

In the Court of Appeal of Alberta

Citation: Fort McMurray 468 First Nation v Alberta Energy Regulator, 2025 ABCA 242

Date: 20250630

Docket: 2501-0096AC

Registry: Calgary

Between:

Fort McMurray 468 First Nation

Applicant

- and -

Alberta Energy Regulator and AdhMor Ltd.

Respondents

**Oral Reasons for Decision of
The Honourable Justice Jolaine Antonio**

Application for Permission to Appeal

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[1] The Applicant, Fort McMurray 468 First Nation, seeks permission to appeal a decision of the Alberta Energy Regulator (AER) dated March 4, 2025, denying the Applicants Requests for Regulatory Appeal Nos. 1943588 and 1948977. The Applicant and the AER made written and oral submissions on this application. The Respondent AdhMor Ltd. declined to make submissions on this application but has indicated by letter that it reserves its right to participate in the appeal, should permission be granted.

[2] Pursuant to section 45(1) of the *REDA*, this Court may grant permission to appeal from a decision of the AER on a question of law or jurisdiction. The Court considers the following factors when determining whether to grant permission to appeal:

1. Whether the issues are of general importance;
2. Whether the issues are of significance to the decision itself;
3. Whether the appeal has arguable merit; and
4. Whether the appeal will unduly hinder the progress of the underlying proceedings: *Ranchland (Municipal District No 66) v Alberta Energy Regulator*, 2024 ABCA 309 at para 3.

[3] Having considered all the materials and submissions before me, and applying the stated factors, I am satisfied it is appropriate to grant leave to appeal, and I so order.

[4] Perhaps due to the limited role it can play as a tribunal respondent, the AER did not assert the underlying proceedings would be unduly hindered if the appeal proceeds.

[5] For purposes of a permission application, the facts and issues before me sufficiently distinguish this case from some authorities on which the respondent relies with respect to the nature of the alleged errors. I am satisfied the proposed appeal would contain issues of law over which this Court has jurisdiction.

[6] The three proposed grounds of appeal include issues regarding the interpretation and legal content of the “direct and adversely affected” test and the role of the Ministerial Order 53/2014. These issues are of sufficient importance and sufficient merit to warrant hearing by a panel of this Court. Since this matter will be heard by a panel, it would be inappropriate for me to say more.

[7] I offer two gentle reminders:

- a) a reminder to the applicants that the Court of Appeal has jurisdiction on questions of law only;
- b) a reminder to the AER that it is and will continue to be bound by the constraints imposed by *Ontario (Energy Board) v Ontario Power Generation Inc*, 2015 SCC 44, [2015] 2 SCR 147.

[8] For clarity, the respondent AdhMor Ltd. retains its ability to participate in the appeal.

Application heard on May 22, 2025

Reasons filed at Calgary, Alberta
this 30th day of June, 2025

Antonio J.A.

Appearances:

K. Gunn
D. Korell (no appearance)
C. Stockwell
 for the Applicant

P.D. Fitzpatrick
G.A. Wong
K.W. Gibson
 for the Respondent, Alberta Energy Regulator

M.K. Ignasiak, KC (no appearance)
T. McDonough (no appearance)
 for the Respondent, AdhMor Ltd.