

September 28, 2020

To: Parties currently registered in Proceeding 25690

**Barlow Solar Park Ltd.  
Barlow Solar Project  
Proceeding 25690  
Application 25690-A001**

**Ruling on standing**

1. In this ruling, the Alberta Utilities Commission decides whether to hold a public hearing to consider an application by Barlow Solar Park Ltd. relating to a solar power project located in Calgary, Alberta.
2. The Commission must hold a hearing if persons who have filed a statement of intent to participate in Proceeding 25690 have demonstrated that they have rights that may be “directly and adversely affected” by the Commission’s decision. Such a person may participate fully in the hearing, including giving evidence, questioning of witnesses, and providing argument. This permission to participate is referred to as standing.
3. The Commission issued a notice of application for Proceeding 25690 on July 21, 2020. The Commission received a statement of intent to participate from Randy Cusson.
4. The Commission has authorized me to communicate its decision on standing.

**How the Commission determines standing**

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

**(2) If it appears to the Commission that its decision or order on an application **may directly and adversely affect the rights of a person**, the Commission shall**

- (a) give notice of the application in accordance with the Commission rules,
  - (b) give the person a reasonable opportunity of learning the facts bearing on the application as presented to the Commission by the applicant and other parties to the application, and
  - (c) hold a hearing. [emphasis added]
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.<sup>1</sup>

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."<sup>2</sup> 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.<sup>3</sup>

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."<sup>4</sup>

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.

## **Ruling**

10. Mr. Cusson stated that he was opposed to the Commission approving the application. He indicated that solar energy technology is inefficient, requires labour to keep operating and eventually requires refitting.<sup>5</sup> The Commission issued a request for additional information from Mr. Cusson, asking about the location of any land interests he may have in proximity to the proposed development and any legal rights he might have that may be directly and adversely affected by the Commission's decision on the application. The Commission did not receive a response from Mr. Cusson.

11. The Commission considers that Mr. Cusson's concerns are general in nature and do not demonstrate that he has legal rights that may be directly and adversely affected by the Commission's decision on the application. The Commission therefore denies standing to Mr. Cusson and will not hold a hearing to further consider his concerns.

---

<sup>1</sup> *Cheyne v Alberta (Utilities Commission)*, 2009 ABCA 94; *Dene Tha' First Nation v Alberta (Energy and Utilities Board)*, 2005 ABCA 68 [*Dene Tha'*].

<sup>2</sup> *Dene Tha'*.

<sup>3</sup> *Sawyer v Alberta (Energy and Utilities Board)*, 2007 ABCA 297.

<sup>4</sup> 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.

<sup>5</sup> Exhibit 25690-X0024, System generated PDF; Exhibit 25690-X0025, Mr. Cusson's SIP.

12. Should you have any questions, please contact the undersigned at [gary.perkins@auc.ab.ca](mailto:gary.perkins@auc.ab.ca).

Yours truly,

Gary Perkins  
Commission Counsel