Energy Resource Appeal Tribunal

Citation: *Jessica Greenlees v. BC Energy Regulator*, 2026 BCERAT 2

Decision No.: ERAT-ERA-25-A001(a)

Decision Date: 2026-02-20

Method of Hearing: Conducted by way of written submissions concluding on May 29, 2025

Decision Type: Summary Dismissal Decision

Panel: Subodh Chandra, Panel Chair

Appealed Under: *Energy Resource Activities Act*, SBC 2008, c. 36

Between:

Jessica Greenlees

Appellant

And:

BC Energy Regulator

Respondent

And:

Ovintiv Canada ULC

Third Party

Appearing on Behalf of the Parties:

For the Appellant:	Self-represented
For the Respondent:	Jason Steele, Counsel
For the Third Party:	Lars Olthafer, Counsel

SUMMARY DISMISSAL DECISION

INTRODUCTION

[1] On January 21, 2025, the British Columbia Energy Regulator (the "Respondent") approved application #100119726 (the "Application") and issued Ovintiv Canada ULC (the "Third Party") a permit to construct new pipelines (the "Permit").

[2] The Permit allows the Third Party to construct and operate new pipelines (the "Pipelines") that would connect an existing wellsite (the "Old Site") to a new proposed wellsite (the "New Site").

[3] The Old Site is located on an adjacent property north of the Appellant's land. The New Site is proposed to be located on a property south of Appellant's land. Currently, there are three pipelines that run parallel to the proposed pipelines allowed by the Permit that would go through the Appellant's land. There is no dispute that the Old Site and existing pipelines that traverse the appellant's lands were appropriately authorized and constructed.

[4] The Third Party has not yet applied for a permit for the construction of the New Site from the Respondent, which must authorize the construction of the New Site. The Third Party intends to file a separate application for a permit for the construction of the New Site.

[5] The Appellant appeals the Permit pursuant to s. 72 of the *Energy Resource Activities Act*, SBC 2008, c. 36 (the "*Act*") and asks that the Permit be varied so that the Third Party is required to amend their plans for the New Site construction, which would reroute the path of the Pipelines. The Third Party has brought this application for a summary dismissal of the appeal.

BACKGROUND

The History:

[6] On March 26, 2024, the Third Party sent information about the Pipelines to the Appellant via express mail, including a notification package and an invitation to consult, as required under the Act. The letter provided a general description of the Pipelines, as well as information regarding flaring, odors, noise, lighting, and traffic associated with the construction and operation of the Pipelines.

[7] On April 14, 2024, the Third Party received a response from the Appellant. The Appellant indicated she would consent to the Third Party installing new pipelines through her property **only if** the location of the New Site was changed (emphasis added). She

indicated that she was not agreeable to the location of the New Site although she understood the New Site was not going to be on her property in any event.

[8] On April 15, 2024, the Third Party submitted the Appellant's response letter to the Respondent.

[9] On June 11, 2024, the Third Party hosted an open house which provided landowners an opportunity to discuss the Pipelines with subject matter experts.

[10] On August 23, 2024, the Third Party sent a letter to the Appellant in response to the Appellant's concerns related to the New Site, such as: sour gas development and proximity to her residence, emergency response plan/safety, process safety, pipeline integrity, traffic, property value, noise, lighting, and road maintenance.

[11] On September 3, 2024, the Third Party sent a letter to the Appellant in response to the Appellant's concerns about the Pipelines and stated the following:

> Ovintiv assessed existing pipelines parallelling the proposed right-of-way and determined new pipelines are required and will parallel the existing rights-of-way to reduce the overall environmental impact.

[12] On October 9, 2024, the Third Party applied to the Respondent for a permit to construct the Pipelines under s. 24 of the *Act*.

[13] On January 21, 2025, the Respondent issued the Permit to the Third Party. On February 5, 2025, the Appellant appealed the issuance of the Permit to the Energy Resource Appeal Tribunal (the "Tribunal"). On April 29, 2025, the Third Party applied to have the appeal of the permit summarily dismissed.

The Summary Dismissal Application:

[14] The Third Party has brought this application for summary dismissal under the *Administrative Tribunals Act*, SBC 2004, c. 45 (the "*ATA*"), and Rule 18(d) of the *Energy Resource Appeal Tribunal Rules*. The Third Party submits:

> (a) Pursuant to s. 31(1)(a) of the *ATA*, the Appeal primarily relates to concerns that are unrelated to the decision by the Respondent about the Permit and, therefore, is beyond the jurisdiction of the Tribunal;
>
> (b) Pursuant to s. 31(1)(f) of the *ATA*, the Appeal does not have a reasonable prospect of success because:
>
> (i) the Appeal is beyond the jurisdiction of the Tribunal;
>
> (ii) the Respondent made the Permit decision with due regard to the submissions made by the Appellant and the Third Party, and any Pipelines related issues raised by the Appellant on Appeal were not raised at the time of the Permit decision.

(c) Pursuant to s. 31(1)(a) of the *ATA*, the Appeal is beyond the jurisdiction of the Tribunal because the Tribunal does not have jurisdiction to grant the remedy requested by the Appellant.

ISSUES

1. Is the appeal related to the decision made by the Respondent and therefore within the jurisdiction of the Tribunal?
2. Does the appeal have a reasonable prospect of success under s. 31(1)(f) of the *ATA*?
3. Is the remedy sought by the Appellant beyond the jurisdiction of the Tribunal?

THE LEGISLATIVE CONTEXT

[15] Pursuant to section 20 of the *Act* and section 31(1) of the *ATA*, the Tribunal may dismiss an application, including an appeal filed pursuant to subsection 72(2) of the *Act*, if it determines that any of the following apply:

(a) the application is not within the jurisdiction of the tribunal;

(b) the application was not filed within the applicable time limit;

(c) the application is frivolous, vexatious or trivial or gives rise to an abuse of process;

(d) the application was made in bad faith or filed for an improper purpose or motive;

(e) the applicant failed to diligently pursue the application or failed to comply with an order of the tribunal;

(f) there is no reasonable prospect the application will succeed; or

(g) the substance of the application has been appropriately dealt with in another proceeding.

SUBMISSIONS OF THE PARTIES

The Third Party's Submissions:

[16] The Third Party submits that the concerns raised by the Appellant do not relate to the Permit decision, instead relating primarily to the New Site, which has not yet been approved by the Respondent.

[17] The Third Party submits that in this appeal, the Appellant stated the Respondent failed to properly consider "the fact that I am not okay with the [New Site] that is to be pipelined" and, as a result, "the location of the lease in reference to our home is not safe." The Third Party submits that these concerns about the location of the New Site form the basis of the appeal.

[18] The Third Party argues the concerns, as stated by the Appellant, that form the basis of the appeal are primarily unrelated to the Permit decision. Therefore, the appeal does not fall within the scope of the Tribunal's jurisdiction and must be dismissed pursuant to s. 31(1)(a) of the *ATA*. The Third Party further submits that given that the appeal only raises concerns that are beyond the jurisdiction of the Tribunal and, therefore, it has no reasonable prospect of success and must also be dismissed pursuant to s. 31(1)(f) of the *ATA*.

[19] The Third Party states the appeal also must be summarily dismissed pursuant to s. 31(1)(f) of the *ATA* as there are two additional reasons the appeal has no reasonable prospect for success. Firstly, they submit the Respondent gave "due regard" to the Appellant's submissions and the Third Party's Consultation & Notice Report prior to issuing the Permit and, consequently, the appeal is bound to fail as per s. 72(2) of the *Act*. Secondly, they submit that the Appellant raises new concerns in the appeal that were not brought to the attention of the Respondent. Therefore, the Third Party argues, the Respondent cannot be faulted for not giving due regard to concerns that were not raised before it. Additionally, the Third Party submits that the Respondent has previously addressed some concerns the Appellant raised during the Permit decision and which she now raises again in this appeal.

[20] The Third Party also submits that the order the Appellant seeks from the Tribunal, "to move the [New Site] which would reroute or change the pipeline," is not within the jurisdiction of the Tribunal. The Third Party argues the Tribunal lacks the jurisdiction to order the Respondent and the Third Party to move the location of the New Site as a remedy for this appeal and, as a consequence, the appeal ought to be dismissed under s. 31(1)(a) of the *ATA*.

The Respondent's Submissions:

[21] The Respondent submits the Tribunal's jurisdiction in this appeal is limited to deciding whether the Respondent's decision to issue the Permit was made with due regard to the "previously stated concerns of the landowner."

[22] The Respondent submits that the concerns previously raised by the Appellant during the consultation and notification process leading to the issuance of the Permit only pertained to the location of the New Site. The Respondent further argues the Appellant did not raise any concerns related to the Third Party's application to construct the Pipeline.

The Respondent submits it gave "due regard" to the Appellant's written submissions made during the consultation phase of the permitting process.

[23] The Respondent further submits that the issues raised by the Appellant in this appeal are not matters she previously raised, and as such they are not proper grounds for an appeal of the Permit.

[24] Lastly, the Respondent submits the Appellant will be provided with a separate opportunity to outline any concerns she may have during the consultation on the application for a permit for the New Site. The Respondent argues that any concerns expressed by the Appellant with respect to the New Site permit application will be considered by the Respondent before determining whether to approve the activity.

The Appellant's Submissions:

[25] The Appellant submits she has previously made both the Third Party and the Respondent aware of her concerns with both the Pipelines and the New Site.

[26] The Appellant submits she informed the Third Party she does not want a pipeline on her land, does not want to lose use of more of her land, and does not feel it is safe to have a pipeline so close to her home.

DISCUSSION AND ANALYSIS

Is the appeal related to the decision made by the Respondent and therefore within the jurisdiction of the Tribunal?

[27] The onus is on the Third Party, as the party applying to summarily dismiss the appeal, to establish, on the balance of probabilities, that the appeal is not within the jurisdiction of the Tribunal for the reason that the Respondent's decision is unrelated to the appeal filed by the Appellant.

[28] The Oil and Gas Appeal Tribunal, the precursor of the Tribunal, stated at paragraph 47 of *Olaf and Frances Jorgensen v. Oil and Gas Commission*, 2018 BCOGAT 1 (CanLII) [*Olaf*]:

> Regarding the test to be met in an application for summary dismissal, the Panel agrees with the Tribunal's findings in the *Previous Appeal* and *Strasky*, discussed above. Specifically, **summary dismissal of an appeal based on a lack of jurisdiction should only be done in "clear cases"**. There are several reasons for this. First, summary dismissal takes away an appellant's opportunity to have a full hearing of the merits of their appeal. Also, summary dismissal proceedings are preliminary in nature, and do not provide the parties or the Tribunal with an opportunity to consider the implications of different interpretations of the legislation in the

> context of full submissions on the facts and the law. Evidence presented at a full hearing on the merits may be helpful in understanding the consequences of different interpretations. Furthermore, one of the reasons for the existence of an administrative appeal process is to provide a way to resolve disputes that is more accessible than the court process, especially for self-represented parties, as is often the case with landowners appealing to the Tribunal. The threshold for summary dismissal of an appeal must be high to ensure that appellants have an opportunity to be heard on matters that are, arguably, within the Tribunal's jurisdiction (emphasis added).

[29] Although this Panel is not bound by the other tribunal decisions, I note that the abovementioned *Olaf* decision is publicly available and I find the reasoning set out in it to be persuasive. I adopt the above-noted test that a summary dismissal of an appeal based on lack of jurisdiction should only be done in 'clear cases' and the threshold for such a dismissal must be high.

[30] The Third Party submits that the Respondent's decision about the Permit was only about the Pipelines and was not about the New Site. The Third Party argues that the Appellant's current appeal, in contrast, is not about the Pipelines and is only about the location of the New Site.

[31] If the Third Party and the Respondent are correct in their assertions that the subject matter of this appeal was only about the New Site, and not about the Pipelines, then the appeal would be outside the jurisdiction of the Tribunal for being unrelated to the decision that was made by the Respondent. However, I find that the Third Party and the Respondent are not correct on this point, and that the appeal pertains to both the Pipelines and to the New Site.

[32] It is clear to me that the Appellant had clearly communicated to the Third Party, and her conditional position was clearly in front of the Respondent as well, that she would **only** agree to the construction of the Pipelines **if** the New Site's location were moved.

[33] In her Notice of Appeal, the Appellant, in setting out what the decision-maker failed to properly consider, states:

> The fact that I am not okay with the well site that is to be **pipelined** too. I do not accept the risk involved to my family having a **pipeline** and wellsite so close to our home and pasture. They also failed to consider the loss of the forested land and the fact we will not be able to use the land while they are pipelining (emphasis added).

[34] I find the Appellant's statement in her Notice of Appeal addresses both the Pipelines and the location of the New Site. As the appealed Permit represents the Respondent's decision to allow for the construction of the Pipelines, I find the Appellant's grounds of appeal relate to the Respondent's decision. Consequently, I dismiss the Third

Party's application to summarily dismiss the appeal on the grounds that the appeal is not related to the Permit decision.

Does the appeal have a reasonable prospect of success under s. 31(1)(f) of the ATA?

[35] The Third Party argues the appeal does not have a reasonable prospect of success for two reasons: the appeal is beyond the Tribunal's jurisdiction, and the Respondent made the Permit decision with due regard to the Appellant's submissions. I will deal with each of these arguments in turn.

s. 31(1)(f) – beyond the jurisdiction:

[36] The Third Party submits that the appeal is beyond the jurisdiction of the Tribunal because it is bound to fail and has no reasonable prospect of success as the appeal is not about the Permit decision. Hence, they submit that the appeal ought to be dismissed pursuant to s. 31(1)(f) of *ATA*.

[37] This submission is similar to the submissions made by the Third Party under s. 31(1)(a) of *ATA* about the jurisdiction of the Tribunal by submitting that the appeal has no reasonable prospect of success because it is beyond the jurisdiction of the Tribunal.

[38] The reasons I have provided for my determination that this appeal is within the jurisdiction of the Tribunal under section 31(1)(a) of the *ATA* on the basis the grounds of appeal relate to the Respondent's decision are equally applicable here.

[39] The Third Party's application to summarily dismiss this appeal on the grounds the appeal does not have a reasonable prospect of success because it is beyond the jurisdiction of the Tribunal is dismissed.

s. 31(1)(f) – Permit decision made with 'due regard':

[40] The Third Party submits that the appeal should be summarily dismissed because it does not have a reasonable prospect of success, as the Respondent made the Permit decision with 'due regard' to all of the considerations that it is required to consider under the *Act*, including the submissions made by the Appellant.

[41] The Respondent also submits that as the Permit decision was made with due regard, the Appellant's appeal ought to be summarily dismissed.

[42] A determination about whether the Respondent did in fact make the Permit decision with due regard will be determinative of the appeal. I find it is inappropriate for the Panel to engage in such analysis for the determination of a summary dismissal application under the *ATA* provisions. The position of the Third Party and Respondent is that the appeal should be dismissed as the Permit was issued after the Respondent assessed the statutorily required factors. This determination, as stated above, is a central issue within this appeal. Any assessment of this central issue within an application to summarily dismiss an appeal must be much narrower than what would occur within the

hearing of this issue on its merits. The question I must determine in this application is whether it is clear that the appeal is bound to fail and has no reasonable prospect of success.

[43] For the reasons stated in the above analysis, I have determined that the appeal is not bound to fail nor that it has 'no reasonable prospect of success.' I find that the concerns raised by the Appellant in this appeal are not new concerns that were not raised previously. On the contrary, she specifically raised her concerns about the Pipelines going through her property in order for it to be connected to the New Site. The appeal ought to be heard and determined on its merits, allowing the Tribunal to decide if the Respondent gave due regard to the Appellant's concerns, after a full hearing of the matter. I specifically find that, in these circumstances, a determination about whether the Permit decision was made with due regard is not a proper ground on which to summarily dismiss an appeal on the basis that it is bound to fail under s. 31(1)(f) of the *ATA*.

[44] Hence, the Third Party's application for a summary dismissal, under s. 31(1)(f) of *ATA*, on the basis that the appeal does not have a reasonable prospect of success, is dismissed.

Is the remedy sought by the Appellant beyond the jurisdiction of the Tribunal?

[45] The Tribunal noted in its decision of *Dejour Energy (Alberta) Ltd. v. Oil and Gas Commission*, 2021 BCOGAT 2 (CanLII) [*Dejour*], at para 18:

> The question of jurisdiction also requires that [the Tribunal] consider what remedy the Appellant is seeking on appeal. It is not enough that the Order is appealable; the Appellant must also be asking the Tribunal for a remedy that it is capable of giving, in order for the appeal to be within the Tribunal's jurisdiction.

[46] I note that the abovementioned *Dejour* decision is publicly available and I adopt the above reasoning from this decision for the purposes of this summary dismissal application.

[47] The remedy the Appellant seeks in this appeal is "to move the proposed well site which would reroute or change the pipeline."

[48] Section 72(6) of the *Act* provides the remedies that the Tribunal may issue for an appeal filed pursuant to section 72:

> (a) confirm, vary, or rescind the decision made under section 71 or the determination, or
>
> (b) send the matter back, with directions, to the review official who made the decision or to the person who made the determination, as applicable.

[49] I agree with the Third Party that if the Appellant was only seeking the remedy of relocating the New Site, the Tribunal would not have the jurisdiction to grant that remedy, as the location of the New Site was not a decision made by the Respondent in issuing the Permit.

[50] Based on the information before me, I find the grounds of appeal are not limited in the manner suggested by the Third Party. I previously found the Appellant's statement in her Notice of Appeal addresses both the Pipelines and the location of the New Site. As the appealed Permit represents the Respondent's decision to allow for the construction of the Pipelines, I find the Appellant's grounds of appeal relate to the Respondent's decision.

[51] The location of the New Site and the location of the Pipelines are inextricably intertwined. The Pipelines must lead to the New Site, and the New Site must be located where the Pipelines lead. The Appellant's grounds of appeal are not limited to the location of the New Site and expressly include rerouting or changing the Pipelines as remedy sought in this appeal.

[52] Were the argument of the Third Party accepted on this point, the Appellant would lose her right to appeal the Respondent's decision to authorize the presence and location of the Pipelines. The authorization of the presence and location of the New Site was not a decision made by the Respondent, but it is a decision, as attested to by the Respondent and the Third Party, the Respondent must make if the Third Party wants to build and operate the New Site.

[53] Any decision regarding the New Site will be made subject to the *Act*, including the appeal rights therein. However, a decision of the Respondent regarding the New Site does not need to include any authorization of the presence or location of the Pipelines, as these have been authorized by the Permit. Any appeal of a thus-far-hypothetical decision regarding the New Site would not allow for the appeal of the presence or location of the Pipelines as they would not be the subject matter of the Respondent's decision about the New Site, unless they were specifically incorporated into that decision.

[54] The result of this situation is that the only available opportunity for the Appellant to dispute the Respondent's authorization of the presence and location of the Pipelines is by appealing the Permit. The Appellant did so. I find the Appellant understands the linked nature of the location of the Pipelines and the New Site. Her understanding of the connection between the New Site and the Pipelines does not allow for any decision on the presence or location of the New Site to be brought into this appeal. Similarly, however, the Appellant's understanding does not limit her right to appeal the Respondent's decision authorizing the presence and location of the Pipelines. As set out above, I find she has done so.

[55] I find the Third Party's interpretation of the Appellant's grounds of appeal to be overly narrow and not supported by a plain and logical reading of the Notice of Appeal and I reject this interpretation.

[56] I find the remedy the Appellant seeks in this appeal, "to move the proposed well site which would reroute or change the pipeline," to be responsive to, in part if not in whole, the decisions made by the Respondent in issuing the Permit. As such, the remedial options the Tribunal is empowered to impose under section 72(6) of the *Act* are available in these circumstances.

[57] The Third Party's application for a summary dismissal of the appeal, under s. 31(1)(a) of *ATA* and on the basis that the Tribunal does not have the jurisdiction to grant the requested remedy, is dismissed.

DECISION

[58] In reaching this decision, I have considered all of the parties' submissions and the relevant and admissible evidence, whether specifically referenced in my reasons or not.

[59] For all the above stated reasons, the Third Party's application to summarily dismiss the appeal is dismissed.

"Subodh Chandra"

Subodh Chandra, Panel Chair
Energy Resource Appeal Tribunal