

**ALBERTA UTILITIES COMMISSION**

**Proceeding 29924**

**Application for Review of Caroline Solar Farm Decision 28295-D01-2025 - PACE  
Bang Energy LP, on behalf of 2518397 Alberta Ltd.**

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**CLEARWATER COUNTY**

**APPLICATION FOR REVIEW SUBMISSIONS**

**April 15, 2025**

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## Contents

I. INTRODUCTION .....	2
II. TEST FOR AUC REVIEW .....	3
III. EXTENDED TIMELINE AND PERMISSION, IF REQUIRED .....	3
IV. FACTS RELEVANT TO THE APPLICATION .....	3
V. GROUNDS FOR REVIEW.....	5
A. AUC Rule 16, s 5(1)(a) and (c) .....	5
B. Changed Circumstances.....	5
C. Palpable and Overriding Error of Fact or Mixed Fact and Law .....	5
VI. COUNTY’S RIGHTS ARE DIRECTLY AND ADVERSELY AFFECTED BY THE ORIGINAL DECISION.....	6
VII. PREJUDICE TO THE COUNTY .....	7
VIII. CONCLUSION.....	7

### I. INTRODUCTION

1. In accordance with the direction from the Alberta Utilities Commission,<sup>1</sup> Clearwater County (the “**County**”) provides these submissions which expand and clarify the County’s March 31, 2025, submissions (the “**March Submissions**”).<sup>2</sup>
2. The County requests that the AUC review Decision 28295-D01-2025 (the “**Original Decision**”) in accordance with sections 5(1)(a) and (c) of AUC Rule 16: *Review of Commission Decisions*.
3. If a review is granted, the County intends to argue that the Commission erred in approving the project given its inappropriate location and concerns with emergency response.

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<sup>1</sup> Exhibit 29924-X0063.

<sup>2</sup> Exhibit 29924-X0044.

## II. TEST FOR AUC REVIEW

4. The Commission's authority to review its own decision is discretionary.<sup>3</sup> Rule 16: *Review of Commission Decisions* sets out the process for considering an application for review.
5. These are extraordinary circumstances which warrant a departure from the principle of finality in administrative decision-making.<sup>4</sup>

## III. EXTENDED TIMELINE AND PERMISSION, IF REQUIRED

6. If the Commission considers the County's request as separate from the requests of R. Barnett and S. Fleshman, the County, if needed, seeks authorization for the Commission to consider its request for review outside of the 30-day deadline.<sup>5</sup> We note that the AUC expressly invited interested persons to provide correspondence respecting a request for a review.<sup>6</sup>

## IV. FACTS RELEVANT TO THE APPLICATION

7. The County re-iterates the facts stated in the March Submissions.<sup>7</sup> In particular, the following:

Council directed the review request in alignment with AUC's Rule 016, *Review of Commission Decisions*, section 5(1)(c), due to changed circumstances, in that the municipal entity involved at the time of initial AUC application and hearing no longer exists, due to municipal amalgamation occurring January 1, 2025.

Please find enclosed with this filing [*sic*] the *Order in Council* dated December 4, 2024, amalgamating the Village of Caroline and Clearwater County as of January 1, 2025.

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<sup>3</sup> *Alberta Utilities Commission Act*, SA 2007, c A-37.2, [s 10](#).

<sup>4</sup> Decision 29199-D01-2024 at para 11.

<sup>5</sup> AUC Rule 16, s 3(2) and (3), Decision 28244-D01-2023 at para 11.

<sup>6</sup> Exhibit 29924-X0006.

<sup>7</sup> Exhibit 29924-X0044.

As of January 1, 2025, the former Village of Caroline became the hamlet of Caroline, within the newly created municipality of Clearwater County. The AUC hearing and processes related to Decision 28295-D01-2025 took place in 2023-2024, prior to Clearwater County being the authority having jurisdiction for municipal development approval processes.

Clearwater County, at the time of the AUC hearing respecting the PACE project in November, 2024:

- a) became aware that the then Village of Caroline was not taking an active position in the proceedings.
- b) Determined that the Village of Caroline had not negotiated binding commitments, as the municipal planning authority having jurisdiction;
- c) Therefore at that time Clearwater County undertook informal discussions with PACE, given it was anticipated that the Village of Caroline MAY be amalgamated with Clearwater County.

However, any discussions between Clearwater County and PACE did not, and at law could not, form the basis of binding commitments by PACE in relation to future requirements of municipal development permits.

8. The County also notes the jurisdiction confusion created between the two municipalities during the AUC process as a result of the pending amalgamation. As stated by the AUC in the Original Decision:

On July 24, 2024, the Village of Caroline and Clearwater County announced their approval of an Amalgamation Report, which was a proposal to the Minister of Municipal Affairs to amalgamate the two municipalities. Pending a Ministerial Order in Council, the amalgamation was projected to come into effect on January 1, 2025. **At the close of the record of this proceeding, the municipalities had not amalgamated** [emphasis added].<sup>8</sup>

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<sup>8</sup> Decision 28295-D01-2025 at PDF page 5, footnote 3 (“**Original Decision**”).

9. This confusion is clear when reviewing the Information Request Responses submitted by the former Village and the County.<sup>9</sup> The former Village deferred issues to the County and the County deferred issues to the former Village.

## V. GROUNDS FOR REVIEW

### A. AUC Rule 16, s 5(1)(a) and (c)

10. The County requests a review under Rule 16, sections 5(1)(a) and (c), which state:

(1) The Commission may grant an application for review of a decision, in whole or in part, where it determines that the review applicant has demonstrated:

(a) The Commission made a **palpable and overriding error of fact, or mixed fact and law where the legal principle is not readily extricable, which is material to the decision**. An error is palpable if it is obvious and is overriding if it has impacted the result ...

(c) **There are changed circumstances material to the decision, which occurred since its issuance** [emphasis added].

### B. Changed Circumstances

11. The material change is described in the March Submissions and is based on the amalgamation of the former Village and the County.

### C. Palpable and Overriding Error of Fact or Mixed Fact and Law

12. In the Original Decision, the AUC made an error of fact or mixed fact and law when it held:

**Regarding the LUB, while the land use district is zoned as Reserved for Future Residential Development, the LUB recognizes a broad range of discretionary uses in this district.** Given the various potential uses for this district, many of which are industrial in nature, the Commission finds that **no provision has been identified that indicates the project conflicts with the LUB.**<sup>10</sup>

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<sup>9</sup> Exhibit 28295-X0349 and Exhibit 28295-X0325.

<sup>10</sup> Original Decision at para 20.

13. In land use planning, uses that are neither listed as permitted or discretionary are automatically prohibited.<sup>11</sup> While the Original Decision states that there are “various potential uses for this district, many of which are industrial in nature” the Original Decision errs by failing to:

- a) consider and determine whether any of the discretionary uses would, by definition, accommodate the proposed project;<sup>12</sup>
- b) recognize that if a use is not listed as permitted or discretionary, under municipal land use planning rules it is not authorized. A use that is not authorized would directly conflict with the Village of Caroline Land Use Bylaw. Note that pursuant to the Order in Council,<sup>13</sup> the Village of Caroline Land Use Bylaw will continue to apply until repealed and replaced by County Council. This has not yet occurred.

## **VI. COUNTY’S RIGHTS ARE DIRECTLY AND ADVERSELY AFFECTED BY THE ORIGINAL DECISION**

14. Given the project is now located within its boundaries and jurisdiction, whereas before it outside of the County’s purview, the County’s rights are directly and adversely affected.

15. The County is now responsible for processing the development permit application and dealing with any other aspects of the project within its jurisdiction, such as road use and development agreements, design briefs (required easements and right of ways for public utilities and roads), waste management, fire and emergency response, and landscaping and visual impacts.

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<sup>11</sup> *Gellarne Holdings (2001) Ltd v Edmonton (City)*, 2023 ABCA 327 at [para 8](#), *Desaulniers v. Clearwater (County)*, 2007 ABCA 71 at [paras 59-60](#).

<sup>12</sup> See the Village of Caroline Land Use Bylaw - Exhibit 28295-X0114 at PDF page 49.

<sup>13</sup> Exhibit 29924-X0044 at PDF page 6.

**VII. PREJUDICE TO THE COUNTY**

- 16. While we appreciate the need for finality, these circumstances are exceptional and unique: the amalgamation between the former Village and the County was not certain until such time as the Order in Council came into effect.<sup>14</sup>
- 17. An amalgamation process occurring at the same time as the AUC process has created a situation where the County could not fully consider or address the impact of a solar project being developed on lands that are now within the County's boundaries.

**VIII. CONCLUSION**

- 18. The County respectfully requests a review of the Original Decision in accordance with sections 5(1)(a) and (c) of AUC Rule 16.

**CLEARWATER COUNTY  
BY ITS COUNSEL, BROWNLEE LLP**



Per: \_\_\_\_\_  
**Jeneane S. Grundberg, K.C. and  
Brendan Dzioba**

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<sup>14</sup> Exhibit 29924-X0044 at PDF pages 4-31.