

June 17, 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 for parties concerned with Majorville Cairn and Medicine Wheel

1. The Alberta Utilities Commission received statements of intent to participate (SIPs) in this proceeding from the following individuals or organizations, whose interest in the proceeding relates primarily to the Buffalo Plains Wind Farm (the project)'s potential impacts on the Majorville area:

- Brian Reeves
- Shawn Bubel, on behalf of the University of Lethbridge
- Wayne Wegner
- Chinook Country Historical Society

2. Brian Reeves, a professor of archeology and consultant, expressed concern with potential impacts to the Majorville Cairn and Medicine Wheel, and provided his opinion that the site warrants protection at a federal and international level. Brian Reeves recommended that a visual impact assessment of the site be undertaken and that, based on the results, the project footprint should be reconfigured to avoid visually impacting the viewsapes from the Majorville Cairn and Medicine Wheel.

3. The SIP filed by the University of Lethbridge was written by Shawn Bubel in his capacity as a professor of archeology and the president of the Archeological Society of Alberta. Shawn Bubel described the historical, ceremonial and archeological significance of the Majorville Cairn and Medicine Wheel and expressed concerns with potential visual impacts to the viewscape.

4. Wayne Wegner described his recent visits to the Majorville Cairn and Medicine Wheel as a form of complementary therapy for an illness, and expressed concerns that the viewscape, wildlife, serenity, and cultural and historical significance of the site may be impacted by the project. Wayne Wegner also filed a subsequent submission documenting his observations of the site at sunset.

5. The Chinook Country Historical Society was concerned that the project would negatively impact the integrity of the Majorville Cairn and Medicine Wheel and result in a significant negative visual impact on the southwestern viewsapes from the complex. Chinook Country

Historical Society was in favour of further and wider consultation regarding the project's impacts on the Majorville Cairn and Medicine Wheel.

6. The Commission has made a decision on the standing of these parties and instructed me to communicate the following. The Commission finds that these parties do not satisfy the test for standing. Nevertheless, it will extend varying degrees of participation rights to these parties, as described in greater detail below. Specifically, the Commission will allow full participation in the proceeding from Brian Reeves and Shawn Bubel, on behalf of the University of Lethbridge, and will allow limited participation from Wayne Wegner, and the Chinook Country Historical Society. These four parties will not be eligible to recover local intervener costs for their 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 earlier rulings 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

Ruling

9. None of the above parties have demonstrated that they have a legally recognized right that might be directly or adversely impacted by the project. The Commission finds that none of the above parties have satisfied the test for standing.

10. Notwithstanding its decision to deny standing and costs eligibility to these parties, the Commission retains its authority to allow persons without standing to participate in its proceedings and to determine the level of that participation.² That is, it may permit a person

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

² *Canada (Combines Investigation Act Director of Investigation & Research) v Newfoundland Public Telephone Co.*, [1987] 2 SCR 466; *Society of Composers, Authors and Music Publishers of Canada v Canada (Copyright*

without standing to participate by filing a brief written or oral submission explaining his or her position, or it may allow the person to fully participate in the hearing by filing evidence, cross-examining witnesses and submitting argument. When deciding to grant participation rights, the Commission takes into account whether the person or group requesting participation has relevant information that may assist the Commission in carrying out its duties or functions.

11. The Commission notes that Brian Reeves and Shawn Bubel both identified themselves as possessing significant expertise directly relevant to the Majorville Cairn and Medicine Wheel. The Commission anticipates that they may be able to provide specialized evidence on the historical and archeological significance of the site that, in addition to the evidence provided by the First Nations and Indigenous individuals regarding Blackfoot knowledge, practices and history, would benefit the Commission in its determination on the applications. The Commission is therefore prepared to extend full participation rights to Brian Reeves and Shawn Bubel.

12. The Commission notes that it is not subject to the laws of evidence unless its evidentiary rulings work an unfairness on a party. The Commission does not formally qualify experts in its proceedings. However, because Brian Reeves and Shawn Bubel have attested to their qualifications and expertise in support of their submissions, the Commission considers that their evidence has the potential to be prejudicial to the applicant in the absence of an opportunity for the applicant to challenge their credibility and expertise. The Commission will therefore be unable to place significant weight on the submissions provided by Brian Reeves and Shawn Bubel unless they make themselves available to answer information requests and to be questioned by the applicant at the oral hearing.

13. The Commission finds that both Wayne Wegner and the Chinook Country Historical Society have expressed a genuine interest in the proceeding, and that their submissions may also be of some assistance to the Commission. The Commission has therefore decided to extend limited participation rights to these parties. The Commission will accept the submissions filed by these parties on the record to date, and will allow each of these parties to file a brief written statement prior to the oral hearing in this proceeding, if they wish. The deadline for the brief written statement will be communicated in a process letter in due course.

14. Lastly, the Commission notes that the submissions provided by Wayne Wegner and the University of Lethbridge contain links to information hosted on third-party websites, including videos depicting the Majorville Cairn and Medicine Wheel and other wind projects. For the purpose of maintaining the integrity and security of the public record of its proceedings, the Commission is unable to accept documents hosted on third-party websites as part of the proceeding record. As set out in Section 17 of Rule 001: *Rules of Practice*, documents, including video recordings, must be filed on the eFiling System in a supported format. The Commission will not direct parties to amend their existing submissions, however, they may wish to do so in

Board), [1993] FCJ 137; Decision 2011-436: AltaLink Management Ltd. and EPCOR Distribution & Transmission Inc. – Heartland Transmission Project (November 1, 2011).

light of this guidance. In any case, the information contained at links to third-party websites will not be considered by the Commission unless it is re-filed in accordance with Rule 001.

15. Should you have any questions, please contact the undersigned at 403-592-4394 or by email at meghan.anderson@auc.ab.ca.

Yours truly,

Meghan Anderson
Commission Counsel