

November 29, 2018

To: Parties currently registered on Proceeding 23821

**Acestes Ventures Ltd.
Coaldale Solar Project
Proceeding 23821
Applications 23821-A001 and 23821-A002**

Ruling on standing

1. In this ruling, the Alberta Utilities Commission must determine whether to grant standing to persons who have filed a statement of intent to participate in Proceeding 23821.
2. The Commission must hold a hearing if persons who have filed a statement of intent to participate in Proceeding 23821 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.
3. The Commission has authorized me to communicate its decision on standing.

Background

4. On August 13, 2018, Acestes Ventures Ltd. (Acestes) applied to construct a 22-megawatt solar power plant, designated as the Coaldale Solar Project, and for a connection order to connect the proposed power plant to a FortisAlberta Inc. 25-kilovolt distribution line.
5. The Commission issued a notice of application for Proceeding 23821 on September 26, 2018, and reissued the notice of application on October 19, 2018, to account for returned mail for some stakeholders in the area. The Commission received statements of intent to participate from the following parties:
 - Nivin Farms Ltd.
 - Dave and Grace Matthies
 - Lethbridge County
6. In their statement of intent to participate dated October 17, 2018, Nivin Farms Ltd., and Dave and Grace Matthies indicated that Nivin Farms Ltd. owns the northeast quarter of Section 1, Township 10, Range 20, west of the Fourth Meridian, and Dave and Grace Matthies own the northwest quarter of Section 1, Township 10, Range 20, west of the Fourth Meridian. They are concerned about the use of agricultural land for the project, the effects of glare from the project, visual impacts, a decrease in property values, crop damage from heat generated by the solar panels, watershed impacts, noise and traffic. They also raised concerns about decommissioning costs at the end of life of the project and who would bear the costs if the

applicant was insolvent at that time.

7. Lethbridge County raised land use concerns. It noted that the land on which the project would be located is zoned as agricultural and would need to be re-designated before a development permit could be issued. Acestes responded to Lethbridge County indicating that it had submitted the rezoning amendment application to Lethbridge County on September 26, 2018. Acestes stated that it was applying for the rezoning amendment concurrently with the facility application and would apply for a development permit if the rezoning application was successful.

How the Commission determines standing

8. 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]

9. 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.¹

10. 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.”² 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.³

11. The Commission summarized court decisions relating to the meaning of the phrase “directly and adversely affected” in a decision issued in 2015 and concluded that to pass the test for standing, “the potential effects associated with a decision of the Commission must be personal rather than general and must have harmful or unfavourable consequences.” The Commission further commented that the court decisions “highlight the need for persons seeking

¹ *Cheyne v Alberta (Utilities Commission)*, [2009 ABCA 94](#); *Dene Tha’ First Nation v Alberta (Energy and Utilities Board)*, [2005 ABCA 68](#) [*Dene Tha’*].

² *Dene Tha’*.

³ *Sawyer v Alberta (Energy and Utilities Board)*, [2007 ABCA 297](#).

standing to demonstrate the degree of connection between the rights asserted and potential effects identified.”⁴

12. 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

13. The Commission is satisfied that Nivin Farms Ltd., and Dave and Grace Matthies have demonstrated that they have legal rights because they own land in close proximity to the project. They also have demonstrated that the Commission’s decision on the applications has the potential to result in a direct and adverse effect on them. The potential effects described by them include the effects of glare from the project, visual impacts, a decrease in property values, crop damage from heat generated by the solar panels, noise and traffic. The Commission finds that these parties have met the standing test; therefore, they are granted standing in this proceeding. A notice of hearing will issue shortly.

14. The Commission further finds that Lethbridge County has not demonstrated that it has legal rights that may be directly and adversely affected by the Commission’s decision on the applications. Lethbridge County has concerns relating to zoning. The question of zoning is a matter within the purview of Lethbridge County. Acestes has filed a rezoning application with Lethbridge County and the county will make a decision on the rezoning application. Therefore, the Commission denies standing to Lethbridge County. However, if Lethbridge County wants to participate in the hearing on this proceeding it may do so by making a statement, either verbally or written, at the hearing.

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

Yours truly,

Giuseppa Bentivegna
Commission Counsel

⁴ Decision 3110-D02-2015: Market Surveillance Administrator Allegations against TransAlta Corporation et al., Phase 2 Preliminary matters; Standing and Restitution, Proceeding 3110, September 18, 2015.