

October 16, 2019

To: Parties currently registered on Proceeding 24828

**ENMAX Power Corporation
101 Street Transmission Line 7.82L Relocation Project
Proceeding 24828
Application 24828-A001**

Ruling on standing

1. In this ruling, the Alberta Utilities Commission decides whether to hold a public hearing to consider an application by ENMAX Power Corporation relating to the 101 Street Transmission Line 7.82L Relocation Project located in the Springbank area of Calgary.
2. The Commission must hold a hearing if persons who have filed a statement of intent to participate in Proceeding 24828 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 of witnesses, and providing argument. This permission to participate is referred to as standing.
3. The Commission issued a notice of application for Proceeding 24828 on September 9, 2019. The Commission received statements of intent to participate from:
 - Manoj Sharma
 - Leon Nellissen
 - Greg Josiak
4. Counsel for ENMAX filed a letter in response to the statements of intent to participate in which it made submissions on each of these three individuals’ standing to participate in this proceeding.¹ After consideration of the statements of intent to participate and ENMAX’s submissions, the Commission has granted standing to Manoj Sharma and Greg Josiak. Leon Nellissen has not been granted standing in this proceeding because he has not met the test, explained below.
5. The Commission has authorized me to communicate its decision on standing.

¹ Exhibit 24828-X0032, EPC Ltr re SIPs – Standing.

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 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 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.²

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.”³ 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.⁴

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.”⁵

10. 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

² *Cheyne v Alberta (Utilities Commission)*, [2009 ABCA 94](#); *Dene Tha’ First Nation v Alberta (Energy and Utilities Board)*, [2005 ABCA 68](#) [*Dene Tha’*].

³ *Dene Tha’*.

⁴ *Sawyer v Alberta (Energy and Utilities Board)*, [2007 ABCA 297](#).

⁵ [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.

standing, unless a more specific link or connection to the demonstrated or anticipated characteristics of a proposed project is established.

Ruling

11. Manoj Sharma and Greg Josiak each state that they own and reside on land in close proximity to the project and that they are concerned about adverse visual impacts of the project when viewed from their residence. Mr. Sharma's property in The Slopes community is in the first row of houses nearest the project boundary. It is approximately 300 metres from existing Transmission Line 7.82L and approximately 400 metres from the proposed relocation route.⁶ Although The Slopes community is a residential subdivision, it is in a rural setting and views to the west, towards the existing and proposed relocation route, are not obstructed by features typically found in an urban residential setting. The Commission is satisfied that Mr. Sharma has demonstrated that he has legal rights that may be directly and adversely affected by the Commission's decision on the application and grants him standing.

12. Mr. Josiak's property is in the Pinebrook community, which is outside the boundaries of the city of Calgary. It is consequently a "rural community" within the definition in Rule 007,⁷ and is adjacent to the existing Transmission Line 7.82L and approximately 200 metres south of the southern terminus of the proposed relocation route.⁸ The Commission is satisfied that Mr. Josiak has demonstrated that he has legal rights that may be directly and adversely affected by the Commission's decision on the application and grants him standing.

13. Mr. Nellissen indicated that he owns property located within 800 metres from the project boundary, however he did not provide the address of his property or a legal land location that would allow the Commission to locate his property in relation to the project. Further, Mr. Nellissen has not described how the Commission's decision on the application has the potential to result in a direct and adverse effect on him. Although in his submission Mr. Nellissen expresses concerns about project costs, proximity to high-pressure gas pipelines, environmental impacts and views for residents of The Slopes community, these concerns appear to relate to the Highway 8 Transmission Line 7.82 Relocation Project, which is the subject of a different proceeding.

14. The Commission will afford Mr. Nellissen an opportunity to provide his property's municipal address or a legal land location, and a description of how the Commission's decision on the 101 Street Transmission Line 7.82 Relocation Project has the potential to result in a direct and adverse effect on his rights. Mr. Nellissen should file a response by **October 23, 2019**. The Commission will re-assess Mr. Nellissen's standing based on any response filed by then.

15. The persons who have been granted standing are eligible to potentially recover the costs of their participation in this proceeding, as they fall within the definition of "local intervener" in

⁶ Distances are estimated from the map provided in Exhibit 24828-X0009.01, Appendix C-5: Landowner Map, page 1.

⁷ Rule 007: *Applications for Power Plants, Substations, Transmission Lines, Industrial System Designations and Hydro Developments*, footnote 13 on page 50.

⁸ Distances are estimated from the map provided in Exhibit 24828-X0009.01, Appendix C-5: Landowner Map, page 1.

Section 22 of the *Alberta Utilities Commission Act*. Rule 009: *Rules on Local Intervener Costs* applies to costs claims for this proceeding.

16. The Commission emphasizes that eligibility to claim costs does not guarantee full recovery of any costs. Any claims for costs must be filed after this proceeding is concluded, in accordance with Rule 009, and costs recovery is subject to the Commission assessing the parties' contribution to the proceeding. The Commission encourages parties with similar interests and positions to work together to ensure that any expenditures are minimized and costs are not duplicated.

17. As standing has been granted to Manoj Sharma and Greg Josiak in this proceeding, and based on the concerns they raised, the Commission will hold a written hearing to consider the application by ENMAX Power Corporation for the 101 Street Transmission Line 7.82 Relocation Project. A notice of hearing will be issued in due course.

18. If you have any questions, please contact the undersigned at 403-592-4389 or by email at nicholas.sawkiw@auc.ab.ca.

Yours truly,

Nicholas A. Sawkiw
Commission Counsel