

January 21, 2019

To: Parties currently registered on Proceeding 23377

**Windy Point Wind Park Ltd.  
Windy Point Wind Park Amendment  
Proceeding 23377  
Applications 23377-A001 to 23377-A003**

**Ruling on standing**

**Introduction**

1. In this ruling, the Alberta Utilities Commission decides whether to hold a public hearing to consider applications by Windy Point Wind Park Ltd. to amend its existing approval for the Windy Point Wind Park to be located near Pincher Creek, Alberta.

2. The Commission must hold a hearing if persons who have filed a statement of intent to participate (SIP) in Proceeding 23377 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. Given the considerable amount of time that had passed since the initial registration dates of the SIPs and the process undertaken following the filing of the SIPs, the Commission sought confirmation from these interested persons on their continued participation in Proceeding 23377.<sup>1</sup> The Commission received responses from:

- Heritage Wind Farm Development Inc., filed by 1576834 Alberta Ltd.
- TransAlta Corporation
- Dr. Bjorn P. Berg and Ms. Deborah Berg, partners and owners of Bravo Ranch.

4. Prior to making its decision on standing, the Commission afforded Windy Point Wind Park Ltd. an opportunity to comment on the standing of these persons and granted these persons an opportunity to reply to any comments received.

**Statements of intent to participate**

5. TransAlta Corporation (TransAlta) indicated that it is the manager of the Summerview 1 and Summerview 2 wind farms located adjacent to the Windy Point Wind Park. Western Sustainable Power Inc. owns the Summerview 1 and Summerview 2 wind projects. In its SIPs,<sup>2</sup>

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<sup>1</sup> Exhibit 23377-X0166 to Exhibit 23377-X0170, AUC letters to parties, October 12, 2018.

<sup>2</sup> Exhibits 23377-X0094 and 23377-X0161.

TransAlta indicated that it owns or occupies land within 200 metres of the Windy Point Wind Park project. It submitted that wind facilities directly adjacent to one another can produce wake effects, which can decrease production and increase the cost of equipment maintenance of wind turbines located downwind. TransAlta estimated a production loss of two per cent, “which is equivalent to an overall \$2.4 million enterprise value impact to the Summerview 1 and Summerview 2 wind farms.”<sup>3</sup>

6. Dr. Berg and Ms. Berg indicated in different parts of the application that their residence is either 726 metres or 1,040 metres from a proposed wind turbine in the Windy Point Wind Park project and denoted as Receptor M. They own Bravo Ranch on which their residence is located. They expressed concerns about the location of wind turbines T1, T2, and the meteorological tower in the southwest quarter of Section 12, Township 8, Range 29, west of the Fourth Meridian, in particular in relation to noise and visual impacts as well as the effects of turbine lighting. Dr. Berg and Ms. Berg also have concerns related to impacts of the project on wildlife, local roads and community security.

7. Heritage Wind Farm Development Inc. (Heritage Wind Farm Development) submitted that it and its president, Mr. Allan Kettles, retain an ownership interest in the Heritage Wind Energy Centre based on “some six strictly confidential, milestone commitments in the renamed Heritage Wind Energy Centre.”<sup>4</sup> It submitted that the Heritage Wind Energy Centre would be directly and adversely affected by the noise and wake effects of the Windy Point Wind Park project. It also took issue with the information provided in the applications, in particular with the environmental information filed and lack of environmental studies.

8. In response to the SIPs, Windy Point Wind Park Ltd. requested that the Commission deny standing to 1576834 Alberta Ltd. and Heritage Wind Farm Development for the following reasons.<sup>5</sup> Windy Point Wind Park Ltd. submitted that 1576834 Alberta Ltd. was dissolved on January 1, 2016, and has not shown it has a legal right or interest that may be affected by a decision of the Commission in Proceeding 23377. In addition, Heritage Wind Farm Development is an active Alberta corporation with Mr. Kettles as its sole director and shareholder, through affiliated companies, and was the previous owner of the Heritage Wind Farm. NextEra Canada Development & Acquisitions Inc. purchased the outstanding ownership of the Heritage Wind Farm, renamed the Heritage Wind Energy Centre, and Heritage Wind Farm Development no longer has an ownership interest in the wind farm which will be located adjacent to Windy Point Wind Park. NextEra Canada Development & Acquisitions Inc. has not filed a SIP in this proceeding.

9. Windy Point Wind Park Ltd. added that Heritage Wind Farm Development has not filed any evidence to support its contention that it holds an ownership interest in the Heritage Wind Energy Centre. It also stated that caveats for surface leases on land titles of the Heritage Wind Energy Centre lands are in the name of Heritage Wind GP, a wholly-owned subsidiary of NextEra Canada Development & Acquisitions Inc. Its land tile searches did not show Heritage Wind Farm Development as the caveator on any lands within 2,000 metres of the Windy Point Wind Park or as having any other legal interest in such lands. Windy Point Wind Park Ltd. added that Mr. Kettles is

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<sup>3</sup> Exhibit 23377-X0095.

<sup>4</sup> Exhibit 23377-X0171, PDF pages 1 and 2.

<sup>5</sup> Exhibit 23377-X0178.

no longer named as part of the development team for the Heritage Wind Energy Centre. It submitted that Heritage Wind Farm Development has not met the Commission's two-part standing test.

10. On the issue of wake effects, Windy Point Wind Park Ltd. stated that there is no evidence to show adverse wake effects to the Heritage Wind Energy Centre from the Windy Point Wind Park because neither project has been constructed to date. Further, both projects are the subject of amendment applications before the Commission; therefore, arguments on the impact of wake effects are hypothetical and speculative.

11. Heritage Wind Farm Development responded to Windy Point Wind Park Ltd.'s submissions on standing.<sup>6</sup> It stated that 1576834 Alberta Ltd. was an identifier used by the Commission for Benign Energy Canada Inc. and no submissions were ever made on behalf of 1576834 Alberta Ltd. Heritage Wind Farm Development reiterated its previous comments on the Windy Point Wind Park Ltd.'s applications, and other wind power plant applications and approvals. It requested standing in Proceeding 23377.

12. The Commission has authorized me to communicate its ruling on standing to you.

### **How the Commission determines standing**

13. 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]

14. 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 part of the 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 part of the 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.<sup>7</sup>

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<sup>6</sup> Exhibit 23377-X0180.

<sup>7</sup> *Cheyne v Alberta (Utilities Commission)*, [2009 ABCA 94](#); *Dene Tha' First Nation v Alberta (Energy and Utilities Board)*, [2005 ABCA 68](#) [*Dene Tha'*].

15. 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.”<sup>8</sup> 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.<sup>9</sup>

16. 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.”<sup>10</sup>

17. 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 SIP 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**

18. The Commission grants standing in Proceeding 23377 to TransAlta and Dr. Berg and Ms. Berg for the following reasons. The Commission is satisfied that TransAlta and Dr. Berg and Ms. Berg meet the first part of the standing test because they own property or occupy lands in close proximity to the Windy Point Wind Park project.

19. As described by TransAlta, some of the proposed wind turbines in the Windy Point Wind Park project are proposed to be located directly adjacent to and downwind from the existing Summerview 1 and Summerview 2 wind projects; and that for this reason, there is potential for wake effects from the proposed project on the TransAlta winds farms. TransAlta stated that the wake effects may decrease production and increase the cost of equipment maintenance of wind turbines located downwind in the Summerview 1 and Summerview 2 wind projects. The Commission finds that TransAlta has demonstrated that the Commission’s decision on the applications has the potential to result in a direct and adverse effect on it. Accordingly, TransAlta meets the second part of the standing test.

20. The potential effects of the Windy Point Wind Park described by Dr. Berg and Ms. Berg include proximity of the project, visual effects including turbine lighting, increased noise, and effects on wildlife and local roads. The Commission finds that Dr. Berg and Ms. Berg have demonstrated that the Commission’s decision on the applications has the potential to result in a direct and adverse effect on them. They have consequently met the second part of the standing test.

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<sup>8</sup> *Dene Tha’*.

<sup>9</sup> *Sawyer v Alberta (Energy and Utilities Board)*, 2007 ABCA 297.

<sup>10</sup> 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.

21. The Commission denies standing to Heritage Wind Farm Development because it has not shown that it has a right recognized by law in the proximity of the Windy Point Wind Park project such as property rights, or other legally recognized rights, claims or interests in the Heritage Wind Energy Centre or any other land in the area. A mere assertion that Heritage Wind Farm Development and its president, Mr. Kettles, retain an ownership interest in the Heritage Wind Energy Centre based on “some six strictly confidential, milestone commitments” is not sufficient to meet the first part of the standing test. As a result, the Commission need not consider the second part of the test.

22. Should you have any questions, please contact the undersigned at 403-592-4503 or by email at [giuseppa.bentivegna@auc.ab.ca](mailto:giuseppa.bentivegna@auc.ab.ca).

Yours truly,

Giuseppa Bentivegna  
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