

December 21, 2018

To: Parties currently registered on Proceeding 23951

**Aura Power Renewables Ltd.
Fox Coulee Solar Project
Proceeding 23951
Applications 23951-A001 and 23951-A002**

Ruling on standing

1. The Alberta Utilities Commission received applications from Aura Power Renewables Ltd. for approval to construct a 75-megawatt solar power plant approximately four kilometres north of Drumheller, and to interconnect the power plant to the Alberta Interconnected Electric System. The Commission received 30 statements of intent to participate before it issued a notice of hearing in this proceeding on November 15, 2018. All of these statements of intent to participate were from individuals who are part of the group known as the Solar Opposition Participants (SOP). The Commission received two statements of intent to participate from organizations that are not part of the SOP after the notice of hearing was issued.

2. If it appears to the Commission that a person has rights that may be directly and adversely affected by the Commission's decision, the Commission must allow that person to participate fully in the hearing, including giving evidence, questioning witnesses and providing argument. This permission to participate is referred to as standing. In this ruling, the Commission must determine whether to grant standing to the persons who filed statements of intent to participate in this proceeding.

3. The Commission has authorized me to communicate its decision on standing.

Statements of intent to participate

4. Several SOP members own and reside on land that is within two kilometres of the proposed project. A number of other SOP members do not reside near the proposed project but own hangars at the Drumheller Municipal Airport, which is within two kilometres of the proposed project. The concerns listed by the SOP members include: environmental impacts, noise, property value impacts, agricultural impacts, increased traffic, impacts on the Drumheller airport and pilot safety, social and economic impacts, fire risks, glare and glint. Three SOP members stated that they work at the TAQA plant that is located 150 metres from the proposed project, and two of them raised concerns with the proposed project being close to the plant. The TAQA employees also listed many of the same concerns raised by the SOP.

5. Howell Mayhew Engineering Inc. and the Alberta Wilderness Association (AWA) each filed statements of intent to participate after the Commission issued a notice of hearing. Howell Mayhew Engineering Inc. stated that it is a solar panel producer and has concerns about some of the issues raised by the SOP. The AWA stated that its members have concerns with the environmental impacts of the project, particularly its impact on species at risk in the area, such as

the burrowing owl. It also stated it would like the Commission to consider if the environmental, social and economic effects of the project are in the public interest, which the Commission notes is part of its statutory responsibilities under the *Alberta Utilities Commission Act*.

How the Commission determines standing

6. Section 9(2) of the *Alberta Utilities Commission Act* sets out the test to be applied by the Commission when determining standing and the consequences of such a finding:

(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]

7. 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

8. 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

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

10. 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

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](#).

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.

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 usually 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

11. The Commission is satisfied that the SOP members listed in Schedule A have demonstrated that they have legal rights that may be directly and adversely affected by the Commission's decision on the applications. These individuals own land in close proximity to the proposed project or have a legal right to use a hangar that is part of the Drumheller Municipal Airport, which is near the proposed project.

12. The Commission decided that the three TAQA employees have not demonstrated that they have legal rights that may be directly and adversely affected by the Commission's decision on the applications. They do not have a legal interest in the TAQA plant or the lands on which the plant is located; the TAQA corporation holds those interests. Their submissions do not indicate that they reside at the TAQA plant, even on a temporary basis. The Commission therefore decided that Bob Persson, Brent Dolan and Sam Currie do not have standing in this proceeding. Although these individuals may continue as members of the SOP, at the group's discretion, none of them have standing to participate in the hearing in their own right.

13. The Commission also decided that Howell Mayhew Engineering Inc. has not demonstrated it has rights that may be directly and adversely affected by the Commission's decision in this proceeding. Howell Mayhew Engineering Inc. stated it was concerned about the issues raised by the SOP, and that its business of selling solar panels may decline if the project is not approved. Apart from the question whether a decline in sales represents an impact on a legal right, the Commission considers that this result would be, at best, an indirect consequence of a decision denying the project applications. The Commission therefore decided that Howell Mayhew Engineering Inc. does not have standing to participate in the hearing.

14. The Commission considers that the AWA's concerns regarding consultation and the environmental impacts of the project, including those on species at risk in the area, are general in nature and do not support a finding of direct and adverse effect on a legal right. The AWA did not identify land in which it or any of its members has a legal interest. The Commission decided that the AWA did not provide information demonstrating that it or its members have a legal right that may be directly and adversely affected by the Commission's decision on the proposed project, and therefore the AWA does not have standing to participate in the hearing.

15. Please contact the undersigned at 403-592-3280 or by email at gary.perkins@auc.ab.ca if you have questions about the standing decisions addressed in this ruling.

Yours truly,

Gary Perkins
Commission Counsel

Attachment

Schedule A - Persons with standing in Proceeding 23951

Name Representative ⁵
Mark and Susan Doyle
Terena Kleinschroth
Wendy Braun
Sandra Burroughs
Lee Cowie
Nick Dalton
Dave and Lori Dedul
Debbie Cardamone
Peter Cardamone
Albert Jenson
Tony Keller
Colin Murray
Heather and Darrin Lehmann/Morgan
Duane and Jamie Phoenix
Bruce Thompson
Gordon Denzler
Roger and Joshua Church
Tom Dooley
Pat and Catherine Bonneville
Bob Graham
Jason James
Colin Jenson
Brian Kinniburgh
Mark Kinniburgh
Matthys Nell
Donald Ostergard
Roy Smith

⁵ All persons listed in Schedule A are being represented by Ackroyd LLP.