

January 28, 2020

To: Parties currently registered on Proceeding 23958

**Alberta Infrastructure
Foothills Medical Centre Power Plant Expansion Project
Proceeding 23958
Applications 23958-A001 and 23958-A002**

Ruling on standing and request to expand the scope of the proceeding

1. On January 21, 2020, Dan Hider submitted a statement of intent to participate and filed evidence in the Foothills Medical Centre Power Plant Expansion Project proceeding. In his evidence, Mr. Hider expressed concerns with the existing ENMAX distribution line to which Alberta Infrastructure is proposing to connect the power plant.¹ Mr. Hider's concerns with the existing distribution line include routing, capital and maintenance costs, electromagnetic fields, consultation and efficiency of the service connection ENMAX would provide to the power plant. Mr. Hider requested that the Alberta Utilities Commission either expand the scope of this proceeding or provide a separate proceeding to consider ENMAX's distribution line.

2. Mr. Hider also referenced a letter from the Commission's Market Oversight and Enforcement division responding to his complaint that ENMAX had circumvented the AUC approval process by erroneously identifying the feeder as a distribution line. In that letter, the Market Oversight and Enforcement division concluded:

In this instance, based on the information gathered in its investigation, enforcement staff have recommended that the investigation be closed. This recommendation has been accepted by the designated enforcement Commission member. Consequently, the investigation concerning this complaint is closed.²

3. In this ruling, the Alberta Utilities Commission considers whether to grant standing to Mr. Hider and whether to expand the scope of the proceeding or open a new proceeding to consider the ENMAX distribution line.

4. The Commission has authorized me to communicate its decision.

How the Commission determines standing

5. Subsection 9(2) of the *Alberta Utilities Commission Act* sets out how the Commission must determine standing:

¹ Exhibit 23958-X0065, Hider Evidence. January 21, 2020.

² Exhibit 23958-X0065, Hider Evidence, PDF Page 4, Email dated October 1, 2019.

(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]

6. 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.³

7. 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.”⁴ 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.⁵

8. 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.”⁶

9. 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.

³ *Cheyne v Alberta (Utilities Commission)*, [2009 ABCA 94](#); *Dene Tha’ First Nation v Alberta (Energy and Utilities Board)*, [2005 ABCA 68](#) [*Dene Tha’*].

⁴ *Dene Tha’*.

⁵ *Sawyer v Alberta (Energy and Utilities Board)*, [2007 ABCA 297](#).

⁶ [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.

Ruling

10. The Commission understands Mr. Hider's main concerns to be related to the ENMAX distribution line that would facilitate the connection of the power plant to the Alberta Interconnected Electric System (AIES) if the project were to be approved. The application before the Commission in this proceeding is to alter the Foothills Medical Centre Power Plant and to connect it to the AIES. The scope of this project does not include the construction or routing of the ENMAX distribution line, nor is ENMAX a party to this proceeding. The Commission therefore considers that the main concerns raised by Mr. Hider are unrelated to the application before it.

11. Likewise, the Commission considers Mr. Hider's concern with the efficiency of the ENMAX service connection to the power plant to be a general or broad concern about the proposed project and that it is insufficient to establish standing.

12. In light of the above, the Commission finds that Mr. Hider has not demonstrated that he has rights that may be directly and adversely affected by the Commission's decision on the proposed project and is consequently denied standing to participate in this proceeding.

13. The Commission also denies Mr. Hider's request to expand the scope of the proceeding or to open a separate proceeding to consider ENMAX's distribution line. The ENMAX distribution line referenced by Mr. Hider has already been constructed and was dealt with through the Commission's complaint mechanism by its Market Oversight and Enforcement division.

14. Should you have any questions, please contact the undersigned at 403-592-4360 or at rob.watson@auc.ab.ca.

Yours truly,

Rob Watson
Commission Counsel