AUC
Alberta Utilities Commission

January 7, 2025

To: Parties currently registered in Proceeding 29273

City of Medicine Hat
Saamis Solar Park Ownership Transfer to City of Medicine Hat
Proceeding 29273
Application 29273-A001

Ruling on standing

1. In this ruling, the Alberta Utilities Commission decides whether to hold a public hearing to consider Application 29273-A001 by the City of Medicine Hat (the City) to transfer approvals for the Saamis Solar Park (the project). The approvals are currently held by Saamis Solar Park Limited (Saamis).

2. The Commission must hold a hearing if persons who have filed a statement of intent to participate (SIP) in Proceeding 29273 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 a notice of application for Proceeding 29273 on November 1, 2024. The Commission received SIPs from the Medicine Hat Utilities Ratepayer Association (MHURA) and the Medicine Hat Land Developer Group (MHLD), comprised of Rick Wahl, on behalf of Wahl Builders Ltd., Gary Stimson, and John McMahon and Bill Fanning.

4. The Commission has decided that MHURA and MHLD do not have standing in this proceeding.

5. The Commission has authorized me to communicate its decision on standing.

Original proceeding

6. While MHURA did not participate in the original proceeding that approved the project, MHLD were previously granted standing. As property developers and individual landowners, MHLD raised concerns that the project would sterilize the future development potential of its lands. In the original proceeding, the City had issued a development permit that included a time limit condition that certain lands can be used for generating renewable energy for up to 40 years. MHLD argued that this term meant the lands will not be serviced with municipal infrastructure until at least 40 years from the start of development for this project, which would effectively

preclude the group members from realizing on their investment in these lands during their lifetimes.[1]

7. In its decision, the Commission found it reasonable to assume that the City, when issuing its development permit, considered the anticipated timing of population growth and the need for residential development of the lands near the project. The Commission found no basis to challenge the City's development timelines. The Commission considered MHLD's concerns but was satisfied that the project was unlikely to significantly affect the future development of MHLD lands.[2]

Statements of intent to participate

8. MHURA identified concerns with a lack of transparency and public consultation by the City regarding taking ownership of the Saamis Solar Park and the City's lack of consultation with taxpayers. MHURA stated that City ratepayers are concerned that the purchase and construction of the project will burden ratepayers and result in substantial financial costs for decades.

9. MHLD is concerned that the City, as the proposed owner and operator of the project, will no longer be subject to the 40-year time limit on development and will have the ability to operate the solar project on that land indefinitely. Further, MHLD noted that the City's development permit provides that the lands can be used for solar energy production for 40 years from the date commencing of the construction. If the project is split into two phases, some construction may not commence for several years.

10. MHURA and MHLD noted that this application is unique from typical transfer of ownership applications involving two private corporations. MHURA noted that it might have sought intervener status in the proceeding to consider the approval of Saamis's application for the Saamis Solar Park had the public known that the City would become the owner and operator of the project. MHLD noted that it would have participated differently in the original proceeding had it known at that time that the City was planning to acquire the project.

11. Following receipt of the SIPs from MHURA and MHLD, the Commission requested additional input from parties before issuing its ruling on standing.[3] In particular, the Commission requested the City provide comments on the SIPs and provided the groups the opportunity to submit comments in reply.

12. Regarding the MHURA SIP, the City stated that concerns about the potential investment and ratepayer impacts are both premature and a matter within the legislative authority of the City

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1 Decision 27788-D01-2024: Saamis Solar Park Limited – Saamis Solar Park, Proceeding 27788, Applications 27788-001 and 27788-002, July 18, 2024, paragraphs 84, 89-92.

2 Decision 27788-D01-2024: Saamis Solar Park Limited – Saamis Solar Park, Proceeding 27788, Applications 27788-001 and 27788-002, July 18, 2024, paragraphs 96-97.

3 Exhibit 29273-X0015, AUC letter - Preliminary matters regarding standing, December 2, 2024.

for approval by elected councilors.[4] Taken together, MHURA's concerns fall outside the scope of the application.

13. Similarly, regarding the MHLD SIP, the City stated that its concerns are not relevant to the transfer application and were considered in the original proceeding.[5] The City noted that any unresolved issues can be addressed before the Commission through future amendment applications to ensure the project complies with all necessary requirements, including generation capacity limits set out in Section 95 of the *Electric Utilities Act*.

14. In the reply submissions, both MHLD and MHURA stated that it is not possible to identify all the ways they may be directly and adversely impacted by the application.[6] Both groups stated that if the Commission refuses to grant standing, they want the approval of the transfer application to be subject to certain steps, including consultation and engagement with stakeholders regarding the proposed amendments to phase development of the project.

15. MHURA and MHLD requested the opportunity to provide additional submissions on standing following the City's information request responses, filed on December 19, 2024. The Commission denies this request as it does not need to hear further from parties regarding this issue.

How the Commission determines standing

16. 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
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> (a) give notice of the application in accordance with the Commission rules,
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> (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
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> (c) hold a hearing. [emphasis added]

17. 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

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4 Exhibit 29273-X0020, Letter to AUC re City's submission on SIPs, December 6, 2024, pages 2-4.
5 Exhibit 29273-X0020, Letter to AUC re City's submission on SIPs, December 6, 2024, pages 4-5.
6 Exhibit 29273-X0021, MHLD Group Reply Submission on Standing to the City's December 6, 2024 Letter re SIP of MHLD Group, December 10, 2024;
Exhibit 29273-X0022, MHURA Reply Submission on Standing to the City's December 6, 2024 Letter re SIP of MHURA, December 10, 2024.

information to show that the Commission's decision on the application may "directly and adversely affect" the person's right, claim or interest.[7]

18. 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."[8]

19. The Commission assesses the potential for a "direct and adverse affect" on a case-by-case basis. It considers the specific circumstances of each proposed project application and each SIP that it receives. In the past, the Commission has decided that general or broad concerns about a proposed project will generally be insufficient to establish standing, unless a more specific link or connection to the demonstrated or anticipated characteristics of a proposed project is established.

Ruling

20. The Commission finds that MHURA and MHLD have not provided sufficient information to demonstrate 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.

21. In reaching this finding, the Commission is mindful of the relatively narrow nature of ownership transfer applications, and the scope of MHLD's participation in the original proceeding.

22. Certain requirements must be met for an interested party to acquire an approval, whether by application, assignment or transfer. The City is a municipal corporation and is eligible to hold the approval pursuant to Section 23(h) of the *Hydro and Electric Energy Act*. The Commission finds, for the purposes of standing, that the City's transfer application is not unique from a transfer application involving two private corporations.

MHURA

23. The concerns raised by MHURA are matters that are not properly before the Commission in this proceeding. MHURA indicated that its members will be directly affected by the proceeding because of potential utility rate and tax impacts to them as residents of the City and due to the physical proximity to the Saamis Solar Park project.[9]

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

[8] 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.

[9] Exhibit 29272-X0017, Appendix "A" - MHURA List of Registered Landowners and Legal Descriptions.

24. The *Municipal Government Act* provides broad authority for council to pass bylaws for municipal purposes in respect of public utilities.[10] The terms, costs, and charges associated with the provision of services from a municipal public utility are established by council.[11] The City Council enacted Bylaw No. 2244, under which it approves utility rates. The utility rate approval process includes an opportunity for public input on rate changes.[12] The City Council also has a process through which it will consider a final investment decision on the project, which includes reviewing a detailed business case prepared by the City, to be voted on by elected city councillors.[13]

25. The Commission has previously held that the *Municipal Government Act* confers as much latitude as possible to municipal councils in dealing with local matters.[14] The Supreme Court of Canada also stated that the provisions of the *Municipal Government Act* must be construed in a broad and purposive manner when determining if the municipality is authorized to exercise a certain power.[15]

26. Section 43 of the *Municipal Government Act* confers limited appellate jurisdiction on the Commission to consider complaints related to a municipally established service charge, rate or toll. Notably, this section cannot be used to challenge the rate structure itself[16] and the Commission's authority under this section is narrowly interpreted so that it does not infringe on the broad powers granted to municipalities to govern their affairs,[17] such as the City Council's authority to approve utility rates, as set out above.

27. The Commission acknowledges that the Saamis Solar Park project may impact utility rates or have tax impacts to residents of the City. However, these issues are not properly before the Commission in this proceeding.

MHLD

28. MHLD has not set out concerns that demonstrate the Commission's decision on the transfer application will adversely affect its rights. The Commission finds that the concerns are not relevant to this application and were substantively considered in the original proceeding.

29. Importantly, the terms and conditions of the Commission's approval issued in the original proceeding are unaffected in this application. MHLD's concerns, including the impacts on the future development potential of its members' lands over the course of the project's lifespan, were considered in the original proceeding. These concerns informed the Commission's decision and

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10 *Municipal Government Act*, Section 7(g).
11 *Municipal Government Act*, Section 34(1).
12 Bylaw No. 2244, Section 57.
13 Exhibit 29273-X0020, Letter to AUC re City's submission on SIPs, December 6, 2024, at pages 2 and 3.
14 Decision 22896-D01-2018: EPCOR Water Services Inc., Appeal of Water Utility Charges by Katelyn Garlough, Proceeding 22896, June14, 2018.
15 *United Taxi Fellowship of Southern Alberta v Calgary (City)*, 2004 SCC 19, paragraph 7.
16 *Municipal Government Act*, Section 43(1).
17 Decision 22896-D01-2018: EPCOR Water Services Inc., Appeal of Water Utility Charges by Katelyn Garlough, Proceeding 22896, June 14, 2018.

the terms and conditions of the approval. The potential transfer of an approval, without more, does not change or alter its terms and conditions.

30. While MHLD stated that it would have approached its intervention in the original proceeding differently if it was aware that the City intended to acquire the project, the Commission does not find that this assertion demonstrates that the group's rights may be adversely affected by the Commission's decision in this application. If the transfer is approved, the City would remain subject to the terms and conditions of the approval unless they are amended following a subsequent amendment application brought by the City.

31. The Commission also finds that MHLD's concerns regarding the City's development permit, including the 40-year term, are not relevant in this proceeding and were considered in the original application. The City previously issued the development permit and, in the original proceeding, the Commission found no basis to challenge the City's development timelines. The Commission was satisfied that the project was unlikely to significantly affect the future development of MHLD lands.

32. The transfer application does not engage or otherwise affect the 40-year term in the City's development permit. The Commission reiterates that the City will remain subject to the terms and conditions of the approval if the transfer is approved unless the Commission amends the conditions following an amendment application.

33. Should you have any questions, please contact Matthew Parent at 403-592-4457 or by email at matthew.parent@auc.ab.ca or Caitlin Graham at 403-592-4532 or by email at caitlin.graham@auc.ab.ca.

Yours truly,

Matthew Parent
Commission Counsel