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Via AUC E-filing

Alberta Utilities Commission
1400, 600 Third Avenue SW
Calgary, Alberta T2P 0G5

Dear Sirs and Mesdames:

**Re: City of Medicine Hat
Saamis Solar Park Ownership Transfer to the City of Medicine Hat
Proceeding 29273 (Application 29273-A001)
City of Medicine Hat Submission re Statement of Intent to Participate**

We have been retained by the City of Medicine Hat (the “**City**”) in connection with Alberta Utilities Commission (“**AUC**”) Proceeding 29273, regarding the Application 29273-A001, filed by the City on August 27, 2024 (the “**Application**”) requesting AUC approval pursuant to section 95 of the *Electric Utilities Act* (“**EUA**”) and sections 11, 19 and 23 of the *Hydro and Electric Energy Act* (“**HEEA**”) to:

- hold an interest in the Saamis Solar Park Project (the “**Project**”), subject to the capacity limit established pursuant to subsection 95(4) (the “**Section 95 Application**”); and
- transfer to the City (the “**Transfer Application**”) the AUC Power Plant Approval 27788-D02-2024 and Substation Permit and Licence 27788-D03-2024 (collectively, the “**AUC Approvals**”).

In response to the AUC’s December 2, 2024 letter, we provide the following comments on the statements of intent to participate (“**SIP(s)**”) filed on November 21, 2024 by the Medicine Hat Utilities Ratepayer Association¹ (“**MHURA**”) and the Medicine Hat Land Developers Group² (“**MHLD Group**”).

For the reasons set out below, the City respectfully requests that neither the MHURA nor the MHLD Group be granted standing with respect to the Application.

Additional Background re City’s Acquisition

The AUC Approvals for the Project are currently held by Saamis Solar Park Limited (“**Saamis**”). Saamis and the City are parties to an Asset Purchase Agreement (the “**Purchase Agreement**”),

¹ Medicine Hat Utilities Ratepayers Association, Letter to AUC re MHURA SIP (21 November 2024) (Exhibit 29273-X0011).

² Medicine Hat Land Developers Group, Letter to AUC re MHLD Group SIP (21 November 2024) (Exhibit 29273-X0013).

pursuant to which the City has agreed to purchase the Project from Saamis. The terms of the Purchase Agreement are confidential, but the closing of the transaction and the City's acquisition of the Project remain subject to the satisfaction of several conditions precedent (including AUC approval of the Application).

By way of background, because the City is not the owner of the Project, it has not yet completed the detailed site design and related engineering (to reflect the smaller size of a first phase), commenced consulting stakeholders or determined the scope of any phasing related amendments to the AUC Approvals. Therefore, City Council has not considered the resulting business case for a final investment decision regarding construction of the first phase of the Project. These steps cannot occur until the City is the owner of the Project. If the Application is not successful, an amendment to the AUC Approvals to allow for a phased approach is not expected to be required by the current owner. Therefore, the Application is a gating requirement which, if approved, will allow both Saamis and the City to proceed with their respective obligations to satisfy the conditions precedent pursuant to the Purchase Agreement.

The Application, should it be successful, is one of many regulatory steps (both municipal and before the AUC) required prior to the City reaching a final investment decision and having the requisite authority to commence construction of the Project. Examples of the required regulatory steps and approvals include:

- conducting additional planning and due diligence with respect to the proposed phased development of the Project, including engineering studies (e.g. technology specific, site placement, transmission and distribution rerouting and integration into the City grid), supply chain, commercial and financial analysis, and other related diligence;
- consultation and engagement with stakeholders regarding the proposed amendments to phase development of the Project;
- application to the AUC for an amendment to Power Plant Approval 27788-D02-2024 to permit the phased construction of the Project; and
- following completion of the required engineering, studies and analysis, consultation and the subsequent approval by the AUC for the phased development of the Project, the City must seek final investment decision from City Council.

If the Application is denied, the acquisition by the City will not proceed and the above steps (including an amendment to the AUC Approvals) will not be required. In such scenario, Saamis will remain the owner of the Project with the right to proceed with the development, construction and operation of the Project as currently contemplated and approved by the AUC under the AUC Approvals.

City's Submissions re MHURA SIP

The MHURA SIP raises concerns citing a lack of transparency and public consultation with respect to the City's proposed acquisition of and financial investment in the Project. MHURA claims the City has not provided specific information about the anticipated costs and financial impact on taxpayers. As discussed below, these concerns are not relevant to the Application and will be the subject of future decisions before City Council. City Council is the proper forum to

consider both whether the City should invest in the Project and any resulting impacts to tax payers and the Medicine Hat Utility rates.³

As stated above, the City is not the owner or proponent of the Project and therefore has no control over the Project. It cannot consult or engage on a Project for which it is not the owner. In addition, as previously noted, the City has not taken a final investment decision with respect to the Project. Once a detailed business plan capable of informing a final investment decision has been completed, a recommendation will be submitted to City Council for consideration. The decision to fund and construct the Project will be made by the duly elected City Councillors.

Upon and following commercial operation of the Project, the electricity rates charged by the Medicine Hat Utility are determined by City Council in accordance with City of Medicine Hat Bylaw No. 2244.⁴ It is important to note that City Council, and not the AUC, approves utility rates through its municipal government processes.⁵ In accordance with Bylaw No. 2244, the Medicine Hat Utility prepares a proposal for utility rates based on various factors, including the cost of production, distribution, administration, maintenance, infrastructure investment, and market conditions. Public input is sought regarding rate changes through the publication of a notice in a newspaper having general circulation in the City of Medicine Hat area. Public input can take the form of a public hearing or written submissions, allowing residents and stakeholders to provide feedback on the proposed rates.⁶

Once the Medicine Hat Utility's proposal has been reviewed and public consultation has taken place, it is City Council, as elected officials, who vote on the proposed utility rates. If approved, the new rates are implemented in accordance with City Council's decision.

Further, MHURA has not demonstrated, nor even asserted, that any of its members have any legal right that may be directly and adversely affected by the AUC's decision regarding the Application. MHURA's concerns fall outside the scope of the Application because such concerns duplicate the consultation and regulatory consideration provided to them in AUC Proceeding 27788. Any new City-led consultation related to any proposed amendments to the AUC Approvals cannot appropriately occur until the City is the owner of the Project. Similarly, MHURA's concerns related to the financial considerations for the City's investment in the Project are misdirected because such matters will be considered by City Council as the funding authority and rate regulator.

In summary, MHURA's concerns with respect to the City's potential investment in the Project and impacts to rate payers are not only premature but also a matter within the legislative authority of the City for approval by its elected councillors. Once it has been determined that the City can acquire the Project and a phased development approach can be implemented to remain within the confines of the City's approved capacity limit under Section 95 of the EUA, the City can

³ *Municipal Government Act*, RSA 2000, c M-26, ss 5, 7, 28-44.

⁴ City of Medicine Hat, By-Law No. 2244, *Consolidation of a Bylaw of the City of Medicine Hat to regulate control the generation, distribution and use of electrical energy in the service area of the City of Medicine Hat's Electric Utility, as designated by the Alberta Utilities Commission* online: <https://www.medicinehat.ca/en/government-and-city-hall/resources/Documents/Bylaws/2244.pdf>.

⁵ MGA, ss 7(g) and 34(1).

⁶ By-Law No. 2244, s 57.

engage in the work required to determine the financial investment required and can consult with stakeholders in a meaningful way.

Taken together, MHURA's concerns fall outside the scope of the Application. MHURA's concerns related to the financial considerations of investing in the Project are premature because the financial decisions and related rate and tax impacts will be considered by City Council as the funding authority and rate regulator. Consideration of these matters and any related stakeholders concerns will occur following a successive sequence of steps including approval of the Application enabling ownership transfer, completion of phase specific due diligence, receipt of amended AUC Approvals, and refinement of the resulting business case.

City's Submissions re MHL D Group

With respect to the MHL D Group, the concerns raised in the SIPs are not relevant to the Application and were considered in the original approval of the Project by the AUC. Concerns related to any proposed phased development of the Project are premature and can be raised directly with the City once it is the owner of the Project. As stated above, any unresolved issues can be addressed before the AUC in connection with subsequent amendment application(s) required to amend the Project Approvals to facilitate development of the Project within the capacity limits set by the AUC pursuant to Section 95 of the EUA.

In addition, many of the concerns raised within the MHL D Group SIP were considered by the AUC in Proceeding 27788. Specifically, the MHL D Group asserts that a phased approach will delay the development of their lands potentially extending the 40-year development permit condition and changing one of the fundamental bases on which the AUC approved the Project in AUC Proceeding 27788.⁷ The MHL D Group also asserts that had they known about the City's involvement in the Project, it would have changed its strategy in AUC Proceeding 27788.

The MHL D Group's concerns related to any proposed phased development of the Project or any alleged changes to the bases upon which the AUC issued the AUC Approvals are not relevant to the current Application. Should the Application be approved, the City's ability to proceed with the construction and operation of the Project will be subject to the AUC's determination under Section 95(5) of the EUA. The AUC Approvals do not currently contemplate a phased development and would only permit the holder to construct the full 325 MW solar project. Therefore, to proceed with the construction and operation of the Project, following the transfer of the AUC Approvals, an amendment will be prepared by the City to allow for construction and operation of the Project in a phased manner in compliance with the capacity limits set in the AUC's determination under Section 95(5) of the EUA.

If the Application is approved, in addition to completing additional engineering, environmental and feasibility studies, the City will engage in a participant involvement program in accordance with AUC Rule 007.⁸ The MHL D Group's concerns regarding potential impacts of a proposed phased development can be raised directly with the City during such consultations and if not resolved, addressed before the AUC in connection with the amendment application required to amend the AUC Approvals to facilitate such development. Should the City become the owner of the Project, a phased development approach to the Project and how it could provide additional flexibility for

⁷⁷ AUC Decision 27788-D01-2024, *Saamis Solar Park Limited* (18 July 2024) at paras 89-97.

⁸ AUC, Rule 007: *Applications for Power Plants, Substations, Transmission Lines, Industrial System Designations, Hydro Developments and Gas Utility Pipelines* (28 March 2024), Section 4 and Appendix A-1.

the development of the area is a topic of discussion the City welcomes engagement on with the MHLG Group. The MHLG Group can apply to participate in the amendment application and raise any unresolved issues it has at such time.

The MHLG Group also asserts that following an approval of the Application, the City can pursue development on the NE7 quarter that could not have been raised or addressed during the approval process. With respect, the City is obliged to comply with the AUC Approvals and does not have the power to unilaterally amend or disregard the conditions of the AUC Approvals. To the contrary, section 619 of the *Municipal Government Act*⁹ (“MGA”) expressly provides otherwise and any municipal decisions contrary to the AUC Approvals may be subject to an appeal before the Land and Property Rights Tribunal (“LPRT”).

The MHLG Group is also concerned the City would not be subject to the 40-year time limit on development for NE7 quarter and will have the ability to operate the Project on that land indefinitely. The 40-year time limit is a condition of the development permit, which runs with the land, and would therefore bind the City. Further, there are legislative safeguards in place. Any amendment to this condition would be subject to appeal to the LPRT by any affected person pursuant to sections 685(2.1)(a)(i)(C) and 685(2.1)(b) of the MGA and section 27(3) of the *Matters Related to Subdivision and Development Regulation*.¹⁰ In turn, the LPRT decision could be appealed to the Alberta Court of Appeal pursuant to section 688(1)(b)(iii.1) of the MGA.

Conclusion

For the above reasons, the City submits that the AUC should not grant standing to either MHURA or the MHLG Group. As discussed above, the concerns of both groups are irrelevant to the Application and will be the subject of future regulatory processes and decisions before City Council and the AUC.

Yours truly,



Kimberly Howard
Partner | Associée

⁹ RSA 2000, c M-26.

¹⁰ Alta Reg 84/2022.