

In the Court of Appeal of Alberta

Citation: Fort Industrial Estates Ltd v Alberta Energy Regulator, 2026 ABCA 302

Date: 20260923
Docket: 2401-0229AC
Registry: Calgary

Between:

**Fort Industrial Estates Ltd., Heartland Center I Ltd.
and Heartland Center II Ltd.**

Applicants

- and -

Alberta Energy Regulator and Chemtrade Logistics Inc.

Respondents

And Between:

**Fort Industrial Estates Ltd., Heartland Center I Ltd.,
Heartland Center II Ltd., Alberta Energy Regulator and
Chemtrade Logistics Inc.**

Respondents

- and -

City of Fort Saskatchewan

Applicant

**Reasons for Decision of
The Honourable Justice Jo'Anne Strekaf**

Application for Permission to Appeal
Application for Permission to Intervene

**Reasons for Decision of
The Honourable Justice Jo'Anne Strekaf**

Introduction

[1] The applicants Fort Industrial Estates Ltd., Heartland Center I Ltd., and Heartland Center II Ltd. (collectively, Fort Industrial) seek permission to appeal two decisions of the Alberta Energy Regulator (AER file nos. 430604 and 431456) that relate to a pipeline owned and operated by the respondent Chemtrade Logistics Inc. The decisions, dated June 26, 2024 and August 2, 2024, denied requests by Fort Industrial for: (i) a regulatory appeal under section 38 of the *Responsible Energy Development Act*, SA 2012, c R-17.3 of the AER's April 2019 decision to approve an amendment to Chemtrade's pipeline licence; and (ii) reconsideration of the April 2019 decision under section 42 of the *Responsible Energy Development Act*.

[2] The City of Fort Saskatchewan has applied to intervene in the application for permission to appeal and, if permission to appeal is granted, on the appeal itself.

[3] For the reasons set out below, Fort Industrial's application for permission to appeal is granted. Fort Saskatchewan's application to be added as an intervenor in the permission to appeal application is denied. Fort Saskatchewan is granted intervenor status in the appeal itself.

Background

[4] Fort Industrial owns lands and commercial buildings within the city limits of Fort Saskatchewan and within 500 metres of Chemtrade's chemical manufacturing plant and pipeline. The pipeline is also within the city limits of Fort Saskatchewan.

[5] Prior to April 2019, the pipeline was designated as "undefined" pursuant to the AER's *Directive 056: Energy Development Applications and Schedules* [Directive 056] and therefore had no setback requirements beyond the pipeline right-of-way. In November 2018, Chemtrade applied to the AER to amend its pipeline license. The amendment, which was approved in the April 2019 decision, changed the pipeline's designation to "Level 4", changed the classification of the contents of the pipeline from a miscellaneous gases pipeline to a hydrogen sulfide or sour gas pipeline and increased the licensed hydrogen sulfide content. These changes resulted in a significantly increased setback requirement to 1.5 kilometres on neighbouring lands, including those of Fort Industrial.

[6] Neither Fort Industrial nor Fort Saskatchewan was notified of, or consulted with respect to, Chemtrade's application, contrary to the mandatory notice and consultation requirements of *Directive 056*. Chemtrade's application, however, incorrectly stated that the notice requirements had been met. The AER did not hold a hearing to consider the application, and Fort Industrial was

not aware of the amendment to Chemtrade's licence and associated increase in setback and its potential effect on Fort Industrial's continuing planned development of its lands.

[7] According to Fort Industrial, its planner first became aware of a potential 500-metre setback in June 2022. By the spring of 2023, Fort Industrial had determined what had happened and learned about Chemtrade's application and the April 2019 decision. At about the same time, Chemtrade opposed Fort Industrial's development plans, relying on the increased setback.

[8] On July 7, 2023, Fort Industrial requested a regulatory appeal and reconsideration of the April 2019 decision. In response, the AER conducted a compliance audit that confirmed Chemtrade did not comply with the participant involvement requirements of *Directive 056* in its application.

[9] The AER sent Chemtrade a notice of noncompliance on February 2, 2024. The notice also noted inaccuracies in the release volume and level designation on the amended pipeline licence, which should have shown the pipeline as Level 2 with a 500-metre setback, rather than Level 4 with a 1.5 km setback. Rather than suspend the amended license and hold a hearing, the AER directed Chemtrade to file an amendment application to correct the release volume and level designation, which Chemtrade did on March 18, 2024.

[10] Fort Industrial and Fort Saskatchewan filed statements of concern in the new proceeding. The AER found a hearing was not required as Fort Industrial and other landowners were not adversely affected because the new application would reduce the pipeline level designation from Level 4 to Level 2, and approved the amendment.

[11] The AER then considered Fort Industrial's application for a regulatory appeal of the April 2019 decision, dismissing the application on June 26, 2024 because it was filed outside the 30-day appeal period, which had expired in 2019. On August 2, 2024, the AER also denied Fort Industrial's reconsideration request, holding that the regulatory appeal mechanisms are available to industry and the public and finding no compelling reason to reconsider its decision from April 2019.

[12] Fort Industrial now seeks leave to appeal the dismissal of its regulatory appeal and reconsideration applications.

Preliminary issue

[13] As a preliminary matter, Chemtrade argues that Fort Industrial's application for permission to appeal the AER's first decision, which denied the regulatory appeal as being filed out of time, was itself filed out of time and should therefore be dismissed. The AER's first decision was issued on June 26, 2024. Its subsequent decision, denying Fort Industrial's alternative request for a reconsideration, was issued on August 2, 2024. The application for permission to appeal both decisions was filed on August 30, 2024, within one month of the second decision, which is the

time limit prescribed by section 45 of the *Responsible Energy Development Act* and the associated regulations.

[14] This Court has held that the preferable procedure, where there are a number of interlocutory decisions by the AER, is to wait until the final decision is rendered and then appeal the ultimate result: *Fort McKay First Nation v Alberta Energy Regulator*, 2013 ABCA 355 at paras 11-12. That reasoning applies here, where the subject decisions of the AER were closely related and, indeed, considered relief that had been sought in the alternative, and decided within five weeks of each other. It was appropriate that the application for permission to appeal both decisions was filed after the second was decided. The application for permission to appeal was not filed out of time.

Fort Saskatchewan's application to intervene on the application for permission to appeal

[15] Fort Saskatchewan seeks permission to intervene on the application for permission to appeal and, if permission to appeal is granted, to intervene on the appeal itself.

[16] Permission to intervene is rarely granted prior to the granting of permission to appeal, and only in exceptional circumstances: *R v NMP*, 2000 SCC 59 at para 5; *Provident Energy Ltd v Alberta (Utilities Commission)*, 2008 ABCA 316 at para 8. I am not satisfied that there are such circumstances here that warrant Fort Saskatchewan's participation at this stage of the proceedings. The application to intervene on the application for permission to appeal is therefore denied.

[17] Fort Saskatchewan's second application, for intervenor status on the appeal proper, will be addressed following consideration of the application for permission to appeal.

Fort Industrial's application for permission to appeal

[18] Section 45(1) of the *Responsible Energy Development Act* provides for an appeal of decisions of the AER to this Court on a question of jurisdiction or law, with permission of a judge of the court. Several factors are considered: (i) is the issue of general importance; (ii) is the point raised of significance to the decision; (iii) does the appeal have arguable merit; and (iv) will the proposed appeal delay any underlying proceeding?: *Bokenfohr v Pembina Pipeline Corporation*, 2017 ABCA 40 at para 2; *TransAlta Corporation v Alberta Energy Regulator*, 2023 ABCA 172 at para 2.

[19] The weight given to the various factors depends on the circumstances. Generally, the decision is rooted in an overall consideration of whether there is an issue of law of sufficient importance to justify an appeal: *Municipal District of Ranchland No 66 v Alberta Energy Regulator*, 2024 ABCA 274 at para 4, citing *AltaLink Management Ltd v Alberta (Utilities Commission)*, 2022 ABCA 18 at para 13.

[20] Fort Industrial argues the proposed appeal raises important questions of law and/or jurisdiction:

- (a) Did the AER correctly interpret and apply the mandatory notice requirements under the *Pipeline Act Rules of Practice*, Alta Reg 125/2023 and *Directive 056*, and did it err in interpreting “appealable decision” under section 36 of the *Responsible Energy Development Act* in the context of a decision made without mandatory notice having been given?
- (b) Did the AER err in jurisdiction by not reconsidering or reversing the April 2019 decision or finding that it was rendered void *ab initio*, after confirming Chemtrade’s noncompliance with the mandatory notice requirements?
- (c) Did the AER breach principles of natural justice and procedural fairness by refusing to reconsider the April 2019 decision and by precluding landowners from participating in the original amendment process by refusing to direct a hearing?

[21] The core issue on the proposed appeal relates to the AER’s approval of Chemtrade’s pipeline license amendment in 2019, despite the fact that Chemtrade failed to give mandatory notice to impacted landowners or obtain their confirmation of non-objection as required by *Directive 056*, and the manner in which the AER dealt with the later attempts by Fort Industrial to challenge that approval. Fort Industrial says that, in considering the applications for regulatory appeal and reconsideration, the AER failed to adequately address how the acknowledged lack of notice affected the April 2019 decision itself. By allowing the April 2019 decision to stand after its own findings of non-compliance, the AER breached the principles of natural justice. The issues raised, according to Fort Industrial, affect regulatory certainty, the integrity of the AER’s processes, and the rights of landowners across Alberta given the fundamental importance of notice requirements to procedural fairness generally.

[22] Chemtrade characterizes the issues before the AER differently, as discretionary decisions of the AER that focus on narrow issues. It says the first decision addressed only the timelines for appeal, specifically whether Fort Industrial had acted expeditiously in filing its request for a regulatory appeal, and concluded those timelines had not been met and should not be extended. The second decision considered whether Fort Industrial established extraordinary circumstances to warrant reconsidering the April 2019 decision, a discretionary matter under section 42 of the *Responsible Energy Development Act*. The AER exercised its discretion not to reconsider because of the existence of the regulatory appeal mechanisms.

[23] In my view, Chemtrade’s characterization of the matters at issue before the AER and in the proposed appeal is unduly narrow and fails to address the fundamental issue, which is the alleged failure of the AER to address the procedural and substantive matters before it in a meaningful fashion. The introductions to both impugned decisions refer to the AER’s audit of Chemtrade’s applications and state that the audit results were shared with the parties and submissions sought on

how the results impacted the parties' positions and the regulatory appeal process. However, neither decision addresses the substance of those matters and submissions. The decision dismissing the regulatory appeal addresses only the timing of Fort Industrial's request, determines it did not act sufficiently expeditiously after first becoming aware of an issue with the setbacks in June 2022, and declines to exercise the AER's discretion to extend the time to file. The decision does not demonstrate that consideration was given to what, if any, consequences flowed from the failure of Chemtrade to comply with the notice requirements of *Directive 056* and the misleading nature of its application, and the related inability of affected landowners to participate in the application process. The AER's subsequent denial of the reconsideration application was premised solely on the existence of the regulatory appeal process, which Fort Industrial was unable to access because of the finding that it had missed the statutory deadline. Again, the fairness of the process and the consequences of the results of the AER's audit were left unaddressed.

[24] I am satisfied that the proposed appeal raises issues that are of general importance to the regulatory practice of the AER and the rights of landowners and others entitled to notice and participation under the AER's governing legislation and rules. The procedural fairness and natural justice issues are questions of law that are sufficiently important to justify an appeal.

[25] I would frame the issue on appeal as follows: Did the AER breach principles of procedural fairness by failing to provide affected landowners with a meaningful opportunity to challenge the April 2019 decision, after confirming that decision was made without compliance with the AER's mandatory notice requirements?

Fort Saskatchewan's application for intervenor status on the appeal

[26] A single justice may grant permission to intervene and impose conditions on the intervention: *Alberta Rules of Court*, Alta Reg 124/2010, r 14.37(2)(e), 14.58(1). The proposed intervenor must be affected by the outcome of the appeal and show they can offer an expertise or fresh perspective on the subject matter that will be helpful in resolving the appeal: *PricewaterhouseCoopers Inc v Perpetual Energy Inc*, 2020 ABCA 254 at para 20; *Papaschase Indian Band (Descendants of) v Canada (Attorney General)*, 2005 ABCA 320 at para 2. Other relevant factors include whether the intervenor's interests may not be fully protected by the parties and whether the intervention will unduly delay the proceedings or prejudice the rights of the parties: *Pedersen v Alberta*, 2008 ABCA 192 at para 3.

[27] Fort Saskatchewan's materials set out its evidence regarding the impact of the April 2019 decision on the city, including the impact of reclassification of the pipeline on the city's land use planning and decisions and approvals regarding planning and development. Fort Saskatchewan says there are city roads located within the pipeline setback, and yet the required consultations did not occur, nor was Fort Saskatchewan provided with notice of Chemtrade's application. Fort Saskatchewan shares Fort Industrial's concerns with the process followed by the AER, which resulted in a decision that changed the rules applicable to Fort Saskatchewan's planning and approvals without the city's input.

[28] I am satisfied that Fort Saskatchewan has a direct interest in the issues raised in the appeal that differs from that of Fort Industrial, and that the city's interests will not necessarily be protected in its absence. I am also satisfied that the intervention will not cause delay or prejudice or widen the dispute between the parties.

[29] Fort Saskatchewan is granted intervenor status on the appeal.

Conclusion

[30] The application for permission to appeal is granted on the following issue: Did the AER breach principles of procedural fairness by failing to provide affected landowners with a meaningful opportunity to challenge the April 2019 decision, after confirming that decision was made without compliance with the AER's mandatory notice requirements?

[31] Fort Saskatchewan's application to intervene in the application for permission to appeal is denied. However, Fort Saskatchewan is granted permission to intervene in the appeal proper.

Applications heard on June 10, 2026

Reasons filed at Calgary, Alberta
this 23rd day of September, 2026

Strekaf J.A.

Appearances:

K. Wilson, KC
for the Applicants/Respondents Fort Industrial Estates Ltd., Heartland Center I Ltd.
and Heartland Center II Ltd.

P.D. Fitzpatrick
S. Gibbons
G. Wong
for the Respondent Alberta Energy Regulator

J.D. Buhler
K. Lawless
for the Respondent Chemtrade Logistics Inc.

J.A. Agrios, KC
for the Applicant City of Fort Saskatchewan