



**Power Renewable Energy Corporation, Alberta Electric System
Operator and AltaLink Management Ltd.
Jenner Wind Power Project and Interconnection
Proceeding 21394**

**Request for review on AUC Ruling on Standing,
Issued September 21, 2016**

December 19, 2016

Alberta Utilities Commission

Decision 22190-D01-2016

Power Renewable Energy Corporation, Alberta Electric System Operator and AltaLink
Management Ltd.

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1 Introduction

1. The AUC established proceeding 21394 to consider applications by Power Renewable Energy Corporation (PRE), the Alberta Electric System Operator and AltaLink Management Ltd. Those applications all relate to a new wind farm project and associated transmission facilities located near Jenner, Alberta (the Jenner wind project). The Friends of Science Society (the FSS) had concerns with the project and wanted the Commission to hold a hearing to consider those concerns. In a ruling letter dated September 21, 2016, (the standing decision) the hearing panel assigned to the proceeding decided that the FSS had not demonstrated that it had rights that may have been directly and adversely affected by the Commission's decision on the Jenner wind project applications and concluded that the FSS did not have standing to participate in Proceeding 21394.

2. In this decision, a review panel of the Commission must decide whether to grant a request made by the FSS to review the standing decision. The FSS alleges that the hearing panel made errors when it denied it standing. The FSS also provided additional information in support of its request for standing.

3. The review panel has decided to deny the FSS's application to review the standing decision because it has failed to demonstrate, on a balance of probabilities, the existence of an error of fact, law or jurisdiction that could lead the review panel to materially vary or rescind the standing decision. Further, the review panel finds that, notwithstanding the additional information filed by the FSS, the FSS has not demonstrated that it has rights or interests that may be directly and adversely affected by the hearing panel's decision on Proceeding 21394. The Review panels reasons for these decisions are found below.

2 Background

4. The FSS filed a statement of intent to participate in Proceeding 21394. The FSS described itself as "a registered non-profit society in Alberta, a group of earth, atmospheric, solar scientists, engineers and interested citizens (numbering about 350) who have been studying climate science, policy and economics for 14 years and issuing related reports and commentaries." The FSS stated that the Jenner Wind project would result in burdensome costs to taxpayers and consumers of electrical power in Alberta for little or no power or environmental benefit.¹

¹ Exhibit 21394-X0036, Friends of Science Society, Specific objections to the Jenner Wind Farm project, May 13, 2016.

5. In the standing decision, the hearing panel found that the FSS had not met the legal test for standing because it failed to identify the rights it was asserting. The hearing panel also found that the concerns the FSS had expressed were general in nature and related to the potential economic, environmental, and social impacts associated with wind generation.²

6. On November 17, 2016, the FSS wrote to the AUC and asked for an appeal/review of the standing decision. The FSS stated that it was filing its application in accordance with a decision of the Alberta Court of Queen's Bench called *Reese v. Alberta (Ministry of Forestry, Lands & Wildlife)*³ which addresses the concept of "public interest standing" (the *Reese* decision). The FSS explained that the other grounds for its appeal include:

- PRE made statements that are false and misleading, contrary to the *Competition Act*, and
- The new renewable target legislation appears to violate the principles of FEOC- Fair Efficient and Open Competition.

3 The Commission's test for review

7. The Commission's authority to review its own decisions is found in Section 10 of the *Alberta Utilities Commission Act*, which states "[t]he Commission may in accordance with the rules made under subsection (2) review any decision or order made by it under this Act or any other enactment and after the review may confirm, rescind or vary the decision or order." The Court of Appeal has found that the Commission's authority to review its own decisions is a discretionary authority.⁴

8. Section 10 also provides that the Commission may make rules respecting the review of its own decisions. The Commission set out the rules governing reviews of its own decisions in Rule 016: *Review of Commission Decisions*.

9. Subsection 6(3)(a) of Rule 016 provides that the Commission may grant a review when an error of fact, law or jurisdiction is alleged if "the existence of an error of fact, law or jurisdiction is either apparent on the face of the decision or otherwise exists on a balance of probabilities that could lead the Commission to materially vary or rescind the decision."

10. The Courts and the Commission have emphasized the importance of finality in decision making.⁵ As stated by the Commission in Decision 2012-124, "...decisions of the Commission are intended to be final; the Commission's rules recognize that a review should only be granted in those limited circumstances described in Rule 016."⁶

² Exhibit 21394-X0127, AUC Ruling on standing, September 21, 2016.

³ *Reese et al. v. Alberta (Minister of Forestry, Lands and Wildlife) et al.*, 1992 CanLII 2825 (AB QB)

⁴ *AltaGas Utilities Inc. v. Alberta (Energy and Utilities Board)*, 2008 ABCA 46 (CanLII), at paragraph 33, and *Atco Electric Ltd. v. Alberta (Energy and Utilities Board)*, 2004 ABCA 254 (CanLII), at paragraph 29.

⁵ *Housen v. Nikolaisen* [2002] 2 S.C.R. 235, 2002 SCC 33 at paragraph 4, *Windrift Ranches Limited v. Alberta Surface Rights Board*, 1986 ABCA 158 (CanLII), paragraph 18, Decision 2012-124: AltaLink Management Ltd. and EPCOR Distribution & Transmission Inc., Decision on Request for Review and Variance of AUC Decision 2011-436, paragraph 31.

⁶ Decision 2012-124: AltaLink Management Ltd. and EPCOR Distribution & Transmission Inc., Decision on Request for Review and Variance of AUC Decision 2011-436, paragraph 31.

4 Commission findings

11. The review panel has decided to dismiss the FSS's application to appeal/review the Commission's decision to deny it standing for the following reasons. First, the *Reese* decision addressed public interest standing in the absence of express legislative determination of a standing test. The test for standing in Commission proceedings is expressly set out in its governing legislation. Accordingly, as explained below, the court's description of the public interest standing test does not apply to Commission proceedings. Second, the FSS have not demonstrated that the hearing panel made an error of any kind when it found that the FSS failed to satisfy that statutory standing test.

12. The AUC's test for standing is set out in Section 9 of its home statute, the *Alberta Utilities Commission Act*. That test requires that, if a person wishes to have his or her concerns about an application considered by the Commission, the person must demonstrate that he or she has a legal right that may be directly and adversely affected by the Commission's decision on an application.

13. The Alberta Court of Appeal has said that the Commission's standing test has two parts.⁷ First, a person must demonstrate that the right he or she is asserting is recognized by law. Second, a person must provide some information that shows that the Commission's decision on the application may directly and adversely affect his or her rights.⁸ For the second part of the test, the Alberta Court of Appeal stated in *Dene Tha' First Nation v. Alberta (Energy and Utilities Board)*⁹ that "some degree of location and connection between the work proposed and the right asserted is reasonable."¹⁰

14. The Commission recently described how it interprets the standing test in Section 9 in Decision 3110-D02-2015. It found that the standing test "requires a person to demonstrate the potential for both direct and adverse effects arising from the Commission's decision".¹¹ The Commission further found that, under Section 9(2), "the potential effects associated with a decision of the Commission must be personal rather than general and must have harmful or unfavourable consequences."¹²

15. In its application to review the standing ruling, the FSS alleges that the hearing panel ought to have applied the public interest standing test set out in the *Reese* decision. The FSS provided no authority for this assertion other than the *Reese* decision itself.

16. The AUC is a creature of statute; it may only do that which its governing legislation allows it to do. Had the legislature intended the Commission to apply the public interest test set out in the *Reese* decision when deciding standing, it could have done so. Instead, the Legislature enacted Section 9 as it now reads. Accordingly this was the test the hearing panel was required by statute to apply when determining the standing of the FSS. The FSS have failed to demonstrate, on a balance of probabilities, that the hearing panel erred by not applying the public interest test in the *Reese* decision.

⁷ *Cheyne v. Alberta (Utilities Commission)*, 2009 ABCA 94 (CanLII), at paragraph 13

⁸ *Dene Tha' First Nation v. Alberta (Energy and Utilities Board)*, 2005 ABCA 68, *Cheyne v. Alberta (Utilities Commission)*, 2009 ABCA 94

⁹ *Ibid.*

¹⁰ *Ibid.*, paragraph 14

¹¹ Decision 3110-D02-2015, Market Surveillance Administrator allegations against TransAlta Corporation et al. – Phase 2 Preliminary matters: Standing and Restitution, September 18, 2015.

¹² *Ibid.*

17. The review panel also finds that the FSS have not demonstrated that the hearing panel erred when it found that FSS did not have standing to participate in Proceeding 21394. The new information included in the FFS's application relates to the wind generation industry in general and to changes and proposed changes to the regulatory treatment of wind generation in Alberta. Other than to allege that certain statements made by PER regarding the nature of wind generation were false, the FIS has not raised any specific concerns about the Jenner wind project, nor has it explained how the Commission's decision on the project may directly and adversely affect it.

18. The review panel concludes that the FSS failed to demonstrate that the hearing panel erred in its decision to deny the FSS standing. Further, the review panel finds that, the additional information filed by the FSS in its application, does not demonstrate that the FSS is entitled to standing in this proceeding. Specifically, the review panel finds that the FSS has not satisfied either component of the Commission's standing test.

19. For the above reasons, the Commission finds that the FSS have failed to demonstrate that an error of fact, law or jurisdiction is either apparent on the face of the standing decision or otherwise exists on a balance of probabilities that could lead the Commission to materially vary or rescind the standing decision. Accordingly, the application to review the standing decision is denied.

5 Order

20. The Friends of Science Society's application to review the standing decision made by the hearing panel assigned to Proceeding 21394 is denied.

Dated on December 19, 2016.

Alberta Utilities Commission

(original signed by)

Neil Jamieson
Panel Chair