

June 9, 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**

Third ruling on standing for LOWP members and Alberta Wilderness Association

1. In this ruling, the Commission issues its determination on standing for remaining members of the Lomond Opposing Wind Projects Group (LOWP) and the Alberta Wilderness Association. The Commission will issue its ruling on standing for other prospective interveners at a later date.

2. In its standing rulings of March 31, 2021 and April 19, 2021, the Alberta Utilities Commission granted standing to LOWP and some of its members. The Commission requested additional information from LOWP regarding certain statements of intent to participate (SIPs). Lastly, the Commission established a submission deadline of April 28, 2021, for those persons who own, occupy or reside on land within 2,000 metres of the original project boundaries who had not yet filed a SIP.

3. LOWP responded to the Commission's requests on April 28, 2021. In its response, LOWP requested standing for certain members who had not previously filed SIPs, or whose SIPs had not previously included sufficient information for the Commission to make a determination on standing. LOWP also requested that the Commission reconsider its prior determination to deny standing to certain LOWP members.

4. In addition to the information and SIPs provided by LOWP, the Commission also received SIPs from the Alberta Wilderness Association. The Alberta Wilderness Association indicated that it represented a member who has property rights in the vicinity of the project.

5. The Commission has authorized me to communicate its decision on standing. The Commission has decided that the members of LOWP listed in Schedule A have standing, and that the members of LOWP listed in Schedule B do not have standing in this proceeding. Members of LOWP who do not have standing are nevertheless entitled to participate in the proceeding at the discretion of LOWP, however LOWP is not eligible to recover costs of participation associated with those of its members who do not qualify for standing.

6. The Commission denies standing to the Alberta Wilderness Association, but will extend it limited participation rights as described in greater detail below. The Alberta Wilderness Association is not eligible to recover its costs of participation.

How the Commission determines standing

7. 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]

8. As described in the Commission’s first ruling on standing in this proceeding, 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. The second test is factual: a person must provide enough information to show that the Commission’s decision on the applications may “directly and adversely affect” the person’s right, claim or interest.¹

9. In certain circumstances, for the purpose of providing predictability and clarity to stakeholders, 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. In the current proceeding, the Commission has stated that it will generally consider persons who own, occupy or reside on land located within 2,000 metres of the original boundaries to have rights that may be directly and adversely affected by its decision on the applications, and therefore to have standing.

Ruling

Members of LOWP

10. The Commission has reviewed the SIPs filed by the persons identified in Schedule A and is satisfied that they qualify for standing.

11. The list of persons who qualify for standing includes residents of Lake MacGregor Estates. LOWP has explained that Lake MacGregor Estates has an access agreement for land bordering Lake MacGregor under which residents of Lake MacGregor Estates are provided access for recreational purposes to land within the standing radius. The concerns identified by these persons include impacts to use and enjoyment of the area surrounding Lake MacGregor, as well as impacts to property values and health.

12. The list of persons who qualify for standing also includes certain persons whose legal right or interest is limited to ownership of a burial plot at the Lomond Cemetery. LOWP did not

¹ *Cheyne v Alberta (Utilities Commission)*, [2009 ABCA 94](#); *Dene Tha’ First Nation v Alberta (Energy and Utilities Board)*, [2005 ABCA 68](#) [*Dene Tha’*].

describe the nature of this ownership interest, but the Commission is prepared to assume that the burial plots have been properly conveyed in accordance with the *Cemeteries Act*, and thereby constitute a right to land that is recognized in law, although not registered on title. The Commission has therefore applied its presumption of standing to these persons. However, as described in greater detail in its ruling on project roads and notification,² the Commission denies the request by LOWP to direct further notification or consultation with respect to these persons.

13. LOWP requested that the Commission reconsider its earlier determination on standing with respect to LOWP members who are family members of persons with standing, and who will inherit land in the vicinity of the project from those family members in the future. LOWP submitted that these persons have legal rights that may be impacted by the Commission's decision on the applications. This request is also denied.

14. Being in a position to inherit land in the future does not amount to a legally recognized right or interest sufficient to satisfy the test for standing. As a general proposition, the prospective beneficiary of a will may have the expectancy of a future land inheritance, but has no enforceable right or interest in that land until such time as the will is executed. Except in extraordinary circumstances, a will is of no legal effect until the testator's death. The Commission therefore finds that the prospective inheritors of land in the project area do not qualify for standing in their own right.

15. The Commission reiterates that, in accordance with Commission practice and as explained in its previous rulings, members of LOWP without standing are still able to participate fully in the proceeding. At this stage, the practical distinction between members of LOWP with standing and those without relates primarily to LOWP's eligibility to claim honoraria on behalf of its members. The Commission wishes to emphasize that this eligibility to claim costs, including honoraria, is also subject to the group size limits set out in Appendix A of Rule 009: *Rules on Local Intervener Costs*, and that in assessing a costs claim, the Commission takes into consideration whether an intervener or group acted responsibly, and contributed to a better understanding of the issues before the Commission.

Alberta Wilderness Association

16. The Alberta Wilderness Association indicated that the project would impact one of its members' ability to enjoy his property, and that it was also concerned with wildlife impacts and impacts on the viewscape and cultural significance of the Majorville Cairn and Medicine Wheel. The Alberta Wilderness Association stated that one of its members owns property at the northeast quarter of Section 22, Township 17, Range 20, west of the Fourth Meridian, which is within the project boundary, but it did not identify this individual.

17. The Alberta Wilderness Association does not qualify for standing in its own right, and in the absence of any identifying information regarding the member it represents, the Commission is unable to grant standing to the Alberta Wilderness Association. The Commission has broad discretion to control its own processes and recognizes that, notwithstanding its failure to satisfy the standing test, the Alberta Wilderness Association has a genuine interest in the subject matter

² Exhibit 26214-X0260, AUC ruling on project roads and notification.

of the proceeding. The Commission will therefore grant limited participation rights to the Alberta Wilderness Association, and will allow it to file a brief written submission in advance of the oral hearing. The deadline for the brief written statement will be communicated in a process letter in due course. The Alberta Wilderness Association is not eligible to recover any costs associated with this participation.

Yours truly,

Meghan Anderson
Commission Counsel

Attachments

Schedule A – Members of LOWP with standing in Proceeding 26214

Name
Laurie Boos
Tracy Doram
Ian Odland
Kayla Odland
Eddie Colot
Delores and Patrick Honess
Dale Dietrich
Larry Dietrich
Judy Landry
Christina Tardif
Sharon Moore Edwards
Stephen Edwards
Joanne Monner
Tracy Heather
Naomi Lindstedt
Tom, Ian and Penny Chapman
Brian and Vonnie Reed
Oluf Steinmuller
Ernie Vornbrock
Dale Dietrich
Jamie and Nancy Wareham
Dale Erickson
Kevin Loftus
Rachelle Dietrich
Bruce Jones
Margaret Ost
Megan Williamson
Mel and MaryAnne Williamson

Schedule B – Members of LOWP without standing in Proceeding 26214

Name
Shelby Wogsberg
Kyle Braun
Kailyn Kent
Amber Schwartzenberger
Rachelle Tiegen
Courtney Belley
Kaitlin Gillespie

Schedule C – Persons with limited participation rights in Proceeding 26214

Name
The Alberta Wilderness Association