

April 8, 2020

To: Parties currently registered on Proceeding 25296

**Aura Power Renewables Ltd.**  
**Fox Coulee Solar Project Amendment**  
**Proceeding 25296**  
**Application 25296-A001**

**Ruling on standing**

**Background**

1. Aura Power Renewables Ltd., by Approval 23951-D02-2019,<sup>1</sup> has approval to construct and operate the Fox Coulee Solar Project, near the town of Drumheller. In Application 25296-A001, Aura applied to the Alberta Utilities Commission for approval to amend the Fox Coulee Solar Project to utilize a combination of single-axis tracking and fixed-tilt solar panels, and to remove the battery storage component of the power plant (the project).
2. In this ruling, the Commission decides whether to hold a hearing to consider the application by Aura to amend the approval for the Fox Coulee Solar Project, outlines how a costs claim can be made, and sets out a schedule for the proceeding's process steps.
3. The Commission must hold a hearing if persons who have filed a statement of intent to participate (SIP) in Proceeding 25296 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.
4. The Commission issued a notice of application for Proceeding 25296 on February 7, 2020. The Commission received SIPs from the following persons:

<b>Stakeholder</b>
Colin Murray
Debbie Cardamone
Peter Cardamone
Matthys Nell
Terena Kleinschroth
Colin Jensen
Gordon Denzler
Tom Dooley
Lee Cowie

<sup>1</sup> Power Plant Approval 23951-D02-2019, Proceeding 23951, Application 23951-A001, August 13, 2019.

<b>Stakeholder</b>
Wendy Braun
Dave Burroughs
Nick Dalton
Bob Graham
Mark Kinniburgh
Brian Kinniburgh
Sandra Burroughs
Roy Smith
Donald Ostergard
Jason James
Pat and Catherine Bonneville
Town of Drumheller

5. Each of the aforementioned persons was granted standing by the Commission with respect to the original proceeding for the Fox Coulee Solar Project, Proceeding 23951. And, with the exception of the Town of Drumheller, each of them participated in the original proceeding as a member of the Solar Opposition Participants group and is represented in the present proceeding by Ifeoma Okoye of Ackroyd LLP.

6. The Commission has authorized me to communicate its decision on standing. For the reasons that follow, the Commission grants limited standing to each of the persons who filed a SIP, as listed above in paragraph four, on the basis of potential solar glare impacts to airport users and pilots arising from the proposed amendments to the project.

### **Ruling**

7. The Commission assesses whether a person has standing based on a two-part test. The first part of the test is legal: a person must demonstrate that the right being asserted is recognized by law. The second part of the 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.

8. When determining standing for amendment applications, the Commission only considers whether the proposed amendments have the potential to directly and adversely affect rights. An amendment application does not re-open consideration of the project as a whole. As it stated in a prior decision:<sup>2</sup>

a person must provide information that shows the Commission’s decision on the amendment application may directly and adversely affect the rights of that person. The determination in relation to whether there is a direct and adverse effect, relates to the effects of the amendment versus what was previously approved and not the effect of the amendment versus a greenfield or

---

<sup>2</sup> Decision 3520-D01-2015, Appendix A – AUC ruling on standing, Proceeding 3520: Alteration to Bull Creek Wind Project, March 4, 2015, citing Exhibit 0093.00, Application to Amend the Previously Approved WR2 Project, Application 1610214, Proceeding 3004, March 27, 2014.

new development. In *Visscher v Alberta (Energy Resources Conservation Board)*, the Alberta Court of Appeal stated:

If 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>3</sup>

9. In view of the foregoing, the Commission has considered the scope of Aura’s amendment application and whether any of those persons who filed SIPs have demonstrated that any of the proposed changes to the project have the potential to directly and adversely affect their rights.

10. Aura’s amendment application seeks approval to utilize a combination of single-axis tracking and fixed-tilt solar panels, rather than the entirely fixed-tilt configuration approved in Proceeding 23951. Its application included a solar glare hazard report, and an addendum to the report, which predicted solar glare impacts at adjacent residences, township roads, and the Drumheller Municipal Airport. The reports, along with confirmation in an information response, indicated the following impacts relating to solar glare:

Component	Green Glare (min)	Yellow Glare (min)	Red Glare (min)
Flight Path 1 (Northbound)	0	0	0
Flight Path 2 (Southbound)	15730	0	0
Flight Path 3 (Eastbound)	0	0	0
Flight Path 4 (Westbound)	0	0	0
E-W Aircraft Taxi Road	0	0	0
Highway 9	0	0	0
Range Rd 203	0	637	
Range Rd 204	0	0	0
Township Rd 294	0	0	0
D1	0	0	0
D2	0	0	0
D3	0	0	0
D4	1009	0	0
D5	1067	0	0
D6	0	0	0

4

11. Each of the persons who filed a SIP requested standing on Aura’s amendment application on the basis that they own land in proximity to the project, or operate out of the Drumheller Municipal Airport, and are therefore directly and adversely affected by the proposed amendments. The Town of Drumheller requested standing in its capacity as the legal owner and manager of the Drumheller Municipal Airport.

<sup>3</sup> *Visscher v Alberta (Energy Resources Conservation Board)*, 2011 ABCA 209 [emphasis added].

<sup>4</sup> Exhibit 25296-X044, IR Response 1, PDF page 2.

12. All of the SIPs received by the Commission specifically referenced the new and novel glare impacts to pilots operating out of the Drumheller Municipal Airport as a result of the amendment application. Additionally, those SIPs filed by landowners raised concerns with the solar glare impacts of the amendments on residences adjacent to the project. Some landowners also commented on the siting of the project in proximity to the Drumheller Municipal Airport, potential noise impacts of the project, and surface water runoff. The Town of Drumheller commented on emergency access to the site, the site's proximity to the airport, solar glare impacts, radio interference and thermal activity.

13. With respect to the first part of the standing test, the Commission finds that each of the persons who filed a SIP has demonstrated the existence of rights recognized in law. These persons, including the Town of Drumheller, own land in close proximity to the project or have a legal right to use a hangar that is part of the Drumheller Municipal Airport.

14. With respect to the second, factual part of the standing test, the Commission has considered whether, having regard to the nature and scope of the proposed changes to the project (as described above), the persons who filed SIPs have provided sufficient information to show that the Commission's decision on the proposed amendments may directly and adversely affect their rights.<sup>5</sup>

15. In assessing this factual question, the Commission has taken into account the Court of Appeal of Alberta's guidance that to determine whether a right is "directly" affected, "[s]ome degree of location or connection between the work proposed and the right asserted is reasonable."<sup>6</sup> The Commission has also taken into account the case law summarized in Decision 3110-D02-2015, and its conclusions in that decision 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," and 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>7</sup> Further, as noted in paragraph 8 above, if the amendment does not have a "measurable impact," permitting standing would amount to a collateral re-examination of the original approval.<sup>8</sup>

16. As more fully described below, no person has provided information satisfactory to the Commission that the proposed amendments have the potential to directly and adversely affect their rights except with respect to solar glare impacts at the Drumheller Municipal Airport.

17. As a preliminary matter, the Commission observes that concerns raised regarding the project's siting in proximity to the Drumheller Municipal Airport, radio interference, thermal activity and emergency access, were considered in Decision 23951-D01-2019<sup>9</sup> and pertain to the

---

<sup>5</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>6</sup> *Dene Tha'*.

<sup>7</sup> Decision 3110-D02-2015: Market Surveillance Administrator Allegations against TransAlta Corporation et al., Phase 2 Preliminary matters; Standing and Restitution, paragraphs 56-63.

<sup>8</sup> *Visscher v Alberta (Energy Resources Conservation Board)*, 2011 ABCA 209.

<sup>9</sup> Decision 23951-D01-2019: Aura Power Renewables Ltd. – Fox Coulee Solar Project, Proceeding 23951, Applications 23951-A001 and 23951-A002, August 13, 2019.

existence of the project as a whole, rather than to the specific changes proposed in the amendment application. No stakeholder made submissions associating any of the above concerns to the specific changes proposed in the amendment application. In the absence of a demonstrated link between the proposed amendments and those matters and concerns, they are neither the basis for standing nor issues that are properly considered in this proceeding.

18. The Commission acknowledges the submissions of Debbie and Peter Cardamone and Bob Graham concerning noise impacts as a result of the project, including noise impacts on residences, animals and communication between pilots, and the potential for high-frequency noise. However, the Commission emphasizes that noise concerns were considered in Decision 23951-D01-2019 and Aura's proposed amendments do not result in a predicted increase in noise above the permissible sound level at any receptors adjacent to the project.

19. The Commission is not persuaded that the persons who filed SIPs have provided any information to suggest that the amendment application will result in a new noise impact on them that is either direct or adverse. Further, and in any event, the Commission considers that any change in the noise impact associated with these proposed amendments is not measurable; therefore, granting standing on this issue would result in a collateral re-examination of Approval 23951-D02-2019.

20. The Commission acknowledges Mr. Cardamone's concerns with surface water runoff. As a condition of Approval 23951-D02-2019, Aura is required to install small-scale culverts on project access roads where required to maintain established overland water flows across the project lands.<sup>10</sup> The Commission is not persuaded that there is any potential change in the water runoff from the facility arising from the amendment application and considers that the existing condition sufficiently addresses concerns with water runoff arising from project infrastructure, regardless of whether the project employs tracking or fixed-tilt solar panels.

21. All persons who filed SIPs identified concerns associated with solar glare. The amendment application requests a change in the solar panels used in the power plant, from fixed-tilt solar panels to a combination of fixed-tilt and single-axis tracking solar panels. The Commission considers that the solar glare impact report and subsequent information responses filed along with the amendment application support a finding that the proposed amendments may result in different solar glare impacts than what was previously approved.

22. Decision 23951-D01-2019 states:

Beginning with the potential effect of solar glare from the project on aviation activities, the Aura and the SOP expert witnesses concluded in their respective reports that there is no potential that aircraft on the flight paths extending north and south from the Drumheller airport's main runway would be subject to any glare from the project. Green Cat and Solas witnesses confirmed this conclusion in the joint expert witness statement filed in this proceeding. The Commission accepts the analysis and conclusions of these expert witnesses, and on the basis of their evidence, finds that pilots using the Drumheller

---

<sup>10</sup> Power Plant Approval 23951-D02-2019, Proceeding 23951, Application 23951-A001, August 13, 2019.

airport's main (north-south) runway are not expected to be affected by solar glare from the project.<sup>11</sup> [emphasis added]

23. The Commission's decision in Proceeding 23951 was predicated on there being no solar glare impacts, either green-grade glare or yellow-grade glare, along the main flightpaths from the Drumheller Municipal Airport. The details of the amendment application indicate that the proposal would create a solar glare impact along the southbound flightpath, and a variation in the predicted impacts at the adjacent residences.

24. Due to the change in predicted solar glare impacts, the Commission is satisfied that the proposed amendments have the potential to directly and adversely affect the rights of pilots operating out of the Drumheller Municipal Airport, as well as the Town of Drumheller, which owns and operates the airport.

25. With respect to impacts on adjacent residences, the solar glare impact report and subsequent information responses indicate that certain receptors could experience an increase in duration of glare, in total minutes per year, but a decrease in the intensity of that solar glare. Based on this information, the Commission is not persuaded that the potential impacts of the proposed amendment on landowners are adverse in nature such that the test for standing is met.

26. In this case, each of the landowners who filed a SIP participated in the original proceeding as a member of the Solar Opposition Participants group and expressed concerns regarding solar glare in the present proceeding that align with those of pilots and airport users. The Commission's past practice has generally been to allow all members of a group to participate in the proceeding as long as one or more members of the group has standing. In light of these circumstances, the Commission considers it reasonable to exercise its discretion to extend standing to each of these persons.

27. The Commission emphasizes the limited scope of standing that has been granted in this proceeding. Interveners must accordingly confine their participation in this proceeding to addressing potential increased solar glare impacts on pilots and airport users, as compared to the existing approval.

### **Costs**

28. The persons who have been granted standing are eligible to potentially recover the costs of their participation in this proceeding. Rule 009: *Rules on Local Intervener Costs* applies to costs claims for this proceeding.

29. The Commission emphasizes that eligibility to claim costs does not guarantee recovery of those costs. Any claims for costs must be filed after this proceeding is concluded, in accordance with Rule 009. Cost recovery is subject to the Commission assessing the value of parties' contribution to the proceeding, and in accordance with the guidance provided in Section 7 of Rule 009, the Commission may consider whether an intervener submitted evidence and argument on issues that were not relevant to the proceeding. The Commission emphasizes that local

---

<sup>11</sup> Decision 23951-D01-2019, PDF page 32.

interveners with similar interests are encouraged to intervene as a group rather than individuals so as to reduce duplication of the information presented at the hearing and of costs.

### Schedule

30. Given the scope of the issues discussed above, the Commission has determined that the hearing will proceed by way of a written process and has set out the following process steps for its consideration of the amendment application:

<b>Process step</b>	<b>Deadline</b>
Intervener information requests to applicant	Wednesday, April 29, 2020
Applicant information request responses	Wednesday, May 13, 2020
Intervener evidence	Wednesday, May 27, 2020
Information requests to interveners	Wednesday, June 3, 2020
Intervener information request responses	Wednesday, June 17, 2020
Applicant rebuttal evidence	Tuesday, June 30, 2020
Written argument from all parties	Monday, July 13, 2020
Written reply argument from all parties	Monday, July 20, 2020

31. Should you have any additional questions please contact the undersigned at 403-592-4394 or by email at [meghan.anderson@auc.ab.ca](mailto:meghan.anderson@auc.ab.ca).

Yours truly,

Meghan Anderson  
Commission Counsel