

November 15, 2019

To: Parties currently registered on Proceeding 24891

**Cypress Renewable Energy Centre GP Inc.
Cypress Wind Power Project
Proceeding 24891
Applications 24891-A001 to 24891-A003**

Ruling on standing

1. In this ruling, the Alberta Utilities Commission determines whether to hold a public hearing to consider applications by Cypress Renewable Energy Centre GP Inc. for approval to construct and operate a 201.6-megawatt wind power project, called the Cypress Wind Power Project.
2. The Commission must hold a hearing if persons who have filed a statement of intent to participate in Proceeding 24891 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 applications for Proceeding 24891 on September 25, 2019. The Commission received a statement of intent to participate from Paul and Twyla von Huene.
4. The Commission has authorized me to communicate its decision on standing.

Statement of intent to participate

5. Paul and Twyla von Huene (the von Huenes) explained in their statement of intent to participate that they own the land located in the northeast quarter of Section 36, Township 10, Range 3, west of the Fourth Meridian, and have resided on that land since 2001. The von Huenes stated that they own and operate a cattle ranch on this land and that it is located more than 1,000 metres from the proposed project. The von Huenes identified concerns with respect to the non-dispatchable nature of wind energy, effects on wildlife in the area, fire safety, visual impacts, noise impacts and property value.
6. The von Huenes also indicated that they had concerns with respect to the newspapers selected by the Commission for providing the notice of applications to residents, and the lack of an in-person information session held by the Commission.

How the Commission determines standing

7. Subsection 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]

8. 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.¹

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

10. 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

11. 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

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.

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

Ruling

12. The Commission finds that the von Huenes have not provided sufficient information to demonstrate that they hold rights that may be directly and adversely affected by the Commission's decision in this proceeding. The Commission understands that based on the legal land description given, the von Huenes' property is located approximately 3,400 metres from the proposed project site. While proximity to a project is not the only factor that the Commission considers when reviewing an application for standing, it is an important one. Given the von Huenes' distance from the project, the Commission does not consider that there is a sufficient connection between the potential impacts described in their statement of intent to participate and the rights asserted. The von Huenes are accordingly denied standing.

13. Because there are no parties with standing in this proceeding, a hearing will not be scheduled. The Commission acknowledges the submissions made by the von Huenes, and will take them into account when deciding if approval of the project is in the public interest.

14. The Commission wishes to address the additional concerns raised by the von Huenes pertaining to newspaper notification and in-person information sessions. The Commission followed its established procedures in communicating notice of the applications. These procedures included publication of the notice in two local newspapers (the Medicine Hat News and the Prairie Post) and direct mail notice to 110 addresses identified by the applicant in its participant involvement program. The Commission considers its distribution of the notice of applications to be appropriate and consistent with its established practices and procedures.

15. Lastly, information sessions are offered in anticipation of parties being granted standing in a proceeding, and although they may be held in person when appropriate, they are also often held by direct telephone call or conference call. There is no obligation or requirement for the Commission to hold an in-person information session in its proceedings.

16. Please contact the undersigned at 403-592-4389 or at nicholas.sawkiw@auc.ab.ca if you have any questions regarding the matters addressed in this ruling.

Yours truly,

Nicholas A. Sawkiw
Commission Counsel