

November 22, 2019

To: Parties currently registered on Proceeding 24930

Stirling Renewable Energy Limited Partnership, by its general partner Stirling Wind Project Ltd.

Stirling Wind Project Amendments

Proceeding 24930

Applications 24930-A001 and 24930-A002

Ruling – standing on the amendment application

1. Stirling Renewable Energy Limited Partnership, by its general partner Stirling Wind Project Ltd. (Stirling) filed applications in Proceeding 24930 for approval of amendments to the Stirling Wind Project and Red Coat 967S Substation.
2. In this ruling, the Commission determines whether to hold a hearing for the amendment application.
3. The Commission must hold a hearing if persons who have filed a statement of intent to participate (SIP) 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.
4. The Commission issued a notice of applications for the proceeding and received SIPs from Rod and Robin Conrad, Calvin Metzger and George and Margaret Stanko. These individuals have formed the Stirling Landowner Group (SLG).
5. The Commission has authorized me to communicate its ruling on standing.
6. The Commission assesses whether a person has standing based on a two-part test. The first part of the test is legal: a person must demonstrate that the right being asserted is recognized by law. The second part of the 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.
7. When determining standing for amendment applications, the Commission only considers whether the proposed amendments have the potential to directly and adversely affect rights. An amendment application does not re-open consideration of the project as a whole, and “[i]f the

expansion will have **no measurable impact**, then permitting standing would amount to a collateral re-examination of the permit originally given for the existing facility.”¹

8. In view of the foregoing, the Commission has considered the scope of Stirling’s amendment application and whether any of those persons who filed SIPs have demonstrated that any of the proposed changes to the project have the potential to directly and adversely affect their rights.

9. Stirling’s amendment application seeks approval to change the turbine model for the power plant and to reduce the number of turbines proposed, including a number of associated changes that were summarized by Stirling in its submissions, reproduced below:²

Component	Previous Senvion 3.6M140	New Goldwind 4.X 155 Series	Changes
Turbine nameplate capacity (MW)	3.6	4.035	Increased turbine capacity
Number of turbines	32	28	Reduced number of turbines
Tower hub height (m)	110	110	None
Rotor diameter (m)	140	155	Increased rotor diameter
Total tip height (m)	180	187.5	Increased tip height
Number of blades	3	3	None
Rotational speed (rpm)	5.2 – 9.6	6 – 10	Change in rotational speed
Cut-in wind speed (m/s)	3.0	2.5	Change in cut-in speed
Cut-out wind speed (m/s)	22.0	26.0	Change in cut-out speed
Transformer location	External transformer at base of turbine	External transformer at base of turbine	None

10. Stirling submitted that the alterations to the project would result in adjustments to access roads, the collector system, and changes to the substation equipment. Stirling stated that it also made minor turbine location adjustments, all within 50 metres of the Commission-approved locations, and located a temporary laydown area, a permanent laydown area, and an operation and maintenance building.

¹ *Visscher v Alberta (Energy Resources Conservation Board)*, 2011 ABCA 209 [emphasis added].

² Exhibit 24930-X0014, Stirling Power Plant LOE, PDF page 3.

11. The SLG requested standing on Stirling's amendment application on the basis that the persons in the group own land and/or reside in proximity to the project, and are therefore directly and adversely affected by the proposed amendments. Their concerns with the amendments include noise and visual impacts, wildlife impacts, safety concerns, dust and traffic, substation location, distribution line relocation and setback requirements.

12. The SLG submitted that weed surveys were supposed to be conducted and provided to its members prior to construction. It is requesting that this information be provided, or for construction to be held back until this requirement is met. Similarly, the SLG requested a copy of the emergency response plan prior to the start of construction. The SLG also requested that the location of equipment washing stations be indicated.

13. The SLG submitted that the turbines proposed to be removed are not optimal from an avian impact perspective. It requested that Stirling provide justification on how the turbines were selected or that the Commission direct the removal of other turbines.

14. The SLG is also concerned that the 50-metre variance of turbine locations could increase the danger of ice throw or the towers collapsing onto roads. It requested the opportunity to provide more evidence on this issue.

15. In response to the SIPs, Stirling requested that standing be denied. It submitted that the Conrads' residence is located more than 2,000 metres from the project boundary and that all of the SLG members failed to demonstrate a direct and adverse impact caused by the amendment application. Stirling submitted that a number of concerns raised by the SLG members, including setbacks, avian mortality, shadow flicker, visual impacts, dust control, ice throw, tower collapse and the impact of the project on local rural views and lifestyle were previously considered by the Commission, are addressed by the mitigation measures committed to, and/or are not materially affected by the changes in the amendment application. Stirling submitted that "...imperceptible differences in Project sound profiles between the approved project and the proposed Project do not satisfy the legal test of providing some evidence, either subjectively or objectively, of a potentially adverse, harmful or unfavourable impact that the Applicants may experience as a result of the Commission approving the amendments as proposed."³

Ruling

16. With respect to the first part of the standing test, the Commission finds that Rod and Robin Conrad, Calvin Metzger and George and Margaret Stanko have demonstrated the existence of rights recognized in law, namely interests in land. Additionally, Mr. Metzger's and the Stankos' residences are located within 2,000 metres of the project. While the Conrads' residence is beyond 2,000 metres, their quarter section appears to be within 2,000 metres of the project.

17. With respect to the second, factual part of the standing test, the Commission has considered whether, having regard to the nature and scope of the proposed changes to the project (as described above), the Conrads, Mr. Metzger and the Stankos have provided sufficient

³ Exhibit 24930-X0030, Stirling submission on standing.

information to show that the Commission's decision on the proposed amendments may directly and adversely affect their rights.⁴

18. In assessing this factual question, the Commission has taken into account the Alberta Court of Appeal's guidance that to determine whether a right is "directly" affected, "[s]ome degree of location or connection between the work proposed and the right asserted is reasonable."⁵ The Commission has also taken into account the case law summarized in Decision 3110-D02-2015 and its conclusions 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," and 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."⁶ Further, as noted in paragraph 7 above, if the amendment does not have a "measurable impact," granting standing would amount to a collateral re-examination of the original approval.⁷

19. As a preliminary matter, the Commission observes that some of the concerns raised by the SLG were considered in Decision 22546-D01-2019⁸ and pertain to the existence of the project as a whole, rather than to the specific changes proposed in the amendment application. These concerns include the project's effects on wildlife, the filing of Stirling's new environmental studies, dust control, detailed traffic agreements, fire and ice throw issues, turbine collapse, shadow flicker, visual impacts and concerns with noise. The SLG also requested weed surveys and the emergency response plan prior to the start of construction. With the exception of noise and visual effects, the SLG did not make submissions linking any of the above concerns to the specific changes proposed in the amendment application. In the absence of a demonstrated link between the proposed amendments and those matters and concerns, they are neither the basis for standing, nor issues that are properly considered in this proceeding.

20. The Commission acknowledges the SLG's submissions on the potential visual effects resulting from the proposed amendments. However, Stirling's proposed changes to the project since its original approval include removing four turbines and reducing the size of the overall project area. The turbine hub height would remain the same, while the rotor diameter would increase by 15 metres. While these proposed amendments may change the visual effects of the project if approved, given the distance between the SLG members' lands and the turbine locations, the Commission is not persuaded that this change will result in an impact on them that is either direct or adverse. Further, and in any event, the Commission considers that any change in the visual effects associated with the proposed amendments is not measurable. Hence, granting standing on this issue would result in a collateral re-examination of Approval 22546-D02-2019.

⁴ *Cheyne v Alberta (Utilities Commission)*, 2009 ABCA 94; *Dene Tha' First Nation v Alberta (Energy and Utilities Board)*, 2005 ABCA 68 [*Dene Tha'*].

⁵ *Dene Tha'*.

⁶ Decision 3110-D02-2015: Market Surveillance Administrator Allegations against TransAlta Corporation et al., Phase 2 Preliminary matters; Standing and Restitution, paragraphs 56-63.

⁷ *Visscher v Alberta (Energy Resources Conservation Board)*, 2011 ABCA 209.

⁸ Decision 22546-D01-2019: Stirling Wind Project Ltd. – Stirling Wind Project, Alberta Electric System Operator - Stirling Wind Project Connection Needs Identification Document, AltaLink Management Ltd. - Stirling Wind Project Connection Facility Applications Proceeding 22546, Applications 22546-A001 to 22546-A006, April 26, 2019.

21. The SLG's submissions on noise are also acknowledged. The amendment application requests a change in the turbine model being used for the project and changes to the substation components. The amendments would result in a reduction in noise from the substation and is unlikely to result in an increase in the predicted noise levels for the original configuration. The Commission considers that the noise impact assessment filed with the amendment application supports that the proposed turbine model may have a different noise profile than that previously approved, and that increased noise from the remaining turbines (over that predicted for the turbines previously approved) may be experienced. Accordingly, the Commission is satisfied that the proposed amendments have the potential to directly and adversely affect the rights of persons in close proximity to the turbines, and on this basis grants standing to the Conrads, Mr. Metzger and the Stankos.

22. The Commission emphasizes the limited scope of the standing granted to the Conrads, Mr. Metzger and the Stankos; they have been granted standing on the basis that the Commission is satisfied that the potential noise impacts from the proposed turbine amendments to the project may result in a direct and adverse effect on their rights. These persons must accordingly confine their participation in this proceeding to addressing potential increased noise impacts as they relate to the turbines.

Schedule

23. Given the scope of the issues delineated above, the Commission will be holding a written hearing and has set out the following process for its consideration of the amendment application:

Process step	Date
Intervener evidence	December 16, 2019
Stirling rebuttal evidence	January 13, 2020
Argument	January 20, 2020
Stirling reply argument	January 27, 2020

24. The persons who have been granted standing are eligible to potentially recover the costs of their participation in this proceeding. Rule 009: *Rules on Local Intervener Costs* applies to costs claims for this proceeding.

25. The Commission emphasizes that eligibility to claim costs does not guarantee recovery of those costs. Any claims for costs must be filed after this proceeding is concluded, in accordance with Rule 009. Cost recovery is subject to the Commission assessing the value of parties' contribution to the proceeding, and in accordance with the guidance provided in Section 7 of Rule 009, the Commission may consider whether an intervener submitted evidence and argument on issues that were not relevant to the proceeding.

26. If you have any questions, please contact the undersigned at 403-592-4360 or by email at rob.watson@auc.ab.ca.

Yours truly,

Rob Watson
Commission Counsel