



## **Suncor Energy Products Inc.**

### **80-MW Hand Hills Wind Power Project**

**December 4, 2014**

**The Alberta Utilities Commission**

Decision 2014-331: Suncor Energy Products Inc.

80-MW Hand Hills Wind Power Project

Application No. 1609163

Proceeding No. 2326

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Fifth Avenue Place, Fourth Floor, 425 First Street S.W.

Calgary, Alberta

T2P 3L8

Telephone: 403-592-8845

Fax: 403-592-4406

Website: [www.auc.ab.ca](http://www.auc.ab.ca)

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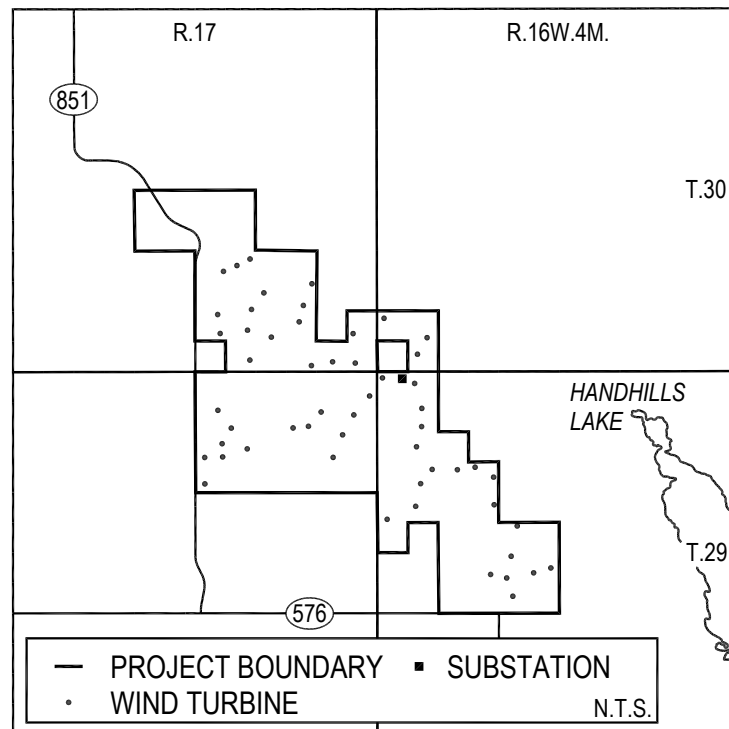
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## 1 Introduction

1. In this decision, the Alberta Utilities Commission (AUC or the Commission) must decide whether to approve an application by Suncor Energy Products Inc. (Suncor), to construct and operate the Hand Hills Wind Power Project (the project or the proposed power plant) pursuant to sections 11, 14 and 15 of the *Hydro and Electric Energy Act*. The project would be located in the Delia area, approximately six kilometres south of Delia, 22 kilometres southwest of Hanna and 27 kilometres northeast of Drumheller.

2. The location of the project is shown in the following map:



3. The project would consist of the following components:

- 54 General Electric 1.6-100 wind turbines, each rated at 1.62 megawatts (MW) with a total capacity of 80 MW;
- a collector system; and
- the Hand Hills 605S substation.

4. The project would be located in:

| Section(s)                     | Township | Range | Meridian |
|--------------------------------|----------|-------|----------|
| 16, 17, 19, 20, 21, 29, 30, 31 | 29       | 16    | 4        |
| 25, 27, 34, 35, 36             | 29       | 17    | 4        |
| 6                              | 30       | 16    | 4        |
| 1, 2, 3, 10, 11                | 30       | 17    | 4        |

## 2 Background

5. On December 21, 2012, Suncor filed an application for approval to develop the project.

6. The application was registered as Application No. 1609163 and Proceeding No. 2326.

7. On May 30, 2014, the Commission issued a notice of application for Proceeding No. 2326.

8. The Commission received four statements of intent to participate, three in response to the notice of application, and one submission which was received prior to the date that the notice of application was issued.

9. In their statement of intent to participate, filed on August 21, 2013, Allen and Shelly Girtetz submitted that they were being treated unfairly by Suncor and were unsure of the status of Suncor's application. Mr. Girtetz later submitted that he was concerned with the project's impact on his quality of life, land value, as well as the effect(s) of vibration from the wind turbines. He further stated that he was planning on building a farm residence, but there was a lack of studies done on the effect of wind farms on landowners after these projects are built.

10. On June 24, 2014, Larry and Laura McDonald submitted a statement of intent to participate in response to the Commission's notice. Mr. and Ms. McDonald expressed concern about living in close proximity to the project. Their concerns were related to, among other things, health, animal safety and the project's impact on the viewscape of the area.

11. Mr. and Ms. McDonald indicated that they wanted to build a home on their land but would not if the project were to be constructed.

12. On June 26, 2014, Flemming Danielsen submitted a statement of intent to participate on the record of the proceeding. Mr. Danielsen's concerns included the project's potential effects on noise, health, the environment, property value and visual impact. Mr. Danielsen also expressed concern with Suncor's consultation process.

13. On June 25, 2014, 1712610 Alberta Ltd. (BluEarth) submitted a letter indicating that it currently holds approval from the Commission to construct and operate the 78.2-MW Hand Hills wind farm<sup>1</sup> and the associated Highland 572S substation<sup>2</sup> (collectively, the BluEarth project). In its letter, BluEarth indicated that it is neither in support nor against the application; however, it sought to intervene in the proceeding as the BluEarth project is adjacent to the project and should the project be approved, both projects would share interconnection infrastructure.

14. The Commission issued its standing ruling on August 5, 2014. The Commission determined that Mr. and Ms. Girletz, Mr. and Ms. McDonald, and Mr. Danielsen may be directly and adversely affected by the Commission's decision on the project application. A copy of the Commission's ruling is attached as [Appendix A](#).

15. The Commission issued a notice of hearing on July 30, 2014, scheduling a hearing for November 4, 2014, in Drumheller, Alberta. The notice also provided details of the application, timing for an AUC information session and a schedule of the remaining process steps for consideration of the application.

16. After the notice of hearing was issued, the Commission received three additional submissions.

17. In their statement of intent to participate, filed on August 29, 2014, Elaine Nelson, Cory Nelson and Tracy Wolf expressed concerns related to the project's potential effects on noise, health, the environment, property value, visual impact and livestock.

18. On September 4, 2014, Kelly Fitzpatrick and Doug Greer submitted a statement of intent to participate on the record of Proceeding No. 2326 expressing concern with, among other things, loss of property value, line loss, carbon footprint, the project's proximity to wildlife and the project's impact on birds.

19. On September 9, 2014, the Commission issued a further ruling on standing. In its ruling, the Commission granted standing to Ms. Nelson, Mr. Nelson and Ms. Wolf and found, for the reasons set out therein, that Ms. Fitzpatrick and Mr. Greer had not demonstrated, on a factual basis, that their rights or interests may be directly and adversely affected by the application. A copy of the ruling is attached as [Appendix A](#).

20. On September 25, 2014, the Commission received a letter of support from the Town of Drumheller.

21. The hearing commenced on November 4, 2014, in Drumheller, Alberta. Two parties registered at the oral hearing: Suncor and Mr. Danielsen. Shortly after the hearing commenced, Suncor requested a brief adjournment to allow its representatives an opportunity to speak with Mr. Danielsen in an attempt to expedite the hearing, which resulted in Mr. Danielsen withdrawing his objection to the project. As no other interveners were present, the Commission proceeded to question the Suncor witness panel.

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<sup>1</sup> Power Plant Approval No. [U2014-187](#), Application No. 1610497, Proceeding No. 3188, May 13, 2014.

<sup>2</sup> Substation Permit and Licence No. [U2014-188](#), Application No. 1610497, Proceeding No. 3188, May 13, 2014.

22. During oral argument, the Commission became aware of a late submission comprising of two emails from Mr. Girletz. The first email requested that the hearing be postponed, and the second email indicated that he could not attend the hearing, his lawyer was unavailable and a request for Commission staff to convey a message to the Commission panel. He stated, among other things, that the agreement in place with Suncor was signed by a previous landowner, if turbines are not on your land there are no benefits, and no compensation would be payable to him. Mr. Girletz also indicated that he wanted the panel to know that Suncor told him he was a victim of bad timing and that there was nothing he could do.

23. The Commission, in response to the late-filed submission from Mr. Girletz, re-opened the evidentiary portion of the record. Mr. Girletz's email correspondence was read into the record at the hearing and Commission Counsel asked further questions of Suncor relating to this submission. Suncor was then given an opportunity to address the email in argument.

### **3 Role and authority of the Commission**

24. The Commission regulates the construction and operation of power plants in Alberta. The wind farm proposed by the applicant is a "power plant" as that term is defined in subsection 1(K) of the *Hydro and Electric Energy Act*. Section 11 of the *Hydro and Electric Energy Act* states that no person may construct or operate a power plant without prior approval from the Commission. In addition, sections 14 and 15 of the *Hydro and Electric Energy Act*, direct that approval from the Commission is necessary prior to constructing or operating a substation or a transmission line.

25. Accordingly, Suncor has applied to construct the project pursuant to sections 11, 14 and 15 of the *Hydro and Electric Energy Act*.

26. When considering an application for a power plant, the Commission is guided by sections 2 and 3 of the *Hydro and Electric Energy Act* and Section 17 of the *Alberta Utilities Commission Act*.

27. Section 2 lists the purposes of the *Hydro and Electric Energy Act*. Those purposes include:

- to provide for the economic, orderly and efficient development and operation, in the public interest, of the generation of electric energy in Alberta;
- to secure the observance of safe and efficient practices in the public interest in the generation of electric energy in Alberta; and
- to assist the government in controlling pollution and ensuring environment conservation in the generation of electric energy in Alberta.

28. Section 3 of the *Hydro and Electric Energy Act* requires the Commission to have regard for the purposes of the *Electric Utilities Act* when assessing whether a proposed power plant is in the public interest. The purposes of that act include the development of an efficient electric industry structure and the development of an electric generation sector guided by competitive market forces.



29. Section 3 of the *Hydro and Electric Energy Act* further directs that the Commission shall not have regard to whether the proposed power plant “is an economic source of electric energy in Alberta or to whether there is a need for the electric energy to be produced by such a facility in meeting the requirements for electric energy in Alberta or outside of Alberta.”

30. Section 17 of the *Alberta Utilities Commission Act* states that the Commission shall:

...in addition to any other matters it may or must consider in conducting the hearing or other proceeding, give consideration to whether construction or operation of the proposed... power plant... is in the public interest, having regard to the social and economic effects of the ...plant... and the effects of the ...plant... on the environment.

31. In reaching the determinations set out in this decision, the Commission has considered all materials comprising the record of this proceeding, including the evidence and submissions provided by each party such as the late submission filed by Mr. Girletz. References in this decision to specific parts of the record are intended to assist the reader in understanding the Commission’s reasoning relating to a particular matter and should not be taken as an indication that the Commission did not consider all relevant portions of the record as it relates to that matter.

## **4 Discussion**

### **4.1 Project description**

32. As stated above, the proposed power plant is comprised of 54 wind turbines. Each turbine has a hub height of 80 metres and a rotor diameter of 100 metres. Suncor submitted that while the theoretical maximum output of the turbines is over 81 MW, it would control its operations to ensure a maximum of 80 MW is delivered to the Alberta Interconnected Electrical System.

33. Suncor indicated that the wind turbines proposed in this proceeding would be operating in two modes: mode 0 and noise reducing operating (NRO) mode 103. NRO mode 103 lowers the sound output.

34. In its application, Suncor also requested approval to construct and operate the underground collector system and associated substation. The collector system would consist of approximately 52 kilometres of cables, buried approximately one metre underground.

35. Suncor’s application indicated that the Hand Hills 605S substation would connect to the collector system and would consist of two step-up transformers, each rated at 28/37/47-megavolt-ampere (MVA), 34.5/240-kilovolt (kV).

36. Suncor indicated before the proposed power plant commences operations, an application would be required from ATCO Electric Ltd. to construct and operate a 240-kV transmission line that would connect the Hand Hills 605S substation to the Mother Mountain 2055S substation. This application is currently before the Commission.

37. With respect to project siting, Suncor stated that, in general, the project area is dominated by agricultural land-use activities, including oil and gas development, gravel extraction, and rural residential use. Although the project site is located within the Northern Fescue Natural Sub-region of the Grasslands Natural Region, the turbines would be located on privately held

lands, zoned as “agricultural district”. In its application, Suncor stated that the project was not expected to significantly alter current land-use and that landowners could continue crop production and livestock grazing.

38. Two turbines would be located within 300 metres of Secondary Highway 851. Suncor submitted that it has received approval from Alberta Transportation for one turbine and is working with Alberta Transportation to develop a traffic accommodation strategy for the other turbine. Suncor stated that it would provide supporting documentation to the AUC upon receipt.

39. Suncor originally indicated that its construction completion date would occur at the end of 2015, but later requested a three-year extension to 2018. It explained that if it were granted approval by the Commission, it would take time to secure corporate approval for funding, secure the equipment and construct the project. It also stated that the project could not operate until ATCO Electric Ltd. had received approval for the interconnection and that ATCO Electric Ltd.’s application is currently in abeyance and is outside of Suncor’s control.

## 4.2 Noise

40. Suncor’s application included a noise impact assessment as well as a revised version of the noise impact assessment which predicted the cumulative noise of the project. The revised version of the noise impact assessment stated that, with the addition of the project, the permissible sound level for all dwellings in the study area would be 40 dBA  $L_{eq}$  nighttime and 50 dBA  $L_{eq}$  daytime, and would be in compliance with AUC Rule 012: *Noise Control* (AUC Rule 012).

41. Noise from the project would arise from the 54 General Electric 1.6-100 wind turbines and two 47-MVA transformers.

42. Suncor indicated that there are existing energy-related developments in the area including various compressors, pump stations and the approved, but not yet constructed, BluEarth project. Suncor confirmed that sound contributions from these facilities were included in its cumulative sound level predictions.

43. The results indicated that the project would be in compliance with the daytime period and nighttime permissible sound levels with all wind turbines operating in the unrestricted operating mode during the daytime period. Suncor explained that, in order to comply with the more stringent nighttime sound level required by AUC Rule 012, nighttime operations would be conducted in a NRO mode which would decrease sound emissions. The NRO-103 mode would be programmed to engage when hub height wind speeds exceed 8.5 metres per second (m/s) during the nighttime period and would act to reduce noise emissions through the reduction of rotor speed which, in turn, would decrease the aerodynamic sound from the wind turbine blades. Rotor speed is reduced through blade pitch adjustment and gearbox braking. Suncor committed to ensure that NRO-103 mode is programmed to engage when hub height wind speeds exceed 8.5 m/s during the nighttime period as defined in AUC Rule 012 (10 p.m. to 7 a.m.).

44. Suncor stated that the wind turbines are capable of operating in several other NRO modes which are a special order item that Suncor committed to implement, if required, to comply with permissible sound level requirements contained in AUC Rule 012.

45. In its revised noise impact assessment, Suncor indicated that the results of the cumulative sound level assessment indicated that six receptors were predicted to be within one dBA of the nighttime compliance limit of 40 dBA.<sup>3</sup> Additionally, the receptor location most impacted by the project, R35, has a project contribution of 38 dBA and a predicted cumulative sound level of 39 dBA  $L_{eq}$  nighttime. This receptor is located 0.6 kilometres from wind turbine number 38 and a predicted cumulative sound level of 39 dBA  $L_{eq}$  nighttime.

46. With respect to low frequency noise, Suncor stated that there is no indication that there would be an issue with low frequency noise from the project's operation. The potential of a low frequency noise condition is determined by a two-part test as outlined in AUC Rule 012. Suncor acknowledged the first part of the test is met given the predicted dBC and dBA values. Suncor explained that second part of the test in AUC Rule 012 is a measurement conducted using one-third octave band values to confirm the presence or absence of a tone. Based on its analysis of the noise present, Suncor submitted it is unlikely that there would be a tone below 250 hertz. Suncor also stated that the sound spectrum provided by the turbine manufacturer did not indicate any tonal components.

47. Further, Suncor committed to conducting post-construction sound level surveys at the six receptors predicted to be within one dBA of the nighttime permissible sound level. Suncor stated the one dBA criterion was selected to confirm the project was compliant at the most potentially impacted residences. The proposed compliance monitoring program would include spectral data in the one-third octave bands to allow for analysis and verification of the low frequency content of project-related sound. Also, Suncor stated that if a complaint is received, a full low frequency noise assessment would be completed using one-third octave measurements and a tonality analysis as required by AUC Rule 012.

### 4.3 Environment

48. Suncor's environmental evaluation report, included in its project application, described the environmental setting of the project area such as designated areas, wetlands, water bodies, soils, terrain, vegetation and wildlife. It also discussed the potential adverse effects of the project on these environmental components and identified mitigation measures that would eliminate or reduce these potential effects. Suncor then assessed the significance of the residual effects after mitigation. The environmental evaluation report was based on desktop information and vegetation and wildlife field work.

49. The environmental evaluation report acknowledged that the project has the potential to impact various groups of wildlife, including birds, bats, mammals, amphibians and species at risk, but predicted that, with the implementation of the proposed mitigation measures, the impacts of the project on wildlife would be low to medium in magnitude and importance. During the project's operation, disturbance and mortality of birds and bats, were identified as the only two residual environmental effects classified as having a medium level of importance. The environmental evaluation report defined a residual environmental effect of medium level importance as potentially resulting in a decline to lower than baseline, but stable levels after the project's closure.<sup>4</sup>

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<sup>3</sup> R12, R22, R26, R32, R33 and R35.

<sup>4</sup> Exhibit No. 18, PDF page 176.

50. In addition, the project's effects on vegetation, soils, terrain, wetlands and land cover were classified as low to minimal.<sup>5</sup> The environmental evaluation report recommended that regional management actions such as research, monitoring and/or recovery initiatives may be required.

51. With respect to project siting, Suncor indicated that to reduce effects on vegetation and wildlife habitat, the majority of wind turbines were located on cultivated land and tame pasture. Less than one per cent of the project's infrastructure would be located on native pasture.<sup>6</sup> To limit adverse effects when working on native pasture, Suncor indicated that it would limit the width of access roads and the size of its workspaces.

52. The environmental evaluation report stated that all turbines, access roads and collector cables were sited to respect setbacks and located at least 100 metres from wetlands. Suncor also committed to complete construction during dry ground conditions to the extent possible and to employ rig mats, geotextiles, vegetated buffer zones, earthen berms or silt fencing as needed to further protect wetlands.

53. Upon decommissioning, project equipment would be removed, evaluated and transported to appropriate facilities for reconditioning, salvage, recycling or disposal. The wind turbines' concrete pedestals would be removed to a depth of one metre below surface and the area backfilled to match the natural grade.

54. Suncor also indicated that, upon decommissioning, 52 kilometres of buried cables would remain in place. Suncor explained that the proposal to leave the buried cable in place would minimize future land disturbance which would occur if the cable were removed. Suncor indicated that when the project is decommissioned, the reclamation standards in force at that time, would be followed.<sup>7</sup> Suncor also indicated that it would retain future liability for that remaining infrastructure.

55. In its application, Suncor indicated that it was required to receive approval from the Fish and Wildlife Division of Alberta Environment and Sustainable Resource Development (ESRD) for the project. Suncor included an ESRD sign-off letter for the project as an attachment to the application.<sup>8</sup>

56. The Wind Energy Referral Report, dated June 20, 2012 (the sign-off), itemized several mitigation and monitoring measures for the project. The sign-off acknowledged that Suncor had sited all turbines, the substation and roads on cultivated land to avoid unnecessary impacts to wildlife and wildlife habitats, and noted that Suncor committed to follow minimal disturbance guidelines for activity on native prairie.<sup>9</sup>

57. During the hearing, Suncor committed to complying with the terms outlined in the sign-off and implementing all direction received from ESRD.

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<sup>5</sup> Exhibit No. 18, PDF page 207, Table 17.

<sup>6</sup> Exhibit No. 18, pages 197 and 195.

<sup>7</sup> Exhibit No. 18, Section 1.2.5 Decommissioning Phase, PDF page 173.

<sup>8</sup> Exhibit No. 41, ESRD Fish and Wildlife Division Project Sign-off Letter Project Referral Report.

<sup>9</sup> Exhibit No. 18, Attachment 7, ESRD sign-off, PDF page 115.

58. With respect to wildlife surveys, Suncor stated that it had not conducted any monitoring of known nest sites since 2012 because of uncertainty with the construction schedule. However, Suncor committed to monitoring known nest sites, conducting further sweeps for unidentified nest sites, and further consulting with ESRD should the project be approved by the Commission.

59. Additionally, Suncor confirmed that it received conditional *Historical Resources Act* clearance from Alberta Culture. Suncor stated that it had not yet received unconditional clearance but it would do so prior to construction.

## 5 Consultation

60. Suncor conducted a participant involvement program for the project. This participant involvement program included notifying all landowners, residents and occupants within a two-kilometre radius of the project as well as other interested parties including government agencies, municipalities and industry associations. Suncor also established a dedicated email address and toll free stakeholder line. It held open houses on May 2, 2012, and August 15, 2012, in Delia, and personally consulted with landowners, residents and occupants within 800 metres of the project site boundary.

61. In its application, Suncor identified stakeholders' comments which included concerns with respect to noise, visual impacts, wildlife impacts, turbine siting, traffic and dust, economic benefits, land disturbance and soil erosion.

62. Suncor indicated that it did not initially consult with First Nations because the project would be located entirely on privately owned land. However, project information and an invitation to an open house were sent to the Siksika First Nation. Upon request, Suncor met with Siksika First Nation representatives to discuss the project.

63. As stated above, upon decommissioning, cables from the collector system would be de-energized and would remain buried in perpetuity. Suncor stated that during consultation, it informed landowners that the cable would be left in place.

64. At the hearing, Suncor provided an update on its consultation with registered parties.

65. Suncor submitted that, according to its records, Mr. Girletz was contacted in April 2012; was delivered all consultation materials; attended an open house on May 2, 2012; attended an in-person meeting in August 2012; and took part in various phone discussions with its representatives. Suncor stated that its understanding of Mr. Girletz's concerns was that his land was not selected for turbine placement and that he wished to be compensated for the project's adverse effects on his property value. Suncor stated that Mr. Girletz did not define the adverse effects and refused material dealing with property devaluation.

66. In response to the late submission, Suncor reiterated that Mr. Girletz's primary concern was that a turbine was not placed on his land. Suncor submitted there were several siting constraints that prevented it from siting a turbine on Mr. Girletz's land: a residence located to the south; the BluEarth project located to the north; cumulative noise effects would be too high for an adjacent landowner; and the land is located at the edge of an escarpment. Suncor submitted that Mr. Girletz's concerns regarding environment, vibration and the devaluation of his property is contradicted by his existing agreement with another wind farm.

67. Suncor further stated that its compensation for option agreements was fair as it represented decades of option payments where it is possible that no development will come to fruition. It stated that Mr. Girletz would have been aware of the option on the land at the time he purchased the land.

68. Suncor submitted that it had recently met with the McDonald family after receiving their statement of intent to participate and offered to have Intrisik Consulting Services come out to discuss health concerns. Suncor indicated that, following the meeting, no follow-up or response to the offer for a further meeting with Intrisik Consulting Services or Suncor was received.

## **6 Findings**

69. In deciding if the proposed power plant is in the public interest, the Commission considered the social, economic and environmental effects of the project.

70. The Commission has reviewed the application, has considered the submissions of the parties and finds, for the reasons outlined below, that approval of the proposed power plant is in the public interest.

71. The Commission considers that two emails were sent by Mr. Girletz immediately prior to the hearing and that the first was a request to postpone the hearing. Because the Commission received a second email, indicating information that Mr. Girletz had requested to be conveyed to the Commission panel, there is no need to rule on his suspension request. If the Commission were to rule on the suspension request, it would have denied this request because Mr. Girletz had not provided sufficient information to demonstrate that the hearing should be rescheduled. The Commission would have found that, in the circumstances, such a delay would prejudice Suncor. In making its decision, the Commission would have considered the following to be important factors: Mr. Girletz had been aware of the proceeding since prior to August 2012; had filed his statement of intent to participate in August 2013; had attended an AUC information session which outlined the process steps for consideration of the application; and his submissions indicated that his primary concerns related to turbine siting and compensation which are matters that are outside of the Commission's jurisdiction.

72. The Commission has considered Mr. Girletz's concerns and has taken these concerns into account when making its decision on the project application.

73. The Commission has reviewed the noise impact assessments and notes that the purpose of a noise impact assessment is to provide reasonable predictions of the project's noise that may be experienced at nearby residences (receptors). Based on its review, the Commission is of the view that the noise impact assessments provide reasonable predictions of the project's noise contribution as well as the cumulative noise level that would be experienced at nearby residences. In making its finding, the Commission considers that Suncor has committed to conducting post-construction noise surveys at the six most impacted residences to confirm the project's compliance with the permissible sound level. These receptors were identified as receptors R12, R22, R26, R32, R33 and R35.

74. The Commission heard evidence from Suncor that comprehensive sound level surveys would be conducted at receptors within one dBA of the permissible sound level. Based on the evidence submitted, the Commission considers Suncor's approach for identifying receptors that should receive cumulative sound level assessments reasonable in the circumstances.

75. With respect to the potential for low frequency noise, the Commission notes that AUC Rule 012 contains a two-part test to assess the potential for low frequency noise. With respect to the first part of the test, the dBC minus the dBA value was predicted to be greater than 20 dB at some receptors. However, with respect to the second part of the test, the Commission has accepted Suncor's evidence that because the dBC value was less than 60 for a compliance sound level of 40 dBA, the second part of the test fails, and thus, there is no indication that low frequency noise would occur as a result of the turbines' operation. The Commission also notes that Suncor stated that there is no tonal component for the turbines. Based on the above, the Commission finds that Suncor followed the requirements of AUC Rule 012 in conducting its low frequency noise analysis and is satisfied, based on the evidence, that there is no indication that operation of the project would result in a contribution to low frequency noise at the receptors.

76. Based on the foregoing, the Commission finds that the noise impact assessment submitted by Suncor fulfills the requirements of AUC Rule 012.

77. With respect to the environment, the Commission observes that Suncor has received ESRD sign-off. As indicated in past decisions,<sup>10</sup> the Commission regards compliance with the existing regulatory requirements administered by other public or government departments or agencies to be important elements when deciding if potential adverse impacts are acceptable and approval of a project is in the public interest. The Commission considers that the sign-off is strong evidence that the project's environmental effects would be acceptable. The Commission accepts Suncor's representations that it will implement those mitigation measures required by ESRD and considers that any approval from the Commission would be conditional on Suncor's compliance with all ESRD directions:

- Suncor shall comply with all directions received from ESRD, including the conditions outlined in the sign-off. Suncor shall inform the Commission if ESRD has required any further mitigation measures and advise when this condition has been satisfied.

78. The Commission recognizes that pursuant to AUC Rule 007: *Applications for Power Plants, Substations, Transmission Lines, Industrial System Designations and Hydro Developments* (AUC Rule 007), applicants may shift the location of their wind turbines up to 50 metres from the coordinates stated in the application without having to reapply to the Commission for approval. The Commission is of the view that this flexibility provided in AUC Rule 007 was not intended to permit applicants to contravene environmental setbacks. Should the project be approved and a relocation results in the project infringing upon an environmental setback or other natural feature, the Commission expects Suncor to consult with ESRD and implement any additional mitigation specified.

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<sup>10</sup> EUB Decision [2001-111](#); EPCOR Generation Inc. and EPCOR Power Development Corporation - 490-MW Coal-Fired Power Plant, Application No. 2001173, December 21, 2001, and Decision [2014-40](#): 1646658 Alberta Ltd. - Bull Creek Wind Project, Application No. 1608556, Proceeding No. 1955, February 20, 2014 (Errata issued March 10, 2014).

79. The Commission accepts Suncor's proposal to reclaim the project to the standard in effect at the time of decommissioning. In doing so, the Commission expects that Suncor will continue to consult with ESRD or its successor to refine reclamation standards and that some requirements for decommissioning and reclamation may change relative to that proposed in the application.

80. The Commission notes that Suncor has received conditional *Historical Resources Act* clearance from Alberta Culture, in regard to the project, but has committed to applying for unconditional clearance when its development plans are finalized.<sup>11</sup> The Commission accepts Suncor's commitment to obtain *Historical Resources Act* clearance and directs that any historical resource impact assessment required by Alberta Culture be completed prior to initiating construction of the project:

- Prior to construction, Suncor shall receive unconditional clearance for the project from Alberta Culture and advise the Commission when this condition has been satisfied.

81. With respect to consultation, the Commission observes that a participant involvement program includes both a public notification and a personal consultation component. The Commission, in Decision [2014-040](#),<sup>12</sup> considered that:

A participant involvement program is a fundamental component of any facility application; the responsibility of the applicant to meet its consultation requirements under AUC Rule 007 must be satisfied before the Commission can consider the various components of a facility application. In other words, an applicant must discharge its mandatory public notification and personal consultation obligations in order for the Commission to be satisfied that the consultation process provided a reasonable opportunity for the Commission to have before it sufficient information to properly carry out its public interest mandate.

The Commission finds that the participant involvement program designed by Suncor met the requirements of AUC Rule 007 in the following ways:

- mail out of project information packages to all stakeholders;
- personal consultation to stakeholders within the project area;
- open houses; and
- ongoing efforts made to address landowner concerns as they arose.

82. The Commission finds that Suncor's consultation and participant involvement program was consistent with the requirements of AUC Rule 007 and adequate given the nature and scope of this project. In assessing whether the participant involvement program meets the requirements of AUC Rule 007, the Commission has considered whether landowners were consulted at important decision making steps of the process. The Commission has also considered Suncor's efforts to contact those landowners, including the refusal of landowners to engage in consultation.

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<sup>11</sup> Exhibit No. 31.01, PDF page 7.

<sup>12</sup> Decision 2014-040 (Errata): 1646658 Alberta Ltd. Bull Creek Wind Project, Application No. 1608556, Proceeding No. 1955, February 20, 2014 (Errata issued March 10, 2014).



83. It is evident from the record that Suncor conducted its consultation program sufficiently during all stages of the application process, including public notifications, open houses and multiple rounds of follow-up meetings and phone calls. Additionally, the record shows that Suncor attempted to provide potentially affected stakeholders with sufficient information to understand the project and its potential implications, and a sufficient opportunity to express concerns about the proposed power plant.

84. The Commission acknowledges that even an effective consultation program may not resolve all landowner concerns. There may be situations where individual stakeholders may feel that the consultation effort as it pertained to their interests specifically was insufficient or superficial. The perceptions of the applicant and some interveners about the quality and effectiveness of the public consultation can be quite different. This is not the fault of Suncor or the intervener; it merely reflects the fact that the parties do not agree.

85. The Commission has heard testimony from Suncor and has received submissions from Mr. Girletz relating to the amount of compensation that Suncor has paid to landowners in and around the project area. As noted in previous Commission decisions, the Commission has no authority over compensation under its governing legislation.<sup>13</sup> However, the Commission considers that, in this instance, the evidence brought forward with respect to compensation matters may provide insight into the nature and extent of Suncor's participant involvement program. In particular, this evidence has provided the Commission with valuable information regarding Suncor's contact with Mr. Girletz such as whether Suncor responded to Mr. Girletz's requests and appeared willing to engage in dialogue. The Commission has also reviewed the option agreements filed by Suncor and finds that these documents provide the history and context regarding Suncor's initial contact with landowners.

86. The Commission finds that Suncor appears to have been responsive when dealing with new concerns raised by landowners after its application was submitted to the Commission. For example, Suncor's consultation records show discussions were held with interveners after statements of intent to participate were filed. The Commission also observes that Suncor met with Mr. Danielsen and was able to resolve his concerns during the hearing. Therefore, based on the evidence presented by Suncor and notwithstanding the concerns expressed by Mr. Girletz, the Commission finds that Suncor made efforts to engage in a dialogue with landowners and discharged its consultation obligations.

87. With respect to the siting of turbines in close proximity to highways, the Commission expects Suncor to obtain approval from Alberta Transportation prior to constructing these turbines.

88. Based on the foregoing, the Commission considers the project to be in the public interest in accordance with Section 17 of the *Alberta Utilities Commission Act*.

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<sup>13</sup> Decision 2013-402: AltaLink Management Ltd. Decision on a request for an Order under Section 23 of the *Alberta Utilities Commission Act*, Application No. 1609762, Proceeding No. 2717, November 7, 2013.

## 7 Decision

89. Pursuant to Section 11 of the *Hydro and Electric Energy Act*, the Commission approves the application and grants Suncor the approval set out in Appendix 1 – Power Plant Approval No. U2014-509 – December 4, 2014 (Appendix 1 will be distributed separately).

90. Pursuant to sections 14, 15 and 19 of the *Hydro and Electric Energy Act*, the Commission approves the application and grants Suncor the approval set out in Appendix 2 – Substation Permit and Licence No. U2014-510 – December 4, 2014 (Appendix 2 will be distributed separately).

Dated on December 4, 2014

### The Alberta Utilities Commission

*(original signed by)*

Willie Grieve, QC  
Chair

*(original signed by)*

Kate Coolidge  
Acting Commission Member

*(original signed by)*

Patrick Brennan  
Acting Commission Member

## Appendix A – Copy of the Commission’s standing rulings

### August 5, 2014 ruling on standing

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Document

(consists of 5 pages)

### September 9, 2014 ruling on standing

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Document

(consists of 4 pages)

**Appendix B – Proceeding participants**

| <b>Name of organization (abbreviation)<br/>counsel or representative</b> |
|--|
| Suncor Energy Products Inc.<br>Keith Knudsen                             |
| 1712610 Alberta Ltd. (BluEarth Renewables Inc.)<br>Tyler Jans            |
| Flemming Danielsen   |
| Town of Drumheller<br>Cody Glydon  |
| Kelly Fitzpatrick and Doug Greer   |
| Allen and Shelly Giretz  |
| Larry and Laura McDonald   |
| Cory and Deeon Nelson  |

**Appendix C – Oral hearing – registered appearances**

| <b>Name of organization (abbreviation)<br/>counsel or representative</b> | <b>Witnesses</b>  |
|--|---|
| Suncor Energy Products Inc.<br>B. Roth                                   | T. Drew<br>K. McCoey<br>J. Hood<br>K. Knudsen<br>S. Glendinning |
| F. Danielsen   |   |

The Alberta Utilities Commission

Commission Panel

Willie Grieve, QC, Chair

Patrick Brennan, Commission Member

Kate Coolidge, Commission Member

Commission Staff

S. Sinclair (Commission Counsel)

V. Choy

J. Law

**Appendix D – Abbreviations**

| <b>Abbreviation</b> | <b>Name in full</b>  |
|---------------------|--|
| AUC                 | Alberta Utilities Commission   |
| AUC Rule 007        | <i>AUC Rule 007: Applications for Power Plants, Substations, Transmission Lines, Industrial System Designations and Hydro Developments</i> |
| AUC Rule 012        | <i>AUC Rule 012: Noise Control</i>   |
| BluEarth            | 1712610 Alberta Ltd.   |
| Commission          | Alberta Utilities Commission   |
| dB                  | decibel  |
| dBA                 | A-weighted decibel   |
| dBc                 | C-weighted decibel   |
| ESRD                | Fish and Wildlife Division of Alberta Environment and Sustainable Resource Development   |
| kV                  | kilovolt   |
| m/s                 | metres per second  |
| MVA                 | megavolt-ampere  |
| MW                  | megawatt   |
| NRO                 | noise reducing operating mode  |
| Suncor              | Suncor Energy Products Inc.  |

August 5, 2014

To: Interested Parties

**Suncor Energy Products Inc.**  
**Hand Hills Wind Power Project**  
**Application No. 1609163**  
**Proceeding No. 2326**

### **Ruling on standing**

#### **1. Introduction**

1. In this ruling the Alberta Utilities Commission (AUC or the Commission) must decide if the persons who filed a submission on the Hand Hills Wind Power Project have demonstrated that they have rights that may be directly and adversely affected by the Commission's decision on the project application. A person who demonstrates the potential for direct and adverse effect is said to have "standing".

2. The Commission asked me to write to you to provide its ruling and reasons for its ruling on the standing of those persons that filed submissions in relation to the Hand Hills Wind Power Project.

#### **2. Background**

3. On December 21, 2012, Suncor Energy Products Inc. (Suncor) filed an application for approval to develop the Hand Hills Wind Power Project (the project). The project would consist of 54 wind turbines, an underground collector system and a substation. The project site is located approximately six kilometres south of Delia, 22 kilometres southwest of Hanna, and 27 kilometres northeast of Drumheller.

4. On May 30, 2014, the Commission issued a notice of application for Proceeding No. 2326.

5. In the notice of application, the Commission directed any person who had concerns or objections to the application, or who wished to support the application to file a submission by June 26, 2014.

6. Subsequently, the AUC received returned-mail notifications indicating that some parties had not received the original notice. The Commission, by letter dated July 21, 2014, extended the deadline to file statements of intent to participate for these parties until August 5, 2014. Should

the Commission receive submissions from these parties the Commission will determine their standing, and issue a ruling in due course.

7. On August 20, 2013, Allen and Shelly Girletz submitted a statement of intent to participate in advance of the Commission's notice. Mr. and Ms. Girletz voiced concerns about consultation and not knowing what was happening with the project.

8. On June 24, 2014, Larry and Laura McDonald submitted a statement of intent to participate in response to the Commission's notice. Mr. and Ms. McDonald expressed concern about living in close proximity to the project. Their concerns related to, among others things, health, animal safety and the project's impact on the viewscape of the area.

9. On June 26, 2014, Flemming Danielsen submitted a statement of intent to participate. Flemming Danielsen's concerns included the project's potential effects on noise, health, the environment, property value and visual impact.

10. On June 25, 2014, 1712610 Alberta Ltd. (BluEarth) submitted a letter indicating that it currently holds approval from the Commission to construct and operate the 78.2 megawatt Hand Hills wind farm<sup>1</sup> and the associated Highland 572S Substation<sup>2</sup> (collectively, the BluEarth project). In its letter, BluEarth indicated that it is neither in support nor against the application, however, it indicated that it seeks to intervene in the proceeding as the BluEarth project is adjacent to the project and should the project be approved, both projects will share interconnection infrastructure.

### **3. How the Commission determines standing**

11. Standing before the Commission is determined by subsection 9(2) of the *Alberta Utilities Commission Act* which states:

(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.

12. In *Cheyne v. Alberta (Utilities Commission)*, the Alberta Court of Appeal characterized Section 9(2) as the equivalent of Section 26(2) of the *Energy Resources Conservation Act* and confirmed that the two-part test for standing under Section 26(2) applies to subsection 9(2). The Court described that test as follows:

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<sup>1</sup> Approval No. U2014-187.

<sup>2</sup> Permit and License No. U2014-188.



...s. 26(2) has two branches. First is a legal test, and second is a factual one. The legal test asks whether the claim right or interest being asserted by the person is one known to the law. The second branch asks whether the Board has information which shows that the application before the Board may directly and adversely affect those interests or rights. The second test is factual.

13. If the Commission finds that a person has standing pursuant to Section 9(2) of the *Alberta Utilities Commission Act* it must hold a hearing to consider the person's concerns about the subject application. Further, persons with standing have the right to fully participate in the hearing. The Commission considers this to include the right to file evidence in support of their position, the right to question or cross-examine the applicant(s) on its evidence and the right to make argument.

14. In the past the Commission has allowed persons without standing the opportunity to provide a brief statement to the Commission that describe their views on the application. In exceptional circumstances the Commission may also allow parties without standing to fully participate in a hearing by filing evidence, cross-examining the applicant and giving argument. However, where all persons with standing withdraw their objections the Commission may cancel the hearing even if parties without standing have expressed a desire to participate in that hearing.

15. The Commission's authority to allow persons whose rights may not be directly and adversely affected by the Commission's decision on an application to participate in its proceedings is necessarily incidental to the Commission's express power to hold hearings and determine how hearings are conducted pursuant to the provision of the *Alberta Utilities Commission Act* set out above. The Commission spoke to this authority in AUC Decision 2011-437 where it stated:

The Commission's proceedings are conducted to determine an outcome that meets the public interest mandate set out in the legislation. In the vast majority of its proceedings, the Commission is not limited to considering only the evidence presented to it by the applicant and by parties that may be directly and adversely affected. Indeed, it is the Commission's role to test the application to determine whether approval of that application would be in the public interest. If it chooses, the Commission may allow parties that may not be directly and adversely affected by the Commission's decision on the application to bring evidence relevant to assessing the factors that the Commission is required to consider in determining the public interest it is charged with considering in a particular proceeding.<sup>3</sup>

#### **4. Ruling on Standing**

16. The Commission received three submissions in response to the notice of application and one submission in advance of the notice. The Commission reviewed all of these submissions and has taken them into account when making this ruling.

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<sup>3</sup> Decision 2011-436: AltaLink Management Ltd. and EPCOR Distribution & Transmission Inc. Heartland Transmission Project, Application No. 1606609, Proceeding ID No. 457, November 1, 2011 at para 74.

### **Landowners or residents**

17. The Commission has reviewed the application, and the submissions made by the parties and is satisfied that Mr. and Ms. Girletz, Mr. and Ms. McDonald and Flemming Danielsen have standing to participate in a hearing to consider the project application. These persons own and occupy lands within two kilometres of the proposed project. Given the scope of the project, the Commission finds that there is a sufficient degree of connection between the ownership and occupation rights asserted by these parties and project-associated concerns that they raised in their objections.

18. In the Commission's view, these persons raised similar concerns about the project in their objections. The Commission encourages these persons to work together as a group and, if possible, bring forward a single intervention that addresses the group's collective concerns. The participation of a group with shared interests allows group members to share the work of preparing for and participating in a hearing. This approach makes hearings more efficient and reduces the risk of having intervenor costs disallowed for duplication of effort. It should also be noted that cost awards to local intervenors are affected by efficiencies that are gained, or which should have been gained, by a co-operative approach among intervenors and intervenor groups.

### **Other parties**

19. With respect to BluEarth, the Commission considers that BluEarth did not describe how its rights or interests could be directly and adversely affected by the Commission's decision on the application. Accordingly, the Commission has insufficient information to assess BluEarth's standing. However, given the location of the BluEarth project, the Commission is prepared to exercise its discretion and allow BluEarth to participate in the hearing, which has already been triggered by a number of other parties who the Commission has found may be directly and adversely affected by its decision on the application. BluEarth may fully participate in this proceeding by filing evidence, cross-examining the applicant and participating in argument and reply.<sup>4</sup>

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<sup>4</sup> Exhibit 189.01 AUC Ruling on Standing of ATCO Electric, AltaLink Management Ltd. and Alberta Electric System Operator, 240-kV Transmission Line 964L/983L from Bowmanton 244S to New Whitley 251S Substation Facility Application No.s 1606526, 1606564, 1606402 & 1606403, Proceeding ID 748.

**5. Conclusion**

20. Because the Commission has determined that Mr. and Ms. Girletz, Mr. and Ms. McDonald and Flemming Danielsen have rights that may be directly and adversely affected by its decision on the application, the Commission will hold a public hearing in accordance with Section 9 of the *Alberta Utilities Commission Act*.

21. If you have any questions please contact the undersigned via telephone at 403-592-4499.

Yours truly,

Shanelle Sinclair  
Commission counsel

September 9, 2014

**To: Interested Parties**

**Suncor Energy Products Inc.  
Hand Hills Wind Power Project  
Application No. 1609163  
Proceeding No. 2326**

**Ruling on standing for additional submissions**

**1. Introduction**

1. In this ruling, the Alberta Utilities Commission (AUC or the Commission) must decide if the persons who filed statements of intent to participate on the Hand Hills Wind Power Project, after the deadline to file has passed have demonstrated that they have rights that may be directly and adversely affected by the Commission's decision on the project application. A person who demonstrates the potential for direct and adverse effect is said to have "standing".

2. The Commission has asked me to write to you to provide its ruling and reasons for its ruling on the standing of those persons that filed submissions in relation to the Hand Hills Wind Power Project.

**2. Background**

3. On December 21, 2012, Suncor Energy Products Inc. (Suncor) filed an application for approval to develop the Hand Hills Wind Power Project (the project). The project would consist of 54 wind turbines, an underground collector system and a substation. The project site is located approximately six kilometres south of Delia, 22 kilometers southwest of Hanna, and 27 kilometres northeast of Drumheller.

4. On May 30, 2014, the Commission issued a notice of application for Proceeding No. 2326.

5. In the notice of application, the Commission directed any person who had concerns or objections to the application, or who wished to support the application to file a submission by June 26, 2014.

6. On August 5, 2014, the Commission issued its standing ruling. In that ruling the Commission indicated that it had received returned-mail notifications indicating that some

parties had not received the original notice and that should it receive submissions from these parties the Commission will determine their standing, and issue a ruling in due course.

7. On August 29, 2014, Elaine Nelson, Cory Nelson and Tracy Wolf submitted a statement of intent to participate in relation to the proceeding. Their concerns included the project's potential effects on noise, health, the environment, property value, visual impact and livestock.

8. On September 4, 2014, Kelly Fitzpatrick and Doug Greer submitted a statement of intent to participate on the record of Proceeding No. 2326 expressing concern with, among others things, loss of property value, line loss, carbon footprint, the project proximity to wildlife and the project's impact on birds. In their statement of intent to participate, Ms. Fitzpatrick and Mr. Greer stated that they reside approximately 2.4 kilometres from the project site.

### **3. How the Commission determines standing**

9. Standing before the Commission is determined by subsection 9(2) of the *Alberta Utilities Commission Act* which states:

(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.

10. In *Cheyne v. Alberta (Utilities Commission)*, the Alberta Court of Appeal characterized Section 9(2) as the equivalent of Section 26(2) of the *Energy Resources Conservation Act* and confirmed that the two-part test for standing under Section 26(2) applies to subsection 9(2). The Court described that test as follows:

...s. 26(2) has two branches. First is a legal test, and second is a factual one. The legal test asks whether the claim right or interest being asserted by the person is one known to the law. The second branch asks whether the Board has information which shows that the application before the Board may directly and adversely affect those interests or rights. The second test is factual.

11. If the Commission finds that a person has standing pursuant to Section 9(2) of the *Alberta Utilities Commission Act* it must hold a hearing to consider the person's concerns about the subject application. Further, persons with standing have the right to fully participate in the hearing. The Commission considers this to include the right to file evidence in support of their position, the right to question or cross-examine the applicant(s) on its evidence and the right to make argument.

12. In the past the Commission has allowed persons without standing the opportunity to provide a brief statement to the Commission that describes their views on the application. In exceptional circumstances the Commission may also allow parties without standing to fully participate in a hearing by filing evidence, cross-examining the applicant and giving argument. However, where all persons with standing withdraw their objections the Commission may cancel the hearing even if parties without standing have expressed a desire to participate in that hearing.

13. The Commission's authority to allow persons whose rights may not be directly and adversely affected by the Commission's decision on an application to participate in its proceedings is necessarily incidental to the Commission's express power to hold hearings and determine how hearings are conducted pursuant to the provision of the *Alberta Utilities Commission Act* set out above. The Commission spoke to this authority in AUC Decision 2011-437 where it stated:

The Commission's proceedings are conducted to determine an outcome that meets the public interest mandate set out in the legislation. In the vast majority of its proceedings, the Commission is not limited to considering only the evidence presented to it by the applicant and by parties that may be directly and adversely affected. Indeed, it is the Commission's role to test the application to determine whether approval of that application would be in the public interest. If it chooses, the Commission may allow parties that may not be directly and adversely affected by the Commission's decision on the application to bring evidence relevant to assessing the factors that the Commission is required to consider in determining the public interest it is charged with considering in a particular proceeding.<sup>1</sup>

#### **4. Ruling on standing**

14. The Commission has reviewed the application, and the submissions made by the parties and is satisfied that Ms. Nelson, Mr. Nelson and Ms. Wolf have standing to participate in the hearing to consider the project application. These persons own lands within two kilometres of the project. Given the scope of the project, the Commission finds that there is a sufficient degree of connection between the ownership and occupation rights asserted by these parties and project-associated concerns that they raised in their objections.

15. In the Commission's view, Ms. Nelson, Mr. Nelson and Ms. Wolf raised similar concerns about the project in their objection as Mr. and Ms. McDonald, Mr. Danielsen and Mr. and Ms. Girletz. The Commission encourages these persons to work together as a group and, if possible, bring forward a single intervention that addresses the group's collective concerns. The participation of a group with shared interests allows group members to share the work of preparing for and participating in a hearing. This approach makes hearings more efficient and reduces the risk of having intervenor costs disallowed for duplication of effort. It should also be noted that cost awards to local intervenors are affected by efficiencies that are gained, or which should have been gained, by a co-operative approach among intervenors and intervenor groups.

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<sup>1</sup> Decision 2011-436: AltaLink Management Ltd. and EPCOR Distribution & Transmission Inc. Heartland Transmission Project, Application No. 1606609, Proceeding No. 457, November 1, 2011 at para 74.

16. With respect to Ms. Fitzpatrick and Mr. Greer, the Commission considers that Ms. Fitzpatrick and Mr. Greer reside a considerable distance from the project. Based on the information filed, the Commission finds that these parties have not demonstrated that the land rights that they appear to be asserting may be directly and adversely affected by the Commission's decision on the application.

17. While Ms. Fitzpatrick and Mr. Greer, do not have standing, they have three options for participation in the project proceeding. First, if some or all of the persons with standing form an intervenor group, then Ms. Fitzpatrick and Mr. Greer, may join that group and participate as part of that group. Second, the Commission is prepared to allow these parties to provide a brief submission in the hearing to express their views on the project. Regardless of how they choose to participate, Ms. Fitzpatrick and Mr. Greer will not be eligible to recover the costs of their participation in the hearing. Third, Ms. Fitzpatrick and Mr. Greer may submit additional information regarding their standing to participate in the project proceeding by no later than September 26, 2014. The Commission would then decide on their standing for the proceeding.

18. If you have any questions please contact the undersigned via telephone at 403-592-4499.

Yours truly,

Shanelle Sinclair  
Commission counsel