

January 3, 2020

To: Parties currently registered on Proceeding 25034

**Northstone Power Corp.
Application to Alter Northstone Elmworth Generation Station
Proceeding 25034
Application 25034-A001**

Ruling – standing on the amendment application

1. Northstone Power Corp. filed the subject amendment application in Proceeding 25034 for approval to alter the existing Northstone Elmworth Generation Station.
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 by filing evidence and providing argument. This permission to participate is referred to as standing.
4. The Commission issued a notice of application for the proceeding and received SIPs from Allen Sawchuk and Silvia Coulas.
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. On an amendment application, the test for standing is whether the proposed amendment has the potential to directly and adversely affect an individual’s rights. The Alberta Court of Appeal has clarified that if a facility expansion will have “no measureable impact” then permitting standing would amount to an improper collateral re-examination of the original approval.¹

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

8. In view of the foregoing, the Commission has considered the scope of Northstone's amendment application and whether either of the persons who filed SIPs have demonstrated that any of the proposed changes to the Northstone Elmworth Generation Station have the potential to directly and adversely affect their rights.

9. Northstone's amendment application seeks approval to replace a three-megawatt Cooper Bessemer LSV16 natural gas genset unit with a 9.4-megawatt Wartsila 20V34S engine/generator set. Northstone submitted that the new generator would be installed at the location of the removed genset.

10. Mr. Sawchuk requested standing on the amendment application on the basis that nitrogen oxides and carbon dioxide emissions will affect him and his farm labourers. Mr. Sawchuk also listed concerns relating to noise and light pollution. Lastly, Mr. Sawchuk identified the presence of a school approximately two kilometres from the Northstone Elmworth Generation Station, and raised concerns about the effect of emissions on the children.

11. Ms. Coulas requested standing on the amendment application on the basis of noise and vibration impacts. Ms. Coulas submitted that she currently experiences noise and vibration at her residence that have contributed to consequences such as sleep disturbance, annoyance, and cracks in the foundation of her home. She raised concerns that the alteration will make these impacts worse. Ms. Coulas also raised concerns regarding health impacts associated with emissions.

Ruling

12. With respect to the first part of the standing test, the Commission finds that both Mr. Sawchuk and Ms. Coulas have demonstrated the existence of rights recognized in law, namely interests in land, as their residences are located within 2,000 metres of the Northstone Elmworth Generation Station.

13. 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 Northstone Elmworth Generation Station (as described above), Mr. Sawchuk and Ms. Coulas have provided sufficient information to show that the Commission's decision on the proposed amendments may directly and adversely affect their rights.²

14. 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."³ 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

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'*.

asserted and potential effects identified.”⁴ Further, as noted in paragraph seven above, if the amendment does not have a “measurable impact,” granting standing would amount to a collateral re-examination of the original approval.⁵

15. The amendment application requests an increase to the generation capacity of the power plant. The Commission considers that the noise impact assessment filed with the amendment application supports that the proposed power plant alteration may result in a different noise profile than the previously approved configuration, and that increased noise may be experienced. Likewise, the proposed alteration may result in a change to vibration effects. The Commission also considers that the application materials indicate that the amendment may result in a net increase to certain emissions. 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 power plant, and on this basis grants standing to Mr. Sawchuk and Ms. Coulas.

16. With respect to Mr. Sawchuk’s concerns about light pollution, the Commission is not persuaded that the proposed amendments will change the visual effect of the existing facility, and does not find that there is any information to suggest that such a change would result in a direct impact on the intervener. Accordingly, standing is not granted on this issue.

17. With respect to Mr. Sawchuk’s concerns about the effect of emissions on local school children, standing is not granted on this issue since, as mentioned above, the standing test requires that the potential effects associated with a decision of the Commission must be personal rather than general. The Commission is not satisfied that Mr. Sawchuk has established a connection between potential effects on the school children and his own legal rights.

18. The Commission emphasizes the limited scope of the standing granted to Mr. Sawchuk and Ms. Coulas; they have been granted standing on the basis that the Commission is satisfied that the potential incremental changes to the noise, vibration and emission impacts from the proposed power plant amendments may result in a direct and adverse effect on their rights. The interveners must accordingly confine their participation in this proceeding to addressing potential increased noise, vibration and emission impacts as they relate to the applied-for changes to the power plant. As emphasized above, this application is not for a new power plant, and issues that are unrelated to the incremental effects of the amendment application are not properly considered in this proceeding.

Schedule

19. 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.

20. Mr. Sawchuk and Ms. Coulas shall file submissions on or before February 10, 2020. These submissions should include both evidence and argument in support of their positions that the Commission should consider.

⁴ Decision 3110-D02-2015: Market Surveillance Administrator Allegations against TransAlta Corporation et al., Phase 2 Preliminary matters; Standing and Restitution, paragraphs 56-63.

⁵ *Visscher v Alberta (Energy Resources Conservation Board)*, 2011 ABCA 209.

21. Northstone shall have an opportunity to file a submission in response to any filings from the interveners. Northstone's submission should include its rebuttal argument and supporting evidence and be filed on or before February 24, 2020.

Cost

22. 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.

23. 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.

24. If you have any questions, please contact the undersigned at 403-592-4394 or by email at meghan.anderson@auc.ab.ca.

Yours truly,

Meghan Anderson
Commission Counsel