

June 10, 2019

To: Persons currently registered on Proceeding 23763

**ENGIE Development Canada GP Inc.
Duchess Solar Project
Proceeding 23763
Applications 23763-A001 to 23763-A002**

Ruling on standing

1. In this ruling, the Alberta Utilities Commission decides whether to hold a public hearing to consider applications by ENGIE Development Canada GP Inc. relating to the development of the Duchess Solar Project, located near Duchess, Alberta.
2. The Commission must hold a hearing if persons who have filed a statement of intent to participate in Proceeding 23763 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 ruling on standing.

Background

4. The Commission issued a notice of applications for Proceeding 23763 on January 18, 2019. The Commission received statements of intent to participate from the County of Newell as well as the following individuals who stated they own or occupy land near the proposed project: Trevor Smith, Melissa Smith, Marilynn Smith and Verna Fosen, Conny Rommens and Bob Granger, Candyce Plumer, Dan Plumer and Verne Klassen.
5. In its statement of intent to participate, the County of Newell raised concerns with the proposed project meeting its needs regarding land use, access and permitting. It requested that the Commission require the applicant to obtain development permit approval from the county to ensure that access and development requirements that have been discussed with the applicant are adequately addressed.
6. The concerns raised by those persons who own or occupy land near the proposed project include the siting of the proposed project, decreased property values, visual effects, increased noise, impacts to agricultural operations, negative health effects, effects on the environment, project costs and government subsidies.

7. The Commission issued letters on April 26, 2019 and May 13, 2019 requesting additional information from Verne Klassen regarding any rights that may be directly and adversely affected by the Commission's decision on the applications.^{1,2} On May 31, 2019, Verne Klassen sent an email to the Commission confirming his address,³ which is located approximately 2.3 kilometres from the proposed project.

Ruling

8. The Commission is satisfied that Trevor Smith, Melissa Smith, Marilynn Smith, Verna Fosen, Conny Rommens, Bob Granger, Candyce Plumer and Dan Plumer have demonstrated that they have legal rights that may be directly and adversely affected by the Commission's decision on the applications. These individuals all own or occupy land within two kilometres of the proposed project and have demonstrated that the Commission's decision on the application has the potential to result in a direct and adverse effect on their rights. The potential effects described by these persons include proximity of the project, decreased property values, visual effects, increased noise, impacts to agricultural operations, negative health effects and effects on the environment.

9. The additional information submitted by Verne Klassen demonstrates that his residence is not within two kilometres of the proposed project, rather it is located approximately 2.3 kilometres away. As such, Verne Klassen has not demonstrated that he has legal rights or interests that may be directly and adversely affected by the proposed project and is consequently denied standing in this proceeding.

10. The Commission finds that the County of Newell has not demonstrated that it holds legal rights that may be directly and adversely affected by the Commission's decision on the applications. The County of Newell has raised concerns related to land use, access and permitting and requested that the Commission require the applicant to obtain development permit approval from the county to ensure that access and development requirements are adequately addressed. The County of Newell's statement of intent to participate did not disclose any interest in land or indicate that it has any other legal right that may be affected, and as a result it has not met the Commission's standing test.

11. The Commission has the authority to control its own process and has discretion to allow parties without standing to participate in its proceedings and to determine the level of that participation.⁴ That is, it may permit a person without standing to participate to file a brief written submission explaining his or her position, or it may allow the person to fully participate in the hearing by filing evidence, cross-examining witnesses and submitting argument. When deciding to grant participation rights, the Commission takes into account whether the person or

¹ Exhibit 23763-X0052, AUC letter to Verne Klassen – Request for additional information, April 26, 2019.

² Exhibit 23763-X0056, AUC letter - Request for additional information, May 13, 2019.

³ Exhibit 23763-X0057, Klassen email to AUC, June 3, 2019.

⁴ *Alberta Utilities Commission Act*, SA 2007, c A-37.2; *Canada (Combines Investigation Act Director of Investigation & Research) v Newfoundland Public Telephone Co.*, [1987] 2 SCR 466; *Society of Composers, Authors and Music Publishers of Canada v Canada (Copyright Board)*, [1993] FCJ 137; Decision 2011-436: AltaLink Management Ltd. and EPCOR Distribution & Transmission Inc. – Heartland Transmission Project, Proceeding 457, Application 1606609, November 1, 2011.

group requesting participation has relevant information that may assist the Commission in carrying out its duties or functions.

12. The County of Newell stated that it would not attend a hearing if one is held unless the Commission considers it necessary and has requested that the Commission consider a number of factors in making a determination on the applications.⁵ Nonetheless, if the County of Newell wishes to participate in this proceeding, it may do so by making a verbal statement at the hearing or submitting a written statement in addition to what it has already filed on the record. Should the County of Newell wish to file a statement, it must do so no later than the date set out by the Commission for intervener evidence in its notice of hearing.

13. The Commission reminds the County of Newell that only local interveners, as that phrase is defined in Section 22 of the *Alberta Utilities Commission Act*, are eligible to recover their costs of participation in ENGIE's facility applications. To meet that definition, the claimant must demonstrate that it: (a) has an interest in land that it occupies or is entitled to occupy, and (b) that the interest in land is or may be directly and adversely affected by the Commission's decision on the application(s) before it.

14. The Commission currently has insufficient information before it to make a determination regarding the municipality's eligibility to claim local intervener costs under Rule 009: *Rules on Local Intervener Costs*. However, it is important to note that the Commission's authority to award costs to interveners in its proceedings is discretionary and that, in previous decisions, the Commission and its predecessors have declined to exercise their discretion to allow municipalities to recover local intervener costs for their participation in proceedings.⁶

15. Should you have any questions about the matters addressed in this letter, please contact me at 403-592-4360 or rob.watson@auc.ab.ca.

Yours truly,

Rob Watson
Commission Counsel

⁵ Exhibit 23763-X0042, Development Requirements Request, February 26, 2019.

⁶ Decision 2011-489, Heartland Transmission Project Local Intervener Costs Claim, December 14, 2011, paragraphs 14-26, citing *Wood Buffalo (Regional Municipality) v Alberta (Energy and Utilities Board)*, 2007 ABCA 192 at paragraph 8 and *Lavesta Area Group v Alberta (Energy and Utilities Board)*, 2009 ABCA 155 at paragraph 22, See also, Decision 21717-D01-2016, *South and West of Edmonton Area Transmission Development Cooking Lake, Saunders Lake, Wabamun and Leduc Developments, Costs Award*, paragraphs 80-86.