



**East Strathmore Solar Project Inc.**

**East Strathmore Solar Project**

**September 25, 2020**

**Alberta Utilities Commission**

Decision 24266-D01-2020

East Strathmore Solar Project Inc.

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Proceeding 24266

September 25, 2020

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## **1 Decision summary**

1. In this decision, the Alberta Utilities Commission considers whether to approve an application from East Strathmore Solar Project Inc. to construct and operate a solar power plant designated as the East Strathmore Solar Project and to interconnect the power plant to FortisAlberta Inc.'s electric distribution system.

2. After consideration of the record of the proceeding, for the reasons outlined in this decision and subject to the specified conditions, the Commission finds that approval of the power plant and interconnection is in the public interest having regard to the social, economic, and other effects of the project, including its effect on the environment.

## **2 Introduction and background**

3. East Strathmore Solar Project Inc. (ESSPI) filed an application with the Commission requesting approval to construct and operate a 20.1-megawatt (MW) solar power plant in Wheatland County, approximately 12 kilometres east of Strathmore. ESSPI also applied for an order to connect the power plant to FortisAlberta Inc.'s electric distribution system. The application, filed pursuant to sections 11 and 18 of the *Hydro and Electric Energy Act*, was registered on January 24, 2019, as Application 24266-A001.

4. The Commission issued a notice of application on February 26, 2019, to stakeholders identified by ESSPI in its application and advertised the notice in the Strathmore Times. In response to the notice of application, it received nine statements of intent to participate. In a ruling on May 28, 2019, the Commission granted standing to Brienne Chabot, Sandra and Leonard Desmet, Herman and Barb Praeker, Michael and Francine Ramsay, Rod and Beth Vergouwen, and Praeker Farms. It also granted participation rights to Wheatland County. The Vergouwens, the Ramsays, and the Praekers formed the VRP Group.

5. On May 29, 2019, ESSPI requested that the Commission place the application in abeyance to allow ESSPI the opportunity to continue to consult with the stakeholders that were granted standing.

6. On February 3, 2020, ESSPI requested that the Commission remove the application from abeyance and continue its review of the application. The Commission determined that an oral hearing was required and issued a notice of hearing for the project in accordance with Section 7 of Rule 001: *Rules of Practice* on February 11, 2020. The hearing was scheduled to commence on March 31, 2020.

7. On March 12, 2020, the Commission issued Bulletin 2020-06: *AUC defers live proceedings to reduce COVID-19 risk*, stating that all public hearings, consultations or

information sessions are immediately deferred until further notice. The hearing scheduled for March 31, 2020 was deferred accordingly.

8. Following subsequent adjournments to allow the VRP Group additional time to obtain expert reports, file written evidence, and to accommodate a medical emergency, the AUC held a virtual hearing on June 8, 2020.

9. The Commission is considering this application under sections 11 and 18 of the *Hydro and Electric Energy Act*. These sections stipulate that no person can construct or operate a power plant or connect a power plant to the Alberta Interconnected Electric System without the Commission's approval.

10. In accordance with Section 17 of the *Alberta Utilities Commission Act*, the Commission must assess whether the project is in the public interest, having regard to its social, economic and environmental effects.

11. The Commission has previously found that the public interest will be largely met if an application complies with existing regulatory standards, and the project's benefits to the public outweigh its negative impacts.<sup>1</sup> The Commission must take into account the purposes of the *Hydro and Electric Energy Act* and the *Electric Utilities Act*,<sup>2</sup> and cannot consider the need for the project or whether it is the subject of a renewable electricity support agreement under the *Renewable Electricity Act*. It must also determine whether an applicant has met the requirements of Rule 007: *Applications for Power Plants, Substations, Transmission Lines, Industrial System Designations and Hydro Developments* and Rule 012: *Noise Control*. An applicant must obtain all approvals required by other applicable provincial or federal legislation.

### 3 Project description

12. The proposed project would consist of a 20.1-MW solar power plant, including solar photovoltaic panels, inverter/transformer stations, access roads, a perimeter fence and a vegetation buffer. The power plant would be comprised of approximately 78,000 solar photovoltaic modules, each with a capacity of approximately 335 watts, and approximately 10 inverter/transformer stations. The project would be connected to FortisAlberta Inc.'s electric distribution system through a 700-metre-long underground distribution line connected to the Namaka 428S Substation.

13. The project would be sited on approximately 120 acres of private, cultivated land in Wheatland County, and located on a single quarter section of land in the southwest quarter of Section 9, Township 24, Range 23, west of the Fourth Meridian, as shown on the map below.

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<sup>1</sup> Alberta Energy and Utilities Board Decision 2001-111: EPCOR Generation Inc. and EPCOR Power Development Corporation 490-MW Coal-Fired Power Plant, Application 2001173, December 21, 2001, page 4.

<sup>2</sup> *Hydro and Electric Energy Act*, RSA 2000 c H-16, sections 2 and 3.

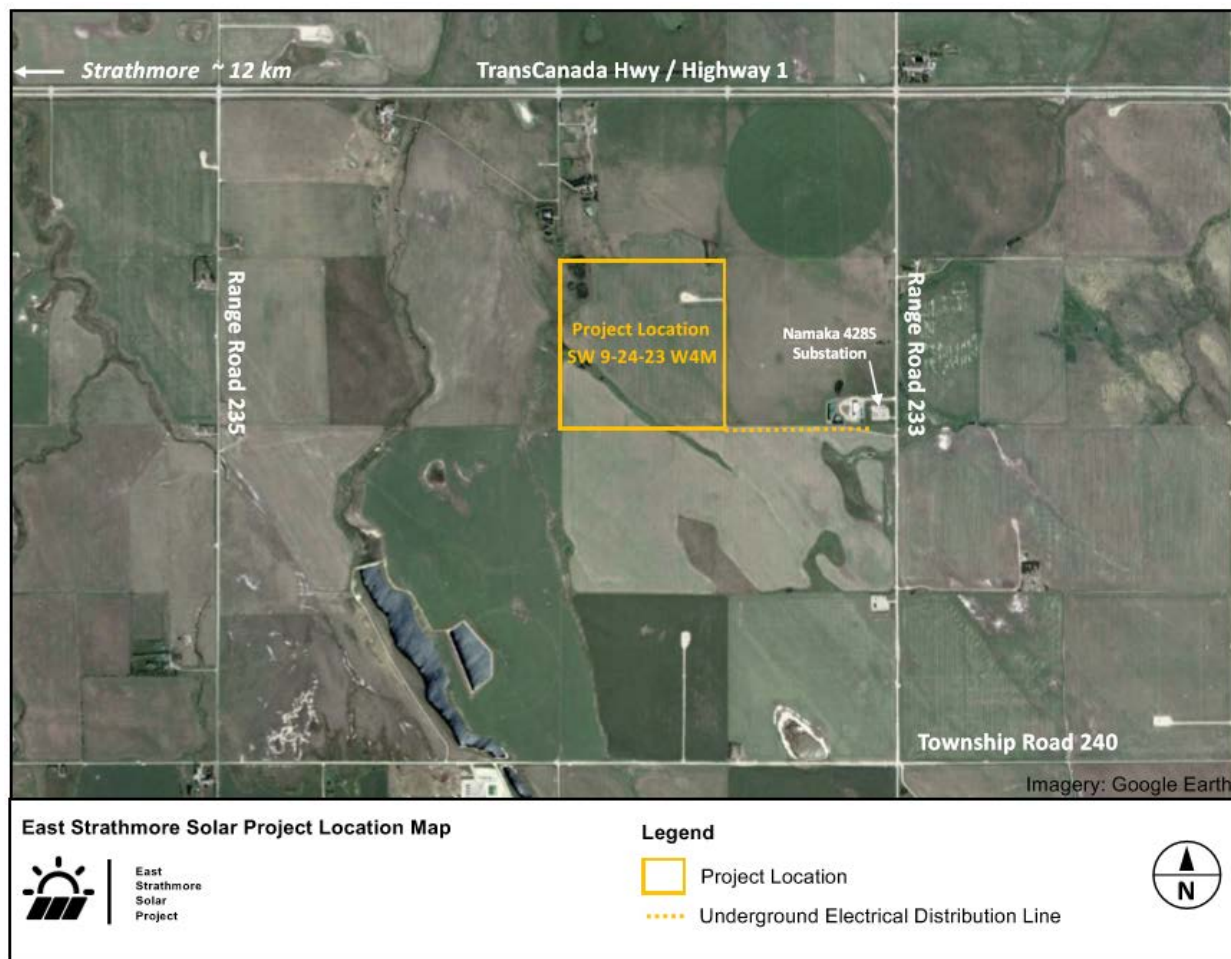


Figure 1. East Strathmore Solar Project area<sup>3</sup>

14. ESSPI indicated that it plans to begin construction in the fall of 2020, with an anticipated commercial operation date of April 2021.

15. ESSPI stated that it completed its participant involvement program in accordance with Rule 007. ESSPI submitted that it provided consultation to stakeholders within 800 metres of the proposed project and provided public notification to stakeholders within 2,000 metres from the proposed project.

#### 4 Discussion and findings

16. The primary issues raised in this proceeding concerned stormwater management, property value impacts of the proposed project on nearby residences, visual and solar glare impacts, land use and environmental impacts, and Wheatland County's municipal bylaw setback requirements for the new Energy District zoning.

<sup>3</sup> Exhibit 24266-X0008, Appendix 8 - Project Area Map.

17. For the reasons outlined below the Commission finds that approval of the project is in the public interest. The Commission is satisfied that the benefits of the project outweigh its negative effects and approves the power plant and interconnection, subject to the specified conditions.

#### **4.1 Stormwater runoff**

##### **4.1.1 Views of the parties**

18. The VRP Group had a number of concerns with the project's potential stormwater runoff. It argued that the water from the project site drains north, directly affecting the Vergouwen and Ramsay lands. The group argued that ESSPI could not confirm that there would be sufficient space on the project lands to develop a stormwater pond, if needed. It also argued that a stormwater management plan had not been completed and would not be available until 30 days prior to construction.

19. In addition, the Praekers stated that in their experience, leaving agricultural land fallow (summer fallowing) would decrease its productivity and water holding capacity. Lastly, the VRP Group asserted that the lack of regular crops on the project lands for the life of the project would result in migration of salts from the project land onto its lands which would damage its lands' productivity.

20. In response and in an effort to address the stormwater runoff concerns of the VRP Group, ESSPI made the following commitments:

- i) ESSPI will develop a stormwater management plan that will be prepared by a professional engineer after the final project design is complete.
- ii) ESSPI's stormwater management plan will be provided to project interveners no later than 30 days before construction of the project is scheduled to commence.
- iii) In the event that there are questions or concerns arising from the stormwater management plan, ESSPI will connect the interested individual with the professional engineer who will be responsible for developing the plan and related assessments.
- iv) ESSPI will apply for the Commission's approval, if required, to incorporate any changes to the project design that may be necessary under the stormwater management plan, such as a stormwater management pond or other infrastructure.

21. ESSPI added that it intends to re-seed the project site with a suitable perennial crop that is expected to improve hydrology conditions relative to existing conditions.

22. ESSPI argued that the project site currently drains to the southwest and is not expected to have significant changes to the grading or drainage patterns, or significant road development that would alter the existing drainage conditions of the project lands.

23. ESSPI also argued that there is no professional evidence to support the claim that salt from the project lands may be diverted to the Praekers' lands and decrease its productivity. ESSPI confirmed that the project lands would contain regular crops throughout the lifespan of the project, and stated that it is its intention to establish perennial grasses and forage crops as

quickly as possible in order to manage weeds and unwanted vegetation on the project site. ESSPI stated that William Patterson, ESSPI's Project Manager, discussed this issue with a professional agrologist who confirmed that a lack of vegetation on the project site would take a long time to cause any significant impact to salinity.

#### **4.1.2 Commission findings**

24. The Commission finds ESSPI's commitments regarding its stormwater management plan to be reasonable. It considers ESSPI's commitments to be sufficient to mitigate any concerns raised by the VRP Group regarding stormwater management and drainage.

25. Although the VRP Group raised a concern with the project's effect on salinity of the project site, there is no evidence on the record to indicate whether there would be any changes to the salinity of the project site that may be diverted to the Vergouwen or Ramsay lands. In the absence of such evidence, the Commission is not persuaded that the project would cause any changes to the salinity, productivity or water holding capacity of the project lands.

26. Notwithstanding, the Commission finds ESSPI's commitment to retain a professional engineer to develop a stormwater management plan to be reasonable, and expects ESSPI to abide by its commitment in this regard, as detailed in paragraph 20 above.

## **4.2 Property value impacts**

### **4.2.1 Views of the parties**

27. The VRP Group raised concerns with the property value impacts of the project on their lands. In their statement of intent to participate, the Vergouwens stated that the solar project will put their farming business at risk by affecting their land and their ability to access financing.<sup>4</sup> The Vergouwens also expressed concerns that the presence of a large solar project adjacent to their land would have a negative impact on surrounding land values.<sup>5</sup>

28. Robert Telford of Telford Land & Valuation Inc. was retained by ESSPI to conduct a property value assessment impact report for the project. His conclusion was that there was no information that would support any positive or negative impacts associated with the type of facility proposed by ESSPI.

29. Mr. Telford stated that the market data is too limited to confirm an individual's subjective opinion on property value impacts. Mr. Telford confirmed that he would expect the impacts to be minimal based on his professional opinion and experience.

30. ESSPI submitted that despite its assertions, the VRP Group did not provide any expert evidence on the proposed project's impacts to property values.

31. In response to the Vergouwens' concerns about the potential limitations on future developments of their land, ESSPI noted the Vergouwens' confirmation that they do not have

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<sup>4</sup> Exhibit 24266-X0017, Rod and Beth Vergouwen's statement of intent to participate.

<sup>5</sup> Exhibit 24266-X0069, VRP Group Willsay Statement Rod and Beth Vergouwen With Tabs A through I May 27 2020, PDF page 3.

any active applications for new developments on their land, and reiterated the Commission's prior determination in this regard:

Consistent with past decisions, the Commission considers that future developments and residences that are at the conceptual or idea stage are not certain and may change depending upon the economy, changes in circumstances of the potential developer, amendments to municipal bylaws on development, or inability to secure municipal approval. In the Commission's view, there is a great deal of uncertainty as to whether such projects would ever proceed and if so, the timing and the potential impacts; consequently, such projects are speculative.<sup>6</sup>

#### **4.2.2 Commission findings**

32. The Commission has consistently found that property valuation is a complex and technical matter that is influenced by a wide variety of contextual and circumstantial factors.<sup>7</sup> For this reason, the Commission has maintained that findings about property value impacts must be based on project-specific information that is provided by qualified experts and tested or made available for testing in a hearing. In this case, no party filed evidence of that quality.

33. The Commission also observes that the potential impact of a solar facility on property value may have an aspect of subjectivity: factors that may deter one purchaser may attract another. It finds that the evidence on the record of this proceeding is insufficient to allow it to determine whether the project may have a positive or negative effect on the value of adjacent properties.

### **4.3 Visual and solar glare impacts**

#### **4.3.1 Views of the parties**

34. ESSPI retained Green Cat Renewables Canada Corporation to assess the potential for solar glint and glare from the project. ESSPI argued that the dwellings that are most likely to be affected by solar glare are unlikely to receive any glare due to terrain elevation and topographic screening, and consequently, no mitigation measures are necessary to address potential glare impacts.

35. The VRP Group noted the solar glare report's conclusion that the effects of solar glare would be most acute for properties to the southwest and southeast of the proposed project, and that the Praeker residence would be the most affected. The group also remarked on Green Cat's proposed mitigation measures, including the planting of vegetation to the height of the solar panels adjacent to the solar project to reduce the effects of solar glare, and argued that no mitigation measure was proposed to reduce the solar glare effects on the Praeker residence.

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<sup>6</sup> Decision 21030-D02-2017, Fort McMurray West 500 kV Transmission Project, paragraph 417, citing EUB Decision 2007-055: Bearspaw Petroleum Ltd. Application for Two Pipeline Licences, Crossfield Field, Application 1453533, July 24, 2007, EUB Decision 97-1: Renaissance Energy Ltd., Applications for Well Licences, Applications for Pipelines, March 11, 1997 and Decision 2009-028: AltaLink Management Ltd. Transmission Line from Pincher Creek to Lethbridge, Application 1521942, Proceeding 19, March 10, 2009.

<sup>7</sup> Decision 2011-436: AltaLink Management Ltd. and EPCOR Distribution & Transmission Inc, Heartland Transmission Project, November 1, 2011, PDF page 24, paragraph 87.

36. ESSPI submitted that physical distance and visual screening of the project from VRP Group members' residences would mitigate the visual impacts of the project. It argued that the project was sited to maximize visual screening of the project by local topography.<sup>8</sup>

37. As mentioned above, ESSPI committed to planting a vegetation buffer located along the northern portion of the project. The vegetation would be selected in consultation with a vegetation expert with special consideration of the project conditions which do not provide access to water or water rights. ESSPI has committed to pruning and replacing dead vegetation throughout the project operations.

#### **4.3.2 Commission findings**

38. The Commission finds that ESSPI's commitment to install a vegetation buffer on the northern side of the project is reasonable and will mitigate the visual impacts of the project from the Vergouwen and Ramsay residences, and imposes the following condition of approval:

- a. ESSPI shall plant a vegetation buffer along the northern boundary of the project site as indicated in its application. ESSPI shall ensure that the vegetation buffer is developed in consultation with a registered arborist. ESSPI shall take reasonable measures to ensure that the vegetation buffer is regularly maintained throughout the lifespan of the project, including watering, pruning and replacing dead trees.

39. The Commission accepts Green Cat's analysis and conclusions that there would be minimal solar glare impacts associated with the project due to terrain elevation and topographic screening.

40. Notwithstanding the above findings, the Commission directs ESSPI to promptly investigate any concerns raised regarding solar glare from the project and to share the results of its investigation with the person(s) who raised the concern. The Commission expects ESSPI to take reasonable measures to mitigate or eliminate any solar glare that is determined to result from the project, including implementing any reasonable requests for additional visual screening or other mitigation to reduce or eliminate solar glare experienced by the complainant(s).

41. The Commission observes that Green Cat's conclusion was premised upon the use of an anti-reflective coating applied to the solar panels that would reduce solar glare. Accordingly, the approval of this project is conditional upon the use of an anti-reflective coating. The Commission imposes the following as conditions of approval:

- b. ESSPI shall use a standard anti-reflective coating for the project's solar panels.
- c. ESSPI shall file a report detailing any complaints or concerns it receives or is made aware of regarding solar glare from the project during its first year of operation, as well as ESSPI's response to the complaint. ESSPI shall file this report no later than 13 months after the project becomes operational.

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<sup>8</sup> Exhibit 24266-X0089, ESSPI Reply Argument - July 22 2020, PDF page 4.

## 4.4 Land use and environmental impacts

### 4.4.1 Views of the parties

42. The VRP Group raised concerns about the loss of productive land. It argued that the project is proposed on agricultural land which is productive land, and that the project would result in its fragmentation, which is against the goal of the South Saskatchewan Regional Plan to maintain agricultural land by reducing its fragmentation and conversion.

43. In response, ESSPI quoted a previous Commission finding in Decision 24573-D01-2020 wherein it stated:

...in the absence of legal or government policy restrictions that affect a private landowner's ability to take agricultural land out of production, that choice remains with the landowner and should not be upset by the Commission unless it is clearly demonstrated that the public interest requires the Commission to intervene in the decision.<sup>9</sup>

44. ESSPI retained Shrike Environmental Consulting Ltd. to prepare an environmental evaluation report for the project (EE Report).<sup>10</sup> Shrike's Stephen Glendinning testified at the hearing on behalf of ESSPI. ESSPI also filed an Alberta Environment and Parks (AEP) renewable energy referral report in which AEP ranked the project as low risk based on project siting, setbacks, limited wildlife use in the area and commitments made by ESSPI to mitigate and monitor wildlife impacts.<sup>11</sup>

45. ESSPI quoted a statement from AEP's referral report that project infrastructure, such as solar arrays, transformers, collection lines, access roads, switching station, storage building, laydown yards and temporary work space, have been sited to avoid native habitat because the project is sited entirely on cultivated land. ESSPI argued that the project siting reduces the risk to wildlife and wildlife habitat and aligns with AEP-Wildlife Management policy.

46. ESSPI argued that the VRP Group has not put forward any expert evidence or other information to establish that the project is inconsistent with land use guidelines outlined in the South Saskatchewan Regional Plan or that the public interest requires regulatory intervention to restrict redevelopment of the project lands in these circumstances. In this regard, Mr. Glendinning confirmed that the project is compatible with ongoing agricultural uses.

47. ESSPI also argued that the VRP Group has not provided any evidence to dispute ESSPI's siting methodology.

48. ESSPI confirmed that the project would be surrounded by a chain-link fence with three rows of barbed wire in accordance with the requirements of the Canadian Electrical Code. Mr. Glendinning confirmed with AEP that the specifications of the fence would be satisfactory.

### 4.4.2 Commission findings

49. The Commission acknowledges the concerns raised by the VRP Group about the loss of productive farm land; however, it maintains its view that the choice to take agricultural land out

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<sup>9</sup> Decision 24573-D01-2020: Elemental Energy Renewables Inc. – Brooks Solar II Power Plant, Application 24573-A001, January 16, 2020, page 25, paragraph 115.

<sup>10</sup> Exhibit 24266-X0005, Appendix 5 - Environmental Evaluation.

<sup>11</sup> Exhibit 24266-X0003, Appendix 3 - Renewable Energy Referral Report.

of production should remain with the landowner and should not be upset by the Commission unless it is clearly demonstrated that the public interest requires the Commission to intervene in the decision.

50. The Commission accepts the evidence reflected in the AEP referral report that the environmental impacts from the project are expected to pose a low risk to wildlife and wildlife habitat.

51. ESSPI must also comply with the requirements of Rule 033: *Post-approval Monitoring Requirements for Wind and Solar Power Plants* which came into force on July 1, 2019, and applies to all solar projects approved after September 1, 2019. Subsection 3(3) of Rule 033 requires approval holders to submit annual post-construction monitoring survey reports to AEP and to the Commission. Consequently, the Commission also imposes the following as a condition of approval:

- d. ESSPI shall submit an annual post-construction monitoring survey report to Alberta Environment and Parks (AEP) and the Commission within 13 months of the project becoming operational, and on or before the same date every subsequent year for which AEP requires surveys pursuant to Subsection 3(3) of Rule 033: *Post-approval Monitoring Requirements for Wind and Solar Power Plants*.

52. The Commission notes that, pursuant to the *Conservation and Reclamation Regulation*, the project is subject to the reclamation obligations set out in Section 137 of the *Environmental Protection and Enhancement Act* and that ESSPI must obtain a reclamation certificate at the project's end of life. The reclamation process is managed by AEP pursuant to the *Conservation and Reclamation Directive for Renewable Energy Operations*, which provides more detailed information on conservation and reclamation planning and reclamation certificate requirements for renewable energy operators in Alberta. ESSPI has acknowledged its statutory obligations under the *Environmental Protection and Enhancement Act* and the *Conservation and Reclamation Regulation*, to properly reclaim the project and obtain a reclamation certificate at the project's end of life. The Commission is satisfied that ESSPI's legislative obligations related to decommissioning and reclamation of the project site sufficiently address the concerns raised by the VRP Group.

## **4.5 Noise impacts**

### **4.5.1 Views of the parties**

53. While the VRP Group did not raise any concerns regarding noise impacts of the project itself, it raised a concern with ESSPI's lack of assurance that noise emanating from the construction of the project's emergency access road would not disrupt the VRP Group.

54. ESSPI submitted that the noise impact assessment predicted that the cumulative sound levels of the project would be far below the permissible sound levels outlined in Rule 012 at all receptors. ESSPI did not expect the final equipment selection to have a significant impact on the predicted sound levels, and committed to filing a letter with the Commission, at least 30 days prior to the start of construction, to confirm the finalized equipment and that the noise impacts have not increased beyond what was described in the application.

#### **4.5.2 Commission findings**

55. Concerning construction noise, the Commission notes ESSPI's obligation to comply with local noise bylaws and the mitigating measures for construction noise stipulated in Rule 012.

56. The Commission accepts the noise impact assessment which predicted that the noise impacts of the project would be below the permissible sound levels described in Rule 012. In this regard, the Commission's review of the application and associated findings are based on ESSPI's assessment, which is in turn based on the use of generic equipment. As such, because the Commission's findings may change depending on ESSPI's final equipment selection, the Commission imposes the following as a condition of approval:

- e. Once ESSPI has made its final selection of equipment for the project and no later than three months before construction of the project is scheduled to commence, ESSPI shall file a letter with the Commission that identifies the make, model, and quantity of the equipment and include an updated site plan if the equipment layout has changed. The letter must also confirm that the finalized design of the project will not increase the land, noise, glare and environmental impacts beyond those described in the materials submitted by ESSPI in support of the present application and approved by the Commission.

#### **4.6 Municipal bylaw setback requirements**

##### **4.6.1 Views of the parties**

57. The parties to this proceeding disagreed on the municipal bylaw set backs that should apply to the proposed project. For its part, ESSPI stated (and this is not disputed by the VRP Group), that the project was originally designed and applied for in accordance with the municipal setback requirements under Wheatland County's land use bylaw for Agricultural General District, in force on January 24, 2019 and that these setbacks should continue to apply. However, on May 7, 2019, following the filing of ESSPI's application for approval of the project, Wheatland County amended its land use bylaw to include Energy District zoning, which had the effect of increasing the setbacks from residential property lines for large-scale solar projects, from 3.05 metres to 300 metres. The VRP Group argued that the revised setback requirements revised in May 2019 should apply to this project, as those requirements affect the project's proximity to the Vergouwen's residence, located directly to the north.

58. Under the current land use bylaw, the residential setback requirements for Energy District zoning reads as follows:

Residential Setbacks: A setback of 300m (984.2 ft) from the edge of the redistricted area for a Solar Facility from the property line that is directly adjacent to a neighboring residential dwelling must be maintained, or from the dwelling if no property line exists.

59. Wheatland County filed a statement of intent to participate in the proceeding, and a letter confirming that "any new applications for permits and land use for solar and wind projects are expected to meet the new site regulations and requirements as approved, or variances will be required through their applications to the County."<sup>12</sup> ESSPI noted that Wheatland County did not participate any further in the proceeding, and suggests that there is no evidence on the record

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<sup>12</sup> Exhibit 24266-X0036, Letter to Gary Perkins.

indicating that Wheatland County opposes or has any concerns regarding the project, or that ESSPI cannot proceed with the municipal development permit process if the project is approved. The VRP Group countered that Wheatland County's statement of intent to participate contains its position, and that there is no evidence that the county is amenable to a relaxation of the setback requirement.

60. ESSPI committed to filing an Energy District development application with Wheatland County, which would include a request for variance and all supporting documentation. The VRP Group argued that despite its knowledge that Wheatland County was revising its land use bylaw, ESSPI did not change its project to comply with the revised setbacks, nor did it apply to the county for a variance. ESSPI responded that it has increased the setbacks on the northern portion of the property to 175 metres to accommodate the concerns raised by the Vergouwens during consultation. ESSPI stated that as a result of this increased setback, the project is currently proposed to be located 325 to 350 metres from the closest residential dwelling (the Vergouwens).

61. Both parties made submissions on the application of Section 619 of the *Municipal Government Act* (Section 619). The VRP Group argued that under Section 619, if the Commission were to approve the project without requiring adherence to the 300-metre setback, neither Wheatland County or any local residents would have the ability to seek the enforcement of same. ESSPI argued that although the Commission has consistently acknowledged that its approval will prevail over municipal land use bylaw requirements pursuant to Section 619, the recent Court of Appeal of Alberta decision in *Borgel v Paintearth (Subdivision and Development Appeal Board)* (Borgel) confirms that the *Municipal Government Act* does not override municipal authority to impose development conditions that do not conflict with a decision of the Commission, even though the scope of such conditions may be narrowed by the Commission's approval. It further argued that this approval does not circumvent the municipal development process or deprive interested stakeholders from their right to participate in such proceedings.

62. Lastly, ESSPI indicated that, should a 300-metre setback from adjacent residential property lines be required as a condition of approval, the project would no longer be viable and would likely not be constructed. In reply argument, the VRP Group responded that there is no evidence on the record indicating how the financial metrics of the project would be affected, and to what degree.

#### **4.6.2 Commission findings**

63. The Commission is of the view that Wheatland County's statement of intent to participate forms a part of the record of this proceeding. It also acknowledges that both ESSPI and the VRP Group are in agreement that despite the lack of evidence filed by Wheatland County to this effect, (i) the project currently does not comply with the land use bylaw residential property setback requirement, and (ii) ESSPI has not filed an application for a variance or relaxation of this requirement with the county. The Commission cannot draw any inference from the county's lack of further participation in this proceeding that it will or will not amend, vary or relax this bylaw requirement as it applies to the project. Consequently, the Commission will make its decision on this project on the basis that it currently does not conform with the county's land use bylaw.

64. The Commission observes that under Section 619 of the *Municipal Government Act*, an approval or permit from the Commission prevails over any statutory plan, land use bylaw,

subdivision decision, or development decision by a subdivision authority, development authority, subdivision and development appeal board, or the Municipal Government Board and other related authorizations.

65. The Commission acknowledges that Wheatland County is the municipal land use authority for the project lands, and that the evidence on the record indicates that the proposed project would not comply with the required 300-metre setback.

66. The Commission's governing legislation lists the factors and principles the Commission must take into account when considering an application for a power plant. Those factors and principles are found in sections 2 and 3 of the *Hydro and Electric Energy Act*, Section 5 of the *Electric Utilities Act* and Section 17 of the *Alberta Utilities Commission Act*. However, in assessing whether a proposed development is in the public interest, the Commission may consider, amongst other factors, whether a proposed project is consistent with a municipality's planning and land use decisions.

67. The Commission considers that a municipality's land use authority and the land use regime established under its bylaws form part of its overall determination of whether approval of a project is in the public interest.

68. Although no evidence was submitted on the record of this proceeding addressing the impact of the project on residents who do not have a 300-metre (or greater) setback from their property line, the Commission posits that at least one benefit of the increased setback is to minimize noise, solar glare and visual impacts of the project on surrounding residents.

69. Lastly, despite the fact that the project is not in compliance with Wheatland County's land use bylaw setback requirement, ESSPI has committed to increasing the setback along the northern property line to 175 metres at its furthest point in order to address the concerns raised by the Vergouwens, and as a result of this change, the project will be located between 325 and 350 metres from the closest residential dwelling (the Vergouwens). The Commission has considered this commitment in making its decision. It considers that the increased setback committed to by ESSPI will minimize the noise, solar glare and visual impacts of the project on the Vergouwens, and is therefore reasonable in the given circumstances. The Commission strongly encourages ESSPI to continue to work with Wheatland County to seek a resolution of the setback issue arising from the county's land use bylaw.

70. For the reasons outlined above and subject to all of the conditions outlined in this decision (which are listed in Appendix C), the Commission finds that ESSPI has satisfied the requirements of Rule 007 and Rule 012 and that in accordance with Section 17 of the *Alberta Utilities Commission Act*, approval of the project is in the public interest having regard to the social, economic, and other effects of the project, including its effect on the environment.

## **5 Decision**

71. Pursuant to Section 11 of the *Hydro and Electric Energy Act*, the Commission approves the application and grants East Strathmore Solar Project Inc. the approval set out in Appendix 1 – Power Plant Approval 24266-D02-2020 – September 25, 2020, to construct and operate the East Strathmore Solar Project.

72. Pursuant to Section 18 of the *Hydro and Electric Energy Act*, the Commission approves the interconnection and grants East Strathmore Solar Project Inc. the connection order set out in Appendix 2 – Connection Order 244266-D03-2020 – September 25, 2020, to connect the East Strathmore Solar Project to FortisAlberta Inc.’s electric distribution system.

73. The appendices will be distributed separately.

Dated on September 25, 2020.

### **Alberta Utilities Commission**

*(original signed by)*

Anne Michaud  
Vice-Chair

**Appendix A – Proceeding participants**

Name of organization (abbreviation) Company name of counsel or representative
East Strathmore Solar Project Inc. (ESSPI) T. Oleniuk E. Bouey
VRP Group Counsel: J. Laycraft, Q.C. A. Louie  Members: B. Praeker H. Praeker F. Ramsay M. Ramsay B. Vergouwen R. Vergouwen Praeker Farms Ltd. Praeker Acres Inc.
E. Barlow
B. Chabot
L. Desmet and S. Desmet
Wheatland County

**Appendix B – Virtual hearing – registered appearances**

Name of organization (abbreviation) Name of counsel or representative	Witnesses
East Strathmore Solar Project Inc. (ESSPI) T. Oleniuk E. Bouey	D. Eaton S. Glendinning W. Patterson C. Sutherland R. Telford
VRP Group J. Laycraft, Q.C. A. Louie	H. Praeker M. Ramsay R. Vergouwen

<p>Alberta Utilities Commission</p> <p>Commission panel Anne Michaud, Vice-Chair</p> <p>Commission staff N. Sawkiw (Commission counsel) C. Dalsin A. Anderson</p>
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## Appendix C – Summary of Commission conditions of approval

This section is intended to provide a summary of all conditions of approval for the convenience of readers. In the event of any difference between the directions and conditions in this section and those in the main body of the decision, the wording in the main body of the decision shall prevail.

The following are conditions of Decision 24266-D01-2020 that require follow-up with the Commission, and will be tracked as conditions of Power Plant Approval 24266-D02-2020 using the AUC's eFiling System:

- ESSPI shall file a report detailing any complaints or concerns it receives or is made aware of regarding solar glare from the project during its first year of operation, as well as ESSPI's response to the complaint. ESSPI shall file this report no later than 13 months after the project becomes operational.
- ESSPI shall submit an annual post-construction monitoring survey report to Alberta Environment and Parks (AEP) and the Commission within 13 months of the project becoming operational, and on or before the same date every subsequent year for which AEP requires surveys pursuant to Subsection 3(3) of Rule 033: *Post-approval Monitoring Requirements for Wind and Solar Power Plants*.
- Once ESSPI has made its final selection of equipment for the project and no later than three months before construction of the project is scheduled to commence, ESSPI shall file a letter with the Commission that identifies the make, model, and quantity of the equipment and include an updated site plan if the equipment layout has changed. The letter must also confirm that the finalized design of the project will not increase the land, noise, glare and environmental impacts beyond those described in the materials submitted by ESSPI in support of the present application and approved by the Commission.

The following are conditions of Decision 24266-D01-2020 that do not require follow-up with the Commission:

- ESSPI shall plant a vegetation buffer along the northern boundary of the project site as indicated in its application. ESSPI shall ensure that the vegetation buffer is developed in consultation with a registered arborist. ESSPI shall take reasonable measures to ensure that the vegetation buffer is regularly maintained throughout the lifespan of the project, including watering, pruning and replacing dead trees.
- ESSPI shall use a standard anti-reflective coating for the project's solar panels.