

COURT OF APPEAL OF ALBERTA

Form AP-3
[Rule 14.53]

COURT OF APPEAL FILE NUMBER: **2301-0144AC**

TRIAL COURT FILE NUMBER: N/A

REGISTRY OFFICE: CALGARY

APPLICANT: MICHAEL JUDD

STATUS ON APPEAL: APPELLANT
STATUS ON APPLICATION: APPLICANT

RESPONDENTS: ALBERTA ENERGY
REGULATOR and PIERIDAE
ALBERTA PRODUCTION LTD.

STATUS ON APPEAL: RESPONDENTS
STATUS ON APPLICATION: RESPONDENTS

DOCUMENT: **APPLICATION OF MICHAEL JUDD FOR
PERMISSION TO APPEAL**

ADDRESS FOR SERVICE AND
CONTACT INFORMATION OF
PARTY FILING THIS DOCUMENT: University of Calgary Public Interest Law Clinic
Attention: Shaun Fluker
Suite 4340, Murray Fraser Hall
2500 University Drive NW
Calgary, Alberta T2N 1N4
Counsel for Michael Judd
T: 403.220.4939
Email: sfluker@ucalgary.ca



and

CONTACT INFORMATION OF ALL
OTHER PARTIES: Alberta Energy Regulator
Attention: Meighan LaCasse
Suite 1000, 250 – 5th Street SW
Calgary, Alberta T2P 0R4
T: 403.297.3488
Email: Meighan.LaCasse@aer.ca

Bennett Jones LLP
Attention: Daron Naffin
4500 Bankers Hall East
855 – 2nd Street SW
Calgary, Alberta T2P 4K7
Counsel for Pieridae Alberta Production Ltd.
T: 403.298.3668
Email: naffind@bennettjones.com

NOTICE TO RESPONDENT(S): ALBERTA ENERGY REGULATOR and
PIERIDAE ALBERTA PRODUCTION LTD.
(RESPONDENTS)

WARNING

If you do not come to Court on the date and time shown below either in person or by your lawyer, the Court may give the applicant what it wants in your absence. You will be bound by any order that the Court makes. If you intend to rely on other evidence or a memorandum in support of your position when the application is heard or considered, you must file and serve those documents in compliance with the Rules. (Rule 14.41 and 14.43)

NOTICE TO RESPONDENT(S):

You have the right to state your side of this matter before the Court.

To do so, you must be in Court when the application is heard as shown below:

Date: September 13, 2023
Time: 09:30am
Where: Calgary, Court of Appeal
Before: single judge of the court (Rule 14.37)

Nature of Application and Relief Sought:

1. This Application is brought by Michael Judd (the **Applicant**) pursuant to section 45(1) of the *Responsible Energy Development Act*, SA 2012 c R-17.3 requesting permission to appeal a decision of the Alberta Energy Regulator (**AER**) dated

May 19, 2023, to deny a motion filed by the Applicant in Regulatory Appeal 1935549 seeking disclosure and access to information held by the AER.

Grounds for making this application:

2. The Applicant is a person who is directly and adversely affected by Application No. 31097955 made by Pieridae Alberta Production Ltd. (**Pieridae**) to the AER and Pipeline Licence No. 62559 issued by the AER to Pieridae, pursuant to the *Responsible Energy Development Act*.
3. In Regulatory Appeal 1935549 the AER will decide whether to confirm, vary, suspend, or revoke its decision to approve Application No. 31097955 and issue Pipeline Licence No. 62559.
4. The AER has determined the following issues will be heard in Regulatory Appeal 1935549:
 - a. the determination of the Emergency Planning Zone for the pipeline, including methodology used and the application of AER modelling requirements;
 - b. emergency preparedness and proposed public protection measures;
 - c. the construction and operation of the pipeline, including the design and monitoring of the pipeline and the pipeline Integrity Management Program; and
 - d. the potential effects of the pipeline on the environment.
5. A hearing date has not yet been set for Regulatory Appeal 1935549, and based on submissions from the parties on scheduling it appears unlikely the hearing will take place before the end of 2023.
6. On April 13, 2023, the Applicant filed a motion with the AER in Regulatory Appeal 1935559 (the **Motion**) seeking disclosure and access to all information collected, received, assessed, compiled or produced by the AER under Directive 067 - *Eligibility Requirements for Acquiring and Holding Energy Licences and Approvals* and Directive 088 – *Licensee Life-Cycle Management*, in relation to Application No. 31097955 and Pipeline Licence No. 62559 and in relation to a holistic licensee assessment of Pieridae and its eligibility to acquire and hold a licence for energy development in Alberta.
7. On May 1, 2023, Pieridae filed a response submission with the AER to the Motion and on May 10, 2023, the Applicant filed a reply submission to the AER.
8. The AER denied the Motion by way of written reasons set out in a letter decision dated May 19, 2023 (the **“Decision”**).
9. This Application seeks permission to appeal the Decision.

10. Section 45(1) of the *Responsible Energy Development Act* provides that the Applicant may seek permission to appeal a decision of the AER on a question of jurisdiction or law.
11. The Decision raises the following questions of law:
 - a. the AER erred in law by failing to comply with its duty of procedural fairness owed to the Applicant whose rights, privileges or interests are directly affected, to ensure that the Applicant has a full and complete opportunity to know and meet the case against him in an adjudicative hearing;
 - b. the AER erred in law by contravening the right of the Applicant not to be deprived of enjoyment of his property except by due process of law, as provided by section 1 of the *Alberta Bill of Rights*, RSA 2000, c A-14; and
 - c. the AER erred in law by failing to provide reasons which meaningfully address the submissions made by the Applicant and which are justifiable, intelligible, and transparent within the legal and factual context of the Decision.

Material or evidence to be relied on:

12. Memorandum of Argument, filed.
13. Affidavit of Michael Judd, filed.

Applicable Acts, regulations and rules:

14. *Responsible Energy Development Act*, SA 2012 c R-17.3.
15. *Responsible Energy Development Act General Regulation*, Alta Reg 90/2013
16. *Alberta Bill of Rights*, RSA 2000, c A-14.
17. AER Directive 067 - *Eligibility Requirements for Acquiring and Holding Energy Licences and Approvals*.
18. AER Directive 088 - *Licensee Life-Cycle Management*
19. *Alberta Rules of Court*, Alta Reg 124/2010.