

November 26, 2018

To: Persons currently registered on proceedings 23807, 23808 and 23809

**TransAlta Corporation
Sundance and Keephills Power Plants Coal to Gas Conversion
Proceedings 23807, 23808 and 23809
Applications 23807-A001, 23808-A001 and 23809-A001**

Ruling on standing

Introduction

1. TransAlta Corporation has submitted applications to convert several coal units at its Sundance and Keephills facilities to natural gas (the proposed projects). These applications are being considered in proceedings 23807, 23808 and 23809.
2. Mike Northcott submitted a statement of intent to participate¹ in proceedings 23807, 23808 and 23809. In his statement of intent to participate, Mr. Northcott expressed concern with the proposed projects increasing the operating lives of the generating units. Mr. Northcott believes that the proposed generating units are extremely inefficient, resulting in wasted heat and fuel, and contribute unacceptable carbon emissions that will have a negative impact on environmental integrity. The statement of intent to participate gave a legal land description for Mr. Northcott's location that is approximately 30 kilometres from the proposed projects.
3. The Commission has authorized me to communicate its decision on standing. For the reasons described below, the Commission has decided that Mr. Northcott does not have standing in these proceedings.

How the Commission determines standing

4. 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**

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

¹ Exhibit 23807-X0013, Northcott SIP, Faxed September 24, 2018, uploaded to eFiling on September 26, 2018.

5. The meaning of the key phrase, “directly and adversely affect,” has been considered by the Alberta Court of Appeal on multiple occasions, and the legal principles set out by the court guide the Commission when it decides standing. Standing is determined by the 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 information to show that the Commission’s decision on the application may “directly and adversely affect” the person’s right, claim or interest.²

6. To determine if a right is “directly” affected, the court has said that “[s]ome degree of location or connection between the work proposed and the right asserted is reasonable.”³ When considering the location or connection, the Commission looks at factors such as residence or other occupation, and the frequency and duration of the applicant’s use of or presence in the area near the proposed site.⁴

7. 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.”⁵

8. 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 demonstrated.

Ruling

9. The Commission finds that Mr. Northcott has not asserted rights that would be directly affected by the Commission’s decision on the proposed alterations to the power plants. Mr. Northcott’s concerns about the environment and operating efficiencies of the generating units are general in nature and do not indicate a potential for direct and adverse impacts on his rights. In addition, Mr. Northcott’s location, approximately 30 kilometres from the facilities, lacks the degree of location or connection that would indicate the potential for a direct and adverse affect on his rights. While proximity is not the only factor that the Commission looks at to determine standing, it is an important one and in this case the facts indicate the standing test is not met.

² *Cheyne v Alberta (Utilities Commission)*, 2009 ABCA 94; *Dene Tha’ First Nation v Alberta (Energy and Utilities Board)*, 2005 ABCA 68 [*Dene Tha’*].

³ *Dene Tha’*.

⁴ *Sawyer v Alberta (Energy and Utilities Board)*, 2007 ABCA 297.

⁵ 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.

10. If you have any questions, please contact me by telephone at 403-592-3280 or by email at gary.perkins@auc.ab.ca.

Yours truly,

Gary Perkins
Commission Counsel