Federal Court  Cour fédérale

Date: 20231218

Docket: 23-T-102

Citation: 2023 FC 1721

Ottawa, Ontario, December 18, 2023

PRESENT: The Honourable Mr. Justice Régimbald

BETWEEN:

CITIZENS FOR MY SEA TO SKY

Applicant

and

MINISTER OF ENVIRONMENT AND CLIMATE CHANGE, ATTORNEY GENERAL OF CANADA, WOODFIBRE LNG

Respondents

ORDER AND REASONS

I. Overview

[1] The Applicant "Citizens for my Sea to Sky" [the Applicant] seeks an extension of time to commence an application for judicial review of a decision by the Minister of Environment and Climate Change [Minister] to issue an Amended Decision Statement [ADS] in relation to the

construction and operation of a liquefied natural gas facility located 7 km southwest of Squamish, British Columbia, on the northwestern shoreline of Howe Sound [the Project].

[2] For the reasons below, I am not satisfied that it is in the interests of justice to grant an extension of time. The motion for an extension of time to commence an application for judicial review is dismissed.

II. Factual background

[3] Woodfibre Management Ltd. [Woodfibre] is a Canadian company managing the Project. Woodfibre was granted federal, provincial, municipal and Squamish Nation approvals for the development of the Project.

[4] The Applicant is an environmental organization. It has been involved in multiple aspects of the environmental assessment and amendment process regarding the Project.

[5] The permitting process for the Project was initiated in 2012. On March 17, 2016, the then Federal Minister of Environment issued a Decision Statement [DS] setting out environmental conditions for the Project. On March 7, 2018, the DS was amended to reflect changes to the Project's cooling system.

[6] On June 7, 2022, Woodfibre submitted an application for additional amendments to the DS. In November 2022, the Impact Assessment Agency of Canada [the IAAC] issued a Draft

Analysis of Proposed Changes to the Project responding to the proposal in the application [Proposed Changes]. A public consultation followed.

[7] The Applicant was notified of the Proposed Changes on November 18, 2022. Having been involved in the Project since 2013, the Applicant sent a comprehensive submission to the Minister, on January 30, 2023, responding to and suggesting a rejection of the Proposed Changes.

[8] On August 4, 2023, the Minister issued the ADS, making amendments to the pre-existing DS conditions, including its conditions 3.8 and 6.4 relating to the protection of marine mammals and water quality and sediment, respectively. The approved amendments constitute the ADS that would be subject to the proposed application for judicial review.

[9] The deadline to apply for judicial review under subsection 18.1(2) of the *Federal Courts Act*, RSC 1985, c. F-7, was September 5, 2023.

[10] On August 28, 2023, after weeks of work in attempting to find legal representation, the Applicant, through counsel, contacted the Attorney General of Canada to inform them that it intended to file an application for judicial review of the August 4, 2023, ADS and that it would need an extension of time to September 18, 2023, to do so. The Applicant, again through counsel, also sent an e-mail to Woodfibre's public e-mail contact stating that it intended to file an application for judicial review.

[11] On October 12, 2023, the Applicant filed its motion record for an extension of time to file a notice of application for judicial review.

[12] The motion record was served on the Attorney General of Canada on October 13, 2023, and on Woodfibre on October 16, 2023.

III. Issues

[13] The issue is whether the Applicant meets the test for an extension of time to file its proposed notice of application for judicial review.

IV. Analysis

A. *The Principles applicable to an extension of time*

[14] In *Thompson v Canada (Attorney General)*, 2018 FCA 212 [*Thompson*] at paragraph 5 (see also *Canada (Attorney General) v Larkman*, 2012 FCA 204 at para 62 [*Larkman*]; *Grenier c. Canada (Procureur général)*, 2023 CAF 186; *Gagnon v Canadian Association of Professional Employees*, 2023 FCA 59), the Court of Appeal established the four factors that the Court must consider when determining whether an extension of time should be granted:

a) Did the moving party have a continuing intention to pursue the judicial review application?
b) Does the moving party have a reasonable explanation for the delay?
c) Is there some potential merit to the application for judicial review?
d) Is there prejudice to the other party from the delay?

[15] It is not necessary to satisfy each of the four criteria, nor does the criteria constitute an exhaustive list of questions that may be relevant in a given case. Instead, the Court must consider each factor and decide whether, on balance, the interests of justice would be served by granting the extension of time (*Thompson* at para 6; *Larkman* at para 62; *Heddle Marine Service (NL) Inc. v Kydy Sea (Ship)*, 2019 FC 1140; *Canada (Attorney General) v Hennelly*, 1999 CanLII 8190 (FCA)).

[16] As noted in *Larkman*, "[t]he need for finality and certainty underlies the thirty-day deadline. When the thirty-day deadline expires and no judicial review has been launched against a decision …, parties ought to be able to proceed on the basis that the decision … will stand." Further, the Court of Appeal stated that "[f]inality and certainty must form part of our assessment of the interests of justice" (at para 87).

[17] Similarly, in *Canada v Berhad*, 2005 FCA 267 at paragraph 60, the Court of Appeal highlighted that the 30-day deadline to challenge administrative decisions is "not whimsical." Rather, "[i]t exists in the public interest, in order to bring finality to administrative decisions so as to ensure their effective implementation without delay and to provide security to those who comply with the decision or enforce compliance…."

[18] In the end, however, the overriding consideration is that justice be done between the parties (*Alberta v Canada (Citizenship and Immigration)*, 2018 FCA 83 at para 45; see also *Larkman* at para 85; *Peters v Peters First Nation*, 2023 FC 399 at para 50).

a) Did the Applicant have a continuing intention to pursue the application for judicial review?

[19] The parties disagree on the evidence filed by the Applicant in relation to its continuing intention to pursue the application for judicial review. Following a motion by the Applicant for leave of the Court to file reply evidence, the Applicant has filed its entire correspondence between the parties.

[20] In an affidavit sworn by Tracey Saxby, the Executive Director of the Applicant [the Executive Director], Ms. Saxby notes that the Applicant is a people-powered organization founded in 2014 in response to the Woodfibre Project and its associated pipelines and tankers. The Applicant has been involved in the matter since 2013 through research, advocacy, raising public awareness, government engagement and participation in the environmental review process.

[21] The Executive Director admits having learned of the ADS on August 4, 2023. However, she was on medical leave, and had sought reassurance from the Regional advisor of the Minister, on June 9, 2023, that the ADS was likely to be issued only in September/October 2023. The Executive Director also attests to having sought legal representation to file a notice of application for judicial review as soon as possible thereafter. Counsel was eventually retained, after much effort to find an available one, on August 25, 2023.

[22] The evidence adduced by the Applicant in support of their motion demonstrates a continuing intention to pursue the application.

[23] This factor therefore favours the granting of the motion for an extension of time.

b) Does the Applicant have a reasonable explanation for the delay?

[24] As stated above, on August 28, 2023, the Applicant contacted the Attorney General of Canada [the AGC] and Woodfibre to inform them that it intended to file a notice of application for judicial review of the ADS decision issued on August 4, 2023. To the AGC only, the Applicant also stated that it would need an extension to September 18, 2023, to file the application.

[25] The motion record for an extension of time was eventually filed on October 12, 2023, served on the AGC on October 13, and on Woodfibre on October 16, 2023.

[26] The Applicant therefore filed its motion record 45 days after its August 28 initial communication, and 37 days after the deadline to file the notice of application for judicial review, which was set for September 5, 2023.

[27] In their motion record, the Applicant asserts that on August 4, 2023, following the issuance of the decision, it began searching for legal counsel to file the application. On August 25, 2023, the Applicant retained legal counsel. As discussed, on August 28, 2023, counsel for the Applicant communicated with the Respondents.

[28] The correspondence that followed, included in the Applicant's reply evidence but also in the motion record of the Respondent AGC, demonstrates that the Applicant had communications with counsel for the AGC, and copying Woodfibre's public e-mail contact, between August 31,

2023, and September 4, 2023. In those communications, the Applicant's counsel informs the Respondents that it intends to present a motion for an extension of time to the Court *ex parte*, but ultimately decides not to do so. In the meantime, on September 1, 2023, counsel for the AGC had sent a letter to counsel for the Applicant outlining AGC's concerns.

[29] On September 8, the Applicant's counsel sent an e-mail to the Respondents and attached a letter in response to the AGC's letter of September 1, 2023. In that e-mail, counsel for the Applicant stated that he "enclose[d] a fulsome response outlining not only the basis for the judicial review but the application for an extension of time to file the judicial review materials."

[30] On September 13, 2023, counsel for the AGC responded to the Applicant's counsel's letter dated September 8, 2023.

[31] On September 29, 2023, the Applicant's counsel sent an e-mail to the AGC (a wrong e-mail address was used for Woodfibre) stating that they were "in the process of putting together our application package for the extension of time". On October 3, there was an exchange of e-mails between counsel for the AGC and counsel for the Applicant in relation to the process that the Applicant intended to follow to serve and file its motion record. In one e-mail response, counsel for the Applicant states that "[w]hatever the proper procedure may be, the fact is we will likely have filed copies by tomorrow." On October 5, counsel for the AGC informed the Applicant's counsel that they needed to file a motion under Rule 369 and that he could accept service.

[32] As stated earlier, the motion record was served on the AGC on October 13, and on Woodfibre on October 16, 2023.

[33] In the Court's view, there are significant gaps in the evidence presented by the Applicant on its explanation for the delay. First, there is no evidence as to why counsel for the Applicant did not file the motion before September 10, 2023. In an e-mail dated September 8 to the Respondents, the Applicant stated having enclosed "a *fulsome response outlining not only* the basis for the judicial review *but the application for an extension of time to file the judicial review materials*" [emphasis added]. The evidence demonstrates that the Applicant had prepared the argument for the motion before September 10, but then waited another 32 days to file the motion materials. There little evidence explaining that delay.

[34] There is evidence that counsel for the AGC and counsel for the Applicant exchanged letters between September 8 and September 13. However, there is no evidence of what actions the Applicant took between September 8 and September 13, or between September 13 and September 29 (when the Applicant's counsel sent another e-mail to counsel for the AGC), as to why those delays were necessary.

[35] While there is evidence of activity and attempts to serve Woodfibre with the motion materials on September 29 and on October 6, 2023, that evidence is inconclusive. At the same time, the Applicant was in communication with counsel for the AGC on the applicable rules of procedure for the motion. It was only on October 5, 2023, that the Applicant's counsel confirmed with counsel for the AGC that the proper procedure required a motion under Rule 369. It took

another 8 days for the Applicant to serve the AGC with its material, and 11 days to serve Woodfibre.

[36] Consequently, the Applicant has not provided an adequate justification for the delay.

[37] More specifically, I note that the delay incurred by the Applicant's counsel to file and serve the motion for an extension of time is even greater than the 30-day time limit to file the application for judicial review. If counsel had been retained on August 4, when the ADS was issued, it would have been expected that the notice of application be filed within 30 days. In this case, the Applicant took more than 30 days from retaining counsel (on August 25, 2023) to even file a motion for an extension of time.

[38] The Court has previously held that a party must be able to provide a reasonable explanation for the entire period of delay, "including the time between the moment when the party realizes that the prescribed time limit could not be or was not met and the moment when the motion is filed" (*Singh v Canada (Citizenship and Immigration)*, 2023 FC 380 [*Singh*] at para 36; see also *Lesly v The Minister of Citizenship and Immigration*, 2018 FC 272 at paras 20-21; *Canada (Attorney General) v Hennelly*, 1999 CanLII 8190 (FCA), at para 6). The Court has also previously rejected requests for an extension of time because a party failed to properly explain each step resulting in the overall delay, including any initial delay of counsel (*McLean v Canada (Royal Mounted Police)*, 2021 FC 1148; *Singh* at para 36).

[39] In this case, and overall, the factor weighs against granting the motion for an extension of time. There is indeed little justification as to why the motion could not be filed by September 10, 2023. The evidence demonstrates that the motion materials were ready, or about ready. There is little evidence as to why it took another 32 days, longer than the legislated time to file an actual notice of application for judicial review, to file the motion for an extension of time. The existing evidence only discloses some communications between counsel, perhaps confusion as to the applicable rules of procedure, but no substantive reason why it took 32 days from September 10 to serve and file the motion for an extension of time.

c) Is there some potential merit to the application for judicial review?

[40] While a moving party need not show that its applications will necessarily be successful, it must still demonstrate that their application has "some merit and a reasonable chance of success" (*MacDonald v Canada (Attorney General)*, 2017 FC 2 at para 17).

[41] In this case, the Applicant's proposed notice of application for judicial review identifies three main issues with the ADS:

1) The first issue is a jurisdictional one, that the Minister did not have the jurisdiction to amend the DS made under the Canadian Environmental Assessment Act, 2012, SC 2012, c 19 [CEAA].

2) The second issue is that the Minister's decision is unlawful and unreasonable because the ADS does not consider all adverse effects to marine mammals; is not based on

current and up-to-date science; the ADS unreasonably limits the scope of water quality and sediment monitoring; and the ADS is based on legal, political and economic rationales that are outside the ambit of section 68 of the Impact Assessment Act, SC 2019, c 28, s 1 [IAA].

3) The third issue is that the ADS now appears to allow Woodfibre to revise its own ADS and make changes to its conditions.

[42] At this stage of the analysis, the Court must determine whether the proposed application for judicial review has some merit and a reasonable chance of success. The motion judge's role is to assess the preliminary strength of the application, and weigh this factor along with the other considerations noted in the criteria noted above. It is not in the interests of justice to allow an application to proceed if it is clearly without merit. However, it may be in the interests of justice to allow a meritorious application to be filed even if there was a lack of diligence in bringing the matter forward. On a motion to extend time, it is not the motion judge's responsibility to decide whether the application will ultimately succeed or fail (*Luutkudziiwus v Canada (Attorney General)*, 2023 FC 1133 [*Luutkudziiwus*] at para 25; *Kemp v Canada (Finance)*, 2022 FCA 198 at para 17).

[43] In my view, the issues presented by the Applicant do not, as a whole, appear to have sufficient merit and reasonable chance of success.

1. Did the Minister have the jurisdiction to amend the DS made under the Canadian Environmental Assessment Act, 2012, SC 2012, c 19 [CEAA]?

[44] On the first issue, the Applicant argues that the CEAA was repealed in 2019 and replaced with the IAA and that therefore the Minister has no power to amend the DS. However, section 184 of the IAA provides that a decision statement issued by the Minister under subsection 54(1) of the CEAA is deemed to be a decision under subsection 65(1) of the IAA, meaning that amendments may be made under section 68 of the IAA. The Applicant's first argument therefore appears to be weak.

[45] Moreover, the Applicant had the opportunity to provide submissions to the Minister on the Proposed Changes to the DS. However, in its January 30, 2023, submissions, the Applicant did not argue that the Minister was without jurisdiction to make any changes to the DS. As the Supreme Court of Canada held in *Alberta (Information and Privacy Commissioner) v Alberta Teachers' Association*, 2011 SCC 61 at paragraphs 22-28, the reviewing court has the discretion to refuse to consider an issue raised for the first time on judicial review because it is preferable to allow the initial decision maker the opportunity to deal with the issue first and provide its reasons on the matter. In my view, the Applicant had the opportunity to argue that the Minister did not have the power to issue the ADS requested by Woodfibre in its January 30, 2023, submissions. Raising the argument for the first time in judicial review may be inappropriate. In any event, as stated, there is low merit to this argument.

2. Is the Minister's decision unlawful and unreasonable?

[46] On Applicant's second issue, the Applicant submits that the Minister's decision is unreasonable for various reasons, all mostly related to the adverse effects on pinnipeds and water quality.

[47] First, section 68(2) of the IAA provides that amended decision statements may only be issued if the amendment “will not increase” the adverse effects indicated in the impact assessment of the designated project. The Applicant then argues that the new conditions accept sound levels to 190 decibels and extending to 150 metres, while the previous conditions limited the sound levels to 160 decibels and extending to 7,322 metres. This change in their view “increases” the impact and the Minister therefore has no power to amend the DS in this manner.

[48] Second, the Applicant argues that the Minister’s decision is unreasonable because they did not rely on the most current and up-to-date scientific evidence.

[49] Third, the Applicant argues that the Minister’s decision unreasonably limits the scope of water quality and sediment to the effects “attributable to the project” leaving the other adverse effects under the old permit outside of its scope. The Applicant also states that the decision is contrary to recommendations by Environment and Climate Change Canada [ECCC], in which “ECCC recommended that condition 6.4 clearly state that monitoring must occur during all Project phases, not only construction and operation.” According to the Applicant, the Minister therefore ignored the advice of their own experts.

[50] Fourth, the Applicant argues that the decision was made for economic reasons under section 22 of the IAA, which is a consideration that is outside the ambit of section 68 of the IAA.

[51] In my view, only the first of these four grounds within the Applicant’s second issue has some merit and a reasonable chance of success, while the others have low or no merit.

[52] On the first ground, the Applicant asserts that the new conditions are justified by the fact that, according to the Department of Fisheries and Oceans [DFO], the marine mammals will not experience “acute physical harm.” The Applicant argues that this is not the legal standard and that, rather, the ADS increases the “behavioral disturbance threshold” which is an “adverse effect.” The Applicant also asserts that the IAAC takes the position that there are no “adverse effects,” because the effects are not “significant,” which in the Applicant’s view means that there will in fact be “adverse effects” and therefore the Minister may not allow them under section 68 of the IAA.

[53] The Applicant’s argument relies on what appears to be the Draft Analysis of Proposed Changes to the Woodfibre LNG Project Decision Statement Conditions, dated November 2022 [Draft Analysis of Proposed Changes] (which is not part of the Applicant’s motion record but can be found as Exhibit B of the affidavit of Janzel Renaud in Woodfibre’s motion record at p 17). However, the Applicant’s reliance on the Draft Analysis of Proposed Changes appears to be incomplete. In that Draft Analysis of Proposed Changes, the IAAC concludes, after having considered a multitude of submissions, including those of the DFO but also of others, that modifying condition 3.8 “would not increase the extent to which the effects of the Project, as assessed during the environmental assessment, are adverse” (see Woodfibre’s motion record at p 23). Therefore, while the argument that the Minister’s decision is unreasonable because the impact of the Proposed Changes will “increase” the adverse effects has some merit and a reasonable chance of success, the strength of that argument as framed by the Applicant in its proposed notice of application is not as compelling as the Applicant suggests.

[54] On the second ground, for the Applicant to prove that the Minister did not rely on the most up-to-date scientific evidence, it originally intended to file new expert evidence (as noted in the proposed notice of application). In its reply, the Applicant now states that it no longer intends to introduce expert evidence and will rely on the record. First, the Court has long established that it is not proper for an applicant on judicial review to introduce evidence that was not before the decision maker in an effort to undermine a decision of the Minister (*Alberta Wilderness Assn v Canada (Minister of Environment)*, 2009 FC 710 at paras 30, 34). Evidence to add, to correct, and to supplement the evidence before the Minister is not permissible on judicial review (*Abbott Laboratories Ltd v Canada (Attorney General)*, 2008 FC 700 at paras 14, 37). The admission of extrinsic evidence cannot seek to transform a judicial review into a trial *de novo* on the merits of the scientific evidence that takes the Court outside of its proper role (*Morton v Canada (Fisheries and Oceans)*, 2019 FC 143 at para 265; *Canadian Tire Corporation v Canadian Bicycle Manufactures Association*, 2006 FCA 56 at paras 11-13). Second, it is unclear, on this ground, how the Applicant could demonstrate that the Minister failed to rely on up-to-date evidence if it does not demonstrate it with additional evidence. Third, as stated above, the Applicant was able to bring this alleged "up-to-date" science to the Minister's attention in its submissions of January 30, 2023, but appears to have failed to do so. While this ground is not completely without merit, it has a low chance of success.

[55] On the third ground, the Applicant did not discharge its burden to demonstrate the merit of their allegation. The Draft Analysis of Proposed Changes does discuss the ECCC position and notes that ECCC, notwithstanding its earlier statement that condition 6.4 should "occur during all Project phases, not only during construction and operation," is now in agreement with Woodfibre

that “monitoring for only the effects to water and sediment quality that are attributable to the Project during construction and operation would not result in additional adverse effects” (Woodfibre’s Responding Motion Record at pp 25-26). Consequently, the Minister’s decision does not appear to be “directly contrary” and “contradictory” to their experts’ recommendations as argued by the Applicant. Therefore, the merits of this ground as framed by the Applicant, that the Minister’s decision is unreasonable for having ignored their own expert advice, is without merit.

[56] On the fourth ground, that the Minister considered economic rationales, the Applicant states in its proposed notice of application that “[o]ur pinniped experts will testify to the feasibility of the old conditions,” in order to bolster their argument that the “economic rationales” considered by the Minister to accept the Proposed Changes were not required, but merely make the operation more expensive. The Applicant also argues that the factors of section 22 of the IAA are outside the ambit of section 68 of the IAA.

[57] In my view, the merits of this ground is low. First, again, the Applicant may be seeking to admit expert evidence on judicial review, which is not normally allowed as discussed above. On the substantive issue of whether the section 22 factors may apply to a section 68 amendment, the factors set out at section 22 are important in the decision-making process under the IAA. Section 68 of the IAA then provides that the Minister may add, remove or amend a condition of an earlier decision. A preliminary assessment of the context of the IAA suggests that the Minister should not be bound by earlier findings made under section 22, because section 68 allows amendments on request, likely due to a change in circumstances. This being said, the Applicant

appears to rely again on the Draft Analysis of Proposed Changes for this ground. As stated above, and like the jurisdictional ground, the Applicant ought to have brought that argument to the Minister in due course, in its January 30, 2023, submissions. Nevertheless, there is low merit or chance of success on this ground.

3. the DS now appears to allow Woodfibre to revise its own ADS and make changes to its conditions

[58] Finally, the third issue raised by the Applicant that the amendment to condition 2.10 appears to grant Woodfibre the authority to revise its own ADS is simply without merit. Condition 2.10 merely states that Woodfibre may "propose" additional amendments, which would be examined in due course, under the ADS, including any additional information that may be required under condition 2.11. The Minister must then approve them under section 68 of the IAA. Like other issues and grounds noted above, the Applicant ought to have brought that argument to the Minister in due course, in its January 30, 2023, submissions. In any event, it is without merit.

4. Conclusion on the Merits of the Proposed Application

[59] Overall, the proposed application for judicial review is of limited merit. The Applicant wishes to bring new issues (and potentially additional evidence) on judicial review, when it had the opportunity to bring those same arguments in its submissions provided to the Minister on January 30, 2023. Moreover, from a substantive perspective, the arguments, as a whole, are generally of low merit, although not completely devout of a chance of success.

[60] Consequently, as a whole, the factor related to the potential merits of the proposed application does not weigh heavily in favour of granting an extension of time.

[61] It bears noting that, despite the encouragement of the Applicant to increase the support to their cause, notably by engaging the public, no other judicial review has been commenced to contest the ADS; and this includes the participation of eleven Indigenous groups who were consulted.

d) Is there a prejudice to the other party from the delay?

[62] Woodfibre has submitted evidence suggesting that it would be unduly prejudiced if the motion for an extension of time was granted. Woodfibre alleges that it has taken steps in reliance of the ADS, and after the end of the 30-day time limitation. Granting an extension of time would therefore introduce inherent uncertainty. Woodfibre states that it has committed expenditures of over $100 million between now and February 2024, in anticipation of construction, including completing requirements for regulatory authorizations, entering into a sales purchase agreement and other contractual arrangements.

[63] In addition, Woodfibre alleges that it may suffer additional prejudice because necessary work must be completed, such as piling and foundations, by February 2024, in advance of the arrival of its “floatel” and that if the “floatel” is not in place and operating by February 2024, Woodfibre will face impediments to meet its regulatory obligations. Other construction will also need to be re-scheduled, ultimately delaying critical activities. In the end, Woodfibre will suffer

economic consequences including impacts on its relationships with stakeholders and contracting parties.

[64] The Applicant argues in its reply at paragraphs 23-24 that Woodfibre failed to disclose that the "floatel" is not yet approved and undergoing federal and provincial permitting processes. However, there is no evidence in support of the Applicant's assertion that the "floatel" is not approved, or that the process to obtain the necessary authorizations will not culminate before February 2024. Woodfibre also responded in sur-reply that no further federal or provincial authorization is required.

[65] While, in my view, the prejudice alleged by Woodfibre may be cast too broadly, I am satisfied that it would suffer an important prejudice if an extension of time was granted.

[66] As the Court of Appeal held in *Larkman* at paragraph 86, "Many authorities suggest that unexplained periods of delay, even short ones, can justify the refusal of an extension of time." Moreover, at paragraph 87, the Court of Appeal held that :

> [87] The need for finality and certainty underlies the thirty-day deadline. When the thirty-day deadline expires and no judicial review has been launched against a decision or order, parties ought to be able to proceed on the basis that the decision or order will stand. Finality and certainty must form part of our assessment of the interests of justice.

[67] Moreover, I agree with Woodfibre's reliance on *Luutkudziiwus* at paragraph 41. In that case, the Court held that: "permitting the application for judicial review to proceed now would constitute a material change in the circumstances in which PRPA and Vopak took and must

continue to take steps towards the timely completion of the project. At the very least, it would create doubt about whether the project can proceed on its current schedule. Allowing the application for judicial review to proceed at this late stage […] would subvert the principles of certainty and finality the 30-day period is meant to protect, principles on which PRPA and Vopak reasonably relied in proceeding with the development of the project. Consequently, this factor weighs against an extension of time." The same rational applies in this case.

[68] As discussed in *Luutkudziiwus* at paragraph 40, the issue in this motion is not about a delay incurred by an application for judicial review itself, but the narrower issue of the prejudice resulting from the granting of an extension of time to file a notice of application of judicial review.

[69] In this case, Woodfibre adduced evidence of the steps it has taken after the 30-day time period, and until now, to meet its requirements up to February 2024. I am satisfied that the evidence adduced by Woodfibre demonstrates that it would suffer an important prejudice because of the steps it has undertaken after the close of the 30-day deadline to file a notice of application for judicial review.

[70] Therefore, this factor weighs heavily against an extension of time.

e) Overall assessment

[71] First, I note the Applicant's evidence obtained by e-mail dated November 1, 2023, that in light of the Supreme Court of Canada's decision in *Reference re Impact Assessment Act*, 2023

SCC 23, the IAAC is reviewing all potential amendments to decision statements to determine the next steps. In my view, that e-mail carries little weight on this motion for an extension of time. If the IAAC concludes that the Supreme Court of Canada decision has an impact, then IAAC will take measures, which may nullify the ADS or restart the process, rendering the proposed application for judicial review moot. If the IAAC concludes that there is no impact, then the evidence is not relevant on this motion for an extension of time.

[72] Weighing and balancing the factors noted above, it would not be in the interests of justice to grant an extension of time to commence the proposed application for judicial review.

[73] I accept that the Applicant had a continuing intention to file an application for judicial review of the Minister's ADS. However, I am not satisfied that it has provided a reasonable explanation for the entire period of delay including between the moment when the Applicant retained counsel and when the motion for an extension of time was actually filed more than 45 days later. I am also not satisfied that the proposed application has sufficient merit and a reasonable chance of success. Most importantly, I am satisfied that the Respondent Woodfibre has established, on the evidence it adduced and as discussed above, that it would suffer important prejudice if the application were permitted to proceed now.

[74] On balance, the weighing of the factors do not favour the granting of an extension of time. The motion is therefore dismissed.

V. Costs

[75] The Applicant, as a public interest litigant, requests that no costs be awarded to any party, regardless of the outcome of the motion.

[76] The Respondents have not sought their costs.

[77] I agree with the parties that no costs should be awarded.

VI. Conclusion

[78] The Applicant failed to meet the onus required to show that the delay was reasonable and that it would be in the interests of justice to grant an extension of time to commence the application for judicial review. For the reasons noted above, the motion is dismissed, without costs

ORDER in 23-T-102

THIS COURT ORDERS that:

1. The motion for an extension of time is dismissed.

2. The parties shall bear their own costs.

"Guy Régimbald"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	23-T-102
STYLE OF CAUSE:	CITIZENS FOR MY SEA TO SKY v MINISTER OF ENVIRONMENT AND CLIMATE CHANGE, ATTORNEY GENERAL OF CANADA, WOODFIBRE LNG

MOTION IN WRITING CONSIDERED AT OTTAWA, ONTARIO PURSUANT TO RULE 369 OF THE *FEDERAL COURTS RULES*

ORDER AND REASONS:	RÉGIMBALD J.
DATED:	DECEMBER 18, 2023

APPEARANCES:

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