

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 nis'koo and Camille Pablo Russell**

1. The Alberta Utilities Commission received statements of intent to participate (SIPs) in this proceeding from the following persons, who are members of First Nations that form the Blackfoot Confederacy:

- nis'koo, supported by Harley Bastien
- Camille Pablo Russell

2. nis'koo is identified as a longtime Beaver Bundle owner, Elder and ceremonialist of the Blood Tribe/Kainai (Kainai). The SIP requests standing for nis'koo and notes that this request is supported by Harley Bastien, who is identified as a member of the Peigan (Piikani) Nation and an ally of nis'koo. Camille Pablo Russell is identified as a member of Kainai and a piercing Sundance leader. In their SIPs, each of these persons discusses the cultural, historical and ceremonial importance of the Majorville Cairn and Medicine Wheel.

3. Standing is the right of a person to fully participate in a hearing which may include the right to learn of the other side's case, the right to give oral or documentary evidence, the right to question parties adverse in interest, and the right to make final argument.

4. The Commission has made a decision on the standing of nis'koo and Camille Pablo Russell and instructed me to communicate the following. The Commission finds that these persons do not satisfy the test for standing. Nevertheless, the Commission will extend participation rights to these persons, as described in greater detail below. Further, these persons will be eligible to recover their personal costs of participation in the proceeding.

### **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. 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.<sup>1</sup>

7. In applying the second part of the standing test, the Commission typically examines factors such as the distance between the prospective intervenor’s interests and the site of the proposed development, and the amount of disturbance or displacement a prospective intervenor might expect to experience. Over time, and in light of guidance from the Court of Appeal of Alberta, the Commission’s application of this test has evolved to focus on the degree of physical location or connection between a proposed project and an asserted right.<sup>2</sup>

## **Ruling**

8. nis’koo (supported by Harley Bastien) and Camille Pablo Russell have both requested standing in this proceeding. The SIP filed by nis’koo describes the Majorville Cairn and Medicine Wheel as a sacred holy site and states that the site and surrounding area must not be disturbed or obstructed.

9. The SIP filed by Camille Pablo Russell describes the ongoing importance of the Majorville Cairn and Medicine Wheel for the practice of traditional ceremonies, and emphasizes the importance of preserving the site.

10. The Commission notes that nis’koo and Camille Pablo Russell have not identified the nature of any legally recognized rights or interests that would satisfy the standing test. The Commission understands that their interventions are likely premised on their individual exercise of the collective Aboriginal and treaty rights asserted by their First Nations. Even assuming that the first part of the standing test (i.e., a right recognized by law) were satisfied, the Commission finds that the second part of the test, with its attendant emphasis on “hard information” to demonstrate a degree of connection or location,<sup>3</sup> is not well suited to address situations where concerns with a project relate primarily to its impacts on the spiritual or ceremonial significance

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<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’ First Nation v Alberta (Energy and Utilities Board)*, 2005 ABCA 68, paragraph 14.

<sup>3</sup> *Dene Tha’ First Nation v Alberta (Energy and Utilities Board)*, 2005 ABCA 68, paragraphs 14, 18.

of a site. Additionally, because Aboriginal and treaty rights are collectively held, the Crown's duty to consult does not extend to individual members of Indigenous communities.<sup>4</sup>

11. However, the Commission has the authority to control its own process and has discretion to allow parties without standing to participate in its proceedings. The Commission considers that nis'koo and Camille Pablo Russell, as members of First Nations belonging to the Blackfoot Confederacy, are in the unique position of being able to speak personally to the cultural significance of the Majorville Cairn and Medicine Wheel as well as their use of the site for spiritual and ceremonial purposes.

12. The Commission considers that their perspectives have the potential to assist the Commission's understanding of the historic and contemporary significance of the site. The Commission will allow these persons to participate in the proceeding by filing written submissions explaining their concerns, and attending the oral hearing to provide testimony.

13. The Commission notes that nis'koo and Camille Pablo Russell both identify as members of Kainai, and that Kainai has formally submitted its own SIP in this proceeding. As always, the Commission encourages persons and communities with similar interests in a proceeding to work together where possible to co-ordinate their intervention, as this supports an efficient hearing process.

14. Based on its review of the SIPs, the Commission understands that Harley Bastien wishes to express support for nis'koo, but is not seeking any formal participation in this proceeding. If this interpretation is incorrect and Harley Bastien is seeking participation beyond that of an ally and supporter to nis'koo, the Commission requests that Harley Bastien file a separate SIP to notify the Commission by July 1, 2021.

15. Lastly, the Commission will allow nis'koo and Camille Pablo Russell to recover their personal costs of participation in the proceeding, in accordance with the cost recovery model established for local interveners under Rule 009: *Rules on Local Intervener Costs*. Personal costs of participation include honoraria and disbursements associated with preparing submissions and attending the oral hearing, but do not include the costs of retaining consultants or legal counsel. The Commission will require nis'koo and Camille Pablo Russell to claim their costs in accordance with Rule 009, but will reimburse these persons for their reasonable personal costs of participation from its own budget, rather than directing the applicant to pay these costs.

16. Should you have any questions, please contact the undersigned at 403-592-4394 or by email at [meghan.anderson@auc.ab.ca](mailto:meghan.anderson@auc.ab.ca).

Yours truly,

Meghan Anderson  
Commission Counsel

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<sup>4</sup> *Behn v Moulton Contracting Ltd*, 2013 SCC 26, paragraphs 30-31; *Beckman v Little Salmon/Carmacks First Nation*, 2010 SCC 53, paragraph 35.