

October 30, 2019

To: Parties currently registered on Proceeding 24831

**ENMAX Power Corporation  
Highway 8 Transmission Line 7.82L Relocation Project  
Proceeding 24831  
Application 24831-A001**

**Ruling on standing**

1. In this ruling, the Alberta Utilities Commission determines the standing of people and groups who have filed requests to participate in a public hearing in which the Commission will consider an application by ENMAX Power Corporation relating to the Highway 8 Transmission Line 7.82L Relocation Project located in Calgary, Alberta.
2. Persons (including individuals and corporations) who have demonstrated that they have rights that may be directly and adversely affected by the Commission's decision on the application are legally entitled to participate in the hearing. 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 hearing for Proceeding 24831 on September 6, 2019.<sup>1</sup> In the notice, the Commission directed any person who had concerns with or objections to the application to file a statement of intent to participate by October 8, 2019. The Commission stated that it considers that persons who own or reside in the first row of houses surrounding the finalized right-of-way for either the preferred or alternate route proposed for the transmission line have rights that may be directly and adversely affected by the Commission's decision on the application and that these persons would be legally entitled to participate in the hearing, subject to any objections from another party.
5. The notice of hearing also stated that persons who do not own property or reside in the first row of houses may apply to the Commission to participate in the hearing. The Commission stated that it would determine whether any such persons have standing on a case-by-case basis.
6. The Commission received statements of intent to participate from 35 individuals who state that they own or occupy land located near the proposed project, and from another individual who states that he represents owners of commercial land near the project that the owners intend to develop. Three community associations also filed statements of intent to participate.

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<sup>1</sup> Exhibit 24831-X0024, AUC notice of hearing - written submissions due October 8th/written evidence due November 19, 2019.

7. The concerns raised in the statements of intent to participate include the siting of the proposed transmission line, decreased property values, visual effects, increased noise, interference with agricultural operations, negative health effects, impacts on safety, effects on the environment and the quality of public consultation for the project.

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

8. 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]

9. 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 part 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 part 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>

10. 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>

11. 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

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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](#).

standing to demonstrate the degree of connection between the rights asserted and potential effects identified.”<sup>5</sup>

12. 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**

13. The Commission is satisfied that the persons listed in Schedule A to this letter have demonstrated that they have legal rights that may be directly and adversely affected by the Commission’s decision on the application. The individuals listed in Schedule A own or occupy land in the first row of houses adjacent to either the preferred or the alternate route for the transmission line, or their land is in close proximity to one of those routes. The potential effects described by these persons include decreased property values, visual effects, increased noise, interference with agricultural operations, negative health effects, and effects on the environment.

14. Three community groups requested standing, namely:

- Slopes Community Association
- Springbank Hill Community Association
- Discovery Ridge Community Association

15. When a community organization requests standing in a Commission proceeding, the Commission generally considers the organization to have standing if it is authorized to represent one or more persons who have standing to participate or if the organization itself has a legal right or interest that may be directly and adversely affected by the proposed development. The Commission notes that each of the three community associations states that it represents at least one of the individuals determined in Schedule A to have standing. The Commission therefore grants standing to the Slopes Community Association, Springbank Hill Community Association and Discovery Ridge Community Association as the representative of their respective members with standing. The community associations are also listed in Schedule A to this letter.

16. Elio Cozzi filed a statement of intent to participate<sup>6</sup> in which he states that he is the president of the Springbank Hill Community Association and intends to participate on behalf of the association, which represents residents located adjacent to the proposed alternate route. Mr. Cozzi also indicated that his home is not located in the first row of houses but that he and the association were supporting residents located near the alternate route. After Mr. Cozzi filed his statement of intent to participate, Nancy McKenzie filed statements of intent to participate as

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<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> Exhibit 24831-X0033, System generated PDF.

counsel for the Springbank Hill Community Association.<sup>7</sup> Mr. Cozzi was not included in the list of association members represented by Ms. McKenzie. The Commission also understands that Mr. Cozzi is not seeking standing in his own right and that Ms. McKenzie will be conducting the association's intervention in this proceeding. The Commission considers that Mr. Cozzi's statement of intent to participate, filed on behalf of the association, is superseded by the filings made by Ms. McKenzie. While Mr. Cozzi is free to participate as part of the association's intervention in the proceeding, Mr. Cozzi does not have standing in his own right because he has not demonstrated that he has a legal right or interest that may be directly and adversely affected by the proposed development.

17. The Commission finds that the individuals listed in Schedule B to this letter have not demonstrated that they have legal rights that may be directly and adversely affected by the Commission's decision on the application. Robert Filyk, Sam and Janet Coles, Judy Hawco, Manoj Sharma, Rob Symonds, Roger Straathof, Shu Hui Ting and Ashley Highton filed statements of intent to participate, indicating that they own or occupy property in the Slopes community and are opposed to the alternate route proposed by ENMAX. The Commission considers that none of these individuals owns or occupies property in the first row adjacent to the right-of-way for the proposed alternate route (being the route nearest to the Slopes community). In addition, their statements of intent to participate indicate that the proposed alternate route would range between 400 metres and more than 1,000 metres from the residences they own or occupy. For these reasons, the Commission finds that none of Robert Filyk, Sam and Janet Coles, Judy Hawco, Manoj Sharma, Rob Symonds, Roger Straathof, Shu Hui Ting or Ashley Highton have demonstrated that they have a legal right or interest that may be directly and adversely affected by the proposed development. They are accordingly denied standing.

18. Jesper Trangeled filed a statement of intent to participate that indicates he owns or occupies land in the Springbank Hill community that is approximately 800 metres from the proposed alternate route. He stated that he is concerned about the underground gas pipeline near that route posing a safety hazard and interfering with plans to construct a noise attenuation barrier on or near the route in the future. Mr. Trangeled's property is several streets removed from the first row of housing adjacent to the alternate route, and is several hundred metres from the eastern terminus of the alternate route. The Commission finds that Mr. Trangeled has not demonstrated that he has a legal right or interest that may be directly and adversely affected by the proposed development and therefore denies him standing.

19. Jim Edwardson filed a statement of intent to participate in which he states that he represents the owners of a future development site on 69th Street and Springbank Boulevard, however, he does not identify the specific land parcel in which the owners have an interest. In order to consider whether Mr. Edwardson or the owners he represents have standing, the Commission requires information about the location of their land, the type of development the owners have planned, and the state of progress of the development (e.g., is it in the conceptual, detailed planning, permitting or construction stage). Mr. Edwardson should file such information by **November 6, 2019**. The Commission will re-assess Mr. Edwardson's standing based on any response filed by then.

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<sup>7</sup> Exhibit 24831-X0080, System generated PDF; Exhibit 24831-X0082, Supplemental Information on SIP for the Springbank Hill Community Association – October 8, 2019.

### **Local intervener costs eligibility**

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

21. Each of the associations granted standing in this proceeding is eligible to potentially recover the costs incurred by it to represent those of its members that have been granted standing in this proceeding and have authorized the association to represent them. In other words, the association’s eligibility to make a local intervener costs claim is entirely dependent on it representing a person who is a local intervener.

22. 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.

23. The persons listed in Schedule B who do not have standing and are not eligible to claim local intervener costs may choose to have their interests represented in this proceeding by a community association that has been granted standing and has agreed to accept them as a member of the group.

24. If you have any questions, please contact the undersigned at 403-592-4389 or by email at [nicholas.sawkiw@auc.ab.ca](mailto:nicholas.sawkiw@auc.ab.ca).

Yours truly,

Nicholas A. Sawkiw  
Commission Counsel

Attachments

**Schedule A - Persons with standing in Proceeding 24831**

<b>Name</b>	<b>Representative</b>
Monique Christofferson	
John Bobenic	
Namrata Sudhakar	
Pratap Varshney	
Mathieu Cousineau	
Claudine Cousineau	
Suzette Pereira	
Sunil Sudhakar	
Tristan Schulz	
Aidan Kutcher	
Litong Zhao	
Yanmei Fei	
Donald Mortimer	
Darren Langille	
Robert Weston	
Tameem Muhieddine	
Amin Jamalomidy	
Rachel Thompson	
Al Bessel	
Justin Koks	
Vern Merk	
Slopes Community Association	Nancy McKenzie
Springbank Hill Community Association	Nancy McKenzie
Gerald Merk	
Douglas Merk	
Discovery Ridge Community Association	Gavin Fitch
Johanne Audet	
Leon Nellissen	

**Schedule B – Persons who do not have standing in Proceeding 24831**

<b>Name</b>	<b>Representative</b>
Elio Cozzi	
Robert Filyk	
Sam and Janet Coles	
Judy Hawco	
Manoj Sharma	
Rob Symonds	
Roger Straathof	
Shu Hui Ting	
Ashley Highton	
Jesper Trangeled	