AUC
Alberta Utilities Commission

Eastervale Solar Inc.

Eastervale Solar + Energy Storage Project

February 19, 2025

Alberta Utilities Commission
Decision 28847-D01-2025
Eastervale Solar Inc.
Eastervale Solar + Energy Storage Project
Proceeding 28847
Applications 28847-A001 and 28847-A002

February 19, 2025

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1 Decision summary

1. In this decision, the Alberta Utilities Commission denies applications from Eastervale Solar Inc. (ESI) to construct and operate the Eastervale Solar + Energy Storage Project (the project). The project would have consisted of a 300-megawatt (MW) solar power plant; the Eastervale 1090S Substation; and a 200-MW, 400-megawatt hour (MWh) energy storage facility (ESF).

2. Having considered the evidence, and having weighed the potential benefits of the project against its adverse effects, the Commission has determined that approval of the project, as applied for, is not in the public interest. The Commission's decision to deny the applications is based on several aspects of the project design, in which the Commission considers that the project has the potential to cause adverse social or environmental effects that have not been sufficiently mitigated by ESI. These are primarily the project's extensive impacts to wetlands. Other issues include the glare that the project is predicted to produce on a nearby roadway without a proactive mitigation proposal by ESI, and concern that ESI's reclamation security planning does not adequately ensure funds will be available at the project's end of life. The combined effect of all of the project's expected impacts and the lack of proactive siting and other mitigation proposals has led the Commission to conclude that proper mitigation would require a re-siting exercise, and cannot be ameliorated at this stage through the imposition of various conditions of approval. The decision to deny is without prejudice to ESI's ability to reapply for a project on the same lands.

3. The Commission finds that the project's adverse effects on wetlands are not acceptable. The project design resulted in 55 wetland setback infringements of Class III and above wetlands, with 23 wetlands being directly impacted by project infrastructure. This includes the ESF, operations and maintenance building, and substation being sited on wetlands. While the project area has previously been impacted by agricultural activities, which have the potential to compromise the ecological function of wetlands, the project would impact many cultivated and partially cultivated wetlands and wetland setbacks that, in the Commission's view, continue to provide ecological value.

4. The Commission is not satisfied with ESI's approach to project siting, in which all wetlands in the project area were treated largely similarly, and as though their ecological value had necessarily been compromised by agricultural activities. The Commission finds that ESI did not make a reasonable effort to uphold the objectives of the *Wildlife Directive for Solar Energy Projects*, which applies to cultivated wetlands, and did not have sufficient regard for the individual features of the affected wetlands, such as the type and classification of wetland, and the extent of the proposed infringements.

5. The Commission gave extensive consideration to whether it could condition the project in a manner that would sufficiently mitigate its effects on wetlands, such as by imposing mandatory setbacks between higher quality wetlands and permanent project infrastructure, and ordering ESI to revise the project layout accordingly. However, the Commission has concluded that it is not feasible to premise an approval on such conditions, largely due the number of affected wetlands, the significance of the encroaching infrastructure, and the magnitude of the layout revisions that would be required. The Commission emphasizes that the applicant retains the burden to demonstrate that its project, as proposed, is in the public interest; it is not the Commission's role to effectively re-site the project by imposing significant layout revisions as conditions of approval, particularly where such revisions (such as relocating the ESF to uphold a wetland setback) would necessitate updates to other application materials and key evidence, such as the noise impact assessment and dispersion modelling results.

6. In addition to the expected environmental impacts, ESI conducted a solar glare assessment which concluded there would be yellow glare on some roads and residences. A group of landowners called the Eastervale Preservation Authority (EPA) expressed concerns about the potential for glare from the project's solar panels on surrounding roads, particularly Township Road 400. The Commission shares this concern.

7. The Commission assessed whether sufficient funds would be available at the project's end of life to cover the costs of decommissioning and reclamation. The Commission finds that the third-party reclamation cost estimate provided by ESI is not sufficiently conservative, as it relies on salvage value to cover the majority of the costs of reclamation.

8. Other aspects of the project, such as its effects on agricultural lands and the safety of the proposed ESF, were the focus of much concern for interveners, namely the EPA and the Municipal District of Provost No. 52 (MD) . While these aspects of the project were not the primary concerns for the Commission in deciding to deny the applications, the Commission has nevertheless commented on these matters, for the purpose of providing guidance to the parties.

9. In the following sections of this decision, the Commission provides its detailed findings on the applications. The Commission begins with an overview of the Commission's process, including its mandate and an explanation of how it balances public interest considerations. The decision then addresses aspects of the project that contributed to the Commission's decision to deny the applications. These are impacts on the environment, particularly wetlands and wildlife, unmitigated glare, and reclamation planning. The Commission then discusses other aspects of the project that were contested throughout the proceeding, including the project's impacts on agricultural lands and the safety of the ESF. The decision concludes with a discussion of the project's overall benefits, finding that the project is not in the public interest having regard to its social, economic, and other effects, including its effects on the environment.

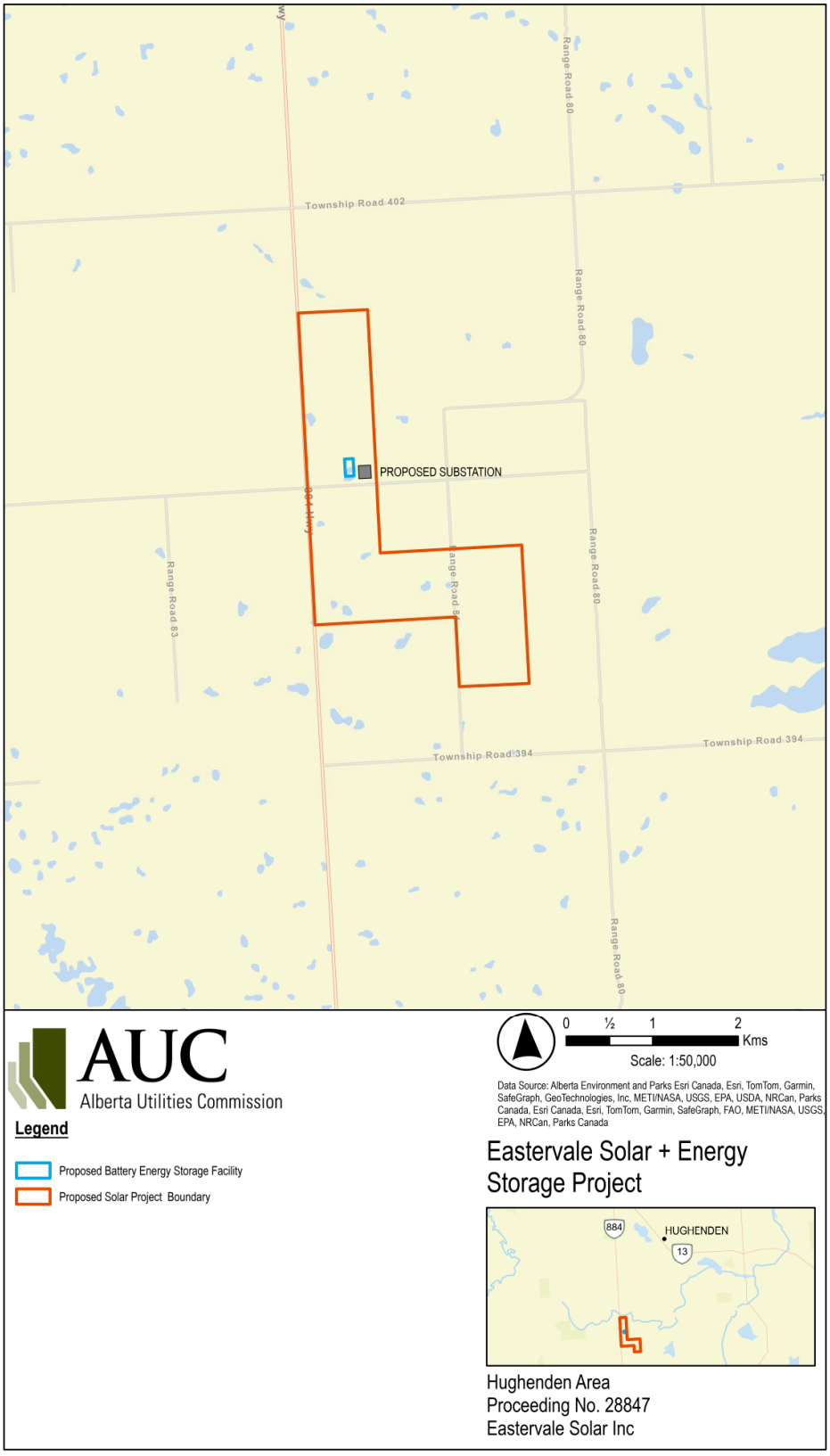
1.1 Background

10. The project was proposed to be located on approximately 314 hectares (or 776 acres) of agricultural land in the MD of Provost No. 52, Alberta, approximately 10 kilometres southwest of the village of Hughenden, as shown in Figure 1. The project was sited on land that is classified as Class 2 land under the Land Suitability Rating System (LSRS).

11. The power plant would have consisted of approximately 578,900 Longi 600-watt bifacial solar panels/modules on a fixed-tilt racking system and 67 inverter stations. The substation

would have been enclosed by a chain-link fence and would have included two 240/34.5-kilovolt (kV), 167-megavolt ampere (MVA) transformers, and one 240/34.5-kV, 222-MVA transformer. The ESF would have consisted of 176 EVLO-FLEX BESS units, 176 BESS Power Conversion Systems, and 88 BESS step-up transformers. In addition, the project would have included access roads, fences, temporary workspaces and a 34.5-kV underground collection system to connect the power plant to the substation and ESF.

Figure 1. Proposed location of the project



12. The Commission issued a notice of hearing and received statements of intent to participate from area landowners who formed the EPA, which opposed the project. The Commission granted standing to the group and its members. The Commission also received a statement of intent to participate from the Municipal District of Provost No. 52, which raised concerns regarding the incompatibility of the project with municipal statutory planning documents. The Commission granted the MD full participation rights in the proceeding.[1] The Commission later received statements of intent to participate from the hosting landowners in support of the project. The Commission granted standing in the proceeding to these individuals as well.[2] The Commission held an oral hearing to hear these concerns.

2 How the Commission assessed the proposed project

13. The Commission is an independent regulator tasked with considering the approval of applications such as this one for power plants, substations and energy storage facilities.[3] The Commission must consider whether the proposed project is in the public interest, having regard to its social, economic, environmental and other effects.[4]

14. In fulfilling this mandate, the Commission balances a variety of public interest considerations, also taking into account the purposes of the *Hydro and Electric Energy Act* and the *Electric Utilities Act*. These statutes provide for the economic, orderly and efficient development of facilities and infrastructure, including power plants and ESFs, that are in the public interest. They also set out a framework for a competitive generation market, where decisions about whether and where to generate electricity are left to the private sector.[5]

15. The applicant bears the onus of demonstrating that approval of its project is in the public interest. Interveners may attempt to show that the applicant has not met its onus by demonstrating the effects of the project on their interests, and explaining what a better balancing of the public interest might be. The Commission's role is to test and assess the evidence before it and engage in a multifaceted analysis established by the regulatory regime, to determine if the project should be approved, and if so, whether any conditions should apply.

16. Conducting a public interest assessment requires the Commission to assess and balance the competing elements of the public interest in the context of each specific application before it. Part of this exercise is an analysis of the nature of the impacts associated with a particular project, and the degree to which a project proponent has addressed these impacts. Balanced against this is an assessment of the project's potential public benefits.

17. The Commission has previously affirmed that the public interest will be largely met if an application complies with existing regulatory standards and the project's public benefits outweigh its negative impacts.[6] As a starting point, a power plant application filed with the Commission must comply with Rule 007: *Applications for Power Plants, Substations,*

1 Exhibit 28847-X0061, AUC letter - Ruling on standing.
2 Exhibit 28847-X0067, AUC letter - Additional ruling on standing.
3 *Hydro and Electric Energy Act*, sections 11, 13.01, 14, 15 and 19.
4 *Alberta Utilities Commission Act*, Section 17.
5 *Hydro and Electric Energy Act*, sections 2 and 3; *Electric Utilities Act*, Section 5.
6 Alberta Energy and Utilities Board Decision 2001-111: EPCOR Generation Inc. and EPCOR Power Development Corporation expansion of Genesee power plant, Application 2001173, December 21, 2001, PDF page 11.

Transmission Lines, Industrial System Designations, Hydro Developments and Gas Utility Pipelines and Rule 012: *Noise Control.*

2.1 How the Commission considered the MD's land use planning policies in its public interest determination

18. The MD's concerns in this proceeding focused heavily on the project's perceived incompatibility with the MD's agricultural land use planning objectives.

19. The MD provided the Commission with its Municipal Development Plan Bylaw No. 2132, and Land Use Bylaw No. 2157, which were the land use planning policies in effect when ESI applied for a municipal development permit and when it filed its application before the Commission. In April 2024, Municipal Development Plan Bylaw No. 2324 came into force and Land Use Bylaw No. 2323 came into force in June 2024. Both sets of instruments contain a number of objectives, policies and provisions pertaining to the preservation of agricultural land.[7]

20. The MD raised concerns about the viability and feasibility of ESI's agrivoltaics plan and argued that the proposed project would result in an unacceptable degradation of high-quality agricultural land, which conflicts with the municipality's agricultural land preservation goals.[8] The MD relied on the findings made by the MD's Municipal Development Council in its development permit decision, which found that ESI's proposed land use would represent "a fundamental degradation" of the land's suitability for agricultural operations as defined under its land use bylaw (namely its removal of use from potential grain production, which is appropriate to its classification, via a forced repurposing to species-limited grazing and/or haying) and submitted that such projects should be sited away from lands classified as Class 1 to 4 following the Canadian Land Inventory (CLI).[9] During the hearing, the MD suggested that no mitigation measures would be suitable to bring this project into compliance with the MD's statutory planning documents.[10]

21. Municipalities play a unique role in land use planning and have a strong interest in upholding local objectives. The Commission considers their land use authority and planning instruments when determining if a project is in the public interest[11] and values the insights municipalities can provide on the potential effects of projects including the regional context of their planning instruments.[12] While the Commission considers municipal land use planning policies in making its public interest determination, these land planning policies are also assessed against existing provincial laws, project impacts (social, economic, and environmental effects), and compliance with rules 007 and 012. For solar power plants on high-quality agricultural lands, the Commission's public interest assessment is also informed by the Government of Alberta's stated intention to impose an "Agriculture First" approach to decision-making, as

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7 Exhibit 28847-X0104, Written Evidence of MD of Provost, PDF pages 1 to 3.
8 Exhibit 28847-X0104, Written Evidence of MD of Provost, PDF pages 3 to 8.
9 Exhibit 28847-X0104, Written Evidence of MD of Provost, PDF 172 to 176; Transcript, Volume 3, page 542, lines 20 to 25, page 543, lines 1 to 5.
10 Transcript, Volume 3, page 537, lines 11 to 17.
11 Decision 27842-D01-2024: Aira Wind Power Inc. – Aira Solar Project and Moose Trail 1049S Substation, Proceeding 27842, Applications 27842-A001 and 27842-A002, March 21, 2024, paragraph 28; Decision 27486-D01-2023: Foothills Solar GP Inc. – Foothills Solar Project, Proceeding 27486, Applications 27486-A001 and 27486-A002, April 20, 2023, paragraph 23.
12 Decision 28086-D01-2024: Three Hills Solar Power Corp. – Three Hills Solar Project, Proceeding 28086, Application 28086-A001, June 12, 2024.

communicated in the Minister of Affordability and Utilities' letter to the Commission on February 28, 2024. Under an Agriculture First approach, renewable electricity generation is permissible on Class 1 and 2 lands where a proponent can demonstrate the ability for both crops or livestock to coexist.

22. Although the Commission endeavors to achieve consistency with municipal planning, pursuant to sections 619 and 620 of the *Municipal Government Act*,[13] the Commission's decisions prevail over municipal planning instruments.[14] This ensures that issues determined at the provincial level are not reheard at the municipal level.

23. The Commission recognizes that the MD prioritizes the conservation and preservation of its high-quality agricultural land. Although the Commission values and appreciates the MD's participation in this proceeding, it is clear that the MD maintains a firm stance against the development of any renewable energy on the higher quality classes of agricultural land.[15]

24. In some ways, the MD's position and approach regarding the integration of renewable energy and agriculture was unhelpful. The MD could have provided more assistance to the Commission for its public interest determination by offering evidence or insights on how best to balance electricity generation and agriculture, or suggesting intermediate measures that it would consider acceptable, short of a full denial of the project. The Commission's process would benefit if municipalities provided constructive suggestions on how proposed developments can be reconciled with municipal planning instruments, rather than adopting a blanket opposition to any renewable energy on high-quality agricultural land.

3 Discussion and findings

25. To successfully assess the impacts of a proposed project, the Commission must view the applied-for project in its entirety. Sometimes, minor defects in the siting process can be remedied through conditions (e.g., requiring greater setbacks from wetlands). However, in this case the Commission finds itself in the position that the cumulative effect of multiple conditions of approval could change the project layout and other aspects of the project so significantly that it cannot proceed with a holistic assessment of the project. If the Commission were to require significant wetland setback changes, the noise impact assessment, glare assessment, and air dispersion modelling results may change and the impacts to surrounding land may change; the Commission finds that in these circumstances, those changes are best assessed in a new proceeding. In the sections that follow, the Commission sets out its findings that led to this conclusion.

3.1 ESI's approach to siting was not sufficiently protective of wetland impacts

26. The *Wildlife Directive for Solar Energy Projects* establishes standards for solar energy projects in Alberta to avoid or mitigate the risk to wildlife and wildlife habitat. While the

[13] *Municipal Government Act*, RSA 2000, c M-26, sections 619 and 620.

[14] *Borgel v Paintearth (Subdivision and Development Appeal Board)*, 2020 ABCA 192, paragraph 22. This was affirmed most recently by the Court of Appeal of Alberta in *Canmore (Town of) v Three Sisters Mountain Village Properties Ltd*, 2023 ABCA 278, paragraphs 74 to 75.

[15] Exhibit 28847-X0104, Written Evidence of MD of Provost, PDF pages 172 to 176; Transcript, Volume 3, page 537, lines 11 to 17, page 542, lines 20 to 25, page 543, lines 1 to 5, page 548, lines 15 to 17.

standards in the *Wildlife Directive* do not have the force of law, adherence to those standards is an important consideration for the Commission in assessing whether a project is in the public interest. Applicants who propose departures from the standards in the *Wildlife Directive* should be prepared to justify that the departure is warranted.

27. As explained in the *Wildlife Directive*, appropriate site selection at the landscape level is the first and most critical factor in preventing significant negative effects on wildlife. Relevant to this proceeding, the *Wildlife Directive* establishes a standard that solar energy projects must not occur within 100 metres of any wetland class identified in Table 1 of the Alberta Wetland Classification System, except for wetland classes listed as temporary.

28. Prior to filing its application, ESI initially designed the project to apply a blanket 30-metre setback to 40 Class III and above wetlands (wetlands with a permanence of seasonal or higher) while an additional 18 Class III and above wetlands are proposed to be directly impacted (project infrastructure would be sited within the wetland boundary).[16] ESI communicated this design to Alberta Environment and Protected Areas (AEPA) in its Renewable Energy Referral Submission.[17]

29. ESI later revised the project and, in doing so, increased the project's total impacts to wetlands. ESI removed the blanket 30-metre setback approach, and increased the number of setback encroachments (i.e., encroachments on the 100-metre *Wildlife Directive* setback) from 40 to 55 Class III and above wetlands.[18] ESI also increased the project's direct impacts to wetlands from 18 to 23.[19] This is what was included in ESI's application to the Commission.

30. The Commission understands that the impetus for this change was an increase in size of the project and changes to the infrastructure layout.[20] With respect to both the initial and revised versions of the project, ESI justified its non-compliance with the *Wildlife Directive* on the basis that there was existing cultivation in and around the project wetlands.

31. The Commission understands that numerous siting constraints exist that may influence the layout of a project[21] and, in some cases, the overall viability of a project may depend on some degree of wetland encroachment. The Commission has historically recognized that the extent of previous cultivation may be an appropriate consideration in assessing whether a relaxation to a wetland setback is acceptable. In the case of projects within actively cultivated landcovers, the desired outcomes of the *Wildlife Directive*, including the conservation and protection of habitat, may be satisfied through the development of a solar project. This is particularly true where the

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16 Exhibit 28847-X0009, Attachment 8 - Renewable Energy Project Submission, PDF page 10: "A reduction of the 100-m setback on Class III (Seasonal) and greater (i.e., Class IV and V) wetlands is proposed for the Project. All Class III or greater wetlands will receive either a 30-m setback or be impacted by infrastructure."

17 Exhibit 28847-X0009, Attachment 8 - Renewable Energy Project Submission, PDF pages 9 to 18.

18 Exhibit 28847-X0208, Attachment 2 - WEST Reply Evidence – Land Cover and Surface Water (Bauman Report), Table 4, PDF page 23.

19 Exhibit 28847-X0208, Attachment 2 - WEST Reply Evidence – Land Cover and Surface Water (Bauman Report), Table 4, PDF page 23.

20 Exhibit 28847-X0014, Attachment 13 - Environmental Evaluation, PDF page 9.

21 Exhibit 28847-X0223, ESI Reply Evidence, PDF pages 7 and 12; Exhibit 28847-X0089, ESI-EPA-2024JUL12-001b Environmental Constraints.

continuous impact of agriculture is a greater stressor on habitat than what can be expected during the life of the project.

32. However, in the current circumstances, the Commission is not prepared to accept the number of wetland setback infringements proposed by ESI, or its blanket reliance on cultivation as a rationale for infringing the setbacks, without regard to other relevant and site-specific circumstances. Given the stated importance of appropriate site selection in the *Wildlife Directive*, the Commission expects proponents to apply a more nuanced and site-specific approach when contemplating impacts to wetlands.

3.1.1 Pre-existing cultivation does not entitle a project to impact wetlands

33. As noted above, ESI proposed to encroach the setbacks of 55 Class III and above wetlands. Of these, 23 wetlands would be directly impacted. A witness for ESI acknowledged that the wetland setback infringements proposed by ESI constitute a relatively high number of infringements for a project of this size.[22] ESI emphasized its view that these wetland impacts are justifiable because the project lands are previously impacted by agricultural activities and that the ecological function of the wetlands have therefore been diminished.

34. On behalf of the EPA, Cottonwood Consulting (C. Wallis) remarked that this project presents an unprecedented number of wetland impacts and encroachments.[23] With these impacts and encroachments, C. Wallis filed evidence suggesting that these cultivated wetlands continue to provide important ecological value, and that the wetland setbacks contained in the *Wildlife Directive* are still applicable to cultivated wetlands. Further, wetlands in the project area have varying degrees of impact due to cultivation, with some presenting no direct impacts by agriculture. C. Wallis critiqued what he described as a "blunt-force approach" to the many setback relaxations, that lacked a nuanced, wetland-by-wetland analysis.[24]

35. C. Wallis and Western EcoSystems Technology, ULC (WEST) (J. Bauman) each provided an analysis of the extent and frequency of disturbance by agriculture in the project area, and both followed a similar rubric. As described in ESI's reply evidence, the wetlands in the project area may be:

- Fully cultivated within the boundary at some point in the recent or historical record;
- Partially cultivated within the boundary at some point in the recent or historical record; and,
- Cultivated within the setback only.[25]

36. This analysis was helpful to the Commission in evaluating what wetlands infringements might be acceptable. However, the extent and scale of pre-existing cultivation presented by ESI was seemingly not used to inform its proposed setback encroachments. Rather than assessing the individual characteristics of the wetlands in the project area, including their degree of past cultivation and the extent of the proposed project impacts, ESI deemed the entirety of the

[22] Transcript, Volume 2, page 360, lines 11 to 13.
[23] Transcript, Volume 4, page 563, lines 7 to 8.
[24] Transcript, Volume 4, page 583, line 18 to page 584, line 4.
[25] Transcript, Volume 1, pages 169 to 171; Exhibit 28847-X0208, Attachment 2 - WEST Reply Evidence – Land Cover and Surface Water (Bauman Report), PDF pages 37 to 44.

wetlands in the project area to have been affected by past cultivation, and relied on this to support an absence of any setback for a substantial number of wetlands. The Commission finds that this approach is contrary to the objectives of the *Wildlife Directive* and results in a project design that fails to minimize potential adverse effects to wildlife and wildlife habitat.

3.1.2 ESI could have re-sited major project infrastructure to reduce environmental impacts

37. ESI has proposed a suite of project infrastructure that would have varying degrees of impact to the environment. In this section, the Commission focuses on the potential wetland impacts associated with the ESF, operations and maintenance building, and substation. The Commission also discusses EPA's concerns that fencing around the perimeter of the project may impede the utilization of wetland areas by wildlife, and specifically the ability of wildlife to travel between wetlands.

38. Construction of the ESF, operations and maintenance building, and substation are some of the most impactful activities proposed for the project and would have required stripping soils, and preparation of a gravelled pad. In contrast, fencing is not an activity that requires approval under the *Water Act*,[26] and the presence of fencing does not generally pose a significant risk to wetland health and hydrology such that a setback is necessarily required.

39. The Commission notes that ESI's application contemplated siting the ESF and the operations and maintenance building within the delineation of a Class III wetland identified as EAWET035. The substation was proposed to be sited within the delineation of a Class III wetland identified as EAWET230. In the Commission's view, filling in these Class III wetlands will result in a significant loss of their ecological function.[27]

40. At the hearing, when questioned about these wetland impacts, ESI conceded that, should the Commission require the avoidance of EAWET035, it could accommodate this. Specifically, the ESF could be relocated northeast of the proposed location. ESI also suggested that the final footprint of the ESF may be slightly smaller than initially contemplated due to improvements in battery technology.

41. While ESI was not aware of precisely where the operations and maintenance building could be relocated, it also committed to relocating this building should the Commission determine this to be necessary. ESI also indicated that the substation could be relocated to the southeast to avoid impacting EAWET230.

42. Although ESI indicated in an undertaking response, that it could look at accommodating relocations of the ESF, substation and operations and maintenance building without compromising the feasibility of the project, these suggestions were made as a "back-of-a-napkin" engineering exercise, at the end of the hearing and only in response to questions by the Commission.[28] In other words, this concession was suggested at the 11th hour when these siting decisions could have been made up front as part of the project design, as is clearly encouraged in the *Wildlife Directive*. Further, the Commission is mindful that relocating key infrastructure such

[26] Alberta Environment, "*Water Act* – Fact Sheet – Approvals and Licences" https://open.alberta.ca/dataset/aa7b6ac2-0868-4f4d-8f78-193c1bff28fa/resource/35e36668-de5c-40ec-b3cb-226bc54cd8ec/download/aenv-water-act-fact-sheet-approvals-and-licences-7511.pdf (accessed February 2025).

[27] Transcript, Volume 2, page 367, lines 1 to 6.

[28] Transcript, Volume 4, page 675, lines 12 to 16.

as the substation and ESF to avoid wetlands and would necessitate corresponding revisions to ESI's other application materials and evidence, such as its dispersion and noise modelling evidence and potentially create other adverse effects. This set of cascading changes weighs in favour of denial rather than conducting an after-the-fact exercise of imposing many conditions to attempt to repair what the Commission considers to be defects in the initial siting process. Similarly, the Commission accepts the evidence of C. Wallis that there are possible improvements available to reduce the adverse effects of the project fencing on wildlife[29] (particularly within Section 35, Township 39, Range 8, west of the Fourth Meridian). The relocation of this infrastructure would also necessitate corresponding revisions to ESI's other application materials.

43. The Commission gave extensive consideration to whether it could condition the project in a manner that would sufficiently mitigate its effects on wetlands and wildlife, such as by imposing mandatory setbacks between higher quality wetlands and permanent project infrastructure, and ordering ESI to revise the project layout accordingly. However, the Commission has concluded that it is not feasible to premise its approval on such conditions, largely due the number of affected wetlands and the significance of the encroaching infrastructure.

44. Again, the Commission recognizes that siting decisions require an applicant to balance competing constraints, including noise, aesthetic, emergency response and access considerations.[30] However, a key aspect of the Commission's public interest assessment involves assessing whether a project complies with regulatory standards, and determining whether the residual adverse effects of a project have been mitigated to an acceptable degree. In these circumstances, where AEPA's referral reports identified the risk to wetlands as high, the Commission would expect to see greater consideration of wetland avoidance as a siting constraint. It is not sufficient to propose relocations of major project infrastructure after an application has been filed and substantially processed.

3.2 ESI's approach to glare mitigation demonstrates a similar lack of proactive planning

45. The Commission has unresolved concerns about the potential for glare impacts to Township Road 400. ESI submitted a solar glare assessment to evaluate the potential glare impacts from the project on nearby roads and residences. ESI proposed using fixed-tilt solar panels for the project, and the assessment predicted that the most impacted road would be Township Road 400, which would have received up to 7,841 minutes of yellow glare[31] per year. The most impacted residence was predicted to observe yellow glare for a maximum of 4,097 minutes per year.

46. ESI submitted that the prediction results are conservative because: (i) the glare analysis assumes clear sunny skies every day, throughout the year; (ii) the glare analysis does not account for existing structural, topographical or vegetative screening; (iii) the glare is generally predicted

[29] Exhibit 28847-X0120, Appendix O. EastervalSolarEvidenceofCottonwood_6August2024final, PDF page 70.

[30] Exhibit 28847-X0208, Attachment 2 - WEST Reply Evidence – Land Cover and Surface Water (Bauman Report), PDF page 23.

[31] The solar glare assessment used colour codes to categorize effects of glare to a person's eyes.
- Green glare: glare with low potential for temporary after-image.
- Yellow glare: glare with potential for temporary after-image.
- Red glare: glare with potential for permanent eye damage.

to occur when the sun masks and overpowers the glare off the panels; and (iv) the assessment gives a total amount of possible glare for an entire route, in all directions, and does not account for the probability of the driver to be travelling through an affected section, in the correct direction, and at the right time. The solar glare assessment did not recommend that ESI implement any glare mitigation.

47. EPA members expressed concerns with glare impacts from the project solar panels on the surrounding roads, especially Township Road 400. The Commission shares this concern. The predicted glare on this road amounts to on average over 75 minutes per day. While this is an unpaved local road and not heavily travelled, this road is the main east-west access road for local residents located east of the project. The EPA indicated Township Road 400 is travelled on several times a day and in addition, it is a school bus route.

48. The Commission notes that the use of fixed tilt panels limits the ability of a proponent to reduce glare through adjustments to the resting angle, as can typically be done with single-axis panels. ESI committed to promptly investigating any glare complaints made after construction of the project and to apply "specific targeted mitigations as necessary," however, this does not fully alleviate the concerns of the Commission regarding the potential for glare impacts on Township Road 400. In this case, ESI has taken a reactive, rather than proactive, approach to glare mitigation. The Commission questions whether the glare impacts could have been more effectively mitigated or entirely alleviated through changes to the initial project design rather than relying on the presence or absence of complaints after construction.

3.3 The proposed reclamation security program does not ensure sufficient funds will be available at the project's end of life

49. The Commission expects applicants to fully reclaim projects and to bear the costs of doing so. Applicants are required to explain how they will ensure that sufficient funds are available at a project's end of life to cover the cost of decommissioning and reclamation.

50. ESI submitted a third-party reclamation cost estimate report completed by DNV Canada Ltd., which estimates the salvage value to be $21,787,000 and the total reclamation cost to be $33,239,000, resulting in a net decommissioning cost of approximately $11,452,000 million at the time of decommissioning.[32] ESI submitted that the estimates are based on 2024 CAD and based the recycling on present-day technology and estimated rates. It expects technology for recycling these components to improve significantly by the time the project is reclaimed.

51. While not determinative, the Commission considers that aspects of ESI's reclamation security planning do not adequately ensure funds will be available at the project's end of life. Specifically, the Commission is concerned that the third-party estimate is not sufficiently conservative, particularly given the fact that the project is sited entirely on high quality Class 2 lands. The plan estimated prospective salvage value to cover the majority of the costs of reclamation, and the salvage value is dependent on the market value for the power plant components at an uncertain future date. The Commission does not consider it sufficiently certain that the equipment will retain its commercial value, and therefore is concerned with most of the reclamation cost being based on a prospective and uncertain salvage value.

[32] Exhibit 28847-X0130, ESI-AUC-2024JUL30-001 Eastervale Decommissioning Cost Analysis, PDF page 10.

52. While not determinative, the Commission generally found that the project's impacts to agricultural land were mitigable through ESI's agrivoltaics plan The project is sited entirely on land that is classified as Class 2 land under the LSRS.[33] Class 2 lands are generally considered to be high-quality agricultural lands.

53. A key concern for interveners in this proceeding was that the project would take portions of this high-quality agricultural land out of agricultural production or would limit the available options for agriculture. The parties disputed the significance of this loss and the adequacy of the measures to mitigate this loss. While ESI emphasized that this project represents only 0.21 per cent of the Class 2 lands within the MD, the MD and EPA expressed that any loss of high-quality agricultural land is significant and contrary to the objectives of the MD's statutory planning documents, which prioritize the preservation of agricultural land as a key objective.

54. The Commission assesses each project before it on a case-by-case basis to understand the adverse effects, including whether the adverse effects can be minimized or mitigated to an acceptable degree. With respect to adverse effects on agricultural land use, this involves an assessment of whether the proposed project can co-exist with agriculture in a manner that sufficiently preserves the agricultural use of this high-quality land.

55. In the current circumstances, the Commission's decision to deny the project is not dependent on the project's effects on agriculture. The Commission is therefore not required to make findings on the adequacy of ESI's agrivoltaics plan, or whether the residual adverse effects on agriculture after the implementation of the agrivoltaics plan are acceptable.

56. Nevertheless, the Commission's denial of the project is without prejudice to ESI's ability to reapply for a reconfigured project on the same lands. On this basis, the Commission will use this opportunity to provide general guidance to parties on what it expects from applicants in order to demonstrate the potential for a project to co-exist with agriculture. The Commission emphasizes that this guidance is not binding on future panels, in respect of this project or other projects.

3.3.1 The level of detail in ESI's proposed agrivoltaics plan was acceptable at this stage of project development

57. To minimize the potential loss of high-quality agricultural land use during its municipal development permitting application, ESI submitted an initial agrivoltaics plan to the MD that proposed co-located sheep grazing and hay production with the solar project. The MD reviewed this agrivoltaics plan and ultimately denied a development permit for the project, finding that the agrivoltaics plan was fundamentally incompatible with the municipality's statutory planning documents. Specifically, the MD indicated that the land use proposed under the agrivoltaics plan was not equivalent in value to the existing uses and constituted a degradation of these high-quality agricultural lands.[34] Tannas Conservation Services Ltd. (Tannas) revised this

[33] The LSRS assesses the suitability for a tract of land for sustained production of spring-seeded small grains (i.e., wheat, barley, oats) and does so by assessing climatic, soil and landscape factors. See: Agriculture and Agri-Food Canada, "Land Suitability Rating System for Agricultural Crops" https://sis.agr.gc.ca/cansis/publications/manuals/1995-lsrs/lsrs.pdf, PDF page 12.

[34] Exhibit 28847-X0104, Written Evidence of MD of Provost, PDF page 5; Transcript, Volume 3, page 527, lines 1 to 25; page 528, lines 1 to 9; page 529, lines 11 to 25.

agrivoltaics plan for ESI's application to the AUC, and included Saskatoon berry production alongside the originally proposed sheep grazing and hay production.

58. Both the MD and EPA expressed concerns about the adequacy and feasibility of the agrivoltaics plan and much hearing time was spent on this issue. Concerns about adequacy focused on whether the proposed agricultural uses were of sufficiently high value to protect the productivity of the land. Concerns about feasibility related to whether the agrivoltaics plan could be successfully implemented. In support of these concerns, intervenors submitted that ESI had not provided sufficiently detailed information to support the plan, and that key logistical and practical elements of the agrivoltaics plan were still unknown or undecided.

59. With respect to the adequacy of the agrivoltaics plan, the MD submitted that the plan is inadequate and overlooks the challenges associated with implementing agrivoltaics, particularly Saskatoon berry production.[35] The EPA, among other concerns, critiqued the fact that the proposed Saskatoon berry production would occur on only one quarter section of the project lands, and not the remaining six and a half quarter sections, all of which also constitute Class 2 lands.

60. Both the EPA and MD were skeptical of the viability of a large-scale Saskatoon berry operation. For example, the MD submitted there is no proven track record of Saskatoon berry farms in Alberta, especially within an agrivoltaics setting,[36] and expressed skepticism that a Saskatoon berry farm of the scale proposed by ESI is feasible.[37] The parties also disagreed on whether ESI had provided sufficient detail to have confidence in the agrivoltaics plan. The interveners noted that farmers have not been retained,[38] the configuration and design of the Saskatoon berry orchard has not been finalized,[39] any water requirement to establish the Saskatoon berry bushes has not been addressed,[40] and a plan for the marketing and sale of sheep and berries was lacking.[41] Overall, the EPA viewed the agrivoltaics plan as too vague and speculative, lacking the necessary details and commitments to ensure the continued agricultural viability and productivity of the project lands. The MD expressed similar concerns and indicated that the updated agrivoltaics plan, which added horticulture, did not resolve its prior concerns.[42]

61. ESI provided evidence in response to these concerns, particularly as it related to the feasibility and level of detail associated with the Saskatoon berry farm. ESI stated that market analysis conducted by Tannas indicated that a Saskatoon berry farm would be economically viable.[43] ESI also indicated that Saskatoon berries currently grow on the project lands.[44]

62. ESI clarified some details regarding the horticultural operations, including that mechanical equipment would be used to harvest berries, and labour requirements for the

35 Transcript, Volume 5, page 772, lines 22 to 25; page 773, lines 1 to 24.
36 Transcript, Volume 5, page 773, lines 9 to 18.
37 Transcript, Volume 5, page 773, lines 19 to 21.
38 Transcript, Volume 4, page 619, lines 2 to 16.
39 Transcript, Volume 1, page 67, lines 2 to 17.
40 Exhibit 28847-X0087, ESI Response to EPA IRs No. 1, PDF pages 17 to 19; Transcript, Volume 2, page 308, lines 12 to 25.
41 Exhibit 28847-X0106, Appendix A Mark Wight Submissions, PDF page 86.
42 Exhibit 28847-X0104, Written Evidence of MD of Provost, PDF page 174.
43 Exhibit 28847-X0084, ESI Response to MD of Provost IR No. 1, PDF page 4.
44 Transcript, Volume 1, page 80, lines 18 to 23.

proposed horticultural operation.[45] While it submitted that it would be premature to have contracted with farmers at this stage, ESI stated that preliminary discussions have occurred.[46] ESI also made a number of commitments in relation to the proposed Saskatoon berry farm, including to provide capital to establish a processing facility,[47] provide the seedlings to establish the orchard,[48] and provide irrigation water as necessary to establish the orchard.[49]

63. The Commission considers that ESI provided sufficient information regarding the agrivoltaics plan to substantiate a commitment to implementing agrivoltaics in the manner described in the plan. The absence of granular details as to the implementation of an agrivoltaics plan is reasonable at this stage of development, and not necessarily evidence that the plan is not feasible or underdeveloped. The Commission finds it reasonable for ESI to have planned to finalize necessary contractual arrangements only after knowing the outcome of its power plant approval application.

64. Commercial Saskatoon berry growing is not novel in Alberta; however, the Commission recognizes that this is the first solar generation project in Alberta that has proposed co-existence with Saskatoon berry production on a relatively large scale (i.e., on one quarter section). The commitments made by ESI to support the establishment and production of the Saskatoon berries supported the feasibility of the agrivoltaics plan.

3.3.2 ESI's agrivoltaics plan was expected to result in increased productivity

65. Having considered the agrivoltaics plan, the Commission also considered whether the residual adverse effects on agricultural land use would have been minimized to an acceptable degree.

66. The parties did not agree on the significance of the potential loss of agricultural land associated with the project, and whether (or how) to quantify this loss. As discussed below, ESI advanced a method of quantifying the overall output of the land, taking into account both electricity generation and agricultural output from the agrivoltaics system. In contrast, expert evidence prepared on behalf of the EPA concluded that the best use of the project lands is to remain agricultural cropland producing grains and oilseeds. The MD maintained its view, as expressed during the municipal development permitting process, that ESI's proposed use of the land represents a fundamental degradation of the land's suitability for agricultural operations.

67. On behalf of ESI, Tannas submitted that the Land Equivalent Ratio (LER) is an effective tool for comparing the productivity of project lands under the agrivoltaics proposal to the current agricultural activities. The LER is a ratio of production after the solar project compared to production before the solar facility. Tannas submitted that gross revenue is a necessary metric in this comparative analysis, as it is not possible to directly compare the yields of the current agricultural activities to the proposed agrivoltaics plan due to the lack of a consistent unit of production.[50] Tannas proposed factoring in electricity generation into the LER calculation, which would increase productivity results by 100 per cent.

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45 Exhibit 28847-X0084, ESI Response to MD of Provost IR No. 1, PDF page 8.
46 Exhibit 28847-X0084, ESI Response to MD of Provost IR No. 1, PDF page 11.
47 Exhibit 28847-X0084, ESI Response to MD of Provost IR No. 1, PDF page 16.
48 Exhibit 28847-X0280, Eastervale AUC Commitment List (October 31, 2024), PDF page 1.
49 Transcript, Volume 5, page 702, lines 14 to 17.
50 Exhibit 28847-X0150, ESI Response to AUC IR No. 4, PDF page 2.

68. The Commission does not find the inclusion of the electricity generation in the LER to be helpful as it simply adds the same value of electrical production to both the existing agricultural production and to the production after the agrivoltaics plan has been implemented. As a result, the LER values discussed below do not include electricity generation.

69. Tannas estimated that the proposed sheep grazing would generate 74 per cent of the anticipated revenue that would be generated from cropping the same land without the solar project by comparing annual gross revenue of sheep production compared to pre-project cropping (a LER of 0.74). For the combined berry production and sheep grazing, Tannas estimated that this would generate 298 per cent of the revenue that would be generated from cropping the same land without the solar project (a LER of 2.98).[51] This submission suggests that the agrivoltaic system incorporating Saskatoon berry production would be more productive than traditional cropping practices on an equivalent area of land.

70. The Commission accepts that the LER analysis indicates a substantial portion of the agricultural productivity would be maintained through the life of the project, but considers that the LER represents an approximate assessment with some assumptions that, while necessary for the analysis, may not bear out in practice. While the Commission is not prepared to wholly endorse the use of LER, the Commission does consider it to be a useful tool to provide an approximate quantification of different scenarios.

71. The Commission is sensitive to the MD's position that shifting from high-value cereal crop production to sheep grazing and a limited Saskatoon berry operation represents a reduction in the land's agricultural value. However, ESI provided evidence that over the last six years, the project lands have been variously cropped with high value annual crops, animal feed and forages, or used for grazing.[52] The Commission analyzed the cropping history of the project lands and notes that only two quarter sections[53] have been used exclusively for harvesting crops including oats, barley, wheat and canola between 2019 to 2024 with no reports of silage, baling as forage or grazing.[54] For the majority of the project area, the agrivoltaics proposal offers similar agricultural activities to the current practices.

72. With the addition of the Saskatoon berry production, the overall productivity is predicted to increase and be above 100 per cent. In general, the Commission considers an agrivoltaics plan that has the potential to increase overall productivity, as compared to historical use, to be a positive attribute.

3.4 The parties presented significantly different modelling on whether hydrogen fluoride would be released under a thermal runaway of the ESF

73. The ESF proposed would have used lithium iron phosphate (LFP) battery cells. The EPA's primary concern with the proposed 200-MW ESF was the potential release of hydrogen fluoride (HF) in the event of a fire.

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51 Exhibit 28847-X0150, ESI Response to AUC IR No. 4, PDF page 4.

52 Exhibit 28847-X0279, 28847_X0094_ESI-EPA-2024JUL12-006 Project Area Land Information_000113_Hi-lighted.

53 The northwest quarter of Section 2, Township 40, Range 8, west of the Fourth Meridian and the southwest quarter of Section 2, Township 40, Range 8, west of the Fourth Meridian.

54 Exhibit 28847-X0279, 28847_X0094_ESI-EPA-2024JUL12-006 Project Area Land Information_000113_Hi-lighted.

74. ESI retained Calvin Consulting Group Ltd. (Calvin) to assess the risk of HF emissions to the public and local residents. Calvin reported that it modelled 10-minute average concentrations for HF and carbon monoxide (CO) and results did not exceed the Centers for Disease Control and Prevention's Immediately Dangerous to Life or Health values.

75. The EPA argued that the air dispersion modelling prepared by Calvin did not adequately assess a worst-case scenario because it was based on the assumption that only one module would ignite at a time. The EPA retained Integrated Modelling Inc. (IntMod) to prepare an alternate air dispersion modelling analysis. The IntMod report modelled a worst-case scenario where multiple modules were ignited.

76. The modelling methodologies and inputs used by Calvin and IntMod resulted in considerable differences in estimated HF emission rates. Despite that levels of HF have not been detected in UL 9540A testing and that fire kinetics and fire dynamics theory support the observations recorded in UL 9540A testing, Calvin explained that it put forward its HF emission rate out of an abundance of caution. Calvin selected an HF emission rate of 0.00093 grams per second (g/s) based on a conservative estimate of HF formation from electrolyte decomposition and the possibility of some collateral HF formation.[55] In contrast, IntMod elected to adopt an emission rate of 166.8 milligrams per watt-hour (mg/Wh), which considers an energy capacity component. This rate was adopted from a 2017 study on emissions from lithium-ion battery fires, referred to as the Larrson report.[56] Taking into account the EVLO-FLEX's enclosure rating, IntMod assumed an HF release rate and calculated a notional amount of HF in an enclosure that could be emitted. Based on a scenario where 25 per cent of the notional HF amount is emitted, IntMod calculated a HF emission rate of 29.0 g/s. IntMod's emission level estimate presents a striking difference, at a factor of over 30,000 times greater than Calvin's emission rate.

77. Calvin relied on cell, module and unit level UL 9540A tests to support its position that HF emissions from a fire would be negligible. Calvin further explained that in the context of fire kinetics and fire dynamics theory, the relatively low temperatures associated with LFP battery failure (less than 400°C after the transient period of thermal runaway) are consistent with very low or negligible HF production.

78. Calvin identified the Arrhenius equation as one of the primary ways to understand the relationship between temperature and the rate at which a reaction occurs, noting that sustained LFP electrolyte decomposition reactions associated with thermal runaway occur at approximately 400°C. Applying the Arrhenius equation, the mathematical result for 400°C correlates to a HF production rate that is close to zero. Further, Calvin described that meaningful HF production will not occur until sustained temperatures exceed 650°C.[57]

79. In contrast, IntMod based its HF emission rates on a maximum theoretical conversion of available fluorine to HF. IntMod first used the results from a widely referenced study of laboratory single-cell destructive tests recorded in the Larsson report, which initiated the failure with a 16-kilowatt propane flame. That report states that the average HF release for LFP cells is 166.8 mg/Wh. IntMod then scaled the results of the single-cell test to the ESF sized for the project and then evaluated scenarios assuming that between five to 25 per cent of the cells would

[55] Exhibit 28847-X0214, Attachment 8 - Calvin Consulting Group Reply Evidence (Calvin Report), PDF page 9.
[56] The Larrson Report is a scientific study which investigated the release of toxic gases, particularly hydrogen fluoride, during lithium-ion battery fires.
[57] Exhibit 28847-X0281, Undertaking – Temperature of HF Production.

experience thermal runaway simultaneously. IntMod stated that the arbitrary nature of the five to 25 per cent range was intentional, in order to show a broad range of outcomes.

80. Calvin countered saying that the tests described in the Larsson report subjected batteries to external heating that produce very hot flames, with characteristics very different than the flames in an LFP thermal runaway event.

81. The Commission finds both the Calvin and IntMod reports to be helpful as they provide emission predictions of different scenarios using different methodologies. While neither the Calvin model nor the IntMod model likely perfectly describe a real-world incident, the Commission considers the testing of a full module using a widely recognized testing standard more compelling than a scale up of lab data, which does not consider any physical differences between a single cell, a module and ultimately a unit installation. Since temperature is a significant driver in HF production rates, the UL 9540A test results that measure temperatures within the unit geometry are informative compared to a blanket assumption of an HF emission rate.

82. The wide range of expert opinion on the record of this proceeding underscores the need for layers of mitigation in the event of an incident. The Commission considers that siting, appropriate design that takes into account potential hazards, and a robust emergency response plan are all integral in determining the acceptability of a battery ESF.

4 Conclusion

83. In accordance with Section 17 of the *Alberta Utilities Commission Act*, in addition to any other matters it may or must consider, the Commission must give consideration to whether approval of the Eastervale Solar + Energy Storage Project is in the public interest having regard to the social and economic effects and the effects on the environment. In general, the Commission considers that the public interest will be largely met if an application complies with existing regulatory standards, and the project's public benefits outweigh its negative impacts, including effective mitigation of impacts experienced by more discrete members of the public.

84. The Commission notes that public benefits of the project include its ability to generate emissions-free electricity and to contribute to the diversification of Alberta's energy resources. ESI estimated that the project will generate an average of $1.6 million dollars per year in property tax revenue over the course of the project. ESI also estimated that the project will create up to 300 full-time jobs during construction, and up to five permanent jobs. Additionally, ESI supported and intends to continue its support of the Czar-Metiskow 4-H Beef Club and other community and non-profit initiatives after construction is completed.[58] In addition to these public benefits, the Commission notes that the project is supported by the hosting landowners, some of whom participated in the hearing to express their support for the project, including its potential to provide them with a source of economic diversification and steady revenue. B. and C. Beebe explained that they viewed the solar project as an opportunity to earn a stable income stream from their land, and use that income to improve farming operations by investing in upgraded

[58] Exhibit 28847-X0233, ESI Reply Evidence, PDF page 33.

machinery.[59] R. and K. Beebe viewed the project as a means to ensure that their farmland remained intact and owned by the family.[60]

85. The Commission has weighed all of the potential benefits in its assessment. However, overall, the Commission finds that the benefits associated with the project do not outweigh the adverse impacts of the project, particularly the impacts to the environment.

5 Decision

86. For the reasons outlined in the decision, the Commission finds that approval of the applications is not in the public interest, and in accordance with sections 11, 13.01(1), 14, 15 and 19 of the *Hydro and Electric Energy Act*, the Commission denies the applications. This decision is without prejudice to ESI's ability to re-apply for a project on the same lands after it has considered the Commission's concerns.

Dated on February 19, 2025.

Alberta Utilities Commission

(original signed by)

Renée Marx
Panel Chair

(original signed by)

Michael Arthur
Commission Member

[59] Exhibit 28847-X0204, Statement - Barkley and Cheryl Beebe (signed), PDF page 1.
[60] Exhibit 28847-X0205, Written Statement - Rockie and Kathy Beebe, PDF page 1.

Appendix A – Proceeding participants

Name of organization (abbreviation) Name of counsel or representative
Eastervale Solar Inc. (ESI) Jessica Kennedy Erin Allison
Municipal District of Provost No. 52 Michael Niven Sarah Howard
Eastervale Preservation Authority (EPA) Richard Secord Mark Wight Kelli Penman Lee Hayes Bradley Johnson Brandon Penman David Wight Kjirsten Hoveland-Wight
Rockie Beebe
Barkley Beebe
Alberta Utilities Commission **Commission panel** Renée Marx, Panel Chair Michael Arthur, Commission Member **Commission staff** Meghan Anderson (Commission counsel) Peju Anozie (Commission counsel) Victor Choy Elaine Chu Derek Rennie Joan Yu

Appendix B – Oral hearing – registered appearances

Name of organization (abbreviation) Name of counsel or representative	Witnesses
Eastervale Solar Inc. (ESI) Jessica Kennedy, Bennett Jones LLP, counsel Erin Allison, Bennett Jones LLP, counsel	Margaret McKenna Jennifer Traichel Steven Tannas Michael Sveen Janet Bauman Glen Doll Hesam Yazdanpanahi Stephen Ramsay Merlin Garnett
Municipal District of Provost No. 52 Michael Niven, Carscallen LLP, counsel Sarah Howard, Carscallen LLP, counsel	Tyler Lawrason
Eastervale Preservation Authority (EPA) Richard Secord, Ackroyd LLP, counsel	Cliff Wallis Marc Polivka Jason Binding Brandon Green James Farquharson Mark Wight Brandon Penman Kelli Penman Lee Hayes Kjirsten Hoveland-Wight
Beebe family	Rockie Beebe Barkley Beebe