



# AUC

Alberta Utilities Commission

**Wouter d'Ailly**

**Microgeneration Power Plant**

**April 11, 2014**



**The Alberta Utilities Commission**

Decision 2014-084: Wouter d'Ailly

Microgeneration Power Plant

Application No. 1608786

Proceeding No. 2136

April 11, 2014

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The Alberta Utilities Commission

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## **1 Introduction**

1. On August 29, 2012, Wouter d'Ailly filed Application No. 1608786 with the Alberta Utilities Commission (AUC or the Commission). The applicant requested approval to operate a power plant on his property in the northwest quarter of Section 8, Township 20, Range 1, west of the Fifth Meridian, in the Okotoks, Alberta area. The power plant would consist of a grid-connected 14.5-kilowatt (kW) solar panel photovoltaic (PV) generating unit, a grid-connected 1.8-kW wind generating unit, and a stand-alone 12-kW natural-gas generating unit, which has been in operation since the summer of 2011. Mr. d'Ailly also requested approval to interconnect the PV generating unit and the wind turbine to the electrical distribution system of FortisAlberta.
2. On October 3, 2012, the Commission issued information requests to Mr. d'Ailly. Mr. d'Ailly responded to the information requests on July 22, 2013, by filing a report prepared by Gordon Howell, of Howell-Mayhew Engineering Inc.
3. On April 9, 2013, Mr. Brent MacLean filed a statement of intent to participate with the Commission. Mr. MacLean objected only to the solar PV generating unit.
4. On August 13, 2013, the Commission issued information requests to Mr. MacLean, who responded to the requests on August 28, 2013.
5. On October, 21, 2013, the Commission issued a notice of written hearing.
6. On October 24, 2013, Mr. d'Ailly wrote to the Commission and requested it make a pre-determination with respect to the costs associated with the proceeding.
7. Mr. MacLean responded to Mr. d'Ailly's request regarding costs on October 28, 2013, stating that he had insufficient time to consult with a lawyer regarding the Commission's costs rules.
8. On November 1, 2013, the Commission issued a letter to all parties suspending the written hearing process.
9. On December 5, 2013, the AUC held an information session where both the applicant and the intervening party attended.

10. The Commission issued a notice of pre-hearing on December 19, 2013, and stated that the pre-hearing meeting would consider the following:

- Should the Commission exercise its discretion to award local intervener costs in this proceeding?
- What issues should the Commission consider in this proceeding?
- What process should the Commission adopt for this proceeding?

11. The pre-hearing meeting was held on January 9, 2014, at the AUC's office in Calgary, Alberta.

12. In Decision [2014-016](#),<sup>1</sup> the Commission ruled that the application would be considered via a written proceeding and outlined the schedule for the remainder of the proceeding. The Commission determined that local intervener costs would not be awarded in this proceeding and that parties would be responsible for their own costs. It also identified that the primary issues to be considered in this proceeding relate to consultation, property value impact, project siting and visual impact, but did not limit or restrict the parties to these specific issues.

## 2 Discussion

### 2.1 Views of the applicant

13. Mr. d'Ailly requested approval for the following project components located on his property in the northwest quarter of Section 8, Township 20, Range 1, west of the Fifth Meridian, in the Okotoks, Alberta area.

- A grid-connected 14.5-kW solar panel PV generating unit, which would consist of 67 solar panels.
- A grid-connected 1.8-kW wind generating unit, which consists of one 1.8-kW wind turbine.
- Interconnection approvals for the PV generating unit and the wind turbine to connect them to the electrical distribution system of FortisAlberta.
- A stand-alone 12-kW natural-gas generating unit.

14. Mr. d'Ailly stated that the 14.5-kW solar PV system is on the ground facing south and has been operating since September 2012.

15. Mr. d'Ailly submitted that the power plant would reduce greenhouse gas emissions and would have a positive effect on the environment.

16. Mr. d'Ailly stated that the wind turbine has been operating since March 2010. He submitted that the unit has a sound pressure level rating of approximately 45 dBA at a wind speed of six to eight metres per second. He submitted that the wind turbine is installed next to his house and that he does not consider sound to be an issue.

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<sup>1</sup> Decision 2014-016: Wouter d'Ailly – 14.5-kW Solar Power Plant Pre-hearing Meeting, Application No. 1608786, Proceeding ID No. 2136, January 27, 2014.

17. Mr. d'Ailly submitted that the natural gas generating unit has been in operation since the summer of 2011 and that the unit is not connected to the grid. He stated that the unit is used as a backup generator during electrical outages.

18. Mr. d'Ailly stated that he had made the appropriate microgeneration applications to FortisAlberta to connect the wind turbine and solar generating unit. He stated that he had also contacted the Municipal District (MD) of Foothills and that no development permit was required for the generating units. He submitted that he did not learn that an application to the AUC was required until April of 2012.

19. Mr. d'Ailly indicated that his participant involvement program for the solar PV array consisted of notifying his two closest neighbours, one of whom is Mr. MacLean. Mr. d'Ailly submitted a letter of support from his other neighbour. Mr. d'Ailly submitted that because the solar panels could not be seen by any other neighbours and the unit does not make any appreciable noise that he did not contact any other neighbours about the project.

20. Mr. d'Ailly indicated that he did not contact any of his neighbours about the wind turbine or natural gas generator. He submitted that his neighbours are so far away that they would need binoculars to see the wind turbine and that the turbine looks very similar to a common electrical distribution pole. He added that he did not believe that his neighbours could hear or see the natural gas generator due to its location next to his house.

21. Mr. d'Ailly stated that while he had not originally provided details of the application to Mr. MacLean, he has since corrected that matter and contacted Mr. MacLean to attempt to resolve his concerns. Mr. d'Ailly submitted that he also provided a copy of the Howell-Mayhew engineering report that details the project to Mr. MacLean.

22. Mr. d'Ailly provided photographs of the solar panels from near Mr. MacLean's house and a snapshot of Mr. MacLean's house from the location of the solar panels. Mr. d'Ailly submitted that Mr. MacLean's property is greater than 800 metres away from the solar panels and that there would be no visual impact at his residence because a wood lot blocked the view of the solar panels. Mr. d'Ailly stated that he had intentionally located the solar panels in this location for this reason. He added that the solar panels are an approved use of agricultural land in the MD of Foothills.

23. Mr. d'Ailly submitted that because there is no appreciable visual impact, there is no tangible affect to property value. Mr. d'Ailly further submitted that Mr. MacLean did not provide any real evidence to demonstrate that the solar array will have an effect on property value. He added that potential purchasers who are looking for a natural and traditional setting are more likely to appreciate renewables and their contribution to the benefit of the world as a whole. He stated that this may actually increase the value of Mr. MacLean's property.

24. Mr. Howell, on behalf of Mr. d'Ailly, performed an analysis that concluded that no reflections from the solar panels would strike the residences of either of Mr. d'Ailly's closest neighbours.

25. Mr. d'Ailly talked about a history of disagreements between the two neighbours and stated that this really amounts to a dispute between two neighbours.

## 2.2 Views of the intervener

26. Mr. MacLean stated that Mr. d'Ailly did not provide specific details of the solar development in the fall of 2012. He said that Mr. d'Ailly did not conduct a participant involvement program and did not disclose information about the project prior to his objection. Mr. MacLean stated that when he attempted to have a discussion with Mr. d'Ailly, that Mr. d'Ailly simply passed him off to the Commission. Mr. MacLean added that had Mr. d'Ailly contacted him at the onset of the project, they could have worked together so that both parties would be satisfied. He stated that Mr. MacLean sent him the Howell-Mayhew engineering report, but that he still had outstanding questions that the report did not answer. He stated that a third-party report is not an effective way to communicate and does not replace having a thoughtful conversation.

27. Mr. MacLean further expressed that he is unaware of Mr. d'Ailly's future plans for solar development on his property and is concerned that this may only be the beginning. He stated that the municipality also did not notify him of the development and that Mr. d'Ailly has never attempted to answer his questions or resolve his concerns with the project. Mr. MacLean submitted that Mr. d'Ailly has refused to work with him and refused to talk with him, even when he attempted to initiate the conversations himself.

28. Mr. MacLean submitted that his and Mr. d'Ailly's property are classified as agricultural by the MD of Foothills which allows for traditional farming and ranching activities. Mr. MacLean expressed that the solar panels do not fit into the rural landscape and detract from the extraordinary foothills scenery.

29. He stated that Mr. d'Ailly's previous solar panels were highly reflective and he often thought that he should not have to live with the profound visible pollution they created, but that in an effort to be neighbourly, he never complained about them. He stated that even though the project may not be readily visible from his house, there is a visual impact to the majority of his land.

30. Mr. MacLean submitted that while Mr. d'Ailly believed he had picked an ideal site for the power plant because the view of the power plant from the house would be blocked by a wood lot, Mr. MacLean declared that he placed no value on the view from his bathroom window, the only window of his home facing the power plant. He indicated that instead, he placed greater importance on the spectacular views from the balance of his quarter section and provided photographs of the views from his quarter section of the surrounding scenery and of the solar panels. He added that professional realtors had advised him that the balance of his quarter section is where the value of his property truly exists. He submitted that Mr. d'Ailly should have focused on minimizing the visual effect to his quarter section rather than focusing on minimizing the effect to his bathroom window. He submitted that the Howell-Mayhew report was limited because Mr. Howell had never visited the site and because it focused on the visual effects to the house and not on the effects to the remainder of his quarter section.

31. Mr. MacLean submitted that he was very concerned about the project's impact to his property value. He stated that he consulted with two local independent professional realtors, who both stated that his quarter section would be less valuable due to the solar developments. They indicated that the highest valued land in the area is that with a beautiful view and a traditional agricultural setting. He indicated that the realtors informed him that some clients who would

potentially buy his property would lose interest when they saw the solar power plant. He submitted that his property value could be reduced by several hundred thousand dollars.

32. Mr. MacLean expressed interest in collaborating with Mr. d'Ailly and working out their differences. He stated that he was not opposed to solar developments and was only seeking to minimize the negative effects the project would have on him and his property. He stated that had Mr. d'Ailly properly consulted with him, another suitable location for the solar panels could have been found.

### 3 Findings

33. Mr. MacLean expressed three concerns about Mr. d'Ailly's solar array: visual impacts, property devaluation and inadequate consultation. These concerns relate directly to the project's social, economic and environmental impacts and the Commission will address each in turn.

34. The Commission finds Mr. d'Ailly took reasonable and effective steps to minimize and mitigate the visual impacts associated with his solar array. The solar array is set considerably back from Mr. MacLean's property line and is sited on the ground, in a depression and behind a wood lot. The evidence before the Commission was that reflections from the solar array would miss the MacLean residence by a minimum of 25 degrees or 359 metres.<sup>2</sup> The Commission also notes that the solar array is located north of Mr. MacLean's property and that the views that Mr. MacLean appeared to be most concerned about preserving are of the Rocky Mountains to the west of his property.

35. The Commission finds that the siting steps taken by Mr. d'Ailly effectively reduced or eliminated any visual impacts at Mr. MacLean's residence. While the Commission recognizes that the solar array may be visible from other locations on Mr. MacLean's property, it is not satisfied that this will have a significant effect on the view given its location and low profile.

36. Regarding impacts to property value, the Commission observes that the realtors that Mr. MacLean relied upon stated that the highest valued land in the area is that with a beautiful view and a traditional agricultural setting. The Commission considers it relevant that Mr. MacLean emphasized in his submissions that the best views from his property are those to the west looking onto the Rocky Mountains. Given the low profile nature of the solar array and its location to the north of Mr. MacLean's property, the Commission is not satisfied that it will impact the views to the west or the agricultural nature of Mr. MacLean's property.

37. Further, and while not determinative of this issue, the Commission considers it important to note that it has considered the impacts of various types of utility infrastructure on nearby residential and agricultural property value in many previous decisions. The Commission's consistent conclusion has been that property value impacts, even for structures as large as a wind turbine, or a transmission tower, diminish rapidly with distance.

38. For example, in Decision [2011-436](#),<sup>3</sup> the Commission considered the potential impact of the largest transmission towers ever constructed in Alberta on the property values of nearby

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<sup>2</sup> Exhibit 008, Report by Howell-Mayhew Engineering Inc., page 53, paragraph 81.

<sup>3</sup> Decision 2011-436: AltaLink Management Ltd. and EPCOR Distribution & Transmission Inc. – Heartland Transmission Project, Application No. 1606609, Proceeding ID No. 457, November 1, 2011.

residential and agricultural lands. In that decision, the Commission concluded that any impact on property value would be small and would continue to diminish for distances greater than 200 metres from the transmission line.<sup>4</sup> More recently, the Commission reached a similar conclusion with respect to property value impacts associated with a wind farm located near the town of Provost.<sup>5</sup>

39. Finally, the Commission notes that while the lands owned by Mr. d'Ailly and Mr. MacLean are zoned as agricultural lands, the installation of solar panels is a permitted use in the MD of Foothills. This suggests to the Commission that, at least from the perspective of the MD, the construction and operation of a solar array is consistent with the agricultural nature of the lands.

40. Having regard to the foregoing, the Commission finds that it is unlikely that the continued operation of Mr. d'Ailly's solar array will have a material impact on Mr. MacLean's property value.

41. The Commission recognizes that Mr. d'Ailly is an individual landowner with very little experience with the Commission's application process and consultation requirements. The Commission also recognizes that the evidence before it was that Mr. d'Ailly and Mr. MacLean have disagreed in the past over various matters. However, notwithstanding Mr. d'Ailly's relative inexperience with the Commission's processes and these past disputes, it was incumbent upon Mr. d'Ailly to inform Mr. MacLean of his plans and consider Mr. MacLean's concerns about those plans.

42. The Commission finds that the participant involvement program conducted by Mr. d'Ailly with respect to the project was not ideal and could have been improved in several ways. The Commission would expect that if Mr. d'Ailly were to make another application in the future, that the quality of his participant involvement program would be improved.

43. The Commission finds that Mr. d'Ailly did eventually provide Mr. MacLean with all of the relevant application details, as evident by him providing Mr. MacLean with Mr. Howell's report on the project. In addition, Mr. d'Ailly directed Mr. MacLean to the Commission when his concerns were not fully resolved. The Commission finds that Mr. MacLean was therefore provided an appropriate avenue to raise his concerns and objection to the project. The Commission is satisfied that Mr. MacLean was informed and aware of the project and that he had the opportunity to have his concerns heard.

44. The Commission has reviewed the application and has determined that the technical, siting, emissions, environmental and noise aspects of the power plant have been met.

45. When deciding if approval of this application is in the public interest, the Commission is required by Section 17 of the *Alberta Utilities Commission Act* to consider the project's social, economic and environmental effects. Having regard to the foregoing, the Commission is satisfied that the project's social and economic and environmental effects are primarily positive and that its negative impacts have been effectively mitigated by the reasonable and effective siting steps taken by Mr. d'Ailly.

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<sup>4</sup> Decision 2011-436, paragraph 742.

<sup>5</sup> Decision [2014-040](#): 1646658 Alberta Ltd. - Bull Creek Wind Project, Application No. 1608556, Proceeding ID No. 1955, February 20, 2014 (Errata issued March 10, 2014), paragraph 529.

#### 4 Decision

46. Pursuant to Section 11 of the *Hydro and Electric Energy Act*, the Commission approves the application and grants Mr. d'Ailly the approval set out in Appendix 1– Microgeneration Power Plant – Approval No. U2014-139 – April 11, 2014 (Appendix 1 will be distributed separately).

47. Pursuant to Section 18 of the *Hydro and Electric Energy Act*, the Commission approves the connection order and grants Mr. d'Ailly the approval set out in Appendix 2 – Connection Order No. U2014-140 – April 11, 2014 (Appendix 2 will be distributed separately).

Dated on April 11, 2014.

#### The Alberta Utilities Commission

*(original signed by)*

Tudor Beattie, QC  
Panel Chair

*(original signed by)*

Neil Jamieson  
Commission Member

*(original signed by)*

Kate Coolidge  
Acting Commission Member