

February 28, 2019

To: Persons currently registered on Proceeding 23958

**Alberta Infrastructure
Foothills Medical Facility Power Plant Expansion Project
Proceeding 23958
Applications 23958-A001 and 23958-A002**

Ruling on standing

1. In this ruling, the Alberta Utilities Commission decides if any party has standing with regard to applications by Alberta Infrastructure, on behalf of Alberta Health Services, for an expansion to the Foothills Medical Centre power plant (the proposed expansion project) and an interconnection of the proposed expansion project to ENMAX's distribution system. The proposed expansion project would consist of the addition of one eight-megawatt natural-gas turbine generator and associated equipment to the existing Foothills Medical Centre power plant. An application is expected to be filed for approval of an associated high-pressure natural gas pipeline as a separate project.

2. The Commission must hold a hearing if persons who have filed a statement of intent to participate in Proceeding 23958 have demonstrated that they have rights that may be "directly and adversely affected" by the Commission's decisions on the applications. 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 issued a notice of applications for Proceeding 23958 on December 14, 2018. The Commission received statements of intent to participate from the following persons:

- Alan Wolf
- Randy Beaton
- Krista Hughes
- Ellen and Dr. Dac Dang

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

5. The Commission has decided that Mr. Beaton, Ms. Hughes and the Dangs have standing, but that Mr. Wolf does not have standing in this proceeding. An explanation of this decision follows.

Statements of intent to participate

6. Mr. Wolf stated that he is interested in learning more about the proposed expansion project for future projects involving the use of natural gas on site. His address is listed as being in Swift Current, Saskatchewan.

7. Mr. Beaton stated that his property is adjacent to the proposed expansion project. He indicated that noise from the existing power plant and the exhaust plume are noticeable from his property. He is concerned about an increase in noise if the proposed expansion project were to be approved. He also expressed a concern that the proposed expansion project would set a precedent for the incursion of other commercial ventures in residential areas. Mr. Beaton questioned why the proposed expansion project is necessary when the Foothills Medical Centre could receive power from the electric distribution system. He stated that if the project is approved, the Commission should place a cap on the amount of electricity the power plant could sell to the grid. Mr. Beaton also requested that the Commission direct the applicant to provide a complaint and issue resolution process to address concerns arising from facility operations.

8. Ms. Hughes' property is located approximately 200 metres from the project area. She expressed concern with the proposed expansion project increasing the noise levels and reducing air quality in the neighbourhood. She wants the Commission to ensure that the proposed expansion project is necessary for specific Foothills Medical Centre activities and that it is not being overbuilt to sell power. She also expressed concern with the potential high-pressure pipeline and the proposal for three above-ground diesel storage tanks.

9. The Dangs have two properties adjacent to the project area. They expressed concerns about health impacts, noise levels and heavy metal and other air pollutants related to the proposed expansion project. The Dangs also expressed concerns with the consultation done by an individual they believe was a representative of the applicant.

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.¹

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."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

13. 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

14. 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

15. The Commission is satisfied that Mr. Beaton, Ms. Hughes and the Dangs have demonstrated that they have legal rights that may be directly and adversely affected by the Commission's decisions on the applications. They all own properties in close proximity to the proposed expansion project and have demonstrated that the Commission's decisions on the applications have the potential to result in a direct and adverse effect on them. The potential effects from the proposed expansion project described by these persons include increased noise, reduced air quality, and negative health effects. The Commission grants standing in Proceeding 23958 to Mr. Beaton, Ms. Hughes and the Dangs.

16. In his SIP, Mr. Wolf listed his address as being in Swift Current, Saskatchewan, and the extent of his interest in this proceeding was described as "knowing more about this project for future projects involving utilizing natural gas on site conversion to electricity in various

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.

procedures...”⁵ Mr. Wolf has not provided any information to demonstrate that he has rights that may be directly and adversely affected by the Commission’s decisions in this proceeding. For this reason, the Commission finds that Mr. Wolf did not meet the first part of the standing test and, as such, denies him standing.

17. If you have any questions about this letter please contact me at 403-592-4360 or at rob.watson@auc.ab.ca.

Yours truly,

Rob Watson
Commission Counsel

⁵ Exhibit 23958-X0017: Wolf SIP.