

May 28, 2019

To: Persons currently registered on Proceeding 24266

**East Strathmore Solar Project Inc.  
East Strathmore Solar Project  
Proceeding 24266  
Application 24266-A001**

**Ruling on standing**

1. In this ruling, the Alberta Utilities Commission considers whether to hold an oral public hearing to consider an application by East Strathmore Solar Project Inc. for the development of the East Strathmore Solar Project near Strathmore, in Section 9, Township 24, Range 23, west of the Fourth Meridian.
2. The Commission must hold a hearing if persons who have filed a statement of intent to participate in Proceeding 24266 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 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.

**Statements of intent to participate**

4. The Commission issued a notice of application for Proceeding 24266 on February 26, 2019. The Commission received statements of intent to participate from Herman and Barb Praeker, Rod and Beth Vergouwen, Sandra and Leonard Desmet, Praeker Farms, Brienne Chabot, Michael and Francine Ramsay, Odessa Cohen on behalf of the Wheatland County planning and development department, Praeker Acres Inc., and Emma Barlow.
5. Odessa Cohen stated that Wheatland County was in the process of developing a bylaw relating to large scale, commercial wind and solar facilities. She stated that the proposed project could be affected by new site regulations and the county wanted the Commission to consider those potential impacts.
6. The other persons who filed statements of intent to participate indicated that they own, occupy or farm land in the area of the project. They raised a number of concerns about the proposed project, including potential impacts on groundwater and drinking water, contaminated run-off and soil erosion, invasive weeds and pests, the loss of productive agricultural land, project decommissioning and reclamation, reduced property values, impacts on the natural ecosystem and biodiversity, visual impacts, toxic substances released from project infrastructure,

health effects on humans and livestock, visual impacts, solar glare into residences, fire hazards, loss of quiet enjoyment of property and traffic impacts, including opening up a no-exit road for more general access.

### How the Commission determines standing

7. 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]

8. The meaning of the key phrase, “directly and adversely affect,” has been considered by the Court of Appeal of Alberta on multiple occasions, and the legal principles set out by the court guide the Commission when it determines standing. Standing is determined by the 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.<sup>1</sup>

9. 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>2</sup> When considering the location or connection, the Commission looks at factors such as residence and the frequency and duration of the person’s use of the area near the proposed site.<sup>3</sup>

10. 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>4</sup>

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

<sup>2</sup> *Dene Tha’* at paragraph 14.

<sup>3</sup> *Sawyer v Alberta (Energy and Utilities Board)*, 2007 ABCA 297.

<sup>4</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.

11. 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**

12. Herman and Barb Praeker, Rod and Beth Vergouwen, Sandra and Leonard Desmet, Praeker Farms, Brienne Chabot, and Michael and Francine Ramsay have all demonstrated that they have legal rights that may be directly and adversely affected by the Commission’s decision on the application. These individuals and Praeker Farms own or occupy land that is adjacent to or within two kilometres of the proposed project. Given their proximity to the proposed project, the Commission grants standing to each of these individuals and to Praeker Farms.

13. Wheatland County did not assert that it has a legal right that might be directly and adversely affected by the Commission’s decision on the application, and the information it filed does not indicate that Wheatland County meets the standing test. However, the Commission has authority to control its own process and may allow additional parties to participate in proceedings without finding that they meet the test for standing.<sup>5</sup> That is, the Commission may allow a person who has not demonstrated a potential direct and adverse effect on their rights to participate in a proceeding in either a limited context or with full participation rights, including the ability to file evidence, cross-examine witnesses and submit argument.

14. In making its decision whether to grant participation rights, one factor the Commission takes into account is whether the person or group requesting participation has relevant information that may assist the Commission in carrying out its duties. Wheatland County indicated that it is in the process of considering a bylaw that would specifically address large-scale, commercial solar energy facilities. The proposed bylaw would include provisions concerning site requirements and setbacks. The Commission considers this to be information that would assist its understanding of the local land use requirements relating to the project, and consequently grants Wheatland County full participation rights in the hearing.

15. Although Wheatland County is entitled to full participation in the hearing, it is not eligible to make a costs claim in relation to its participation in the hearing. The Commission’s Rule 009: *Rules on Local Intervener Costs* will apply to costs claims in relation to the application filed by East Strathmore Solar Project Inc. Under Rule 009, only a local intervener is eligible to potentially recover the costs of its participation in facility applications. “Local intervener” is defined in the *Alberta Utilities Commission Act* as follows:

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<sup>5</sup> *Alberta Utilities Commission Act*, SA 2007, c A-37.2; *Canada (Combiner 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.

22(1) For purposes of this section, “local intervener” means a person or group or association of persons who, in the opinion of the Commission,

(a) has an interest in, and

(b) is in actual occupation of or is entitled to occupy land that is or may be directly and adversely affected by a decision or order of the Commission in or as a result of a hearing or other proceeding of the Commission on an application to construct or operate a hydro development, power plant or transmission line under the Hydro and Electric Energy Act or a gas utility pipeline under the Gas Utilities Act, but unless otherwise authorized by the Commission does not include a person or group or association of persons whose business interest may include a hydro development, power plant or transmission line or a gas utility pipeline.

16. The Commission has exercised its discretion to allow Wheatland County to participate in the East Strathmore Solar Project hearing, even though Wheatland County has not met the test for standing. Wheatland County does not, however, fall within the definition of “local intervener” under Section 22 of the *Alberta Utilities Commission Act* and Rule 009, as it has not demonstrated that it holds an interest in land that may be affected by the Commission’s decision on the application. Therefore, any costs incurred by Wheatland County to participate in Proceeding 24266 will not be eligible for recovery under Rule 009.

17. Praeker Acres Inc.’s statement of intent to participate identified that its lands are located in Section 27, Township 23, Range 23, west of the Fourth Meridian. These lands are approximately 3.2 kilometres south of the project location. Given that distance, the Commission is not satisfied that Praeker Acres Inc.’s legal rights may be directly and adversely affected by the Commission’s decision on the application. To the extent that Praeker Acres Inc. raised concerns about the loss of productive farmland and the removal of world food production, the Commission considers those to be general or broad concerns that do not demonstrate a direct and adverse impact on Praeker Acres Inc.’s rights. Therefore, Praeker Acres Inc. is not granted standing to participate in this proceeding.

18. Emma Barlow’s statement of intent to participate stated that she owns or occupies land more than one kilometre from the proposed project. She also stated that she is concerned about the conversion of prime agricultural land to solar farms, and that if solar energy is needed it should not be situated in areas that will affect agriculture and livestock that support the economy. Ms. Barlow indicated that she would not personally participate in a hearing and did not respond to a Commission letter requesting further information with respect to her interest in the proposed project. The Commission considers that Ms. Barlow’s concerns are general in nature and do not demonstrate that she has legal rights that may be directly and adversely affected by the Commission’s decision on the application. Moreover, she is not requesting participation rights in the hearing. Consequently, the Commission does not grant standing to Ms. Barlow.

19. A notice of hearing will be issued in due course. If you have any questions about this letter, please contact me at 403-592-3280 or by email at [gary.perkins@auc.ab.ca](mailto:gary.perkins@auc.ab.ca).

Yours truly,

Gary Perkins  
Commission Counsel