction and Operation of the Pipeline

The Panel notes Mr. Judd's statement that he does not intend to give evidence on issue 3, and Pieridae's submission that the Panel therefore does not need to consider that issue. However, this regulatory appeal is of the decision to issue the Licence, which authorizes the construction and operation of the pipeline. Issue 3 focuses on that matter, and is relevant to and informs issues 1, 2 and 4. As such, we have decided to include issue 3 as a hearing issue.

Hearing Issues Suggested by Mr. Judd

Mr. Judd suggested four additional issues to be included for the hearing:

- 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.

The Panel has chosen not to include Mr. Judd’s suggested issues in this regulatory appeal hearing.

Regarding Mr. Judd’s suggested issue A, Mr. Judd described the “legal uncertainty” he identified as stemming from his understanding of the ownership of existing energy assets and a withdrawn application concerning the transfer of existing licences between Pieridae and Shell¹. Suggested issue D relates to terms of a sale agreement transferring energy assets between Shell and Pieridae. However, in this regulatory appeal, the panel must decide whether to confirm, vary, suspend or revoke the Licence. Neither an application for the transfer of licences for energy assets nor a regulatory appeal of a decision in respect of the transfer of licences for energy assets are before this Panel. The pipeline authorized by the Licence is a new pipeline, applied for and to be built by Pieridae. Matters related to the transfer of licences for existing energy assets between Shell and Pieridae are not relevant to this proceeding.

Regarding Mr. Judd’s proposed issues A, B, and C, the AER has regulatory processes that, among other things, assess a licensee’s capabilities to meet its obligations throughout the energy development life cycle and its eligibility to hold licences. Those processes are separate and distinct from the pipeline licensing process. The regulatory requirements set out in AER Directives 067 and 088 apply throughout the energy resource development life cycle and are not specific to a particular project application.

The Panel must consider the factors prescribed under section 15 of the *Responsible Energy Development Act* and section 3 of the *Responsible Energy Development Act General Regulation*, including social and economic effects of the pipeline and the pipeline’s effects on the environment. It is not necessary for us to adopt Mr. Judd’s suggested issues to carry out this responsibility.

¹ The Panel understands the references to Shell to be references to Shell Canada Limited.

For the reasons above, Mr. Judd's suggested issues A, B, C and D are not applicable to this regulatory appeal and are not included as issues for the hearing.

Submissions on the Merits

The Panel notes that Mr. Judd's submissions on the proposed hearing issues also advance submissions on the merits in respect of those issues. At this stage, submissions on the merits are not properly before the Panel. The submissions on the merits advanced by Mr. Judd with his submissions on the proposed hearing issues will not be considered by the Panel when making its final decision on the hearing. Mr. Judd will have the opportunity to make submissions on the merits of the hearing issues, as they have been determined by the Panel, later in the hearing process. Mr. Judd may then restate any relevant merits submissions he sought to make at this stage, should he wish.

Hearing Dates, Format and Location

Before setting the hearing submission schedule, the Panel would like to canvass the availability of the parties for a two or three day in-person hearing in June 2023; specifically, June 13 – 15, June 20 – 22 or June 27 – 29, 2023. We also invite the parties to provide their views on the proposed hearing format, whether oral or electronic, and, if an oral hearing, whether the hearing should be held in Calgary at the AER's Govier Hall, or at another location.

Please provide a response, including availability and views on hearing format and location, to Hearing.Services@aer.ca by **4:00 pm on March 21, 2023**.

Sincerely,

C.L.F. Chiasson, Presiding Hearing Commissioner

cc: S. Fluker, Public Interest Law Clinic (University of Calgary)
T. Myers, Bennett Jones LLP
B. Kapel Holden, AER Panel Counsel
L. Mosher, AER Panel Counsel
E. Arruda, AER Hearing Services