

October 7, 2019

To: Parties currently registered in Proceeding 24801

**Sutton Energy Ltd.
Wildwood Power Plant
Proceeding 24801
Application 24801-A001**

Ruling on standing

1. In this ruling, the Alberta Utilities Commission decides whether to hold an oral public hearing to consider an application by Sutton Energy Ltd. relating to the development of the Wildwood Power Plant near the town of Wildwood.
2. The Commission must hold a hearing if persons who have filed a statement of intent to participate in Proceeding 24801 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 issued a notice of application for Proceeding 24801 on August 12, 2019. In response, the Commission received a statement of intent to participate from Ann Schlemko.
4. The Commission requested additional information from Ms. Schlemko on September 3, 2019, and again on September 12, 2019, regarding her land location and any rights that may be directly and adversely affected by the Commission’s decision on the application. The Commission did not receive a response from Ms. Schlemko by the requested date of September 19, 2019.
5. The Commission has authorized me to communicate its decision on standing. For the reasons described below, the Commission denies standing to Ms. Schlemko.

How the Commission determines standing

6. 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]

7. 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

8. 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 proximity of residence and the frequency and duration of the applicant’s use of the area near the proposed site.³

9. 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

10. The Commission assesses the potential for whether a person may be “directly and adversely affected” 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 are typically insufficient to establish standing, unless a more specific link or connection to the demonstrated or anticipated characteristics of a proposed project is established.

Ruling

11. The Commission finds that Ms. Schlemko has not provided sufficient information to demonstrate that she holds rights that will be directly and adversely affected by the Commission’s decision in this proceeding. The Commission accordingly denies standing to Ms. Schlemko.

12. As standing has not been granted to anyone in this proceeding, the Commission will not hold an oral public hearing to consider the application by Sutton Energy Ltd. relating to the development of the Wildwood Power Plant.

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.

13. If you have any questions about this letter, please contact me at 403-592-4388 or by email at laura.johnson@auc.ab.ca.

Yours truly,

Laura Johnson, P.Eng.
Lead Application Officer