

SUPREME COURT OF NOVA SCOTIA

Between:

ECOLOGY ACTION CENTRE and NEW BRUNSWICK ANTI-SHALE GAS ALLIANCE, INC.

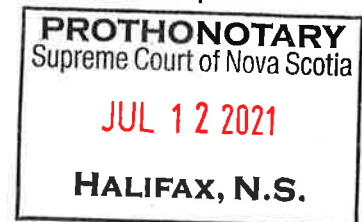
Applicants

and

NOVA SCOTIA DEPARTMENT OF ENVIRONMENT and the MINISTER OF ENVIRONMENT (ALSO KNOWN AS THE MINISTER OF ENVIRONMENT AND CLIMATE CHANGE)

Respondent

NOTICE FOR JUDICIAL REVIEW



To: The Nova Scotia Department of Environment (“Nova Scotia Environment”), the Minister of Environment (“Minister”), the Attorney General of Nova Scotia representing Her Majesty the Queen in right of the Province of Nova Scotia, and Pieridae Energy (Canada) Ltd.

Request for judicial review

The Applicants request judicial review of a decision of The Honourable Keith Irving, MLA, Minister of Environment and Climate Change (the “Decision”) and of the failure or refusal of the Minister to provide a written statement setting out the findings of fact upon which the Decision was based and the reasons for the Decision, within 30 days of the Applicants’ request, or at all.

Decisions to be reviewed

The Decision is dated April 29, 2021 and was made under section 40 of the Nova Scotia *Environment Act*, S.N.S., 1994-95, c. 1 (the “Act”) and subsection 13(1)(b) of the *Environmental Assessment Regulations*, N.S. N.S. Reg. 26/1995, as amended, made under the Act. The

Decision approved, with conditions, a project registered by Pieridae Energy (Canada) Ltd. (“Pieridae”) for environmental assessment under the Act, described as the *Realignment of Marine Drive (Highway 316) Project* (the “Highway Realignment project”). The project is proposed to be built near Goldboro, Nova Scotia.

The Decision was communicated to the Applicants on or about April 29, 2021. Attached to this Notice is a copy of the Decision. On April 30, 2021, the Applicants requested that the Minister provide a written statement of the Decision setting out the findings of fact upon which it is based and the reasons for the Decision, pursuant to subsection 10(4) of the Act. No such written statement was received, and the Applicants received only an email referring them back to the Decision posted on the Nova Scotia Environment website. The Decision does not contain the Minister’s reasons for the Decision or the factual findings upon which the Decision was based. Attached to this Notice is a copy of the Applicants’ request of April 30, 2021 and the May 3, 2021 response from Nova Scotia Environment.

On April 28, 2021, the Court suspended the deadline for filing notices of judicial review under Civil Procedure Rule 7. The suspension was lifted effective June 6, 2021. This Notice is filed within the applicable filing deadlines.

The Applicants

The Applicants are not-for-profit non-governmental environmental groups which are funded from donations received from the public and from their members. They bring this proceeding representing the public interest, and do not have any personal or pecuniary interest in this proceeding.

The Applicant **Ecology Action Centre (EAC)** is a Nova Scotia-based environmental organization incorporated under the laws of Nova Scotia. The EAC was established in 1971 and currently has over 4000 members across the province. The EAC works with its partners to provide current environmental information, promote researched solutions, and act as a watch-dog for the environment. The EAC has participated in numerous provincial and federal environmental assessments including many reviews of onshore and offshore fossil fuel projects. The EAC was an active intervenor and participant in the 1997 review of the Sable Offshore Energy Project proposed near Sable Island National Park Reserve, Nova Scotia and the 2006 review of the Keltic Petrochemicals Inc. LNG and Petrochemical Facility proposed for Goldboro, Nova Scotia. The EAC also participated in the 2014 review of the Goldboro LNG Project and the related 2021 review of the Highway Realignment project, both also proposed for Goldboro.

The Applicant **New Brunswick Anti-Shale Gas Alliance, Inc. (NBASGA)** is an umbrella environmental organization incorporated under the laws of New Brunswick, representing both Anglophone and Francophone groups, of all types, across that province. Its mandates are to ensure unconventional fossil fuels are not extracted in New Brunswick and/or exported to Nova

Scotia or elsewhere, and to promote the move to a clean energy economy in light of the climate emergency. NBASGA has opposed the Goldboro LNG project because of the project's adverse climate impacts within and beyond the Atlantic region, and because New Brunswick shale gas was listed as a source of natural gas to be used in the project. Although there is currently a moratorium on fracking shale gas in New Brunswick, Pieridae still possesses New Brunswick gas leases and the New Brunswick government has indicated it may lift the moratorium under certain conditions. NBASGA also participated in the 2021 review of the Highway Realignment project at the Goldboro LNG site.

Grounds for review

The Applicants seek review on the following grounds:

1. The Minister erred, and acted unreasonably, by unlawfully failing to provide the Applicants with a written statement of the Decision, setting out the findings of fact upon which it is based and the reasons for the Decision, within 30 days of the Applicants' request, contrary to the requirements of section 10(4) of the *Environment Act*;
2. The Minister erred in law and in fact, and acted unreasonably, in making the Decision as he failed to provide an internally coherent rationale within the context of the legal and factual constraints on the Minister when making his Decision under section 40 of the *Environment Act*;
3. The Minister erred in law and in fact, and acted unreasonably, by failing to properly consider the comments received from the Applicants and other participants during the public consultation process, including the comments received from the Applicants concerning greenhouse gas emissions and the risks of carrying out the project in an area already significantly impacted by historical gold mining activity and contaminated by toxic gold mine tailing deposits; and
4. Such further and other grounds as may appear prior to the hearing of this matter.

Orders proposed

The Applicants request the following Orders:

1. An order in the nature of *mandamus* directing the Minister to provide the Applicants with the written statement of the Decision setting out the findings of fact upon which it is based and the reasons for the Decision;
2. An order in the nature of *certiorari* quashing the Decision; and
3. Directing that costs be awarded to the Applicants.

You may participate

You may participate in the judicial review if you file a notice of participation no more than ten days after the day a copy of this notice for judicial review is delivered to you. Filing the notice entitles you to notice of further steps in the judicial review.

Record to be produced

The Applicants foresee no difficulty in obtaining the record, the contents of which should be in the possession of Nova Scotia Environment and/or the Minister's office, and that such record should be compiled and delivered to the Court and to the Applicants within a timeline to be directed by the Court at the hearing of the Motion for Directions.

The record will contain all documents in the possession of Nova Scotia Environment and/or the Minister's Office that were put before the Minister in respect of the Decision, and all documents relating to the Minister's failure to comply with section 10(4) of the *Environment Act*.

Notice to decision-making authority

The Respondent is required by Civil Procedure Rule 7 (Judicial Review and Appeal) to file one of the following no more than five days after the day the decision-making authority is notified of this proceeding by delivery of a copy of this notice for judicial review:

- a complete copy of the record, with copies of separate documents separated by numbered or lettered tabs;
- a statement indicating that the decision-making authority has made arrangements with the Applicants to produce of the record, providing details of those arrangements, and estimating when the return will be ready;
- an undertaking that the decision-making authority will appear on the motion for directions and will seek directions concerning the record; or
- a summary of reasons given orally without a record and your certificate the summary is accurate, if you gave reasons orally and not on record.

If you fail in this regard, a Judge may order costs against you including a requirement that you indemnify each other party for any expenses caused by your failure, such as expenses caused by an adjournment if that is the result.

Stay of proceedings or other interim remedy

The Applicants will not make a motion for stay of the Decision under judicial review.

Filing and delivering documents

Any documents you file with the court must be filed at the office of the Prothonotary at the Law Courts, 1815 Upper Water Street, Halifax Nova Scotia, telephone 902-424-4900.

When you file a document you must immediately deliver a copy of it to each other party entitled to notice, unless the document is part of an *ex parte* motion, the parties agree delivery is not required, or a judge orders it is not required.

Contact information

The Applicants designate the following address:

James Gunvaldsen Klaassen and Danielle Gallant
Ecojustice
520-1801 Hollis St
Halifax, NS B3J 3N4
T: 902-417-1700 – Ext. 642
F: 902-417-1701
E: jgunvaldsenklaassen@ecojustice.ca

The Applicants hereby consent to electronic service, which will be effective if delivered by electronic mail to jgunvaldsenklaassen@ecojustice.ca.

Documents delivered to this address are considered received by the Applicants on delivery. Further contact information is available from the prothonotary.

Motion for date and directions

At 11 a.m. on Thursday August 5, 2021, the Applicants will appear before a Judge in Chambers at The Law Courts, 1815 Upper Water Street, Halifax Nova Scotia, to make a motion for an order giving directions for the judicial review including a date and time for the hearing of it. The judge may make an order or provide directions in your absence if you or your counsel fail to attend, and the court may determine the judicial review without further notice to you.

Signature

Signed on July 12, 2021.



**James Gunvaldsen Klaassen
and Danielle Gallant**
Ecojustice
Counsel for the Applicants

Prothonotary's Certificate

I certify that this notice for judicial review was filed with the court on July 12, 2021.



Prothonotary

Caroline McInnes
Prothonotary



Environment and Climate Change
Office of the Minister

PO Box 442, Halifax, Nova Scotia, Canada B3J 2P8 • Telephone 902-424-3736 • novascotia.ca

File number: 10700-40-57504
40100-30-314

April 29, 2021

Barb Bryden, Environmental Manager
Pieridae Energy (Canada) Ltd.
1718 Argyle Street, Suite 730
Halifax, Nova Scotia
B3J 3N6

Dear Barb Bryden:

Re: **Environmental Assessment – Pieridae Energy (Canada) Ltd.
Realignment of Marine Drive (Highway 316), Guysborough County, Nova Scotia**

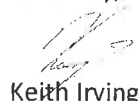
The environmental assessment of the proposed Realignment of Marine Drive (Highway 316) has been completed.

This is to advise that I have approved the above project in accordance with Section 40 of the Nova Scotia *Environment Act*, S.N.S., 1994-95 and subsection 13(1)(b) of the Environmental Assessment Regulations, N.S. Reg. 348/2008, made under the Act. Following a review of the information provided by Pieridae Energy (Canada) Ltd., and the information provided during the government and public consultation of the environmental assessment, I am satisfied that any adverse effects or significant environmental effects of the undertaking can be adequately mitigated through compliance with the attached terms and conditions.

This approval is subject to other approvals required by statute or regulation, including but not limited to, approval under Part V of the *Environment Act* (Approvals and Certificates section).

If you have any questions regarding the approval of this project, please contact Helen MacPhail, Supervisor, Environmental Assessment Branch, at (902) 483-2696 or via email at Helen.MacPhail@novascotia.ca.

Sincerely,


Keith Irving, MLA
Minister of Environment and Climate Change

Encl.

c: Helen MacPhail

James Gunvaldsen Klaassen

From: Environment Assessment Web Account <EA@novascotia.ca>
Sent: Monday, May 3, 2021 8:48 AM
To: Gurprasad Gurumurthy; MacPhail, Helen; Minister, Env
Cc: James Gunvaldsen Klaassen; kenpat@ns.sympatico.ca; Marla MacLeod; Danielle Gallant; Emily Valois; mark butler; gretchenf@sierraclub.ca
Subject: RE: URGENT: April 29, 2021 Decision of the Minister of Environment and Climate Change

Good morning Gurprasad,

The Minister's written statement on the decision can be found on our website at:

<https://www.novascotia.ca/nse/ea/Realignment-of-Marine-Drive-Project/>

Regards,
EA Branch

From: Gurprasad Gurumurthy <gurprasad.gurumurthy@ecologyaction.ca>
Sent: April 30, 2021 12:25 PM
To: MacPhail, Helen <Helen.MacPhail@novascotia.ca>; Environment Assessment Web Account <EA@novascotia.ca>; Minister, Env <Minister.Environment@novascotia.ca>; Environment Assessment Web Account <EA@novascotia.ca>
Cc: James Gunvaldsen Klaassen <jgunvaldsenklaassen@ecojustice.ca>; kenpat@ns.sympatico.ca; Marla MacLeod <marla.macleod@ecologyaction.ca>; Danielle Gallant <dgallant@ecojustice.ca>; Emily Valois <evalois@ecojustice.ca>; mark butler <novamarkbutler@gmail.com>; gretchenf@sierraclub.ca
Subject: URGENT: April 29, 2021 Decision of the Minister of Environment and Climate Change

** EXTERNAL EMAIL / COURRIEL EXTERNE **

Exercise caution when opening attachments or clicking on links / Faites preuve de prudence si vous ouvrez une pièce jointe ou cliquez sur un lien

To,

Keith Irving, Minister of Environment and Climate Change, Nova Scotia; Helen McPhail, Supervisor, Environmental Assessments Branch, Nova Scotia

**April 29, 2021 Decision of the Minister of Environment and Climate Change
Realignment of Marine Drive (Highway 316), Guysborough County, Nova Scotia
File number: 10700-40-57504 40100-30-314**

Pursuant to subsection 10(4) of the Environment Act, we request that the Minister provide us with a written statement of the Minister's April 29, 2021 decision in the above-captioned matter, setting out the findings of fact upon which it is based and the reasons for the decision.

Submitted by and on behalf of the Ecology Action Centre, The New Brunswick Anti-Shale Gas Alliance, and Sierra Club Canada Foundation.

Sincerely,

Gurprasad G

Gurprasad Gurumurthy, E.I.T., E.Pt.
Energy Coordinator (Renewables & Electricity)

K'ijipuktuk, Unceded Mi'kmaw Territory
2705 Fern Lane, Halifax, NS, B3K 4L3
tel. 902.429.5287
ecologyaction.ca

Ecology Action Centre



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The Ecology Action Centre is monitoring the outbreak of COVID-19 and is following the recommendations and guidance from the Chief Public Health Officer. For accurate, up-to-date information on novel coronavirus, including prevention tips and details on Nova Scotia's preparation, visit novascotia.ca/coronavirus