

October 26, 2018

To: Parties currently registered on Proceeding 22726

**Paintearth Wind Project Ltd.
Paintearth Wind Project
Proceeding 22726
Applications 22726-A001 to 22726-A003**

Ruling on standing

1. In this ruling, the Alberta Utilities Commission decides whether to hold an oral public hearing to consider applications by Paintearth Wind Project Ltd. (Paintearth) relating to a wind power project located in the County of Paintearth No. 18.

2. The Commission must hold an oral hearing if persons who have filed a statement of intent to participate in Proceeding 22726 have demonstrated that they have rights that may be “directly and adversely affected” by the Commission’s decision. Such a person may participate fully in the hearing, including giving evidence, questioning of witnesses, and providing argument. This permission to participate is referred to as standing.

Background

3. The Commission issued a notice of applications for Proceeding 22726 on July 4, 2017. The Commission received statements of intent to participate from Robert Dahmer,¹ Leonard Solick,² Kelsey Solick³ and JD Johnson⁴ in response to the notice of applications. Subsequently, Leonard Solick and Kelsey Solick withdrew their statements of intent to participate.

4. In a letter to the Commission dated August 11, 2017, Paintearth requested that further consideration of its applications be suspended and that the proceeding be held in abeyance. The request was made because Paintearth was undertaking additional consultation to address stakeholder concerns that might result in changes to the proposed project. On August 16, 2017, the Commission placed the proceeding in abeyance.

5. On May 31, 2018, Paintearth amended its applications including the number of turbines and the turbine layout. A notice of amended applications was issued on July 5, 2018, with a July 27, 2018 deadline, to submit a statement of intent to participate. No responses were received in response to this notice.

¹ Exhibit 22726-X0026, Dahmer SIP, July 21, 2017.

² Exhibit 22726-X0036, Leonard Solick SIP, July 27, 2017.

³ Exhibit 22726-X0039, Kelsey Solick SIP, July 30, 2017.

⁴ Exhibit 22726-X0042, JD Johnson's Letter, August 8, 2017.

6. Paintearth submitted a letter dated August 2, 2018, requesting that standing be denied to Mr. Dahmer and Mr. Johnson for the following reasons. The modification of the turbine layout in the amended applications showed that Mr. Dahmer no longer has property within 2,000 metres of the project area and that Mr. Johnson lives or occupies lands more than five kilometres from the project area.

7. On August 17, 2018, the Commission afforded Mr. Dahmer and Mr. Johnson an opportunity to comment on Paintearth's request to deny them standing. No response was received by the deadline. However, due to the time that had passed since the filing of the statements of intent to participate, the Commission issued letters to Mr. Dahmer and Mr. Johnson, asking whether they still intended to participate in the proceeding. The Commission stipulated a deadline to respond by October 15, 2018, and that a lack of response would indicate that the party no longer wished to participate in the proceeding.

8. On October 15, 2018, the Commission received a response from Mr. Dahmer indicating that he still had concerns with the proposed project and intended to participate in the proceeding.

9. The Commission has authorized me to communicate its ruling on standing in this proceeding.

How the Commission determines standing

10. Section 9(2) of the *Alberta Utilities Commission Act* sets out how the Commission must determine standing:

- (2) If it appears to the Commission that its decision or order on an application **may directly and adversely affect the rights of a person**, the Commission shall
- (a) give notice of the application in accordance with the Commission rules,
 - (b) give the person a reasonable opportunity of learning the facts bearing on the application as presented to the Commission by the applicant and other parties to the application, and
 - (c) hold a hearing. [emphasis added]

11. The meaning of the key phrase, "directly and adversely affect", has been considered by the Alberta Court of Appeal on multiple occasions, and the legal principles set out by the court guide the Commission when it determines standing. Standing is determined by application of a two-part test. The first test is legal: a person must demonstrate that the right being asserted is recognized by law. This could include property rights, constitutional rights or other legally recognized rights, claims or interests. The second test is factual: a person must provide enough information to show that the Commission's decision on the application may "directly and adversely affect" the person's right, claim or interest.⁵

⁵ *Cheyne v Alberta (Utilities Commission)*, 2009 ABCA 94; *Dene Tha' First Nation v Alberta (Energy and Utilities Board)*, 2005 ABCA 68 [*Dene Tha'*].

12. To determine if a right is “directly” affected, the court has said that, “[s]ome degree of location or connection between the work proposed and the right asserted is reasonable.”⁶ When considering the location or connection, the Commission looks at factors such as residence and the frequency and duration of the applicant’s use of the area near the proposed site.⁷

13. The Commission assesses the potential for a “direct and adverse effect” on a case-by-case basis. It considers the specific circumstances of each proposed project application and each statement of intent to participate that it receives. In the past, the Commission has decided that general or broad concerns about a proposed project will generally be insufficient to establish standing, unless a more specific link or connection to the demonstrated or anticipated characteristics of a proposed project is established.

Ruling

14. The Commission is satisfied that Mr. Dahmer has demonstrated that he has legal rights that may be directly and adversely affected by the Commission’s decision on the applications. Mr. Dahmer owns land in close proximity to the proposed project and has demonstrated that the Commission’s decision on the application has the potential to result in a direct and adverse effect on him. The potential effects described include decreased property values, visual effects, increased noise, interference with agricultural operations, negative health effects, aviation concerns, and effects on the environment. The Commission grants standing to Mr. Dahmer.

15. The Commission denies standing to Mr. Johnson. In his statement of intent to participate, Mr. Johnson indicated that he lives north of Halkirk, and included general concerns that are not specific to the project. The proposed project is located at least five kilometres south of Halkirk. Furthermore, Mr. Johnson did not respond to the Commission’s August 2018 letter, indicating he still wanted to participate in the proceeding.

16. The Commission has decided to hold an oral public hearing to consider the Paintearth Wind Project. A notice of hearing will be issued in due course.

17. If you have any questions, please contact Giuseppa Bentivegna at 403-592-4503 or by email at giuseppa.bentivegna@auc.ab.ca.

Yours truly,

Giuseppa Bentivegna
Commission Counsel

⁶ *Dene Tha’*.

⁷ *Sawyer v Alberta (Energy and Utilities Board)*, 2007 ABCA 297.