

March 31, 2021

To: Parties currently registered in Proceeding 26214

**Buffalo Plains Wind Farm Inc.
Buffalo Plains Wind Farm
Proceeding 26214
Applications 26214-A001 and 26214-A002**

Ruling on standing and other issues

1. In this ruling, the Alberta Utilities Commission decides whether to hold a public hearing to consider applications by Buffalo Plains Wind Farm Inc. (BPWF) for approval to construct and operate a 514.6-megawatt wind power project called the Buffalo Plains Wind Farm (the project), in the Lomond area.
2. The Commission must hold a hearing if persons who have filed a statement of intent to participate in Proceeding 26214 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 notices of applications for Proceeding 26214 on January 13, 2021, and March 3, 2021.¹ The Commission received statements of intent to participate from a group identified as Lomond Opposing Wind Projects group (LOWP) and its individual members, as well as Marvin Maronda, Larry Root, Brad Bakuska, and the Village of Lomond.
4. In its statement of intent to participate filed on behalf of the group, LOWP identified certain concerns regarding the sufficiency of stakeholder notification for the project, including BPWF’s method for delineating the project boundaries. The Commission sought comments from BPWF and reply comments from LOWP on these concerns.
5. The Commission has authorized me to communicate its decision on standing and other concerns raised by LOWP.
6. The Commission has determined that LOWP and some of its members, as well as Marvin Maronda, Larry Root and the Village of Lomond have standing in this proceeding. In

¹ The notice of applications, originally issued on January 13, 2021, was re-issued upon identification of a mapping error in the original notice, which had inadvertently failed to depict a proposed overhead collector line running north-south, parallel to Range Road 211, on the west side of the project. The existence and location of this overhead collector line was correctly depicted by BPWF in its application materials. The re-issued notice was distributed to everyone who had received the original notice, as well as certain stakeholders identified by BPWF in Exhibit 26214-X0174 and Exhibit 26214-X0176, who had previously been omitted from the stakeholder mailing labels provided to the Commission.

accordance with its past practice, the Commission will allow other members of LOWP to participate in the proceeding in their capacity as members of a group with standing. Persons and parties with standing are listed in Schedule A. Persons listed in Schedule B do not have standing in this proceeding. Prior to making a determination on standing in respect of the persons listed in Schedule C, the Commission requests that they provide additional information.

LOWP concerns regarding project maps and delineation of project boundaries

7. LOWP expressed concerns regarding stakeholder notification for the project, including whether the project maps supplied to the Commission by BPWF were sufficient to meet the Commission's notification and consultation requirements, and whether BPWF should have included the area impacted by above-ground collector lines within the project boundaries. LOWP suggested that, as a result of BPWF's method for delineating and depicting project boundaries, potentially affected stakeholders may have been misled as to whether they qualify for standing.

8. In response, BPWF maintained that the project maps it supplied to the Commission satisfy all Rule 007: *Applications for Power Plants, Substations, Transmission Lines, Industrial System Designations and Hydro Developments* requirements and properly depict all overhead and underground collector lines within the project boundaries. BPWF also stated that it accounted for all overhead and underground collector lines when carrying out its participant involvement program (PIP), and that all identified stakeholders who own land, occupy or reside within 2,000 metres any project infrastructure (including above-ground and underground collector lines) were notified of the project, and all identified stakeholders who own land, occupy or reside within 800 metres of any project infrastructure were consulted. Additionally, BPWF stated that it had provided project mailouts to stakeholders outside of the notification radius, including all stakeholders within the village of Lomond, via a postal code drop.

9. LOWP asserted that BPWF had artificially reduced the area captured within the project boundaries in a manner that was intended to eliminate opposition to the project. Specifically, LOWP stated that BPWF had narrowed the project boundaries, as compared to what was originally communicated to stakeholders, due to minor changes to the footprint and location of certain project infrastructure. Further, LOWP asserted that BPWF had delineated the project boundaries in certain areas with reference to legal subdivisions rather than quarter sections of land. LOWP suggested that these actions had excluded certain stakeholders from the notification and consultation radii and resulted in a convoluted depiction of which lands were impacted by the project. LOWP argued that BPWF should not have reduced the project area from the original design.

10. BPWF stated that the changes made to the project layout, and corresponding reduction to the project boundaries, were not intended to eliminate opposition to the project. Rather, BPWF had made changes to the project layout and certain turbine locations in September 2020 in response to stakeholder feedback and to minimize potential noise, shadow and environmental impacts. BPWF explained that, in accordance with the PIP guidelines contained in Appendix A of Rule 007, where a proposed project is revised, stakeholders that fall outside of the notification boundaries for the revised project footprint are not required to remain included in the PIP provided that they are advised that they will no longer receive project communications. BPWF submitted that its project information had been widely disseminated to stakeholders and the

broadier public through its PIP, and that a reduction to the project boundaries does not necessarily correlate with a reduction of project awareness.

LOWP concerns regarding standing

11. LOWP stated that the concerns identified in its statement of intent to participate were raised in order to explain why the Commission should grant standing to some persons who own, occupy or reside on land outside of the 2,000-metre distance from the project boundaries delineated by BPWF. LOWP also suggested that the practice of granting standing to persons within 2,000 metres of the project boundaries should be considered outdated as turbine heights have increased over time. LOWP requested that the Commission use greater latitude in granting standing in the current proceeding due to the size of the project and the proposed turbines, as well as the proximity of nearby communities.

12. In response, BPWF noted that the test for standing established under the *Alberta Utilities Commission Act* “does not include considerations regarding the size of a project or proximity of nearby communities as factors to be considered by the Commission when granting participation rights.”² BPWF stated that “the Commission does not have the discretion to grant greater latitude or blanket participation rights under section 9(2) of the [*Alberta Utilities Commission Act*] without being satisfied that each party seeking to participate has rights that could be directly and adversely impacted by the [a]pplication or, in the case of the LOWP group, at least one or more members of the group satisfies this requirement.”³

How the Commission determines standing

13. 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]

14. 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

² Exhibit 26214-X0174, BPWF Ltr to AUC re LOWP Group Concerns - March 5, 2021, PDF page 3.

³ Exhibit 26214-X0174, BPWF Ltr to AUC re LOWP Group Concerns - March 5, 2021, PDF page 11.

information to show that the Commission's decision on the application may "directly and adversely affect" the person's right, claim or interest.⁴

15. 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."⁵ 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.⁶

16. 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."⁷

Standing considerations in this proceeding

17. In order to grant standing, the Commission must be satisfied that a person has rights that may be directly and adversely affected by the Commission's decision on an application. The Commission assesses the potential for a "direct and adverse effect" on a case-by-case basis. It considers the specific circumstances of each application and each statement of intent to participate that it receives. In this manner, eligibility for standing necessarily responds to advancements in technology and project infrastructure (such as increased turbine height and capacity), as the Commission takes into consideration the unique characteristics of a proposed project and its anticipated impacts.

18. In certain circumstances, the Commission extends presumptive standing to persons who own, occupy or reside on land within a particular geographic range of a proposed project where the potential for direct and adverse effects is foreseeable. Although intended to provide greater predictability for stakeholders, the presumption of standing for persons within a particular geographic range is rebuttable, and is ultimately subject to the Commission being satisfied that these persons satisfy the test for standing.

19. As indicated in the notices of applications, for the purposes of this proceeding the Commission stated that it would generally consider persons who own, occupy or reside on land located within 2,000 metres of the proposed project boundaries to have rights that may be directly and adversely affected by its decision on the applications, and therefore to have standing. The Commission also confirmed that standing for other participants, and any objections to standing, would be considered on a case-by-case basis.

⁴ *Cheyne v Alberta (Utilities Commission)*, [2009 ABCA 94](#); *Dene Tha' First Nation v Alberta (Energy and Utilities Board)*, [2005 ABCA 68](#) [*Dene Tha'*].

⁵ *Dene Tha'*.

⁶ *Sawyer v Alberta (Energy and Utilities Board)*, [2007 ABCA 297](#).

⁷ [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.

20. In the present circumstances, there is a dispute between BPWF and LOWP regarding the method used to delineate the project boundaries. LOWP maintains that BPWF's reduction to the project boundaries in September 2020 has contributed to confusion and uncertainty for stakeholders as to whether they qualify for standing.

21. Rule 007 does not provide explicit directions for how an applicant should determine the location of the power plant site boundaries. In many cases, for the purpose of administrative ease and clarity, an applicant will delineate project boundaries that conform with nearby legal land divisions, such as the boundaries of the quarter-section of land on which project infrastructure is sited.

22. In the present case, BPWF reduced its project boundaries in September 2020 to reflect changes to the project footprint including the relocation or removal of several turbines. BPWF provided a map titled Landownership, Consultation and Notification Map as an appendix to its PIP report.⁸ This map illustrates the original project boundaries in grey shading, in relation to the updated project boundaries which are illustrated in orange shading.

23. The Commission is satisfied that the project maps provided by BPWF satisfy the requirements of Rule 007 and accurately depict the locations of the applied-for project infrastructure. The Commission notes, however, that the reductions to the project boundaries effected in September 2020 and depicted on the Landownership, Consultation and Notification Map do not appear to follow a consistent methodology, and that the updated project boundaries variously adhere to different reference points. For example, in certain places the updated project boundaries trace the division between quarter sections of land, whereas in other places the updated project boundaries trace the division between legal subdivisions. Further, there are certain places where the updated project boundaries appear to trace the footprint of linear infrastructure, such as collector lines. As a result, the relative distance between various pieces of project infrastructure and the updated boundaries is not consistent or predictable across the project.

24. The Commission accepts that BPWF communicated revisions to the project boundaries to impacted stakeholders, as required by the PIP guidelines. However, the Commission is sensitive to LOWP's concern that an inconsistent approach to delineating project boundaries may contribute to stakeholder uncertainty regarding qualification for standing, largely as a result of the Commission's reliance on project boundaries delineated by the applicant for the purpose of establishing presumptive standing.

25. In this case, the Commission is aware that there are a number of persons who own, occupy or reside on land just outside of the 2,000-metre distance from the updated project boundaries delineated by BPWF, and who might have been captured by the Commission's presumption of standing had the project boundaries been delineated differently. In particular, the Commission notes that a number of prospective interveners own, occupy or reside on land within the village of Lomond, parts of which fall just outside of the Commission's presumptive standing range if calculated with reference to the updated project boundaries delineated by BPWF.

⁸ Exhibit 26214-X0002, PIP Report Appendix A-D & F-L, PDF page 6.

26. In these particular circumstances, the Commission considers it reasonable to extend presumptive standing to include persons who have demonstrated that they own, occupy or reside on land located within 2,000 metres of the original project boundaries. This includes persons located within the village of Lomond who have provided their legal land locations. In arriving at this determination, the Commission has considered each of the statements of intent to participate filed by persons within 2,000 metres of the original project boundaries, including the potential adverse effects cited therein, and the overall layout of the project. The Commission is satisfied that, given the scope of the project, their location in relation to the project as a whole, and the potential effects described in their statements of intent to participate, persons within 2,000 metres of the original project boundaries have the potential to experience adverse impacts that are personal rather than general in nature.

27. The Commission understands that everyone owning, occupying or residing on land within 2,000 metres of the original project boundaries would have received notification of the project directly from BPWF, but that certain of these persons would not have received the Commission's subsequent notice of applications. The Commission has issued an information request asking that BPWF provide the names and contact information for persons within the notification radius of the original project boundaries, who were subsequently removed from the PIP and the list of mailing labels provided to the Commission. The Commission will provide a notice of applications to these persons directly. Any person residing within 2,000 metres of the original project boundaries who has not yet filed a statement of intent to participate but who feels that they may be directly and adversely affected by the Commission's decision on the applications is requested to contact Kloria Wen at 403-592-4367 or kloria.wen@auc.ab.ca by **April 28, 2021**, for instructions on and, if required, assistance registering to participate in the proceeding.

Ruling on standing

28. In light of the above determinations, the Commission is satisfied that the members of LOWP listed in Schedule A, Marvin Maronda, Larry Root, and the Village of Lomond have demonstrated that they have legal rights that may be directly and adversely affected by the Commission's decision on the applications. The members of LOWP listed in Schedule A all own or occupy land in close proximity to the proposed project and have demonstrated that the Commission's decision on the applications has the potential to result in a direct and adverse effect on them. The potential effects described by these persons in their statements of intent to participate include decreased property values, visual impacts, shadow flicker, increased noise and traffic, interference with agricultural operations, health impacts to humans and livestock, safety risks, economic impacts to local businesses and tourism, and impacts on the environment.

29. The Commission finds that the persons listed in Schedule B have not demonstrated that they hold rights that will be directly and adversely affected by the Commission's decision in this proceeding, and, as such, the Commission denies standing to these persons.

30. With respect to the members of LOWP listed in Schedule B, the Commission finds that these persons have not identified any right or interest recognized in law or, having regard to the distance between these persons and the project, they have not established on a factual basis, that approval of the proposed project may directly and adversely affect their rights or interests. The

Commission notes that a purely economic or commercial interest, such as a source of business in a particular geographic area, is not a right recognized in law as contemplated by the *Alberta Utilities Commission Act* and, accordingly, does not satisfy the first part of the standing test. Consistent with the Commission's past practice, persons denied standing may participate in the proceeding as members of LOWP at the discretion of the group, but will not be eligible to claim intervener funding, such as honoraria and personal disbursements associated with their participation. With respect to Brad Bakuska, who is not identified as a member of LOWP, the Commission finds that the concerns identified in the statement of intent to participate are general or policy-related in nature, and that Brad Bakuska has not asserted any right or interest that may be affected by the project.

31. The Commission is unable to determine the standing of the persons listed in Schedule C at this time. Some of these persons have asserted that they own land, occupy or reside in the vicinity of the project, but have not provided any details regarding their location. The Commission requests that these persons provide additional information that clearly identifies the legal land location (or if they live within the village of Lomond, the municipal address) of any land they own, occupy, or reside on in the vicinity of the proposed project. Other persons listed in Schedule C have not fully described the nature of their right or interest in land. The Commission requests that persons listed in Schedule C who occupy land in the vicinity of the proposed project, please explain how they occupy the land (for example, do you have a contract or other agreement allowing you to farm at a specific legal land location). Persons in Schedule C who do not own, occupy or reside on land in proximity to the proposed project, but who are requesting standing in this proceeding on behalf of a family member who does, are requested to identify their family member, explain the family member's rights or interests, and confirm that they are authorized to communicate the family member's concerns. Lastly, the Commission notes that the residents at the Lake McGregor Country Estates have stated that they have a legal right to access lands within 2,000 metres of the proposed project. The Commission requests that these persons please provide the exact location of the land to which they have a legal right, and further describe how this right specifically may be directly and adversely affected by the proposed project. The Commission requests that the foregoing information be provided by **April 28, 2021**.

Costs eligibility

32. Persons who have been granted standing in this proceeding fall within the definition of "local intervener" in Section 22 of the *Alberta Utilities Commission Act* and are therefore eligible to file a costs claim seeking recovery of the costs of their participation in this proceeding, in accordance with the Commission's Rule 009: *Rules on Local Intervener Costs*.

33. LOWP has been granted standing and is eligible to potentially recover the costs incurred to represent those of its members that have been granted standing in this proceeding and have authorized LOWP to represent them. In other words, the LOWP's eligibility to make a local intervener costs claim is entirely dependent on it representing members who are local interveners in their own right.

34. The Commission emphasizes that eligibility to claim costs does not guarantee full recovery of those costs. Any claims for costs must be filed after this proceeding is concluded, in

accordance with Rule 009, and cost recovery is subject to the Commission assessing the value of a party's contribution to the proceeding.

35. Should you have any questions, please contact the undersigned at 403-701-2565 or by email at meghan.anderson@auc.ab.ca.

Yours truly,

Meghan Anderson
Commission Counsel

Attachments

Schedule A – Persons with standing in Proceeding 26214

Name
Marvin Maronda
Larry Root
Village of Lomond
Members of LOWP
Laura Schlaht
Royden and Catherine Lucas
David And Joan Andres
Colleen Boos
Max and Barb Brauer
David and Sandy Brotherwood
Gregory Chitrenky
Dorothy, Esther and Emilia Craine
Jim Domolewski
Robert Donnelly
Janet Drummond and Lynn Goode
Janina Friesen
Rob and Dennell Gillespie
Clay Helland
Justin Helland
Karen Helland
Larry and Wendy Helland
Rayne Helland
Zaine Helland
Steve and Sandy Kam
Brock Liebreich
Luke and Shauna Liebreich
Lynnette Liebreich
Stanley and Helen Liebreich
Ronald Magnuson
Douglas Marks and Mary Peters
Garry Marks
Michael Maronda

Shelley Maronda
Desiree and Boyd Mensinger
Laura Nolan
Erich Ruppert
Elly Rutherford
S+S Hardware + Grocery
Schlaht Farms Ltd.
Curt and Tawnya Schlaht
Jayden and Cara Schlaht
Laverne Schlaht
Ron and Marg Schlaht
Carel and Susanna Seyffert
Brayden and Jessica Shepherd
Garry Sokvitne
Gerald and Danita Stokes
Jami Stokes
Norman and Terry Stokes
Wade Stokes
Triple L Land & Cattle Ltd. and Liebreich Land Co.
Victor VanderGaag
Casey West
Douglas West
La Verla Wogsberg
William and Marilyn Wogsberg
Jay and Karen Humphrey
Ralph and Maya Johnson
Ted Stokes
Rick Siljak
Cindy West
Lavinia Henderson
Ben and Amber Stokes
Wallace and Karen Mensinger

Schedule B – Persons without standing in Proceeding 26214

Name
Brad Bakuska
Ian and Barbara Godkin
Deanna Heather
Bruce Jones
Brad and Melanie McKay
Doug and MaryAnne Stanko
Todd Krause
John and Bea Kuzma
Alena Mcpherson
Darryl Onda
Margaret Ost
Sharon Stoyberg
Ross and Barb Ward
Karlee Thompson
Warren Heather
Megan Williamson
Mel and MaryAnne Williamson
Laurie Umscheid

Joshua McCutcheon
Shelby Wogsberg
Kyle Braun
Diane Wiest
Alvin and Sheila Winch
Teresa Gregus
Ryan Harder
Nathan Anderson
Kailyn Kent and Kyle Howe
Kellie Ransom
Amber Schwartzenberger
Rachelle Tiegen
Courtney and Branden Belley
Kaitlin Gillespie
Chris Groves
Julia Worthington
Ben Loree
Laurie Steinbach
Shelli, Melissa and Katherine Barnes

Schedule C – Members of LOWP from whom the Commission seeks additional information

Name
Larry Dietrich
Judy Landry
Christina Tardif
Delores and Patrick Honess
Tracy Heather
Naomi Lindstedt
Sharon Moore-Edwards
Stephen Edwards
Tom Chapman
Ian Chapman
Penny Chapman
Joanne Monner
Brian and Vonnie Reed
Oluf Steinmuller
Ernie Vornbrock
Dale Dietrich
Jamie and Nancy Wareham