

September 27, 2019

To: Parties currently registered on Proceeding 24718

**Jenner 1 Inc.  
Jenner Wind 1 GP Inc.  
Jenner Wind Power Project Amendment and Ownership Transfer  
Proceeding 24718  
Applications 24718-A001 to 24718-A004**

**Ruling on standing**

**Background**

1. In this ruling, the Alberta Utilities Commission decides whether to hold a public hearing to consider applications by Jenner 1 Inc. and Jenner Wind 1 GP Inc. (Jenner Wind) for approval of an amendment to the approved, but not yet constructed, Jenner Wind Power Project, and to transfer ownership of the project between related corporations.

2. Jenner Wind's amendment applications seek approval to change the turbine model from the 178.5-metre-tall Goldwind three-megawatt (MW) turbine to the 187.5-metre-tall Goldwind 4.2-MW turbine, reduce the number of turbines from 36 to 29, adjust the turbine locations within 50 metres of the approved turbine locations, alter the approved Halsbury 306S Substation, alter the routing of Transmission Line 949L, and transfer ownership of the Jenner Wind Power Project from Jenner 1 Inc. to Jenner Wind 1 GP Inc.

3. The Commission must hold a hearing if persons who have filed a statement of intent to participate (SIP) in Proceeding 24718 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.

4. The Commission issued a notice of applications for Proceeding 24718 on July 26, 2019. The Commission received SIPs from the following parties:

- Carmen Stopanski
- Kevin Stopanski
- Dawn Rasmuson (and on behalf of her parents David and Dianna Burnat)
- Amy Harvey
- Kaitlyn Tancowny
- James Larson
- Daniel Larson
- Stephanie Lessner
- Jordan Lessner

- Mitchell Larson
- Dixie Furgeson
- Cathy and Dan MacDonald

5. In response to a Commission letter giving Jenner Wind an opportunity to comment on the SIPs, Jenner Wind submitted that the parties who filed SIPs failed to satisfy the test for standing and requested that the Commission proceed to consider the project without a hearing.<sup>1</sup>

6. The Commission issued a letter stating that it would consider whether the proposed changes to the approved project could result in a direct and adverse effect on a person's rights, and not whether the project as a whole may affect rights. The Commission requested that Dawn Rasmuson, Kaitlyn Tancowny, James Larson, Daniel Larson, Stephanie Lessner, Mitchell Larson and Jordan Lessner explain how the Commission's decision on the proposed changes to the approved Jenner Wind Power Project would directly and adversely affect them. Additionally, the Commission noted there was a discrepancy between the distance from the project given by some individuals in their SIP and the corresponding distances given by Jenner Wind in its submission. Accordingly, the Commission requested that the legal land description, including the legal subdivision, of the land owned or occupied by Kaitlyn Tancowny, James Larson, Daniel Larson, Stephanie Lessner, Mitchell Larson and Jordan Lessner be provided in that person's response.

7. The Commission did not receive any responses to its request for additional information from SIP filers and has made standing decisions based on the information provided on the record of the proceeding.

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

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

9. 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]

10. 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

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<sup>1</sup> Exhibit 24718-X0055, Jenner Letter of Enquiry Standing Submissions, PDF page 1.

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>2</sup>

11. 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>3</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>4</sup>

12. 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>5</sup>

13. Where an applicant seeks an amendment to an existing approval, a person must show that the proposed amendment may directly and adversely affect their rights. When determining standing for amendments, the Commission only considers the potential additional effects of the amendment in comparison to the existing approved project. An amendment application does not re-open consideration of the project as a whole. The Court of Appeal of Alberta has stated, "[i]f the expansion will have no measurable impact, then permitting standing would amount to a collateral re-examination of the permit originally given for the existing facility."<sup>6</sup>

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 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**

15. None of the persons who filed SIPs raised a concern about Jenner Wind's application for approval to transfer ownership of the project, and the Commission has concluded that no person has demonstrated that they have legal rights that may be directly and adversely affected by the Commission's decision on that application. For the purpose of making standing decisions, the

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<sup>2</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>3</sup> *Dene Tha'*.

<sup>4</sup> *Sawyer v Alberta (Energy and Utilities Board)*, 2007 ABCA 297.

<sup>5</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.

<sup>6</sup> *Visscher v Alberta (Energy Resources Conservation Board)*, 2011 ABCA 209.

Commission has considered whether any person has demonstrated that a proposed change to the approved Jenner Wind Power Plant has the potential to directly and adversely affect their rights.

16. The individuals who filed SIPs indicated that they own, reside on or farm land in the Jenner area. Each of those interests in land is a legal interest that meets the first part of the standing test.

17. With respect to the second, factual part of the standing test, the Commission has considered whether any of the individuals who filed SIPs provided sufficient information to show that the Commission's decision on the requested changes to the project may directly and adversely affect their rights as a landowner, resident or occupant of land. While proximity of a SIP filer's land to the project is not the only factor the Commission considers when it decides standing, it is an important one. The Court of Appeal of Alberta has confirmed that some degree of location or connection between the work proposed and the right asserted is reasonable.

18. The SIPs filed by Carmen Stopanski, Kevin Stopanski, Dixie Furgeson, Stephanie Lessner, Jordan Lessner, Daniel Larson and Mitchell Larson did not include a legal land description identifying the land they owned, occupied or farmed. None of them provided that information in response to the Commission's subsequent letter asking SIP filers to provide missing legal land locations. Jenner Wind submitted that Carmen and Kevin Stopanski's land was located approximately six kilometres from the project boundary, that Stephanie and Jordan Lessner's residence was located approximately 4.1 kilometres from the project boundary, and that Daniel Larson's residence was located approximately 4.1 kilometres from the project boundary. Jenner Wind had no information to provide about either Dixie Furgeson's or Mitchell Larson's land locations, but it noted that Mitchell Larson's SIP stated that the project is "two miles away" from him.

19. The concerns raised by these individuals include visual impacts, affects on wildlife and livestock, diminished property values, impacts on water wells, increased fire hazard, and human health affects from low frequency noise and shadow flicker. The Commission notes that none of these concerns are specific to the changes requested in the amendment applications: they were expressed as concerns about the project as a whole. The Commission reiterates that the filing of the amendment applications do not provide a basis for re-examining what was previously decided by the Commission. The Commission also notes that some of the concerns raised are general in nature and do not demonstrate an impact on the legal rights asserted. In any case, given that these SIP filers did not identify the location of the lands they own, occupy or farm, the degree of location or connection between the project changes proposed and the property rights asserted is missing for each of these individuals. The Commission concludes there is no reliable information that demonstrates the proposed changes to the project may directly and adversely affect their rights or interests. The Commission therefore finds that none of the SIP filers who failed to provide a legal description of the lands they own, occupy or farm meets the Commission's standing test.

20. Kaitlyn Tancowny and James Larson each filed a SIP that identified the land they own and occupy is located in Section 33, Township 22, Range 8, west of the Fourth Meridian. James Larson stated that his residence is less than two kilometres from the project's turbines; however, Jenner Wind submitted that the project boundary's nearest point on a map to the parcel

of land identified by Kaitlyn Tancowny and James Larson was 2.4 kilometres from the project. The concerns raised in their SIPs include visual impacts, affects on wildlife (including increased rodent populations) and the environment, diminished property values, impacts on water wells, and human health affects from low frequency noise and shadow flicker.

21. The Commission accepts Jenner Wind's estimate that the lands owned and occupied by Kaitlyn Tancowny and James Larson are more than 2,000 metres from the project boundary. The Commission notes that their concerns relate to the approved project generally and not the changes requested in the amendment applications. Given their distance from the project and the general nature of their concerns, the Commission finds that they have not demonstrated that the proposed changes to the project may directly and adversely affect their rights. The Commission therefore does not grant standing to Kaitlyn Tancowny or James Larson.

22. Amy Harvey stated that her family owns a ranching and farming property approximately 10 miles "up the river from" the project, and she provided the legal land location Section 9, Township 23, Range 7, west of the Fourth Meridian. The concerns raised in her SIP include impacts on migratory and resident bats and birds, and a lack of suitable mitigation and compensation for their losses, visual impacts, diminished property values, dust and other impacts on sensitive prairie grasslands. The Commission considers that these concerns are related to the project as a whole and not to the changes proposed in the amendment applications. In addition, most of the concerns are general in nature and do not relate to the property rights asserted by Amy Harvey. To the extent that her concerns over diminished property values and visual impacts may relate specifically to her property, the Commission finds that her distance from the project of several kilometres demonstrates that she is too far removed from the project for her legal rights and interests to be directly and adversely affected. Therefore, the Commission does not grant standing to Amy Harvey.

23. Cathy and Dan MacDonald stated that they own or occupy land in Section 9, Township 23, Range 7, west of the Fourth Meridian. Jenner Wind stated that parcel of land was approximately 8.8 kilometres northeast of the project boundary. The concerns raised by Cathy and Dan MacDonald focus on impacts on sensitive wildlife species and habitat, in particular in and near to the Red Deer River corridor, and impacts on native prairie that is adjacent to the project lands. Their SIP included a number of recommendations to address the concerns they raised, which they asked the Commission to consider. The Commission appreciates Cathy and Dan MacDonald's thoughtful submissions; however, in terms of their standing in this proceeding the Commission finds that their concerns relate to the project as a whole and are general in nature. They do not relate to the property they identified, which is several kilometres from the project, and so do not demonstrate that their legal rights could be directly and adversely affected by the proposed changes to the project. Therefore, the Commission does not grant standing to Cathy and Dan MacDonald.

24. Dawn Rasmuson filed a SIP on her own behalf and on behalf of her parents, David and Dianna Burnat. Jenner Wind identified Dawn Rasmuson and her parents as occupants or owners of land in a number of sections in Township 21, Range 9, west of the Fourth Meridian,<sup>7</sup> and it submitted that Dawn Rasmuson was the only SIP filer who satisfied the first branch of the

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<sup>7</sup> Exhibit 24718-X0008, Attachment LOE-PP-G - PIP Summary, page 14.

standing test, based on her ownership of property in proximity to the project. Jenner Wind stated that the proposed changes to the project will not directly or adversely affect her rights because there would be no change in potential impacts relative to the project that was previously approved by the Commission.<sup>8</sup>

25. Dawn Rasmuson stated that she and her parents were concerned about the overall impact the project would have on them as a business and as ranchers and farmers. Her specific concerns included noise and visual impacts of the turbines, affects on human and animal health (in particular, birds of prey) and affects on her water.

26. The Commission notes that the concerns raised by Dawn Rasmuson relate to the project as a whole, rather than the changes proposed in the amendment applications. Some of her particular concerns, for example noise and environmental issues relating to the project, were addressed by the Commission in Decision 21394-D01-2017.<sup>9</sup> As previously stated, the filing of the amendment applications do not provide a basis for re-examining what was previously decided by the Commission. The Commission finds that Dawn Rasmuson's concerns do not relate to the changes proposed in the amendment applications and there is nothing in the proposed changes that might result in a new or increased adverse impact on her or her parents' legal rights and interests. The Commission also notes that turbines presently approved for locations nearest to Dawn Rasmuson's and her parents' lands would not be installed if the amendment applications are approved.<sup>10</sup> Having regard for the foregoing, the Commission finds that Dawn Rasmuson has not demonstrated that the proposed changes to the project could result in a direct and adverse affect on the rights and interests asserted by her and her parents. The Commission does not grant standing to Dawn Rasmuson or to David and Dianna Burnat.

27. Because there are no parties with standing in this proceeding, the Commission will not schedule an oral hearing.

28. Should you have any questions about the matters addressed in this letter, please contact the undersigned 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

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<sup>8</sup> Exhibit 24718-X0055, Jenner Letter of Enquiry Standing Submissions, page 7.

<sup>9</sup> Decision 21394-D01-2017: Power Renewable Energy Corporation, Alberta Electric System Operator and AltaLink Management Ltd. – Jenner Wind Power Plant and Interconnection, Proceeding 21394, Applications 21394-A001 to 21394-A006, June 16, 2017.

<sup>10</sup> The amendment applications request approval to remove turbines 70, 74, 77, 80, 84 and 89. These turbines are presently approved to be constructed and operated in sections 1, 12, and 13 of Township 21, Range 9, west of the Fourth Meridian.