



Alberta PowerLine General Partner Ltd.

Fort McMurray West 500-Kilovolt Transmission Project

February 10, 2017

Alberta Utilities Commission

Decision 21030-D02-2017

Alberta PowerLine General Partner Ltd.

Proceeding 21030

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1 Decision summary

1. In this decision, the Alberta Utilities Commission must decide whether to approve Alberta PowerLine General Partner Ltd.'s applications to construct and operate the Fort McMurray West 500-Kilovolt transmission facilities. After consideration of the record of the proceeding, and for the reasons outlined in this decision, the Commission finds that approval of the substations, transmission line 12L41 on the south common route and west route option, and transmission line 12L44 on the north common route and common route variation 1, are in the public interest having regard to the social, economic, and other effects of the transmission facilities, including their effect on the environment.

2. The Commission must also decide whether to approve applications to alter and operate existing facilities and to construct and operate new facilities filed by ATCO Electric Ltd. and AltaLink Management Ltd., that are associated with the Fort McMurray West 500-Kilovolt Transmission Project. After consideration of the record of the proceeding, and for the reasons outlined in this decision, the Commission finds that approval of the new substation, new transmission line,¹ the alteration of existing substations and existing transmission lines are in the public interest having regard to the social, economic, and other effects of the facilities, including their effect on the environment.

3. In reaching the determinations set out in this decision, the Commission has considered all relevant materials comprising the record of this proceeding, including the evidence, argument, and reply argument provided by each party. Accordingly, references in this decision to specific parts of the record are intended to assist the reader in understanding the Commission's reasoning relating to a particular matter and should not be taken as an indication that the Commission did not consider all relevant portions of the record with respect to that matter.

2 Introduction and background

4. Alberta PowerLine General Partner Ltd. (Alberta PowerLine) filed an application with the Commission on December 1, 2015, for approval to construct and operate the Fort McMurray West 500-Kilovolt (kV) Transmission Project (the project). The project consists of 400 kilometres of single-circuit transmission line (12L41) from the Sunnybrook 510S Substation to a new 500-kV substation to be constructed adjacent to the existing 240-kV Livock 939S Substation, and approximately 100 kilometres of new single-circuit 500-kV transmission line

¹ For ease of reference in this decision, the Commission has referred to the combination of transmission line 12L41 and transmission line 12L44 as the "transmission line".

(12L44) from the 500-kV Livock 939S Substation to a new 500-kV substation that will connect to a new substation designated as Thickwood Hills 951S Substation.²

5. The project requires modifications to two existing substations along the route and the construction of the new Thickwood Hills 951S Substation. On December 8, 2015, ATCO Electric Ltd. applied to alter the Livock 939S Substation, and AltaLink Management Ltd. filed a request to construct 100 metres of 500-kV line to be joined to transmission line 12L41 and to alter the Sunnybrook 510S Substation.

6. On December 11, 2015, ATCO Electric Ltd. applied to construct the Thickwood Hills 951S Substation, which included the construction of two new 20-kilometre single-circuit 240-kV transmission lines connecting the Thickwood Hills 951S Substation to the existing transmission line 9L01. It also applied to construct two new single-circuit 240-kV transmission lines, approximately three kilometres each to connect the Thickwood Hills 951S Substation to the existing transmission line 9L07. The applications are jointly considered in Proceeding 21030 (the proceeding).

7. The Commission issued a notice of hearing on December 29, 2015, confirming that the hearing would begin on June 6, 2016 at a venue to be determined later.

8. The Commission held five information sessions, between January 25 and January 29, 2016, in Manly Corner, Barrhead, Westlock, Wabasca and Fort McMurray. Notification of the information sessions was provided in the notice of hearing, and advertisements were placed in Edmonton newspapers and local newspapers.

9. On April 15, 2016, the Commission issued a notice of hearing location confirming that the hearing would begin on June 6, 2016, and be held in stages. The first stage would begin in Edmonton at the Best Western PLUS Westwood Inn on 18035 Stony Plain Road N.W., Edmonton, move to the Quality Hotel & Conference Centre at 424 Gregoire Drive, Fort McMurray on June 27, 2016, and then recommence on July 11, 2016, at the Best Western PLUS Westwood Inn in Edmonton.

10. The Commission cancelled the hearing on May 6, 2016, due to the catastrophic wildfire in the Fort McMurray area. The Commission considered that it would be unfair to expect the persons affected by the fire to participate in this proceeding at such a distressing time. It issued a notice of hearing cancellation and suspended the process.

11. The Commission rescheduled the hearing on June 1, 2016, to commence at the Best Western PLUS Westwood Inn in Edmonton on September 19, 2016.

12. On September 2, 2016, the Commission received two Notices of Questions of Constitutional Law, described in more detail below, and ruled that the question of its jurisdiction to consider the matters raised should be determined as a preliminary matter. As a result, the commencement of the hearing was delayed in order to allow time for the hearing of this preliminary matter. On September 13, 2016, the Commission issued a notice delaying the commencement of the hearing to October 12, 2016.

² For ease of reference in this decision, the Commission has referred to all proposed transmission lines as the “transmission line” because one set of structures house the transmission line or lines along different portions of the route as applicable.

13. The hearing began on Wednesday, October 12, 2016, at the Best Western PLUS Westwood Inn in Edmonton before Commission Member Anne Michaud (panel chair), Commission Vice-Chair Mark Kolesar, and Acting Commission Member Kate Coolidge. The hearing concluded on November 10, 2016.

14. On November 17, 2016, the Commission issued a letter informing the applicants, Alberta PowerLine, ATCO Electric Ltd. and AltaLink Management Ltd., and the interveners that it was unable to meet the 180-day decision deadline due to unforeseen delays. The Commission extended the time for issuing the decision by 90 days following December 27, 2016, in accordance with Section 15.2(2) of the *Hydro and Electric Energy Act*.

2.1 The Fort McMurray West 500-kV Transmission Line Project

15. The project consists of the following elements:

- A 500-kV single-circuit transmission line approximately 400 kilometres in length, designated as 12L41 from AltaLink Management Ltd.'s transmission line 1241L to the existing Livock 939S Substation. The transmission line also contains three optical repeater sites.
- A 500-kV single-circuit transmission line approximately 100 kilometres in length, designated as 12L44, from the existing Livock 939S Substation to the proposed Thickwood Hills 951S Substation.
- One 500-kV substation, including four 500-kV circuit breakers, at the existing Livock 939S Substation.
- One 500-kV substation, including one 500/240-kV transformer and three 500-kV circuit breakers, at the proposed Thickwood Hills 951S Substation.

16. The applications identified a west route option, preferred west variant option, an east route option and an east route variant option. Alberta PowerLine proposed a guyed "V" type structure for the project. Transmission lines 12L41 and 12L44 have common routing in the south and north section of the lines known as the south common route and the north common route.

17. Should the west route option be approved, approximately one kilometre of the transmission line through the Fort Assiniboine Sandhills Wildland Provincial Park would be constructed on new double-circuit structures along with existing transmission line 9L913. This portion of the project would be designated transmission line 12L41. A temporary transmission line would be required to keep transmission line 9L913 in service while construction of transmission line 12L41 is underway.³

18. On January 21, 2016, Alberta PowerLine filed an amendment to its west route in the Slave Lake area. The amendment relocated a portion of the route as far as seven kilometres west of the original alignment. The proposed changes occurred at node W220 through node W256 between townships 71 and 74.

³ ATCO Electric Ltd. applied for this minor alteration and for a temporary bypass on December 14, 2015.

19. On June 6, 2016, Alberta PowerLine submitted amendments to the north and south portions of the common route, as well as to the east and west route options. The most significant of these amendments was to the north common route. Alberta PowerLine submitted two newly proposed options in the area of Brion Energy Corporation's McKay River Commercial Project (MRCP), referred to as common route variation 1 and common route variation 2.

20. On June 30, 2016, Alberta PowerLine submitted its third amendment to the applications, the most significant of which was the withdrawal of the diagonal portion of the west route option from nodes W54 to W73. The effect of this amendment was that the preferred west variant option became the west route option. As a result of this amendment, the Diagonal Group and Orica Canada Inc. did not participate in the hearing. The Commission also modified the "deemed complete" date of the applications from April 24, 2016 to June 30, 2016 because of this amendment.

2.1.1 Optical repeaters

21. Optical repeater stations are required to boost the communications signal because of the length of transmission line 12L41. Alberta PowerLine proposed three locations for the optical repeater stations on the west route option and east route option.

Table 1. Location of repeater stations

West route option	Location	East route option	Location
Bloomsbury Optical Repeater	LSD 02-26-60-04-W5M	Fernand Lake Optical Repeater	LSD 02 & 03-03-60-27-W4M
Florida Optical Repeater	LSD 14-35-71-04-W5M	Lawrence Lake Optical Repeater	LSD 04-16-70-25-W4M
Muskwa Optical Repeater	LSD 09-19-83-24-W5M	Crooked River Optical Repeater	LSD 10 & 11-20-77-22-W4M

22. The optical repeater stations would be located within the right-of-way, in close proximity to a transmission line structure. The optical repeater stations will require a small building to house the telecommunication equipment needed to support the operation of the internal communications and telecontrol system, which will be situated on a gravel pad and surrounded by a fence.

2.2 Transmission line route

Figure 1 – Common, preferred and alternate routes



2.2.1 South common route

23. The south common segment of the transmission line begins at the Sunnybrook 510S Substation near the Genesee Generating Station and proceeds north. The route crosses the North Saskatchewan River and passes Duffield and the village of Alberta Beach on the east side. North of the village of Alberta Beach, the line crosses Highway 43 and continues further north before splitting into the west route option and the east route option. There are no alternative routes proposed by Alberta PowerLine in this southern area.

2.2.2 West route option

24. Once the south common route splits, the west route option heads west until it reaches transmission line 913L, where it begins to parallel transmission line 913L north and continues to do so for much of its length. The transmission line continues north passing Barrhead and then crosses the Athabasca River and traverses through the Fort Assiniboine Sandhills Wildland Provincial Park. At this point, transmission line 913L becomes 9L913 and the route continues to parallel it. The west route option then continues north passing Slave Lake and Wabasca before turning east and connecting to the Livock 939S Substation.

2.2.3 Alternate east route and the east route option variation

25. At the point where the south common route splits, the east route option is primarily a greenfield route. The east route option heads east and northeast towards Westlock then continues mainly north until it crosses the Athabasca River. The east route option then takes a north-eastwardly direction until it rejoins the west route option and connects to the Livock 939S Substation.

26. The east route option variation deviates from the east route option between townships 56 and 58 and crosses those townships further to the east before rejoining the east route option.

2.2.4 North common route

27. The north common section of the route departs at the Livock 939S Substation as transmission line 12L44 and parallels transmission line 9L57 until it is level with the Thickwood Hills 951S Substation. At that point, it embarks in an eastwardly direction and connects to the Thickwood Hills 951S Substation.

2.2.5 Common route variation 1

28. The common route variation 1 is a small deflection in the northern portion of the common route located in the northeast quarter of Section 30 and the southeast quarter of Section 31, Township 89, Range 13, west of the Fourth Meridian.

2.2.6 Common route variation 2

29. The common route variation 2 is a deflection in the northern portion of the common route and is based on a route suggested by an intervener, Brion Energy Corporation. Compared to the north common route, this route diverts to the east earlier and then heads towards the Thickwood Hills 951S Substation from the south.

2.3 Participants in the hearing

30. To assist the reader, the Commission has included the following brief introduction of the landowners, residents, and Aboriginal groups who participated in the public hearing. A complete list of all participants is attached to this decision as [Appendix A](#).

2.3.1 South common route interveners

31. The Wong Group is opposed to the south common route segment at the portion where it leaves the Sunnybrook 510S Substation. The group consists of two parties residing at the southernmost point of the common route. The Wong Group retained Nican International Consulting Ltd. (Nican) to develop an alternative route in this area.

32. Burnco Rock Products Ltd. (Burnco), Lehigh Hanson Materials Limited and Tricycle Lane Ranches Ltd. (the Burnco landowners) are gravel pit operators and land holding companies who have an interest in lands north of the North Saskatchewan River. They are opposed to the south common route as it crosses the North Saskatchewan River to a point near the village of Alberta Beach. The Burnco landowners filed a report by Berrien Associates Ltd. that suggested routing alternatives for the common route section.

33. MWC Investments Inc. is a landowner opposed to the south common route. The route bisects the site of its planned campground and residential development.

34. The South of 43 Group is a landowner group opposed to the common route south of where the transmission line crosses Highway 43. The South of 43 Group filed a report from Gettel Appraisals Ltd. that examined a loss valuation assigned to residences of its group members. A route developed by Warren LaFoy, a group member, was also submitted.

35. Dunhill Group Inc. and 1531486 Alberta Ltd. are gravel pit operators that own land within 800 metres of the south common route.

36. Members of both the Renz and Treichel families group own property within 800 metres of the transmission line and are opposed to the south common route at the corner where it bypasses the village of Alberta Beach. The Village of Alberta Beach town council also joined the Renz group. The Renz group filed the North Star planning report which discusses future land use in the village of Alberta Beach area, and proposed the Village of Alberta Beach concept route which placed further distance between the village of Alberta Beach and the transmission line route.

2.3.2 West route option interveners

37. The Barrhead West Group is opposed to the west route option. The group's 14 landowner members are within 800 metres of the project.

38. Roy Ernst is opposed to the routing of the west route option around Kipp Lake. Mr. Ernst filed a report prepared by Nican that suggested route alternatives in the Kipp Lake area.

2.3.3 East route option interveners

39. The East Route Landowner Opposition Group (ERLOG) is a group of 215 individuals and businesses opposing the east route option. Many are within 800 metres of the east route option.

40. ERLOG filed four reports in support of its position: a report prepared by Berrien Associates Ltd. that compares the west route option and the east route option and proposes alternate routes; the Keith Taylor report on aerial spraying; the Cottonwood Consultants Ltd. report on the project's environmental effects; and the Gettel Appraisals Ltd. report on property impacts.

2.3.4 North common route interveners

41. Brion Energy Corporation (Brion) is opposed to the routing of the north common section and common route variation 1 as it turns west towards the Thickwood Hills 951S Substation.

2.3.5 Aboriginal groups interveners

42. Gunn Métis Local 55 is an Aboriginal group whose members harvest within close proximity to the transmission line including, most notably, the southern portion of the transmission line near the Lac Ste. Anne trails. It is opposed to the development of the transmission line through its members' traditional lands. Gunn Métis Local 55 submitted a report from Dragonfly Ecological Services on the project's impacts on ethnobotanical species and a report from Willow Springs Strategic Solutions Inc. titled the "Lac Ste. Anne Métis Traditional Knowledge and Use Report" that describes impacts on the Gunn Métis Local 55 members' exercise of their traditional rights.

43. Beaver Lake Cree Nation is a "band" under the *Indian Act* and is a signatory to Treaty 6. The Beaver Lake Cree Nation members have exercised and continue to exercise their Aboriginal and treaty rights in the vicinity of the project. Its members access Crown lands along both the east and west route options, north of the Athabasca River. Beaver Lake Cree Nation is not against the development of the transmission line, but is opposed to the project until certain pre-conditions, discussed in more detail in the following sections, are satisfied.

2.3.6 Other interveners

44. The Consumers' Coalition of Alberta (CCA) opposed the development of all segments of the transmission line concurrently and not in a staged manner. It is also opposed to the west route option of the transmission line because it is a more costly option.

2.4 Interested parties who filed written submissions

45. A number of interested parties filed written submissions to express their concerns with the transmission line. Their written submissions were reviewed by the Commission and taken into account in coming to its decision. A list of the proceeding participants who submitted statements of intent to participate or who withdrew their participation prior to or during the oral hearing is attached to this decision as [Appendix B](#).

3 Nature of proceeding

3.1 The Commission's role⁴

46. The Commission's role as an independent, quasi-judicial agency of the province of Alberta was discussed in detail in the Heartland Transmission Project decision.⁵ As a quasi-judicial body, the Commission is similar in many ways to a court when it holds hearings and makes decisions on applications. Like a court, the Commission bases its decisions on the evidence before it and allows interested parties to cross-examine the applicant's witnesses to test that evidence. Other similarities to the judicial process include the power to compel witnesses to attend its hearings and the obligation to provide a written decision with reasons. However, the Commission is not a court and has no inherent powers. Its powers are set out in legislation. It is sometimes referred to as an expert tribunal because it deals frequently with specialized subject matter required to balance the public interest considerations that it must address. Unlike a court proceeding, the Commission's proceedings are not matters between two or more competing parties to determine who wins and loses. In other words, the Commission's proceedings are not in the nature of a *lis inter partes* (a dispute between parties).

47. The Commission's proceedings are conducted to determine an outcome that satisfies the public interest mandate set out in the legislation. In the vast majority of its proceedings, the Commission is not limited to considering only the evidence presented to it by the applicant and by parties that may be directly and adversely affected. Indeed, it is the Commission's role to test the application to determine whether approval of that application would be in the public interest. If it chooses, the Commission may allow parties that may not be directly and adversely affected by the Commission's decision on the application to bring evidence relevant to assessing the factors that the Commission is required to consider in determining the public interest it is charged with considering in a particular proceeding. It is the role of the applicant to demonstrate that approval of its application would be in the public interest, and it is the role of the parties that may be directly and adversely affected by approval of the application to demonstrate how the approval or denial of the application does or does not satisfy the public interest. They may do so by bringing evidence of the effects of the application on their own private interests and explaining how the public interest may be better served by accommodating their private interests, and they may use the evidence filed by all parties to the proceeding to argue what a better balancing of the public interest might be.

48. In performing its duty to test the application, the Commission not only actively tests the evidence by asking questions of the applicant and the parties, but also by asking questions of any expert witnesses called by the applicant or the parties. In some cases, the Commission calls independent witnesses to address issues that the Commission considers important and wants to make sure are addressed in the record of the proceeding. The Commission's objective is to determine whether the application as filed is in the public interest and, if not, what changes could be ordered by the Commission to most effectively balance the various public interest factors it must consider, by relying upon its own expertise as well as the evidence it has before it.

⁴ Paragraphs 46 to 48 are reproduced from Decision 2011-436, paragraphs 73 to 76.

⁵ Decision 2011-436, AltaLink Management Ltd. and EPCOR Distribution & Transmission Inc., Heartland Transmission Project, November 1, 2011.

3.2 How the Commission considered the evidence

49. The way in which the Commission considers evidence was thoroughly discussed in the Heartland Transmission Project decision.⁶ For the purpose of this decision, the Commission finds that those considerations apply to the Fort McMurray West 500-kV Transmission Project application.

50. Just as the Commission is not a court, it is not a political body and does not make its decisions based upon the views or opinions of the majority of participants. The fact that many people have a particular view of an application is but one of many factors that the Commission may consider when making its decision. A far more important consideration for the Commission is why parties hold that view of the application. To assess these views, the Commission must carefully consider the evidence filed by those parties and decide whether that evidence is relevant, whether it supports the positions parties have taken and how to balance that evidence with other evidence that may suggest a different conclusion.

51. Similar to a court, the evidence considered by the Commission in its proceedings, and in the course of the Fort McMurray West 500-kV Transmission Project proceeding in particular, can be broadly divided into two categories, ordinary evidence and expert evidence. Ordinary evidence is testimony given by a witness about facts: for example, what a witness saw, heard, smelled or touched. Expert evidence is opinion evidence on a scientific or technical matter provided by a person with specialized knowledge, experience or training in that field.

52. Historically, the courts would only consider opinion evidence on a subject if that evidence was provided by an expert witness. The general rule was that lay witnesses were restricted to providing ordinary evidence. However, the courts recognized some limited exceptions to this rule, such as the identification of handwriting, persons and things, apparent age, the physical condition of a person, the emotional state of a person, the condition of things, certain questions of value and estimates of speed and distance.

53. One of the ways in which the Commission's process differs from that of the court is that it is not required to strictly apply the rules of evidence that relate to a trial before a judge. In fact, Section 20 of the *Alberta Utilities Commission Act*⁷ makes it clear that when the Commission is conducting a hearing, it is not bound by the rules of law concerning evidence that apply to judicial proceedings. While this allows the Commission some flexibility to determine what evidence to admit and what weight to give the evidence it admits, it cannot ignore the principles of procedural fairness that underlie the formal rules of evidence.

54. In a recent case called *Lavallee v Alberta* (Securities Commission), the Alberta Court of Appeal considered the effect of Section 29(f) of the *Alberta Securities Act*, which is very similar to Section 20 of the *Alberta Utilities Commission Act*, and stated that the laws of evidence applicable to judicial proceedings do not apply. The court stated as follows:

It is clear from the *Securities Act* that panels are to employ less formal procedures than would be required in a court. It is therefore open to a panel to admit, for example, hearsay evidence without holding a *voir dire*. Boards are given considerable latitude in

⁶ Paragraphs 50 to 56 are substantially reproduced from Decision 2011-436, paragraphs 77-97, *mutatis mutandis*.

⁷ SA 2007, c A-372, Section 20.

determining what evidence to admit and, if admitted, the weight to give that evidence. But we can't be indifferent to the rules of evidence either.

By the same token, a panel has the discretion to refuse evidence; for example, evidence that it considers to be inherently flawed. The provisions of the statute must be read so as to give effect to the legislative intent that relevant evidence will be generally admissible, while at the same time honouring the requirements of procedural fairness and giving the Commission control over its own process.⁸

55. Over the course of the hearing, the Commission heard testimony from more than 70 witnesses. These witnesses included lay witnesses, expert witnesses and corporate witnesses (employees of Alberta PowerLine).

56. For the most part, the lay witnesses at the hearing testified about how the proposed transmission line project may affect them, their families and in some cases, their businesses. For example, the Commission heard evidence from a number of farmers on how the approval of the project on their lands might affect their farming operations.

3.3 Weight of expert opinion evidence⁹

57. Expert evidence is opinion evidence on a scientific, technical or otherwise specialized matter provided by a person with specialized knowledge, experience or training.

58. The Supreme Court of Canada succinctly explained the role of an expert witness in *R v Howard* when it stated "Experts assist the trier of fact in reaching a conclusion by applying a particular scientific skill not shared by the judge or the jury to a set of facts and then by expressing an opinion as to what conclusions may be drawn as a result."¹⁰

59. In the event that the Commission finds that an expert's evidence extends beyond the limits of his or her expertise, the Commission will take the approach outlined in Decision 2012-303:

...evidence provided by [an expert] in areas where he was clearly not qualified to opine, will be given the weight of a lay witness rather than the weight of a properly qualified expert in these areas. Where that evidence diverges from the evidence of a properly qualified expert witness, the evidence of the qualified expert witness will be preferred.¹¹

60. Another important factor when considering expert evidence is the expert's independence and objectivity. On April 30, 2015, the Supreme Court of Canada issued a judgement *White Burgess Langille Inman v Abbott and Haliburton Co.*, 2015¹² that directly addressed expert evidence and its relationship between independence, admissibility and weight.

⁸ *Lavallee v Alberta (Securities Commission)*, 2010 ABCA 48, paragraph 17 (available on CanLII an QL), [2010] AJ No144, 474 AR 295, 100 Admin LR (4th) 9, 317 DLR (4th) 373, 22 Alta LR (5th) 201, leave to appeal to SCC refused, Canadian Association of Energy and Pipeline Landowner Associations [2010] SCCA No 119.

⁹ Paragraph 57 to 60 are substantially reproduced from Decision 2011-436, paragraphs 89 to 91, *mutatis mutandis*.

¹⁰ *R v Howard*, [1989] 1 SCR 1337, paragraph 19.

¹¹ Decision 2012-303, ATCO Electric Ltd., Eastern Alberta Transmission Line Project, page 26, paragraph 128.

¹² *White Burgess Langille Inman v Abbott and Haliburton Co.*, 2015 SCC 23, [2015] 2 S.C.R. 182.

Underlying the various formulations of the duty are three related concepts: impartiality, independence and absence of bias. The expert's opinion must be impartial in the sense that it reflects an objective assessment of the questions at hand. It must be independent in the sense that it is the product of the expert's independent judgment, uninfluenced by who has retained him or her or the outcome of the litigation. It must be unbiased in the sense that it does not unfairly favour one party's position over another. The acid test is whether the expert's opinion would not change regardless of which party retained him or her.¹³

3.4 The Commission's consideration of expert evidence

61. By Bulletin 2016-07,¹⁴ the Commission advised interested parties that it had dispensed with the need to qualify expert witnesses and that it would not be necessary for counsel to request that their respective witnesses be qualified as an "expert" witness with regard to their pre-filed written evidence or testimony at an oral hearing.

62. The Commission heard expert opinion evidence on a number of subjects related to the project. The Commission has adopted the approach described above in weighing the expert evidence tendered in this proceeding.

63. In this proceeding, the Commission instructed the parties to file a curriculum vitae for each of their respective witnesses in order to be able to assess the weight attributable to the relevant evidence, and for opposing counsel to question witnesses' qualifications and credibility.

64. The Commission is satisfied that the consultants listed below who gave evidence in the proceeding were able and willing to carry out their respective duty to provide the Commission with fair and objective evidence. Accordingly, the Commission finds that the expert evidence filed by these consultants met the threshold for admissibility from the perspective of independence.

65. The Commission finds that the witnesses listed below gave evidence that was consistent with their expertise and in a relatively objective manner:

- Shawn Martin, CH2M Hill Canada Limited
- Glen Doll, Serecon Valuations Inc.
- William Bailey, E^xponent
- Christopher Oakley, Midgar Consulting Inc.
- Authur Küpper, Innova Global
- Robert Berrien, Berrien Associates Ltd.
- Cliff Wallis, Cottonwood Consultants Ltd.
- Keith Taylor, 1472888 Alberta Ltd. Taylor Aviation
- Pablo Argenal, Nican International Consulting Ltd.
- Brian Gettel, Gettel Appraisals Ltd.
- Ryan Archer, Gettel Appraisals Ltd.
- Karen Kubiski, Dragonfly Ecological Services
- Dermont O'Connor, Willow Springs Strategic Solutions Inc.

¹³ White Burgess Langille Inman v Abbott and Haliburton Co., 2015 SCC 23, [2015] 2 S.C.R. 182, paragraph 32.

¹⁴ Bulletin 2016-07: Practice advisory and procedural change – expert witness qualification no longer required, issued March 24, 2016.

- George Jennings, Cretes Applied and Natural Sciences
- Keely Winnitoy, Cretes Applied and Natural Sciences
- Trevor Cuthbert, Golder Associates Ltd.

66. The weight given to the evidence of consultants is discussed in greater detail in the relevant sections of this decision.

67. Many of the witnesses who appeared at the hearing can effectively be described as corporate witnesses. These witnesses included officers and employees of Alberta PowerLine and of certain interveners such as Burnco. In the Commission's view:

...the policy and explanatory evidence provided by a corporate witness is akin to ordinary evidence provided by a lay witness. It is essentially an explanation or recitation of facts. Technical evidence, on the other hand, is essentially expert evidence provided by a corporate witness.¹⁵

68. Each of the CCA's witnesses, Trevor Cline, Dan Levson and Dustin Madsen testified that he did not consider himself an independent expert.¹⁶ Mr. Cline explained that,

...in order to appear, in my opinion, as an independent expert, there would have to be a clear box around the work performed, and I would have performed, you know, analysis design, et cetera to the extent of producing a professional report. And in this instance, that wasn't done.

That having been said, I certainly consider my appearance here being—appearing as an expert and, as a professional engineer, I would take the position that my responses [sic], I will attempt to be fulsome and honest...¹⁷

Mr. Levson added that he was appearing at the hearing largely on a policy basis. I carry lots of hats. I don't think you want me to go through all of them, but I think my evidence would be unbiased and truthful, but I'm not representing myself as an independent expert.¹⁸

Mr. Madsen also stated:

I am here as a witness for the CCA. I wouldn't consider myself necessarily a policy witness for the CCA either. I am just here based on my experience, my expertise and as outlined in my CV, but I am not an independent expert.¹⁹

They also testified that exhibits 21030-X1176 and 21030-X1177, the written submissions of the CCA, were produced collaboratively and each of them could not identify having prepared a specific portion of the documents.²⁰ Based on this testimony, the Commission finds that by their own admission, Messrs. Cline, Levson and Madsen are not independent experts and their

¹⁵ Decision 2012-303: ATCO Electric Ltd., Eastern Alberta Transmission Line Project, page 28, paragraph 134.

¹⁶ Transcript, Volume 17, pages 3633, 3635 and 3636.

¹⁷ Transcript, Volume 17, pages 3633 and 3634.

¹⁸ Transcript, Volume 17, page 3635, lines 15 to 19.

¹⁹ Transcript, Volume 17, pages 3636, lines 20 to 25.

²⁰ Transcript, Volume 17, pages 3635 to 3637.

evidence will not be considered as such. The Commission will weigh their evidence as noted below as ordinary evidence given by a lay witness.

69. The Commission has taken the same approach to the assessment of corporate evidence in this proceeding.

4 Procedural motions

4.1 Standing

70. After receipt of the applications, the Commission received numerous statements of intent to participate from landowners and other interested stakeholders, which related primarily to either of the proposed transmission line routes. As stated earlier in its December 29, 2015²¹ notice of hearing the Commission informed parties that it had made an advance determination that persons who owned or resided on property located within 800 metres of the edge of the right-of-way of any of the proposed route options would have standing to participate in the proceeding.

71. The Commission issued its first ruling on standing on February 19, 2016,²² wherein it confirmed that persons who own or reside on property located within 800 metres of any of the project's right-of-way components would have standing in the proceeding because such persons have rights that may be directly and adversely affected by the Commission's decision on the applications. Subsequently, landowner groups with one or more members who own or reside on property located within 800 metres of the project also had standing.

72. In that ruling, for the reasons set out therein, the Commission granted standing to the Alberta Electric System Operator (AESO) and denied standing to various organizations, groups, and other entities because they had not established a sufficient connection between the rights, if any, that they asserted and the project.

73. The Commission listed the remaining parties who had filed statements of intent to participate listed in Schedule C of its first standing ruling. In that ruling, the Commission set out a process schedule to afford the applicants an opportunity to comment on the standing of Schedule C parties and for these parties to respond to comments. Schedule C was primarily comprised of parties who did not own property within 800 metres of the project and Aboriginal groups. For certain parties, the Commission found that insufficient information was provided in the statements of intent to participate, and indicated that it had sent letters requesting further information to those parties. The ruling is attached as [Appendix D](#).

74. On March 24, 2016, the Commission issued its second ruling on standing. In that ruling, the Commission determined whether the Schedule C parties, and other remaining parties who were late filing their statements of intent to participate, had standing in the proceeding.²³

75. Various Aboriginal groups sought standing based upon a direct and adverse impact on the traditional rights of its members and on the proximity of its members to the proposed

²¹ Exhibit 21030-X0250, Notice of Hearing for Proceeding 21030, December 29, 2015.

²² Exhibit 21030-X0655, Ruling on Standing, February 19, 2016.

²³ Exhibit 21030-X0854, AUC Ruling on Standing of Schedule C Parties and Remaining Parties, March 24, 2016.

transmission line right-of-way. The Commission granted standing to the following Aboriginal groups:

- Alexis Sioux Nation
- Beaver Lake Cree Nation
- Fort McKay First Nation
- Mikisew Cree First Nation
- Sucker Creek First Nation
- Gunn Métis Local 55
- Wabasca Métis Local 90
- Fort McMurray Métis Local 1935
- Buffalo Lake Métis Settlement

76. For the remaining Aboriginal groups, the Commission found that these groups did not provide sufficient information to meet the standing test, including an explanation of the nature of their asserted rights or of the connection between the exercise of these rights and the project test. Therefore, for the particulars set out in the ruling, the Commission found that the remaining Aboriginal groups had not sufficiently demonstrated how the rights asserted by its members may be directly and adversely affected by the Commission's decision on the applications in the proceeding.

77. The Commission also confirmed that landowners within 800 metres of the project who were late filing their statements of intent to participate had standing. The ruling is attached as [Appendix E](#).

78. On July 14, 2016,²⁴ the Commission received a statement of intent to participate and written submissions from the CCA. It argued it had standing because any increase in the project's costs may result in increased costs to ratepayers. On August 11, 2016, the Commission issued its third ruling on standing and found that the CCA had not satisfied the test for standing. However, it allowed the CCA to participate in the proceeding by: (i) admitting the CCA's statement of intent to participate and supporting documents; (ii) affording the CCA an opportunity to cross-examine parties adverse in interest during the hearing; (iii) granting the CCA an opportunity to seat witnesses; and (iv) granting the CCA an opportunity to submit argument and reply argument.²⁵ The ruling is attached as [Appendix F](#).

4.2 Beaver Lake Cree Nation request for names to be omitted

79. Beaver Lake Cree Nation submitted affidavits from some of its members in support of its statement of intent to participate. However, the names of the individual affiants were omitted. The Commission requested that the names be included by a letter dated February 19, 2016.²⁶ In its motion, Beaver Lake Cree Nation requested that the Commission reconsider this request. It submitted that the names of the members who swore the affidavits were not relevant to the determination of standing in this proceeding.

²⁴ Exhibit 21030-X1176, CCA request for standing, July 14, 2016.

²⁵ Exhibit 21030-X1214, AUC Ruling on CCA Intervener Status, 2016-08-11, August 11, 2016.

²⁶ Exhibit 21030-X0653, AUC Letter to the Beaver Lake Cree Nation – request for additional information, February 19, 2016.

80. The Commission in its ruling dated March 2, 2016,²⁷ found that the name of the affiants were relevant because the affiant states in the affidavit that he or she has “personal knowledge of the facts and matters hereinafter deposed to, except where they are otherwise stated to be made on information and belief, in which case I believe them to be true”. The Commission therefore ruled that the names were to be included if Beaver Lake Cree Nation wished the Commission consider the information contained in the affidavits in support of its application for standing. The ruling is attached as [Appendix G](#).

4.3 Alberta PowerLine confidentiality

81. On February 24, 2016, Alberta PowerLine filed a motion for a confidentiality order under Section 13 of Rule 001: *Rules of Practice* on the basis that the information requested by the Commission in information requests contains financial and commercial information that should not be placed on the public record of Proceeding 21030. The information for which confidentiality was requested is described below:

- Capital costs for the applied-for route options of the Fort McMurray West 500-kV Transmission Project to be provided in response to APL-AUC-2016, FEB01-002.
- Costs of alterations to transmission line 9L913 to be provided in response to APL-AUC-2016, FEB01-011.
- Structure cost information to be provided in responses to APL-AUC-2016, FEB01-010(e).
- APL-AUC-2016, FEB01-010(f), APL-AUC-2016, FEB01-017(c).
- APL-AUC-2016, FEB01-018(b) and APL-AUC-2016, FEB01-018(c).²⁸

(collectively, the costs information)

82. The Commission, in granting the confidentiality request, found that the costs information may be of interest to Alberta PowerLine’s competitors and disclosure of the costs information may significantly harm Alberta PowerLine’s competitive position in future bid processes. For these reasons, the Commission found that the salutary effects of public disclosure of the costs information in the name of procedural fairness were outweighed by the deleterious effects to Alberta PowerLine in this instance. Accordingly, the Commission was satisfied that the requirements of the applicable portions of Section 13 of Rule 001, as well as the criteria established by the Supreme Court of Canada had been satisfied.²⁹

83. The Commission attached a form of confidentiality undertaking to its ruling, but subsequently, received a request from counsel for Brion to modify the form of undertaking.³⁰ The Commission denied Brion’s request in a ruling dated March 31, 2016, for the reasons set out in that ruling. The ruling is attached as [Appendix H](#).

²⁷ Exhibit 21030-X0719, AUC Ruling on Beaver Lake Cree Nation Request, March 2, 2016.

²⁸ Exhibit 21030-X0693, Confidentiality Motion APL-AUC-2016, FEB01 Information Request, February 24, 2016.

²⁹ Exhibit 21030-X0734, AUC ruling on confidentiality motion filed by Alberta PowerLine L.P., March 9, 2016.

³⁰ Exhibit 21030-X0869, AUC Ruling on changes to confidentiality undertaking - 2016-03-31.

4.4 Notices of Questions of Constitutional Law

84. The Commission received Notices of Questions of Constitutional Law from the Wabasca Métis Local 90, the Gunn Métis Local 55, the Fort McMurray Métis Local 1935/Fort McKay Métis Community Association, the Métis Nation of Alberta Lakeland Local Council 1909, Beaver Lake Cree Nation and Sucker Creek First Nation (collectively, the Aboriginal parties).

85. Subsequently, on September 6, 2016, Alberta Justice and Solicitor General (Alberta) submitted a letter to the Commission in which it took the position that the Commission does not have jurisdiction to consider the questions raised in the Notices of Questions of Constitutional Law. It requested that the Commission determine, as a preliminary matter, the question of its jurisdiction over the matters raised in the Notices of Questions of Constitutional Law.

86. Also on September 6, 2016, the Commission invited the applicants, the Attorney General of Canada (Canada), and the Aboriginal parties to comment on Alberta's proposal to consider the jurisdictional question as a preliminary matter, by September 9, 2016.

87. On September 9, 2016, the applicants, Alberta PowerLine, ATCO Electric Ltd. and AltaLink Management Ltd. submitted that they supported the process proposed by Alberta.

88. The Wabasca Métis Local 90, Gunn Métis Local 55, the Fort McMurray Métis Local 1935, Beaver Lake Cree Nation and the Sucker Creek First Nation objected to the process proposed by Alberta and submitted that matters concerning the Notices of Questions of Constitutional Law ought to be considered after the close of the evidentiary portion of the hearing in accordance with the process currently set out for Proceeding 21030. No response was received from either Canada or the Métis Nation of Alberta Lakeland Local Council 1909.

89. The Commission issued a ruling indicating that it would determine the question as to whether it has the jurisdiction to consider the matters raised in the Notices of Questions of Constitutional Law as a preliminary matter because it could impact the participation of Alberta and Canada in the proceeding, as well as the parties' evidence and submissions. To ensure a fair and efficient hearing, parties should from the outset of the hearing, be cognizant of the Commission's determination of its jurisdiction over the questions raised in the Notices of Questions of Constitutional Law. Such an approach was aimed at saving hearing time and the resources of all the parties to the proceeding. The ruling is attached as [Appendix I](#).

90. The Commission set a process schedule for the jurisdictional question³¹ and delayed the commencement of the hearing until October 12, 2016 to accommodate this schedule.

91. On October 7, 2016, the Commission issued a ruling determining questions of whether the Notices of Questions of Constitutional Law were adequate, and whether it had jurisdiction over the matters raised in the Notices of Questions of Constitutional Law.

92. For the reasons set out in that ruling, the Commission found that although the notices were adequate it did not have the jurisdiction to consider the issues raised.³² The ruling is attached as [Appendix J](#).

³¹ Exhibit 21030-X1331, AUC Ruling on the process to consider the Notices of Questions of Constitutional Law, September 13, 2016.

4.5 Motion to review

93. On September 15, 2016, the South of 43 Group asked the Commission to review, or alternatively, reconsider a ruling it made on September 7, 2016 with respect to the admissibility of late-filed evidence.

94. For the reasons set out in its September 19, 2016 ruling, the Commission found that the South of 43 Group had not established that extraordinary circumstances exist so as to justify a review or reconsideration of the Commission's decision to deny its request to file new evidence more than six months after the date for the filing of intervenor evidence had passed.³³ If the South of 43 Group wanted the Commission to consider its proposed route, as amended, it ought to have done so in accordance with the process schedule. The ruling is attached as [Appendix K](#).

4.6 Bias

95. In connection with the Notices of Questions of Constitutional Law, the Commission issued a letter on September 22, 2016, stating that it had retained Mr. Keith Bergner of the firm Lawson Lundell LLP to assist Commission counsel with the question of the Commission's jurisdiction.

96. By letter dated September 26, 2016,³⁴ counsel for Beaver Lake Cree Nation and the Sucker Creek First Nation requested that the Commission reconsider its decision to retain Mr. Bergner on the ground that the hiring of Mr. Bergner may give rise to a reasonable apprehension of bias.

97. In their motion, Beaver Lake Cree Nation and the Sucker Creek First Nation set out a number of grounds, including that Mr. Bergner has published at least one article where he "unequivocally draws a conclusion on an issue that is of serious controversy amongst the parties to this proceeding, in the case law and amongst commentators; namely, whether the jurisdiction of the AUC over the NQCLs is determined by the ownership (public or private) of the project proponent," that they submitted leads to a reasonable apprehension of bias.

98. In its September 30, 2016 ruling, the Commission determined that for their allegation of a reasonable apprehension of bias to be successful, Beaver Lake Cree Nation and the Sucker Creek First Nation must establish that a reasonable person would think that the existence of the interactions between Mr. Bergner and Commission counsel would not only influence the sitting panel, but also influence the panel to decide the jurisdiction question unfairly.³⁵ Having examined the factual circumstances, the Commission found a reasonable apprehension of bias case had not been established. The ruling is attached as [Appendix L](#).

99. The Commission also ruled on a second bias motion filed by the Burnco landowners. The Burnco landowners filed intervenor evidence in accordance with the process schedule established by the Commission. The Burnco BAR No. 2 route was proposed in the Burnco landowners' intervenor evidence by their expert, Mr. Robert Berrien. Alberta PowerLine commented on this

³² Exhibit 21030-X1406, AUC ruling on jurisdiction to determine the questions stated in the Notices of Questions of Constitutional Law, October 7, 2016.

³³ Exhibit 21030-X1342, AUC ruling on request from South of 43 landowner group to review a ruling, September 19, 2016.

³⁴ Exhibit 21030-X1369, Motion, September 26, 2016.

³⁵ Exhibit 21030-X1383, AUC ruling on reasonable apprehension of bias motion, September 30, 2016.

evidence for the first time in its reply evidence, which was filed in accordance with the process schedule approved by the Commission. The timeline for the original request was as follows:

7. On September 2, 2016, the Commission received a letter from the Burnco landowners requesting the Commission's leave to file a supplemental report from their expert Mr. Berrien and a supplemental drone video. Counsel for the Burnco landowners explained that Mr. Berrien's report "addresses Alberta PowerLine's concerns". In its September 7, 2016, ruling, the Commission denied that request.³⁶

100. Subsequently, the Commission received a motion requesting that it reconsider its ruling on the grounds that its ruling was unfair and creates a reasonable apprehension of bias.

101. In its October 4, 2016 ruling, the Commission decided that whether the ruling was unfair was a matter of procedural fairness.³⁷ The Commission was not persuaded that it was necessary to direct further process in order to satisfy participatory rights required by the legal authorities.

102. The Commission also found that the Burnco landowners provided insufficient evidence to support the assertion that a reasonable person would perceive the Commission to be biased towards Alberta PowerLine in this proceeding for the reasons set out in that ruling. The ruling is attached as [Appendix M](#).

4.7 Alberta PowerLine's motion to limit intervenor witnesses

103. Alberta PowerLine filed a motion seeking to strike certain pre-filed opening statements from the record and objecting to certain intervenor witnesses. It also expressed concern that, based on the contents of certain pre-filed opening statements, some intervenors may intend to present new oral evidence that is well beyond the matters contained in their documentary evidence.

104. The Commission ruled that it would not limit the nature of the evidence to be brought forward by lay witnesses or persons without standing at that time for the reasons specified therein. The ruling is attached as [Appendix N](#).

4.8 Time extension rulings

105. The Commission received several time extension motions and requests to file further evidence as well as other motions. Where it deemed it necessary the Commission implemented a process schedule to receive parties' comments on the requested time extension. These time extension motions and the Commission's rulings on the time extension motions are available on the Commission's eFiling System.³⁸

³⁶ Exhibit 21030-X1281, AUC ruling on request to file additional evidence, September 7, 2016.

³⁷ Exhibit 21030-X1386, Ruling on request to reconsider prior ruling, October 4, 2016.

³⁸ See for example:

Exhibit 21030-X0690, AUC ruling on the Bigstone Cree Nation's time extension request.

Exhibit 21030-X0731, AUC Ruling on Bigstone Cree Nation's request for a further time extension.

Exhibit 21030-X0808, AUC Ruling on Beaver Lake Cree Nation request - 2016-03-14.

Exhibit 21030-X0823, Ruling on Buffalo Lake Métis Settlement to File Further Information.

Exhibit 21030-X0870, AUC Ruling on time extension - 2016-03-31.

Exhibit 21030-X0878, AUC ruling on time extension request to file evidence.

Exhibit 21030-X0931, AUC ruling on the Mikisew Cree First Nation time extension request to file.

5 Process for transmission projects and legislative framework

106. To properly understand the process for transmission line and substation projects designated as critical transmission infrastructure, it is necessary to review the regulatory process that applies to transmission projects not so designated. Further, the critical transmission infrastructure provisions in the *Electric Utilities Act* and the *Transmission Regulation*, the *Hydro and Electric Energy Act*, and the *Alberta Utilities Commission Act* must be interpreted in the context of the legislative framework for transmission projects as a whole.

5.1 Process for new transmission projects

107. Two approvals from the Commission are required to build new transmission in Alberta, other than for critical transmission infrastructure. The first is an approval of the need for expansion or enhancement to the system pursuant to Section 34 of the *Electric Utilities Act*. The second is a permit to construct and a licence to operate a transmission line pursuant to sections 14 and 15 of the *Hydro and Electric Energy Act*. These approvals are described as a two-stage process.

108. The first stage of the process for each new transmission facility requires the AESO to file an application with the Commission for approval of the need for the transmission line or substation. This application is referred to as a needs application. The AESO, in its capacity as the Independent System Operator (ISO) is responsible for preparing a needs application under Section 34 of the *Electric Utilities Act*, which describes the circumstances under which it must be filed. Section 11 of the *Transmission Regulation* describes the information that the AESO must include in a needs application which includes an assessment of current transmission capacity; load and generation forecasts; studies and analyses that identify the timing and nature of the need for new transmission; and a technical and economic comparison of the technical solutions considered by the AESO to address the need identified. Section 11 also requires a needs application to describe the AESO's preferred option or technical solution to address that need.

109. When the Commission approves a needs application, it approves the need to expand or enhance the transmission system and the AESO's preferred alternative technical solution to meet that need. The approval of a technical solution necessarily includes the approval of that solution's technical capability, its expected cost and its high level land use impacts. The Commission and its predecessor, the Alberta Energy and Utilities Board, have consistently followed this approach when deciding upon needs applications.³⁹ Section 38 of the

Exhibit 21030-X0986, AUC Ruling on Time Extension Request.

Exhibit 21030-X1062, AUC ruling on extension of deadline to file evidence from the Alexis Sioux Nation, the Fort McMurray Métis Local 1935 and the Buffalo Lake Métis Settlement.

Exhibit 21030-X1233, AUC ruling on the South of 43 Landowner Group request for leave to file drone video.

Exhibit 21030-X1281, AUC ruling on request to file additional evidence.

Exhibit 21030-X1335, Ruling on Alberta PowerLine's request to amend its reply evidence.

Exhibit 21030-X1407, AUC ruling on objection to witnesses and amended reply evidence.

³⁹ See EUB Decision 2005-049: Alberta Electric System Operator - Needs Identification Document Application Southwest Alberta 240-kV Transmission System Development Pincher Creek – Lethbridge Area, Application 1340849, May 17, 2005, page 5; AUC Decision 2009-126: Alberta Electric System Operator - Needs Identification Document Application Southern Alberta Transmission System Reinforcement, Application 1600862, Proceeding 171, September 8, 2009, page 1; Decision 2010-188: Alberta Electric System Operator - Needs Identification Document Application Hanna Region Transmission System Development, Application 1605359, Proceeding 278, April 29, 2010, page 3, AUC Decision 2013-369: Alberta Electric System Operator, AltaLink Management Ltd. and ENMAX Power Corporation - Foothills Area Transmission Development,

Transmission Regulation describes the principles and matters that the Commission must consider when deciding upon a needs application. Subsection 38(e) requires the Commission to find the AESO's assessment of the need to be correct unless an interested person satisfies the Commission that the assessment is technically deficient, or that approval of the needs application would not be in the public interest.

110. The second stage of the process relates to facility applications for transmission lines or substations to meet the need identified by the AESO in the needs application, and are prepared by a transmission facility owner assigned by the AESO. When considering an application for a transmission facility, the Commission must consider whether the proposed transmission line is in the public interest having regard to the social and economic effects of the transmission line and the effect of the transmission line on the environment, pursuant to Section 17 of the *Alberta Utilities Commission Act*. The Commission described its public interest mandate as follows, in Decision 2009-028:⁴⁰

When considering an application for a transmission line the Commission is obliged by section 17 of the Alberta Utilities Commission Act to consider whether the proposed project is in the public interest having regard to its social and economic effects and its effect on the environment. The Commission recognizes that there is no universal definition of what comprises the "public interest" and that its meaning cannot be derived from strictly objective measures. The Commission acknowledges that the ultimate determination of whether a particular project is in the "public interest" will largely be dictated by the circumstances of each transmission facility application.

In the Commission's view, assessment of the public interest requires it to balance the benefits associated with upgrades to the transmission system with the associated impacts, having regard to the legislative framework for transmission development in Alberta. This exercise necessarily requires the Commission to weigh impacts that will be experienced on a provincial basis, such as improved system performance, reliability, and access, with specific routing impacts upon those individuals or families that reside or own land along a proposed transmission route as well as other users of the land that may be affected. This approach is consistent with the EUB's historical position that the public interest standard will generally be met by an activity that benefits the segment of the public to which the legislation is aimed, while at the same time minimizing, or mitigating to an acceptable degree, the potential adverse impacts on more discrete parts of the community.

5.2 Process for critical transmission infrastructure projects; legislative provisions

111. Section 1(1)(f.1) of the *Electric Utilities Act* defines critical transmission infrastructure:

"critical transmission infrastructure" means a transmission facility designated under section 41.1 or the Schedule as critical transmission infrastructure.

112. Section 41.2 of the *Electric Utilities Act* eliminates the requirement for a need approval from the Commission for critical transmission infrastructure.

Applications 1608620, 1608642, 1608637, 1608643, 1608649, 1608846, 1608861 and 1608862, Proceeding 2001, October 7, 2013, pages 8 and 9.

⁴⁰ Decision 2009-028: AltaLink Management Ltd. Transmission Line from Pincher Creek to Lethbridge, Application 1521942, Proceeding 19, March 10, 2009, paragraphs 32 and 33.

113. Sections 41.3 and 41.4 of the *Electric Utilities Act* state:

41.3 Subject to the regulations, the Independent System Operator must, in a timely manner, direct a person determined under the regulations to make an application in a timely manner to the Commission under the *Hydro and Electric Energy Act* for an approval of critical transmission infrastructure.

41.4(1) The Independent System Operator, with respect to the critical transmission infrastructure referred to in section 1(1) of the Schedule, shall, subject to the regulations, specify and make available to the public milestones that the Independent System Operator will use to determine the timing of the stages of the expansion of the terminals referred to in section 1(1) (a) and (b) of the Schedule.

(2) The transmission facilities referred to in section 4 of the Schedule shall be developed in stages in accordance with subsection (3).

(3) The facility referred to in section 4(a) of the Schedule shall be developed first, which may initially be energized at 240 kV, and the Independent System Operator shall, subject to the regulations, specify and make available to the public milestones that the Independent System Operator will use to determine the timing of the development of the facilities referred to in section 4(b) and (c) of the Schedule.

114. The Schedule to the *Electric Utilities Act* reads in part as follows:

Each of the critical transmission infrastructure described in this Schedule includes all associated facilities required to interconnect a transmission facility described in this Schedule to the interconnected electric system.

The following transmission facilities are designated as critical transmission infrastructure:

...

4 Two single circuit 500 kV alternating current transmission facilities from the Edmonton region to the Fort McMurray region, generally described as follows:

- (a) a facility from a new substation to be built in the Thickwood Hills area, approximately 25 km west of the Fort McMurray Urban Service Area, to a substation at or in the vicinity of the existing Brintnell 876S substation;
- (b) a facility at or in the vicinity of the existing Brintnell 876S substation, to a substation in the vicinity of the existing Keephills - Genesee generating units;
- (c) a facility, located east of the facilities described in clauses (a) and (b) and geographically separated from those facilities for the purposes of ensuring reliability of the transmission system, from a new substation to be built in the Gibbons - Redwater region to a new substation to be built in the Thickwood Hills area, approximately 25 km west of the Fort McMurray Urban Service Area.

115. The *Hydro and Electric Energy Act* provides direction to the Commission regarding the approval of several types of electric facilities, including transmission lines and substations. The following provisions in this act apply specifically to critical transmission infrastructure:

13.1(1) In this section, “critical transmission infrastructure” means critical transmission infrastructure as defined in the *Electric Utilities Act*.

(2) The construction, connection and operation of a transmission line or part of a transmission line that is designated as critical transmission infrastructure is required to meet the needs of Alberta and is in the public interest.

19(1) On an application for an approval, permit or licence under this Part, or for an amendment of an approval, permit or licence, the Commission may grant the approval, permit, licence or amendment subject to any terms and conditions that it prescribes or may deny the application.

(1.1) Notwithstanding subsection (1), the Commission shall not refuse an approval of a transmission line or part of a transmission line designated as critical transmission infrastructure as defined in the *Electric Utilities Act* on the basis that, in its opinion, it does not meet the needs of Alberta.

116. In its consideration of an application for electric facilities, including transmission lines or substations designated as critical transmission infrastructure, the Commission is directed by Section 17 of the *Alberta Utilities Commission Act* as follows:

17(1) Where the Commission conducts a hearing or other proceeding on an application to construct or operate a hydro development, power plant or transmission line under the *Hydro and Electric Energy Act* or a gas utility pipeline under the *Gas Utilities Act*, it shall, in addition to any other matters it may or must consider in conducting the hearing or other proceeding, give consideration to whether construction or operation of the proposed hydro development, power plant, transmission line or gas utility pipeline is in the public interest, having regard to the social and economic effects of the development, plant, line or pipeline and the effects of the development, plant, line or pipeline on the environment.

(2) The Commission shall not under subsection (1) give consideration to whether critical transmission infrastructure as defined in the *Electric Utilities Act* is required to meet the needs of Alberta.

117. Pursuant to the above-noted provisions on critical transmission projects, the first stage of the process, the determination of whether a new transmission project is required to meet the needs of Albertans and is in the public interest, is made by the legislature.

118. In the second stage of the process, applications for the construction and operations of all new transmission projects, the “facility applications”, the Commission decides whether the approval of a specific transmission project that was designed to meet the need identified in the first stage is consistent with the technical solution identified in the first stage, and is in the public interest having regard to its social, economic and environmental effects. At this stage, the public interest standard will generally be met by a route alternative that benefits the segment of the public to which the legislation is aimed, while at the same time minimizing, or mitigating to an acceptable degree, the potential adverse impacts on more discrete parts of the community.

119. In this instance, under Section 41.3 of the *Electric Utilities Act*, the AESO directed Alberta PowerLine to file applications with the Commission requesting approval to construct and operate the Fort McMurray West 500-kV Transmission Project. The direction was given to Alberta PowerLine because it had been selected by way of the competitive procurement process, discussed below, pursuant to Section 24.2 of the *Transmission Regulation*, which states:

24.2(1) For the purposes of this section, “competitive process” means a fair and open process that allows any qualified person, as determined by the ISO, to submit a proposal in respect of a transmission facility, including a financial bid, as the method to determine the person referred to in subsection (2).

(2) The ISO must develop a competitive process to determine the person who is eligible to apply for the construction and operation of the transmission facilities referred to in section 24(3)(a) and (c).

(3) Before the ISO implements a competitive process developed under subsection (2), the ISO must obtain the Commission’s approval of the competitive process.

(4) Where the Commission approves a competitive process developed under subsection (2), the Commission must consider any resulting arrangements, including any changes requiring the Commission’s approval or determination pursuant to section 24.3(3) or (4), as prudent.

(5) The competitive process developed under subsection (2) must not exclude

- (a) a TFO, whether or not the TFO has undertaken any work or provided any services to the ISO in respect of a proposed transmission facility, or
- (b) any other person that has undertaken any work or provided any services to the ISO in respect of a proposed transmission facility

unless the TFO or other person does not have the necessary qualifications to participate in the competitive process.

(6) Subject to subsection (7), the ISO may request, and a TFO or other person must provide, any records to the ISO that are necessary to develop and implement a competitive process.

(7) If there is a dispute between the ISO and a TFO or other person regarding whether a record is necessary for the purposes of the ISO as referred to in subsection (6), the matter must be determined by the Commission.

(8) A competitive process that is approved by the Commission may be used by the ISO for more than one transmission facility project.

5.3 Competitive procurement process

120. The AESO filed an application on September 15, 2011, requesting approval of a competitive process to determine who is eligible to apply to the Commission for the construction and operation of critical transmission infrastructure pursuant to Section 24.2 of the *Transmission Regulation*. Section 24.2(3) of the *Transmission Regulation* requires the AESO to

obtain the approval of the Commission prior to the AESO implementing any competitive process that it develops. In Decision 2012-059,⁴¹ the Commission found that the application lacked adequate details and could not be approved, but made determinations on the scope and intent of the competitive procurement legislation, and the manner in which those provisions were incorporated into the overall legislative scheme for the development, construction, operation and payment for transmission infrastructure in Alberta.

121. The AESO filed supplemental evidence and the Commission approved the competitive process to determine who is eligible to apply to the Commission for the construction and operation of certain transmission facilities pursuant to Section 24.2 of the *Transmission Regulation*⁴² in Decision 2013-044.⁴³

122. The AESO initiated the competitive process to select the parties eligible to apply for the construction and operation of the Fort McMurray West 500-kV Transmission Project in May 2013.⁴⁴ As denoted in the slides for an information session of June 11, 2013 for the *AESO Competitive Process Fort McMurray West 500-kV Transmission Project Request for Expressions of Interest*, the project to move electricity between the Edmonton and Fort McMurray regions was described as comprising:

- A 500-kV Thickwood Hills substation (approximately 25 kilometres west of Fort McMurray).
- A 100-kilometre 500-kV alternating current single-circuit transmission line from the new 500-kV Thickwood Hills substation to the new 500-kV Livock substation.
- A 500-kV Livock substation (adjacent to the existing 240-kV Livock substation).
- A 400-kilometre 500-kV alternating current single-circuit transmission line from the new Livock 500 kV substation to the existing Sunnybrook substation.⁴⁵

123. This presentation also stated that the project was identified in the AESO's long-term plan and legislated as critical transmission infrastructure.

124. On December 18, 2014, the AESO awarded Alberta PowerLine the contract to design, build, finance, operate, and maintain for a period of 35 years, the Fort McMurray West 500-kV Transmission Project. The project was described as consisting of 500 kilometres of transmission

⁴¹ Decision 2012-059: Alberta Electric System Operator – Competitive Process Pursuant to Section 24.2(2) of the Transmission Regulation Part A: Statutory Interpretation, Application 1607670, Proceeding 1449, February 27, 2012. This decision was put to the AESO as an aid to cross by the CCA, Transcript Volume 10, page 1880.

⁴² Decision 2013-044: Alberta Electric System Operator – Competitive Process Pursuant to Section 24.2(2) of the Transmission Regulation Part B: Final Determination, Application 1607670, Proceeding 1449, February 14, 2013. This decision was put to the AESO as an aid to cross by the CCA, Transcript Volume 10, page 1883.

⁴³ The approval was subject to the conditions set out in the decision and directions of the Commission.

⁴⁴ Exhibit 21030-X1518, Letter from Stikeman Elliott to Wachowich & Company, page 1.

⁴⁵ Exhibit 21030-X1521, CCA Cross Aid to AESO #5, Exhibit 1521, CCA Cross Aid to AESO- REOI Fort McMurray West 500 kV Info, AESO Competitive Process Fort McMurray West 500 kV Transmission Project, Request for Expressions of Interest, Slide Presentation, Information Session of June 11, 2013, PDF page 6. See also Transcript, Volume 10, pages 1909, 1910, 1915, 1929 and 1930.

line and two new 500-kV substations between the Wabamun and Fort McMurray areas with an estimated in-service date of June 2019.⁴⁶ Alberta PowerLine, as the successful bidder of the competitive process, was eligible to apply to construct and operate the project.

125. No party took issue with the fact that the competitive procurement process had been approved by the Commission or with the manner in which the AESO conducted the competitive process.⁴⁷

5.4 Role of the AESO in an application for critical transmission infrastructure

126. Section 38.1 of the *Transmission Regulation* states:

38.1 In addition to its duties under sections 17 and 33(1) of the Act, the ISO must, at the time a TFO or other person makes an application for Commission approval under the *Hydro and Electric Energy Act* in respect of critical transmission infrastructure,

- (a) provide the Commission with transmission substation and line configurations in respect of that critical transmission infrastructure in no less detail than the ISO would provide in a needs identification document if such a document had been required for the critical transmission infrastructure, and
- (b) certify to the Commission as to whether the technical aspects of the application by the TFO or other person meet the requirements set out by the ISO in the transmission system plan in respect of that critical transmission infrastructure.

127. Section 38.1 of the *Transmission Regulation* creates two obligations for the AESO. First, it must file substation and line configurations for the critical transmission infrastructure projects with the Commission. These configurations must provide the same level of detail as configurations for a needs application. Second, the AESO must certify that the technical aspects of the application meet the requirements of the long-term plan.

128. In the Commission's view, the role of the AESO in a critical transmission facility application is very similar to its role in any hearing for transmission facilities under the *Hydro and Electric Energy Act*; to essentially confirm, for the Commission, that the facility application can perform its intended function. In that respect, Section 15.1 of the *Hydro and Electric Energy Act* is worded similarly to Subsection 38.1(b). That section applies to transmission facilities that are not designated critical transmission infrastructure and provides certification that the technical aspects of the facility application meet the requirements set out in the needs identification document. These views are in keeping with those expressed in previous critical transmission infrastructure decisions.⁴⁸

129. As noted earlier, the need for critical transmission infrastructure has been approved and the technical solution to meet that need is described in the Schedule of the *Electric Utilities Act*. The descriptions of the critical transmission infrastructure projects are broad and general in

⁴⁶ Exhibit 21030-X0002, Attach 01- Application Text-Final, PDF page 11, and Exhibit 21030-X1519, CCA Aid 2 to AESO - AESO Awards Alberta PowerLine with Fort M.

⁴⁷ The CCA who raised the issue as to whether the AESO complied with Section 41.4 of the *Electric Utilities Act*, stated it accepted that the competitive procurement process had been approved, at Transcript Volume 10 at page 1901.

⁴⁸ Heartland Decision 2011-436, Western Alberta Transmission Line Project Decision 2012-327, Eastern Alberta Transmission Line Project Decision 2012-303.

nature. The Schedule⁴⁹ for the Fort McMurray West 500-kV Transmission Project describes a single-circuit 500-kV transmission line from the Edmonton region to the Fort McMurray region and generally as a facility from a new substation to be built in the Thickwood Hills area, approximately 25 kilometres west of the Fort McMurray Urban Service Area, to a substation at or in the vicinity of the existing Brintnell 876S Substation; and a facility at or in the vicinity of the existing Brintnell 876S Substation, to a substation in the vicinity of the existing Keephills - Genesee generating units. The AESO certified that the route options described in the applications can perform their intended function.⁵⁰

130. The Commission finds that the AESO's participation in a critical transmission infrastructure project should generally be focused on providing the information required in Section 38.1 of the *Transmission Regulation*, and answering questions that are directly-related to that evidence. However, the AESO's compliance with Section 41.4 of the *Electric Utilities Act* was specifically raised as an issue in this proceeding. Consequently, the Commission considers that the AESO had to address it, for the reasons discussed below.

5.5 Compliance of the project with Section 41.4 of the Electric Utilities Act

131. Applications were filed seeking permits and licences to construct and operate the project under the *Hydro and Electric Energy Act*. The applications indicated that the project was designated as critical transmission infrastructure pursuant to Section 4 of the Schedule to the *Electric Utilities Act*. The CCA contended that the project did not meet the provisions of the *Electric Utilities Act*. In this section, the Commission sets out the applicable provisions of the *Electric Utilities Act* and the *Transmission Regulation* (for ease of reference) the views of the parties, and its findings.

5.5.1 Critical transmission infrastructure provisions

132. Section 41.4 of the *Electric Utilities Act* states:

41.4(1) The Independent System Operator, with respect to the critical transmission infrastructure referred to in section 1(1) of the Schedule, shall, subject to the regulations, specify and make available to the public milestones that the Independent System Operator will use to determine the timing of the stages of the expansion of the terminals referred to in section 1(1) (a) and (b) of the Schedule.

(2) The transmission facilities referred to in section 4 of the Schedule shall be developed in stages in accordance with subsection (3).

(3) The facility referred to in section 4(a) of the Schedule shall be developed first, which may initially be energized at 240 kV, and the Independent System Operator shall, subject to the regulations, specify and make available to the public milestones that the Independent System Operator will use to determine the timing of the development of the facilities referred to in section 4(b) and (c) of the Schedule.

⁴⁹ See Schedule to the *Electric Utilities Act*.

⁵⁰ Exhibit 21030-X1091, Appendix B-Section 38.1 Filing-ISO Certifica 1177 and Exhibit 21030-X1090, Appendix A – Section 38.1 Filing-Area SLDs 1176.

133. The Schedule of the *Electric Utilities Act* as it relates to the project states:

Each of the critical transmission infrastructure described in this Schedule includes all associated facilities required to interconnect a transmission facility described in this Schedule to the interconnected electric system.

The following transmission facilities are designated as critical transmission infrastructure:

...

4 Two single-circuit 500 kV alternating current transmission facilities from the Edmonton region to the Fort McMurray region, generally described as follows:

- (a) a facility from a new substation to be built in the Thickwood Hills area, approximately 25 km west of the Fort McMurray Urban Service Area, to a substation at or in the vicinity of the existing Brintnell 876S substation;
- (b) a facility at or in the vicinity of the existing Brintnell 876S substation, to a substation in the vicinity of the existing Keephills - Genesee generating units;
- (c) a facility, located east of the facilities described in clauses (a) and (b) and geographically separated from those facilities for the purposes of ensuring reliability of the transmission system, from a new substation to be built in the Gibbons - Redwater region to a new substation to be built in the Thickwood Hills area, approximately 25 km west of the Fort McMurray Urban Service Area.

134. The following provisions of the *Transmission Regulation* apply to consultations with market participants on critical transmission infrastructure milestones:

4.1(1) The ISO must consult on the development of milestones with those market participants that the ISO considers are likely to be directly affected by the milestones related to critical transmission infrastructure, referred to in section 41.4 of the Act that the ISO will use to determine the timing of

- (a) the expansion of the terminals referred to in section 1(1) (a) and (b) of the Schedule to the Act, and
- (b) the development of the transmission facilities referred to in section 4(b) and (c) of the Schedule to the Act.

(2) After the ISO completes the consultation under subsection (1), the ISO must specify and make available to the public the milestones that apply to the critical transmission infrastructure referred to in subsection (1).

5.5.2 Views of the CCA

135. The CCA submitted that the project did not meet the applicable provisions set out in Section 41.4 of the *Electric Utilities Act*, the Schedule to the act and the

*Transmission Regulation.*⁵¹ The CCA put forward a three-pronged argument in support of its submission.

136. First, the CCA argued that sections 4(a) and 4(b) of the Schedule to the *Electric Utilities Act* describe separate facilities. The facility described in Section 4(a) is from a new substation in the Thickwood Hills area to a substation at or near the vicinity of the existing Brintnell 876S Substation. The CCA took no issue with the project commencing at the Thickwood Hills substation, to be located approximately 25 kilometres west of Fort McMurray. However, in the CCA's view, the end point of the project was not in compliance with Section 4(a) because it would end at the Livock 939S Substation, which is not in the vicinity of the Brintnell 876S Substation. The Livock 939S Substation is 38 kilometres away from the Brintnell 876S Substation. For this same reason, the CCA argued the project did not comply with Section 4(b), as the north end of the project is the Livock 939S Substation. The CCA argued that the language in sections 4(a) and 4(b) is prescriptive, and where the legislator intended a broader area to be considered for locating the south end of the project, it stated "in the vicinity of the existing Keephills-Genesee generating units".

137. Further, the CCA argued that Section 4(a) of the Schedule refers to the Brintnell 876S Substation because this substation has two 240-kV lines; one that runs to the south and one that runs to the west. In addition, the Brintnell to Wesley Creek line is also part of this substation and connects to the northwest.⁵² It stated that connecting the transmission line proposed in Section 4(a) to this substation and energizing it at 240-kV would result in four 240-kV lines out of Fort McMurray and, along with the voltage support of the proposed Thickwood Hills 951S Substation, would significantly increase transfer capability in and out of Fort McMurray. The CCA also contended that, if the AESO had this option, the AESO would have been able to defer for a period of time the facilities referred to in sections 4(b) and 4(c) of the Schedule until they are required. The CCA acknowledged that the facility referred to in Section 4(c) had been deferred by the AESO until the AESO carries out further analysis.⁵³ The CCA argued that the Brintnell 876S Substation had to be the end point for the facility referred to in Section 4(a) and the starting point for the facility referred to in Section 4(b) for the following reason:

When the AESO selected the Livock substation rather than the Brintnell substation as the southern point for Section 4(a), this made 4(b) completely necessary whereas constructing the line as required by the EUA Brintnell would retain the mandatory staging of Section 4(b), likely to a time when load and generation growth in Fort McMurray area would require the addition of Section 4(b).⁵⁴

138. The CCA added that building to the Livock 939S Substation would not add significant additional capacity out of the Fort McMurray area. It submitted that the project could be made compliant with Section 4(a) of the Schedule if:

[t]he line from Livock would simply continue past the Livock substation. If the west route is chosen and to make Section 4(a) compliant with the EUA, the line could be built at 500 kV but energized at 240 kV to where the west route turns in the westerly direction at the reference point being W389. This passes to the north of Brintnell substation. It

⁵¹ Exhibit 21030-X1177, Ft McM West 500kV - CCA Submission, PDF pages 4 to 8.

⁵² Exhibit 21030-X1177, Ft McM West 500kV - CCA Submission, Figure 1, PDF page 6.

⁵³ Transcript, Volume 20, pages 4370 to 4371.

⁵⁴ Transcript, Volume 20, page 4333 lines 10 to 17.

would run north of Brintnell substation about 6 kilometres and is, therefore, in our submission, in the vicinity of Brintnell. It would then go on to intersect with the 240-kV line from the northwest at position W361. We submit this is more fully in compliance with Section 4(a) of the EUA CTI [critical transmission infrastructure] legislation.⁵⁵

139. The CCA stated that a new section of line would have to be constructed, likely under direct assignment, to connect the proposed line to the another transmission line or to a substation near the Brintnell 876S Substation. The CCA submitted proposals on the manner in which a compliant line could be constructed if the east route were chosen.

140. In addition to a plain reading of the legislative provisions in question, the CCA argued that its interpretation of these provisions was based on the views of its witness, Mr. Cline, who had been the manager of transmission system planning with the AESO at the time the legislation was drafted. Mr. Cline had “specific input into the wording included in the EUA that stipulated the requirement for multiple line sections or stages of the Fort McMurray Project”.⁵⁶ It argued that significant weight should be given to Mr. Cline’s testimony because it is the “best evidence on the record as to the intent of the legislative (*sic*) intent (*sic*) and particularly why Brintnell was named and not Livock”.⁵⁷

141. Second, the CCA submitted that pursuant to Section 41.4(3), the facility described in Section 4(a) of the Schedule “shall be developed first” before those referred to in sections 4(b) and 4(c). In support of its argument, the CCA pointed to the words used in Section 41.4(3) that the AESO “shall, subject to the regulations, specify and make available to the public milestones” that the AESO will use to determine the timing of the development of facilities referred to in sections 4 (b) and 4(c) of the Schedule. It added that the intent of the legislation is for the Fort McMurray 500-kV transmission development to be constructed in stages. The CCA argued that, under the legislation, to advance the development of a facility at or in the vicinity of the existing Brintnell 876S substation, to a substation in the vicinity of the existing Keephills-Genesee generating units described in Section 4(b) of the Schedule, the AESO had to specify and publish milestones to be used to determine the timing of the construction of this transmission line. The CCA contended that the AESO had not satisfied the requirements of Section 41.4(3) of the *Electric Utilities Act* in that the AESO did not specify and make available to the public milestones that the AESO would use to determine the timing of the development of facilities in the Fort McMurray project; that is, to determine the timing of sections 4(b) and 4(c) of the Schedule. It argued that milestones should not be interpreted to mean the in-service date set out in the long-term plan, as argued by the AESO.⁵⁸ The CCA submitted that the AESO should be required to produce milestones, to demonstrate how those milestones were developed, and how they would be fulfilled.

142. The CCA indicated that it was unaware of any publication by the AESO of specific milestones or of the sequence of construction for each of the stages of the Fort McMurray 500-kV development, and that the AESO refused to provide staging information.⁵⁹ Instead, the AESO “backcast” its activities and is stating that it met the legislative requirement for consultation by presenting its long-term plan to certain parties. The CCA argued that the

⁵⁵ Transcript, Volume 20, page 4334, lines 10 to 22 and page 4380.

⁵⁶ Transcript, Volume 20, page 4337, lines 1 to 5.

⁵⁷ Transcript, Volume 20, page 4338, lines 3 to 5.

⁵⁸ Transcript, Volume 20, page 4365, lines 6 to 9.

⁵⁹ Transcript, Volume 20, pages 4364 and 4365.

presentations on the long-term plan were made subsequent to the definition of the project used for the competitive process, and that these presentations did not solicit input on staging or staging information. The CCA also submitted that an example of appropriate staging information is found in the Southern Alberta Transmission Reinforcement project, Exhibit 21030-X1190.

143. Third, the CCA referred to Section 4.1(1) of the *Transmission Regulation* which states that the “ISO must consult on the development of milestones with those market participants that the ISO considers are likely to be directly affected by the milestones related to critical transmission infrastructure” and argued that pursuant to it, the AESO should have consulted ratepayers about the establishment of specific milestones, the sequence of construction, and the process by which the AESO would monitor and determine whether the milestones were met for each of the stages of the Fort McMurray 500-kV development, because ratepayers would bear the costs of the project. The CCA contended that the AESO’s witness agreed that ratepayers, who the CCA represents, are directly affected by the project.⁶⁰

144. Although the CCA agreed that the AESO had discretion on the form and approach taken to complete the consultation⁶¹ it argued that this discretion was not so broad as to allow the AESO to set aside its public interest mandate or dismiss the legislative requirements to consult with parties on the required staging. The CCA submitted that the AESO’s consultation with parties directly affected by this project was inadequate because the AESO failed to apply its own consultation principles. For example, the AESO did not provide the CCA with an opportunity to comment on the AESO’s milestones and its decisions on staging. Due to the lack of consultation, the CCA was not adequately informed about the AESO’s direction, plans, and decisions on milestones. It added that although the CCA is a member of the transmission facility cost monitoring committee, the information provided to this committee did not constitute adequate consultation. The CCA added that it was not aware of any credible evidence that the AESO reasonably consulted with any other ratepayer groups, in compliance with the legislative requirements.

145. Based on the above, the CCA submitted that the project does not comply with Section 41.4 and sections 4(a) and 4(b) of the Schedule of the *Electric Utilities Act*. Therefore, it cannot be approved by the Commission. In the CCA’s view, applications 21030-A001, 21030-A007 and 21030-A008 should not be approved by the Commission until such time as the AESO has demonstrated that it has fully complied with the requirements of Section 41.4(3) of the *Electric Utilities Act*. It submitted that there was a staging option contemplated in the act that could be exercised by the AESO, in conjunction with Alberta PowerLine, to defer a significant portion of the Fort McMurray West 500-kV Transmission Project, while providing almost the same capacity and potentially obtaining operational benefits until the later stages of the project are required. The CCA took issue with the timing of the facility referred to in Section 4(b).⁶² Further, it submitted that under Section 19 of the *Hydro and Electric Energy Act*, the Commission has the authority to direct the AESO and Alberta PowerLine to file an application that is compliant with the *Electric Utilities Act*. It also argued that the Commission has the authority to approve in-service dates.

⁶⁰ Transcript, Volume 20, pages 4355 to 4356.

⁶¹ Transcript, Volume 20, page 4357, lines 12 to 15.

⁶² Transcript, Volume 20, page 4376, lines 19 to 22.

5.5.3 Views of the AESO

146. The AESO addressed the issue, brought forward by the CCA, of whether it had complied with the applicable critical transmission infrastructure provisions of the *Electric Utilities Act*. The AESO stated that the Livock to Thickwood Hills segment of the Fort McMurray West 500-kV Transmission Project is described in Section 4(a) of the Schedule to the *Electric Utilities Act* and the Sunnybrook to Livock segment is described in Section 4(b) of the Schedule. Section 4(c) describes what is referred to as “the Fort McMurray east project”.

147. The AESO disagreed with the CCA’s argument that the segment described in Section 4(a) of the Schedule had to be developed first and separate from the segment described in Section 4(b) of the Schedule. It argued that, while Section 41.4(3) of the *Electric Utilities Act* states that the Thickwood Hills to Livock segment is to be developed first, nothing in this section states that all of the facilities, Thickwood Hills to Livock and Livock to Sunnybrook, cannot be developed at the same time; or that the Sunnybrook to Livock segment must be developed subsequent to the development of the Livock to Thickwood Hills segment.⁶³ The AESO added that its decision to develop the two segments concurrently was within its purview, based on its responsibility to forecast the needs of Alberta and develop plans for the transmission system to provide efficient, reliable, and non-discriminatory system access service and to schedule the implementation of required transmission system expansions and enhancements.

148. The AESO contended that it had fulfilled its consultative obligations set out in Section 4.1 of the *Transmission Regulation*, and that it had specified and made milestones available to the public. In support of its argument, it referred to its letter of April 29, 2016 in which the AESO informed the Commission that it had responded to Mr. Keith Wilson, counsel for Burnco Rock Products Ltd. and Tricycle Lane Ranches Ltd., with respect to milestones and consultation, and wherein it stated:

1. The AESO has satisfied its obligation under section 41.4(3) of the EUA to “specify and make available to the public milestones that the [AESO] will use to determine the timing of the development” of the Project, described in section 4(b) of the Schedule to the EUA.
2. The AESO has satisfied its obligation under section 4.1(1)(b) of the Regulation to consult with market participants that the AESO considers are likely to be directly affected by milestones related to the Project.⁶⁴

149. The AESO added in its letter to the Commission that, in its view, Mr. Wilson’s request did not address matters relevant to the Commission’s consideration and determination of the project application. However, the AESO relied on its response to Mr. Wilson on the milestone used to determine the timing for development of the project and consultation, in which it stated:

...

The AESO fulfilled its obligation under section 41.4(3) for the Project on December 18, 2014, when the AESO posted a Media Release on its website to announce that APL had been awarded the contract for the Project. At that time, the AESO

⁶³ Transcript Volume 10, pages 1909 and 1910 and Volume 18, page 3857, lines 17 to 25.

⁶⁴ Exhibit 21030-X1073, LT AUC Request for AESO Milestone Document 2016-04-29, pages 1 and 2.

confirmed that the target in-service date (“ISD”) for the Project is 2019. The milestone inherent in the target ISD posted with this Media Release is the timeline for when development would need to commence in order to achieve the target ISD, which is based on the AESO’s assessment of when the Project is required.

2. Consultation with market participants likely to be directly affected by the Project milestone

Section 4.1(1)(b) of the *Transmission Regulation* (“TReg”) requires the AESO to consult with market participants that the AESO considers are likely to be directly affected by milestones related to the Project.

The AESO fulfilled its obligation under section 4.1(1)(b) of the TReg through consultation that the AESO undertook, over a multi-year period, for both its long-term transmission system plan, and the competitive process that the AESO was required to develop and carry out for the Project:

- On June 19, 2012, the AESO posted its 2012 Long-term Transmission Plan (“2012 LTP”) to the AESO’s website, following consultation with market participants that were likely to be directly affected. The 2012 LTP identified that the Project needed to be in service in 2017 and assumed it could be delivered in that year, and therefore indicated a target ISD of 2017.
- As part of its consultation for the competitive process, the AESO prepared and posted a May 9, 2013 Project Information Brief⁶⁴ in which the AESO identified a revised target ISD of 2019. The change in target ISD from 2017 to 2019 reflected the additional time required to complete the competitive process. In the AESO’s Timing Considerations slide that was presented with the AESO’s June 2013 Bidder Information Session Presentation for the competitive process, the AESO presented a timeline of Project events, including a target ISD of 2019 Q2.
- The AESO’s Progress Report for the 2012 LTP was posted on the AESO website on July 11, 2013 and identified 2019 as the anticipated ISD for the Project.
- On April 17, 2014, the AESO posted its Northeast Regional Plan⁹ (“NERP”) on the AESO’s website. The NERP identified an anticipated ISD for the Project of 2019, based on when the Project is required to resolve system issues in the area, which was identified as 2019-2020.
- Throughout the competitive process for the Project, the AESO continued to consult on the target ISD, culminating in the above-described milestone for the Project. [footnotes omitted]⁶⁵

150. The AESO submitted that the project referenced in the 2012 long-term plan with an in-service date of 2017 was the project described in Section 4(a) of the Schedule.⁶⁶ The AESO further stated that, as part of its consultation for the competitive process, it prepared and posted a May 9, 2013 project information brief in which it identified a revised target in-service date of 2019. This change in target in-service date from 2017 to 2019 was due to the additional time required to complete the competitive process. In the AESO’s 2013 bidder information session

⁶⁵ Exhibit 21030-X1189, 201-04-29- responses to K. Wilson (1), pages 1 and 2.

⁶⁶ Transcript, Volume 18, page 3862, lines 15 to 17.

presentation for the competitive process, it presented a timeline of project events including a target in-service date of the second quarter of 2019. At this session, the Fort McMurray West 500-kV Transmission Project was described as follows:

- 500-kV Thickwood Hills substation (approximately 25 kilometres west of Fort McMurray).
- A 100-kilometre, 500-kV alternating current single-circuit transmission line from the new 500-kV Thickwood Hills substation to the new 500 kV Livock substation.
- A 500-kV Livock substation.
- A 400-kilometre 500-kV alternating current single-circuit transmission line from the new Livock 500-kV substation to the existing Sunnybrook substation.⁶⁷

151. The AESO added that it had been consistent in its position that the milestone was inherent in the identified target in-service date, which takes into account the time required for the facility application approval and the time required for construction. The identified target is the timeline, based on the AESO's assessment of when the project is required. It pointed to the minutes of the transmission facilities cost monitoring committee which stated that "milestones for the Fort McMurray east line are expected to coincide with the in-service-date resulting from its 2014 Long-Term Plan studies."⁶⁸

152. The AESO also contended that based on Section 2(2) of the *Transmission Regulation*, it has broad discretion in the conduct of its consultations and to determine the market participants with whom it consults. It added that there was no legal requirement for it to file evidence on critical transmission infrastructure consultation in a critical transmission infrastructure facility application filed with the Commission.⁶⁹

153. In response to the CCA's argument that the Commission cannot approve the project because the AESO has not met its consultation obligation and has not set milestones, the AESO argued that matters related to the milestones referred to in Section 41.4(3) of the *Electric Utilities Act*, and to the consultation referred to in Section 4.1(1)(b) of the *Transmission Regulation* are not relevant to the Commission's decision on the Fort McMurray 500-kV west project or to the proceeding.⁷⁰

154. With respect to Mr. Cline's testimony on being involved in the development of the long-term bulk transmission system plans for the northeast, which included the development of a 500-kV loop for Fort McMurray, the AESO said that Mr. Cline had not worked at the AESO for six years and a lot had changed in the intervening time.

155. The AESO pointed to Mr. Jerry Mossing's testimony that the AESO's 2012 long-term plan indicated that development of the Livock to Thickwood Hills segment would proceed with a 2017 in-service date, and that the development of the Sunnybrook to Livock segment would proceed at a later time. Mr. Mossing stated that the decision to terminate the facilities described

⁶⁷ Exhibit 21030-X1521, CCA Cross Aid 5 to AESO-AESOREOI(002), slide 5.

⁶⁸ Exhibit 21030-X1520, Transmission Facility's Cost Monitoring Committee from January 16, 2015, page 4.

⁶⁹ Transcript, Volume 18, page 3871, lines 6 to 8.

⁷⁰ Transcript, Volume 18, page 3872, lines 3 to 9.

in Section 4(a) of the Schedule at Livock was made during the development of the 2012 long-term plan.⁷¹ He testified that Livock was chosen as the termination point because the Livock 939S Substation has the capacity to accept a 500-kV to 240-kV transformer to connect into the 240-kV network to serve load or generation growth in the Livock area which, aside from being separate from Brintnell, is closer to where the load was expected to develop at that time.⁷² Mr. Mossing testified on the reason for proceeding with the project as a single stage:

So, again, I go back to what I said earlier about in that 2012 time frame, between 2012, 2013, the decision to create essentially a single stage, Thickwood to Livock, Livock to Sunnybrook, was made, and formed part of I'd say generally accepted discussion in the industries -- in the industry, excuse me -- to the -- to the extent that the forecasts at the time put an urgency on getting all of the facilities in service as soon as possible accepting that the competitive process application, approval, subsequent facilities application all would have taken time that -- construction of the project all lead to an earliest in-service date of 2019.⁷³

156. Mr. Mossing further testified that “the development of the competitive process, the planning conditions at the time for the in-service date all pointed to a project that was not in the best interests of load customers and market participants, in general in a staged manner, but to proceed as a single stage.”⁷⁴ He added that at the time the competitive process was launched, which was mid-2013, and up to when the project development agreement was entered into with Alberta PowerLine in December 2014, the AESO’s forecast supported the 2019 in-service date. He referred to the constraints on the system at the time the decision was made to proceed with a single project for segments 4(a) and (b), and emphasised that those constraints continue to exist.⁷⁵

157. In conclusion, the AESO submitted that the Commission should reject the positions advanced by the CCA because these positions are flawed and lack merit.

5.5.4 Views of Alberta PowerLine

158. Alberta PowerLine contended that the arguments advanced by the CCA on the interpretation of Section 41.4(3) of the *Electric Utilities Act* and Section 4 of the Schedule to the act relate to the need for the facilities, which is not before the Commission and must be disregarded. It argued that the specific language of Section 41.4(3) did not mandate the staging of construction for the facilities set out in Section 4 of the Schedule.⁷⁶

159. Alberta PowerLine also pointed to the specific wording of Section 41.4(3), which states that the facility referred to in Section 4(a) of the Schedule “shall be developed first”. It submitted that this should be interpreted to mean the facilities referred to in sections 4(b) and 4(c) could not be developed before the facility referred to in Section 4(a) and not that the facilities referred to in sections 4(a) and 4(b) could not be developed concurrently. Alberta PowerLine added that the AESO is given discretion to determine when the facilities referenced in sections 4(b) or 4(c) to the Schedule should be developed. Alberta PowerLine cited the following passage of the CCA’s

⁷¹ Transcript, Volume 10, page 1929, lines 7 to 15.

⁷² Transcript Volume 10, page 1945, lines 15 to 22.

⁷³ Transcript Volume 10, page 1929, lines 16 to 25 and page 1930, lines 1 to 3.

⁷⁴ Transcript Volume 10, page 1915, lines 11 to 15.

⁷⁵ Transcript, Volume 10, pages 1909, 1910, 1946, 1949, 1950, 1978, 1979, 1981, 1995, 1996, 2000 and 2007.

⁷⁶ Transcript, Volume 18, page 3366, lines 9 to 18.

argument in which the CCA seemed to recognize that the facility reference in Section 4(b) could be developed at the same time as the facility in Section 4(a):

And as the economy in Alberta continued to deteriorate and the CCA observed that the AESO did not alter its planed in-service date for this project to accommodate that deterioration of the economy, the CCA felt it had little or no choice but to intervene in this process and communicate its concerns to the Commission.

And this is the important point: (as read)

Simply put, had 100-a-barrel oil continued all throughout this time, and had the Fort McMurray region continued to expand at a rapid pace, then parts of this project, as proposed, may have been entirely necessary to be constructed.

The bottom line is that if the Commission approves the project to proceed as proposed but not as set out in the legislation, customers will be paying for a significant portion of the project that provides either zero or very little benefit.

The continued approval of more and more projects that are premature will continue to erode any remaining competitive advantage Alberta ratepayers have received in the past.

This is not in the public interest. Again, the CCA reiterates this position is not a challenge of the need but of the timing of when Section 4 (b), in particular, is required, which is entirely consistent with the concept of staging as is established in the critical transmission infrastructure portion of the legislation.⁷⁷

160. Alberta Powerline further argued that the CCA's argument is inconsistent because the CCA appears to be saying that if there was \$100 oil, the AESO would have been compliant with the *Electric Utilities Act* in directing the facilities in Section 4(b) to proceed on the present timing; but, in the absence of \$100 oil, the facilities in Section 4(b) should not proceed. It contended that this argument has nothing to do with compliance with the act and everything to do with need and system planning by the AESO. Alberta PowerLine added that the CCA's arguments about timing are either directed at the AESO's determination of the in-service date for the Section 4(b) facilities or go to the need for the 4(b) facilities; neither of which is within the jurisdiction of the Commission.

161. It also contended that the CCA's argument on Section 4(a) of the Schedule ignored the words "at or in the vicinity of" in that section; and that the word "vicinity" is not a precise term but defined as "quality or state of being near or a surrounding area or district"⁷⁸ Alberta PowerLine added that the wording "at or in the vicinity of" afforded the AESO the flexibility to determine that the terminus of the transmission line from Thickwood Hills could be a location other than Brintnell 876 S Substation. However, such a location had to be in the surrounding area or district of the Brintnell 876S Substation. It argued that the Livock 939S Substation is in the vicinity of Brintnell 876S Substation, because it is 38 kilometres away from Brintnell 876S Substation and that the AESO testified to this effect. Alberta PowerLine submitted that the CCA's interpretation that the terminus of the facility described in Section 4(a) must be Brintnell 876S Substation renders the words "in the vicinity of" meaningless.

⁷⁷ Transcript, Volume 21, page 4493, lines 5 to 22 which reference the CCA argument at Transcript Volume 20, pages 4352 to 4353.

⁷⁸ Transcript, Volume 21, page 4491, lines 7 to 10.

162. With respect to whether the AESO had met the additional requirements set out in Section 41.4(3) to make milestones available to the public for consultation, Alberta PowerLine argued:

In this regard, it is instructive to note that the EUA does not prescribe how the AESO is to meet these additional requirements or specify any particular form that must be followed in carrying out these steps.

To the contrary, the AESO is given full discretion to decide how it will appropriately, quote, "specify and make available to the public milestones that the Independent System Operator will use to determine the timing of the development of the facilities referred to in Section 4(b) and (c) of the schedule."

This view is further reenforced (sic) by Section 4.1(1) of the transmission regulation which specifically addresses this consultation and expressly leaves it up to the AESO to determine which market participants it considers are likely to be directly affected.⁷⁹

163. In support of its argument, Alberta PowerLine referred to the AESO's response to Mr. Wilson on April 29, 2016, and said that this letter showed that the AESO understood the requirements of Section 41.4(3) of the *Electric Utilities Act* and chose to fulfill them through a variety of measures. Alberta PowerLine argued that it was not appropriate for the CCA to second guess the form and approach employed by the AESO to complete its consultation. Alberta PowerLine also submitted that Section 11(4) of the *Transmission Regulation* does not apply, as argued by the CCA, because this section pertains to the preparation and filing of a needs identification document by the AESO under Section 34 of the *Electric Utilities Act*, and is not applicable to critical transmission infrastructure projects.

164. Alberta PowerLine further submitted that the facility application stage is not the appropriate forum for the CCA to pursue its arguments on the interpretation of the legislation or to question the system planning decisions of the AESO. It added that the relief sought by the CCA that "the AESO be directed to comply with the EUA" appears to have "nothing to do with Alberta PowerLine and is not directed at Alberta PowerLine."⁸⁰

165. Alberta PowerLine also contended that there are no provisions in the *Electric Utilities Act* or the *Alberta Utilities Commission Act* that "would suggest that the Commission has supervisory jurisdiction over the AESO in a facilities application such as this."⁸¹ It argued that there are provisions in the *Electric Utilities Act* under which the Commission may consider the conduct of the AESO, such as sections 25 and 26; however, Proceeding 21030 is not a proceeding which engages these sections.

166. Alberta PowerLine concluded that the CCA's positions should be rejected because they are not supported by the legislation. Moreover, the CCA is using the Alberta PowerLine facility applications to second guess the AESO's decisions in the exercise of its discretion.

⁷⁹ Transcript, Volume 18, pages 3366 and 3367.

⁸⁰ Transcript, Volume 21, page 4489, lines 17 to 20.

⁸¹ Transcript, Volume 21, page 4490, lines 2 to 7.

5.5.5 Commission findings

167. The Commission must determine whether the applications meet the legislative requirements, including those set out in Section 41.4(3) of the *Electric Utilities Act* and sections 4(a) and 4(b) of the Schedule to the act.

168. Decision 2011-436⁸² provides guidance on the manner in which the critical transmission infrastructure provisions should be interpreted. In that decision the Commission states:

209. In the Commission's view, two principles are important when interpreting Section 2 of the schedule. The first principle is that which was relied upon by all of the motion participants: Driedger's modern principle of statutory interpretation. That principle was adopted and approved by the Supreme Court of Canada, which described it as follows in *Bell Express Vu Limited Partnership v. Rex*:

Today there is only one principle or approach, namely, the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament.

210. A second principle of statutory interpretation at play in this motion is that when two or more statutes are enacted by a legislature on the same subject, they are presumed to operate together to create a single statutory scheme. Looking at other provisions of the statutory scheme ensures "harmony, coherence and consistency between statutes dealing with the same subject matter." In such cases, the provisions of each statute must be read in the context of the other, and consideration must be given to their role in the overall scheme.

...

212. When read in its grammatical and ordinary sense, it is the Commission's view that Section 2 should be interpreted as describing the 500-kilovolt system that the Heartland project must connect to, and not as a direction as to the specific location where the interconnection must take place. However, the Commission recognizes that Driedger's modern principle also requires it to give consideration to the role that Section 2 plays in the larger statutory scheme for the approval of critical transmission infrastructure projects.

213. The schedule to the *Electric Utilities Act* describes four critical transmission infrastructure projects. The Heartland project is unique among those projects, as one interconnection point for the project is to a system rather than to a terminal or a substation. All other transmission lines described in the schedule terminate at a terminal or a substation. In the Commission's view, the choice of the word "system" in Section 2 was intended to provide the eventual applicant with sufficient flexibility to interconnect at any reasonable point along the system. This flexibility would be consistent with the two Heartland alternatives described by the Alberta Electric System Operator in its 2009 long-term transmission system plan and relied upon by the legislature when designating the critical transmission infrastructure projects. Further, such flexibility is consistent with the uncontroverted evidence of the Alberta Electric System Operator and the applicants that the location of the interconnection was irrelevant from an electrical perspective.

⁸² Decision 2011-436, Heartland Transmission Project, AltaLink Management Ltd. and EPCOR Distribution & Transmission Inc., Application 1606609, Proceeding 457, November 1, 2011.

214. The legislature's decision to include the schedule in the *Electric Utilities Act* also suggests that Section 2 does not require that interconnection to the 500-kilovolt system must occur within the municipal boundaries of Edmonton. The *Electric Utilities Act* addresses the issue of need for new transmission, either by way of application for projects that are not critical transmission infrastructure, or by designation of a project as critical transmission infrastructure. Both need approvals and critical transmission infrastructure designations prescribe technical solution to meet the need for new transmission facilities, but do not, and cannot, prescribe the routing or siting of such facilities. That function of the approval process is conducted by the Commission under the *Hydro and Electric Energy Act*, with reference to Section 17 of the *Alberta Utilities Commission Act*.

215. A consistent and overriding theme in the debates on Bill 50 was that decisions on the routing and siting of critical transmission infrastructure projects would be reserved for the Commission. In the Commission's view, the inclusion of the schedule in the *Electric Utilities Act*, rather than in the *Hydro and Electric Energy Act*, supports the notion that Section 2 was intentionally drafted broadly, to allow interconnection to the 500-kilovolt system at a location that made the most sense from a routing perspective.
[footnotes omitted]

169. The above-noted principles apply to the interpretation of Section 41.4(3) of the *Electric Utilities Act* and Section 4 of the Schedule to the act. The Commission first considers Section 4 of the Schedule and then Section 41.4(3) of the act because the CCA argued that it was key to its argument that the end point of the facilities described in Section 4(a) of the Schedule should be the Brintnell 876S Substation and not the Livock 939S Substation.

170. The choice of the Livock 939S Substation as the end point and the approach to staging the facilities, were first raised as an issue in this proceeding in April 2016. It would have been of assistance to the Commission had the AESO filed detailed information on this issue at that time, rather than arguing at the hearing that questions on its implementation of the critical transmission infrastructure legislation were not relevant to the Commission's consideration of this project's applications. The information was only provided by the AESO's witnesses at the oral hearing, mainly in cross-examination.

171. Section 4 of the Schedule describes transmission facilities that are designated as critical transmission infrastructure. These facilities are described as "two single circuit 500 kV alternating current transmission facilities from the Edmonton region to the Fort McMurray region, generally described as follows". The proposed project is for one of these transmission lines. In Section 4(a) of the Schedule, the end point for the transmission line that starts at the proposed Thickwood Hills substation is described as "a substation at or in the vicinity of the existing Brintnell 876S substation". In the applications before the Commission, made pursuant to Section 4(a), the project starts at the Thickwood Hills substation and ends at the Livock 939S Substation. The AESO testified that the Livock 939S Substation is only 38 kilometres from the Brintnell 876S Substation.

172. Having regard to the ordinary meaning of the words "the substation at or in the vicinity of the existing Brintnell 876S substation," the Commission is not persuaded by the argument of the CCA that the facilities described in Section 4(a) had to terminate at the Brintnell 876S Substation, given the reasons provided by the AESO for choosing the Livock 939S Substation during the development of the AESO's 2012 long-term plan. All the words used in a legislative provision are to be considered in the interpretation of that provision, unless an absurd

consequence results by doing so. This is not the case when reading “or in the vicinity of”. The Commission considers that the legislature intended for the words, “or in the vicinity of” to be given a meaning. In the Commission’s view, these words were intended to give the AESO flexibility in determining the end point.

173. Furthermore, the opening words of Section 4 of the Schedule are drafted in broad terms, in that these words refer to “facilities from the Edmonton region to the Fort McMurray region, generally described as follows”. These words are also used in the description of other critical transmission infrastructure designations in the Schedule. Other examples of the broad wording used in the Schedule are words such as “South of the City of Edmonton”, “southeast area of the City of Calgary”, and “in the Gibbons-Redwater region”. This broad wording demonstrates to the Commission that the legislature intended to provide flexibility with respect to the location of critical transmission infrastructure by using such terms as “generally described as follows” and “in the vicinity of”.

174. Driedger’s modern principle of statutory interpretation also requires consideration of the role that Section 4 of the Schedule plays in the larger statutory scheme for the approval of critical transmission infrastructure projects.⁸³ Critical transmission infrastructure designations prescribe technical solutions to meet the need for new transmission facilities. The general locations of the start and end points for the facilities described in the Schedule cannot prescribe the detailed siting or routing of such facilities. That function (routing or siting) is conducted by the Commission under the *Hydro and Electric Energy Act*, with reference to Section 17 of the *Alberta Utilities Commission Act*. In this instance, the need for the facilities described in the Schedule, which are technical solutions, is determined by the *Electric Utilities Act*. With respect to the facility applications, pursuant to Section 41.3 of the *Electric Utilities Act*, the AESO, subject to the regulations:

must, in a timely manner, direct a person determined under the regulations to make an application in a timely manner to the Commission under the *Hydro and Electric Energy Act* for an approval of critical transmission infrastructure.

175. Pursuant to Section 17 of the *Electric Utilities Act*, the AESO, as the system planner, determines when to give a direction under Section 41.4 of the act, but must do so in keeping with Section 41.4(3) of the act. With respect to this project, the AESO directed that the end point for the facility described in Section 4(a) of the Schedule be the Livock 939S Substation. The Commission accepts Mr. Mossing’s testimony that this end point was set out in its 2012 long-term plan and had remained unchanged. The Commission finds credible the testimony of Mr. Mossing that the Livock 939S Substation was identified as the end point of the transmission line described in Section 4(a) because the substation has the ability to accept a 500-kV to 240-kV transformer to connect into the 240-kV network at Livock, to increase the ability to serve load or generation growth in the Livock area, and Livock is closer to where the load was expected to develop at that time.

⁸³ Ruth Sullivan, Sullivan on the Construction of Statutes, 6th edition, at page 28 states: “Even if the ordinary meaning is plain, courts must take into account the full range of relevant contextual considerations including purpose, related provisions, in the same or other Acts, legislative drafting conventions, presumptions of legislative intent, absurdities to be avoided and the like.”

176. However, the Commission must also determine whether the Livock 939S Substation satisfies the requirement that the termination be “in the vicinity of” the Brintnell 876S Substation. If, as argued by the CCA, the legislature intended that the end point of the facility described in Section 4(a) of the Schedule has to be located directly at or within a few kilometres of the Brintnell 876S Substation, the legislature would have indicated that it be directly at, or within a specified number of kilometres, as it did for the location of the Thickwood Hills substation. The term “vicinity” is defined in the Merriam-Webster dictionary as “the quality or state of being near, a surrounding area or district”. Considering that a broad interpretation is to be given to the provisions of the Schedule, in the Commission’s view, a distance of 38 kilometres is in the surrounding area or “in the vicinity of” the Brintnell 876S Substation. Moreover, additional 500-kV facilities had to be built, whether at the Brintnell 876S Substation or the Livock 939S Substation, because both the Brintnell 876S and the Livock 939S substations are rated at 240 kV.

177. Having regard to the foregoing, the Commission is satisfied that the Livock 939S Substation is located in the vicinity of the Brintnell 876S Substation, as required by Section 4(a) of the Schedule.

178. The following three arguments were advanced by the CCA in relation to Section 41.4(3) of the *Electric Utilities Act*, in the context of the act and the legislative scheme for critical transmission infrastructure. First, that the project does not meet the requirements of this section because sections 4(a) and 4(b) of the Schedule describe two separate facilities, and the facilities described in Section 4(a) had to be developed first and the other facilities must be staged or in sequence. Second, the AESO did not publish specific milestones in relation to the staging of the facilities described in Section 4(b) of the Schedule, and did not specify how the determination that the milestones had been met was made. And third, no consultation was conducted by the AESO with the CCA on the milestones or the staging of the facilities in Section 4(b) of the Schedule. The Commission examines each of these arguments in turn.

179. Section 41.4(2) states that the facilities referred to in Section 4 of the Schedule shall be developed in stages in accordance with Section 41.4(3), which states:

(3) The facility referred to in section 4(a) of the Schedule shall be developed first, which may initially be energized at 240 kV, and the Independent System Operator shall, subject to the regulations, specify and make available to the public milestones that the Independent System Operator will use to determine the timing of the development of the facilities referred to in section 4(b) and (c) of the Schedule.

180. Applying Driedger’s modern principle of statutory interpretation and the ordinary meaning rule of statutory interpretation, it is the Commission’s view that the facilities described in sections 4(b) and (c) of the Schedule could not be developed before those in Section 4(a). However, this does not preclude the concurrent development of the facilities described in sections 4(a) and 4(b).

181. According to the testimony of Mr. Mossing, the AESO’s 2012 long-term plan indicated that the facilities from Livock to Thickwood Hills referred to in Section 4(a) of the Schedule would be developed with a 2017 in-service date and that the facilities referred to in Section 4(b) of the Schedule would be developed at a later date. The Commission understands this to mean that the AESO initially planned to develop the facilities described in Section 4(a) first.

182. Mr. Mossing further testified that between 2012 and 2013, the AESO made the decision to create a single stage, combining Thickwood Hills to Livock and Livock to Sunnybrook. Mr. Mossing testified that, based on the forecasts at the time, it was urgent to have all the facilities in service as soon as possible.

183. The Commission finds that direction provided in the Schedule made it clear that the facilities described in Section 4(a) represented the required first step in the development, while providing the AESO with the discretion to determine the timing for the development of the facilities described in sections 4(b) and 4(c). In the Commission's view, that discretion necessarily included the authority for the AESO to direct the concurrent development of the facilities described in the Schedule should circumstances warrant. Taking into account the AESO's broad mandate as the system planner and its obligation to act in the public interest, and given the economic circumstances in 2012-2013, the Commission is satisfied that the AESO had the discretion under Section 41.4(3) to direct the concurrent development of the facilities described in sections 4(a) and (b) and that it exercised that discretion reasonably.

184. Section 4.1 of the *Transmission Regulation* holds the answer to the question of whether the AESO, subject to the regulations, made available to the public milestones that it would use to determine the timing of the development of the facilities referred to in Section 4(b) of the Schedule. This section requires the AESO to consult "on the development of milestones with those market participants that the ISO considers are likely to be directly affected by the milestones related to critical transmission infrastructure, referred to in section 41.4 of the Act."

185. The AESO's approach to consultation and the setting of milestones in relation to the facilities described in Section 4(b) of the Schedule did not actively seek input from affected market participants on the staging of the facilities. Rather, the AESO suggested that market participants could have raised any issues about the project with it. Although the information was public, available on the AESO's website, and discussed with those that participated in various consultations and information sessions, there was no focused consultation on the specific provisions of Section 41.4(3) of the *Electric Utilities Act*.

186. The wording of Section 4.1 of the *Transmission Regulation*, however, is broad. It does not specify the market participants to be consulted, how the milestones are to be determined, or how the consultation is to be conducted. This provision affords the AESO the discretion to determine which market participants to consult in the development of milestones.

187. The Commission finds that, when read together, the purpose of Section 41.4(3) of the *Electric Utilities Act* and Section 4.1 of the *Transmission Regulation* is evident. Those sections were enacted to ensure that the AESO would provide market participants with: i) relevant information on the proposed timing for the development of the facilities described in Section 4(b) and (c) of the Schedule and the rationale for that timing, and ii) an effective opportunity to provide feedback on the AESO's development plans, including the timing of those plans.

188. The evidence before the Commission is that the AESO has been providing stakeholders with information regarding the development and timing of the facilities described in Section 4 of the Schedule since the publication of its 2012 long-term plan. In that plan, the AESO projected a 2017 in-service date for the facilities in Section 4(a) of the Schedule. The AESO initially announced its plan to concurrently develop the facilities described in sections 4(a) and (b) of the Schedule in 2013, as part of the competitive procurement process. At that time, the timing for the

combined project was projected to be 2019. Subsequently, the AESO changed its timing projection for the combined project to 2019-2020, when it published its Northeast Regional Plan. The AESO has updated the projected in-service dates for the combined project regularly since that time.

189. While the AESO did not establish a focused, formal consultation process to address the timing of the facilities in Section 4(b) specifically, the Commission finds that the AESO's general consultation activities, described above, effectively provided stakeholders with the information targeted by Section 4.1 of the *Transmission Regulation*, i.e., the timing for the development of the facilities in Section 4(c) of the Schedule, as part of the combined project and the rationale for that timing. Accordingly, the Commission is satisfied that the requirements of Section 4.1 have been met.

190. Moreover, because there are no parameters for determining a milestone and the AESO has the discretion to make such a determination, the Commission accepts the AESO's explanation that the milestone inherent in the target in-service date is the timeline for when development of the project would have to occur to meet this date, based on the AESO's assessment of when the project is required. Although the CCA stated that it was not arguing the need for the facilities referred to in Section 4(b) of the Schedule, the Commission considers that, in essence, the timing relates to when the facilities are needed.

191. The Commission does not give any weight to Mr. Cline's testimony on the manner in which Section 41.4(3) should be interpreted because the intent of these provisions is determined from the application of the principles of interpretation and not the intent ascribed to it at the time the provisions were drafted.

192. The CCA also argued that because of the current economic climate, the project should be built to minimize costs and meet the minimum required load. The CCA stated that this could be achieved by changing the route to terminate at the Brintnell 876S Substation, and to connect to the 240-kV system at the Brintnell 876S Substation, and also to other transmission lines near this substation, in a manner proposed by the CCA. The Commission rejects the CCA's argument because it goes to the matter of need and need is not at issue in this proceeding.

193. Mr. Mossing testified that the AESO's most recent forecasts and the existence of constraints on the system continue to support the timing of the project. There is no evidence on the record of the proceeding to the contrary.

194. For these reasons, the Commission finds that the requirements of Section 41.4(3) of the *Electric Utilities Act* and Section 4.1 of the *Transmission Regulation* are met. The facilities referred to in sections 4(a) and 4(b) of the Schedule may be developed concurrently.

6 Public consultation

195. The Commission requires applicants for transmission lines to include a description of their participant involvement program in their application. Appendix A of Rule 007: *Applications for Power Plants, Substations, Transmission Lines, Industrial System Designations and Hydro Developments*, participant involvement program guidelines, specifies that a participant involvement program must be conducted before an application is filed, and should

include the distribution of a project-specific information package, responses to questions and concerns raised by potentially-affected persons and a discussion of options, alternatives and mitigation measures. Applicants are expected to ensure that information is conveyed to the public in an understandable manner.

196. Project-specific information packages must be distributed to affected occupants, residents and landowners and should provide detailed information about the proposed development. The information packages must include applicant contact information, the location of the project, including a site-specific map, the general nature of potential impacts and need for the proposed transmission facilities and explanation of how it fits with existing and future plans, a description of the proposed on-site equipment, the anticipated project schedule, and an AUC brochure regarding public involvement in a proposed utility development.

197. For new overhead transmission line projects in rural or industrial settings, applicants are required to provide public notification to occupants, residents and landowners within 800 metres, measured from the edge of the proposed right-of-way for the transmission line or the edge of the proposed substation site boundary.

198. Information sessions or public open houses are an opportunity for applicants to reach the broader public and, when holding public open houses, applicants must disclose the same project-specific information they would disclose to those individuals involved in personal consultation and notification. Prior to filing a facility application, applicants must allow notified stakeholders a minimum of 14 calendar days to receive, consider and respond to the participant involvement program for the project.

199. Applicants must also make all reasonable attempts to contact potentially directly and adversely affected persons, and must respond to any questions or concerns they may have. If an applicant is unable to contact a stakeholder, it should be able to demonstrate reasonable attempts to establish contact. Personal consultation is required with occupants, residents and landowners that are on, or directly adjacent to, the right-of-way proposed for the transmission line.

200. Moreover, if the scope of the project changes or a portion of a project such as a preliminary route segment is no longer being pursued, applicants are required to notify all persons initially consulted to close the participant involvement loop. Applicants must document the participant involvement program and must keep a log containing information on the dates personal consultation occurred or was attempted, whether project information was provided, and to whom the project information was given.

201. The Commission and its predecessor, the Alberta Energy and Utilities Board (the Board), have previously expressed the importance of conducting an effective notification and consultation program before an application is filed. In Decision 2012-327,⁸⁴ the Commission stated that “the program should include responding to questions and concerns, discussing options, providing alternatives and potential mitigation measures, and seeking confirmation that potentially affected parties do not object.” It went on to state that it “expects applicants to be sensitive to timing constraints the public may have especially when dealing with landowners

⁸⁴ Decision 2012-327: AltaLink Management Ltd. Western Alberta Transmission Line Project, Application 1607067, December 6, 2012, page 131.

engaged in agricultural endeavours.” In Decision 2011-329, the Commission discussed the role of interveners and applicants in the consultation process when it stated:

The Commission considers that consultation is a two-way street. The applicant has a duty to consult with landowners and residents in the vicinity of the project in accordance with AUC Rule 007, and make reasonable efforts to ensure that all those, whose rights may be directly and adversely affected by a proposed development, are informed of the application, and have an opportunity to voice their concerns and to be heard. Landowners and residents are entitled to consultation; however, as a practical matter, landowners and residents must make their concerns known to the applicant so that they may be discussed and addressed.⁸⁵

6.1 Alberta PowerLine’s consultation process

202. Alberta PowerLine’s consultation activities began in March of 2014 as part of its due diligence in preparation for its bid to the AESO. During its early engagement, prior to being awarded the project, Alberta PowerLine interacted with a list of communities to review general routing concepts. Its participant involvement program was designed to inform stakeholders who may be directly and adversely affected by the project, by providing project-specific information and an opportunity to express concerns, alternatives and mitigation measures. Alberta PowerLine’s participant involvement program consisted of the following stages:

- Program initiation – early discussions with government agencies and industry.
- Public notification and open houses – preliminary route options announced, input sought.
- First round consultations – personal consultations on preliminary route options.
- Public notification of refined route options.
- Second round consultations – further consultations on refined route options.
- Resolution of concerns – route adjustments identified, mitigation options discussed.
- Notification of proposed route and facility application.

203. Program initiation began when Alberta PowerLine commenced discussions with government, industry, Aboriginal communities and municipalities in March of 2014. The goals were to inform these parties of the nature of the project, that route planning was underway, and to seek the latest information with respect to environmentally-sensitive areas and development plans within each municipality. Alberta PowerLine held meetings with representatives of agencies responsible for administering legislation potentially applicable to the project and with the planning representatives of the municipalities of Barrhead, Lac Ste. Anne, Leduc, Parkland, Westlock, Woodlands, the Municipal District of Lesser Slave River, the Municipal District of Opportunity No. 17 and the Rural Municipality of Wood Buffalo.

⁸⁵ Decision 2011-329, NaturEner Energy Canada Inc., 162-MW Wild Rose 2 Wind Power Plant and Associated Eagle Butte Substation, Proceeding 625, Application 1606143, August 2, 2011, page 30, paragraphs 169-170.

204. Alberta PowerLine was awarded the contract to build the project in December of 2014 and began public notification and consultation of its preliminary route options. The preliminary routes formed the basis for the bid that was provided to the AESO.⁸⁶

205. On January 15, 2015, in the second part of its consultation process, Alberta PowerLine mailed project information, including preliminary route options, to landowners, occupants, residents and other land interest holders⁸⁷ within 800 metres of the preliminary routes.⁸⁸ The packages contained open house invitations, detailed maps and other project information.

206. Prior to mailing project information, Alberta PowerLine identified participants by conducting freehold and Crown land interest searches within 800 metres of the preliminary route options. All information was put into Alberta PowerLine's consultation tracking system which catalogues the stakeholders for each property. The tracking system was consistently updated by returned mail, further information provided by stakeholders and by an automated spatial land assessment completed monthly to identify any changes in land parcels that resulted from new subdivisions. A comprehensive refresh of the project's land title data was also completed prior to any project-wide engagement, to ascertain new landowners to be included in the participant involvement program. Alberta PowerLine's tracking system also documented commitments and has the capability to query search requests. Should the project be approved, the tracking system would be maintained throughout the life of the project.

207. A number of public open houses were held in February 2015 in Fawcett, Westlock, Manly Corner, Smith, Barrhead, the village of Alberta Beach, Genesee, Fort McMurray, Wabasca, and Slave Lake. A total of 696 stakeholders attended the public open houses. In addition to the mailed project information packages, Alberta PowerLine advertised the public open houses in daily and community newspapers. Alberta PowerLine stated the public open houses provided stakeholders with an opportunity to obtain information and share their concerns with the project.

208. According to its records, over 1,900 meetings, telephone conversations and email exchanges with stakeholders occurred during the first round of personal consultation on the preliminary route options. The feedback from stakeholders was used in combination with routing criteria to refine routing options and to develop new potential routes.

209. On March 24, 2015, as part of the first round of consultations, Alberta PowerLine mailed a project information package to approximately 170 landowners, occupants, residents and other land interest holders within 800 metres of a new preliminary route option that was proposed during consultation.

210. In addition, Alberta PowerLine representatives attended a community meeting on April 9, 2015, hosted by the Mayatan Lake Management Association in Duffield. The Mayatan Lake Management Association requested the meeting as a means of addressing primarily environmental-related concerns in the Mayatan Lake and Jackfish Lake areas. The meeting was attended by 45 stakeholders.

⁸⁶ Transcript, Volume 2, page 419, lines 15 to 22.

⁸⁷ Land interest holders are both landowners and occupants.

⁸⁸ For ease of reference, the Commission refers to "landholders and land interest holders", as "landowners".

211. On June 12, 2015, Alberta PowerLine sent information on refined route options. The refined route options were based on its preliminary routes and incorporated feedback received during the first round of consultation. Over 2,600 information packages were delivered to landowners, occupants, residents and other land interest holders within 800 metres of the refined route options. The information package identified the refined route options and included an update on the next steps in the consultation process, including details about the route refinement process, a summary of the consultation feedback to date, routing constraints and challenges, and temporary workspace and access requirements. Information packages for the planned optical repeater sites were distributed on July 27 and August 24, 2016, to stakeholders within 800 metres of those sites. On August 21, 2016, Alberta PowerLine mailed additional information about the required facilities at the Livock 939S and Thickwood Hills 951S substations to occupants, residents, and other land interest holders within 1,500 metres of the substation sites.

212. Alberta PowerLine stated that it consulted with all directly affected landowners and residents within 400 metres of the refined routes, people potentially impacted by access trails and temporary workspace areas, and any other land interest holder who requested consultation.⁸⁹

213. At the time that the second round of consultations took place, Alberta PowerLine had not yet identified a preferred route. The purpose of the second round of consultations was to gather further site-specific details about the potential impacts of the project so that impacts could be assessed and concerns mitigated, including identifying further route adjustments wherever reasonably practicable. Alberta PowerLine stated that over 1,400 meetings, telephone conversations and email exchanges with stakeholders occurred during the second round of consultations on the refined route options. Following the second round of consultations, Alberta PowerLine identified the west route option as the preferred route and the east route option as a reasonable alternative.

214. Throughout the process, Alberta PowerLine endeavored to respond to all outstanding questions and concerns about the project. Because many of the concerns were common to multiple stakeholders, Alberta PowerLine created documents that specifically addressed these concerns. In addition to information-sharing activities, Alberta PowerLine also conducted meetings with stakeholders prior to filing the facility application in an effort to address and resolve outstanding concerns.

215. Consultations with landowners and interested parties routinely led to project improvements, including adjusting routes, developing new routes, or discounting route options.⁹⁰ Over 80 route suggestions were proposed by stakeholders. Alberta PowerLine explained that it reviewed these suggestions against its general routing criteria, feedback from other stakeholders, and available data sets. Where opportunities were identified to reduce overall impacts, Alberta PowerLine discussed route variations with parties that would be directly affected. Over 50 route suggestions were made by landowners during the first round of consultations and nearly 20 were addressed through the elimination of a preliminary east route between the Sunnybrook 510S Substation and node E65. Also, another 20 route suggestions led to the creation of the east route option variation.⁹¹ Stakeholder feedback also identified the original west route option near Gunn, and route amendments and variations of the common route in the

⁸⁹ Exhibit 21030-X1205.02, Clean Version of Revised APL Reply Evidence, PDF page 113.

⁹⁰ Transcript, Volume 18, page 3673, lines 6 to 10.

⁹¹ Exhibit 21030-X0003 – Attach 03, Public Involvement Program - Final, PDF pages 20 and 21.

Thickwood Hills area.⁹² Alberta PowerLine also took into account landowners' feedback on transmission line structure placement.

216. Alberta PowerLine mailed over 1,800 project information packages to stakeholders within 800 metres of the selected route options and substations on November 10, 2015. This information package announced the selection of routes submitted to the Commission and contained an update on the next steps in the regulatory process. In addition, all landowners, occupants, and residents within 800 metres of a changed route (routes that were presented to stakeholders in the second round notification package in June 2015) were provided with additional project information items, which were also posted on the project website. These additional materials included one or more maps showing the refined route options in relation to the participant's land interest.

217. Notification packages were mailed to stakeholders along rejected routes to inform them that they would be removed from future notifications because they were no longer impacted by the project. These notifications were sent in June and November of 2015, before the applications were filed with the Commission.

218. In June 2016, Alberta PowerLine withdrew a portion of the west route option, it gave notice to all landowners within 800 metres of the withdrawn west route option, thereby closing the loop on the public involvement process for those landowners.

6.1.1 Government and agencies

219. As discussed above, Alberta PowerLine engaged with many government agencies beginning in March of 2014.

220. Consultation continued following the identification of preliminary and refined route options to clarify and provide additional information. Alberta PowerLine stated that municipal agencies shared valuable information on regional and site-specific development constraints such as local land use zoning considerations. Route adjustments in the vicinity of the village of Alberta Beach and Parkland County are examples of how consultation influenced the routing of the proposed transmission line.

221. Consultation with provincial and federal agencies primarily focused on resolving site-specific permit requirements and construction mitigation concerns.

222. Alberta PowerLine contacted Alberta Environment and Parks in the third quarter of 2014 as part of its early engagement activities. However, Alberta Environment and Parks declined to meet with Alberta PowerLine until the project was awarded to the successful proponent as a result of the competitive bid process. Upon Alberta PowerLine being awarded the project, Alberta Environment and Parks formed a single standing committee to represent Alberta Environment and Parks and to work with Alberta PowerLine across multiple departmental jurisdictions. Consultation with the standing committee began on March 6, 2015. Alberta PowerLine had multiple discussions with Alberta Environment and Parks pertaining to routing and siting rationale, data sources to be used throughout preliminary routing and siting, project scheduling, regulatory requirements, planned environmental assessments, and proposed mitigation. With respect to wildlife, Alberta Environment and Parks' standing committee

⁹² Transcript, Volume 18, page 3673, lines 13 to 22.

indicated that Alberta PowerLine should pay particular attention to mitigation measures for impacts to the caribou. Alberta PowerLine submitted that it consulted heavily with Alberta Environment and Parks given the length of the transmission line through Crown land, and its jurisdiction over land, wildlife, vegetation and water resources.

6.1.2 Aboriginal consultation

223. Alberta PowerLine conducted early engagement activities during the competitive bid stage of the competitive procurement process. At that time, it communicated general project information such as study areas and timing, and advised that additional project information would be provided should Alberta PowerLine be awarded the project following the competitive procurement process.

224. Alberta PowerLine worked with Aboriginal communities through “information sharing, consultation and collaboration”⁹³ to understand issues and concerns, and submitted that it continues to strive to reach practical solutions for identified concerns. Early engagement included an internal assessment to understand the potential issues that may arise for identified First Nations and Métis groups.

225. Alberta PowerLine’s process for identifying affected First Nations and Métis communities consisted of an internal assessment of the communities it anticipated could be affected by the project, requesting a pre-consultation assessment in accordance with the *Government of Alberta’s Guidelines on Consultation with First Nations on Land and Natural Resource Management (July 28, 2014)* (the Guidelines) from the Aboriginal Consultation Office, engaging with the Government of Alberta to confirm its Aboriginal engagement plan, and meeting with all First Nations and Métis communities identified in the engagement plan.

226. Alberta PowerLine stated that the Guidelines recognize that the duty to consult and reasonably accommodate First Nations rests with the Government of Alberta, which determines which projects require consultation and inform proponents about which First Nations they should consult with regarding their projects. To confirm its engagement plan, on January 14, 2015, Alberta PowerLine sought direction from the Aboriginal Consultation Office regarding the First Nations requiring consultation on the project and to confirm the level of engagement required.⁹⁴ Alberta PowerLine received direction to conduct extensive consultation also referred to as Level 3 engagement under the Guidelines. A Level 3 direction requires approval of a First Nation’s Consultation Plan and bi-monthly consultation reports by the Aboriginal Consultation Office;⁹⁵ Alberta PowerLine received approval of its plan on March 24, 2015.

227. Alberta PowerLine understood that the Aboriginal Consultation Office would also be required to consult directly with identified First Nations.

⁹³ Exhibit 21030-X0002, Attach 01 - Application Text - Final, PDF page 43.

⁹⁴ Transcript, Volume 7, page 1334, lines 19 to 25.

⁹⁵ Exhibit 21030-X0003, Attach 03 - Public Involvement Program - Final, PDF pages 170 to 171.

228. Alberta PowerLine stated that it consulted with the following First Nations, which were identified by the Aboriginal Consultation Office:

Table 2. First Nations consulted

Alexander First Nation	Fort McMurray First Nation
Alexis Nakota Sioux Nation	Kapawe'no First Nation
Athabasca Chipewyan First Nation	Mikisew Cree First Nation
Bigstone Cree Nation	Paul First Nation
Driftpile First Nation	Sucker Creek First Nation
Enoch Cree Nation	Swan River First Nation
Fort McKay First Nation	Saddle Lake Cree Nation
Sawridge First Nation	

229. Alberta PowerLine worked with each First Nation's consultation office to determine community protocols, the scope of work required and to arrange future community consultation activities, as required. Consultation activities included face-to-face meetings, requests to identify site-specific areas of concern, Elder reviews, mapping sessions and community open houses. Alberta PowerLine also delivered project information packages to the First Nations identified above.

230. Alberta PowerLine's objective during consultations with First Nations was to identify areas of cultural and environmental significance and gain information to assist in route and project development. The information collected was used to adjust the route, modify the alignment and placement of structures, adjust project timing, explore alternate access to the right-of-way, and develop mitigation strategies to protect culturally-significant sites.⁹⁶

231. The Aboriginal Consultation Office did not direct Alberta PowerLine to consult with any Métis communities in respect of this project. However, its approach was to remain open to consultation with groups other than the First Nations it was required by the Aboriginal Consultation Office to consult with. Alberta PowerLine therefore consulted with the following additional Aboriginal communities:

Table 3. Other First Nations, Aboriginal communities, or organizations notified

Chipewyan Prairie First Nation	Métis Nation of Alberta – Region 1
Gunn Métis Local 55	Métis Nation of Alberta – Region 4
Michel First Nation	Métis Nation of Alberta – Region 5
Tall Cree First Nation	

232. Alberta PowerLine submitted that the Métis Nation of Alberta's governance structure has multiple levels, including the Provincial Council, the Regional Council and the Local Council. It sought guidance from the Aboriginal Consultation Office on which level of Métis government to engage with.

233. Alberta PowerLine contacted the Métis National Council and provided project information packages via the Métis regions' elected representative. Alberta PowerLine's Aboriginal liaison followed up with the Métis National Council Region within two weeks of delivering the packages to discuss any concerns or questions with respect to the project. Alberta PowerLine stated that it contacted the Métis Nation of Alberta regions 1, 4 and 5 and

⁹⁶ Exhibit 21030-X0003, Attach 03 - Public Involvement Program – Final, PDF page 173.

worked with Métis groups once it was aware of their concerns. The Métis Regional Council did not identify any concerns nor did they provide any indication of an interest to discuss the project.⁹⁷

234. Alberta PowerLine stated that Gunn Métis Local 55 expressed interest in the project in January 2015, and that it held a teleconference with Gunn Métis Local 55 on March 11, 2015 and that meeting was held in April 2015. During the meetings, Alberta PowerLine requested that Gunn Métis Local 55 identify specific areas of interest along the routing options.

6.2 Views of the interveners

235. Throughout the hearing, interveners conveyed that a project of this nature and size requires full and meaningful public involvement throughout all phases of the route selection process. Many interveners expressed concerns about the co-ordination and execution of the project's participant involvement program. Landowners indicated that they were frustrated and disappointed with Alberta PowerLine's notification and consultation processes, primarily in regard to the 500-kV transmission lines.

236. ERLOG and the South of 43 Group were among the intervener groups that expressed concerns with Alberta PowerLine's consultation process, stating that the process was inadequate and unresponsive to their stated concerns. The ERLOG members questioned whether Alberta PowerLine was unable or unwilling to fully and adequately address the concerns of the group regarding the project. The ERLOG members stated that while they participated in good faith discussions with Alberta PowerLine, their issues and concerns had not been satisfactorily dealt with.⁹⁸ Several members of ERLOG submitted that they only had verbal exchanges with Alberta PowerLine and were not provided with any documentation.⁹⁹

237. Other ERLOG members stated that they were not consulted about the project,¹⁰⁰ that the land agents were not knowledgeable on the impacts of the transmission line,¹⁰¹ or that Alberta PowerLine did not come on their property to discuss concerns in person.¹⁰²

238. Members of the South of 43 Group had specific concerns regarding consultation. Jay Crowley indicated that he was only consulted once when he was presented with two route options for the transmission line, and stated he was not notified when a preferred route was selected.¹⁰³ Fernandez Illidio also stated that he did not receive information in the mail and was not consulted.¹⁰⁴ Kenneth Krampl indicated that he was not informed of the proximity of the transmission line to his yard and that he was not notified when the southern portion of the preliminary east route was rejected.¹⁰⁵ Warren Lafoy stated that he was never notified about the project by Alberta PowerLine, and that he did not have a meeting with Alberta PowerLine to go

⁹⁷ Exhibit 21030-X1205.02, Clean Version of Revised APL Reply Evidence, PDF page 152.

⁹⁸ Exhibit 21030-X0892, Submissions of the East Route Landowner Opposition Group, PDF page 16.

⁹⁹ Exhibit 21030-X0897, ERLOG Member Submissions, PDF pages 6 and 8.

¹⁰⁰ Exhibit 21030-X0897, ERLOG Member Submissions, PDF pages 29, 95, 132, 136, 161, 164 and 196.

¹⁰¹ Exhibit 21030-X0897, ERLOG Member Submissions, PDF pages 31 and 56.

¹⁰² Exhibit 21030-X0897, ERLOG Member Submissions, PDF pages 37, 53, 62, 125, 126, 139, 143, 167, 168, 169, 170 and 188.

¹⁰³ Exhibit 21030-X1047, South of 43_Written Evidence and Tabs 3 to 14, PDF page 17.

¹⁰⁴ Exhibit 21030-X1047, South of 43_Written Evidence and Tabs 3 to 14, PDF page 26.

¹⁰⁵ Exhibit 21030-X1047, South of 43_Written Evidence and Tabs 3 to 14, PDF page 33.

over routing.¹⁰⁶ Members of both ERLOG and the South of 43 Group also stated that Alberta PowerLine did not incorporate stakeholder feedback regarding the use of non-guyed wire transmission line structures on agricultural lands.

239. Brion had concerns with the consultation it received from Alberta PowerLine, indicating that it sent four letters to Alberta PowerLine in which it objected to the project within Brion's approved project area and, on January 28, 2016, it suggested an alternate route to Alberta PowerLine. Brion stated that Alberta PowerLine's summary of its concerns entitled, "Concerns regarding impacts to future unapproved well pad developments" is incomplete and misleading.¹⁰⁷

240. Brion also stated that Alberta PowerLine did not meaningfully consider its concerns. In Brion's view, throughout the consultation process, Alberta PowerLine was fixated on the fact that Brion did not have surface dispositions for its future sustaining well pads and made no attempt to understand the Alberta Energy Regulator approval or consider alternative routes.¹⁰⁸ It stated that the creation of common route variation 1 did not address any of its concerns and showed a lack of understanding.

241. Mr. Kevin John of Lehigh Hanson Materials Limited was also frustrated with the consultation conducted by Alberta PowerLine. Mr. John stated he was never able to have very specific and deliberate conversations about the transmission line and how it would affect the gravel operation from an operating and financial standpoint.¹⁰⁹

242. Mr. Kenneth Treichel expressed concerns that the consultation log was inaccurate. He stated that the log does not reflect that Alberta PowerLine was unaware of the "ARSA"¹¹⁰ structure plans and that an Alberta PowerLine land agent contacted him despite knowing that he was represented by a solicitor.¹¹¹

243. The Klause family found the project maps confusing because they were provided in a piecemeal fashion.¹¹² The Klause family submitted that the piecemeal information provided between segments W54 and W72 was not comprehensive, did not effectively provide project-specific information, and did not clearly detail the project or the impacts to landowners. The Klause family submitted that Alberta PowerLine did not provide any site-specific information to show how the transmission line would traverse their land. The land agents did not provide maps, nor inform them of any alternate routes and appeared to ignore their concerns.¹¹³ Further, Alberta PowerLine did not ask for information on their lands and farming operation until July of 2016. The Klause family argued that Alberta PowerLine's consultation program did not comply with the guidelines set out in Rule 007. Ms. Kim Trithart also indicated she was not consulted on the withdrawal of the west route option.¹¹⁴

¹⁰⁶ Exhibit 21030-X1047, South of 43_Written Evidence and Tabs 3 to 14, PDF page 35.

¹⁰⁷ Exhibit 21030-X0891, Brion Written Evidence, PDF page 5.

¹⁰⁸ Transcript, Volume 14, page 2919, lines 1 to 6.

¹⁰⁹ Transcript. Volume 11, page 2257, line 1 to page 2258, line 9.

¹¹⁰ The "ARSA" acronym could not be found elsewhere on the record to explain its meaning.

¹¹¹ Exhibit 21030-X0914, Kenneth Treichel Affidavit, PDF page 3.

¹¹² Exhibit 21030-X1182.02, Final Klause Family Submissions Version 2, PDF page 12.

¹¹³ Exhibit 21030-X1182.02, Final Klause Family Submissions Version 2, PDF pages 13 to 14.

¹¹⁴ Exhibit 21030-X1182.02, Final Klause Family Submissions Version 2, PDF page 15.

244. Gunn Métis Local 55 expressed concern with the consultation process, stating that the bid process did not have a requirement to consult with Métis groups and that the AESO did not pass its Aboriginal stakeholders list to the winner of the bid.¹¹⁵ Gunn Métis Local 55 submitted that Alberta PowerLine did not consult with its members but rather, only provided notification of the project. In its opening statement, Gunn Métis Local 55 stated it was contacted by the AESO during the bid process and attempted to engage Alberta PowerLine in early consultation once it had won the bid. Gunn Métis Local 55 met with Alberta PowerLine on April 25, 2015, at which time Alberta PowerLine indicated it was not prepared to provide capacity funding to conduct a traditional land use study or to offset the costs of reviewing the applications. Gunn Métis Local 55 submitted that such funding is required for proper consultation to take place. Alberta PowerLine also refused to provide geographic information system (GIS) shapefiles until November of 2015, immediately before the application was filed with the Commission.

245. Gunn Métis Local 55 stated that while it met periodically with Alberta PowerLine over the preceding 18 months, the meetings had not accomplished very much as Alberta PowerLine's request for site-specific concerns could not be provided without funding.¹¹⁶ Since obtaining standing in the proceeding, Gunn Métis Local 55 received a proposal from Alberta PowerLine in May of 2016 to fund some activities such as to work with key knowledge holders or Elders within the community to identify more specific sites on the routing and to conduct site visits.¹¹⁷ Gunn Métis Local 55 expressed concerns with this proposal, including that funding was not provided for all activities, the terms of the process would be directed by Alberta PowerLine and not Gunn Métis Local 55 and the Elders may be hesitant to provide land use information to people outside of the community.¹¹⁸

246. Gunn Métis Local 55 argued that true effective consultation requires parties to work together with a common goal to identify impacts and effective mitigation. It stated that for this project, Alberta PowerLine requested site-specific concerns before it could provide funding, while Gunn Métis Local 55 needed funding before it could undertake the work to provide the site-specific concerns.¹¹⁹ Gunn Métis Local 55 agreed with Alberta PowerLine that consultation does not mean that all parties agree, but that in this instance, "the conversation hasn't happened yet"¹²⁰.

247. Gunn Métis Local 55 requested that as a condition of approval, Alberta PowerLine must conduct meaningful consultation with it to support further study of its traditional land use, and work with its members to develop construction plans.¹²¹

248. Beaver Lake Cree Nation was not included on the list of First Nations the Aboriginal Consultation Office directed Alberta PowerLine to notify and therefore, it claimed that it was not notified or consulted.¹²² While Alberta PowerLine stated in its application that its consultation strategy was to remain open to any other groups beyond those directed by the Aboriginal

¹¹⁵ Transcript, Volume 20, page 4221, lines 4 to 11.

¹¹⁶ Transcript, Volume 14, page 2990, lines 6 to 19.

¹¹⁷ Transcript, Volume 7, page 1322, lines 7 to 15.

¹¹⁸ Transcript, Volume 14, page 2991, line 18 to page 2992, line 3.

¹¹⁹ Transcript, Volume 20, page 4227, lines 13 to 23.

¹²⁰ Transcript, Volume 20, page 4227, line 24 to page 4228 line 3.

¹²¹ Transcript, Volume 14, page 2992, lines 15 to 23.

¹²² Exhibit 21030-X0562, BLCN Statement of Intent, PDF page 5.

Consultation Office who wished to express concerns or views of the project,¹²³ Beaver Lake Cree Nation stated that Alberta PowerLine refused to engage Beaver Lake Cree Nation in its initial round of consultation and only agreed to discuss the project after the application was filed.¹²⁴

249. Beaver Lake Cree Nation invited Alberta PowerLine to meet its Chief and Council. This meeting was held on April 18, 2016. Beaver Lake Cree Nation submitted that it remains open to continuing dialog with Alberta PowerLine and requested that the Commission direct Alberta PowerLine to engage in consultation with Beaver Lake Cree Nation for the life of the project, should the application be approved.¹²⁵ Beaver Lake Cree Nation specifically requested that this be a condition attached to any potential approval.¹²⁶

250. Beaver Lake Cree Nation also requested that, if the project is approved, the Commission place a condition directing Alberta PowerLine to give at least two weeks' notice prior to commencing construction in identified traditional land use¹²⁷ areas, to enable the Beaver Lake Cree Nation members the opportunity to collect and harvest medicinal, ceremonial, and traditional plants and species.¹²⁸

251. Beaver Lake Cree Nation requested that the Commission make the following consultation commitments conditions of an approval.

- Alberta PowerLine will continue to consult and engage Aboriginal groups throughout the project and will provide notice of construction activities for any specific areas of significant importance identified by an Aboriginal group. Where reasonably possible, Alberta PowerLine will work with Aboriginal groups to accommodate their traditional use during construction.
- Alberta PowerLine will continue to communicate with each Aboriginal community to provide regular updates about the project.
- Alberta PowerLine will continue to engage with Beaver Lake Cree Nation to identify measures that will allow community members to maintain access to their traditional territory while still adhering to the safety and security measures required for the project.
- With respect to diamond willow fungus, Alberta PowerLine will conduct site visits with Beaver Lake Cree Nation to identify specific areas of concern where diamond willow fungus is currently harvested by Beaver Lake Cree Nation and will work towards identifying appropriate mitigation measures, such as leaving certain trees in place (if possible) or affording opportunities for community members to harvest the fungus prior to clearing.¹²⁹

¹²³ Exhibit 21030-X0003, Attach 03 - Public Involvement Program - Final, PDF page 172.

¹²⁴ Exhibit 21030-X1046, Beaver Lake Cree Nation Written Submissions, PDF page 10.

¹²⁵ Exhibit 21030-X1046, Beaver Lake Cree Nation Written Submissions, PDF page 2.

¹²⁶ Transcript, Volume 16, pages 3512 to 3513.

¹²⁷ The applicants, aboriginal parties and their consultants have referred to "traditional land use" and "traditional land and resources use". For the purposes of this decision the Commission has used the terms interchangeably.

¹²⁸ Transcript, Volume 20, page 4247, lines 11 to 17.

¹²⁹ Exhibit 21030-X1583, APL Undertaking 028.

252. Beaver Lake Cree Nation argued that if Alberta PowerLine intends to adhere to these commitments, it should have no objections to the Commission making them conditions of the approval.¹³⁰

6.3 Views of Alberta PowerLine

253. Alberta PowerLine stated that throughout the participant involvement program, it strived to respond to all outstanding questions, share information and to respond in a timely manner.¹³¹ Alberta PowerLine considered over 80 route suggestions proposed by stakeholders and discussed these suggestions with potentially directly affected parties to determine whether an opportunity to minimize impacts was available. The east route option variation was the result of a number of routing suggestions raised by stakeholders.¹³²

254. Alberta PowerLine explained that throughout the consultation process, stakeholders were given the opportunity to evaluate the engagement with Alberta PowerLine. Input on one-on-one consultations was received using a feedback form where respondents were asked to rate the stakeholder experience across a number of factors. The results of 72 forms showed that the consultation was pleasant and respectful, with the majority showing that concerns were heard.

255. Alberta PowerLine stated that throughout its consultation process it sought to respond to specific concerns either verbally or in writing directly to the party raising the concern. Further, it maintained communication logs to document personal consultations with stakeholders and provided these logs upon request. Alberta PowerLine stated it attempted to accommodate stakeholders' schedules and preferences.¹³³

256. Consultations with private land interest holders identified as stakeholders were conducted in accordance with Rule 007, with consultation beginning in February of 2015. It added that should the project be approved, consultation would continue for the project's duration.

257. Alberta PowerLine used input received from private land interest holders to refine the route options in an effort to reduce potential impacts, dropping preliminary routes from further consideration or modifying routes as a result of feedback.

258. Alberta PowerLine stated that not all parties will be satisfied with the route or the consultation; however, failure to eliminate all opposition should not determine whether a consultation program was complete and comprehensive.¹³⁴ For example, it pointed out that while Burnco still had objections to the routing, it had been in contact with Alberta PowerLine since 2014¹³⁵ and adjustments were made to the routing in response to Burnco's feedback.¹³⁶

259. Alberta PowerLine explained that it considered feedback from stakeholders, but not all suggestions led to adjustments. For example, the Village of Alberta Beach proposed an alternate route concept which Alberta PowerLine considered and reviewed with affected landowners and

¹³⁰ Transcript, Volume 20, page 4271, lines 2 to 5.

¹³¹ Exhibit 21030-X0003, Attach 03 - Public Involvement Program - Final, PDF page 20.

¹³² Exhibit 21030-X0003, Attach 03 - Public Involvement Program - Final, PDF page 21.

¹³³ Exhibit 21030-X0003, Attach 03 - Public Involvement Program - Final, PDF pages 24 to 25.

¹³⁴ Transcript, Volume 18, page 3673, line 23 to page 2674, line 4.

¹³⁵ Transcript, Volume 11, page 2206, lines 1 to 8.

¹³⁶ Transcript, Volume 11, page 2207, lines 1 to 13.

residents. However, based on feedback received from other directly affected stakeholders, Alberta PowerLine ultimately dropped the route from further consideration.¹³⁷

260. The totality of the feedback received from all rounds of consultation was put into Alberta PowerLine's database and was an important component of the information used by experienced planners to determine the preferred and alternative route segments so as to minimize impacts.¹³⁸

261. As discussed above, a number of stakeholders raised concerns with Alberta PowerLine's consultation process. ERLOG, South of 43 Group, Brion, the Treichel family and the Klause family all expressed some concern with the consultation they received.

262. In response to consultation concerns raised by ERLOG, Alberta PowerLine stated that it went beyond the minimum requirements of Rule 007 by consulting with residents within 400 metres, including those located on properties not directly adjacent to the right-of-way. Alberta PowerLine also stated that a number of ERLOG members declined to speak to Alberta PowerLine and that its consultation records show that Alberta PowerLine did consult¹³⁹ or attempted to consult with these members.¹⁴⁰

263. Alberta PowerLine indicated that Mr. Jay Crowley and Mr. Kenneth Krampl, members of the South of 43 Group, were sent two project updates that informed them of the rejection of preliminary routes. Alberta PowerLine conducted an in-person consultation with Mr. Crowley to explain the project, updated Mr. Crowley's contact information, and provided its contact information to allow him to address any additional questions.¹⁴¹ Alberta PowerLine stated that Mr. Fernandez Illidio's contact information on his title was for an Edmonton address and it was unable to locate any other active mailing address.¹⁴² Alberta PowerLine confirmed that its representatives spoke to the Lafoys with regard to the Duffield School¹⁴³ and noted that because the Lafoys are located beyond 800 metres of the project, they were not on the notification list.¹⁴⁴

264. Alberta PowerLine stated that it has been working with Lehigh Hanson Materials Limited on the siting of transmission line structures and will continue to explore whether the areas the where transmission towers are located can be mined in advance and whether impacts can be further minimized.¹⁴⁵

265. In response to Brion's concerns, Alberta PowerLine submitted that it is aware of Brion's concerns, had been in consultation since early 2015, and had been attempting to work with Brion to address these concerns.¹⁴⁶ Alberta PowerLine stated it made repeated attempts to refine the route to avoid future well pad development but that Brion was not agreeable to any routing

¹³⁷ Transcript, Volume 14, pages 2844 to 2845.

¹³⁸ Transcript, Volume 18, page 3674, lines 8 to 13.

¹³⁹ Exhibit 21030-X0775, APL-ERLOG-2016FEB22-036 ERLOG Consultation Records 2 of 9, PDF page 101; Exhibit 21030-X0771, APL-ERLOG-2016FEB22-036 ERLOG Consultation Records 7 of 9, PDF page 134.

¹⁴⁰ Exhibit 21030-X1205.02, Clean Version of Revised APL Reply Evidence, PDF pages 94 to 95.

¹⁴¹ Exhibit 21030-X1205.02, Clean Version of Revised APL Reply Evidence, PDF pages 112.

¹⁴² Exhibit 21030-X1205.02, Clean Version of Revised APL Reply Evidence, PDF pages 112.

¹⁴³ Exhibit 21030-X0835, APL-S43-2016MAR14-003 South of 43_Consultation Records, PDF page 42.

¹⁴⁴ Transcript, Volume 15, page 3238, lines 2 to 6.

¹⁴⁵ Transcript, Volume 18, page 3751, lines 12 to 21.

¹⁴⁶ Exhibit 21030-X1205.02, Clean Version of Revised APL Reply Evidence, PDF page 62.

within the MRCP project area.¹⁴⁷ Alberta PowerLine stated it made repeated requests for information on localized adjustments. Alberta PowerLine stated that it developed two routing variations in response to Brion's concerns.

266. In response to the Klause family's concerns with respect to inadequate maps, Alberta PowerLine stated that the Klause family's lands are directly impacted by both the west route option variation and the east route option. Alberta PowerLine stated the maps show legal land locations and geographic landmarks to assist landowners to locate their properties. Alberta PowerLine stated that all the Klause lands were included on either a single map sheet, or across two maps because of the scale of the maps.¹⁴⁸ Alberta PowerLine stated that during its consultation program with landowners, it provided maps specific to their property so they would not be overwhelmed. Its website also included an interactive map.¹⁴⁹

267. Alberta PowerLine stated that Ms. Trithart was consulted and her concerns were recorded and that it made efforts to contact Ms. Trithart in May and June 2015 to discuss routing, but was unable to reach her. Ms. Trithart declined to receive a project information package and requested that Alberta PowerLine leave her property in August 2015.¹⁵⁰ In response to Ms. Trithart's submission that she was not consulted on the withdrawal of a portion of the west route option, Alberta PowerLine stated that while it provided notification to all landowners within 800 metres of the withdrawn route, the Trithart lands were located over 2.5 kilometres away from the nearest part of the withdrawn route and therefore it did not notify her.¹⁵¹ Alberta PowerLine stated that it was not proposing any changes to the routing in the vicinity of her land and noted that in her statement of intent to participate, Ms. Trithart filed as a member of ERLOG indicating her opposition to the east route option.¹⁵² Alberta PowerLine added that its consultation material states that any route applied for can be approved.¹⁵³ Alberta PowerLine met with Ms. Trithart in July of 2016 to understand her concerns and indicated that it will continue to work with her to mitigate outstanding issues to the extent reasonably possible.¹⁵⁴

268. In response to concerns with the completeness of consultation raised by a number of Aboriginal groups, Alberta PowerLine stated that it undertook a consultation project based on the *Government of Alberta's Guidelines on Consultation with First Nations on Land and Natural Resource Management* (July 2, 2014) and sought feedback from the Aboriginal Consultation Office. Alberta PowerLine provided project updates, construction schedules and details pertaining to the Aboriginal groups' areas of interest.¹⁵⁵ Alberta PowerLine stated that "[c]onsultation played a significant role in determining the final routes, and a number of route modifications not originally proposed by APL were developed through consultation to minimize potential impacts."¹⁵⁶

¹⁴⁷ Exhibit 21030-X1205.02, Clean Version of Revised APL Reply Evidence, PDF page 62.

¹⁴⁸ Exhibit 21030-X0003, Attach 03 - Public Involvement Program - Final, PDF page 130.

¹⁴⁹ Transcript, Volume 5, page 969, lines 11 to 24.

¹⁵⁰ Exhibit 21030-X0003, Attach 03 - Public Involvement Program - Final, PDF page 129.

¹⁵¹ Exhibit 21030-X1205.02, Clean Version of Revised APL Reply Evidence, PDF page 130.

¹⁵² Exhibit 21030-X0458, Kim Trithart Statement of intent to participate.

¹⁵³ Exhibit 21030-X0003, Attach 03 - Public Involvement Program - Final, PDF page 129.

¹⁵⁴ Exhibit 21030-X1205.02, Clean Version of Revised APL Reply Evidence, PDF pages 130 to 131.

¹⁵⁵ Exhibit 21030-X1205.02, Clean Version of Revised APL Reply Evidence, PDF page 148.

¹⁵⁶ Transcript, Volume 1, page 29, lines 2 to 6.

269. Alberta PowerLine noted that there are two components of consultation with Aboriginal groups, Crown consultation directed by the Aboriginal Consultation Office and its consultation as directed by Rule 007. Alberta PowerLine consulted with the Aboriginal groups with which the Aboriginal Consultation Office directed Alberta PowerLine to consult, in accordance with the consultation plan approved by the Aboriginal Consultation Office. The communities that were not included in the consultation plan approved by the Aboriginal Consultation Office were engaged according to the requirements set out in Rule 007.

270. Where a number of Métis groups made requests for direct funding for consultation, Alberta PowerLine generally directed these groups to the Commission's processes to recover costs or to obtain advanced funding. However, it offered to provide some direct funding to Métis groups to cover costs associated with hosting meetings and open houses, transportation and honoraria for Elders to participate in field visits.¹⁵⁷ Alberta PowerLine stated that it will continue to work with Aboriginal groups throughout the life of the project.¹⁵⁸

271. Alberta PowerLine stated it consulted and engaged with 26 Aboriginal groups, including discussions and meetings with community leaders, open houses, mapping sessions, flyovers and site visits. It noted that only two Aboriginal groups participated in the hearing.¹⁵⁹ Alberta PowerLine submitted it adopted a reasonable approach to identifying Aboriginal groups requiring consultation. It followed direction from the Aboriginal Consultation Office and went further, notifying the Métis Nation of Alberta and regional councils of the project.¹⁶⁰ Further, it has committed to continue to consult with Aboriginal groups to identify specific areas of concern during the implementation of the project.¹⁶¹ Based on the above, Alberta PowerLine submitted that it has met the consultation requirements of Rule 007.¹⁶²

272. With respect to the two Aboriginal groups that did participate in the hearing and raised concerns with the consultation they received from Alberta PowerLine, the company responded as follows.

273. Alberta PowerLine provided a communication summary with Gunn Métis Local 55 in its reply evidence. The parties exchanged emails in early 2015, prior to the applications being submitted to the Commission and prior to the teleconference meeting held on March 11, 2015. At the meeting, Alberta PowerLine provided a high level project overview of the east and west route options. Gunn Métis Local 55 was advised to contact the Government of Alberta as it was not on the list provided by the Aboriginal Consultation Office of parties to be consulted.¹⁶³

274. Alberta PowerLine and Gunn Métis Local 55 continued to frequently exchange emails and have discussions and meetings throughout 2015, and Alberta PowerLine provided information about the project¹⁶⁴ such as the GIS shapefiles prior to the applications being filed.

¹⁵⁷ Exhibit 21030-X1205.02, Clean Version of Revised APL Reply Evidence, PDF pages 152 to 153.

¹⁵⁸ Transcript, Volume 1, page 28, lines 10 to 12.

¹⁵⁹ Transcript, Volume 18, page 3711, lines 18 to page 3712, line 1.

¹⁶⁰ Transcript, Volume 18, page 3713, lines 9 to 13.

¹⁶¹ Transcript, Volume 18, page 3713, lines 3 to 6.

¹⁶² Transcript, Volume 18, page 3669, lines 24 to 25.

¹⁶³ Exhibit 21030-X1205.02, Clean Version of Revised APL Reply Evidence, PDF page 264.

¹⁶⁴ Transcript, Volume 18, page 37148, lines 14 to 19.

Alberta PowerLine stated that it initially did not provide shapefiles because the routes were not finalized. However, maps of the area for routing and information were available on its website.¹⁶⁵

275. On July 23, 2015, Gunn Métis Local 55 sent a proposed scope of work and consultation work plan to Alberta PowerLine. In response, Alberta PowerLine requested specific impacts and given they were not provided, did not offer any capacity funding.¹⁶⁶ It stated that at that point, it was requesting the members of Gunn Métis Local 55 to identify which structures were an issue and to look at the routing at a high level to identify specific concerns.¹⁶⁷ Alberta PowerLine stated that Gunn Métis Local 55 refused to provide any specific information unless it was provided funding.¹⁶⁸

276. Once Gunn Métis Local 55 provided specific information to assist in understanding the impacts and areas of concern, Alberta PowerLine was able to come back to the community to work to understand and address those concerns.¹⁶⁹ In May 2016, Alberta PowerLine met with Gunn Métis Local 55 to review Gunn Métis Local 55's evidence and exchange additional information. Alberta PowerLine continued to provide information and updated shapefiles to Gunn Métis Local 55, as requested. Alberta PowerLine stated that it has also offered to facilitate the activities listed in the 2016 work plan, such as site visits, follow-up meetings and open houses.¹⁷⁰

277. Alberta PowerLine has been in contact with Gunn Métis Local 55 regarding this project since January 2015 in an attempt to explain the project, discuss potential impacts and understand its concerns.¹⁷¹ It noted that the Gunn Métis Local 55 has an existing database of its members' traditional land and resource activities that could have been provided to Alberta PowerLine to assist to identifying areas of concern and possible mitigations.

278. With respect to Gunn Métis Local 55's requests that the Commission place, as conditions on an approval, that Alberta PowerLine conduct meaningful consultation so as to support a traditional use study, Alberta PowerLine replied that it has committed to working with Gunn Métis Local 55, and other groups, to facilitate activities such as open houses and site visits, but does not agree that a condition of approval should be to provide capacity funding.¹⁷² It noted that Gunn Métis Local 55 requested similar payments at the TAMA Power Sundance 7 hearing, which the Commission denied.¹⁷³

279. Alberta PowerLine met with Beaver Lake Cree Nation in March of 2016 to deliver project information and maps. Beaver Lake Cree Nation expressed some concerns and requested an opportunity to review the project with the Elders to determine any potential impacts and requested community development contributions. A meeting with the Chief and Council was held on April 18, 2016, to discuss the project and the concerns of Beaver Lake Cree Nation.

¹⁶⁵ Transcript, Volume 7, page 1364, lines 9 to 12.

¹⁶⁶ Transcript, Volume 7, page 1362, lines 18 to 21.

¹⁶⁷ Transcript, Volume 7, page 1364, line 24 to page 1365, line 4.

¹⁶⁸ Transcript, Volume 7, page 1367, lines 18 to 21.

¹⁶⁹ Transcript, Volume 7, page 1366, lines 10 to 14.

¹⁷⁰ Transcript, Volume 18, page 3720, lines 21 to 25.

¹⁷¹ Transcript, Volume 18, Page 3718, lines 14 to 22.

¹⁷² Transcript, Volume 18, page 3721, lines 1 to 7.

¹⁷³ Transcript, Volume 18, page 3721, lines 1 to page 3722, line 5.

280. An additional meeting was held on July 19, 2016. Alberta PowerLine stated that it has been working with Beaver Lake Cree Nation on a scope of work and budget for open houses, Elder mapping sessions and site visits.¹⁷⁴ There were also discussions about the potential for capacity funding. Alberta PowerLine stated that meetings and exchanges were held in June, August and September of 2016 and that discussions are ongoing.

281. Alberta PowerLine stated it is committed to undertaking project-specific traditional land use studies with Beaver Lake Cree Nation¹⁷⁵ and remains committed to ongoing consultation and engagement with Beaver Lake Cree Nation.¹⁷⁶ Alberta PowerLine stated that it will continue discussions to understand site-specific traditional land use concerns that may be addressed by incorporating mitigation measures throughout construction.¹⁷⁷ Alberta PowerLine has also offered to conduct site visits with the Beaver Lake Cree Nation members to identify specific areas of concern where diamond willow fungus is currently harvested. Alberta PowerLine also stated that it is prepared to consider involving the Beaver Lake Cree Nation members as monitors in certain locations throughout construction activities¹⁷⁸ and will provide notice of construction activities in specific areas of cultural importance identified by Beaver Lake Cree Nation.¹⁷⁹ In addition, Alberta PowerLine committed to provide notice to Beaver Lake Cree Nation of the proposed construction schedule at least two weeks prior to the commencement of construction.

282. Alberta PowerLine stated that Beaver Lake Cree Nation's request that consultation and notification over the life of the project be made a condition is not needed, given Alberta PowerLine's stated commitments.¹⁸⁰

283. In its summary of commitments, Alberta PowerLine stated it will continue to consult and engage Aboriginal groups throughout the project and will provide notice of construction activities for any specific areas of significant importance identified by an Aboriginal group. Where reasonably possible, it will work with Aboriginal groups to accommodate their traditional use of the land during construction.¹⁸¹

6.4 Commission findings

284. In accordance with Rule 007, Alberta PowerLine must undertake a participant involvement program including mandatory public notification and personal consultation requirements, and retain documentation of its consultations. In carrying out its public interest mandate, the Commission must be satisfied that the participant involvement program complied with the requirements of Rule 007.

285. A comprehensive participant involvement program is an important component of any application. Stakeholders' input can guide routing development; their concerns and site-specific information can inform and assist with developing appropriate mitigation measures.

¹⁷⁴ Transcript, Volume 7, page 1407, line 22 to page 1408, line 5.

¹⁷⁵ Transcript, Volume 7, page 1410, lines 1 to 15.

¹⁷⁶ Transcript, Volume 18, page 3727, lines 1 to 2.

¹⁷⁷ Transcript, Volume 8, page 1501.

¹⁷⁸ Transcript, Volume 8, page 1535.

¹⁷⁹ Transcript, Volume 18, page 3730, lines 7 to 11.

¹⁸⁰ Transcript, Volume 18, page 3730, line 24 to page 3731, line 2.

¹⁸¹ Exhibit 21030-X1583, APL Undertaking 028, PDF page 3.

286. Upon review of Alberta PowerLine's consultation process and the shortcomings alleged by interveners, it is evident that individual perceptions of the consultation process can vary widely. The Commission heard various concerns raised by the interveners, including unresponsiveness to landowner concerns, that some stakeholders were missed at various stages of the consultation process, and the inability of Alberta PowerLine to provide answers to their questions.

287. The Commission acknowledges the specific concerns of individual interveners and recognizes that there will inevitably be incidents in a program of this magnitude where it fails to satisfy the expectations of some parties. However, it must assess the fundamental components of the participant involvement program as a whole, in light of the nature and scope of the project at hand, and determine whether the overall program satisfies the requirements of Rule 007.

288. According to Alberta PowerLine, its participant involvement program began in 2014, prior to being awarded the contract to develop the project by the AESO. At that time, it initiated early engagement with government, industry, Aboriginal communities and municipalities. Alberta PowerLine formally started the participant involvement program in 2015 by notifying stakeholders within 800 metres of the preliminary routes. It held a number of public open houses and conducted personal consultation with individuals via phone, email and face-to-face discussions.

289. Alberta PowerLine conducted a second round of consultations in June 2015, notifying stakeholders of its refined routes, new route options and the elimination of some preliminary routes from consideration. It conducted a third round of consultations in November 2015 whereby it informed stakeholders of the routes it intended to apply for, as well as its preferred route.

290. The evidence demonstrates that Alberta PowerLine undertook a comprehensive participant involvement program. It conducted multiple rounds of consultation, refining its project with each iteration and providing updates on the changes. Alberta PowerLine utilized effective communication tools including direct consultation, mail notifications, public open houses and community meetings. It also created a database to track and co-ordinate its consultation.

291. Alberta PowerLine's tracking system and approach to identifying new stakeholders was designed to ensure that all potentially-affected parties were informed of the applications and had an opportunity to consider the potential impacts of the project. Taking into consideration the scale and scope of the participant involvement program, oversights were inevitable. However, the Commission is satisfied that the design, nature and multiple phases of the participant involvement program gave stakeholders adequate opportunity to learn about the project. It finds that Alberta PowerLine's approach to the identification of stakeholders was reasonable in the circumstances and that once notified, potentially-affected stakeholders were given sufficient information to understand the project and adequate opportunities to express their concerns.

292. The Commission acknowledges that often stakeholder concerns cannot be resolved, even in an effective participant involvement program. The Commission considers that consultation is a two-way street and is only effective if landowners and other stakeholders make their concerns known to Alberta PowerLine so their concerns may be discussed and potential solutions considered.

293. In Section 4 of this decision, the Commission found that it did not have the jurisdiction to consider the adequacy of Crown consultation with Aboriginal groups. However, the Commission has considered whether Alberta PowerLine's consultation with Aboriginal groups satisfies the regulatory requirements of Rule 007.

294. The Commission initially learned about the concerns of Aboriginal groups through Alberta PowerLine's direct engagement with potentially- affected Aboriginal groups.

295. Where Aboriginal groups fell within the consultation requirements set out in Rule 007, Alberta PowerLine relied on Rule 007 to direct the consultation efforts. The Commission finds that Alberta PowerLine's approach to consultation with Aboriginal groups was adequate for this project and satisfies the requirements of Rule 007.

296. In Decision 2011-436,¹⁸² the Commission made the following comments with respect to effective consultation under Rule 007:

... In the Commission's view, effective consultation achieves three purposes. First, it allows parties to understand the nature of a project. Second, it allows the applicant and the intervener to identify areas of concern. Third, it provides a reasonable opportunity for the parties to engage in meaningful dialogue and discussion with the goal of eliminating or mitigating to an acceptable degree the affected parties concerns about the project. If done well, a consultation program will improve the application and help to resolve disputes between the applicant and affected parties outside of the context of the hearing room.

297. The Commission finds that Alberta PowerLine's consultation with Aboriginal groups met these three objectives. The correspondence on the record of this proceeding and the oral evidence presented by representatives from Alberta PowerLine indicated that Alberta PowerLine engaged in a dialogue with Aboriginal groups in an attempt to identify and potentially mitigate their concerns with the project and these meetings and discussions continued after the applications were filed with the Commission. To this end, while several Aboriginal groups initially raised consultation concerns in their statements of intent to participate, only Beaver Lake Cree Nation and Gunn Métis Local 55 appeared at the hearing. The Commission considers that, given the withdrawal of concerns by the majority of Aboriginal groups consulted by Alberta PowerLine, and the consultation material filed on the record of the proceeding, the evidence demonstrates that Alberta PowerLine made reasonable efforts to engage with Aboriginal groups in discussions about their members' concerns.

298. The Commission has also specifically considered whether Alberta PowerLine's consultation with Beaver Lake Cree Nation and Gunn Métis Local 55 satisfies the regulatory requirements of Rule 007.

299. The evidence on the record demonstrates that Alberta PowerLine held several meetings with both Beaver Lake Cree Nation and Gunn Métis Local 55. These meetings and other personal consultation were documented and filed on the record. To that end, the Commission notes that Alberta PowerLine has offered to provide funding for open houses and site visits to further understand site-specific concerns.

¹⁸² Decision 2011-436: AltaLink Management Ltd. and EPCOR Distribution & Transmission Inc., Heartland Transmission Project, Application 1606609, November 1, 2011, page 57.

300. With respect to Beaver Lake Cree Nation's assertion that Alberta PowerLine refused to meet, the Commission considers that Alberta PowerLine could have better communicated its meeting procedures and accommodated the request for a meeting. Nevertheless, given the totality of the evidence, the Commission finds that Alberta PowerLine made reasonable attempts to consult with Beaver Lake Cree Nation to understand its members' specific concerns and that Alberta Powerline's consultation efforts met the requirements of Rule 007.

301. In making the above findings, the Commission has taken into account that Alberta PowerLine has committed to continue to consult with Aboriginal groups for the project's lifetime. While Beaver Lake Cree Nation has requested that this commitment be a condition of the project's approval, the Commission finds Alberta PowerLine's commitment throughout the proceeding and hearing to be clearly stated and satisfactory. Accordingly, it will not make it a condition of approval.

302. With regard to the request from Gunn Métis Local 55 that funding for further consultation be ordered, there is no requirement in the Commission's rules for applicants to fund consultation meetings with stakeholders. Further, given the consultation record before it, the Commission finds such a condition unnecessary to fulfill the requirements of Rule 007 or its public interest mandate.

303. Having reviewed the application, evidence and testimony of all parties, the Commission finds that the participant involvement program was conducted in accordance with Rule 007 and that the notification and consultation components achieved the purposes set out in Rule 007.

7 Criteria and route siting principles

7.1 Route siting

7.1.1 Alberta PowerLine's routing methodology

304. In establishing a study area for the proposed transmission line, Alberta PowerLine accounted for environmental and social constraints, and also technical requirements identified in the AESO's functional specifications for the project. The Sunnybrook 510S Substation is at the south end of the transmission line. The Livock 500-kV substation is to be located on the existing Livock 939S Substation lease. The anticipated site of the Thickwood Hills 500-kV substation through the Thickwood Hills 240-kV Transmission Development project is as specified by the AESO in that project.¹⁸³

305. The following general transmission line routing criteria were used by Alberta PowerLine:

- Minimize impacts on other land uses, such as residences, built-up areas, oil and gas facilities, and airstrips.
- Utilize existing linear developments to minimize new disturbance and clearing, and follow existing power lines where practical.

¹⁸³ Proceeding 21030, Applications 21030-A010 to 21030-A014, Thickwood Hills transmission project.

- Follow existing roads, where practical, for access, to reduce new clearing, and to avoid impacts to the environment.
- Follow quarter and section lines wherever practical to minimize impact to agriculture.
- Keep routes as straight as reasonably possible, to reduce line length, workspace requirements, and costly corner structures.
- Minimize length through environmentally-sensitive areas, such as watercourses, recreation areas, parks, campgrounds, and wildlife habitat.
- Minimize length through wet areas and steep slopes for better access and to reduce environmental impacts.
- Ensure all electrical system constraints and considerations are respected.¹⁸⁴

306. Alberta PowerLine also used Rule 007 and Alberta Environment and Parks' *Environmental Protection Guidelines for Transmission Lines*, as well as other factors determined by the professional judgement or experience of its planners, to develop specific routing and siting criteria. The criteria are set out below:

- Maintain separation from residences, preferably 150 metres or greater.
- Maintain separation from cities, towns, villages, hamlets and other built-up areas.
- Minimize routing through planned and documented residential, commercial and industrial subdivisions, and lands zoned as country residential or equivalent.
- Maintain separation from schools, churches, community halls, commercial buildings, other public buildings, cemeteries and other gathering places.
- Minimize routing on private land by utilizing Crown land.
- Minimize crossing of existing and planned, documented public recreational areas (e.g., campgrounds, ski areas, golf courses, etc.).
- Minimize routing near lands that are designated scenic areas.
- Minimize overall length of transmission line.
- Follow quarter section and other property boundary lines.
- Parallel existing and planned transmission lines.
- Minimize the number of deflections in the line.

¹⁸⁴ Exhibit 21030-X002, Attach 01 – Application Text Final, page 34.

- Minimize the number of crossings with existing high voltage transmission lines, particularly those 240-kV and greater.
- Minimize locating towers on unstable sites such as slump prone terrain or wet areas.
- Minimize routing on cultivated land by utilizing pasture and bush-pasture.
- Minimize traversing federal lands, national and provincial parks, ecological reserves and areas, and natural areas.
- Minimize routing near airfields including runways and private airstrips.
- Minimize crossings over open water, particularly greater than 400 metres across.
- Minimize encroaching recommended setbacks of known site-specific habitat features of protected wildlife species.
- Minimize traversing lands within known habitat ranges of *Species at Risk Act* Schedule 1 species.
- Minimize routing through designated wildlife areas of concern.
- Minimize impacts to features identified in environmentally significant areas.
- Minimize crossing lands having a Historic Resource Value (HRV) particularly HRV 1 or 2.
- Minimize crossing active mines or known/approved surface mineable resources.
- Minimize routing on lands associated with known/approved developments (e.g., wind farms and upgrader facilities).
- Maintain required minimum setbacks from existing oil and gas facilities.
- Maintain adequate setbacks from telecommunication towers.¹⁸⁵

307. Alberta PowerLine used a staged approach in the development of transmission line routes, which included the following steps:

- i. The gathering of information and initial assessment of opportunities and constraints within a broad study area.
- ii. Examination and selection of preliminary route options for review by interested parties.
- iii. Further analysis of the routing alternatives, including consideration of the feedback and suggestions from those consulted in an extensive participant involvement program.
- iv. Selection of refined routes for more detailed analysis and consultation with interested parties.

¹⁸⁵ Exhibit 21030-X002, Attach 01 – Application Text Final, pages 34 and 35.

- v. Further refinement of routes based on consultations and analysis for submission to the AUC.¹⁸⁶

308. As noted above, Alberta PowerLine's route selection process involved consultation with landowners, occupants, agencies and other interested parties. Alberta PowerLine stated that this input played a critical role in the development of the proposed transmission line routes. Municipal development plans and land use bylaws were reviewed as part of the route development.

309. The project routing area lies within the North Saskatchewan Regional Plan area, the Upper Athabasca Regional Plan area, the Lower Peace Regional Plan area and the Lower Athabasca Regional Plan area. Alberta PowerLine noted that of these, only the Lower Athabasca Regional Plan is completed and proposed that the project was consistent with this plan. For the other, yet-to-be-completed plans, Alberta PowerLine anticipated that the general routing criteria used when developing the routing would be compatible with the future goals of those plans.

310. Alberta PowerLine also took into account the Comprehensive Regional Infrastructure Sustainability Plan for the Athabasca Oil Sands Area in its routing development. This plan describes the province's mandate of integrating multi-use corridor planning and incorporating extensive consultation in the Athabasca oil sands area for proposed future projects. The transmission line routing follows existing linear development, including transmission lines and pipelines, to reduce landscape fragmentation.

7.1.2 Conceptual route siting

311. Alberta PowerLine established a study area for the route development that was approximately 36,000 square kilometres, with preferred and alternate routes denoted by the gray outlined area. The study area is described in the introduction to this decision and depicted in Figure 1 – Common, preferred and alternate routes.

312. The south boundary of the study area was established south of the Genesee 330P Substation. The western extent of the study area was developed to assess possible options west of Wabamun Lake and the eastern extent to assess areas west of Stoney Plain. Due to relatively high-density subdivisions and country residential developments, the area immediately north and south of Stoney Plain and Spruce Grove, and the surrounding area near Morinville were excluded. The study area was extended east of Westlock further north of Stoney Plain, where residential density is lower.

313. The study area boundary was limited west of the town of Athabasca in consideration of the most direct route possible to the Livock 939S Substation and to focus routing on Crown land. North of Calling Lake, the study area boundary was extended further east where the Athabasca River was established as the most eastern extent of the route to reach the Fort McMurray area. The Livock 939S Substation was used as a control point as it is a termination point for transmission lines 12L41 and 12L44. The Athabasca River is approximately 18 kilometres east of the Livock 939S Substation and was therefore established as a boundary for the study area in order to avoid multiple crossings of this major river.

¹⁸⁶ Exhibit 21030-X002, Attach 01 – Application Text Final, page 28.

314. The northwest boundary of the study area was kept to the east of Lesser Slave Lake and the town of Slave Lake because of residential density and the limited routing opportunities given the proximity of the lake. The northern extent of the northwest side of the study area followed the northern boundary of Range 86 and maintained a buffer of approximately 10 kilometres to the northwest of existing transmission line 9L57. Additional land near existing transmission lines 9L01 and 9L07 was included in the study area to assess whether opportunities for routing along existing transmission corridors near Fort McMurray could provide reasonable routing options in the event the Thickwood Hills 951S Substation was sited further north.

315. River-crossing locations for the North Saskatchewan and the Athabasca rivers were identified as key routing constraints. Locations for crossings were selected to ensure that crossings would meet minimum engineering design requirements and minimize environment impacts.

316. On private land, Alberta PowerLine favoured land use boundaries, county-developed and undeveloped road allowances, or following existing linear developments. Mid-field alignments were favoured to reduce impacts to residences due to close proximity while balancing other impacts.

317. Through Crown land, Alberta PowerLine favoured alignments that followed existing linear developments and areas with favourable ground conditions for construction and maintenance. It also favoured alignments resulting in the shortest possible distance while having regard for other constraints. The use of cross-country routes was considered on Crown land.

318. Alberta PowerLine considered several conceptual route areas in the development of the preliminary routes that were presented to the public. All of these conceptual route areas were rejected during the conceptual routing phase of the project. The rejected conceptual route areas and Alberta PowerLine's rationale for rejecting the routes are described in the following paragraphs.

319. Conceptual route area 1 is found west of the Sunnybrook 510S Substation on the west side of Wabamun Lake and Lac Ste. Anne. This routing concept was rejected because it added 40 to 50 kilometres of routing without appreciable reduction in other impacts.

320. Conceptual route area 2 found west around Lac Ste. Anne, was not pursued by Alberta PowerLine because it added five kilometres to the route and resulted in additional 240-kV transmission line crossings with no significant decrease in potential overall impacts to landowners.

321. Conceptual route area 3 would follow the existing 913L transmission line across the narrow point of Lac Ste. Anne. This routing was rejected by Alberta PowerLine as sections of the existing 913L transmission line could not be followed due to residences and oil and gas facilities in close proximity to the transmission line. The Alexis First Nation also expressed its preference to have the 913L transmission line relocated outside of the reserve lands, so that the area could be utilized for future development. Other factors such as proximity to school playgrounds, rural residential areas, stick nests for migratory birds and heavy oil and gas developments led Alberta PowerLine to reject this conceptual routing area. Alberta PowerLine also determined that the cost of this conceptual route was not materially different than other viable route concepts.

322. Conceptual route area 4, found east of Highway 770, in the area south of Highway 16, was rejected due to extensive residential development and areas identified as country residential that were slated for significant future residential subdivision development. This area also has a significant recreational use.

323. Conceptual route area 5 is a slightly more westerly routing on the east route option near townships 61 to 63. This route was rejected because it would require multiple crossings over the Pembina River with structures located within the floodplain. In addition, this conceptual route would not reduce the overall impacts on private land, would not reduce the distance required on Crown land, and would require more heavy angle deflections.

324. Conceptual route area 6 would join the west route option to the east route option instead of crossing the Athabasca River. This conceptual route area would divert eastwardly from the west route option, travel south of the Hubert Lake Wildland Park and join the east route option between townships 66 and 70. Alberta PowerLine stated that this route affected more residential development than the west route option and increased length on private land, affecting additional agricultural land. Further, it did not significantly reduce the total length of the transmission line and did not take advantage of existing linear disturbances and all-weather access to the same extent as the preliminary west route option north of the Athabasca River.

325. Conceptual route area 7 would bring the line closer to the hamlet of Wabasca on the west side of North Wabasca Lake. This conceptual route was not selected because of the proximity to Godin Lake which is a trumpeter swan breeding waterbody, there are seasonal cabins within 150 metres of the alignment, and the area has a planned treaty expansion under a provincial holding reserve.

326. Conceptual route area 8, a route through the hamlet of Wabasca was rejected because the Municipal District of Opportunity No. 17 requested that there be no routing through the hamlet of Wabasca given substantial development within the hamlet, including recreational, commercial and residential development. The area between North and South Wabasca lakes, which the conceptual routing would utilize, has a high concentration of residences, industrial development and transmission and distribution lines.

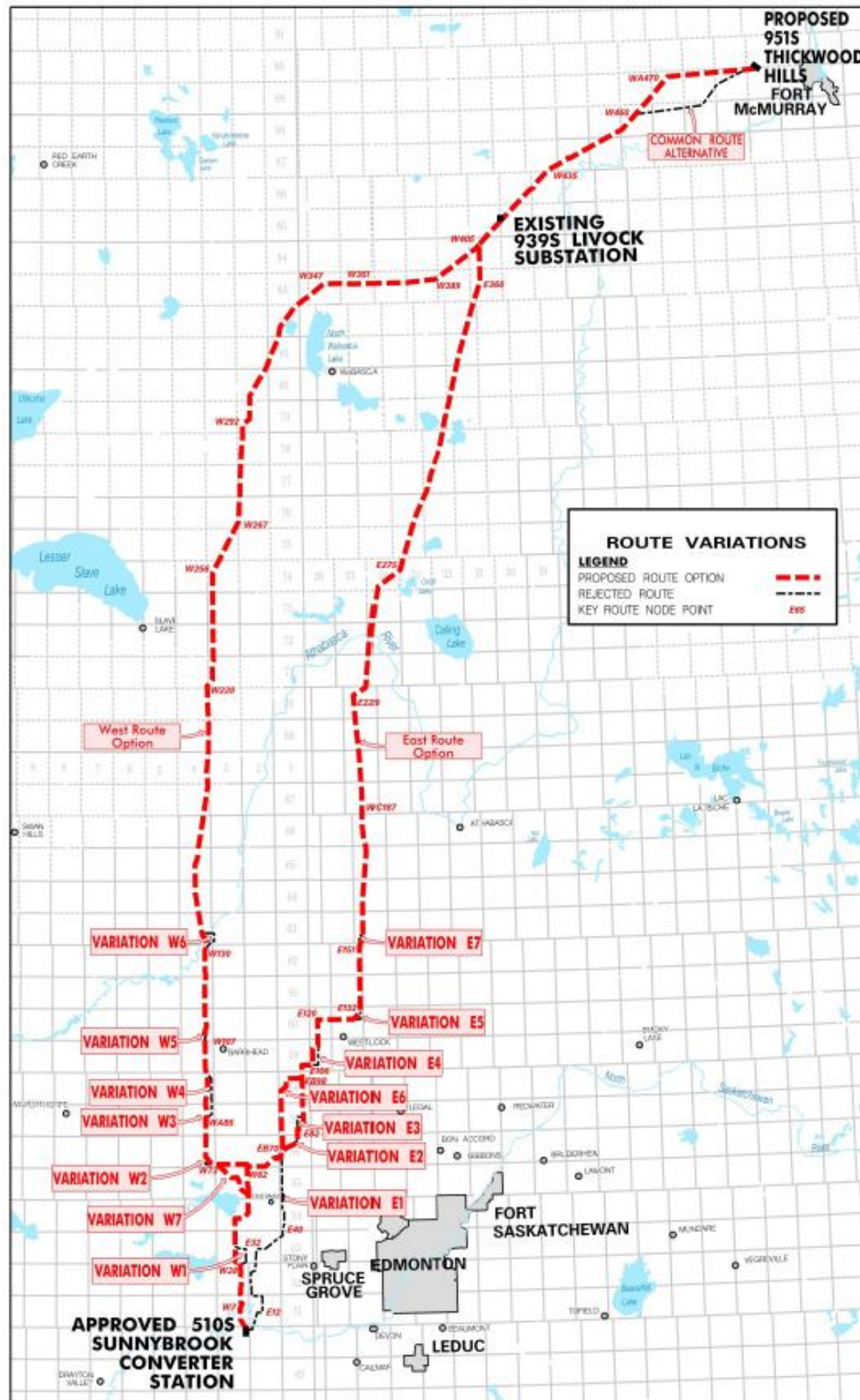
7.1.3 Preliminary route siting

327. Alberta PowerLine developed its preliminary route siting using the above-described conceptual route development process and developed two preliminary route options, the east route option and the west route option. These routes were developed for the 500-kV transmission line 12L41 between the existing Sunnybrook 510S Substation and the Livock 939S Substation. Routing was developed for the 12L44 transmission line between the Livock 939S Substation and the Thickwood Hills 951S Substation. Variations to these routes were developed in locations with significant routing constraints that warranted further consideration.

328. Alberta PowerLine presented the options and variations to landowners, Aboriginal communities, industries and agencies as part of the public involvement program in January 2015. Based on feedback from the preliminary consultation, Alberta PowerLine re-assessed the preliminary routes, considering new information and newly identified constraints. After further data gathering and field reconnaissance, Alberta PowerLine refined the routes where required, and rejected routes that it deemed inferior. The refined routing and the rejected routes can be

seen in Figure 2 below. The black-dashed lines were examined by Alberta PowerLine but rejected in favour of the applied-for routes.

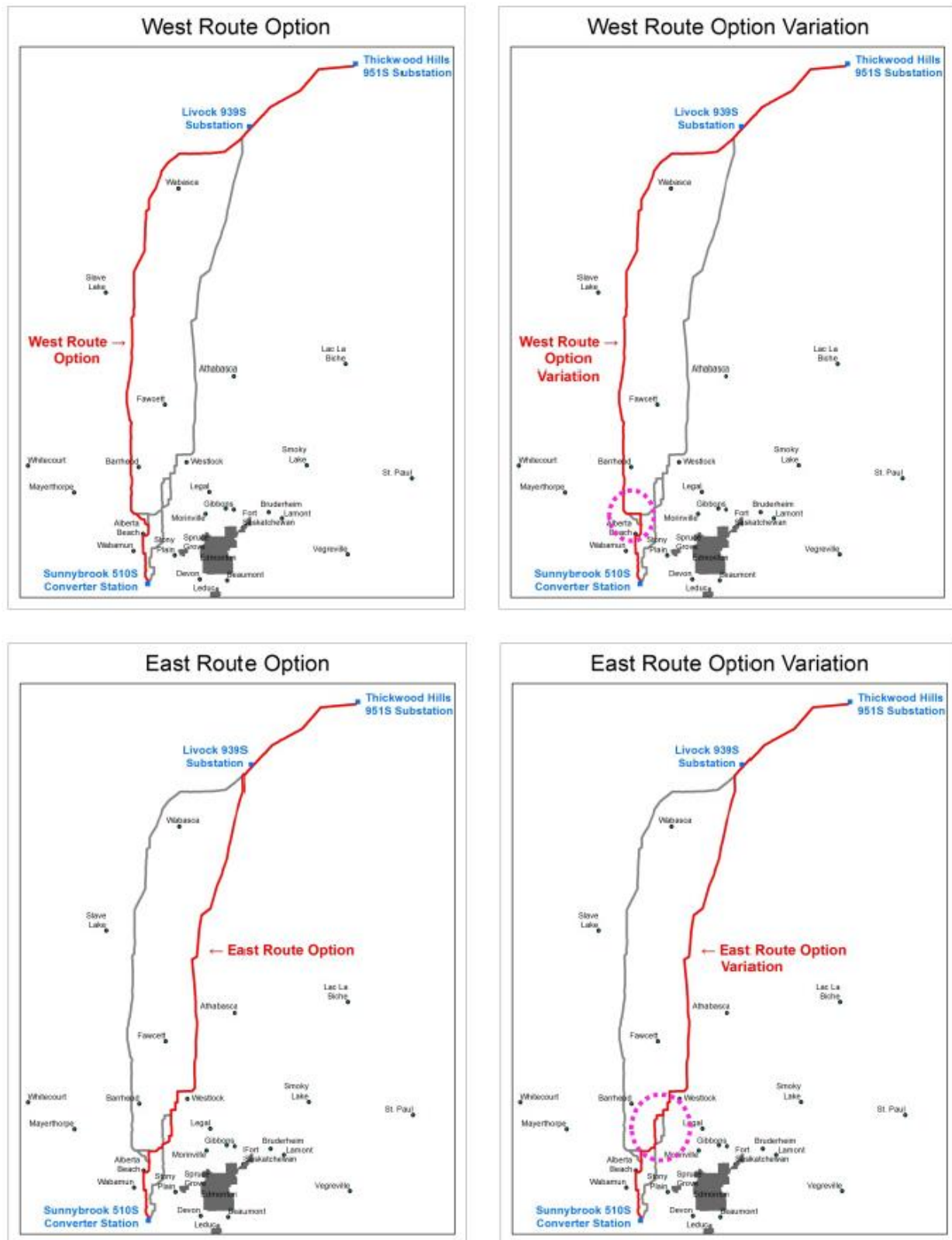
Figure 2 – Preliminary route selection



329. The south portion of the east route (Sunnybrook 510S Substation to node E65) option was rejected in this phase. Following the first round of public consultation, the east route in the south portion displayed a greater residential impact than the west route. The east route in the southern area traversed seven kilometres of an area zoned as country residential, where future subdivisions were permitted. The east route in the southern area displayed greater potential environmental impacts than the west route in this area and Parkland County raised concerns regarding impacts to the environment, residences, lakes and recreational areas. Safety and setback issues were also raised with regard to a helicopter business and aerodrome application in the area.

330. Five minor route variations were identified on the east route option and six minor route variations were identified on the west route option. Alberta PowerLine rejected these variations after further evaluation and consultation with landowners in the area.

Figure 3 – Applied-for routing



331. After filing its application for transmission lines 12L41 and 12L44, Alberta PowerLine continued to make refinements to the routing based on consultation and submitted three amendments to the applications. One of these amendments removed the diagonal portion of the west route option, as described in the introduction of this decision. The final applied-for routes can be seen below in Figure 4 – Alberta PowerLine final routing.

Figure 4 – Alberta PowerLine final routing



332. Alberta PowerLine selected the west route option as the preferred route because it would follow more existing linear disturbances, has greater stakeholder acceptance, and would minimize the overall impact to residences and subdivided lots. According to Alberta PowerLine compared to the east route option, the west route option follows four times the distance adjacent to existing 240-kV transmission lines, nearly two times the distance adjacent to existing roads, and three times the distance adjacent to existing pipelines. Alberta PowerLine also submitted that the west route option follows 50 per cent more multi-use corridors than the east route.

333. The east route option was developed to take the shortest route between the Sunnybrook 510S Substation and the Livock 939S Substation while still considering the general routing criteria.

334. Two variations to the common route option on the 12L44 transmission line in the northern portion were developed after consultation with one of the interveners in the area, Brion. These were submitted as amendments referred to above.

Table 4. Route comparison metrics

Configuration factors	West route option	East route option	East route option variation
Route Length (km)	508.5	481.6	482.6
Major Deflections			
1 - 3 degrees	20	18	19
3 - 10 degrees	32	30	31
10 - 20 degrees	28	23	22
20 - 45 degrees	33	23	21
>45 degrees	22	29	31
Residences Count by Distance From Route Centreline			
0 - 150 m	9	5	6
151 - 300 m	40	35	32
301 - 400 m	34	39	39
401 - 800 m	216	271	265
Total	299	350	342
Nearest Occupied Residence (m)	100	100	12
Subdivided Lots – No Residence – Count			
0 - 150 m	5	4	4
151 - 300 m	1	4	3
301 - 400 m	2	1	1
401 - 800 m	33	41	42
Total	41	50	50
Adjacent Linear Features			
<i>Directly Adjacent</i>			
Existing transmission line - >238 kV (km)	200.1	46.1	46.1
Pipeline (km)	37.0	10.5	11.4
Roads/Access Trails (km)	42.9	25.8	26.1
<i>Indirectly Adjacent</i>			
Existing transmission line - .238 kV (km)	53.3	27.5	27.5
Pipeline	134.2	118.9	118.9
Roads/Access Trails	79.9	28.5	28.5
Parcel Boundary – White Area			
Parcel Boundary (e.g., ¼-line) (km)	60.2	97.2	103.7

Configuration factors	West route option	East route option	East route option variation
Cross-Country			
Green Area – Length of Cross-Country (km)	135.9	227.3	227.3
White Area – Length of Cross-Country (km)	44.9	83.8	77.4
Total Length of Cross-Country (km)	180.8	311.1	304.7
Accessibility			
Length of Required off RoW Access (km)	34.0	33.8	34.0
Area of Required Temporary Workspace (hectares)	47.5	45.5	48.6
Infrastructure Crossings			
Total Energized Circuit >=238 kV	19	10	10
Primary Highways	5	5	5
Secondary Highways	5	7	6
Pipelines	166	174	174
Hydrographic Feature Crossings			
Watercourse Crossings	45	29	31
Environmental/Sensitive Areas			
Wetlands (hectares)	1161.4	1191.1	1187.6
Caribou Range (km)	162.7	149.5	149.5
Special Access Zones (km)	4.0	0	0
Key Wildlife and Biodiversity Zone (km)	7.3	21.3	21.3
Environmentally Significant Areas (hectares)	676.9	723.8	718.5
Protective Notation Areas – Ungulate Habitat Protection Areas (hectares)	0	193.5	193.5
Protective Notation Areas – all others (hectares)	392.4	506.7	506.7
Historic Resource Value potential – HRV 4-5 (hectares)	86.7	91.9	91.9
Historic Resource Value potential – HRV 4-5 (km)	14.3	15.1	15.1
Historical Resource Value potential – HRV 1-3 (hectares)	0	0	0
Historical Resource Value potential – HRV 1-3 (km)	0	0	0
Agricultural Impacts			
Area of Cultivated Land within RoW (hectares)	331.5	418.2	442.5
Area of Pasture Land within RoW (hectares)	171.8	240.8	230.0
Forestry Impacts			
Area of Merchantable Tree Removal within RoW (hectares)	913.2	893.1	901.0
Ownership			
Route Intersecting Private Land (km)	129.3	159.5	161.2
Route Intersecting Public Land (km)	379.2	322.1	321.4
Parcel Assessment			
Directly Affected Private Land Parcels on RoW (count)	236	344	351
Directly Affected Public Land Parcels on RoW (count)	603	511	511
Total Directly Affected Land Parcels (count)	839	855	862
Private Land Parcels within 800 m of RoW (count)	784	1049	1025
Public Land Parcels within 800 m of RoW (count)	1579	1363	1364
Total Land Parcels within 800 m of RoW (count)	4041	4122	4113

335. Alberta PowerLine submitted that utilizing linear disturbances is a key consideration for Alberta Environment and Parks and is also consistent with the goals identified throughout the project's participant involvement program. It argued that the west route option would therefore result in less land fragmentation and be expected to have lesser potential residual effects on valued environmental components, as supported by the environmental assessment submitted as part of the applications.

7.2 Views of the interveners

336. Several interveners and intervener groups presented evidence on Alberta PowerLine's route selection and are present below.

- ERLOG submitted a report prepared by Berrien Associates Ltd. (Berrien) titled, *Review and Opinion of the West (Preferred) and East (Alternate) Routes between Sunnybrook Substation and Livock Substation (Line 12L41)*, (ERLOG Berrien Report).¹⁸⁷
- Burnco Rock Products Ltd., Tricycle Lane Ranches Ltd., and Lehigh Hanson Materials Limited also filed a report prepared by Berrien titled, *Review and Opinion of Two Sub-Segments on the Common Route Portion of the Alberta Power Line between Sunnybrook Substation and Livock Substation (Line 12L41)*, (Burnco Berrien Report).¹⁸⁸
- Roy Ernst submitted a report prepared by Nican titled, *Review of the Alberta PowerLine's Fort McMurray West 500-kV Transmission Project Application, December 2015*, (Roy Ernst Report).¹⁸⁹
- The Wong Group also submitted a report prepared by Nican titled, *Review of the Alberta PowerLine's Fort McMurray West 500-kV Transmission Project Application, December 2015*, and (Wong Group Report).¹⁹⁰

337. The South of 43 Group submitted a route proposal on the west side of Wabamun Lake. This route was developed by a South of 43 Group member, Warren LaFoy.

338. Gunn Métis Local 55 also suggested routing the transmission line west, around Wabamun Lake. A detailed routing proposal was not submitted, but the group challenged Alberta PowerLine's review and rejection of the conceptual route 1.

339. Three route options were submitted in the area of the Brion MRCP. The Alberta PowerLine north common route, the common route variation 1 which was a slight jog to avoid a conceptual well pad of Brion, and common route 2. Brion supported the common route variation 2, developed by Alberta PowerLine based on a route developed by Brion.

340. The Renz and Treichel families group and Ms. Kathy Skwarchuk, chief administrative officer, of the Village of Alberta Beach, proposed the Village of Alberta Beach route concept or what was referred to as the "purple route". This route is described as a diagonal purple line

¹⁸⁷ Exhibit 21030-X0898, Evidence of Robert Berrien and CV.

¹⁸⁸ Exhibit 21030-X0929, Expert Routing Report Originally Filed March 25, 2016 but not posted due to AUC Error.

¹⁸⁹ Exhibit 21030-X0874, Written Evidence of Roy Ernst.

¹⁹⁰ Exhibit 21030-X0876, Written Evidence of the Wong Group.

extending from the upper east corner of the southwest quarter of Section 10, Township 54, Range 3, west of the Fifth Meridian at a northeast diagonal trajectory across and up to the upper west corner of the southwest quarter of Section 13, Township 54, Range 3, west of the Fifth Meridian.

7.3 The Berrien reports

341. The ERLOG Berrien Report contains a review and comparison of the privately-held portions of land on both the west and east route options, but excludes the common route portions of the proposed routes. Mr. Berrien first compared the east route option to the east route option variation to determine which of the east routes should be compared to the west route option.

342. Mr. Berrien submitted that the east route option compared to the east route option variation has some advantages. The east route option has one less residence within 150 metres, and the east route option variation has a cabin within 12 metres of the proposed transmission line. He testified that the proportion of affected cultivated land and directly-affected private land parcels both favour the east route option by a slight margin.¹⁹¹

343. When comparing the west route option with the east route option, Mr. Berrien applied his routing criteria, which are divided into Tier 1 and Tier 2 criteria and listed in order, from the most important to the least important. These can be seen below in Table 5:

Table 5. Berrien routing criteria ranking

Tier 1 routing criteria	Tier 2 routing criteria
<ol style="list-style-type: none"> 1. Avoid home sites 2. Follow existing linear disturbances (ELDs) impacts 3. Minimize line length and costs 	<ol style="list-style-type: none"> 4. Private versus Public Land 5. Minimize agricultural 6. Minimize environmental impacts 7. Minimize tree clearing 8. Minimize visual impacts 9. Avoid impacts on future development 10. Maintain ease of access

344. Mr. Berrien testified that his Tier 1 and Tier 2 criteria were extracted from his examinations of previous decisions of the Commission and its predecessors.¹⁹² Mr. Berrien compared the west route option against the east route option using these criteria and set out the results in the table below. For each factor, Mr. Berrien determined which route he considered superior, if there was sufficient information to do so.

¹⁹¹ Exhibit 21030-X0898, Evidence of Robert Berrien and CV, PDF page 9.

¹⁹² Transcript, Volume 13, page 2569, lines 16-25.

Table 6. Comparison table of routing criteria between the west route option and the east route option¹⁹³

Factor	West route option	East route option
Route Length/Cost		Superior
Residence Count	Superior	
Subdivided Lots	Superior	
Adjacent Linear Features	Superior	
Parcel Boundary		Superior
Cross Country	Superior	
Accessibility	No Significant Difference	No Significant Difference
Infrastructure Crossing	Not Sufficient Information	Not Sufficient Information
Environmental	Superior	
Agricultural	Superior	
Forestry	No Significant Difference	No Significant Difference
Ownership	Superior	
Objection Status	Superior	

345. During cross-examination, Mr. Berrien agreed that ultimately, routing is largely based upon the judgement of the route planner. He indicated that it is site-specific and that various criteria are applied depending upon the particular circumstances of the area.¹⁹⁴

346. Mr. Berrien testified that paralleling a transmission line creates an incremental impact to one that already exists, thereby adding to a visual impact. Whereas in the case of a greenfield routing, an unobstructed view would be affected. Utilizing existing linear disturbances helps with the ultimate goal of generating a route with lowest overall impacts, but it is not possible to avoid all impacts.

347. Based on the above, Mr. Berrien expressed the view that the west route option was the superior route for the Alberta PowerLine project.

348. Mr. Berrien also proposed eight micro-routing adjustments to the east route option, which were referred to as BARs. These were based on a review of site-specific issues on the east route and in locations where Mr. Berrien believed that a routing decision by Alberta PowerLine had impacts that could be mitigated by alternate routing.¹⁹⁵

349. Mr. Berrien suggested micro-routing adjustments in the area of the Burnco properties. In his view, these small adjustments would reduce potential impacts or costs, and also demonstrate how routing criteria might yield different, and likely better, routes in this area with equal or less impact, while alleviating the impact on gravel operations.

350. Mr. Berrien's BAR No. 1 attempted to alleviate impacts to the Keephills gravel operations of Burnco by crossing the North Saskatchewan River to the east and then running up the east side of the Keephills gravel pit and rejoining the Alberta PowerLine proposed route north of the Keephills gravel operation. His BAR No. 2 routed the transmission line east around the Highway 16 operations of Burnco and avoided the lands of Tricycle Lane Ranches Ltd. and

¹⁹³ Exhibit 21030-X0898, Evidence of Robert Berrien and CV, PDF page 17.

¹⁹⁴ Transcript Volume 13, page 2572, line 6.

¹⁹⁵ Exhibit 21030-X0898, Evidence of Robert Berrien and CV, page 18.

Lehigh Hanson Materials Limited at the same time. Mr. Berrien confirmed that he did not consult with landowners or the gravel operators impacted by his proposed BARs.¹⁹⁶

351. Mr. Berrien is of the view that unlike the AESO direct assignment process, the competitive process from which this project resulted passes savings along to Alberta PowerLine which is incentivised to plan an applied-for route and associated structures so as to minimize cost. This results in a disincentive to plan any costly impact-minimizing route designs and an incentive to Alberta PowerLine to defend its routing vigorously where costs could be increased. In cross-examination on this issue, Mr. Berrien stated that although Alberta PowerLine picked the more expensive route on a basis that it has a lower impact, it attempted to avoid any additional costs thereafter.¹⁹⁷

352. During cross-examination, Burnco gravel operation witnesses stated with respect to the Keephills location gravel operation, that they preferred Alberta PowerLine's routing to the Berrien route, from an operational viewpoint.¹⁹⁸

7.4 Views of the South of 43 Group

353. The South of 43 Group contested Alberta PowerLine's rationale for the rejection of conceptual route area 1. It stated that Alberta PowerLine did not provide a calculation for determining that the route distance was 40 to 50 kilometres longer than the applied-for route, did not provide weighting of metrics for the conceptual route and failed to provide a clear explanation of the route criteria used to examine the conceptual route.¹⁹⁹

354. The South of 43 Group submitted an alternative route west around Wabamun Lake that joined with the preferred route west of Majeau Lake. This route is similar to the conceptual route area 1 rejected by Alberta PowerLine. The South of 43 Group stated that this route aligned with Alberta PowerLine's routing principles as it paralleled 22.85 more kilometres of existing transmission line than the applied-for route.²⁰⁰ The group argued that it is a superior route because it has no residences not already within 300 metres of an existing transmission line, compared to the west route option which has 33 residences that were not already within 300 metres of an existing transmission line.²⁰¹

355. The South of 43 Group presented the following table of metrics in support of its route. Mr. Warren LaFoy obtained data for the table by using Google Maps, GeoDiscover maps and the Alberta government website, as well as driving sections of the route.

¹⁹⁶ Transcript, Volume 12, page 2330, lines 7-13.

¹⁹⁷ Transcript, Volume 12, page 2335, lines 2-8.

¹⁹⁸ Transcript, Volume 13, page 2573, lines 13-17.

¹⁹⁹ Exhibit 21030-X1047, South of 43_Written Evidence and Tabs 3 to 14, page 12, PDF 12

²⁰⁰ Exhibit 21030-X1047, South of 43_Written Evidence and Tabs 3 to 14, page 11, PDF 11.

²⁰¹ Exhibit 21030-X1047, South of 43_Written Evidence and Tabs 3 to 14, page 10, PDF 10.

Table 7. Comparison of the South of 43 Group route with the west route option²⁰²

	West route option	South of 43 Group route
Number of houses within 300 metres	33	0
Additional number of houses within 800 metres	127	42
Additional number of houses within 1,000 metres	227	19
Increased distance of transmission line	0 kilometres	40 kilometres
Number of towns of hamlets within 500 metres	1	0
Number of towns of hamlets within 1,000 metres	2	0
Number of subdivisions within 500 metres	1	0
Number of subdivisions within 1,000 metres	4	0
Number of schools with 500 metres	1	0
Distance of transmission line running parallel to existing transmission line	8.15 kilometres	31 kilometres
Number of houses effected by transmission line crossing their only emergency evacuation route	15	0

356. The South of 43 Group suggested micro-routing adjustments for three of its members if the South of 43 Group's proposed route was not accepted. The group suggested that routing the proposed transmission line further to the east could mitigate impacts on Ms. Edith Holtz. A route further to the west from Westland Park subdivision into the southwest quarter of Section 22, Township 53, Range 3, west of the Fifth Meridian would mitigate the impact to the McGinnises' and Crowleys' residences. Finally, the group suggested a route further east from the Krampls' residence that would mitigate their impacts.

7.5 Views of Gunn Métis Local 55

357. Gunn Métis Local 55 also presented a route similar to the conceptual route 1 that would go west around Wabamun Lake. In its evidence Gunn Métis Local 55 stated that Alberta PowerLine acknowledged it did not identify routing metrics associated with the conceptual route 1 option and that individual routing criteria were assessed at a high level only.²⁰³

358. Ms. Tracy Friedel, the vice-president of Gunn Métis Local 55 and chair of the Local's community and industry relations committee, testified that not considering the routing west of Wabamun Lake due to an additional 40 to 50 kilometres was troublesome, given that she did not believe Alberta PowerLine understood all of the potential impacts.²⁰⁴

7.6 Views of Brion Energy Corporation

359. Brion objected to routing the transmission line through an area with economically recoverable bitumen and an approved Alberta Energy Regulator steam-assisted gravity drainage (SAGD) development. Brion supported the routing of the transmission line through a naturally-occurring corridor where it has not identified economically recoverable bitumen.²⁰⁵ Alberta PowerLine developed common route variation 2, a route through the corridor as requested by Brion, which was also referred to as the Brion route. Brion argued that this route aligns better with industrial uses, consistent with the Lower Athabasca Regional Plan, and is superior from an environmental perspective. Brion did not however support the common route

²⁰² Exhibit 21030-X1047, South of 43 Written Evidence and Tabs 3 to 14, PDF page 10.

²⁰³ Exhibit 21030-X1001, Written Submission of GML 55, PDF page 8.

²⁰⁴ Transcript, Volume 15, page 3165, lines 6 to 15.

²⁰⁵ Exhibit 21030-X0891, Brion Written Evidence, PDF page 12.

variation 1 submitted by Alberta PowerLine because it potentially interfered with future developments.²⁰⁶

7.7 The Nican reports

360. Nican presented two reports in evidence. The Wong Group Report examined an area just north of the Sunnybrook 510S Substation to remove impacts on its member Richard Skermer and Larry and Patricia Akins. The Roy Ernst Report reviewed the section of the proposed transmission line near Kipp Lake on the west preferred route option and created separation from the transmission line and Mr. Ernst residence. Mr. Pablo Argenal authored these reports and appeared as a witness at the hearing to speak to them.

361. In both reports Nican agreed with the applicant's environmental assessment submitted by CH2M Hill Canada Limited (CH2M).²⁰⁷ Nican noted that this environmental assessment concluded that both the west and the east routes are acceptable, but there was a general preference towards the west route because the west route option follows more linear disturbances. As a result, Nican developed routes for both the Wong Group and Mr. Ernst that attempted to utilize existing linear disturbances.

362. The Nican reports focused heavily on avoiding "boxing in" of residences. This was a term used in the Nican reports to signify residences that had transmission lines on more than one side of the residence.

363. The Nican routes were developed to utilize existing rights-of-way or to parallel existing transmission lines to prevent residents from being boxed in by multiple transmission lines. In the Wong Group Report, Mr. Argenal stated that the Alberta PowerLine alignment would box in seven residents with two 500-kV transmission lines being visible to both the east and the west. A new alignment was proposed to utilize the right-of-way of AltaLink Management Ltd.'s transmission line 1209L, by salvaging the 1209L line and constructing it in the rejected east route option at the southern portion of the study area. This new alignment, he argued, would avoid the boxing in of residences and reuse existing linear disturbances in the area, which comports with transmission line routing principles.²⁰⁸

364. Mr. Argenal applied the same routing principles when developing the Roy Ernst Report. He testified that in his view, residences with an existing exposure will only experience an incremental impact from the addition of a new transmission line that parallels an existing transmission line.²⁰⁹ This routing principle guided Mr. Argenal's routing suggestions to utilize existing rights-of-way and attempted to prevent boxing in of a number of residences and Kipp Lake.

7.8 Views of the Renz and Treichel families group

365. The Renz and Treichel families own land in the village of Alberta Beach area and are opposed to the Alberta PowerLine routing. As stated above, the Renz and Treichel families and Ms. Kathy Skwarchuk, chief administrative officer, of the Village of Alberta Beach, proposed

²⁰⁶ Further review of Brion's concerns can be found in Section 14, the Business impacts section of the decision

²⁰⁷ Exhibit 21030-X0874, Written Evidence of Roy Ernst, PDF 3 and Exhibit 21030-X0876, Written Evidence of Wong Group, PDF 3.

²⁰⁸ Transcript, Volume 16, page 3331, lines 4 to 7.

²⁰⁹ Transcript, Volume 16, page 3447, lines 15 to 18.

the Village of Alberta Beach route concept or what was referred to as the “purple route”. The purple route would locate the proposed transmission line away from the Treichel lands located on the northwest quarter of Section 10, Township 54, Range 3, west of the Fifth Meridian and the southeast quarter of Section 15, Township 54, Range 3, west of the Fifth Meridian, on a small part of the Renz lands located at the southwest quarter of Section 14, Township 54, Range 3, west of the Fifth Meridian and further away from the village of Alberta Beach. The Village of Alberta Beach was denied standing in the proceeding due to the distance of the village from the proposed transmission line but participated as part of the Renz and Treichel families group. The Renz and Treichel families along with the Village of Alberta Beach argued that the Alberta PowerLine route affected more people than the Village of Alberta Beach route concept did.

366. A Village of Alberta Beach representative stated that the community had nowhere to grow except to the south and submitted that the Alberta PowerLine route would affect the expansion of the village of Alberta Beach. The Renz and Treichel families group submitted an Intermunicipal Development Plan. Mr. Richard Neufeld, preferred the Village of Alberta Beach route concept from a planning perspective as it was in a more rural rather than urban, area.²¹⁰ Mr. Neufeld also stated that the land where the Renz and Treichel families group are situated is going to be developed earlier than the areas south of Highway 633, even though some of the lands had the same designation for land use in the Intermunicipal Development Plan.

7.9 Views of Alberta PowerLine

367. Alberta PowerLine stated that it analyzed significant amounts of information when developing the preferred and alternate routes. Its route selection exercise involved the careful balancing of environmental factors, land use constraints, costs, potential impacts to residences, landholder feedback, and other considerations.

368. Alberta PowerLine submitted that the applied-for transmission line minimizes environmental impacts, follows existing transmission lines to the extent practical or otherwise follows quarter-section lines and property boundaries. Proximity to residences is also reduced where practical.

369. On the portion of proposed transmission line to be located on Crown land in northern Alberta, Alberta PowerLine utilized existing linear disturbances on the west route option. On the east route option, it used the most direct path so as to minimize the overall project footprint on Crown land.

370. Although the west route option has a higher cost, Alberta PowerLine submitted that it is the best routing option because it has a greater length following existing linear disturbances, significantly fewer stakeholder objections, lesser area within cultivated and pasture land, and lower overall environmental impacts. This latter consideration included key wildlife and biodiversity zones, environmentally significant areas, wetlands, and lower impact on caribou.

371. Mr. Scott Merrifield stated that the routing of the proposed transmission line was one where all the potential impacts were balanced and each situation was reviewed on a case-by-case

²¹⁰ Transcript, Volume 14, page 2858, line 2 to 4.

basis.²¹¹ When asked if it prioritized the routing criteria, Alberta PowerLine responded that it took all the routing criteria together and worked to minimize the overall impacts.²¹²

372. Alberta PowerLine further stated that routes were developed initially using the criteria outlined in the applications, but when refining a route, the site-specific details determined what criteria had the least impacts. Therefore, Alberta PowerLine did not rank its criteria.

373. Mr. Carey Kostik testified that none of the routing activities and application of routing criteria were affected by the competitive process.²¹³

374. In cross-examination, Mr. Merrifield of Alberta PowerLine maintained that the Burnco Bar No. 2 route would transfer impacts from the gravel pits onto the adjacent land and would use additional deflections in an attempt to create greater distance from residences.²¹⁴ Muskeg Lake would also require a deflection to route around it, although it is sometimes evident that there is no water in it. Mr. Merrifield specified that although it is required to route around Muskeg Lake, it is not required to route around the Burnco end pit lake, because currently, it is not a lake.²¹⁵

375. Alberta PowerLine maintained that the south common route is superior to that of the BAR No. 2 route, in part, because it affects the future development of Alberta Beach Estates. When questioned as to why the future development of Alberta Beach Estates was taking into account for routing and not the MWC Investments Inc. (MWC) campground, Mr. Merrifield stated that Alberta Beach Estates, is an approved development, whereas the MWC campground,²¹⁶ is in the conceptual planning stage.²¹⁷ Alberta Beach Estates has made progress and is proceeding with its planned road development. Alberta PowerLine views this as a strong indication that the development will occur.²¹⁸

376. Alberta PowerLine's position on the Nican reports is that the increased costs associated with the routes recommended by Nican do not sufficiently reduce the impacts of the transmission line on residences. Specifically, the Wong Group option 1 route would transfer the impacts to other landowners without justification. Further, Alberta PowerLine does not agree that the Wong Group option 1 would avoid boxing in of residences. Alberta PowerLine submitted that Mr. Richard Skermer's residence does not fall within the boxed-in area identified by Mr. Argenal, and that the Akins residence is more than one kilometre from the south common route.

377. Alberta PowerLine also contested Mr. Argenal's definition of the terms used in the Nican reports. Mr. Argenal included residences that he identified both as full new exposure and within his boxed-in area. In Alberta PowerLine's view, this demonstrates that Mr. Argenal's analysis was not useful as residences were included in both categories. The Wong Group Report also did not acknowledge residences that would be boxed in by his re-routing of transmission

²¹¹ Transcript, Volume 9, page 1674, lines 1 to 5.

²¹² Transcript, Volume 9, page 1672, lines 7 to 10.

²¹³ Transcript, Volume 9, page 1835, lines 19 to 21.

²¹⁴ Transcript, Volume 2, page 255, lines 11 to 14.

²¹⁵ Transcript, Volume 2, page 259, line 1.

²¹⁶ The Commission's findings on the issues raised by MWC are discussed in Section 14.

²¹⁷ Transcript, Volume 2, page 265, lines 8 to 11.

²¹⁸ Transcript, Volume 3, page 486, lines 16 to 21.

line 1209L and the existing transmission line 1203L.²¹⁹ Mr. Argenal also acknowledged during cross-examination that the Wong Group option 1 would require additional impacts and presents various technical difficulties.²²⁰

378. Alberta PowerLine argued that the route leaving the Sunnybrook 510S Substation is the best route given the constraints in the area. It noted that Mr. Argenal does not appear to have any extensive experience in routing transmission lines outside of the urban setting of Calgary, and has not been involved in projects of this magnitude.²²¹

379. Alberta PowerLine assessed and discussed the potential impacts of the Berrien BARs for the east route with landowners, but did not agree that they are superior to the east route option. In many instances, either the ERLOG members or other landowners did not agree with the BARs. However, Alberta PowerLine committed to work with landowners to assess tower placement changes with respect to BAR No. 6, should the east route option be approved.

380. In argument, Alberta PowerLine agreed with Mr. Berrien that site-specific circumstances must be considered when assessing the potential impacts in a particular area.²²² Alberta PowerLine however did not agree with Mr. Berrien's ranking of routing criteria, because it maintains that rankings could change with site-specific circumstances, and upon further guidance from a landowner, the regulator, and other stakeholders.²²³ Alberta PowerLine further argued that consultation is critical for route selection and final route selection cannot occur without it.

381. In its argument, Alberta PowerLine addressed allegations that the competitive bid process influenced the routing process. Alberta PowerLine submitted that it was not motivated by the cost recovery process and that despite the additional costs, the west route remained its preferred route because it reduces impacts to the environment, residences, and agricultural operations.²²⁴

382. Alberta PowerLine submitted that the South of 43 Group route is 42 per cent longer than the west route option and requires several additional heavy deflections. Alberta PowerLine added that the South of 43 Group route focuses on impacts to residences and does not weigh the impacts to industrial users, agricultural users and the environment. There would also be a greater number of affected landowners due to the increase in line length.²²⁵

383. The increased length of paralleling existing transmission lines on the South of 43 Group route is achieved through routing in a highly congested area, which would likely require significant alteration to existing transmission lines due to technical requirements. Alberta PowerLine further stated that the South of 43 Group route has a larger impact on the environment because it crosses relatively undisturbed natural habitat.²²⁶

²¹⁹ Transcript, Volume 18, page 3741, lines 11 to 14.

²²⁰ Transcript, Volume 18, page 3742, lines 15 to 16.

²²¹ Transcript, Volume 18, page 3737, lines 12 to 18.

²²² Transcript, Volume 18, page 3732, lines 14 to 23.

²²³ Transcript, Volume 18, page 3733, lines 3 to 10.

²²⁴ Transcript, Volume 18, page 3709, lines 5 to 24.

²²⁵ Exhibit 21030-X1205.02, Clean Version of Revised APL Reply Evidence, page 109, PDF 109.

²²⁶ Exhibit 21030-X1205.02, Clean Version of Revised APL Reply Evidence, page 109, PDF 109.

384. In cross-examination Mr. LaFoy admitted that there are sections where he thought the South of 43 Group route follows the quarter line, but in fact it is offset from the quarter line.²²⁷ Mr. LaFoy also stated that the Duffield School, which is shown at 500 metres from the west route option in his table, is measured to the schoolyard and not the school building itself.²²⁸ He testified that although he had measured 820 metres between the transmission line and his own house, a better estimate would more likely be 1,000 metres because he initially used Google Maps.²²⁹

385. Alberta PowerLine analyzed the micro-routing suggestions submitted by the South of 43 Group. In the instance of Ms. Holtz and the Krampls, the routing suggestions increase separation from their residences but placed the transmission line within 150 metres of neighbouring residences. The McGinnis, Crowley and Pearire/Stingley residences have significant natural screening between them and the proposed transmission line route; shifting the transmission line to the west would place the routing further onto gravel pit operations, thereby increasing the overall impacts of the route.

386. In addressing Gunn Métis Local 55's proposal to route west around Wabamun Lake, Alberta PowerLine stated that conceptual route 1 was evaluated with regard to cost, and the environmental and the socio-economic impacts, using general routing criteria. Alberta PowerLine maintained that when compared to the west route option, the route suggested by Gunn Métis Local 55 did not provide an appreciable reduction in potential impacts for the additional length of the route.

387. Alberta PowerLine submitted that it had considered the Village of Alberta Beach concept route when conducting consultations in the area. Alberta PowerLine quoted a statement that the Intermunicipal Development Plan was intended as a broad policy framework regarding land use, transportation, municipal services, parks and open spaces and more detailed plans were required to develop the area in the near future.²³⁰ The Renz and Treichel lands are currently zoned as agricultural and rezoning is required before they can be developed for country residential or commercial use.²³¹

388. The Alberta PowerLine route follows the boundaries of the Intermunicipal Development Plan, attempting to avoid bisecting land use concepts in the area. The Village of Alberta Beach concept route bisects the highway commercial and future development land use concept areas.²³² Alberta PowerLine further contended that transmission lines within urban areas are not uncommon and provided examples of urban areas from around Alberta that have rights-of-way within urban centres. Alberta PowerLine stated that the Village of Alberta Beach concept route would bring the transmission line in closer proximity to residences, a church and Alberta Beach Estates.

389. Alberta PowerLine submitted that SAGD developments are compatible with transmission lines within a local area, recognizing that future surface disposition conflicts may occur. It therefore created the common route variation 1 and common route variation 2 in an attempt to

²²⁷ Transcript, Volume 15, page 3192, lines 5 to 13.

²²⁸ Transcript, Volume 15, page 3192, lines 19 to 24.

²²⁹ Transcript, Volume 15, page 3238, line 19 to page 3239, line 4.

²³⁰ Transcript, Volume 18, page 3755, lines 5 to 18.

²³¹ Exhibit 21030-X1566, APL Undertaking 009, November 1, 2016.

²³² Transcript, Volume 18, page 3756, lines 2 to 9.

work with Brion. Although Brion asserts that minimizing impacts to it can only be achieved by routing outside of the MRCP, Alberta PowerLine maintains that routing through the MRCP is overall the route with the least impact.

7.10 Commission findings

390. The Commission has historically relied upon six criteria for route selection: agricultural impacts, residential impacts, environmental impacts, cost, electrical considerations and visual impacts. Some impacts, such as agricultural impacts, are not practically mitigated and should instead be compensated for. In certain circumstances, the Commission considers special constraints, which are factors that are unique to the particular area.

391. The Commission's objective is to determine whether the applications as filed are in the public interest and, if not, what changes should be ordered to most effectively balance the public interest factors it must consider. In determining the public interest, the Commission considers the respective social, economic and environmental impacts of the routes proposed by Alberta PowerLine. In doing so, the Commission assesses the following routing criteria: agricultural impacts, residential impacts, visual impacts, electrical considerations, environmental impacts and cost.

392. Despite the differences in opinions on proposed routes and route segments, the routing experts who appeared at the hearing all agreed on the fundamental considerations required in routing a transmission line: avoid home sites; follow existing linear disturbances; minimize impacts on agriculture, minimize impacts on the environment; minimize line length and costs. Alberta PowerLine and the parties to the proceeding identified the criteria they considered relevant to choosing a route and their views of the relative importance of the criteria in this application. Parties relied primarily on metrics referred to in past applications and Commission decisions.

393. The Commission recognizes Mr. Berrien as an independent expert witness on routing based on his experience as outlined in his curriculum vitae. Mr. Berrien applied his routing experience to suggest routing variations on the west route option for Burnco to avoid gravel operations. However, he did not have the benefit of landowner input and the Commission agrees with Alberta PowerLine that this input is an essential ingredient in routing a transmission line. In this regard, it is notable that Burnco did not endorse Mr. Berrien's BAR No. 1 from an operational point of view²³³ and that some of the members of ERLOG were also not supportive of his suggested variations.

394. Mr. Argenal testified that his work for ENMAX in the planning and design of distribution and transmission system included routing of transmission lines²³⁴ and that he was appearing as an independent expert. The Commission accepts that Mr. Argenal has experience in the routing of transmission lines and recognizes him as an expert witness in this area.

395. Although Mr. Neufeld's curriculum vitae indicates he has experience in urban planning, he did not appear to understand the responsibilities of an expert witness. Mr. Neufeld was unable

²³³ Transcript, Volume 11, page 2238, lines 12 to 17.

²³⁴ Transcript, Volume 16, page 3321, lines 1 to 15.

to clearly enunciate that he was providing independent and objective testimony;²³⁵ accordingly, the Commission gives little weight to his testimony.

396. The Commission finds that overall, the methodology adopted by Alberta PowerLine in seeking viable routes was a reasonable one in the circumstances. It is satisfied that Alberta PowerLine ably applied the above-noted routing criteria in assessing the initial study area and in identifying preliminary route options and variants. The Commission also finds that the west route option and east route option along with the common portions of the routes and the variations in the north common route portion were the best alternatives among the route options available to Alberta PowerLine.

397. The Intermunicipal Development Plan for the villages of Alberta Beach, Val Quentin, Sunset Point and Lac Ste. Anne County²³⁶ is a broad policy framework that requires more detailed plans to be developed in the future. The Commission accepts that the siting of the transmission line on the boundary of the land-use areas is acceptable routing practice. It is also of the view that the proposed preferred route does not conflict with the principles outlined in the Intermunicipal Development Plan. The route proposed by Mr. Renz, the Treichels and the Village of Alberta Beach was considered by Alberta PowerLine but was rejected because landowners in the vicinity and Lac Ste. Anne County were not in favour of the proposed change. As a result, the Commission is not persuaded that the Village of Alberta Beach concept route is superior to the south common route in this area.

398. The Commission agrees with Alberta PowerLine that the alternatives presented in both of the reports submitted by Nican increase the technical difficulty of routing the transmission line. It also accepts Alberta PowerLine's submission that these alternatives would add significant costs to the transmission line without an overall decrease in the impacts to landowners in the area.

399. The South of 43 Group route created by Mr. LaFoy and the route proposed by Gunn Métis Local 55 were evaluated by Alberta PowerLine during the conceptual phase of the route planning. Having considered the impacts as a whole, the routes proposed by Mr. LaFoy and Gunn Métis Local 55 on the west side of Wabamun Lake do not reduce the potential overall impacts compared to the route proposed by Alberta PowerLine.

400. As can be seen in the Alberta PowerLine reply, the South of 43 Group's micro-routing suggestions transfer the impacts onto the neighbors of its members and the nearby gravel pit operations, with only a minor reduction to the impacts on the South of 43 Group members. Accordingly, the Commission does not find these micro-routing suggestions to be superior to the west route option.

401. In each of the following sections, the Commission discusses the potential impacts of the proposed transmission line. Agricultural impacts are disruptions to or reduced efficiency of farming operations, the potential spread of clubroot, and the need for weed control in proximity to towers. Residential impacts include impacts to property value and future developments. Environmental impacts pertain to effects on terrain and soil, vegetation, wildlife and aquatic resources. Electrical considerations consist of reliability, access and serviceability of the line and

²³⁵ Transcript, Volume 13, pages 2851 to 2857.

²³⁶ Exhibit 21030-X0911.01, Expert Opinion Complete.

towers, as well as electric and magnetic fields, and corona and space charge effects. Visual impacts consist of the effects on the viewscapes of landowners, residents and recreational users. Cost includes both capital costs and operating and maintenance costs.

8 Health and safety

8.1 Electric and magnetic fields

402. Electric and magnetic fields (EMF) are present wherever electricity flows and are emitted from transmission lines, household appliances, electrical devices and the earth. EMF from transmission lines are affected by the operating voltage and current travelling on the line, and the conductor and structure configuration of the line.

403. Electric fields are produced by voltages applied to electrical conductors (wires) and equipment. The strength of an electric field is directly related to voltage, and will increase as voltage increases. Electric fields may be shielded or blocked by intervening objects such as trees or buildings.

404. Magnetic fields are created by the flow of electricity (the current). The strength of a magnetic field is directly related to the current; the higher the current, the higher the magnetic field. Unlike electric fields, magnetic fields are not easily shielded.

405. The intensity of EMF from transmission lines decreases with distance from the source. Most modern consumer electronics, such as televisions, radios and global positioning systems (GPS) have been designed so that they are largely unaffected by EMF interference.

8.1.1 Views of Alberta PowerLine

406. Alberta PowerLine indicated that alternating current transmission lines, such as those proposed in the project, are a source of extremely low-frequency EMF. The highest level of EMF is directly beneath the transmission line, and the intensity decreases dramatically with distance from the line.²³⁷ Alberta PowerLine conducted EMF modelling of the proposed transmission line which showed that on the centreline, the electric field is 5.6 kilovolt per metre (kV/m) and the magnetic field is 45.3 milligauss (mG). At the edge of the right-of-way, the modelling showed the electric field to be 2.39 kV/m and the magnetic field to be 12.5 mG.²³⁸ Alberta PowerLine submitted that the International Commission on Non-Ionizing Radiation Protection exposure guidelines, last updated in September 2010, recommended a public exposure guideline of 2,000 mG for magnetic fields, and an occupational (worker) exposure of 10,000 mG. It recommended a public exposure guideline of 4.2 kV/m and an occupational (worker) exposure of 8.3 kV/m for electric fields.²³⁹ In Canada, there are no national exposure limits or guidelines for EMF and there are no Canadian government standards for exposure to EMF at frequencies associated with transmission lines.²⁴⁰

²³⁷ Exhibit 21030-X0002, Attach 01 - Application Text – Final, PDF page 106.

²³⁸ Exhibit 21030-X1205.02, Clean Version of Revised APL Reply Evidence, PDF pages 23-24.

²³⁹ Exhibit 21030-X0002, Attach 01 - Application Text – Final, PDF page 106 and Exhibit 51, Attach 10-Exponent EMF Health Report, PDF pages 43 and 44.

²⁴⁰ Exhibit 21030-X0002, Attach 01 - Application Text – Final, PDF page 106 and Exhibit 51, Attach 10-Exponent EMF Health Report, PDF pages 43 and 44.

407. Alberta PowerLine stated that many authorities such as Health Canada and the World Health Organization have been monitoring human exposure to EMF. To date, the weight of scientific evidence does not support a cause and effect relationship between general health symptoms and exposure to EMF.²⁴¹

408. Alberta PowerLine stated it adopted the conclusions and recommendations of Health Canada, the World Health Organization, and the International Commission on Non-Ionizing Radiation Protection with respect to the EMF associated with both alternating current and direct current power lines.

409. Alberta PowerLine distributed an EMF information package in its consultation material. The information package explained what EMF are, summarized the studies conducted internationally, answered frequently asked questions, included material from Health Canada, the Canadian Electricity Association and the World Health Organization, and provided contact information.²⁴²

410. Alberta PowerLine retained E^xponent to prepare a summary of current research on extremely low frequency EMF and health.²⁴³ The report looked at studies conducted between 1998 and 2015. E^xponent stated that none of the reviews conducted by these agencies has concluded that there is a causal relationship between exposure to extremely low frequency EMF and any long-term adverse health effects. E^xponent noted that some studies found a weak statistical association between childhood leukemia and long-term exposure to high levels of average-magnetic field (three to four mG), but stated that the association is limited because scientists have not been able to rule out the possibility that chance, confounding, or bias contributed to the statistical association reported. The report stated that the recent 2015 interagency committee convened by the Ministry of Health of New Zealand concluded that while new research has been conducted in recent years, “the picture is largely unchanged” since the publication of the World Health Organization’s review in 2007.²⁴⁴

411. The E^xponent report concluded that given the amount and quality of research that has been conducted thus far on extremely low frequency EMF, the opinion of scientific organizations is strong that there is not a cause-and-effect relationship between extremely low frequency EMF and any long-term health effects.²⁴⁵

412. Alberta PowerLine also reviewed current research on EMF effects on cattle, pigs, sheep, horses, birds and bees to determine if transmission lines have any effect on the health, productivity, reproduction, navigation or behaviour of the animals. Alberta PowerLine stated its review of this research indicates that exposure to EMF from alternating current power lines is not a demonstrated cause of any adverse effects on these animals.²⁴⁶

413. Alberta PowerLine committed to monitoring EMF research and sharing this information with customers, employees, government officials, or any other interested parties.

²⁴¹ Exhibit 21030-X0002, Attach 01 - Application Text – Final, PDF page 106.

²⁴² Exhibit 21030-X0026, Attach 03 – Appendix 3-15 – EMF Information Sheet.

²⁴³ Exhibit 21030-X0051, Attach 10 - Exponent EMF Health Report.

²⁴⁴ Exhibit 21030-X0051, Attach 10 - Exponent EMF Health Report, PDF page 18.

²⁴⁵ Exhibit 21030-X0051, Attach 10 - Exponent EMF Health Report, PDF page 6.

²⁴⁶ Exhibit 21030-X0002, Attach 01 - Application Text – Final, PDF pages 106 to 107.

414. In response to potential health concerns raised by interveners about their personal health and that of their families as well as their livestock, Alberta PowerLine retained E^xponent to provide a supplemental report to address these concerns.²⁴⁷ In this report E^xponent stated that some interveners raised concerns that studies continued to call for scientific research. E^xponent responded that the recommendation for continued research does not stem from the belief that evidence supports a link, but that science can never prove with absolute certainty the absence of a possible effect.²⁴⁸ Alberta PowerLine stated that one way to interpret the precautionary principle is to look at low-cost or no-cost options such as the adjustment of the phases of the proposed transmission line adjacent to existing transmission lines to reduce the field levels.²⁴⁹ E^xponent reiterated that statistical association was reported in some of the epidemiologic studies of estimated EMF exposure and childhood leukemia, based on the available scientific evidence that was considered “limited”, and that because no biophysical mechanism has been confirmed that could explain a carcinogenic effect of EMF, a causal relationship has not been established.²⁵⁰

415. The supplemental report also included an update on the work of the Draper group.²⁵¹ In 2005, this group published a report that stated the addresses at birth of children with leukemia were more likely to be within 600 metres of overhead transmission lines than the addresses at birth of the selected control group of children without leukemia. In 2015 the same group expanded the study with a larger number of children, across a larger geographic study area, over a longer study period. It reported no overall association between residential proximity and cancer among children, including childhood leukemia.²⁵² Similarly, the supplemental report stated no scientific evidence linking EMF to the development of autism, pulmonary diseases, neurological diseases, cardiovascular diseases or implanted medical devices. At the hearing, Dr. W. Bailey reiterated that there is weak evidence linking EMF with childhood and adult leukemia, brain cancer, breast cancer, neurodegenerative diseases, reproductive effects, and animal health.²⁵³

416. In response to other stakeholders calling for the application of the precautionary principle, E^xponent stated that the World Health Organization calls for measures proportional to the evidence of harm. E^xponent stated that because the evidence of harm to human and animal health is weak, precautionary measures beyond those that have been already implemented and practised by Alberta PowerLine are not warranted.²⁵⁴

²⁴⁷ Exhibit 21030-X1197, Attachment 2 - Selected Topics on Transmission Line Electric and Magnetic Fields, Audible Noise and Health.

²⁴⁸ Exhibit 21030-X1197, Attachment 2 - Selected Topics on Transmission Line Electric and Magnetic Fields, Audible Noise and Health, PDF pages 5 to 6.

²⁴⁹ Transcript, Volume 6, page 1087, line 11 to page 1088, line 8.

²⁵⁰ Exhibit 21030-X1197, Attachment 2 - Selected Topics on Transmission Line Electric and Magnetic Fields, Audible Noise and Health, PDF pages 8 to 9.

²⁵¹ Exhibit 21030-X0051, Attach 10 – Exponent EMF Health Report, PDF page 24.

²⁵² Exhibit 21030-X1197, Attachment 2 - Selected Topics on Transmission Line Electric and Magnetic Fields, Audible Noise and Health, PDF page 9.

²⁵³ Transcript, Volume 6, pages 1076 to 1078.

²⁵⁴ Exhibit 21030-X1197, Attachment 2 - Selected Topics on Transmission Line Electric and Magnetic Fields, Audible Noise and Health, PDF page 7.

417. With respect to impacts on animal health, the supplemental E^xponent report summarized studies on cattle health, reproduction and quality of milk from dairy cows, and found no differences in cows exposed to EMF and those that were not.²⁵⁵

418. Alberta PowerLine stated that, in response to landowners' concerns of perceived health impacts from transmission lines, it is attempting to increase the distance between landowners and transmission lines.²⁵⁶

8.1.2 Views of the interveners

419. Mr. Willem Peetoom stated that the potential health risks associated with high voltage power lines have not been adequately determined.²⁵⁷ Mr. Peetoom testified that there are many cases of cancer along the existing transmission line and believes that there is an association between the transmission line and health effects.²⁵⁸

420. Mr. Treichel testified that as a cow and calf producer he was concerned about health issues caused by his cattle being exposed to EMF.²⁵⁹ Ms. Maritta Renz stated that while it was difficult to establish whether EMF is an issue, it was important enough for the World Health Organization to constantly have a pulse on it. Ms. Renz stated that she has Lyme disease and was told to stay at least 1,000 metres from transmission lines because of EMF.²⁶⁰ Mr. Larry Akins voiced similar concerns about whether the EMF from the transmission lines will have detrimental effects on his cattle.²⁶¹

421. Members of the South of 43 Group also expressed general concerns with the potential health impacts of the project.²⁶² Group members testified that they are concerned with how EMF will affect children, as they are more susceptible to illness and environmental effects when they are growing up.²⁶³ They stated the Duffield School would be 600 metres from the proposed transmission line. Group members also stated there are no studies that show that exposure to high voltage transmission lines are safe to humans and animals.²⁶⁴

422. Members of ERLOG voiced similar concerns about EMF. The Blaylocks,²⁶⁵ Browns,²⁶⁶ and Gravelles²⁶⁷ stated they had concerns with the effect of EMF on their cattle and calves. The Browns stated the EMF exposure was unsafe for their friends and family. The Gonnets stated they live and work on the land and being subject to EMF daily was a concern. They added that a family member has a pacemaker.²⁶⁸ Mr. Dean Dumbeck testified there has not been enough

²⁵⁵ Exhibit 21030-X1197, Attachment 2 - Selected Topics on Transmission Line Electric and Magnetic Fields, Audible Noise and Health, PDF pages 13 to 14.

²⁵⁶ Transcript, Volume 2, page 343, lines 8 to 15.

²⁵⁷ Exhibit 21030-X0859, Written Evidence, PDF Page 1.

²⁵⁸ Transcript, Volume 12, page 2381, lines 17 to 22.

²⁵⁹ Transcript, Volume 14, page 2803, lines 11 to 14.

²⁶⁰ Transcript, Volume 14, page 2811, lines 3 to 8.

²⁶¹ Transcript, Volume 16, page 3335, lines 22 to 24.

²⁶² Exhibit 21030-X1047, South of 43_Written Evidence and Tabs 3 to 14.

²⁶³ Transcript, Volume 15, page 3200, lines 7 to 18.

²⁶⁴ Transcript, Volume 15, page 2196, lines 20 to 23.

²⁶⁵ Exhibit 21030-X0897, C - ERLOG Member Submissions, PDF page 14.

²⁶⁶ Exhibit 21030-X0897, C - ERLOG Member Submissions, PDF page 18.

²⁶⁷ Exhibit 21030-X0897, C - ERLOG Member Submissions, PDF page 89.

²⁶⁸ Exhibit 21030-X0897, C - ERLOG Member Submissions, PDF page 58.

research on health effects from transmission lines and to be safe he would keep his son further away.²⁶⁹ Several other members expressed health concerns with EMF in general.

423. The Hohls stated that if the east route option were approved, their tenants would leave the area because of health concerns. The Hohls quoted the World Health Organization's precautionary principle and said it should be applied to EMF exposure. They added that there were numerous studies around the world that state there are serious health effects associated with high voltage power lines.²⁷⁰ The Hohls stated that several countries have limited the tolerable maximum exposure to 0.2 mG and that Ecolog²⁷¹ recommended an acceptable maximum of 0.1 mG.²⁷² The Hohls have two homes on their property that are approximately 580 metres and 615 metres from the proposed east route option.

424. The Valkenburgs stated they have concerns that the transmission line would affect the health of their family members. They added that certain members of the family are in remission from cancer and another has a hearing condition, where the noise from the line may cause pain and distress.²⁷³

425. Members of the Gunn Métis Local 55 expressed similar concerns with the effects of electric fields on wild game, livestock and human health.²⁷⁴ They stated that regardless of the state of scientific debate about the link between human health and electricity, the perception is enough to create psychological uncertainty and fear.²⁷⁵

8.1.3 Commission findings

426. The issue of whether long-term exposure to extremely low frequency EMF causes health effects has been the subject of considerable scientific review and debate for many years. The Commission's mandate in this proceeding is not to resolve this debate, but rather, to assess the evidence before it, and determine the levels of EMF that are likely to be produced by the project and whether there is a need to impose measures to mitigate the effects of EMF.

427. Alberta PowerLine filed modeling evidence that predicted EMF levels at various distances in and around the right-of way and two expert reports on the health impacts of EMF, prepared by Dr. Bailey of E^xponent. Dr. Bailey testified at the oral hearing as an independent expert. No other expert report was filed on the issue of EMF.

428. According to his curriculum vitae, Dr. Bailey has a doctorate in neuropsychology and has studied and conducted research on EMF for more than 30 years. He is the author or co-author of a number of publications relating to the health impacts of EMF and has held various academic positions at a number of universities. The Commission is satisfied that Dr. Bailey possesses the necessary qualifications, expertise and experience to give expert evidence on human and animal health issues regarding electric and magnetic fields.

²⁶⁹ Transcript, Volume 13, page 2732, lines 13 to 16.

²⁷⁰ Exhibit 21030-X0897, C - ERLOG Member Submissions, PDF pages 109 to 110.

²⁷¹ No studies or reference to the Ecolog recommendation can be found on the record.

²⁷² Exhibit 21030-X0897, C - ERLOG Member Submissions, PDF pages 111 to 112.

²⁷³ Exhibit 21030-X0897, C - ERLOG Member Submissions, PDF pages 111 to 190.

²⁷⁴ Exhibit 21030-X1002, Tab 1 TKU Expert Report - GML 55 Alberta Powerlines Final, PDF page 46.

²⁷⁵ Exhibit 21030-X1002, Tab 1 TKU Expert Report - GML 55 Alberta Powerlines Final, PDF page 56.

429. Alberta PowerLine's EMF modelling for the proposed transmission line showed that at the edge of the right-of-way, the electric field is 2.39 kV/m and the magnetic field is 12.5 mG. The Commission accepts this uncontroverted evidence and finds that the electric field and magnetic field likely to be produced by the proposed transmission line would be very low at the nearest residences and well within the International Commission on Non-Ionizing Radiation Protection guidelines; which recommend a public exposure guideline of 2,000 mG and an occupational (worker) exposure of 10,000 mG for magnetic fields, and a public exposure guideline of 4.2 kV/m and an occupational (worker) exposure of 8.3 kV/m for electric fields. There are currently no Canadian national standards that limit exposure to extremely low frequency EMF.

430. The Commission finds the views expressed in the E^xponent report persuasive. The E^xponent report concludes that none of the reviews conducted between 1998 and 2015 by various organizations find a causal relationship between exposure to extremely low frequency EMF and any long-term adverse health effects. These views are reiterated in the E^xponent supplemental review on specific health conditions discussed by stakeholders, such as childhood leukemia and other various cancers, cardiovascular diseases, and autism.

431. It is acknowledged that some studies found a weak statistical association between childhood leukemia and estimates of long-term exposure to magnetic field levels of three to four mG. Scientists consider that the scientific evidenced of the statistical association is limited. However, as explained by Dr. Bailey, these studies do not show a causal relationship because "no biophysical mechanism has been confirmed that could explain a carcinogenic effect of EMF."²⁷⁶ The Commission observes that the 2015 update in relation to the association of childhood leukemia and EMF reported no overall association between residential proximity to EMF from transmission lines and cancer among children, including childhood leukemia. This further supports the conclusion that no causal relationship between EMF and health effects has been established. Given the low levels of EMF produced by the transmission lines, the Commission finds that the evidence before it does not support a conclusion that there will be health effects attributed to the proposed transmission line. It understands however that there continues to be a genuine concern with this issue.

432. The Commission recognizes the World Health Organization's finding that the association between transmission lines and health effects is weak and their suggestion that low-cost precautionary measures to reduce exposure to EMF should be implemented when constructing new facilities and designing new equipment. The Commission considers that the measures proposed by Alberta PowerLine such as the adjustment of the phases of the transmission line adjacent to existing transmission lines to reduce EMF levels and the distance of residences from the proposed transmission line are responsive to the recommendations of the World Health Organization.

433. Certain members of ERLOG submitted information on EMF from the Responsible Electricity Transmission for Albertans website. This information was first brought forward for the Commission's consideration in the Heartland Transmission Project proceeding. In the resulting decision, the Commission gave no weight to the Responsible Electricity Transmission for Albertans "fact sheets" on EMF, as they were prepared by persons without the

²⁷⁶ Exhibit 21030-X1197, Attachment 2 – Selected Topics on Transmission Line Electric and Magnetic, PDF page 9.

necessary skill, knowledge, experience or training to understand and interpret the studies or reviews they referenced. The Commission continues to hold this view and will not give weight to opinion evidence about health effects of EMF from lay witnesses.

434. The Commission further relies on Health Canada's statement that "There is no conclusive evidence of any harm caused by exposures at levels found in Canadian homes and schools, including those located just outside the boundaries of power line corridors."²⁷⁷ Lastly, no evidence that wildlife or animal health is affected by exposure to EMF from transmission lines was presented to the Commission. Based on the above, the Commission finds that mitigation measures, beyond those already implemented by Alberta PowerLine, need not be considered in relation to EMF from the proposed transmission line.

435. Electrical effects of the proposed transmission line are the same on either of the proposed routes and do not lead the Commission to conclude that one is preferable.

8.2 Pipeline safety and mitigation

436. Pipelines that run parallel to an alternating current transmission line may be affected by the EMF produced by the power line. Under normal operating conditions, these fields can induce alternating currents in the pipeline, which then produce elevated alternating current voltages along the pipeline.

8.2.1 Views of Alberta PowerLine

437. Alberta PowerLine stated that it has worked with pipeline owners directly to complete the necessary studies to address their concerns. It stated it would apply Canadian Standards Association standards aimed at mitigating inductive and conductive effects on pipelines parallel to transmission lines.²⁷⁸ Alberta PowerLine confirmed that 10 pipeline companies initially requested corrosion analysis studies and that of the 10 requests, three have confirmed that corrosion analysis is required and three no longer require studies. The remaining four requests require follow-up to confirm whether the studies are required. Alberta PowerLine added that soil resistivity studies are required prior to completing corrosion studies. Soil resistivity studies have been completed for two-thirds of the west route option. According to Alberta PowerLine, none of the pipeline companies are objecting to the transmission line project.²⁷⁹

438. Alberta PowerLine has planned to meet or exceed setbacks from active wells and their associated developments, as stated in Section 10 of the Overhead Systems of the *Alberta Electrical Utility Code*, and from abandoned wells, as stated in the Alberta Energy Regulator's Directive 079: *Surface Development in Proximity to Abandoned Wells*. Alberta PowerLine stated that well bores drilled subsequent to the application date but prior to securing land rights would also be appropriately accommodated. The setback would accommodate maximum conductor swing.²⁸⁰

439. Alberta PowerLine stated it would adhere to the *Safety Codes Act* and the *Pipeline Act* and work in conjunction with pipeline operators to meet regulated standards so that all facilities can be operated safely.

²⁷⁷ Exhibit 21030-X0051, Attach 10 - Exponent EMF Health Report, PDF pages 46 to 47.

²⁷⁸ Transcript, Volume 6, page 1023, lines 8 to 18.

²⁷⁹ Exhibit 21030-X1536, APL Undertaking 025 (pipeline corrosion analysis).

²⁸⁰ Exhibit 21030-X0002, Attach 01 - Application Text – Final, PDF page 108.

8.2.2 Views of the interveners

440. The CCA asked Alberta PowerLine whether a tight delta configuration of the phases would result in a reduction in magnetic fields and reduce pipeline corrosion. Alberta PowerLine stated that while changing structures to accommodate a delta configuration of the conductor phases would reduce magnetic field levels, other factors had to be considered. The servicing and maintenance of the transmission line while it is energized is one such factor.²⁸¹

8.2.3 Commission findings

441. While the CCA raised some concerns with pipeline corrosion from the transmission line, its concerns related to the cost associated with pipeline corrosion mitigation.

442. The Commission observes that Alberta PowerLine has been in consultation with pipeline operators, and that no pipeline operator registered an objection to Alberta PowerLine's project. Alberta PowerLine will conduct corrosion analysis, where required, in consultation with the pipeline operators.

443. The evidence before the Commission is that Alberta PowerLine is aware of the potential issue and is actively working with pipeline operators to address it. The Commission finds that impacts of the transmission line on pipelines, should they arise, can be mitigated. It is therefore satisfied that with the proper mitigation measures and maintenance, the project will cause little to no alternating current interference effects to pipelines.

444. Pipeline safety does not favour any routing option; this issue may arise along any of the proposed route options and can be mitigated.

8.3 Electrical effects on objects

445. This section addresses stray voltage or induced current on objects, including electromagnetic interference and spark-gap interference. Stray voltage is the low-level voltage that exists between the earth and an electrically-grounded metallic object. In a properly functioning electrical distribution system, some voltage will always exist between neutral systems (ground conductors) and the earth. The level of this neutral-to-earth voltage can change on a daily or seasonal basis, depending on changes in electrical loading, environmental conditions and other factors. For example, a person may get a shock when touching an ungrounded metal fence that is close to a transmission line. In farmyards, stray voltage most commonly occurs because of improper grounding or unbalanced three-phase loading. If the voltage is high enough, it may have an effect on livestock behaviour.²⁸²

446. Electromagnetic interference from overhead power lines is caused by complete electrical discharges across gaps, spark-gap, and partial electrical discharges; in other words, corona.

447. Spark-gap interference occurs at insulators on line hardware, and where there is defective equipment, and is a construction and maintenance problem rather than a design consideration. Radio interference produced by a transmission line will decrease in intensity as a person moves away from the transmission line.

²⁸¹ Transcript, Volume 6, page 1045, line 22 to page 1046, line 13.

²⁸² Transcript, Volume 6, page 1015, line 15 to page 1016, line 1.

8.3.1 Views of Alberta PowerLine

448. Alberta PowerLine stated that transmission lines can induce current and voltage in nearby metallic objects such as fences and compared the nuisance shocks to static electricity after walking on a carpet. Alberta PowerLine indicated that a properly constructed and operated transmission line typically does not induce voltage on farm equipment at a level that would impact livestock operation because there is no direct conductive connection between the transmission line and the farm's electrical system.²⁸³ It stated that it would ground metal fences, buildings and structures, where necessary, to minimize induced voltages.²⁸⁴

449. Should it receive a complaint about stray voltage, Alberta PowerLine would first investigate to determine the source²⁸⁵ as it is often an issue with the wiring of the farm or the distribution line,²⁸⁶ adding that this would be a landowner-driven initiative because it is a rare occurrence that additional grounding is required.²⁸⁷ Alberta PowerLine stated that it would cover the cost of the mitigation for existing building and structures and, should issues arise from a new building or structure, it would assist the landowner in determining the source of the stray voltage. However, any mitigation undertaken for new buildings or structures would be at the cost of the landowner.²⁸⁸

450. Alberta PowerLine stated it is standard practice to install proper grounding or a filter device to ensure the safe and continued operation of electric fences in proximity to the transmission line, and undertook to provide the filter devices if needed.²⁸⁹

451. The corona discharge may create electromagnetic noise on radio signals of the same frequency. Alberta PowerLine stated that the impact of corona on radio signals depends on the strength and type of the signal, and because AM radio operates at a lower frequency than FM radio, there is a greater potential for it to be affected. Although there is a greater potential for such interference under the transmission line, the impacts decrease rapidly with distance. Alberta PowerLine stated the project may impact two-way radios as a result of obstructed line-of-sight between transmitter and receiver but that such situations can be mitigated by the placement of the tower, transmitter, or receiver.²⁹⁰ Alberta PowerLine confirmed that the maximum field intensity of radio noise produced by the transmission line will not exceed the limit for radio interference specified in Industry Canada's Interference-Causing Equipment Standard ICES-004.²⁹¹

452. Alberta PowerLine indicated that modern communication devices such as satellite television, cellular phones, GPS systems, FM radios and wireless internet operate at much higher frequencies than the transmission line and should not be affected. GPS units transmit and receive information through multiple satellites and high frequencies. As the satellites and the receiver move, the receiver drops and picks up new satellites. Because of the nature of the system, it is

²⁸³ Exhibit 21030-X1205.02, Clean Version of Revised APL Reply Evidence, PDF page 20.

²⁸⁴ Exhibit 21030-X0002, Application - Final, PDF page 108.

²⁸⁵ Transcript, Volume 6, page 1017, lines 7 to 10.

²⁸⁶ Transcript, Volume 6, page 1054, lines 14 to 19.

²⁸⁷ Transcript, Volume 6, page 1012, line 15 to page 1013, line 1.

²⁸⁸ Transcript, Volume 6, page 1013, lines 7 to 12.

²⁸⁹ Transcript, Volume 6, page 1013, line 1 to page 1014, line 11.

²⁹⁰ Exhibit 21030-X0002, Application - Final, PDF page 107.

²⁹¹ In fair weather conditions at 15 metres for the outer phase.

unlikely the transmission towers will block the GPS signal. Alberta PowerLine stated that in the event of problems, it would work with landowners to identify the sources of interference and mitigate any interference caused by its project.²⁹²

453. Alberta PowerLine added that it is possible for the transmission line to introduce noise or hazardous voltages on telephone lines, but that it would work with Telus to identify and mitigate any adverse impacts. Alberta PowerLine does not anticipate that cellular phones will be affected.

8.3.2 Views of the interveners

454. Richard Skermer of the Wong Group expressed concerns that the transmission line would interfere with LTE internet services and that Alberta PowerLine had communicated little information to address this concern. He stated that the Genesee area is not well serviced and that with frequency ranges over 1,900 MHz, summer foliage can severely limit internet speed and quality.²⁹³ Mr. Skermer added that he had spoken to his internet provider, who was also concerned with the existing transmission line affecting the quality of his internet signal.²⁹⁴

455. The Jespersen and Blaylock families, members of ERLOG, raised concerns with effects of stray voltage on their agricultural operations.²⁹⁵ The Jespersens operate a 300 cow dairy and a 2,000-head feedlot and have had stray voltage issues in the past. They stated that the stray voltage caused distress to the cows and a severe drop in milk production.²⁹⁶ The Jespersens explained that the problem resulted from the distribution lines and when they produced their own power, the stray voltage problem went away.²⁹⁷ The Jespersens are also concerned about stray voltage being induced on a pipeline that runs by their barn.²⁹⁸ Lonnie Brown, another member of ERLOG, also stated he had issues with stray voltage from another line. He is unsure if he would be able to build a fence under the transmission line.²⁹⁹ The Trithart family, another member of ERLOG, also raised concerns with its two-wire electric fence.³⁰⁰

456. ERLOG members also expressed concerns about electrical interference. Felix Tymkow,³⁰¹ the Will family,³⁰² and the Gosselin family³⁰³ expressed concerns that the transmission line would create electrical interference on TV, radio, cellphone and internet services. The Wiegands expressed similar concerns with interference on the GPS system on their farm equipment.

457. ERLOG requested that Alberta PowerLine be proactive in its approach to stray voltage concerns and work with landowners to identify possible areas that stray voltage might be an issue, rather than have the process that was landowner or complaint driven.³⁰⁴

²⁹² Exhibit 21030-X0002, Application - Final, PDF page 108.

²⁹³ Exhibit 21030-X0876, Written Evidence of the Wong Group, PDF page 28.

²⁹⁴ Transcript, Volume 16, page 3357, lines 17 to 24.

²⁹⁵ Exhibit 21030-X0892, Submissions of the East Route Landowner Opposition Group, PDF page 12.

²⁹⁶ Exhibit 21030-X0897, C - ERLOG Member Submissions, PDF page 130.

²⁹⁷ Transcript, Volume 13, page 2781, lines 3 to 24.

²⁹⁸ Exhibit 21030-X0897, C - ERLOG Member Submissions, PDF page 128.

²⁹⁹ Transcript, Volume 13, page 2782, lines 2 to 12.

³⁰⁰ Exhibit 21030-X1200, Attachment 6 - Klause Family Communication Record, PDF page 2.

³⁰¹ Exhibit 21030-X0897, C - ERLOG Member Submissions, PDF page 187.

³⁰² Exhibit 21030-X0897, C - ERLOG Member Submissions, PDF page 196.

³⁰³ Exhibit 21030-X0897, C - ERLOG Member Submissions, PDF page 87.

³⁰⁴ Transcript, Volume 20, page 4140, line 23 to page 4141, line 4.

458. Laura Peaire, of the South of 43 Group, stated that she had heard that fences had to be grounded because of charging from the transmission line. She stated there was much uncertainty about the issue and did not want to have problems.³⁰⁵ Richard Weiss, who is also concerned about induced voltage, indicated his friend recently had ATCO Electric Ltd. ground his fence.³⁰⁶

459. Burnco stated it is unsure whether the transmission line would interfere with its radio communications. It stated that its plant's emergency shutdown is connected via radio frequency so that the entire plant can be shut down quickly.³⁰⁷

460. Willem Peetoom and Mr. Harm Scholten expressed some concern with stray voltage and shocks. Mr. Peetoom stated that when working under a transmission line, he would get shocks when using the drill fill.³⁰⁸ Mr. Scholten testified that when he was building a barn, the contractors were getting shocks and he had to hire an electrician to ground the building.³⁰⁹

8.3.3 Commission findings

461. Mr. Christopher Oakley testified at the oral hearing about electrical effects of the transmission line. No other experts were presented on this topic. Mr. Oakley has provided testimony on electrical effects to support the regulatory approval process for ATCO Electric Ltd. in a number of previous Commission proceedings. The Commission accepts that he possesses the necessary qualifications, expertise and experience to give expert evidence on the electric effects of transmission lines.

462. The Commission considers that due to the nature of transmission lines, any potential impacts from stray voltage on agricultural operations would not likely result from the 500-kV transmission line, and that stray voltage is more likely to result from the distribution system or the electrical wiring of structures.

463. While the Commission recognizes that the proposed transmission line may induce voltage in ungrounded objects in the vicinity of the proposed line, the Commission is satisfied with Alberta PowerLine's commitment to work with landowners to investigate any situations, locate the source of the problem, and implement mitigation measures where required. Alberta PowerLine also committed to grounding metal fences and buildings in proximity to the proposed transmission line and to respond promptly to any induced voltage concerns that may arise from the operation of the line. Should there be stray voltage issues, the landowner is in the best position to detect the problem and inform Alberta PowerLine of the problem so that Alberta PowerLine can investigate and address the problem.

464. The Commission accepts the evidence that interference from the transmission line is more likely to impact low frequency signals. Further, GPS systems should be unaffected given the movement of the GPS receivers and satellites. With regard to interference from line-of-sight systems, the Commission accepts that this can be mitigated through the placement of the transmission line structures, the transmitter, or the receiver. In addition, Alberta PowerLine has

³⁰⁵ Exhibit 21030-X1047, South of 43_Written Evidence and Tabs 3 to 14, PDF page 40.

³⁰⁶ Exhibit 21030-X1047, South of 43_Written Evidence and Tabs 3 to 14, PDF page 51.

³⁰⁷ Transcript, Volume 11, page 2191, line 21 to page 2192, line 19.

³⁰⁸ Transcript, Volume 12, page 2414, lines 2 to 5.

³⁰⁹ Transcript, Volume 12, page 2414, lines 9 to 13.

committed to not exceed the limit for radio interference specified in Industry Canada's Interference-Causing Equipment Standard ICES-004.

465. Induced voltage and interference could occur on either route. As induced voltage and interference issues can be effectively mitigated, the Commission does not consider that these issues favour either of the east or west route options.

9 Residential impacts

9.1 Proximity to residences

9.1.1 Views of Alberta PowerLine

466. Alberta PowerLine did not retain an expert or file a report on the project's potential impacts on property value. However, its corporate witnesses testified on matters relating to residential property impacts at the hearing.

467. Alberta PowerLine provided the following table comparing the number of residences within close proximity of the route centreline, including the route options and route variation.

Table 8. Residence count by distance from route centreline³¹⁰

Distance to centreline	Number of residences on west route option	Number of residences on east route option	Number of residences on east route option variation
0 - 150 metres	9	5	6
151 - 300 metres	40	35	32
301 - 400 metres	34	39	39
401 - 800 metres	216	271	265
Total	299	350	342

468. The transmission line, as proposed, comprises two common sections, a southern common section and a northern common section. To compare the impacts between the west route option, the east route option and the east route variation, Alberta PowerLine also provided a comparison of the number of residences from node W62 to node W405. This excludes the south common route and the north common route. The following table also excludes residences within 800 metres of an existing 240-kV transmission line.

Table 9. Residence count by distance from centreline from node W62 to W405 excluding residences within 800 metres of an existing transmission line³¹¹

Distance to centreline	West route option (W62 - W405)	East route option (W62 - W405)	East route option variation (W62 - W405)
0 - 150 metres	0	1	2
151 - 300 metres	1	14	11
301 - 400 metres	2	19	19
401 - 800 metres	31	152	146
Total	34	186	178

³¹⁰ Exhibit 21030-X1205.02, Alberta PowerLine Reply, PDF page 11.

³¹¹ Exhibit 21030-X1505, APL Undertaking 013 (W62-W405 Residence Metrics).

469. The following table accounts for residences that are in close proximity to the proposed transmission line but excludes residences that are closer to an existing transmission line (rated at 240-kV or higher) that parallels the proposed transmission line. The proposed transmission line on the east route option and east route variation does not parallel any transmission lines rated at 240-kV or higher.

Table 10. Residence count by distance from route centreline from nodes W62 to W405 excluding residences that are closer to an existing 240-kV (or greater transmission line)³¹²

Distance to centreline	West route option (W62 - W405)	East route option (W62 - W405)	East route option variation (W62 - W405)
0 - 150 metres	4	1	2
151 - 300 metres	9	14	11
301 - 400 metres	7	19	19
401 - 800 metres	73	152	146
Total	93	186	178

470. Potential residential impacts diminish with increased distance from the transmission line.³¹³ The potential impacts of the transmission line on a residence within 150 metres are site specific and have to be assessed for each individual property.³¹⁴ Alberta PowerLine therefore attempted to maintain at least 150-metre separation distance from residences when routing the transmission line to diminish potential impacts. An 800-metre separation distance was used as general guidance to identify parties that may be affected by a transmission line based on the criteria in Rule 007.³¹⁵ When questioned at the hearing, Mr. Merrifield, on behalf of Alberta PowerLine, agreed that there were more residences within 600 metres of the transmission line on the west route option than on east route option.³¹⁶

471. While there are more residences within 150 metres of the west route option, only four of these nine landowners objected to the transmission line and three of the four objecting landowners are in closer proximity to an existing 240-kV transmission line than the proposed transmission line. In addition, the transmission line would not be visible to the fourth residence because there is no line-of-sight due to tree coverage.³¹⁷

472. Alberta PowerLine argued that maintaining separation from residences depends upon site-specific factors such as visual barriers or existing transmissions lines. The opinion of the owner was also taken into account when siting the transmission line near residences.³¹⁸

473. Alberta PowerLine acknowledged that although Mr. Berrien was critical of the portion of the west route option in close proximity to Mr. Eric Szymt's residence, a member of the Barrhead West Group, Mr. Berrien himself had routed within 150 metres of residences when developing some of his BAR routes. Alberta PowerLine also referred to Mr. Berrien's statement

³¹² Exhibit 21030-X1505, APL Undertaking 013 (W62-W405 Residence Metrics).

³¹³ Transcript, Volume 1, page 67, lines 3 to 5.

³¹⁴ Transcript, Volume 1, page 68, lines 5 to 10.

³¹⁵ Transcript, Volume 4, page 784 lines 20 to 25 and page 785, lines 1 to 4.

³¹⁶ Transcript, Volume 4, page 780, line 7.

³¹⁷ Transcript Volume 3, page 775, line 9 to 19.

³¹⁸ Transcript, Volume 18, page 3734, lines 4 to 9.

that once a transmission line is over 100 metres from residences, most of the impacts from residential proximity are removed.³¹⁹

9.1.2 Views of the interveners

474. In answering a question of the CCA, Alberta PowerLine stated that it could not assign a dollar value to increasing distance from the transmission line to residences.³²⁰ The CCA argued that although it agreed that there were fewer residences within 800 metres on the west route option, this modest benefit does not justify selecting the longer and more costly west route option over the east route option. It also pointed out that the west route option has more residences within 150 metres and within 300 metres.³²¹ The CCA is of the view that fewer residences in this range does not justify the increase in cost to Alberta ratepayers.

475. The Barrhead West Group argued that the proximity to residences metric favors the west route option only when considering residences that are over 600 metres away. The Barrhead West Group disagreed that residences within 150 metres are affected the most.³²²

476. ERLOG argued that because there is a materially larger number of newly exposed residences on the east route option, the selection of the west route option is favoured. The 800-metre metric has significance, highlighted by Rule 007 and past Commission decisions.

477. The South of 43 Group stated that with respect to proximity to residences, its proposed west route around Wabamun Lake should be favored over the proposed south common route. When comparing its proposed west route to Alberta PowerLine's route, there are 33 less residences within 300 metres of its proposed west route option around Lake Wabamun.³²³

478. In argument, MWC submitted that the transmission line impacted its planned residential lots, most particularly lot 15.³²⁴

479. As mentioned earlier in this decision, Mr. Berrien was hired as a routing expert by ERLOG and prepared a report. In this report, Mr. Berrien stated that residences at 150 metres or closer are the most important when considering potential impacts on residences, but that at this distance, tree cover can aid in mitigating visual impacts.³²⁵ While Mr. Berrien acknowledged there are fewer residences within 150 metres of the east route option, he opined that metrics cannot be viewed in a vacuum; metrics must be considered as a whole. According to Mr. Berrien's tables, there were 179 residences "newly exposed" to a transmission line on the west route option and 326 on the east route option.³²⁶

³¹⁹ Transcript, Volume 18, page 3372, lines 17 to 21.

³²⁰ Transcript, Volume 9, page 1675, lines 8 to 11.

³²¹ Transcript, Volume 20, page 4387, lines 6 to 20.

³²² Transcript, Volume 18, page 3832, lines 1 to 10.

³²³ Transcript, Volume 19, page 3951, lines 10 to 14.

³²⁴ Transcript, Volume 19, page 3922, lines 10 to 12.

³²⁵ Transcript, Volume 13, page 2596, lines 22 to 23.

³²⁶ Transcript, Volume 13, page 2596, lines 18 to 25, page 2597 lines 1 to 8.

480. Mr. Berrien testified that Alberta PowerLine's east route option "is way too close"³²⁷ to the Szymt residence, adding that the transmission line should be moved to the west side of an existing transmission line to provide further separation.

9.1.3 Commission findings

481. The evidence before the Commission from both the consultants retained by the interveners and from Alberta PowerLine is that potential residential impacts decrease as the distance from residences which do not currently have transmission lines in close proximity to the transmission line increases. However, views diverged on what weight the Commission should place on residences that are already in close proximity to a transmission line.

482. The Commission finds that the impacts to residences which do not currently have a transmission line in close proximity are greater than the incremental impacts on residences already in proximity to a transmission line. However, there will be a lesser impact from a new transmission line on residences that already have a transmission line located between the residence and the new transmission line. The Commission therefore considers that a metric that excludes residences that already have an existing transmission line located between them and a newly proposed transmission line better measures the impact of the transmission line on residences. Taking this metric and all other factors discussed above into account, the Commission views the west route option as the preferable route.

483. The evidence before the Commission shows that there are more residences within 150 metres of the transmission line on the west route option than on the east route option. However, the east route option has twice the number of residences within 800 metres of the transmission line. Given the size of the proposed transmission line structures, the evidence presented on the small number of residences within 150 metres and their site-specific impacts, the Commission has placed more weight on the "residences within 800-metres" metric rather than the "residences within 150 metres" metric. Accordingly, the west route option is the most favorable route option from a residential impacts perspective.

9.2 Property values

9.2.1 Views of Alberta PowerLine

484. Alberta PowerLine stated that no impact to the property values of bare agricultural lands is expected from construction of the project, that the impact on residential property values diminishes with increased distance from the transmission line, and that it consequently attempted to maintain 150 metres separation from residences.³²⁸

485. According to Alberta PowerLine, research completed by property valuation experts has indicated that transmission lines have either a small or indiscernible impact on residential property values, and if an effect were found, it would diminish rapidly with distance and over time.³²⁹ Alberta PowerLine indicated that it is familiar with transmission line impacts to property values based on its past experience. By attempting to maintain a minimum separation distance from residences and routing along property boundaries to minimize impacts to land use, it

³²⁷ Transcript, Volume 13, page 2577, lines 12 to 13.

³²⁸ Exhibit 21030-X1205.02, Clean Version of Revised APL Reply Evidence, PDF page 26.

³²⁹ Exhibit 21030-X0794, APL-Renz-2016FEB22 Information Request Responses.

submitted that there would be small or indiscernible impacts on residential property values.³³⁰ Alberta PowerLine indicated in information responses that a proximate transmission line may have no impact on the value of a subdivided lot.³³¹ It also submitted that there were very similar findings for other types of land use such as industrial, commercial or agricultural.³³²

486. Alberta PowerLine argued that the Gettel Appraisals reports filed on behalf of ERLOG and the South of 43 Group provide no reliable information on potential property value impacts. It submitted that the three studies relied upon by Mr. Gettel to determine the property loss valuations are significantly flawed in their methodology and are not comparable to the project for the following reasons.³³³ The Parkland study looked at bare parcels adjacent to a transmission line, whereas in the case of the residences along the project, the properties were developed with residences at varying distances from the line.³³⁴ In the Heartland study, AltaLink Management Ltd. paid above market-value compensation for certain properties, and Mr. Gettel did not take into account that AltaLink Management Ltd. was kept whole on any loss suffered in the sale of the properties because the loss was included in AltaLink Management Ltd.'s rate base.³³⁵ With respect to the Western Alberta Transmission Line (WATL) study, Mr. Gettel acknowledged that three of four properties received compensation above market value, and he was unaware if this occurred for four other properties that were used in the WATL study.³³⁶

9.2.2 Views of the interveners

487. Many landowners raised concerns that the transmission line would result in losses to their property value during the hearing. Mr. Smyzt, a member of the Barrhead West Group, stated "I know my property value is going to drop dramatically".³³⁷

488. Gettel Appraisals Ltd. (Gettel Appraisals) retained by both ERLOG and South of 43 Group, filed two reports in the proceeding (the Gettel-ERLOG report and the Gettel-South of 43 report). At the hearing, Mr. Brian Gettel testified on behalf of ERLOG and Mr. Ryan Archer testified on behalf of South of 43 Group.

489. The Gettel-ERLOG report³³⁸ evaluated the project's impacts on properties improved with residences. It compared the impacts that the transmission line would have on properties on the east route option and on the west route option and gave an indication of which route would be more favorable.³³⁹ The report also identified the negative factors associated with transmission lines, such as visual effects, health impacts, safety concerns, noise and stigma.³⁴⁰

490. In Mr. Gettel's opinion, visual effects have the largest impact on property value. He added that health effects, real or perceived, and the stigma of an external nuisance can also

³³⁰ Transcript, Volume 3, page 539, lines 3 to 7.

³³¹ Exhibit 21030-X0794, APL – RENZ-2016FEB22 Information Request Responses, PDF page 7, response 2.1.0.

³³² Transcript, Volume 3, page 539 and page 540, lines 19 to 22 and lines 12 to 15.

³³³ Transcript, Volume 18, page 3684, lines 7 to 12.

³³⁴ Transcript, Volume 18, page 3684, lines 16 to 25.

³³⁵ Transcript, Volume 18, page 3685, lines 7 to 11.

³³⁶ Transcript, Volume 18, page 3685, lines 15 to 23.

³³⁷ Transcript, Volume 12, page 2389, lines 10 to 11.

³³⁸ Exhibit 21030-X0902, I – Evidence of Brian Gettel and CV.

³³⁹ Exhibit 21030-X0902, I – Evidence of Brian Gettel and CV, PDF page 3.

³⁴⁰ Exhibit 21030-X0902, I – Evidence of Brian Gettel and CV, PDF pages 16 and 17.

negatively impact property value. According to Mr. Gettel, residences with transmission lines near them also have longer sale periods and, when compared to more basic homes, higher priced homes exhibit a more significant value loss.³⁴¹

491. The Gettel-ERLOG report concluded that the residential value loss range of 10 per cent to 30 per cent would be approximately equal for both routes, but the number of affected properties on the west route option would be 53 per cent fewer than the east route option. In addition, many of these properties on the west route option are already impacted by a transmission line, and therefore the west route option is preferred when compared to the east route option.³⁴²

492. In support of its residential value loss assessment, the Gettel-ERLOG report relied on three impact assessment case studies. The first case study reviewed vacant rural residential lots located west of the city of Edmonton in Parkland County. The second case study reviewed buyouts associated with the Heartland Transmission Project, focused within the Sturgeon County area. The third study reviewed the WATL project where AltaLink Management Ltd. acquired properties pending the development of the transmission line and resold them after the line was built. These studies were used to project losses for the west route option and east route option.

493. When cross-examined by Mr. Wachowich, Mr. Gettel agreed that the Heartland transmission line structures were larger, as much as twice the height, than the proposed transmission line structures.³⁴³ He also agreed that fewer conductors would be used for the proposed transmission line than the Heartland transmission line because the proposed transmission line is a single-circuit transmission line structure.³⁴⁴ Mr. Gettel also stated that three of the 19 properties in the Heartland study were paid compensation above market value³⁴⁵ but he appraised four other properties and was of the view that the acquisition price reflected fair market value.³⁴⁶ In response to questions, Mr. Gettel stated AltaLink Management Ltd.'s representatives swore affidavits that fair market value was paid for the remaining properties.³⁴⁷ When cross-examined by Ms. Deirdre Sheehan, Mr. Gettel indicated he was unaware whether AltaLink Management Ltd. would be able to place any loss on the sale of a property into rate base. He however maintained his view that AltaLink Management Ltd. was trying to get fair market value for the properties.³⁴⁸

494. Mr. Gettel also testified, based upon additional information on four of the eight properties reviewed in the WATL study, above-market value compensation was paid for three of the properties.³⁴⁹ He did not know if the other properties in the study had been paid compensation that was above fair market value.

495. Mr. Gettel stated that in comparing of the west and east route options he provided a "worst-case scenario" for valuation loss of 10 to 20 per cent loss at the low end, and up to

³⁴¹ Exhibit 21030-X0902, I – Evidence of Brian Gettel and CV, PDF page 18.

³⁴² Exhibit 21030-X0902, I – Evidence of Brian Gettel and CV, PDF pages 30 and 31.

³⁴³ Transcript, Volume 12, page 2484, lines 9 to 13.

³⁴⁴ Transcript, Volume 12, page 2484, lines 3 to 4.

³⁴⁵ Transcript, Volume 13, page 2631, lines 10 to 11.

³⁴⁶ Transcript, Volume 13, page 2631 lines 20 to 25, and 2632 lines 1 to 8.

³⁴⁷ Transcript Volume 13, page 2632 lines 20 to 22.

³⁴⁸ Transcript, Volume 13, page 2634, lines 5 to 18.

³⁴⁹ Transcript, Volume 13, page 2614, lines 24 - 25, and page 2615, lines 1 to 2.

30 per cent loss at the high end. However, in cross-examination by Ms. Sheehan, he admitted that the transmission line may well have no impact on some of the properties.³⁵⁰

496. The Gettel-South of 43 Group report also used the same three case studies discussed above. The report concluded that four of the members would experience value losses above 10 per cent, while the others would experience losses ranging from minimal to 10 per cent. It also indicated valuation loss estimates for the following South of 43 Group members:

- Each of Edith Holtz' and Laura Pearie's properties has a projected value loss of 15 per cent to 25 per cent.
- Duane Drews' property has a projected value loss of 10 per cent to 15 per cent.
- Kenneth Krampf's property has a projected value loss of 20 per cent to 30 per cent.

497. Mr. Archer, testifying on behalf of Gettel Appraisals for the South of 43 Group, agreed with Alberta PowerLine that placing transmission line structures strategically along the right-of-way could minimize visual impacts which, in turn, could minimize negative property value impacts.³⁵¹

498. In argument, the South of 43 Group contested Alberta PowerLine's critique of the Heartland study, used by Gettel Appraisals in both of its reports, for the following reasons. First, Gettel Appraisals was used by several of the landowners to complete appraisals during AltaLink Management Ltd.'s purchase of properties in the Heartland study. Second, AltaLink Management Ltd.'s appraisal information was used to contrast the actual prices paid to the appraised values.³⁵² Third, Mr. Gettel stated that through discussions with resale brokers, the brokers confirmed that they were trying to get the best prices that they could for the properties.

499. ERLOG argued that Mr. Gettel was the only expert who evaluated both the west and east route options from a real estate impact perspective.³⁵³ And further, that the Commission found Mr. Gettel's conclusions helpful in past decisions.³⁵⁴

9.2.3 Commission findings

500. The Commission appreciates that there is an element of subjectivity associated with the assessment of property value impacts, but it is of the view that the degree of subjectivity can be reduced by taking reasonable steps to ensure that value impact assessments are drawn from comparable properties and comparable transmission lines.

501. The Gettel-ERLOG report relied on three studies, the Heartland, Parkland, and WATL studies. The Gettel-South of 43 report relied only on the Heartland study. When questioned by counsel, Mr. Gettel acknowledged that the purchase price for some of the Heartland properties was not based on market value. Furthermore, the Heartland towers are significantly larger transmission line structures than the proposed structures. Given these circumstances, the

³⁵⁰ Transcript, Volume 13, page 2620, lines 7 to 12.

³⁵¹ Transcript, Volume 15, page 3295, lines 9 to 17.

³⁵² Transcript, Volume 19, page 3954, lines 19 to 25.

³⁵³ Transcript, Volume 20, page 4122, lines 5 to 9.

³⁵⁴ Transcript, Volume 20, page 4123, line 19 to 25.

Commission finds the Heartland case study to be of very limited assistance when estimating property value impacts for the project's route options.

502. The Parkland study involved bare parcels adjacent to a transmission line, while the properties along the proposed west and east route options are properties with residences at varying distances from the line. Some of the properties in the WATL study were purchased at a price above fair market value, which may have skewed the results of the study. Further, there was also no information on four of the properties in the WATL study, which could have assisted in determining whether their individual purchase price was subject to inflation and not related to their proximity to a transmission line.

503. The Commission does not dispute that Mr. Archer and Mr. Gettel have experience with property valuation and were qualified to opine accordingly but it is not persuaded that residential properties on both the west route and east route options may incur the range of potential losses suggested by them. The Gettel-ERLOG report predicted a minimum 10 per cent valuation loss for each of the properties within approximately 800 metres of the transmission line. However, Mr. Gettel acknowledged that the values he presented represent a worst-case comparison and that some properties may have had no loss at all. Other factors may have also contributed to Mr. Gettel's over-estimation. For example, his loss value ranges appear to rely on a desktop review of tree cover and shelter belts near residences and may not fully recognize their mitigation value.³⁵⁵

504. The Commission is not persuaded by the loss valuation presented in the Gettel-South of 43 report, because it predicted the loss of value primarily based on properties from the Heartland study which is subject to the limitation discussed above.

505. The evidence before the Commission on property value impacts demonstrates that approval of applications may result in negative property value impacts regardless of which route is chosen. The Commission considers, in this regard, that property value is dependent upon many factors such as visibility of the transmission line from the subject property and market trends at the time of sale.

506. The Commission is tasked with determining which route option is likely to result in the least potential overall impact to property value. It accepts that the greater the distance of a residence from a transmission line the less the potential impact on property value, and also that visual barriers such as tree coverage or height of land variations that affect the line-of-sight, diminish the effect of a transmission line on residential property value.

507. Based on the above considerations, the Commission is satisfied that approval of the west route option would result in fewer properties subject to potential negative property value impacts. This is largely due to fewer residences within 800 metres of the transmission line on the west route option, and because it parallels more linear disturbances resulting in only an incremental impact to those residences located along an existing transmission line.

³⁵⁵ Transcript, Volume 13, page 2618, lines 2 to 10.

9.3 Future developments

9.3.1 Views of the interveners

508. Mr. Renz and Mr. Treichel retained North Star Planning to file a report which commented on the future zoning of lands under the Intermunicipal Development Plan for the villages of Alberta Beach, Val Quentin, Sunset Point, and Lac Ste. Anne County. The report also identified perceived visual impact on the village of Alberta Beach community. Mr. Neufeld testified on behalf of North Star Planning at the hearing.

509. Mr. Treichel planned to sell his lands for development for commercial and residential use in the village of Alberta Beach area, in accordance with the Intermunicipal Development Plan. He stated that it would be much easier to sell the land without a large transmission line on it and this could represent a huge loss of income. Mr. Neufeld stated the south common route would be a major impact in terms of land that could not be developed.³⁵⁶ He continued that the transmission line would place a lot of financial limitations on existing landowners and initial developers.³⁵⁷ Ms. Skwarchuk of the Village of Alberta Beach felt that the development of Alberta Beach Estates was given a higher priority than the village of Alberta Beach, even though the village of Alberta Beach can only grow to the south due to limitations in all other directions.³⁵⁸ Ms. Renz stated that she and her husband have experience with land development, and had plans to develop their family property.³⁵⁹

510. Laura Peaire stated that she was planning on building a house on her property that would be placed 60 feet closer to the transmission line than her current home.³⁶⁰ She does not wish to move closer to the transmission line.³⁶¹ Mr. Skermer stated that he has submitted an application to the county to rezone his land from agricultural to mixed use for small farms.³⁶²

511. Mr. Akins of the Wong Group believes his lands are prime for residential development, as there has been much residential development on the north side of the river, less than one mile away. The presence of the transmission line would make his property less desirable for these types of future development.³⁶³ Mr. Skermer of the Wong Group submitted that he has plans to subdivide both of his quarters in the future. The area is covered by the Genesee Area Structure Plan, which indicates that future development is possible. Mr. Skermer believes these quarters are good for subdivisions because they were close to Edmonton and do not have any caveats, but that the transmission line would have a negative impact on the attractiveness of his planned subdivision, and that this impact would directly correlate to property value.³⁶⁴

512. ERLOG's Klause family expressed a desire to fix or rebuild an unoccupied house in close proximity to the transmission line. This is a dream of theirs, and would be facilitated by power and water hook-ups already at the location.³⁶⁵

³⁵⁶ Transcript, Volume 14, page 2831, lines 5 to 10.

³⁵⁷ Transcript, Volume 14, page 2831, lines 5 to 10.

³⁵⁸ Transcript, Volume 14, page 2844, lines 19 to 24.

³⁵⁹ Transcript, Volume 14, page 2900, lines 19 to 24.

³⁶⁰ Transcript, Volume 15, page 3209, lines 1 to 6.

³⁶¹ Transcript, Volume 15, page 3245, lines 1 to 2.

³⁶² Transcript, Volume 16, page 3416, lines 18 to 23.

³⁶³ Transcript, Volume 16, page 3342, lines 2 to 8.

³⁶⁴ Transcript, Volume 16, page 3346, line 1 and page 3347, lines 1 to 9.

³⁶⁵ Exhibit 21030-X1182, PDF page 8, paragraph 12.

9.3.2 Views of Alberta PowerLine

513. Alberta PowerLine stated that it considered potential future developments, their timing and implementation, when planning the transmission line route.³⁶⁶ It identified active development plans, municipal development plans, area structure plans and contacted municipal planning departments to enquire about development applications and attempted to accommodate active plans³⁶⁷ where reasonably practical.³⁶⁸

514. In an attempt to mitigate impacts to future development, Alberta PowerLine routed the transmission line on property boundaries, adjacent to existing transmission lines and adjusted the location of structures where possible. Alberta PowerLine added that the presence of a transmission line which is not on the property boundary does not prevent development of a subdivision. Transmission lines within the boundaries of an urban area are not uncommon, and can be seen in Calgary, Edmonton, Red Deer and Devon.³⁶⁹ Transmission lines are also compatible with recreational areas and other developers have located open spaces and playgrounds in close proximity to transmission lines.³⁷⁰

515. Alberta PowerLine confirmed that the zoning of the Renz and Treichel lands had not been updated in accordance with the Intermunicipal Development Plan and were currently zoned as agricultural. Consequently, any development on those lands for commercial or residential purposes was speculative at this point.³⁷¹ On the other hand, Alberta Beach Estates is an approved subdivision and a road is being developed according to the subdivision plans.³⁷² Alberta PowerLine maintained that the route followed boundaries of the Intermunicipal Development Plan and this would mitigate conflicts with the Intermunicipal Development Plan by not bisecting the land use concepts.³⁷³

516. Alberta PowerLine stated that the Klause family's plan to redevelop their residence has been abandoned since 2013. In its reply evidence Alberta PowerLine confirmed that as of 2016 no development or building permit application has been received by the Lac Ste. Anne County.³⁷⁴

9.3.3 Commission findings

517. The Commission has considered developments that have received approval or are in the process of obtaining approval as part of the route selection process. Consistent with past decisions, the Commission considers that future developments and residences that are at the conceptual or idea stage are not certain and may change depending upon the economy, changes in circumstances of the potential developer, amendments to municipal by-laws on development, or inability to secure municipal approval.³⁷⁵ In the Commission's view, there is a great deal of

³⁶⁶ Exhibit 21030-X1205.2, Alberta PowerLine Reply Evidence, PDF page 28, paragraph 80.

³⁶⁷ An active development plan was defined as existing, approved, and submitted for approval or planned development.

³⁶⁸ Exhibit 21030-X1205.2, Alberta PowerLine Reply Evidence, PDF page 93, paragraph 261.

³⁶⁹ Exhibit 21030-X1205.2, Alberta PowerLine Reply Evidence, PDF page 120, paragraph 331.

³⁷⁰ Exhibit 21030-X1205.2, Alberta PowerLine Reply Evidence, PDF page 122, paragraph 335.

³⁷¹ Exhibit 21030-X1566, APL Undertaking 009, November 1, 2016.

³⁷² Transcript, Volume 3, page 486, lines 16 to 21.

³⁷³ Transcript, Volume 18, page 3756, line 2 to 9.

³⁷⁴ Exhibit 21030-X1205.2, Alberta PowerLine Reply Evidence, PDF page 136, paragraphs 381 and 384.

³⁷⁵ EUB Decision 2007-055: Bearspaw Petroleum Ltd. Application for Two Pipeline Licences, Crossfield Field, Application 1453533, July 24, 2007, EUB Decision 97-1: Renaissance Energy Ltd., Applications for Well

uncertainty as to whether such projects would ever proceed and if so, the timing and the potential impacts; consequently, such projects are speculative.

518. Nevertheless, Alberta PowerLine made reasonable attempts to minimize impacts on future developments. The Commission also acknowledges that although some of the area for future development may be lost to the transmission line right-of-way, the routing of a transmission line on a quarter for subdivision does not preclude that land from being subdivided.

519. The Commission finds the future development of the Renz family's lands and the Treichel family's lands to be speculative. These lands are currently zoned agricultural and Alberta PowerLine confirmed that the rezoning to commercial or residential has not yet happened. However, the route options as proposed do not bisect the Intermunicipal Development Plan, and follow along the boundary between two land use concepts. The Commission finds that this will mitigate some of the potential impacts of the transmission line on these lands, should they be developed in the future. The Commission also finds that the future developments as identified by members of ERLOG, the Wong Group, the South of 43 Group are speculative and accordingly have given them less weight.

9.4 Visual impacts

9.4.1 Views of Alberta PowerLine

520. Alberta PowerLine contended that although visual impacts are subjective and difficult to quantify, it took them into account and attempted to work with landowners to reduce them when routing the transmission line. It kept the route at a minimum distance of 150 metres from residences wherever possible to lessen the visual impacts, and attempted to incorporate natural visual breaks by carefully considering transmission line structure placement during consultation.³⁷⁶ Although this is dependent upon the individual property, Alberta PowerLine agreed that at more than 150 metres away, the impact on residences may only be a visual one.³⁷⁷

521. Compared to a greenfield route, visual impacts are reduced when a transmission line's routing parallels an existing transmission line. It added that the Commission acknowledged that the presence of an existing transmission line reduces the impact of the second line in the Heartland decision. Accordingly, Alberta PowerLine stated that it mitigated visual impacts by following existing transmission lines for 50 per cent of the route on the west route option and 15 per cent on the east route option.³⁷⁸

522. Alberta PowerLine created visual simulations that contained representations of the transmission line at various distances and viewpoints.³⁷⁹ It also filed cross-sections of the typical transmission line structures.³⁸⁰ And in reply evidence, it produced photos of residences in close proximity to the transmission line with a superimposed approximation of the transmission line, to gain further context of potential visual impacts.

Licences, Applications for Pipelines, March 11, 1997 and Decision 2009-028: AltaLink Management Ltd. Transmission Line from Pincher Creek to Lethbridge, Application 1521942, Proceeding 19, March 10, 2009.

³⁷⁶ Exhibit 21030-X1205.2, Alberta PowerLine Reply Evidence, PDF page 26, paragraph 75.

³⁷⁷ Transcript, Volume 1, page 68, lines 21 to 23.

³⁷⁸ Exhibit 21030-X1205.2, Alberta PowerLine Reply Evidence, PDF page 27, paragraph 76.

³⁷⁹ Exhibit 21030-X0087, Attach 03 – Appendix 3 -10- Truescape Simulations.

³⁸⁰ Exhibit 21030-X0086, Attach 03 – Appendix 3-11 – Typical Structures.

9.4.2 Views of the interveners

523. Many interveners on the west route option, east route option and south common route expressed concern with the visual impacts that would be caused by the construction of the transmission line.

524. Mr. Ernst raised concerns about the visual impact to his residence and the visual impact to a new residence that he was planning to build on his property.

525. Mr. Skermer of the Wong Group stated that the transmission line is in the direct line of sight of his current residence.³⁸¹

526. When questioned about the visual impacts of the transmission line, Mr. Akins of the Wong Group said “the horrible eyesore that’s created by the towers and the power line will destroy any potential for residential development overlooking the beautiful river valley”.³⁸²

527. Many members of ERLOG raised concerns with visual impacts when testifying at the hearing. Mr. John Dundas of ERLOG stated that his ranch has been built over the past 45 years and if the transmission line is constructed there “the visual impact, of course, is quite devastating”.³⁸³

528. Mr. Berrien testified on behalf of ERLOG, that following an existing transmission line can reduce the visual impacts of a second transmission line, because the existing transmission line creates screening for the additional transmission line, and constitutes an incremental impact.³⁸⁴ Moreover, the impacts to a residence that is within 100 to 150 metres of a transmission line are almost exclusively visual.³⁸⁵

529. Ms. Laura Peaire, a member of the South of 43 Group who is also concerned with the visual impacts of the transmission line, stated she purchased her land to get away from visual pollution. She does not agree with Alberta PowerLine that the trees will block her view of the transmission line because the transmission line structures would be taller than the trees.³⁸⁶

530. The North Star Planning report stated that the transmission line would not contribute positively to the image of the Village of Alberta Beach and would be the dominant feature on the landscape for all visitors as it would cross the primary entrance. Mr. Neufeld opined that the Village of Alberta Beach route concept would alleviate some of the visual impacts in the area.

9.4.3 Commission findings

531. The Commission acknowledges that the imposition of new transmission line structures can significantly alter a viewscape. Transmission line structures are large, linear developments and their construction and operation often require the removal of trees and other vegetation on public and private lands. Landscaping and trees are important features to most people, and their unwanted removal can be upsetting to landowners and neighbours alike. Further, and as

³⁸¹ Transcript, Volume 16, page 3348, lines 6 to 11.

³⁸² Transcript, Volume 16, page 3342, lines 21 to 25 and page 3343, line 1.

³⁸³ Transcript, Volume 13, page 2724, lines 19 to 22

³⁸⁴ Transcript, Volume 13, page 2581, lines 2 to 25.

³⁸⁵ Transcript, Volume 13, page 2597, lines 9 to 13.

³⁸⁶ Transcript, Volume 15, page 3209, lines 11 to 20.

discussed in the previous section, two important criteria for determining negative property value impacts from a transmission line are visual impacts and the degree to which those impacts can be mitigated by trees or other vegetation.

532. The Commission recognizes that approval of the project will give rise to new visual impacts and result in tree and vegetation clearing, regardless of which route is determined to be in the public interest. The Commission expects Alberta PowerLine to work with landowners, where possible and taking into account span requirements, and environmental and physical constraints, to minimize, to the extent possible, the visual impact of specific structure locations from their residences by moving structures along the right-of-way.

533. The Commission has considered the effect of height, shape and placement of towers on visual impacts, both where the transmission line is proposed to be placed parallel to existing transmission lines, and on a greenfield route. The Commission agrees with both Alberta PowerLine and Mr. Berrien that the impact is generally reduced when a transmission line parallels an existing transmission line, versus on a greenfield route.³⁸⁷ Because the west route option parallels significantly more kilometers of existing transmission lines than the east route option, the Commission finds that the visual impact is generally less on the west route option and that it is preferred from this perspective.

9.5 Land acquisitions

9.5.1 Views of Alberta PowerLine

534. Alberta PowerLine does not have a buyout policy. It endeavours to maintain a 150-metre separation wherever possible and views buyouts as very unique and for specific situations.³⁸⁸ Alberta PowerLine assessed the potential for a buyout on a case-by-case basis having regard to the circumstances giving rise to a potential buyout, the cost of a potential buyout, and the alternatives to a potential buyout.³⁸⁹

535. Alberta PowerLine stated that, in relation to a buyout, consideration was given to whether a residence is within 150 metres of the proposed right-of-way, a person objected to the project and requested a buyout, and other factors such as the presence of existing transmission lines or other physical barriers. At the time of the hearing, Alberta PowerLine was in discussions about one possible buyout.

536. At the hearing, Alberta PowerLine stated that it was willing to work with Mr. Smyzt, whose residence is 112 metres from the centre of the transmission line.³⁹⁰ Mr. Smyzt testified that he was not willing to accept buyout for his property.³⁹¹

9.5.2 Views of the interveners

537. In the CCA's view, Alberta PowerLine made minimal use of buyouts during the route selection process. Alberta PowerLine should have offered buyouts to some residences, including offering additional funds for the inconvenience as an alternative to increasing the cost of the proposed transmission line by using heavier angled structures to maintain a 150 metres

³⁸⁷ Decision 2011-340 and Decision 2012-327.

³⁸⁸ Transcript, Volume 9, page 1665, lines 7 to 12.

³⁸⁹ Exhibit 21030-X0648, APL-AUC-2016FEB01 Information Request Responses, PDF page 20.

³⁹⁰ Transcript, Volume 18, page 3771, lines 19 to 25.

³⁹¹ Transcript, Volume 12, page 2412, lines 20 to 23.

separation.³⁹² Buyouts could have decreased the cost of the overall project and reduced impacts on adjacent residences in certain locations. The CCA gave examples of locations where it believed this could have been achieved.³⁹³ In its submission, the CCA contended that a cost benefit analysis from Alberta PowerLine was needed to evaluate if buyouts were a superior option to routing around residences and result in a lower cost for each route.

9.5.3 Commission findings

538. None of the landowners took issue with the lack of a buyout policy or made submissions that they would have preferred a buyout because of the proximity of their residence to the proposed transmission line. Although Mr. Smyzt's property is in close proximity to the transmission line, he also stated clearly that he did not wish to accept a buyout for his lands.

539. Furthermore, the CCA did not provide any evidence that landowners supported its position on this issue. A buyout policy is not a requirement of a facility application. The Commission agrees with Alberta PowerLine that buyouts must be considered on a case-by-case basis. Accordingly, the Commission finds that the CCA's argument that buyouts should have been offered because buyouts would have reduced the costs of the transmission line is not supported by the evidence.

10 Agricultural impacts

540. Both the west route option and the east route option traverse agricultural lands that contain cultivated and pasture land, as well as organic farms. Alberta PowerLine evaluated a number of criteria, including the area of cultivation and pasture within the right-of-way,³⁹⁴ and the length of the transmission line through these lands.³⁹⁵ In response to an undertaking, AlbertaPowerLine provided the following table:

Table 11. Area of right-of-way within different types of agricultural lands

Criteria	West route option	East route option	East route option variation
Area of cultivated land within the right-of-way (hectares)	331.5	418.2	442.5
Area of pasture land within the right-of-way (hectares)	171.8	240.8	230
Length of transmission line through cultivated land (kilometres)	58.5	77.8	81.4
Length of transmission line through pasture land (kilometres)	29.7	39.1	36.4
Length of transmission line through mixed cultivated and pasture land (kilometres)	5.5	10.8	11.1

³⁹² Transcript, Volume 20, page 4397, lines 7 to 11.

³⁹³ Transcript, Volume 20, pages 4397 and 4398.

³⁹⁴ Exhibit 21030-X1205.02, Clean Version of Revised APL Reply Evidence, PDF page 13.

³⁹⁵ Exhibit 21030-X1567, APL Undertaking 026, PDF page 2.

10.1 Views of Alberta PowerLine

541. Alberta PowerLine acknowledged the project would result in adverse effects on agricultural operations and retained Serecon Valuations Inc. (Serecon) to assess potential impacts on agricultural operations. The potential impacts identified were as follows:

- Loss of income due to loss of use on land on which transmission line structures would be located, or increase in costs of production on land surrounding the structures.
- Potential impacts such as weed growth, nuisance, noise, as well as construction impacts and aerial spraying impacts.

542. Alberta PowerLine considered impacts to agriculture in its routing criteria and proposed to locate the transmission line on quarter and section lines where practical, to minimize the impact on agricultural operations.³⁹⁶ Alberta PowerLine also favoured routing the transmission line on pasture land rather than on cropland, where mid-field alignments were necessary, in an attempt to reduce impacts on agriculture.³⁹⁷

543. Alberta PowerLine confirmed that the guyed-V structures have a larger footprint underneath the guy wires compared to the footprint of a conventional self-support tangent structure.³⁹⁸ The area underneath the guyed structure is approximately 0.44 acres compared to 0.04 acres under a self-support lattice structure. However, Alberta PowerLine stated that one advantage of the guyed structures over the traditional self-support structures is that the guyed-V structures allow for more grazing opportunities.³⁹⁹

544. Alberta PowerLine added that while the area under the selected structures is larger, it is a small area relative to the overall footprint of the property. Alberta PowerLine stated that the more important impact is the presence of an obstruction, having to farm around it, and not the size of the obstruction. In addition, the transmission line structures tend to be smaller in size than other field obstructions such as well sites, building sites and wetlands.⁴⁰⁰ Alberta PowerLine stated that when balancing socio-economic impacts and cost impacts, the use of guyed structures would have less overall impact given the lower initial cost and annual compensation payments for the guyed structures.⁴⁰¹

545. Alberta PowerLine submitted that a guyed transmission line already exists within the project area and is currently being farmed around. AltaLink Management Ltd.'s transmission line 913L which utilizes guyed-Y structures is in the project area and would be paralleled by the proposed 500-kV transmission line. Alberta PowerLine confirmed that the span lengths of the proposed line would not align with line 913L, resulting in a staggering of the transmission line structures. However, there would be separation between the existing and proposed structures that it claimed would allow equipment to work around the individual structures.⁴⁰²

³⁹⁶ Exhibit 21030-X0002, Attach 01 - Application Text – Final, PDF page 44.

³⁹⁷ Exhibit 21030-X0002, Attach 01 - Application Text – Final, PDF page 49.

³⁹⁸ Exhibit 21030-X1205.02, Clean Version of Revised APL Reply Evidence, PDF page 15.

³⁹⁹ Transcript, Volume 9, page 1697, lines 5 to 8.

⁴⁰⁰ Exhibit 21030-X1205.02, Clean Version of Revised APL Reply Evidence, PDF pages 15 to 16.

⁴⁰¹ Exhibit 21030-X1205.02, Clean Version of Revised APL Reply Evidence, PDF page 16.

⁴⁰² Transcript, Volume 9, page 1712, lines 8 to 24.

546. Alberta PowerLine stated that on the west route option, 83 per cent of landowners who would have guyed structures on cultivated fields, have signed a right-of-way agreement. In addition, 86 per cent of landowners, where the proposed transmission line follows the existing guyed transmission line 913L have signed right-of-way agreements.⁴⁰³ Alberta PowerLine contended that the high volume of right-of-way agreements, especially where existing guyed structures are present, shows an acceptance of this type of structure.⁴⁰⁴ In addition, Alberta PowerLine undertook to mitigate guy wire visibility concerns by using brightly coloured plastic guards and reflector tape, or by installing orange metal pipe panel fencing around the base of the guy wires in cultivated fields.⁴⁰⁵ The guards would be installed for the entirety of the proposed transmission line on private land and metal cattle guards⁴⁰⁶ and reflective tape⁴⁰⁷ would be installed upon request of the landowner.

547. Alberta PowerLine stated that the transmission line would meet or exceed Canadian Standards Association Standard C22.3, thereby providing safe physical clearances across various access situations. The transmission line would also meet or exceed the Alberta Electrical Utility Code to ensure adequate clearance of the conductors up to 5.3 metres high. Alberta PowerLine acknowledged that taller farming equipment may be in use and advised landowners to contact Alberta PowerLine in such cases to discuss any safety concerns. Alberta PowerLine also committed to sending a mail-out one year into the operation of the transmission line to remind landowners of the dangers of operating equipment near the line.⁴⁰⁸ Also, in the event of third-party damages or injury caused by the transmission line, Alberta PowerLine stated that the right-of-way agreement would protect the landowner and the landowner would not be liable if she or he accidentally damaged the transmission line structure.⁴⁰⁹

548. While landowners had concerns that farm land would be fragmented between an existing transmission line and the proposed transmission line paralleling it, Mr. Glen Doll of Serecon testified that he did not view paralleling in this case as fragmentation because there would be no reduction or change in land use; landowners would still be able to farm the area.⁴¹⁰ Alberta PowerLine stated that while paralleling an existing line would add more structures, it viewed each obstruction as a separate obstacle and, as long as there is sufficient spacing for equipment to pass, the impact could be minimized.⁴¹¹

549. Alberta PowerLine would also implement a noxious weed program during the construction of the transmission line. It would conduct vegetation surveys and consult with the county's regulators and Agricultural Fieldmen⁴¹² to identify potential noxious weed infestations. Where localized weed infestations are identified, Alberta PowerLine would consider implementing localized topsoil stripping, and would maintain accurate cleaning records where

⁴⁰³ Transcript, Volume 1, page 37, line 12 to page 38, line 7.

⁴⁰⁴ Exhibit 21030-X1205.02, Clean Version of Revised APL Reply Evidence, PDF pages 10 and 16.

⁴⁰⁵ Exhibit 21030-X1205.02, Clean Version of Revised APL Reply Evidence, PDF page 17.

⁴⁰⁶ Transcript, Volume 6, page 1187, lines 8 to 12.

⁴⁰⁷ Transcript, Volume 18, page 3704, lines 3 to 9.

⁴⁰⁸ Transcript, Volume 9, page 1719, lines 9 to 15.

⁴⁰⁹ Exhibit 21030-X1205.02, Clean Version of Revised APL Reply Evidence, PDF page 20.

⁴¹⁰ Transcript, Volume 4, page 700, lines 1 to 21.

⁴¹¹ Transcript, Volume 4, page 727, lines 7 to 20.

⁴¹² Transcript, Volume 6, page 1172, line 13 to page 1173, line 3.

equipment was cleaned.⁴¹³ Alberta PowerLine stated that it would remove soil and plant materials from equipment by mechanical means⁴¹⁴ and re-establish vegetation cover during reclamation using certified seed mixes.

550. Because certain parts of the project area are within areas of known clubroot contamination, Alberta PowerLine would adopt the best management practice identified in the Government of Alberta, *Alberta Clubroot Management Plan* in order to avoid the spread of clubroot. Alberta PowerLine proposed testing and cleaning protocols for this project. Under the best management practice for crop disease and noxious weeds protection, there are three levels of cleaning. Level 1 cleaning consists of the physical removal of dust, soil and plant material from equipment. Level 2 cleaning incorporates hot water or steam to physically remove soil from equipment. Under level 3, a one to two per cent bleach solution will be used in addition to the methods utilized in levels 1 and 2.⁴¹⁵

551. To identify a need for cleaning of equipment, Alberta PowerLine would work with landowners and local regulators, such as the county, to confirm the presence of crop disease on the site or in the area, or implement the requirements of the local district Agricultural Fieldman.⁴¹⁶ Alberta PowerLine stated that in counties in which clubroot is known to exist but a specific field is not known to contain clubroot, soil samples would be taken at the field entrances, auxiliary entrances or accesses that Alberta PowerLine plans to use.⁴¹⁷ The samples are used to determine the level of cleaning required.⁴¹⁸ In addition, Alberta PowerLine would collect soil samples in a targeting sampling pattern where there is a land use break between fields.⁴¹⁹ Alberta PowerLine stated that if a landowner has a particular practice of disinfecting her or his equipment, it would adopt the same practice.⁴²⁰ Alberta PowerLine added that it would disinfect equipment when moving from fields with clubroot to those that do not have clubroot, based on the testing program.⁴²¹ Alberta PowerLine would also monitor the Government of Alberta's standards or guidelines on clubroot management and implement changes as appropriate.⁴²²

552. To minimize impacts to soil during construction, Alberta PowerLine proposed a number of mitigation measures. These include ensuring sufficiently dry or frozen ground surface conditions to reduce excessive rutting and compaction, stripping and stockpiling topsoil and subsoils separately, refraining from stripping top soils under high wind or erosion potential conditions, and the use of geotextiles and/or rig matting to reduce soil degradation.⁴²³

553. In order to restrict weed growth, Alberta PowerLine proposed the use of a native grass seed mixture or other suitable species to establish adequate vegetation cover in the area under and adjacent to transmission line structures that cannot be farmed. This would be done in consultation with the landowner.

⁴¹³ Exhibit 21030-X1205.02, Clean Version of Revised APL Reply Evidence, PDF page 15.

⁴¹⁴ Exhibit 21030-X1205.02, Clean Version of Revised APL Reply Evidence, PDF page 14.

⁴¹⁵ Exhibit 21030-X0018, Attach 09 - APL_PreliminaryEPP_20151127, PDF page 93.

⁴¹⁶ Transcript, Volume 6, page 1172, line 13 to page 1173, line 3.

⁴¹⁷ Transcript, Volume 6, page 1174, lines 17 to 21.

⁴¹⁸ Transcript, Volume 6, page 1176, lines 14 to 19.

⁴¹⁹ Transcript, Volume 18, page 3705, line 17 to page 3706, line 4.

⁴²⁰ Transcript, Volume 6, page 1176, lines 3 to 5.

⁴²¹ Transcript, Volume 18, page 3707, lines 3 to 5.

⁴²² Transcript, Volume 21, page 4487, lines 9 to 11.

⁴²³ Exhibit 21030-X1205.02, Clean Version of Revised APL Reply Evidence, PDF page 18.

554. Alberta PowerLine indicated that although there might be impacts to livestock during construction of the transmission line, such impacts could be mitigated by fencing off construction areas from livestock, maintaining access to water, and allowing landowners and livestock to cross the right-of-way. Construction activities could also be scheduled to minimize impacts.⁴²⁴ Alberta PowerLine stated it would work with landowners to minimize impacts to livestock.⁴²⁵

555. In its report, Serecon identified issues related to organic farming and proposed a number of mitigation measures. During the construction of the transmission line, vehicles traversing through land certified organic could introduce non-permitted substances, thereby putting the organic certification at risk. Serecon proposed discussions with affected landowners to determine the criteria that should be followed to prevent the loss of certification. During the operation and maintenance of the transmission line, Alberta PowerLine would have to use only permitted substances for right-of-way vegetation control, appropriate cleaning of equipment, ensure its personnel adhere to the criteria outlined for the organic farm to prevent the loss of organic certification, and set an appropriate buffer between the right-of-way and the organic farm to eliminate spray drift onto organic land.⁴²⁶ Alberta PowerLine agreed to implement the recommendations in the Serecon report. Alberta PowerLine also stated that it would typically only use ground-based spot herbicide application on private land to prevent drift.⁴²⁷

556. Serecon stated that potential impacts from aerial spraying could be minimized by locating transmission lines along quarter sections and field boundaries. Serecon added that the presence of the transmission line can leave areas of a field that cannot be sprayed and that in these instances, ground application would be required. Serecon recommended that Alberta PowerLine work with landowners and aerial spraying operators to determine how best to spray in close proximity to power lines and to install aviation marker balls on the conductors where aerial spraying occurs regularly, to increase the visibility of the lines.⁴²⁸ Alberta PowerLine contended that properties with transmission lines could still be aerially sprayed and that the guyed wire structures do not pose a greater risk to aerial sprayers, because the widest point of the guyed wires is at ground level and aerial sprayer pilots fly closer to the top of the structure.⁴²⁹

557. In areas where it could not avoid agricultural lands in routing the proposed transmission line, Alberta PowerLine stated that annual structure payments would be paid to landowners to compensate for loss of land use⁴³⁰ and that it would work with landowners on the placement of the structures to minimize impacts.⁴³¹ Alberta PowerLine added that the annual structure payments would include compensation for the loss of efficiencies caused by having to farm around the structures, such as overlap and reduced efficiencies of seed, fertilizer, and herbicide applications, wear-and-tear and GPS reprogramming.⁴³² Alberta PowerLine stated that annual

⁴²⁴ Transcript, Volume 9, page 1710, lines 4 to 16.

⁴²⁵ Transcript, Volume 18, page 3756, lines 6 to 9.

⁴²⁶ Exhibit 21030-X1196, Attachment 1 - High Voltage Transmission Line Agricultural Impact Assessment, Serecon, 2016, PDF pages 24 to 25.

⁴²⁷ Exhibit 21030-X1205.02, Clean Version of Revised APL Reply Evidence, PDF page 81.

⁴²⁸ Exhibit 21030-X1196, Attachment 1, High Voltage Transmission Line Agricultural Impact Assessment, Serecon, 2016, PDF pages 33 to 34.

⁴²⁹ Transcript, Volume 18, page 3707, line 24 to page 3708, line 13.

⁴³⁰ Exhibit 21030-X0002, Attach 01, Application Text – Final, PDF page 109.

⁴³¹ Transcript, Volume 9, page 1707, line 17 to page 1708, line 9.

⁴³² Exhibit 21030-X1205.02, Clean Version of Revised APL Reply Evidence, PDF page 19.

structure payments also account for the increased inconvenience of weed control in the immediate proximity of structures. Alberta PowerLine submitted that the annual structure payments for the guyed-V structures would be \$1,600 on cultivated lands and \$700 on uncultivated lands.⁴³³ This rate, determined by external experts represents an increase of \$200 on cultivated lands and \$150 on uncultivated lands over the rate paid for self-supporting structures.

558. Alberta PowerLine stated a preference for the west route option over the east route option because it contains the lowest amount of area affecting cultivated and pasture land within the right-of-way, and the west route option parallels more existing linear features.

Alberta PowerLine stated that compared to the west route option, the east route option has approximately 38 per cent more cultivated land and 36 per cent more pasture land.⁴³⁴

10.2 Views of the interveners

559. A number of landowners with agricultural operations had concerns about farming in proximity of the proposed transmission line. Shoal Lake Dairy Ltd., Jan and Jacoba Moes, and Peetoom Dairies Ltd. of the South of 43 Group raised concerns about liability and potential damage to their equipment and the transmission line structures. They submitted that when seeding, spraying, combining and working the land, the transmission line structures would be a dangerous obstacle. They also raised weed control concerns stating that the structures would leave crops unreachable with the large sprayers.⁴³⁵

560. In its filed evidence, Peetoom Dairies Ltd. indicated that it currently farms around an existing transmission line and that the addition of another line would further compound its concerns. It stated that because the proposed transmission line would be staggered from the existing line and not be located side-by-side, there would be a greater impact because of the additional inconvenience and loss of land.⁴³⁶ At the hearing, Willem Peetoom testified that the existing line was already difficult to farm around and the new one has a larger footprint, which would result in more time and care to farm around them, and would leave a lot of land not farmable.⁴³⁷ Mr. Peetoom acknowledged that the existing transmission line was present when he bought the land, but that the proposed line was not comparable to the existing line since the proposed line would be taller, wider and double the voltage.⁴³⁸ Mr. Peetoom testified that he currently has seven structures on his property and if the west route option is selected, he will have to farm around 14 structures.⁴³⁹

561. The South of 43 Group also raised concerns with the choice of a guyed structure. Peetoom Dairies Ltd. stated that the design creates a larger footprint, which causes more inconvenience and renders more land unusable.⁴⁴⁰ Mr. Peetoom testified that it is a long-term health risk working close to the high voltage transmission lines and consideration should be given to using structures with a smaller footprint.⁴⁴¹ He added that his friends have hit the guyed

⁴³³ Exhibit 21030-X0648, APL-AUC-2016FEB01 Information Request Responses, PDF page 15.

⁴³⁴ Exhibit 21030-X0002, Attach 01 - Application Text – Final, PDF pages 87 to 88.

⁴³⁵ Exhibit 21030-X0855, Written Evidence.

⁴³⁶ Exhibit 21030-X0859, Written Evidence.

⁴³⁷ Transcript, Volume 12, page 2416, lines 15 to 23.

⁴³⁸ Transcript, Volume 12, page 2403, lines 2 to 13.

⁴³⁹ Transcript, Volume 12, page 2382, lines 10 to 14.

⁴⁴⁰ Exhibit 21030-X0859, Written Evidence.

⁴⁴¹ Transcript, Volume 12, page 2383, lines 14 to 25.

wires in the past.⁴⁴² Mr. Scholten testified that there are existing guyed structures on his property. He stated that, when compared to self-supporting structures, it is not a big difference for grazing or for smaller machinery, but with equipment getting larger, “it can cause a lot of trouble.”⁴⁴³ Mr. Peetoom and Mr. Scholten both stated that colour guards on the guyed wires would not help and it was only a matter of time before the guy wires get hit because a lot of farming happens at night or in dusty conditions.⁴⁴⁴

562. Mr. Treichel echoed the sentiment of the other interveners, that there should not be transmission lines with guyed wires.⁴⁴⁵ Mr. Akins stated that the guyed structures have too high an impact on agriculture.⁴⁴⁶

563. Members of ERLOG voiced similar concerns about agricultural impacts of the proposed transmission line along the east route option. ERLOG stated its members use their lands for growing crops, livestock, organic farming, dairy farms and feedlot operations. ERLOG members stated that the agricultural potential of soil along the east route option is greater than along the west route and that there would be a greater impact.⁴⁴⁷ ERLOG members stated the lands along the east route option were prime agricultural land and it made more sense to locate the transmission line on the west route, where there are existing lines in the area.⁴⁴⁸

564. Similar to landowners on the west route option, ERLOG members did not agree with Alberta PowerLine’s choice of structure. Mr. Lonnie Brown stated that he considered the use of guyed structures to be “an accident waiting to happen”, and that with large equipment and night operation, the chance of hitting them are high.⁴⁴⁹ He did not believe the guy wire markers would help in the long term, because he anticipated the colour would wear away and he doubts that they will be maintained properly.⁴⁵⁰ He contended that the guyed wire tower should be illegal in all farmland in Alberta because it is unsafe.⁴⁵¹ ERLOG requested that self-supporting tangent structures be used on agricultural lands for its members, should the east route option be approved.⁴⁵² ERLOG’s expert, Mr. Berrien, also suggested that guyed structures not be used in agricultural areas.⁴⁵³

565. Mr. Will Huppertz testified that he operates a large cattle and cropland operation across 5,500 acres, which the transmission line would dissect should the east route option be approved. He stated that he uses an aircraft to patrol cattle and scout crops and that the power line would make it hazardous to fly around.⁴⁵⁴ Mr. Huppertz also objected to the loss of his fenceline, which is in place to control wind and soil erosion.⁴⁵⁵

⁴⁴² Transcript, Volume 12, page 2382, lines 15 to 21.

⁴⁴³ Transcript, Volume 12, page 2404, lines 5 to 23.

⁴⁴⁴ Transcript, Volume 12, page 2407, lines 5 to 25.

⁴⁴⁵ Transcript, Volume 14, page 2883, lines 12 to 15.

⁴⁴⁶ Transcript, Volume 16, page 3337, lines 8 to 11.

⁴⁴⁷ Exhibit 21030-X0897, C - ERLOG Member Submissions, PDF page 10.

⁴⁴⁸ Transcript, Volume 13, page 2743, lines 8 to 18.

⁴⁴⁹ Transcript, Volume 13, page 2717, lines 22 to 25 and page 2718, lines 1 to 3.

⁴⁵⁰ Transcript, Volume 13, page 2718, lines 4 to 10.

⁴⁵¹ Transcript, Volume 13, page 2773, lines 24 to page 2774, line 5.

⁴⁵² Transcript, Volume 19, page 4081, lines 13 to 14.

⁴⁵³ Transcript, Volume 12, page 2450, lines 15 to 23.

⁴⁵⁴ Transcript, Volume 13, page 2739, line 23 to page 2741, line 3.

⁴⁵⁵ Transcript, Volume 13, page 2742, lines 10 to 19.

566. Mr. Akins voiced concerns about EMF and that the proposed transmission line would be detrimental to the health of his cattle.⁴⁵⁶ He testified that cattle rub against the guy wires, damaging the cables and causing a structural deficiency to the tower and a safety hazard to the cattle. He did not want Alberta PowerLine interfering with the cattle during breeding season because the added stress could impact the cattle's conception rates and new born calves could be trampled.⁴⁵⁷ He stated that Alberta PowerLine could not guarantee that construction would occur at a time convenient to the cattle operation. Mr. Akins suggested that temporary fencing be erected during construction to protect the cattle, but stated that Alberta PowerLine did not see construction as a concern to the cattle.⁴⁵⁸ Mr. Akins added that he knew temporary fencing was used during the construction of the Western Alberta Transmission Line by AltaLink Management Ltd.⁴⁵⁹

567. Landowners also raised concerns about weed control. Mr. Akins stated he has been on his land for 50 years and knows it is clubroot free. He has concerns that the construction equipment will introduce clubroot to his lands and requested that Alberta PowerLine carry out level 3 cleaning and disinfecting at the entrance of his lands.⁴⁶⁰ He stated that his county is known to have clubroot and that once it gets in the soil, it stays for a very long time.

568. ERLOG members also raised concerns about the spread of noxious weeds and, in particular, clubroot. They submitted that clubroot and noxious weed protocols need to be clearly and definitively communicated to the satisfaction of landowners. Mr. Brown stated that his experience with pipeline companies has shown that they make many promises, such as weed control, but never keep them.⁴⁶¹ He stated that companies do not mow weeds until after they seed, do not keep them sprayed, and generally do the absolute minimum.⁴⁶² ERLOG stated that Alberta PowerLine should be held to a higher standard as it is moving equipment from one parcel of land to another and requested that Alberta PowerLine be directed to conduct the level of cleaning and disinfection requested by a landowner.⁴⁶³

569. Concerns were expressed about the impacts of the proposed transmission line on organic farming. Some ERLOG members engage in organic farming,⁴⁶⁴ organic grain farming,⁴⁶⁵ and organic hay farming.⁴⁶⁶ The Futoranskys stated that the east route would remove a significant amount of trees which currently act as a buffer between their organic farming operation and the traditional farming operation. They testified that weeds would be difficult to control around the guyed wires and on the right-of-way.⁴⁶⁷ ERLOG members also expressed concerns that the inadvertent application of pesticide on organic farmland could impact the certification of organic operations and affect business.⁴⁶⁸

⁴⁵⁶ Transcript, Volume 16, page 3335, lines 16 to 24.

⁴⁵⁷ Transcript, Volume 16, page 3336, lines 15 to 22.

⁴⁵⁸ Transcript, Volume 16, page 3338, lines 9 to 24.

⁴⁵⁹ Transcript, Volume 16, page 3339, lines 9 to 15.

⁴⁶⁰ Transcript, Volume 16, page 3339, lines 18 to 25.

⁴⁶¹ Transcript, Volume 13, page 2717, lines 14 to 21.

⁴⁶² Transcript, Volume 13, page 2773, lines 9 to 23.

⁴⁶³ Transcript, Volume 20, page 4133, lines 1 to 16.

⁴⁶⁴ Exhibit 21030-X0897, C - ERLOG Member Submissions, PDF page 35.

⁴⁶⁵ Exhibit 21030-X0897, C - ERLOG Member Submissions, PDF page 163.

⁴⁶⁶ Exhibit 21030-X0897, C - ERLOG Member Submissions, PDF page 49.

⁴⁶⁷ Exhibit 21030-X0897, C - ERLOG Member Submissions, PDF page 49.

⁴⁶⁸ Transcript, Volume 20, page 4139, lines 22 to 25.

570. Peetoom Dairies Ltd. submitted that during construction, the soil can be disturbed, leading to a reduction in soil fertility. Rocks are also exposed which can damage equipment and require labour intensive rock picking.⁴⁶⁹

571. ERLOG members also raised concerns that the transmission line would affect their ability to aerial spray, which is required in time-sensitive situations. ERLOG retained Keith Taylor to prepare a report and provide expert evidence on aerial spraying. Mr. Taylor stated that the guyed wires pose a safety hazard to aerial sprayers because they are difficult to see. A pilot may fly further away from the transmission line to avoid the guyed wire which results in an increased area of the field that is not sprayed.⁴⁷⁰ Mr. Taylor stated that when operating perpendicular to the transmission line, aerial sprayers will have to pull up earlier, decreasing the amount of field that is sprayed.⁴⁷¹ Mr. Taylor testified that mid-field placements of towers make aerial spraying inefficient because the pilot has to pull up and back down with each pass of the transmission line.⁴⁷² Mr. Taylor added that paralleled transmission lines, whether the towers are staggered or grouped, do not create additional problems.⁴⁷³ He stated that where there are two lines in parallel with different structure heights, it would introduce a level of confidence or safety by giving a reference point in relation to the height of the wires.⁴⁷⁴ Mr. Taylor testified that perpendicular transmission lines are problematic as the corner where two transmission lines meet becomes difficult to access.⁴⁷⁵ He also stated that diagonal lines present issues for aerial spraying. In order to minimize the number of passes, they are typically completed based on the orientation of the field, either north-south or east-west. With diagonal lines, the peripheral view to the left and right differ when approaching the transmission line.⁴⁷⁶ Mr. Taylor confirmed that when flying parallel to transmission lines, he would not be under the conductors and would generally be in line with the top of the structure.⁴⁷⁷

10.3 Commission findings

572. Alberta PowerLine filed an expert report on agricultural impacts, prepared by Mr. Doll of Serecon. Mr. Doll also testified at the oral hearing. No other expert report was filed on agricultural impacts.

573. According to his curriculum vitae, Mr. Doll is a professional agrologist with the Alberta Institute of Agrologists and has been with Serecon for over 10 years. Mr. Doll testified he is an independent consultant presented to address potential agricultural impacts. The Commission is satisfied that Mr. Doll possesses the necessary qualifications, expertise and experience to give expert evidence on the potential agricultural impacts of the transmission line.

574. ERLOG filed an expert report and relied on expert testimony by Keith Taylor, the owner, operator and spray pilot for Taylor Aviation, with 14 years of experience flying agricultural aircraft. The Commission finds that Mr. Taylor possesses the necessary qualifications, expertise and experience to give expert evidence on aerial spraying in the proximity of transmission lines.

⁴⁶⁹ Exhibit 21030-X0859, Written Evidence.

⁴⁷⁰ Exhibit 21030-X0899, E - Evidence of Keith Taylor, PDF page 3.

⁴⁷¹ Transcript, Volume 12, page 2440, lines 9 to 14.

⁴⁷² Transcript, Volume 12, page 2488, line 25 to page 2489, line 9.

⁴⁷³ Transcript, Volume 12, page 2491, lines 12 to 18, and page 2496, lines 5 to 17.

⁴⁷⁴ Transcript, Volume 12, page 2492, line 10 to page 2493, line 5.

⁴⁷⁵ Transcript, Volume 12, page 2554, lines 9 to 18.

⁴⁷⁶ Transcript, Volume 12, page 2556, lines 5 to 25.

⁴⁷⁷ Transcript, Volume 12, page 2549, lines 2 to 22.

575. The Commission evaluated agricultural impacts based on a number of factors, including the total amount of land crossed, the impacts on cultivated and grazing lands, the introduction of weeds and the limitations to agricultural activities such as aerial spraying. Alberta PowerLine has committed to implementing a number of mitigation measures, that were proposed in Serecon's report, aimed at minimizing impacts on agriculture.

576. The Commission heard concerns from interveners on both route options about the proposed guyed-V structures. These interveners testified that the proposed structures have a larger footprint and the guy wires pose a safety hazard when operating machinery in their proximity. By contrast, a large number of landowners on the proposed west route option have no objection to these structures, as demonstrated by the number of right-of-way agreements obtained by Alberta PowerLine. Moreover, AltaLink Management Ltd.'s transmission line 913L, an existing guyed transmission line, is in the area and some of the lands on which these structures are located are currently being farmed by some of the interveners.

577. The Commission finds that there is generally an acceptance of the guyed wire structure and that farming practices and patterns have been adjusted to farm around these structures. Alberta PowerLine has committed to installing coloured plastic guards around the guy wires to increase visibility. It has also agreed to install reflective tape and metal guards around the guy wire foundations at the request of landowners. The Commission finds that these mitigation measures are adequate to address safety concerns.

578. In response to landowners' concerns with the liability for damage or injury caused by the transmission line, Alberta PowerLine stated that landowners are liable if the damage is intentional or as a result of gross negligence, but are not liable in the event of accidents.

579. The Commission finds that the guyed transmission line structures are compatible with grazing activities and provide increased grazing areas under the structures when compared to self-supporting tangent structures. Although it acknowledged that there may be issues with cattle rubbing against the guy wires, Alberta PowerLine has committed to install metal cattle guards as a mitigation measure, upon request from a landowner. The Commission consequently finds that the impacts on grazing would be minimal.

580. Parts of the project are in areas with a known presence of clubroot and many landowners have concerns about clubroot and other noxious weeds being introduced to their fields during the construction and operation of the transmission line. In making its determination on the mitigation measures required to address these concerns, the Commission considers that Alberta PowerLine has committed to conducting an extensive and confidential sampling program to confirm the presence of clubroot prior to entering a field to determine the recommended level of equipment cleaning of the equipment. Alberta PowerLine has committed to adopting the best management practice identified in the Government of Alberta, *Alberta Clubroot Management Plan*, monitoring the Government of Alberta's standards or guidelines on clubroot management and implementing changes as appropriate. Alberta PowerLine has also committed to using approved seed mixes during reclamation and to spraying herbicide along the right-of-way to control weeds.

581. The best management practice for crop disease prevention and noxious weeds describes three levels of equipment cleaning practices ranging from sweeping and scraping to using steam and bleach solutions. Alberta PowerLine will work with landowners and will conduct the same level of cleaning as the landowner's current practice. The Commission finds Alberta

PowerLine's approach to clubroot management to be in compliance with Government of Alberta guidelines for the prevention of the spread of clubroot and other noxious weeds, and that it is bolstered by the proposed sampling program.

582. With respect to potential impacts on organic farming, Alberta PowerLine has stated that it would work with landowners to ensure that organic certification is maintained, and that it typically only uses ground-based spot herbicide application on private lands, which would reduce the likelihood of herbicide drift on to organic farm land. The Commission finds that Alberta PowerLine's mitigation measures address these concerns.

583. The Commission also heard evidence on aerial spraying from both the applicant and ERLOG. Alberta PowerLine stated that impacts to aerial spraying can be mitigated by proper siting of the transmission line or by ground-based application. Mr. Taylor, ERLOG's aerial spraying expert, stated that a transmission line paralleling another has a negligible impact on aerial spraying. Although there may be areas in a field where aerial spraying is not effective, the Commission accepts that with the implementation of the mitigation measures set out in the Serecon report, in most circumstances aerial spraying may take place even after a transmission line is erected. In this regard, the Commission finds that neither the west nor the east route option is favoured.

584. Mitigation measures outlined in the Serecon report and other mitigation measures agreed to by Alberta PowerLine include locating structures on field boundaries or unfarmed areas where possible, working with landowners to maintain organic certification, conducting proper cleaning of equipment prior to entry and exit of each property, ensuring proper separation and protection of soils during construction, constructing during frozen or dry ground conditions when possible, avoiding construction during crop season, preserving windbreaks and allowing natural regrowth of vegetation and providing information to landowners to ensure the land is farmed safely. The Commission is satisfied that, with the implementation of these mitigation measures, the agricultural impacts of the proposed transmission line would be adequately addressed.

585. The impacts on agricultural operations are similar on the west and east route options. The Commission considers that locating the transmission line along quarter lines and property lines can mitigate such impacts. While the interveners on the west route option argued the transmission line should be placed on the east route option because it is the shorter route and results in fewer impacts, from an agricultural point of view the west route option appears to have fewer impacts because it has 331.5 hectares of cultivated land and 171.8 hectares of pasture land within the proposed right-of-way. In comparison, the east route option has 418.2 hectares of cultivated land and 240.8 hectares of pasture land within the proposed right-of-way.⁴⁷⁸ In terms of length, the proposed transmission line passes through approximately 93.7 kilometres of cultivated and pasture land on the west route option, compared to 127.7 kilometres of cultivated and agricultural land on the east route option.⁴⁷⁹ Given that the impacts are similar on both routes, and that the east route option affects more agricultural lands, the Commission finds that the west route option is superior from an agricultural perspective.

⁴⁷⁸ Exhibit 21030-X1205.02, Clean Version of Revised APL Reply Evidence, PDF page 13.

⁴⁷⁹ Exhibit 21030-X1567, APL Undertaking 026, PDF page 2.

11 Route cost

11.1 Views of Alberta PowerLine

586. As noted above in Section 5.3 of this decision, the project was assigned by way of a competitive procurement process. Alberta PowerLine raised confidentiality concerns in relation to filing in this proceeding the agreement between the AESO and itself for the construction and operation of the project. However, Alberta PowerLine filed cost information relating to the proposed routes as directed by the Commission, on a confidential basis.

587. In response to an undertaking to update the bid costs, Alberta PowerLine submitted the cost increases above the original bid price for each route as set out below.

Table 12. Bid cost of Fort McMurray West 500-kV Transmission Project

Original bid ⁴⁸⁰ \$1.43B	Expressed as a cost delta from original bid	Percentage increase
West Route Option ⁴⁸¹	\$184,420,000	13% More than original bid
East Route Option ⁴⁸²	\$73,317,000	5% More than original bid
East Route Option Variation ⁴⁸³	\$72,573,000	5% More than original bid

588. The cost of the project was a fixed bid price for design, construction, financing, operation and maintenance of the project.⁴⁸⁴ Alberta PowerLine will operate and maintain the proposed transmission line for a 35-year period. In cross-examination, Alberta PowerLine also stated that the bid price included the alternating current mitigation cost for the project.⁴⁸⁵

589. Further cost information for the routes was provided in confidential information responses to the Commission. In these information responses, Alberta PowerLine provided cost breakdowns in accordance with Rule 007, including the cost of the transmission line structure type, the cost of using self-supporting transmission line structures as opposed to guyed-V transmission line structures on privately-held lands, and the cost of placing brightly coloured plastic guy guards on towers located on cultivated and private lands.

590. Alberta PowerLine stated that the price arrangement with the AESO was such that it allowed for fixed unit rates for specified price adjustments, and an accuracy tolerance was not applicable to the amounts specified in Table 1, above.

591. The west route option has a right-of-way length of 508.5 kilometres, with an estimated cost that is \$111 million more than the east route option, which has a right-of-way length of 481.6 kilometres. The east route option variation is 482.5 kilometres long, with an estimated cost that is \$112 million less than the west route option.

592. Alberta PowerLine argued that the competitive procurement process has not influenced the routing of the transmission line, and stated that it remains committed to finding the least

⁴⁸⁰ Exhibit 21030-X0002, Main Application, page 76, PDF page 86.

⁴⁸¹ Transcript, Volume 5, page 824, lines 16 to 17.

⁴⁸² Transcript, Volume 5, page 824, lines 18 to 20.

⁴⁸³ Transcript, Volume 5, page 824, lines 21 to 23.

⁴⁸⁴ Exhibit 21030-X0002, Main Application, page 73, PDF page 83.

⁴⁸⁵ Transcript, Volume 8, page 1598, lines 20 to 22.

overall impact route.⁴⁸⁶ Considering the reduction of impacts to lands, residences, and other routing criteria, the west route option remains Alberta PowerLine's preferred route despite the additional cost.⁴⁸⁷

11.2 Views of the interveners

593. The CCA submitted that the higher cost west route option was not justified on the basis of a reduction in land impacts and would provide less value for ratepayers over its lifespan when compared to the east route option. In the CCA's view, the small differences in land use impacts submitted by Alberta PowerLine are not worth \$111 million dollars more than the east route to Alberta ratepayers.

594. The CCA also had concerns with some of the route amendments submitted by the applicant throughout the proceeding. These were the common route variation 1 at a cost of \$1.3 million more and the common route variation 2 at a cost of \$9.8 million. Further, the withdrawal of the diagonal route, which was formerly the west route option, increased the net present cost by \$4 million.⁴⁸⁸

595. The CCA further submitted that following or paralleling existing infrastructure reduces costs to Alberta PowerLine during construction and maintenance, increasing their profits. It argued that paralleling of existing infrastructure is not a benefit.⁴⁸⁹ The CCA further stated that placing the transmission line in a common corridor as is proposed for the west route option, decreases reliability of the system due to outages and increases future costs.⁴⁹⁰

596. The Barrhead West Group did not agree that the longer more costly route should be taken west of Barrhead. It submitted that the cost difference between the west route option and the east route option has been increasing. In its view, this is demonstrated by the fact that the difference in costs between the routes when the applications were first filed in December 2015 was \$74 million, compared to \$111 million at the time of the hearing.⁴⁹¹

597. Mr. Berrien's report for ERLOG listed the minimization of line length and costs, as Tier 1 route assessment criteria. In his analysis of cost, he stated that Alberta PowerLine's choice of the longer, higher cost route was a signal that other criteria had prevailed in establishing which route was superior.⁴⁹² Although Mr. Berrien is of the view that the east route option is superior with respect to route length and cost, he agreed with Alberta PowerLine that the west route option is a superior route overall.

11.3 The cost of alternative transmission line structures

11.3.1 Views of Alberta PowerLine

598. Alberta PowerLine provided evidence on the cost of alternative transmission line structures. It gave ranges for the costs by type of tower structure, because the foundation costs required for each transmission line structure vary.

⁴⁸⁶ Transcript, Volume 18, page 3709, lines 7 to 13.

⁴⁸⁷ Transcript, Volume 18, page 3709, lines 20 to 23.

⁴⁸⁸ Exhibit 21030-X1176, Ft McM West 500kV – CCA Submission.

⁴⁸⁹ Transcript, Volume 20, page 4835, lines 19 to 21.

⁴⁹⁰ Transcript, Volume 20, page 4387, lines 17 to 20.

⁴⁹¹ Transcript, Volume 18, page 3843, lines 5 to 17.

⁴⁹² Exhibit 21030-X0898, D-Evidence of Robert Berrien and CV, page 10, PDF page 10.

599. The typical transmission line structure used for the proposed transmission line is the guyed-V type structure, which has a height of 33 metres to 53 metres, with an average transmission line structure height of 42.6 metres. Each transmission line structure is supported by four guy wires, with a typical guy anchor footprint of 29 to 42 metres by 38 to 66 metres. The guyed-V type transmission line structure has a larger footprint than the more common, self-supporting tower. Alberta PowerLine contended that the larger footprint results in an increase in annual transmission line structure payments for landowners.

600. If a self-supporting tangent⁴⁹³ transmission line structure were used to replace the guyed-V tangent transmission line structure, the cost of these transmission line structures would increase by 1.6 to 1.8 times⁴⁹⁴ due to higher material and unit costs. Alberta PowerLine further explained that guyed tower types are not new in Alberta and have been used for Y-type guyed towers and H-frame 240-kV transmission line structures in the past.⁴⁹⁵

11.3.2 Views of the interveners

601. Some of the parties⁴⁹⁶ raised the issue of the competitive procurement process potentially increasing Alberta PowerLine's incentive to create a low cost route to win the bid, while passing the impacts of land use onto landowners. This was raised from both a routing perspective and transmission line structure type perspective during the proceeding.

602. Mr. Berrien stated that it was important to understand that the cost savings of the V-type guyed towers are cost savings for Alberta PowerLine. This low cost tower type enabled Alberta PowerLine to win the competitive procurement process, but placed the land use impacts on Albertans.⁴⁹⁷ As discussed in Section 10 of this decision on agricultural impacts, some landowners testified that the bigger area footprint of guyed V transmission line structure creates more problems for farming, including aerial spraying.

603. Some interveners on both the west route option and the east route option stated that the transmission line guyed-V tower type is unacceptable. For example, Mr. Dundas stated, "The guy wires are extremely, extremely dangerous."⁴⁹⁸

11.4 Commission findings

604. In order to fulfill its public interest mandate, the Commission must take into account the cost of the routes presented in its review of a facility application. In this section, the Commission conducts a cost comparison of the routes submitted by Alberta PowerLine in its application. Although the costs of the project are determined by the agreement resulting from Alberta PowerLine's winning bid, the Commission considers the cost estimates pursuant to Rule 007, in making its decision on the applications.

⁴⁹³ A tangent transmission line structure can handle very little deflection and is used for straight line routing. The guyed-V tangent transmission line structure used in this application can withstand less than one degree of deflection. Transcript, Volume 9, page 1690, line 8.

⁴⁹⁴ Transcript, Volume 9, page 1831, lines 8 to 11.

⁴⁹⁵ Transcript, Volume 9, pages 1831, line 23 to page 1832 line 14.

⁴⁹⁶ ERLOG Berrien Report, Exhibit 21030-X0898, Burnco Berrien Report, Exhibit 21030-X0929, Wong Group, Transcript, Volume 16, page 3337, line 17 to 22.

⁴⁹⁷ Transcript, Volume 12, page 2446, lines 4 to 14.

⁴⁹⁸ Transcript, Volume 13, page 2775, line 23.

605. Rule 007 specifies the following for transmission line applicants:

7.1.2 Economic Assessment

TS41) Provide a detailed cost breakdown of all alternatives on a common basis with an accuracy tolerance within plus 20% minus 10%. This cost breakdown must be provided in the format shown in Appendix B1. Where identifiable, include costs to be borne by persons other than the applicant and the applicant's customer(s) in the comparison. This information requirement may not be applicable to merchant line applications.

606. The Commission finds that, because this is a competitively-procured project, an accuracy tolerance within plus 20 per cent minus 10 per cent as prescribed in Rule 007 is not required.

607. The Commission agrees with Alberta PowerLine and Mr. Berrien that because it is shorter and less costly, the east route option is a superior route from a cost and length perspective. However, as stated in previous decisions,⁴⁹⁹ the public interest does not require approval of the least-cost alternative.

608. The Commission does not find the submissions of the CCA helpful because it did not submit evidence in support of its submissions that the minor differences in land-use impacts do not warrant the difference in costs between the two route options. The Commission considered the CCA's argument that paralleling existing infrastructure is not a benefit and that placing the transmission line in a common corridor, such as on the west route option, decreases reliability of the system due to outages and increases future costs. The CCA presented no evidence to support these assertions and the Commission finds them to be without basis.

609. The guyed type structures for transmission lines are not new to Alberta; they can be seen throughout the province. The west route option parallels an existing guyed type transmission line structure constructed in 1968.⁵⁰⁰ The Commission finds that there is insufficient evidence on the record to support the assertion that this low-cost transmission line structure type enabled Alberta PowerLine to win the competitive procurement process and place the cost of land-use impacts on Albertans.

12 Environment

12.1 General environmental impacts

610. Alberta PowerLine retained CH2M to assist with the preparation of the environmental section of its application. CH2M prepared an environmental assessment report for the project entitled *Environmental Assessment: Fort McMurray west 500 kV Transmission project and Related Facilities* (the EA report).⁵⁰¹ The EA report was based on desktop information, supplemented by field work studies completed in 2015 for soils, wetlands, vegetation, and wildlife. The EA report described the environmental setting of the project area including terrain, soils, land use and designated areas, aquatics and water resources, wetlands, vegetation, and

⁴⁹⁹ Decision 2012-327, paragraphs 166 and 926.

⁵⁰⁰ Transcript, Volume 4, page 698, lines 11 to 15.

⁵⁰¹ Exhibit 21030-X0023, Final - Environmental Assessment: Fort McMurray west 500 kV Transmission Project and Related Facilities.

wildlife and wildlife habitat.⁵⁰² It also discussed and assessed the potential adverse effects of the project on these environmental components and compared the potential environmental impacts of each route option: the west route; the east route; and the east route variation. Shawn Martin appeared as an expert witness at the public hearing representing CH2M.

611. Alberta PowerLine prepared an environmental protection plan that itemized and described mitigation measures that would eliminate or reduce the potential environmental effects on each of the proposed routes.⁵⁰³ It provided a draft version of the environmental protection plan to Alberta Environment and Parks for review, and feedback from Alberta Environment and Parks was used to further identify sensitive areas and develop or refine mitigation measures in the draft environmental protection plan. Most of the mitigation measures recommended in the EA report were incorporated into an updated environmental protection plan. The environmental protection plan sets out more than 450 mitigation measures and several appendices describing additional mitigation plans.

612. The environmental protection plan states that the conditions of the various regulatory approvals and permits will be incorporated, as required and that it will be updated upon final route approval by the Commission.⁵⁰⁴

12.1.1 Views of Alberta PowerLine

613. Table 11 of the application sets out nine environmental metrics, namely: wetlands; caribou ranges; special access zones for wildlife; key wildlife and biodiversity zones; environmentally significant areas; Ungulate Habitat Protection Protective Notation Areas (PNAs); other PNAs; and Historical Resource Value (HRV) ratings. Six of the nine metrics (wetlands, key wildlife and biodiversity zones, environmentally significant areas, Ungulate Habitat Protection PNAs, other PNAs, HRV 4-5 ratings) favour the west route option, while two of the metrics (length of caribou range and length of special access zones) favour the east route option, and one metric (HRV 1-3 ratings) is the same for all route options.⁵⁰⁵

614. Based on these metrics, Alberta PowerLine identified the west route option as having fewer potential residual effects than the east route option, primarily because the west route option parallels substantially more existing linear disturbances.⁵⁰⁶

615. At the hearing, Mr. Shawn Martin stated that the nine metrics used by CH2M were similar to the 16 environmental metrics used by Mr. Wallis, and that he generally agrees with Mr. Wallis, including with his characterization of weak and strong metrics.

⁵⁰² Transcript, Volume 18, page 3687, Exhibit 21030-X1587.

⁵⁰³ Exhibit 21030-X0018, Fort McMurray west 500 kV Transmission Project, Preliminary Environmental Protection Plan, November 2015. Alberta PowerLine.

⁵⁰⁴ Exhibit 21030-X0018, Fort McMurray west 500 kV Transmission Project, Preliminary Environmental Protection Plan, November 2015, Section 1.1, page 4.

⁵⁰⁵ Exhibit 21030-X0002, Facility Application Text, Table 11, page 75.

⁵⁰⁶ Exhibit 21030-X0002, Application Text, Section 6, page 111.

Native and rare vegetation

616. CH2M's vegetation surveys were summarized in the EA report. Rare vegetation field surveys were conducted along selected segments of the transmission line right-of-way for all route options in 2015.⁵⁰⁷ Because of different flowering periods, a two-season survey was required to capture the different phenology of rare plants. Vegetation ecologists therefore conducted the rare plant surveys in both early and late summer.⁵⁰⁸ CH2M also completed additional early and late season vegetation surveys in 2016.

617. During the 2015 vegetation surveys, 24, 28 and 30 Alberta Conservation and Information Management System (ACIMS)-listed rare vegetation species were observed along the west route option, east route option, and the east route variation option respectively.⁵⁰⁹

618. Alberta PowerLine stated that the locations of the project components would be adjusted to avoid certain rare ecological communities, or if they cannot be avoided, Alberta PowerLine would consult with Alberta Environment and Parks to identify alternative mitigation measures, such as using protective mats or transplantation.⁵¹⁰

619. A similar area of native vegetation would be crossed by the project footprint for all route options: the west route option right-of-way would overlap 2,386 hectares of native vegetation (78.7 per cent of the right-of-way);⁵¹¹ the east route option right-of-way would overlap 2,184 hectares (75.7 per cent); and the east route variation option right-of-way would overlap 2,176 hectares (75.2 per cent).⁵¹²

620. Native vegetation areas disturbed by the project would be returned to an equivalent land use capability. The standards, operating conditions and best management practices for vegetation management that are outlined in Alberta Environment and Parks' *Enhanced Approval Process Integrated Standards and Guidelines* were considered in the development of the project's vegetation mitigation measures and would be used to supplement standard mitigation measures outlined in the preliminary environmental protection plan.⁵¹³

621. CH2M concluded that the predicted residual effect ratings of the project on native vegetation, rare vegetation, and weed spread would be low for all route options. The west route option is anticipated to have a lower effect on native vegetation disturbance when compared to the east route option because it parallels more existing linear disturbances.⁵¹⁴

⁵⁰⁷ Transcript, Volume 8, page 1553, lines 11 to 21.

⁵⁰⁸ Exhibit 21030-X1508, Supplemental Vegetation and Wetland Survey Results, Section 2.0, page 2.

⁵⁰⁹ Exhibit 21030-X0023, Environmental Assessment, Section 6.6.3.2, page 314.

⁵¹⁰ Page 43 of Alberta PowerLine's response to Information Request Alberta PowerLine -AUC-2016FEB01-33(a). February 19, 2016. Exhibit 21030-X0648.

⁵¹¹ Exhibit 21030-X0271, Environmental Assessment Amendment, Table 7.1-1, Section 7, page 40.

⁵¹² Exhibit 21030-X0023, Environmental Assessment, Section 6.6.3.1, page 313.

⁵¹³ Exhibit 21030-X0023, Environmental Assessment, Section 6.6.1, page 308.

⁵¹⁴ Exhibit 21030-X0023, Environmental Assessment, Section 6.6.5, page 319.

Wetlands, aquatics and water resources

622. As part of the EA report CH2M conducted a wetland desktop review to delineate and classify wetlands within an 800-metre wide corridor of the project footprint.⁵¹⁵ CH2M explained that Alberta Environment and Parks had not directed Alberta PowerLine to comply with the current Alberta wetland policy in the green area because the interim policy in the green area would still be applicable.⁵¹⁶ However, within the white area of the province, compensation for wetland destruction would be required.⁵¹⁷

623. The distribution of wetlands within the project footprint for all route options is summarized below.

Table 13. Summary of wetlands crossed by the project footprint for all route options⁵¹⁸

	West route option	East route option	East route variation
No. of Wetlands	580	585	573
Area of Wetlands Encountered (hectares) (per cent of project Footprint area)	1,186.90 (37.8%)	1,222.62 (40.3%)	1,219.08 (40.0%)
Length of Wetlands Encountered (hectares) (per cent of project Footprint area)	220.44 (43.7%)	223.18 (46.3%)	222.02 (46.0%)
No. of Towers within Wetlands	483	485	486

624. CH2M concluded that all route options are similar with respect to the number, area, and length of wetlands crossed, including the number of towers located within wetlands, and that with the implementation of mitigation measures, all route options are considered environmentally suitable, given the anticipated small area in which permanent wetland function would be lost.⁵¹⁹

625. Alberta PowerLine stated that standard construction mitigation measures would reduce the impacts to aquatics and water resources during construction and operation of the transmission line. Permanent transmission line structures would be placed outside of the high water mark of watercourses and waterbodies.⁵²⁰ A qualified aquatic environmental specialist would be employed, in accordance with Alberta Environment and Parks' request, to assess the proposed route crossing on the North Saskatchewan River and identify opportunities to reduce impacts to water quality, aquatic habitat, and fisheries.⁵²¹ Additional mitigation measures have been developed to focus on maintaining and restoring the vegetation seedbank, wetland profiles and local hydrology, and sediment control.⁵²²

626. Alberta PowerLine stated that it will apply for and obtain *Water Act* approvals for permanent disturbances to regulated wetlands and Code of Practice notifications will be

⁵¹⁵ Exhibit 21030-X0022, Appendix D, Wetland Desktop Review, Section 1.1, page 148.

⁵¹⁶ Transcript, Volume 18, page 3698, lines 8 to 13.

⁵¹⁷ Transcript, Volume 9, page 1814, lines 3 to 14.

⁵¹⁸ Exhibit 21030-X0271, Environmental Assessment Amendment, Table 6.1-2, Section 6, page 34.

⁵¹⁹ Exhibit 21030-X0023, Environmental Assessment, Section 6.5.5, page 307.

⁵²⁰ Exhibit 21030-X1205, Alberta PowerLine Reply Evidence, page 84.

⁵²¹ Exhibit 21030-X0800, Burnco Rock Products Ltd. Information Request Responses, page 9.

⁵²² Exhibit 21030-X1205, Alberta PowerLine Reply Evidence, page 228.

submitted to Alberta Environment and Parks for temporary vehicle and equipment crossings through all regulated wetlands a minimum of 14 days prior to the start of construction.⁵²³

627. A variety of groundwater conditions are anticipated across the project footprint as various terrain types are expected to be encountered. Alberta PowerLine stated that geotechnical investigations would be undertaken prior to constructing the foundations of the transmission line structures in order to characterize and account for groundwater levels.⁵²⁴

Soils and terrain

628. All route options cross several areas that have the potential for compaction and rutting, wind or water erosion, saline and sodic soils, and other associated stripping limitations.⁵²⁵ CH2M indicated that the transmission of electricity in overhead power lines has no known effect on soil quality and that any potential effects on soil quality from construction will be temporary and mitigation of these potential impacts is addressed in the environmental protection plan.⁵²⁶

629. A desktop evaluation was conducted by CH2M to identify high level terrain features and constraints that may require special consideration or mitigation.⁵²⁷ The results of the evaluation indicated that the project route options will cross moderate to steep slopes along mountainous areas, as well as steep inclines along stream and river crossings. CH2M stated that although all project route options would encounter terrain instability, they would be limited to areas of steep terrain.⁵²⁸ Areas of terrain instability will be monitored throughout annual patrols for the life of the project.⁵²⁹ CH2M expects the project to comply with industry-accepted practices and mitigation measures, as outlined in the environmental protection plan.⁵³⁰

630. CH2M concluded that with the application of mitigation measures, all of the route options would be considered environmentally suitable from a soil and terrain perspective.⁵³¹

Land use and designated areas

631. All of the proposed route options cross lands that are designated as environmentally significant areas. The west route option follows an existing transmission line easement in the Fort Assiniboine Sandhills Wildland Provincial Park while the east route option crosses a designated important bird area. CH2M concluded that all of the assessed route options are considered environmentally suitable from a land use and designated areas perspective.⁵³²

⁵²³ Exhibit 21030-X0023, Environmental Assessment, Section 5.4.2, page 93.

⁵²⁴ Exhibit 21030-X0648, Alberta PowerLine -AUC-2016FEB01 Information Request Responses, page 37.

⁵²⁵ Exhibit 21030-X0023, Environmental Assessment, Section 6.2.6, page 254.

⁵²⁶ Exhibit 21030-X1204.3, CH2M reply evidence, Section 2.2.4, page 23.

⁵²⁷ Exhibit 21030-X0023, Environmental Assessment, Section 5.1.3.1, page 39.

⁵²⁸ Exhibit 21030-X0023, Environmental Assessment, Section 6.1.5, page 244.

⁵²⁹ Exhibit 21030-X0023, Environmental Assessment, Section 6.1.3.1, page 242.

⁵³⁰ Exhibit 21030-X1204.3, CH2M reply evidence, Section 2.2.4, page 23.

⁵³¹ Exhibit 21030-X0023, Environmental Assessment, Section 6.2.1 and 6.2.6, pages 244 and 254.

⁵³² Exhibit 21030-X0023, Environmental Assessment, Section 6.3.6, page 268.

12.1.2 Views of the interveners

632. Several of the interveners expressed concerns about the project's potential impacts on terrain, soils, aquatics and water resources, wetlands, and vegetation including: ERLOG; the Wong Group; Beaver Lake Cree Nation; and Gunn Métis Local 55.

ERLOG

633. Members of ERLOG expressed concerns pertaining to environmental impacts on wetlands and vegetation. They submitted that the length of existing linear disturbance paralleled by the project would be greater along the west route option resulting in fewer new disturbances. They stated that there is a greater length of wetlands crossed on the east route option than on the west route option.⁵³³

634. ERLOG members are also concerned with the clearing and cutting of old growth trees resulting in land erosion and the removal of shelter and buffer zones for farmed fields, the impact on soils and soil quality and the ground's ability to absorb water.⁵³⁴ Members relayed their concerns with noxious weeds and herbicide use and potential impacts to their organic farming operations. Concerns about the impacts of the project to Lebeaus Lake, George Lake, Dechaine Lake, and Fernand Lake were also identified.⁵³⁵

635. ERLOG retained Cliff Wallis of Cottonwood Consultants to conduct a desktop evaluation and comparison of the environmental impacts of the route options. In his report (the Wallis report), Mr. Wallis stated that all route options will result in the loss or alteration of natural habitats and will affect native vegetation and associated wildlife, including environmentally significant areas and key wildlife and biodiversity zones.⁵³⁶

636. For this report, Mr. Wallis report chose 16 metrics to compare the routes against, and found that the west route option was favoured in comparison to the east route option on 11 of the 16 biodiversity metrics.⁵³⁷ However, he concurred that many of the environmental concerns have been dealt with adequately through the routing process.⁵³⁸

637. Mr. Wallis testified that both routes would cross similar terrain which would result in similar types of wetland complexes being encountered. He stated that the impacts of the project on wetlands would be greater on the east route option than on the west route option as a result of crossing a greater length of wetlands.⁵³⁹

638. ERLOG concluded that based on both the evidence of Mr. Wallis and CH2M, the west route option would have less impact from an environmental perspective than the east route option.⁵⁴⁰

⁵³³ Exhibit 21030-X0892, Submissions of the east route Landowner Opposition Group, Section I, page 11.

⁵³⁴ Exhibit 21030-X0897, ERLOG Member Submissions, PDF pages 97 to 118.

⁵³⁵ Exhibit 21030-X0897, ERLOG Member Submissions, PDF pages 100, 115, 121, 128, 133, 160, 173, and 190.

⁵³⁶ Exhibit 21030-X1009, Cliff Wallis Report on behalf of ERLOG, Executive Summary, page 3.

⁵³⁷ Exhibit 21030-X1009, Cliff Wallis Report on behalf of ERLOG, Section 6, pages 84 to 86.

⁵³⁸ Exhibit 21030-X1009, Cliff Wallis Report on behalf of ERLOG, Section 6, page 84.

⁵³⁹ Transcript, Volume 12, pages 2467-2471.

⁵⁴⁰ Transcript, Volume 20, page 4144, lines 9 to 24.

The Wong Group

639. The Wong Group submitted that there are a number of wetlands along its members' lands and that routing a transmission line in close proximity to a wetland may result in loss or alteration of wetland function, alteration of wetland habitat function, alteration of wetland hydrological function, disturbance of avian habitat and increased potential for avian mortality.⁵⁴¹

The Aboriginal groups

640. The concerns expressed by the Aboriginal groups were related to impacts on vegetation, soils, and the potential impacts of the project on water resources, wetlands, and watersheds.

641. Members of Gunn Métis Local 55 submitted that in order to reduce the impacts of the project, the route options should avoid lakes and rivers where their use is greatest. Gunn Métis Local 55 retained the services of Karen Kubiski of Dragonfly Ecological Services to conduct a review of Alberta PowerLine's EA report and conduct a desktop review of ethnobotanical species which is discussed in Section 12.5.⁵⁴²

642. Beaver Lake Cree Nation expressed concerns with the methods of vegetation clearing during the construction phase of the project. It proposed that mechanical clearing be used to maintain the right-of-way rather than chemical applications and that more details be provided on the project vegetation monitoring plans.⁵⁴³ Beaver Lake Cree Nation requested that the community be allowed to provide input regarding mitigation and management of water resources, including watercourse crossing methods. It also expressed concerns about the main rivers crossed by the project, including the North Saskatchewan River and the Athabasca River. Members indicated that these rivers could be impacted by downstream effects as a result of disturbances or a release into the watercourses.⁵⁴⁴

12.2 Caribou

643. The project will traverse the ranges of two boreal population woodland caribou herds, the West Side Athabasca River (WSAR) herd and the Slave Lake herd. The boreal population of the woodland caribou is listed as a "threatened" species under both Schedule 1 of the federal *Species at Risk Act* and Schedule 6 of the *Alberta Wildlife Regulation*.

644. The government of Canada has published a federal recovery strategy for the boreal population of the woodland caribou that defines and delineates "critical habitat" for the species. The federal recovery strategy identifies the ranges of both the Slave Lake and WSAR herds as critical habitat, which is defined as:

... the area within the boundary of each boreal caribou range that provides an overall ecological condition (that is, the biophysical attributes required by boreal caribou to carry out life processes) that will allow for an ongoing recruitment and retirement cycle of

⁵⁴¹ Exhibit 21030-X0876, Written Evidence of the Wong Group, pages 4 to 5.

⁵⁴² Exhibit 21030-X1001, Written Submissions of Gunn Métis Local 55, page 6.

⁵⁴³ Exhibit 21030-X1046, Beaver Lake Cree Nation Written Submissions, Section 6, pages 9 to 10.

⁵⁴⁴ Exhibit 21030-X1046, Beaver Lake Cree Nation Written Submissions, Section 6, pages 9 to 10.

habitat, and which maintains a perpetual state of a minimum of 65 per cent of the area as undisturbed habitat.⁵⁴⁵

645. At this 65 per cent undisturbed threshold, the measurable probability for a local caribou population to be self-sustaining has been calculated to be 60 per cent.⁵⁴⁶ Undisturbed habitat is defined as habitat not showing any i) human disturbance visible at a scale of 1 to 50,000 including within a 500-metre buffer of the human disturbance, and ii) fire disturbance in the last 40 years.⁵⁴⁷

646. The federal recovery strategy stated that the “recovery goal for boreal caribou is to achieve self-sustaining local populations in all boreal caribou ranges throughout their current distribution in Canada, to the extent possible.”⁵⁴⁸ The federal recovery strategy encourages cooperation and collaboration between the federal government and provincial governments, stating that:

Success in the recovery of boreal caribou depends on the commitment, collaboration and cooperation of many different constituencies that will be involved in implementing the broad strategies and general approaches set out in this recovery strategy and will not be achieved by Environment Canada, or any other jurisdiction, alone.⁵⁴⁹

647. The federal recovery strategy for the boreal population of the woodland caribou also encourages provincial jurisdictions to prepare “range plans” for the caribou ranges within their territory.⁵⁵⁰ The purpose of these range plans is to outline how the given range will be managed to maintain or attain a minimum of 65 per cent undisturbed habitat over time.⁵⁵¹ The federal recovery strategy indicates that these range plans should be completed by the responsible jurisdiction(s) within three to five years.⁵⁵²

648. The population of the Slave Lake caribou herd was estimated at 65 individuals in 2009 and is at risk of immediate extirpation,⁵⁵³ while the population of the WSAR herd was estimated

⁵⁴⁵ Page 32 of the *Recovery Strategy for the Woodland Caribou, Boreal Population, in Canada*. Species at Risk Act Recovery Strategy Series. Environment Canada. 2012. Ottawa, Ontario; Transcript Volume 7, page 1229, Exhibit 21030-X1495.

⁵⁴⁶ Page vii of the *Recovery Strategy for the Woodland Caribou, Boreal Population, in Canada*. Species at Risk Act Recovery Strategy Series. Environment Canada. 2012. Ottawa, Ontario.

⁵⁴⁷ Transcript Volume 7, pages 1230 to 1231, Exhibit 21030-X1495.

⁵⁴⁸ Page vi of the *Recovery Strategy for the Woodland Caribou, Boreal Population, in Canada*. Species at Risk Act Recovery Strategy Series. Environment Canada. 2012. Ottawa, Ontario.

⁵⁴⁹ Page iii) of the *Recovery Strategy for the Woodland Caribou, Boreal Population, in Canada*. Species at Risk Act Recovery Strategy Series. Environment Canada. 2012. Ottawa, Ontario.

⁵⁵⁰ Transcript Volume 6, page 1204, Exhibit 21030-1472; pages 38 and 44 of the *Recovery Strategy for the Woodland Caribou, Boreal Population, in Canada*. Species at Risk Act Recovery Strategy Series. Environment Canada. 2012. Ottawa, Ontario.

⁵⁵¹ Page 38 of the *Recovery Strategy for the Woodland Caribou, Boreal Population, in Canada*. Species at Risk Act Recovery Strategy Series. Environment Canada. 2012. Ottawa, Ontario.

⁵⁵² Pages 39 and 44 of the *Recovery Strategy for the Woodland Caribou, Boreal Population, in Canada*. Species at Risk Act Recovery Strategy Series. Environment Canada. 2012. Ottawa, Ontario.

⁵⁵³ Transcript Volume 3, page 610, Exhibit 21030-X1432; Transcript Volume 4, page 628, Exhibit 21030-X1446; Transcript Volume 9, page 1772, Exhibit 21030-X1511; Appendix F of the *Recovery Strategy for the Woodland Caribou, Boreal Population, in Canada*. Species at Risk Act Recovery Strategy Series. Environment Canada. 2012. Ottawa, Ontario.

at 204 to 272 individuals in 2009 and is in decline.⁵⁵⁴ The federal recovery strategy identifies 100 individuals as the minimum population size necessary to mitigate risk of quasi-extinction of a caribou herd. However, the long-term persistence of populations with less than 100 individuals remains uncertain.⁵⁵⁵

649. The WSAR and Slave Lake caribou ranges both fail to achieve the 65 per cent undisturbed habitat threshold, with the WSAR caribou range estimated at 31 per cent undisturbed and the Slave Lake caribou range estimated at only 20 per cent undisturbed.⁵⁵⁶ Therefore, both caribou herd populations are currently not self-sustaining and the federal recovery strategy recommends habitat restoration in these ranges.⁵⁵⁷

650. The government of Alberta has also published a provincial recovery plan for the woodland caribou. Goals of this recovery plan include achieving self-sustaining populations of woodland caribou and ensuring the caribou's long-term habitat requirements within Alberta are met. One of the key strategies of the provincial recovery plan is the development of range-specific plans for each caribou range in Alberta.⁵⁵⁸

651. The government of Alberta has indicated that range plans for the WSAR and Slave Lake caribou ranges are forthcoming.⁵⁵⁹

12.2.1 Views of Alberta PowerLine

652. Alberta PowerLine explained that because the start, middle, and end points for the transmission line were either specified in legislation or by the AESO, it is not possible to locate the transmission line so as to entirely avoid caribou ranges.⁵⁶⁰ In addition to CH2M, Alberta PowerLine retained Matrix Solutions to complete the caribou-related assessments for the project.⁵⁶¹

653. Alberta PowerLine identified, measured, and incorporated specific caribou-related criteria into its transmission line routing selection and refinement process. In general, Alberta PowerLine endeavored to minimize impacts on caribou ranges and herds by minimizing

⁵⁵⁴ Appendix F of the *Recovery Strategy for the Woodland Caribou, Boreal Population, in Canada*. Species at Risk Act Recovery Strategy Series. Environment Canada. 2012. Ottawa, Ontario.

⁵⁵⁵ Page 22 of the *Recovery Strategy for the Woodland Caribou, Boreal Population, in Canada*. Species at Risk Act Recovery Strategy Series. Environment Canada. 2012. Ottawa, Ontario; Transcript Volume 9, pages 1772 to 1773, Exhibit 21030-X1511.

⁵⁵⁶ Page 6-82 of the EA report; Transcript Volume 6, page 1205, Exhibit 21030-X1472; Transcript Volume 7, page 1239, Exhibit 21030-X1495; Environment Canada. 2012. *Recovery Strategy for the Woodland Caribou, Boreal Population, in Canada*. Species at Risk Act Recovery Strategy Series. Ottawa, Ontario.

⁵⁵⁷ Page 23 of the *Recovery Strategy for the Woodland Caribou, Boreal Population, in Canada*. Species at Risk Act Recovery Strategy Series. Environment Canada. 2012. Ottawa, Ontario; Transcript Volume 7, pages 1240 to 1241, Exhibit 21030-X1495.

⁵⁵⁸ Alberta Woodland Caribou Recovery Team. 2005. *Alberta Woodland Caribou Recovery Plan 2004/05-2013/14*. Alberta Species at Risk Recovery Plan No. 4. Alberta Sustainable Resource Development, Fish and Wildlife Division. Edmonton, Alberta.

⁵⁵⁹ Page 2 of the *Caribou Action Plan Fact Sheet*. Government of Alberta. June 2016. Available online at: <http://aep.alberta.ca/fish-wildlife/wildlife-management/caribou-management/caribou-action-range-planning/default.aspx>; Transcript Volume 7, page 1248, Exhibit 21030-X1495.

⁵⁶⁰ Transcript Volume 1, page 34, Exhibit 21030-X1418; Transcript Volume 4, page 638, Exhibit 21030-X1446; Transcript Volume 7, page 1229, Exhibit 21030-X1495; Transcript Volume 21, page 4436, Exhibit 21030-X1593; page 2-3 of CH2M's Reply Evidence. August 2016. Exhibit 21030-X1204.

⁵⁶¹ Transcript Volume 3, pages 604 and 605, Exhibit 21030-X1432.

the length of routing within the caribou ranges and by following existing linear disturbances within caribou ranges.⁵⁶²

654. However, Alberta Environment and Parks expressed concerns with the original alignment of the west route option through the northwestern portion of the Slave Lake caribou range where habitat use by the caribou population appears to be high.⁵⁶³ Specifically, Alberta Environment and Parks' concerns are with the potential of the proposed routing to act as a barrier to caribou movement, and the potential to improve line-of-sight, travel speeds, and access for wolves in the caribou range. Alberta Environment and Parks also stressed the importance of paralleling existing linear disturbances.⁵⁶⁴

655. As a result of this feedback from Alberta Environment and Parks in January 2016, Alberta PowerLine amended a segment of the west route option that traversed the Slave Lake caribou range, which it named the west route option alteration 1.⁵⁶⁵ This relocation enabled the amended alignment to follow an existing 240-kV transmission line (transmission line 9L56) for nearly all of its length through the Slave Lake caribou range. The west route option alteration 1 decreased the total length of the proposed transmission line right-of-way crossing the Slave Lake caribou range from 14.4 kilometres to 9.0 kilometres and reduced the total project footprint in the Slave Lake caribou range from 87.0 hectares to 54.2 hectares. As a result, 8.7 of the 9.0 kilometres (96.7 per cent) follow an existing linear disturbance, mitigating habitat loss and changes in predator accessibility. In comparison, the 14.4 kilometre portion of the rejected west route option did not parallel any existing linear disturbance.⁵⁶⁶

656. CH2M concluded that the west route option alteration 1 is predicted to have lower residual effects on the Slave Lake caribou range compared to the original alignment of the west route through the range, but that the overall magnitude of the project's residual effects on caribou remains "major" because of the low resilience of the caribou herds to any additional disturbances.⁵⁶⁷

657. The EA report and amendment assessed and compared the caribou-related impacts of the different route options with one another separately from other wildlife species.⁵⁶⁸

658. When comparing the different route options, the west route option, as amended, would have greater impacts on the Slave Lake caribou range and herd than the east route option which avoid the Slave Lake caribou range completely.⁵⁶⁹ However, CH2M assessed the overall impacts

⁵⁶² Transcript Volume 1, page 34, Exhibit 21030-X1418.

⁵⁶³ Bill Black. Alberta Environment and Parks Approvals Manager, Lower Athabasca Region. August 25, 2015. Personal Communication with Alberta PowerLine.

⁵⁶⁴ Transcript Volume 3, pages 608, Exhibit 21030-X1432; Transcript Volume 4, pages 632 and 710, Exhibit 21030-X1446; Transcript Volume 7, page 1267, Exhibit 21030-X1495.

⁵⁶⁵ Transcript Volume 8, page 1562, Exhibit 21030-X1500; Transcript Volume 18, page 3692, Exhibit 21030-X1587.

⁵⁶⁶ Section 8.2.1 of the *Environmental Assessment Amendment* report by CH2M, Exhibit 21030-X0271; Transcript Volume 18, page 3692, Exhibit 21030-X1587.

⁵⁶⁷ Page 8-8 of the *Environmental Assessment Amendment* report by CH2M, Exhibit 21030-X0271.

⁵⁶⁸ Transcript Volume 18, page 3690, Exhibit 21030-X1587; CH2M Hill Canada Ltd. December 2015. *Environmental Assessment for the Fort McMurray west 500 kV Transmission project and Related Facilities*. Prepared for Alberta PowerLine Ltd. Partnership.

⁵⁶⁹ Transcript Volume 3, pages 603, Exhibit 21030-X1432; Transcript Volume 4, page 637, Exhibit 21030-X1446.

of the project on caribou, which took into account the project's impacts on both the WSAR and Slave Lake caribou ranges and herds.⁵⁷⁰

659. CH2M concluded that the caribou-related impact criterion that most distinguished the west and east route options from one another is "Total length of existing linear disturbance in caribou range paralleled." Because the west route option parallels 92.6 kilometres (60 per cent) of existing linear disturbance within the WSAR caribou range compared to 59.4 kilometres (40 per cent) for the east route option, the EA report concluded that the west route option is preferable from an overall impact on caribou perspective.⁵⁷¹

660. With the exception of "Total length of existing linear disturbance in caribou range paralleled", the caribou-related criteria identified and measured in the EA report were relatively similar for each of the route options. The west route option is estimated to result in 3,953 hectares of new disturbance within both caribou ranges compared to 3,938 hectares for the east route option,⁵⁷²⁻⁵⁷³ the west route option is estimated to cross 153.7 kilometres of the WSAR caribou range and 9.0 kilometres of the Slave Lake caribou range compared to 149.5 kilometres and 0 kilometres respectively for the east route option.^{574,575}

661. Alberta PowerLine argued the realignment of the west route option through the Slave Lake caribou range and Alberta Environment and Parks' subsequent approval of the project's draft caribou protection plan is evidence that Alberta Environment and Parks approves of the realigned west route option over the east route option and that Alberta Environment and Parks' concerns about the project's impacts on the Slave Lake caribou herd and range have been acceptably mitigated.⁵⁷⁶ If one of the east route options were to be approved by the Commission, Alberta PowerLine would consult with Alberta Environment and Parks again about additional caribou mitigation measures.⁵⁷⁷

662. A draft Caribou Protection Plan was developed for the west route option to address impacts on caribou and caribou habitat.⁵⁷⁸ The caribou protection plan forms a part of the surface activity disposition approval applications that Alberta PowerLine must submit to Alberta Environment and Parks for the portions of the project located on government of Alberta public lands and was filed on the record of the proceeding.⁵⁷⁹ Alberta PowerLine⁵⁸⁰ collaborated very closely with Alberta Environment and Parks to develop the caribou protection plan,⁵⁸¹ which sets out a number of mitigation measures that CH2M stated support the objectives of the *Woodland Caribou Policy for Alberta* and the federal recovery strategy. According to

⁵⁷⁰ Transcript Volume 3, pages 608, Exhibit 21030-X1432; Transcript Volume 4, pages 634-637, Exhibit 21030-X1446; Transcript Volume 21, page 4436, Exhibit 21030-X1593.

⁵⁷¹ Page 6-114 of the EA Report, Exhibit 21030-X0023.

⁵⁷² Table 6.7-5 on page 6-115 of the EA report, Exhibit 21030-X0023.

⁵⁷³ Exhibit 21030-X0271, Environmental Assessment Amendment, Table 8.2-1, page 49.

⁵⁷⁴ Page 6-114 of the EA report, Exhibit 21030-X0023.

⁵⁷⁵ Exhibit 21030-X0272, Caribou Habitat Availability Model Appendix G, Section 1, page 5.

⁵⁷⁶ Transcript, Volume 4, pages 629, 631, and 712-714, Exhibit 21030-X1446.

⁵⁷⁷ Transcript, Volume 9, page 1767, Exhibit X1511.

⁵⁷⁸ Fort McMurray west 500 kV Transmission project 2015 Caribou Protection Plan. Revision 11. October 3, 2016. By Alberta PowerLine. Exhibit X1476.

⁵⁷⁹ Transcript, Volume 8, page 1555, Exhibit 21030-X1500.

⁵⁸⁰ Transcript, Volume 9, page 1760, Exhibit 21030-X1511.

⁵⁸¹ Transcript, Volume 3, pages 603, Exhibit 21030-X1432; Transcript Volume 18, page 3691, Exhibit 21030-X1587.

Mr. Kostyk of Alberta PowerLine, Alberta Environment and Parks has indicated that the project's caribou protection plan has "set a new standard for how transmission lines will be developed with caribou."⁵⁸²

663. The caribou protection plan outlines a number of preventative mitigation measures that include reducing the impacts of the project's right-of-way on caribou habitat through vegetation retention within the right-of-way and possibly some replanting or reforestation in the right-of-way.⁵⁸³

664. As a component of the caribou protection plan, Alberta PowerLine will review information on caribou calving sites provided by Alberta Environment and Parks, in order to identify any construction work areas that can be prioritized if there are no nearby calving sites, or deferred if caribou calving sites are located nearby.⁵⁸⁴ This information will be used to create the construction schedule that will be included in the finalized caribou protection plan.⁵⁸⁵

665. Alberta PowerLine explained that it will be unable to comply with Alberta Environment and Parks' caribou range timing restriction of February 15 to July 15, because it needs frozen soil conditions to build the transmission line, and sometimes such frozen conditions will not occur until mid-January.⁵⁸⁶ However, it plans to conduct as much construction work as possible outside the timing restriction.⁵⁸⁷ It is better for the purposes of minimizing impacts on caribou if the portions of the project located in caribou ranges are constructed over one winter only, rather than over multiple winter seasons. In other words, constructing during a part of the caribou range timing restriction would be less impactful than planning to completely avoid the timing restriction but having to construct over multiple winter seasons as a result. Further, Alberta PowerLine stated that Alberta Environment and Parks preferred a "one winter season" approach over the multiple winter seasons approach.⁵⁸⁸ In addition, Alberta PowerLine stated that Alberta Environment and Parks will be notified and consulted at least 30 days in advance when adherence to the caribou range timing restriction is not possible.⁵⁸⁹

666. While the caribou protection plan contains a number of mitigation measures, long-term monitoring of the caribou ranges and herds, including monitoring of species that prey on caribou, such as wolves, is not one of the proposed caribou mitigations itemized in the caribou protection plan. Alberta PowerLine submitted that this type of long-term monitoring would fall under Alberta Environment and Parks' purview.⁵⁹⁰

667. Alberta PowerLine explained that while it does not plan on actively monitoring the effectiveness of the proposed caribou mitigation measures as part of the project's construction and post-construction monitoring program, a biologist would be present during construction, and

⁵⁸² Transcript Volume 6, page 1202, Exhibit 21030-1472.

⁵⁸³ Transcript Volume 7, pages 1259 to 1260 and 1277 to 1280, Exhibit 21030-X1495; Transcript Volume 9, pages 1765 to 1766 and 1802, Exhibit 21030-X1511; Transcript Volume 18, page 3696, Exhibit 21030-X1587.

⁵⁸⁴ Transcript Volume 18, page 3697, Exhibit 21030-X1587.

⁵⁸⁵ Alberta PowerLine's response to IR Alberta PowerLine-AUC-2016FEB01-38(f). Exhibit 21030-X0648.

⁵⁸⁶ Transcript Volume 8, pages 1566 to 1567, Exhibit 21030-X1500.

⁵⁸⁷ Transcript Volume 8, page 1567, Exhibit 21030-X1500; Transcript Volume 9, pages 1769 to 1770, Exhibit 21030-X1511.

⁵⁸⁸ Transcript Volume 9, pages 1770 to 1771, Exhibit 21030-X1511.

⁵⁸⁹ Page 249 of Alberta PowerLine's Reply Evidence. August 3, 2016. Exhibit 21030-1205.

⁵⁹⁰ Transcript Volume 9, page 1775, Exhibit 21030-X1511.

its construction contractor's personnel would receive training on making caribou observations.⁵⁹¹ The results of relevant observations would be discussed with Alberta Environment and Parks if required.⁵⁹²⁻⁵⁹³

668. Mr. Martin testified that the government of Alberta has yet to develop a range plan for the Slave Lake or WSAR caribou ranges and no government sanctioned and co-ordinated offset program presently exists for either caribou range.⁵⁹⁴ Alberta PowerLine therefore argued that it would not be appropriate for the Commission to impose a condition requiring Alberta PowerLine to undertake a caribou habitat restoration offset program.⁵⁹⁵ Specifically, Alberta PowerLine argued that because Alberta Environment and Parks has jurisdiction over the management of woodland caribou in Alberta, the Commission should follow the caribou protection plan which states that offsetting habitat restoration for the project is to be determined through consultation with Alberta Environment and Parks.⁵⁹⁶

669. Alberta PowerLine plans to focus on reducing the impacts of the project's right-of-way on caribou and caribou habitat through vegetation retention within the right-of-way, allowing for vegetation growth within the right-of-way to grow to a compatible height to discourage predators and humans from using the right-of-way, and possibly replanting or reforestation in the right-of-way.⁵⁹⁷ Alberta PowerLine committed to continuing to consult with Alberta Environment and Parks with respect to caribou mitigation for the project.⁵⁹⁸

670. Alberta PowerLine stated that the project meets or exceeds all environmental regulations with respect to woodland caribou⁵⁹⁹ and that Alberta Environment and Parks' approval of the caribou protection plan "should carry considerable weight in the Commission's decision regarding whether potential impacts to caribou have been appropriately mitigated."⁶⁰⁰

12.2.2 Views of the interveners

671. Several of the interveners expressed concerns about the project's impacts on caribou including ERLOG, the Barrhead West Group, Dunhill Group Inc., Beaver Lake Cree Nation, and Gunn Métis Local 55.

ERLOG

672. Mr. Wallis testified that he served on the Alberta Caribou Committee for seven years advising the deputy minister of Alberta Sustainable Resources Development, now Alberta Environment and Parks, on woodland caribou recovery planning. He also served on the caribou

⁵⁹¹ Transcript Volume 9, page 1763, Exhibit 21030-X1511.

⁵⁹² Transcript Volume 8, pages 1565 to 1566, Exhibit 21030-X1500.

⁵⁹³ Transcript Volume 9, page 1763, Exhibit 21030-X1511.

⁵⁹⁴ Transcript Volume 7, pages 1242 and 1248, Exhibit 21030-X1495.

⁵⁹⁵ Transcript Volume 18, page 3696, Exhibit 21030-X1587; Transcript Volume 21, pages 4438 and 4489, Exhibit 21030-X1593.

⁵⁹⁶ Transcript Volume 21, page 4488, Exhibit 21030-X1593; Table 2 (page 17) of the *Fort McMurray west 500 kV Transmission project 2015 Caribou Protection Plan*: Revision 11. Alberta PowerLine. October 3, 2016. Exhibit 21030-X1476.

⁵⁹⁷ Transcript Volume 7, pages 1259 to 1260 and 1277 to 1280, Exhibit 21030-X1495; Transcript Volume 9, pages 1765 to 1766 and 1802, Exhibit 21030-X1511; Transcript Volume 18, page 3696, Exhibit 21030-X1587.

⁵⁹⁸ Transcript Volume 7, page 1279, Exhibit 21030-X1495.

⁵⁹⁹ Transcript Volume 6, page 1202, Exhibit 21030-X1472.

⁶⁰⁰ Transcript Volume 18, page 3690, Exhibit 21030-X1587.

research subcommittee that advised the Alberta Caribou Committee on matters of caribou recovery science.⁶⁰¹

673. In testimony, Mr. Wallis agreed with CH2M that the project would have “major” residual impacts on woodland caribou.⁶⁰² Three of the 16 metrics chosen for route comparison by Mr. Wallis in his report were directly related to caribou impacts. With respect to two of the three caribou metrics he evaluated, he found that the west route option is favourable to the east route option. The Wallis report afforded greater importance (or weight) to the two caribou metrics that favoured the west route option than it did to the third caribou metric that favoured the east route option. The two caribou metrics that favoured the west route option are “length of existing linear disturbance paralleled in woodland caribou ranges” and “length of route through, and distance from Zone 1 Area and dense woodland caribou telemetry locations in WSAR caribou range”, while the third caribou metric that weakly favoured the east route option is “length of route in woodland caribou ranges.”⁶⁰³

674. Mr. Wallis explained that a new transmission line paralleling an existing linear disturbance will only add the width of the new right-of-way to the amount of direct and indirect caribou habitat disturbance, because the 500-metre caribou buffer area on each side of a linear disturbance is present and has already alienated caribou from using that habitat. In contrast, a new transmission line through undisturbed habitat that does not parallel an existing linear disturbance adds both the footprint of the right-of-way and a 500-metre area on each side of the line to the amount of direct and indirect caribou habitat disturbance.⁶⁰⁴ Mr. Wallis referred to indirect habitat disturbance within the 500-metre caribou buffer area as “alienation of habitat.”⁶⁰⁵

675. Mr. Wallis agreed with Alberta PowerLine and CH2M that, unless there are extenuating circumstances, it is better overall for caribou if the portions of the project located in caribou ranges are constructed over only one winter rather than over multiple winter seasons.⁶⁰⁶ He also agreed with CH2M’s view that neither the Slave Lake caribou range and herd nor the WSAR caribou range and herd should receive a greater priority.⁶⁰⁷

676. Mr. Wallis stated that in his opinion the major outstanding caribou issue or mitigation gap associated with the project is the lack of caribou habitat restoration offsets to mitigate the project’s residual impacts on caribou and caribou habitat.⁶⁰⁸ Mr. Wallis anticipated that the government of Alberta range plans for the Slave Lake and WSAR caribou ranges will include a caribou habitat restoration offset program. He indicated his preference for Alberta PowerLine’s participation in such an offset program once it is published⁶⁰⁹ and that there is precedent or a

⁶⁰¹ Transcript, Volume 12, pages 2422, and 2527 to 2528, Exhibit X1532; Transcript Volume 20, page 4143, Exhibit 21030-X1592.

⁶⁰² Transcript, Volume 12, pages 2465 to 2466, Exhibit 21030-X1532

⁶⁰³ Cliff Wallis of Cottonwood Consultants. April 2016. *Environmental Considerations for the Alberta Powerline Fort McMurray West 500 kV Transmission Project*. Prepared on behalf of ERLOG. Exhibit 21030-X1009.

⁶⁰⁴ Transcript, Volume 12, pages 2424 to 2425, 2501, 2535, Exhibit 21030-X1532.

⁶⁰⁵ Transcript, Volume 12, pages 2424 to 2425, Exhibit 21030-X1532.

⁶⁰⁶ Transcript, Volume 13, pages 2678 to 2679, Exhibit 21030-X1537.

⁶⁰⁷ Transcript, Volume 12, pages 2527 and 2532, Exhibit X1532; Transcript Volume 13, page 2676, Exhibit 21030-X1537.

⁶⁰⁸ Transcript, Volume 12, page 2427, Exhibit 21030-X1532; Transcript Volume 13, pages 2672, 2673, 2675, and 2680, Exhibit 21030-X1537; Transcript Volume 20, pages 4149 to 4150, Exhibit 21030-X1592.

⁶⁰⁹ Transcript Volume 13, page 2673, Exhibit 21030-X1537; Transcript Volume 20, pages 4149 to 4150, Exhibit 21030-X1592.

history of other regulators requiring linear development projects to include caribou habitat restoration offset mitigation.⁶¹⁰

677. Although Mr. Wallis acknowledged that an offset program has not been a government-imposed requirement,⁶¹¹ in order to further mitigate the project's residual impacts on caribou and caribou habitat, he recommended that the Commission require Alberta PowerLine to participate in a future caribou habitat restoration offset program which could be sanctioned by the government of Alberta.⁶¹²

Views of the Aboriginal groups

678. The concerns expressed by the Aboriginal groups were related to the project's impact on the availability and survival of caribou for hunting and other cultural purposes.

679. Beaver Lake Cree Nation stated that no First Nations group was involved in the preparation of the caribou protection plan. Beaver Lake Cree Nation requested that the Commission include a recommendation in its decision that Alberta PowerLine engage with the Beaver Lake Cree Nation about the caribou protection plan, and provide annual wildlife monitoring data required under the caribou protection plan to Beaver Lake Cree Nation.⁶¹³

12.3 Wildlife

680. The following section summarizes the evidence related to the project's potential effects on wildlife (other than caribou), particularly larger-sized waterbirds, shorebirds, and raptors.

12.3.1 Views of Alberta PowerLine

681. The EA report identified and described the potential effects of the project on wildlife, which included direct habitat loss; alteration of wildlife habitat; displacement or alternation of wildlife movement patterns as a result of reducing habitat connectivity, creating barriers to movement, and sensory disturbance; and increased wildlife mortalities, resulting from a variety of project activities and interactions.⁶¹⁴

682. Wildlife field surveys were conducted by CH2M during the spring, summer, and fall of 2015 to identify wildlife presence and habitat on segments of the route options.⁶¹⁵ Surveys included raptor surveys; breeding bird surveys; sharp-tailed grouse surveys; amphibian surveys at select open-water wetlands, beaver ponds, and slow-moving watercourses within 100 metres of the project footprint with the potential to support breeding amphibians; and incidental wildlife observations were also recorded during various field surveys.

683. Alberta PowerLine identified, measured, and incorporated specific wildlife-related criteria into its transmission line routing selection and refinement process. Four of the five

⁶¹⁰ Transcript, Volume 12, pages 2427 to 2428, Exhibit 21030-X1532; Transcript Volume 13, page 2674, Exhibit 21030-X1537; Transcript, Volume 20, pages 4151 to 4155, Exhibit 21030-X1592.

⁶¹¹ Exhibit 21030-X1537, Transcript Volume 13, page 2702, lines 19 to 21.

⁶¹² Transcript Volume 12, pages 2428 and 2702, Exhibit 21030-X1532; Transcript Volume 20, page 4147, Exhibit 21030-X1592.

⁶¹³ Transcript Volume 20, pages 4277 to 4278, Exhibit 21030-X1592.

⁶¹⁴ Section 6.7.3 of EA report, Exhibit 21030-X0023.

⁶¹⁵ Section 5.7.3.2 (pages 5-173 to 5-181) of the EA report, Exhibit 21030-X0023.

wildlife-related metrics favoured the west route option, while one metric (Special Access Zones) favoured the east route option.⁶¹⁶

684. The wildlife assessment section (Section 6.7) of the EA report assessed and compared the wildlife-related impacts of the different route options with one another, separately from caribou.⁶¹⁷ Wildlife criteria that were measured and compared included:

- Area of native vegetation crossed (hectares).
- Area of wetland habitat crossed (hectares).
- Length of wetlands crossed (kilometres).
- Length of wetlands with highest potential to support amphibian breeding crossed (kilometres).
- Length paralleling existing linear disturbances.
- Length within key wildlife biodiversity zone.
- Length paralleling existing linear disturbance within key wildlife biodiversity zone.
- Length within Special Access Area.
- Length within sharp-tailed grouse area.
- Length within trumpeter swan breeding waterbodies.
- Length within important bird area.

685. Approximately half of the wildlife-related criteria identified and measured in the EA report were relatively similar for each of the route options, including area of native vegetation; area of wetland habitat; length of wetlands and length of wetlands with highest potential to support amphibian breeding.⁶¹⁸

686. According to the EA report the wildlife-related criterion that most favours the west route is “Total length paralleling existing linear disturbance.” Other criteria in favour of the west route option are the transmission line’s total length in key wildlife and biodiversity zones and amount of paralleling existing linear disturbance through key wildlife and biodiversity zones.⁶¹⁹

687. The east route option also traverse provincially identified wildlife habitat areas not crossed by the west route option, including 6.5 kilometres of sharp-tailed grouse range and five

⁶¹⁶ Alberta PowerLine. December 2015. Application Text for the Fort McMurray west 500 kV Transmission project. Exhibit 21030-X0002.

⁶¹⁷ CH2M Hill Canada Ltd. December 2015. Environmental Assessment for the Fort McMurray west 500 kV Transmission project and Related Facilities. Prepared for Alberta PowerLine Ltd. Partnership.

⁶¹⁸ Pages 5-186 to 5-189, 6-81, and 6-105 of the EA report, Exhibit 21030-X0023.

⁶¹⁹ Page 5-186 of the EA report, Exhibit 21030-X0023.

kilometres of the Pelican Lake Important Bird Area.⁶²⁰ The Pelican Lake Important Bird Area contains a large number of colonial waterbirds that breed in this area, including the second largest colony in Alberta of the American White Pelican which is listed under the *Species at Risk Act*.⁶²¹ The east route option also passes near Steele Lake, that provides potential breeding habitat for the western grebe and has an Alberta Environment and Parks recommended 1,000-metre year-round setback.⁶²² The east route option also goes through several Protected Notation Areas for Ungulate Habitat Protection while the west route option avoids them.⁶²³

688. However, the west route option crosses the Fort Assiniboine Sandhills Wildland Provincial Park following an existing easement and 4.0 kilometres of the Saulteaux Wildlife Refuge (a Special Access Area for wildlife) paralleling an existing transmission line, whereas the east route option does not cross any such areas.⁶²⁴

689. The results of the 2015 wildlife field surveys slightly favoured the east route option over the west route option, as there were more observations of sensitive wildlife features along the west route option, including raptor stick nests, total number of breeding bird species and breeding bird species at risk, western toad breeding waterbodies, and the number of species with special conservation status.⁶²⁵

690. Overall, excluding caribou range, the combined length of the west route option that crosses a combined length of identified wildlife habitat areas and parks is approximately 50 per cent less than the combined length of identified wildlife habitat areas and parks traversed by the east route option.⁶²⁶

Wildlife and bird mitigation measures

691. The EA report recommends general measures to mitigate the project's potential effects on wildlife and on birds.⁶²⁷⁻⁶²⁸

692. The environmental protection plan submitted by Alberta PowerLine also itemized and described mitigation measures that would eliminate or reduce the potential effects of the project on wildlife. Appendix L: Wildlife Species of Concern Discovery Contingency Plan of the environmental protection plan describes what actions will be taken if species with special conservation status or their site-specific habitat are discovered during construction of the project. These include suspending construction; assessing the vulnerability of the discovery; notifying Alberta Environment and Parks about the discovery; consulting with Alberta Environment and

⁶²⁰ Pages 5-186, 5-187, 5-188 and 6-127 of the EA report, Exhibit 21030-X0023; Transcript Volume 4, page 659, Exhibit 21030-X1446; Transcript, Volume 7, page 1269, Exhibit 21030-X1495.

⁶²¹ Page 5-167 of the EA report, Exhibit 21030-X0023.

⁶²² Page 6-94 of EA report, Exhibit 21030-X0023.

⁶²³ Transcript Volume 4, page 659, Exhibit 21030-X1446; Transcript Volume 7, page 1269, Exhibit 21030-X1495; Table 11 (page 75) of the Facility Application, Exhibit 21030-X0002.

⁶²⁴ Page 5-187 of EA report, Exhibit 21030-X0023; Transcript Volume 7, page 1270, Exhibit 21030-X1495.

⁶²⁵ Section 5.7.3.2 (pages 5-173 to 5-181) and pages 5-188 to 5-189 of the EA report, Exhibit 21030-X0023; Transcript Volume 7, page 1270, Exhibit 21030-X1495.

⁶²⁶ Page 6-127 of the EA report, Exhibit 21030-X0023.

⁶²⁷ Pages 6-89 and 6-94 of the EA report, Exhibit 21030-X0023.

⁶²⁸ Table 6.7-2 (pages 6-87 to 6-98) of the EA report, Exhibit 21030-X0023.

Parks on appropriate mitigation and monitoring; and updating the environmental alignment sheets with additional mitigation measures if applicable.⁶²⁹

693. Alberta PowerLine committed to installing bird line markers every 20 metres on each of the two parallel overhead shield wires along segments of the transmission line within 150 metres of open waterbodies greater than four hectares, or where important nesting sites have been identified during field surveys, or near important bird areas. Further, Alberta PowerLine stated that once a route was approved, it would go back to Alberta Environment and Parks and reconfirm the proposed locations for bird diverters. Bird marking devices similar to the Firefly type of diverter would be selected.⁶³⁰

694. CH2M also provided a brief review of information and studies on post-construction wildlife displacement from linear developments and mitigation measures to reduce such displacement effects.⁶³¹ It concluded that the “effects of linear developments on wildlife habitat use are reasonably well understood” and therefore “industry best practices include project design (avoid and minimize) and mitigation measures that target establishing regenerating vegetation on a trajectory to natural conditions...”⁶³² It added that based on the literature “Paralleling an existing disturbance feature is one of the best approaches to minimize incremental displacement effects within a zone of influence.”⁶³³

695. Alberta PowerLine indicated that it is not opposed to having the following wildlife-related conditions in the project’s approval:⁶³⁴

- It will comply with the *Wildlife Act*.
- The project will include preconstruction environmental surveys of wildlife, vegetation, and wetlands.
- It will install bird diverters as outlined in the environmental protection plan, as well as where Alberta Environment and Parks has identified areas of concern.
- It will abide by and update the environmental protection plan for the project, as required.

12.3.2 Views of the interveners

696. Several of the interveners expressed concerns about the project’s potential impacts on wildlife (other than caribou) including ERLOG, Roy Ernst, Beaver Lake Cree Nation, and Gunn Métis Local 55.

⁶²⁹ Pages 87 to 88 (Appendix L) of the Fort McMurray west 500 kV Transmission project Preliminary Environmental Protection Plan. ALBERTA POWERLINE. November 2015. Exhibit 21030-X0018.

⁶³⁰ Transcript Volume 9, page 1754, Exhibit 21030-X1511.

⁶³¹ Transcript Volume 9, pages 1786 to 1787 and 1797 to 1798, Exhibit 21030-X1511.

⁶³² Page 1 of Undertaking 031. Fort McMurray west 500 kV Transmission project Review of Post-Construction Effect on Wildlife and Potential Mitigation. Prepared by CH2M. November 4, 2016. Exhibit 21030-X1585.

⁶³³ Page 2 of Undertaking 031. Fort McMurray west 500 kV Transmission project Review of Post-Construction Effect on Wildlife and Potential Mitigation. Prepared by CH2M. November 4, 2016. Exhibit 21030-X1585.

⁶³⁴ Page 2 of Undertaking 028. List of commitments Alberta PowerLine would be willing to accept as conditions of approval. Exhibit 21030-X1583.

697. In his report, Mr. Wallis found, with respect to seven of 11 wildlife-related metrics he evaluated, that the west route option is less environmentally impactful than the east route option. The Wallis report afforded greater importance (weight) to three of the 11 wildlife related metrics, and all three of these highly weighted metrics favoured the west route option.⁶³⁵

698. Mr. Wallis concluded that the east route option would pose greater risks or impacts to wildlife and wildlife habitat than the west route option.⁶³⁶ His major reason for holding this opinion is that the west route option parallels existing disturbances for a much greater length than the east route option.⁶³⁷ As also expressed in his testimony on the impact on caribou, Mr. Wallis explained that a new transmission line paralleling an existing linear disturbance will only add the width of the new right-of-way to the amount of direct and indirect wildlife habitat disturbance, because the wildlife buffer area on each side of a linear disturbance is already present, and has consequently already alienated certain wildlife from using that habitat. In contrast, a new transmission line through undisturbed habitat that does not parallel an existing linear disturbance adds both the footprint of the right-of-way and an area on each side of the line to the amount of direct and indirect wildlife habitat disturbance.⁶³⁸

699. Mr. Wallis testified that while he thought the bird line marking mitigation proposed for the project is “the best we can do at this point in time”, follow-up post-construction monitoring of bird mortalities is necessary to evaluate their effectiveness.⁶³⁹

700. The Gosselins own a quarter section located approximately 402 metres from the east route option near Dechaine Lake.⁶⁴⁰ The Gosselins describe Dechaine Lake as an important waterbody for staging and nesting migratory waterfowl species⁶⁴¹ and indicated they have engaged in conservation activities on their lands to preserve the wildlife habitat along its shores, including planting trees and shrubs; ceasing haying; installing artificial nest tunnels for mallard ducks and nest boxes for cavity nesting ducks that use the lake; and participating in the development of an environmental farm plan for their property.⁶⁴² Further, Ducks Unlimited Canada has visited their property and completed a wildlife habitat report through the Ducks Unlimited Canada Natural Advantage Program. They expressed concerns about the impact of the transmission line on area wildlife and vegetation.⁶⁴³

⁶³⁵ Pages 3 to 5 of the Wallis Report, Exhibit 21030-X1009.

⁶³⁶ Transcript Volume 12, pages 2423, 2535, 2540, Exhibit 21030-X1532; Transcript Volume 20, page 4144, Exhibit 21030-X1592.

⁶³⁷ Transcript Volume 12, pages 2424, 2426, 2525, Exhibit 21030-X1532; Transcript Volume 20, pages 4145 to 4146, Exhibit 21030-X1592.

⁶³⁸ Transcript, Volume 12, pages 2424 to 2425, 2501, 2535, Exhibit 21030-X1532.

⁶³⁹ Transcript, Volume 13, pages 2670 to 2671, Exhibit 21030-X1537

⁶⁴⁰ Pages C-60 of *Appendix C: ERLOG Member Submissions*. April 1, 2016. Exhibit 21030-X0897.

⁶⁴¹ Pages C-61 of *Appendix C: ERLOG Member Submissions*. April 1, 2016. Exhibit 21030-X0897; Transcript Volume 13, pages 2737 to 2738, Exhibit 21030-X1537.

⁶⁴² Pages C-67, C-77, C-79 to C-85 of *Appendix C: ERLOG Member Submissions*. April 1, 2016. Exhibit 21030-X0897; Transcript Volume 13, page 2737, Exhibit 21030-X1537.

⁶⁴³ Pages C 67, C 77, C 79 to C 85 of *Appendix C: ERLOG Member Submissions*. April 1, 2016. Exhibit 21030-X0897; Transcript Volume 13, page 2737, Exhibit 21030-X1537.

701. The Jespersens own several quarter sections located approximately 800 metres from the east route option near Lebeaus Lake. They are concerned about migratory birds that use the lake colliding with the power line during dusk and dawn.⁶⁴⁴

702. The Silvesters own a parcel of land located approximately 800 metres south from the east route option near Lake Fernand. They indicated that their land is on a spring and fall migratory route for sandhill cranes.⁶⁴⁵

703. The Valkenburgs, who own a parcel of land located approximately 160 metres from the proposed east route option stated that their property and the adjacent properties to the south and west of them are “old growth Boreal forest” that provide habitat for migratory birds, the Great grey owl, fishers, and lynx.⁶⁴⁶

704. The Bibbys own two quarter sections, and their home is located approximately 650 metres from the proposed east route option. The Bibbys stated that their property provides habitat for several species of wildlife, including hawks, pileated woodpecker, ruffed grouse, great horned owls, fox, and Hungarian partridge. They expressed their concern that if approved, the project would negatively impact species in this area.⁶⁴⁷

Views of Roy Ernst

705. Roy Ernst expressed concerns about the impacts of the project on wildlife and wildlife habitat in and around Kipp Lake. Counsel for Mr. Ernst also cross-examined Alberta PowerLine and CH2M on wildlife-related matters.

Views of the Aboriginal groups

706. The main concerns of both Beaver Creek First Nation and Gunn Métis Local 55 are the project’s impacts on the availability, survival, and health (e.g., bioaccumulation in wildlife of herbicides used for the project) of wildlife for hunting, trapping, eating, and important cultural purposes.

707. Specific wildlife species of concern to both Aboriginal groups included waterfowl, ungulates (e.g., deer, moose, elk), large carnivores, and small game or fur-bearing species.

12.4 Alberta PowerLine’s responses to specific intervenor concerns

708. CH2M stated that construction will occur outside of the trumpeter swan breeding season (April 1 to September 30), that Alberta PowerLine will adhere to Alberta Environment and Parks’ *Recommended Land Use Guidelines for Trumpeter Swan Habitat*, and that with guidance from Alberta Environment and Parks, bird markers will be installed in proximity to Steele Lake and Godin Lake.⁶⁴⁸

⁶⁴⁴ Pages C-127 to C-128 of *Appendix C: ERLOG Member Submissions*. April 1, 2016. Exhibit X0897; Transcript Volume 13, page 2747, Exhibit 21030-X1537.

⁶⁴⁵ Pages C-173 of *Appendix C: ERLOG Member Submissions*. April 1, 2016. Exhibit 21030-X0897.

⁶⁴⁶ Page C-190 of *Appendix C: ERLOG Member Submissions*. April 1, 2016. Exhibit 21030-X0897.

⁶⁴⁷ Page C-10 of *Appendix C: ERLOG Member Submissions*. April 1, 2016. Exhibit 21030-X0897.

⁶⁴⁸ Page 3-3 of CH2M’s Reply Evidence. August 2016. Exhibit 21030-X1204.

709. Alberta PowerLine stated that after discussions with Alberta Environment and Parks no bird diverters were deemed to be necessary for Lebeaus Lake located approximately 250 metres east of the east route option, although Alberta Environment and Parks had identified the lake as a “significant waterfowl production area”.⁶⁴⁹

710. Alberta PowerLine stated that there is minimal potential for environmental impacts to Dechaine Lake, located approximately one kilometre from the east route option⁶⁵⁰ or to George Lake, located approximately 530 metres from the east route option.⁶⁵¹

711. CH2M advised that while Lake Fernand, a seasonal marsh located approximately 130 metres south of the east route option⁶⁵² may provide habitat for waterfowl, waterbirds, and amphibians, it does not consider the habitat to be unique or environmentally sensitive.⁶⁵³

712. CH2M acknowledged studies that show collisions with transmission lines are the main source of whooping crane mortalities during migration, with collisions correlated with poor weather conditions or low light conditions during the early morning or evening. Alberta PowerLine stated it would seek further input on concerns expressed by ERLOG about the impacts of the project on whooping cranes.⁶⁵⁴

713. CH2M submitted that while Alberta Environment and Parks’ Fisheries and Wildlife Management Information System database reported observations of Canada lynx, fisher, and wolverine within one kilometre of the Bibbys’ property, an April 2015 aerial raptor survey did not identify any stick nests on their property and CH2M does not consider the habitat on the property to be unique or environmentally sensitive.⁶⁵⁵ CH2M also stated that Hungarian partridge is listed as an “Exotic/Alien” species, meaning the species is not native to Alberta but has been introduced as a result of human activities.⁶⁵⁶

714. In response to Mr. Ernst’s concerns, CH2M acknowledged that Kipp Lake provides habitat for birds and other wildlife, but that the Kipp Lake area is not an Alberta Environment and Parks designated wildlife habitat area, the bird species observed in the area during breeding bird surveys are listed as “secure” in Alberta, and that the west route option avoids the lake by more than 200 metres.⁶⁵⁷

⁶⁴⁹ Page 85 of Alberta PowerLine’s Reply Evidence. August 3, 2016. Exhibit 21030-1205; Transcript, Volume 9, page 1752, Exhibit 21030-X1511.

⁶⁵⁰ Pages 85-86 of Alberta PowerLine’s Reply Evidence. August 3, 2016. Exhibit 21030-X1205.

⁶⁵¹ Page 86 of Alberta PowerLine’s Reply Evidence. August 3, 2016. Exhibit 21030-X1205.

⁶⁵² Page 3 of Undertaking 029: Review of Environmentally Sensitive Features at the Valkenburg, Bibby, and Silvester Properties and at Lake Fernand. Prepared by CH2M. November 4, 2016. Exhibit 21030-X1584.

⁶⁵³ Page 3 of Undertaking 029: Review of Environmentally Sensitive Features at the Valkenburg, Bibby, and Silvester Properties and at Lake Fernand. Prepared by CH2M. November 4, 2016. Exhibit 21030-X1584.

⁶⁵⁴ Page 2-14 of CH2M’s Reply Evidence. August 2016. Exhibit 21030-X1204; US Fish and Wildlife Service. 2009. *Whooping Cranes and Wind Development: An Issue Paper*. Regions 2 and 6, US Fish and Wildlife Service.

⁶⁵⁵ Page 2 of Undertaking 029: Review of Environmentally Sensitive Features at the Valkenburg, Bibby, and Silvester Properties and at Lake Fernand. Prepared by CH2M. November 4, 2016. Exhibit 21030-X1584.

⁶⁵⁶ Page 2-14 of CH2M’s Reply Evidence. August 2016. Exhibit 21030-X1204.

⁶⁵⁷ Transcript, Volume 1, pages 159 to 160, Exhibit 21030-X1418; pages 2-17 to 2-18 of CH2M’s Reply Evidence. August 2016. Exhibit 21030-X1204.

12.5 Native vegetation important to Aboriginal groups

715. Gunn Métis Local 55 and Beaver Lake Cree Nation expressed concerns about the project's potential impacts on native and traditional plants gathered by Aboriginal community members for food, medicinal and ceremonial purposes.

12.5.1 Views of Alberta PowerLine

716. Alberta PowerLine submitted reply evidence and a report from CH2M responding to the Aboriginal groups' environmental evidence and concerns including impacts to native vegetation.⁶⁵⁸ CH2M's EA report evaluated the potential residual effects on wildlife species and habitat of cultural and traditional importance using an approach that considers project interactions with all species that may occur in the area.⁶⁵⁹ Alberta PowerLine argued that the identified residual effects, proposed mitigation, effect characterizations and rating conclusions for the wildlife species identified by Aboriginal groups would not change from those identified in the EA report if these species were evaluated separately. In addition to information collected during the vegetation surveys discussed above, Alberta PowerLine stated that additional information on rare plants will be gathered during pre-construction surveys. The pre-construction surveys would be conducted by Alberta PowerLine contracted environmental staff trained to identify rare vegetation.⁶⁶⁰

717. Alberta PowerLine stated that it would continue to work with Aboriginal groups to identify specific locations of culturally important plants along the right-of-way and that it is also willing to consider restricting the use of herbicides in these site-specific locations.⁶⁶¹

718. In addition, where information was made available by the Aboriginal groups, specific geographic locations of Aboriginal sites of importance and their approximate distances and directions from the project footprint were mapped and described in a chart format in the reply evidence.⁶⁶² Alberta PowerLine stated that it would avoid locating project components in these areas. Avoidance measures could include adjusting the locations of structures and access roads and flagging or temporarily fencing sites. Non-avoidance mitigation measures could include restricting traffic, employing lay-down mats, reducing travel to decrease soil compaction, and collecting and sowing seeds or other coverings to protect sites with active vegetation harvesting. Alberta PowerLine stated that it will continue to discuss sites identified by the Aboriginal groups for specific uses and, to the extent possible, avoid or mitigate any such sites located within the project footprint on Crown land.⁶⁶³

719. In response to Ms. Kubiski's evidence that a special use vegetation survey should be conducted, CH2M explained that the EA report evaluated the effects of the project on vegetation species, including native vegetation and plant species of cultural and traditional importance to Aboriginal groups.⁶⁶⁴ Vegetation and rare plant surveys had already been completed and it would

⁶⁵⁸ Exhibit 21030-X1205, Alberta PowerLine Reply Evidence, pages 148-295; Exhibit 21030-X1204, CH2M Reply Evidence on behalf of Alberta PowerLine, Section 3.

⁶⁵⁹ Exhibit 21030-X0023, Final - Environmental Assessment: Fort McMurray west 500 kV Transmission Project and Related Facilities.

⁶⁶⁰ Transcript, Volume 8, Page 1554, lines 1 to 13.

⁶⁶¹ Exhibit 21030-X1205, Alberta PowerLine Reply Evidence, Section 13, page 167.

⁶⁶² Exhibit 21030-X1205, Alberta PowerLine Reply Evidence, Section 13, page 155.

⁶⁶³ Exhibit 21030-X1587, Transcript, Volume 18, Page 3730, lines 1-5.; Exhibit 21030-X1205, Alberta PowerLine Reply Evidence, Section 13, pages 158 to 159.

⁶⁶⁴ Transcript, Volume 18, Page 3712, lines 13 to 17.

be unnecessary to complete a special use vegetation survey because ethnobotanical species are included in the vegetation assessment section of the EA report.⁶⁶⁵

720. CH2M concluded that the project would have a minimal effect on ethnobotanical species as these species are common on the landscape and their habitat requirements occur across the majority of the project, similar to other non-tracked native plant species.⁶⁶⁶ For example, sweetgrass is ranked as S5 by ACIMS, meaning that it is widespread and abundant in the province, American sweetflag is ranked as S3 and is not listed as rare or of conservation concern, and Seneca snakeroot is ranked as S4, meaning that it is uncommon but not rare and usually widespread within the province.⁶⁶⁷

721. Alberta PowerLine stated that conducting field visits along the right-of-way with both the Gunn Métis Local 55 and Beaver Lake Cree Nation members to identify traditional plant harvesting sites requiring avoidance or mitigation is sufficient to address the Gunn Métis Local 55 and Beaver Lake Cree Nation members' concerns.⁶⁶⁸

722. In response to concerns expressed by Beaver Lake Cree Nation regarding the loss of trees that are able to host diamond willow fungus, Alberta PowerLine offered to conduct site visits with the Beaver Lake Cree Nation members to identify specific areas of concern where the fungus is, or may be, harvested. It added that it will develop and implement appropriate mitigation, such as leaving certain trees in place or affording opportunities for the Beaver Lake Cree Nation members to gather the fungus prior to clearing.⁶⁶⁹

723. Alberta PowerLine provided examples of mitigation measures that could be implemented for the project to reduce the impact to diamond willow fungus. These included avoiding any brushing activities in areas of known willow trees if compatible with transmission line safety, and the potential reroute of a segment of the transmission line that intersects large amounts of diamond willow fungus.⁶⁷⁰ It added that it is willing to share its vegetation monitoring programs and any monitoring results with members of Beaver Lake Cree Nation.⁶⁷¹ Alberta PowerLine argued that, given the actions it intends to take, there is no need for the Commission to impose the conditions requested by Beaver Lake Cree Nation in its opening statement.⁶⁷²

724. Alberta PowerLine stated that herbicides are an effective vegetation control option along the right-of-way and noted that the herbicides to be used have been designed to target a unique biochemical process in plants.⁶⁷³

⁶⁶⁵ Exhibit 21030-X1204, CH2M Reply Evidence on behalf of APL, Section 3.2.8.2, page 55.

⁶⁶⁶ Exhibit 21030-X1204, CH2M Reply Evidence on behalf of Alberta PowerLine, Section 3.2.8.2, page 55.

⁶⁶⁷ Exhibit 21030-X1204, CH2M Reply Evidence on behalf of Alberta PowerLine, Section 3.2.8.1, page 54.

⁶⁶⁸ Transcript, Volume 18, pages 3724-3725, lines 24 and 25 and 1 to 4.

⁶⁶⁹ Exhibit 21030-X1205, Alberta PowerLine Reply Evidence, Section 13, Page 199.; Transcript, Volume 8, page 1529, lines 1 to 15.

⁶⁷⁰ Transcript, Volume 8, page 1500, lines 15 to 23.

⁶⁷¹ Transcript, Volume 8, page 1534, lines 19 to 23.

⁶⁷² Transcript, Volume 18, pages 3730, lines 24 and 25, and page 3731, lines 1 and 2.

⁶⁷³ Exhibit 1205, Alberta PowerLine Reply Evidence, Section 13, pages 167 to 168.

725. Alberta PowerLine committed to reduce the potential impacts from use of herbicides by:

- complying with Alberta's *Environmental Code of Practice for Pesticides*
- utilizing low volumes
- using herbicides that target specific vegetation species
- using herbicides that target biological systems only present in vegetation
- using herbicides that do not bio accumulate in wildlife
- following policies and best practices when near watercourses and waterbodies⁶⁷⁴
- restricting the application of herbicides within 30 metres of any rare plants identified during field surveys⁶⁷⁵
- erecting notification where herbicides have been applied, as required by the government⁶⁷⁶

726. Alberta PowerLine also committed to employing non-herbicide methods for controlling vegetation growth in areas of the right-of-way where specific plant harvesting or other traditional use sites are identified.⁶⁷⁷ It also explained that the maximum height of willow tree species with the potential to host diamond willow fungus are compatible with the transmission line.⁶⁷⁸ It added that when the next vegetation cycle is to occur in five to 10 years, it will consult with Aboriginal communities to identify site-specific locations of concern.⁶⁷⁹

12.5.2 Views of the interveners

Gunn Métis Local 55

727. Gunn Métis Local 55 identified the historic Lac Ste. Anne Trail from Onoway to Lac Ste. Anne Mission, which crosses the project right-of-way along the "Rabbit Trail", as an area of importance for harvesting medicinal plants and berries. Gunn Métis Local 55 submitted that right-of-way clearing could have direct negative impacts on medicinal plants and berries during the construction phase of the project.⁶⁸⁰

728. Gunn Métis Local 55 explained that it has yet to identify specific locations of native vegetation species of concern and that effective mitigation measures could not be determined prior to identifying these areas.⁶⁸¹

729. Ms. Kubiski submitted a written report on the ethnobotanical effects of the project on behalf of Gunn Métis Local 55. Her report was a desktop study and did not involve any field data collection or field verification,⁶⁸² but included an estimate of cumulative effects on ethnobotanical species at the landscape level.⁶⁸³

⁶⁷⁴ Exhibit 21030-X1205, Alberta PowerLine Reply Evidence, Section 13, page 167.

⁶⁷⁵ Transcript, Volume 8, page 1550, lines 1 to 18.

⁶⁷⁶ Exhibit 21030-1205, Alberta PowerLine Reply Evidence, Section 13, page 167.

⁶⁷⁷ Exhibit 21030-X1205, Alberta PowerLine Reply Evidence, Section 13, pages 167-168.

⁶⁷⁸ Transcript, Volume 8, page 1532, lines 16 to 19.

⁶⁷⁹ Transcript, Volume 7, pages 1373-1374, lines 12-25 and 1-10.

⁶⁸⁰ Exhibit 21030-X1259, La St. Anne TLU Report, "Plant and Berry Harvesting", page 36.

⁶⁸¹ Transcript, Volume 20, page 4240, lines 1 to 15.

⁶⁸² Exhibit 21030-X1003, Desktop Ethnobotanical Effects Assessment Report, Section 1.1, page 4.

⁶⁸³ Exhibit 21030-X1003, Desktop Ethnobotanical Effects Assessment Report, Section 3.1, page 15.

730. The ethnobotanical report asserted that the EA report completed by CH2M did not identify and predict the potential cumulative and residual effects of the project on valued ecosystem components of the Lac Ste. Anne Métis whose rights and interests may be negatively impacted.⁶⁸⁴

731. The ethnobotanical report stated that native vegetation is important to Aboriginal groups for medicines, food, and other uses.⁶⁸⁵ In particular, sweetgrass, American sweet flag, and Seneca snakeroot are of particular importance to the Gunn Métis Local 55 members, and these species are all limited in distribution in Alberta and limited in distribution within the Lac Ste. Anne Métis territory.⁶⁸⁶ During the public hearing, Ms. Kubiski testified that a special use vegetation survey with focused field work should be completed in order to fully understand the project's impacts on the Lac Ste. Anne Métis ethnobotanical species.⁶⁸⁷

732. The ethnobotanical report concluded that the project will directly and adversely impact the Lac Ste. Anne Métis by adversely affecting three ethnobotanical species of concern to members, and affecting native plant communities that support the growth of ethnobotanical species, at the landscape level.⁶⁸⁸

733. If the project is approved, the ethnobotanical report recommended the following:

- Avoid human disturbance in areas with occurrences of sweetgrass, American sweet flag, and Seneca snakeroot.
- Protect habitats that support species of concern from disturbance by maintaining natural water level fluctuations and placing a minimum 100 metre no-disturbance buffer around the Lac Ste. Anne Métis plant species of concern populations or occurrences.
- Adhere to provincial policy and guidance on how to avoid, minimize, and restore adverse effects to plant species at risk and their habitats.⁶⁸⁹

734. Gunn Métis Local 55 requested that, if the project were to be approved, the Commission approve it with the following conditions:

- That Alberta PowerLine must complete a special use vegetation survey in consultation with Gunn Métis Local 55.
- That Alberta PowerLine must conduct meaningful consultation to support further study of Gunn Métis Local 55 traditional land use, and work with Gunn Métis Local 55 to develop construction plans that will minimize impacts to members.
- That Alberta PowerLine will not use herbicides on the right-of-way.

⁶⁸⁴ Exhibit 21030-X1003, Desktop Ethnobotanical Effects Assessment Report, Section 1.4, page 9.

⁶⁸⁵ Exhibit 21030-X1003, Desktop Ethnobotanical Effects Assessment Report, Section 1.4, page 9.

⁶⁸⁶ Transcript, Volume 14, page 3017, lines 6 to 19.

⁶⁸⁷ Transcript, Volume 14, page 3014, lines 13 to 16.

⁶⁸⁸ Exhibit 21030-X1003, Desktop Ethnobotanical Effects Assessment Report, Section 6.1, page 53.

⁶⁸⁹ Exhibit 21030-X1003, Desktop Ethnobotanical Effects Assessment Report, Section 6.2, pages 53-54.

- That the application is modified to reduce the footprint of the towers by avoiding the use of guyed wires, and reduce right-of-way clearing.
- That notice be provided at least one week in advance of the location of herbicide use so that a Gunn Métis Local 55 community representative may attend in advance of the application of herbicides to identify locations that should not be sprayed.⁶⁹⁰

Beaver Lake Cree Nation

735. Beaver Lake Cree Nation expressed concerns about the impacts of the project on native vegetation along the right-of-way. These included the long-term effects of removal of vegetation harvested for medicinal purposes.⁶⁹¹ Of particular concern to Beaver Lake Cree Nation was the ability to collect diamond willow fungus. The Beaver Lake Cree Nation members use diamond willow fungus for medicinal and ceremonial purposes and the fungus only grows on old growth willow trees that are greater than 30 to 40 years old. Beaver Lake Cree Nation submitted that this particular fungus will not grow on new growth once the right-of-way has been cleared; therefore clearing of the right-of-way would result in the clearing of trees growing, or with the potential to grow, diamond willow fungus.⁶⁹²

736. Elder Kurtis Gladue submitted an affidavit that indicated he gathers diamond willow fungus in the project area. He stated that the project area is the only place he has found the fungus.⁶⁹³ Construction of the project would affect his ability to teach his children and grandchildren about the location of diamond willow fungus in the area.⁶⁹⁴ According to Elder Gladue, the mitigation measure proposed by Alberta PowerLine to cut only the top off of a diamond willow tree where the height of the tree poses a safety risk, is unacceptable.⁶⁹⁵ He stated that any human disturbance on diamond willow trees would adversely affect the spiritual value of the fungus and tree and could destroy the fungus itself.⁶⁹⁶

737. Elder Gladue also expressed concerns during the public hearing regarding the use of pesticides and herbicides and the impacts on rat root, which is also used for medicinal purposes.⁶⁹⁷

738. Elders Eric Lameman, Gary Smallface and James Gladue of Beaver Lake Cree Nation also submitted affidavits and testified that they collect sweetgrass, rat root, and diamond willow fungus throughout the project area.⁶⁹⁸

739. Beaver Lake Cree Nation requested that ground-truthing, which involves direct observation of proposed locations, be conducted in areas where the diamond willow fungus may

⁶⁹⁰ Transcript, Volume 14, page 2992, lines 15 to 25 and page 2993, lines 1 to 13.

⁶⁹¹ Exhibit 21030-X1046, Beaver Lake Cree Nation Written Submission, Section 6, page 9.

⁶⁹² Transcript, Volume 8, page 1528, lines 9 to 19.

⁶⁹³ Exhibit 21030-X1042, Affidavit of Kurtis Gladue, The Beaver Lake Cree Nation member, page 3.

⁶⁹⁴ Transcript, Volume 16, page 3528, lines 2 to 9.

⁶⁹⁵ Transcript, Volume 16, page 3532, lines 1 to 9.

⁶⁹⁶ Transcript, Volume 16, page 3573, lines 5 to 10.

⁶⁹⁷ Transcript, Volume 16, page 3526, lines 6 to 14.

⁶⁹⁸ Transcript, Volume 16, page 3537, lines 8 to 15, page 3540, lines 16 to 24., Exhibit 21030-X1039 Affidavit of Eric Lameman, Exhibit 21030-X1040, Affidavit of Gary Smallface, Exhibit 21030-X1041 Affidavit of James Gladue.

grow so that members can work with Alberta PowerLine to implement effective mitigation measures.⁶⁹⁹

12.6 Comparison of common route variation 1 and common route variation 2 (Brion route)

740. In May of 2015, Brion contacted Alberta PowerLine to communicate its objection to the transmission line route's intersection with the "Approved project Area" of its MacKay River Commercial project.⁷⁰⁰

741. Brion developed an alternative route (the Brion route) in this area which it sent to Alberta PowerLine.⁷⁰¹ Brion also submitted the Brion route to Bill Black, the Land Approvals Manager in the Operations Divisions of the Lower Athabasca Region of Alberta Environment and Parks, to obtain feedback.⁷⁰²

742. On June 6, 2016, Alberta PowerLine filed an amendment that proposed two alternative routes in this area: common route option variation 1 and common route option variation 2.⁷⁰³ Common route variation 1 follows the same corridor as the originally proposed common route but has a 2.9-kilometre deviation that completely avoids a well pad location planned by Brion as part of the MRCP.⁷⁰⁴ Common route variation 2 is nearly identical to the Brion route.

Views of Brion Energy Corporation

743. Brion explained that common route variation 2 would require a single crossing of its multi-use corridor, compared to two crossings that would be required on the common route.⁷⁰⁵ The common route variation 2 minimizes impacts to the MRCP by utilizing a naturally occurring corridor through its approved project area.⁷⁰⁶ This corridor is a narrow tract of land between two areas approved for bitumen extraction.⁷⁰⁷

744. Brion argued that Alberta PowerLine over-emphasized the all-weather access advantages of common route variation 1 over common route variation 2,⁷⁰⁸ because portions of common route variation 2 also have an existing access on the east side and because transmission line maintenance activities would be completed by helicopter.

⁶⁹⁹ Exhibit 21030-X1046, Beaver Lake Cree Nation Written Submissions, Section 7, page 10.

⁷⁰⁰ Page 5 of Written Evidence of Brion Energy Corporation. April 1, 2016. Exhibit 21030-X0891; Transcript Volume 7, pages 1287 to 1288, Exhibit 21030-X1495.

⁷⁰¹ Page 5 of Written Evidence of Brion Energy Corporation. April 1, 2016. Exhibit 21030-X0891; Transcript Volume 7, pages 1289 to 1291, Exhibit 21030-X1495.

⁷⁰² Attachment 11: Brion Correspondence with AEP of Written Evidence of Brion Energy Corporation. April 1, 2016. Exhibit 21030-X0891.

⁷⁰³ Alberta PowerLine. June 2016. *Fort McMurray west 500 kV Transmission project: Application Amendment*. Exhibits 21030-X1101 to 21030-X1108.

⁷⁰⁴ Page 4 of *Fort McMurray west 500 kV Transmission project: Application Amendment*. Alberta PowerLine. June 2016. Exhibit X1101; Transcript Volume 18, page 3782, Exhibit 21030-X1587.

⁷⁰⁵ Exhibit 21030-X0891, Brion Written Evidence, PDF page 12.

⁷⁰⁶ Exhibit 21030-X0891, Brion Written Evidence, PDF page 5.

⁷⁰⁷ Transcript Volume 14, pages 2963 to 2964, Exhibit 21030-X1555.

⁷⁰⁸ Transcript Volume 20, pages 4202 to 4203, 4214, Exhibit 21030-X1592.

745. Brion retained Golder Associates Ltd. (Golder) to conduct a desktop analysis of the proposed routes.⁷⁰⁹ Golder concluded that common route variation 2 was less environmentally impactful because it avoids or minimizes project impacts on wetlands and the woodland caribou.⁷¹⁰ The common route variation 2 would also eliminate disturbance within the Thickwood Fen, a sensitive wetland protected by the government of Alberta.⁷¹¹

746. Brion presented the following table comparing the environmental parameters of the common route and common route variation 2:

Table 14. Distances and disturbance of Alberta PowerLine's proposes route versus the Brion route⁷¹²

	Common route	Common route variation 2 (Brion route)
Total distance (kilometres)	32.37	33.96
Total direct disturbance (hectares)	194.22	203.76
Distance within the caribou range (kilometres)	31.77	24.26
Direct disturbance within caribou range (hectares)	190.62	145.56
Indirect and direct disturbance within caribou range (hectares)	1414.12	1358.56
Distance within Thickwood Fen (kilometres)	3.97	0
Disturbance within Thickwood Fen (hectares)	23.82	0

747. Based on these metrics, Golder submitted that common route variation 2 has less caribou impacts than the common route.⁷¹³ However, Trevor Cuthbert, who testified on behalf of Golder, stated that the recent forest fires in the Fort McMurray area had changed the metrics, and that he now agreed with CH2M that the impacts on caribou habitat for common route variations 1 and 2 were essentially equivalent.⁷¹⁴

748. In response to Alberta PowerLine's view that because common route variation 1 overlaps Brion's future mining development plans it is more consistent with the principles of integrated land management, Brion stated that integrated land management cannot occur because well pads may not be constructed within the transmission line right-of-way. It added that this position is inconsistent with Alberta PowerLine's own expert evidence that there is no clear preferable option between common route variations 1 and 2.⁷¹⁵

749. Brion argued further that approving common route variation 1 would be inconsistent with the Lower Athabasca Regional Plan's regional outcome to optimize the economic potential of the oilsands resource in the Lower Athabasca Region.⁷¹⁶

750. Brion also confirmed that the trapper who initially raised an objection to common route variation 2 had withdrawn his objection.⁷¹⁷

⁷⁰⁹ Golder Associates. Technical Memorandum: Third Party Review of Environmental Assessment Amendment of Alberta PowerLine Fort McMurray west 500 kV Transmission project route options Variation 1 and Variation 2. June 27, 2016. Exhibit 21030-X1168.

⁷¹⁰ Exhibit 21030-X1129, Brion to AUC - IR Responses - 28 June 2016, PDF page 5.

⁷¹¹ Exhibit 21030-X0891, Brion Written Evidence, PDF page 11.

⁷¹² Exhibit 21030-X0891, Brion Written Evidence, PDF pages 11-12.

⁷¹³ Exhibit 21030-X0891, Brion Written Evidence, PDF page 14.

⁷¹⁴ Transcript Volume 14, pages 2914 to 2915, 2972, 2974, 2975, Exhibit 21030-X1555.

⁷¹⁵ Transcript Volume 20, pages 4209 to 4210, Exhibit 21030-X1592.

⁷¹⁶ Transcript Volume 20, pages 4167 and 4178 to 4179, 4212, 4218, Exhibit 21030-X1592.

12.6.1 Views of Alberta PowerLine

751. CH2M, on behalf of Alberta PowerLine, indicated that the common route has less impacts on caribou, and that the following two criteria favour common route variation 1 over common route variation 2. First, because common route variation 2 parallels less existing linear disturbances than common route variation 1, common route variation 2 would result in a greater amount of indirect caribou habitat disturbance than common route variation 1. When both direct and indirect new caribou habitat disturbances are considered together, the total area of new caribou habitat disturbance associated with common route variation 2 is 384 ha more than for common route variation 1. Second, overall future caribou habitat disturbance may be reduced with common route variation 1, because portions of its right-of-way within the West Side Athabasca River Caribou range overlap Brion's proposed future and approved mining development plans.⁷¹⁸

752. The recent wildfires in the area increased disturbed caribou habitat within the caribou range. Approximately 4.9 kilometres of the common route variation 1 was disturbed by the 2016 Fort McMurray wildfires, while only 1.7 kilometres of common route variation 2 was disturbed by the wildfires. Taking the wildfire disturbance into account, the length of common route variation 1 within undisturbed caribou habitat was reduced to 26.9 kilometres, while the length of common route variation 2 within undisturbed caribou habitat was reduced to 22.8 kilometres.⁷¹⁹

753. CH2M also stated that there are minimal differences between common route variations 1 and 2 with respect to impacts on terrain, soils, aquatics and water resources, and vegetation.⁷²⁰ CH2M indicated that although both variations cross the same regional fen wetland complexes, including the Thickwood Fen, the common route variation 2 crosses 12 kilometres less length and overlaps 71.6 hectares less area of disturbance within the Thickwood Fen. In addition, common route variation 2 crosses 11.7 kilometres less length and overlaps 70.6 hectares less area of wetland habitat than common route variation 1 and has fewer structures within wetland boundaries.⁷²¹

754. CH2M stated that common route variation 1 over common route variation 2 is favorable from a land use perspective because common route variation 1 has a shorter overall length, parallels more existing disturbances, and crosses a smaller area of provincially environmentally significant areas than common route variation 2.⁷²²

⁷¹⁷ Exhibit 21030-X1217, McNeilly letter to AUC.

⁷¹⁸ Pages 8-7 and 8-9 of CH2M's June 2016 Supplemental Environmental Assessment for the Brion Route Option Variations, Exhibit 21030-X1107.

⁷¹⁹ Page 64 of Alberta PowerLine's Reply Evidence, August 2016, Exhibit 21030-X1205.

⁷²⁰ CH2M, June 2016, Supplemental Environmental Assessment for Variation 2 Option Variations, Exhibit 21030-X1107.

⁷²¹ Table 6.1-1 (pages 6-2 to 6-3) of Supplemental Environmental Assessment for Variation 2 Option Variations, CH2M, June 2016, Exhibit 21030-X1107.

⁷²² Pages 4-6 to 4-7 of Supplemental Environmental Assessment for the Brion route Option Variations, CH2M, June 2016, Exhibit 21030-X1107.

755. However, from an overall environmental perspective, CH2M concluded that the environmental differences between the common route, common route variation 1 and common route variation 2 are minor.⁷²³

756. Mr. Merrifield testified that Alberta Environment and Parks indicated its preference for Alberta PowerLine's common route,⁷²⁴ and this preference had not changed since the wildfires in the Fort McMurray area.⁷²⁵ Alberta Environment and Parks indicated that it considered the alignment of the common route with existing infrastructure and the use of existing access and cumulative impact to caribou habitat, and found that the common route variation 2 would consequently result in a new clearing. Consequently, Alberta Environment and Parks concluded that the common route has the potential to lessen impacts to caribou.⁷²⁶ Alberta PowerLine contended that the fact that Brion has received no response from Alberta Environment and Parks does not change or diminish Alberta Environment and Parks' preference for common route variation 1.¹

757. Alberta PowerLine submitted that the overlap of development along the common route or common route variation 1 and Brion's operations reduce environmental impacts, while common route variation 2 results in new clearing, less alignment with infrastructure, less use of existing access and more cumulative impacts to habitat.⁷²⁷ Alberta PowerLine stated that the general location of common route variation 2 has less previous industrial disturbance than either the common route or common route variation 1.⁷²⁸ For example, common route variation 2 is not located near any existing all-weather access roads.⁷²⁹ It added that the "naturally" occurring corridor identified by Brion along common route variation 2 is largely a contiguous tract of undisturbed forest characterized by minimal existing disturbances.⁷³⁰

758. Alberta PowerLine also contended that SAGD development and transmission lines are compatible land uses.⁷³¹ It added that while the environmental experts agree that the route options have similar impacts to caribou, future SAGD development is expected in proximity to the common route and common route variation 1. If common route variation 2 were selected, SAGD development would continue in the common route area, resulting in more disturbance to caribou habitat.⁷³²

12.7 Comparison of east route and east route variation

759. Alberta PowerLine submitted that the east route option was developed by identifying the most direct corridor for the proposed 500-kV 12L41 transmission line from the existing Sunnybrook 510S Substation to the proposed Livock Switchyard. In comparison to the west

⁷²³ Page 9-2 of Supplemental Environmental Assessment for the Brion route Option Variations. CH2M. June 2016. Exhibit 21030-X1107.

⁷²⁴ Transcript, Volume 7, page 1313, lines 2 to 15.

⁷²⁵ Transcript, Volume 9, page 1778, lines 11 to 22.

⁷²⁶ Exhibit 21030-X1110, Alberta Environment and Parks response to the Brion proposal.

⁷²⁷ Transcript, Volume 18, page 3785, lines 13 to 17.

⁷²⁸ Page 66 of Alberta PowerLine's Reply Evidence. August 2016. Exhibit 21030-X1205.

⁷²⁹ Page 68 of Alberta PowerLine's Reply Evidence. August 2016. Exhibit 21030-X1205; Transcript Volume 18, page 3784, Exhibit 21030-X1587.

⁷³⁰ Page 66 of Alberta PowerLine's Reply Evidence. August 2016. Exhibit 21030-X1205.

⁷³¹ Page 63 of Alberta PowerLine's Reply Evidence. August 2016. Exhibit 21030-X1205; Transcript Volume 7, page 1298, Exhibit X1495.

⁷³² Transcript, Volume 18, page 3784, line 21 to page 3785, line 6.

route option, this resulted in an increase in the portion of the project that would be sited on Crown land.⁷³³

760. Alberta PowerLine stated that the east route variation represents a similar routing corridor as the east route option but deviates from the east route option between nodes EB70 to EB98 near George Lake near Dunstable, Alberta.⁷³⁴ These deviations were made for land use reasons rather than environmental reasons. Nevertheless, the deviation did result in some minor environmental-related differences between the two routes, as according to Table 11 of the application, the east route option crosses 3.6 hectares more wetlands and 5.3 kilometres more environmentally significant areas than the east route variation option.⁷³⁵ On the other hand, there were a few more active stick nests observed during field surveys along the east route variation, compared to the east route option, with five active red-tailed hawk nests (out of 15 total stick nests) observed along the east route variation compared to just one active red-tailed hawk nest (out of seven total stick nests) observed along the east route option.⁷³⁶ Other than these small differences, the two routes are nearly identical from an environmental perspective.

12.8 Commission findings

761. The Commission received considerable evidence on the potential environmental impacts of the project and the mitigation measures proposed by Alberta PowerLine. The Commission finds that the Environmental Assessment report and the supplementary assessments completed by CH2M and Matrix adequately addressed the anticipated impacts through the application of the proposed mitigation measures.

762. Alberta PowerLine committed to finalize and implement an environmental protection plan for the project. The preliminary version of the environmental protection plan outlines several commitments to avoid or reduce the project's environmental impacts. The findings below are based on Alberta PowerLine's representation that all environmental commitments will be fulfilled.

763. For the reasons that follow, the Commission finds that the west route option will have fewer overall potential residual environmental effects than the east route option. As further discussed below six of the nine environmental-related metrics used by CH2M favoured the west route option⁷³⁷ and 11 of the 16 biodiversity metrics evaluated by Mr. Wallis favoured the west route option.⁷³⁸

⁷³³ Exhibit 21030-X0023. *Environmental Assessment for the Fort McMurray west 500 kV Transmission project and Related Facilities*. CH2M Hill Canada Ltd. December 2015. Prepared for Alberta PowerLine Ltd. Partnership. Section 3.1.1.2, PDF page 23.

⁷³⁴ Page 79 of the *Application Text for the Fort McMurray west 500 kV Transmission project*. Alberta Powerline. December 2015. Exhibit 21030-X0002. Exhibit X0023, EA report. CH2M Hill Canada Ltd. December 2015. Prepared for Alberta PowerLine Ltd. Partnership. Section 3.1.1.4. PDF Page 24.

⁷³⁵ Table 11 (page 75) of the *Application Text for the Fort McMurray west 500 kV Transmission project*. Alberta PowerLine. December 2015. Exhibit 21030-X0002.

⁷³⁶ Table 5.7-3 (page 5-188) of the EA report. CH2M Hill Canada Ltd. December 2015. Prepared for Alberta PowerLine Ltd. Partnership. Exhibit 21030-X0023.

⁷³⁷ Exhibit 21030-X0002, Facility Application Text, Table 11, Page 75.

⁷³⁸ Exhibit 21030-X1009, Cliff Wallis Report on behalf of ERLOG, Section 6, pages 84 to 86.

12.8.1 Vegetation and wetlands

764. Alberta PowerLine's approach to mitigating impacts on tracked rare plants and rare ecological communities involved adjusting the locations of the project components to avoid these plants or, if they cannot be avoided, consulting with Alberta Environment and Parks to identify alternative mitigation measures, such as matting over or transplanting to be adequate.⁷³⁹ In addition, native vegetation areas disturbed by the project will be returned to an equivalent land use capability, and the vegetation management standards, operating conditions and best management practices outlined in Alberta Environment and Parks' *Enhanced Approval Process Integrated Standards and Guidelines* were considered in the development of the project's vegetation mitigation measures and will be used to supplement standard mitigation measures itemized in the preliminary environmental protection plan.⁷⁴⁰ The Commission finds Alberta Powerline's approach to mitigation to be adequate and that with the implementation of the mitigation measures proposed, it has made reasonable efforts to limit the impact on vegetation.

765. The evidence before the Commission indicates that there were only minor differences between the route options with regard to the project's potential impacts on wetlands and that the impacts from either route could be effectively mitigated.

12.8.2 Caribou

766. The Commission heard opinion evidence from both Mr. Martin and Mr. Wallis, testimony from members of Beaver Lake Cree Nation, as well as argument from several parties with respect to the project's potential impacts on caribou. The Commission accepts that it is not possible to locate the transmission line so as to avoid all caribou ranges given that the location of the transmission line is specified by the *Electric Utilities Act*. The evidence before the Commission is that even with implementation of the mitigation measures, if constructed, the project will have residual impacts on critical habitat of the boreal population of the woodland caribou. Both Mr. Martin and Mr. Wallis characterized these residual impacts on the critical habitat of woodland caribou as "major."⁷⁴¹

767. While all route options would traverse the West Side Athabasca River Caribou range, the east route option, if approved would avoid the Slave Lake Caribou range. However, the Commission accepts the evidence presented by Mr. Martin and Mr. Wallis that there are no unique biological and genetic differences between the Slave Lake and WSAR caribou herds that would make it essential to prioritize the preservation or protection of one herd and range over the other.⁷⁴² The Commission therefore agrees with the view held by Mr. Martin and Mr. Wallis that it should consider the project's overall impacts on caribou, and not consider the impacts on the Slave Lake Caribou range in isolation.⁷⁴³

768. When comparing the route options, the Commission finds that most of the caribou-related criteria identified and measured were relatively similar for the west and east route options. However, the criterion that most distinguishes the west and east route options from one another is "Total length of existing linear disturbance in caribou range paralleled." In this respect, the

⁷³⁹ Page 43 of Alberta PowerLine's response to Information Request Alberta PowerLine-AUC-2016FEB01-33(a). February 19, 2016. Exhibit 21030-X0648.

⁷⁴⁰ Exhibit 21030-X0023, Environmental Assessment, Section 6.6.1, page 308.

⁷⁴¹ Transcript Volume 12, pages 2465 to 2466, Exhibit 21030-X1532.

⁷⁴² Transcript Volume 13, page 2676, Exhibit 21030-X1537.

⁷⁴³ Transcript Volume 21, page 4436, Exhibit X1593.

west route parallels significantly more linear disturbance within the WSAR Caribou range than the east route option. The environmental consultants in this proceeding stressed the importance of routing the transmission line in parallel to existing linear disturbances through caribou ranges. Furthermore, the evidence before the Commission is that Alberta Environment and Parks has endorsed this approach.

769. The Commission is also persuaded by the testimony of Mr. Wallis that the east route option may have a greater impact than the west route option because the east route option, where it crosses the WSAR, traverses the highest priority areas for conservation and co-ordinated caribou habitat restoration.⁷⁴⁴ For these reasons, the Commission finds that the west route option is preferable to the east route option from the perspective of the overall impact on caribou.

770. The Commission recognizes that Alberta PowerLine has developed a Caribou Protection Plan for the project, to address impacts on caribou and caribou habitat,⁷⁴⁵ and that this was done in close collaboration with Alberta Environment and Parks.

771. The caribou protection plan sets out the details of the proposed mitigation for both the Slave Lake and WSAR caribou herds.⁷⁴⁶ The caribou protection plan also indicates that the project will not be able to be constructed outside of the restricted activity period that runs between February 15 to July 15 because of the need to construct the project during frozen soil conditions to reduce overall environmental impacts. Based on the evidence before it, the Commission accepts that it is better to minimize the project's overall impacts on caribou by constructing the project components located within caribou ranges over just one winter, if possible, rather than over multiple winter seasons.^{747,748}

772. Alberta PowerLine's approach to monitoring the impacts of the project on caribou during construction includes having a biologist present during construction,⁷⁴⁹ training construction crews on making caribou observations,⁷⁵⁰ and consulting with Alberta Environment and Parks to discuss adaptive mitigation measures if caribou are prevalent.⁷⁵¹ The Commission finds this approach to be reasonable in the circumstances.

773. The evidence before the Commission is that the government of Alberta has not yet developed a range plan for the Slave Lake or WSAR caribou ranges with respect to caribou habitat restoration,⁷⁵² but that range plans covering the WSAR and the Slave Lake caribou ranges are scheduled to be completed in the near future.⁷⁵³ The Commission agrees with

⁷⁴⁴ Transcript, Volume 12, pages 2425 to 2426, Exhibit X1532; Transcript Volume 20, pages 4145 to 4146, Exhibit 21030-X1592.

⁷⁴⁵ Transcript, Volume 9, page 1760, Exhibit 21030-X1511.

⁷⁴⁶ Transcript, Volume 3, pages 603, Exhibit 21030-X1432; Transcript Volume 18, page 3691, Exhibit 21030-X1587.

⁷⁴⁷ Transcript, Volume 9, pages 1770 to 1771, Exhibit 21030-X1511; Transcript Volume 13, pages 2678 to 2679, Exhibit 21030-X1537.

⁷⁴⁸ Page 249 of Alberta PowerLine's Reply Evidence. August 3, 2016. Exhibit 21030-1205.

⁷⁴⁹ Transcript Volume 9, page 1766, Exhibit 21030-X1511.

⁷⁵⁰ Transcript Volume 9, page 1763, Exhibit 21030-X1511.

⁷⁵¹ Transcript Volume 9, page 1763, Exhibit 21030-X1511.

⁷⁵² Transcript Volume 7, pages 1242 and 1248, Exhibit 21030-X1495.

⁷⁵³ Page 2 of the *Caribou Action Plan Fact Sheet*. Government of Alberta. June 2016. Available online at: <http://aep.alberta.ca/fish-wildlife/wildlife-management/caribou-management/caribou-action-range-planning/default.aspx>; Transcript, Volume 7, page 1248, Exhibit 21030-X1495.

Alberta PowerLine's submission that a caribou habitat restoration offset program would be most effective if directed by a provincial agency such as Alberta Environment and Parks. As such, the Commission will not require Alberta PowerLine to restore habitat as a condition of the project's approval. However, upon completion of the range plans for the Slave Lake and WSAR caribou ranges, should Alberta Environment and Parks request that Alberta PowerLine participate in a government of Alberta-sanctioned caribou habitat restoration offset program, the Commission expects Alberta PowerLine to participate in such a program.

774. The Commission finds that the implementation of the proposed mitigation measures outlined in the caribou protection plan are essential to minimizing the project's impacts on caribou and therefore makes the following conditions of the project's approval:

- Alberta PowerLine shall abide by the caribou protection plan as approved by Alberta Environment and Parks for the project.⁷⁵⁴
- Throughout the construction of the project, Alberta PowerLine shall engage in ongoing discussions with Alberta Environment and Parks about the impacts of the project on woodland caribou, and incorporate any additional mitigation measures recommended by Alberta Environment and Parks into the caribou protection plan.

775. The Commission considers compliance with the existing regulatory requirements administered by other government departments or agencies to be important elements when deciding if potential adverse impacts are acceptable and approval of a project is in the public interest. In line with the above approach, Alberta Environment and Parks' acceptance of the caribou protection plan suggests to the Commission that Alberta Environment and Parks' concerns about the project's impacts on caribou herds have been reasonably mitigated.⁷⁵⁵ Nonetheless, given the evidence presented, the Commission finds that the conditions outlined above are necessary to adequately protect the project's impacts on caribou.

12.8.3 Wildlife

776. The Commission observes that approximately half of the wildlife-related criteria (other than caribou) identified and measured in the EA report were relatively similar for each of the route options.⁷⁵⁶

777. The evidence before the Commission is that the degree of paralleling with existing linear disturbances is a key environmental metric. The west route option parallels substantially more linear disturbances and crosses approximately 50 per cent less identified wildlife habitat than the east route option.⁷⁵⁷ The metrics selected by Mr. Wallis also favour the west route option.

778. The Commission finds that the project will negatively impacts birds. While the west route option avoids several important wildlife habitat areas that are located along the east route option (e.g., Pelican Lake Important Bird Area), segments of the west route option are nonetheless in the vicinity of several sensitive bird habitat areas, including the Godin Lake Trumpeter Swan

⁷⁵⁴ Page 2 of Undertaking 028. List of commitments Alberta PowerLine would be willing to accept as conditions of approval. Exhibit 21030-X1583.

⁷⁵⁵ Transcript, Volume 4, pages 629, 631, and 712-714, Exhibit 21030-X1446.

⁷⁵⁶ Pages 5-186 to 5-189, 6-81, and 6-105 of the EA report, Exhibit 21030-X0023.

⁷⁵⁷ Page 6-127 of the EA report, Exhibit 21030-X0023.

Waterbody, two black tern nesting colonies, the North Saskatchewan River, the Athabasca River, the Fort Assiniboine Sandhills Wildland Provincial Park (which offers riparian habitat for bird species at risk including sandhill cranes), and some other waterbodies and wetlands important to migratory birds.

779. The Commission recognizes that Alberta PowerLine has committed to installing bird line markers every 20 metres on each of the two parallel overhead shield wires along segments of the transmission line within 150 metres of open waterbodies greater than four hectares, or where important nesting sites have been identified during field surveys, and near important bird areas. Further, Alberta PowerLine stated that once a route is approved, it plans to go back to Alberta Environment and Parks and reconfirm the proposed locations for the bird diverters.⁷⁵⁸ The Commission is of the view that installing bird markers may be an effective way to mitigate the project's impact and finds Alberta PowerLine's approach of installing bird markers along each segment at the stringing stage to be reasonable.

780. Alberta PowerLine has also stated that should its maintenance or monitoring activities identify a high or unacceptable rates of bird mortality in the vicinity of the transmission line, it will work with Alberta Environment and Parks and Ducks Unlimited Canada to develop additional bird collision mitigation measures.⁷⁵⁹

781. Alberta PowerLine has committed to completing supplemental wildlife field surveys in areas where the route has been realigned or private land access was not previously granted.⁷⁶⁰ On the basis of the surveys conducted and Alberta PowerLine's commitment to conduct further wildlife surveys prior to construction, the Commission finds that Alberta PowerLine has made reasonable efforts to limit the impact on wildlife and wildlife habitat.

12.8.4 Native vegetation important to Aboriginal groups

782. The Commission expects Alberta PowerLine to work in good faith to address the concerns expressed by the Aboriginal groups about the impacts of the project on native vegetation that is important to them, and to implement the mitigation measures outlined on its list of commitments filed on the record of the proceeding.⁷⁶¹

783. Ms. Kubiski's evidence, on behalf of Gunn Métis Local 55, was that the ACIMS database used by CH2M to classify species could underrepresent ethnobotanical species in the project area. Sweetgrass, American sweet flag and Seneca snakeroot are not listed as rare, however the presence of these species may vary greatly depending upon the area.⁷⁶² She added this is why fieldwork is important. The Commission accepts that Ms. Kubiski is qualified in the methodology used to conduct special use vegetation surveys of ethnobotanical plants. However, the nature of her report was a desktop review and did not discuss whether any ethnobotanical species are located along the right-of-way. Her report was therefore of limited assistance in determining the prevalence of ethnobotanically important species in the project area. Ms.

⁷⁵⁸ Transcript Volume 9, page 1753, Exhibit 21030-X1511; Transcript Volume 18, page 3689, Exhibit 21030-X1587.

⁷⁵⁹ Page 58 of Alberta PowerLine's response to Information Request ALBERTA POWERLINE-AUC-2016FEB01-37(i). February 19, 2016. Exhibit 21030-X0648.

⁷⁶⁰ Page 50 of Alberta PowerLine's response to Information Request ALBERTA POWERLINE-AUC-2016FEB01-36(a). February 19, 2016. Exhibit 21030-X0648.

⁷⁶¹ Undertakings Day 9 Exhibit 21030-X1583.

⁷⁶² Transcript Volume 14, page 3034, lines 3 to 8.

Kubiski also appeared unfamiliar with the applicant's reply evidence or its proposed mitigation measures, and was unable to comment on these mitigation measures.⁷⁶³

784. The Commission recognizes that sweetgrass, American sweet flag, and Seneca snakeroot are of particular importance to the Gunn Métis Local 55 members.⁷⁶⁴ The Commission finds that the nature and extent of the environmental reports and the field work conducted by CH2M were adequate in the circumstances, and is not persuaded that a study of ethnobotanical plants on the project site is required, for the following reasons. Firstly, CH2M conducted vegetation surveys to identify rare species including those that are ethnologically important. Secondly, the Commission accepts that the project's potential impacts on rare vegetation would be low in magnitude. Thirdly, should the Gunn Métis Local 55 members identify particular species along the right-of-way, Alberta PowerLine has committed to implementing avoidance or other mitigation measures. The Commission understands that this commitment relates to all ethnologically important species including sweetgrass, American sweet flag, and Seneca snakeroot. The evidence on the record is that Alberta PowerLine has some flexibility locating the transmission line structures laterally along the right-of-way. The Commission has relied on the evidence put forward by Alberta PowerLine that it will be able to avoid, or use other mitigation measures, to ensure that the project's potential effects on these species are minimized to a reasonable extent.

785. Similarly, the Commission recognizes that diamond willow fungus is particularly important to members of Beaver Lake Cree Nation. Alberta PowerLine put forward a number of mitigation measures to protect trees that grow diamond willow fungus. The Commission finds that Alberta PowerLine has taken reasonable steps to mitigate the project's potential impacts on trees inhabited by diamond willow fungus.

12.8.5 Comparison of common route, common route variation 1 and common route variation 2

786. Both CH2M and Golder stated that the impacts of the common route, common route variation 1 and common route variation 2 are similar. While common route variation 2 disturbs less caribou habitat, the habitat that is disturbed is a new disturbance. In contrast, the common route and common route variation 1 parallel more linear disturbances, reducing new disturbances. As stated previously, the Commission regards compliance with the existing regulatory requirements administered by other government departments or agencies to be an important element when deciding if potential adverse impacts are acceptable and approval of a project is in the public interest. The Commission considers Alberta Environment and Parks' preference for the common route to be strong evidence that a route in this area would have less potential impacts. The Commission finds that the common route, and common route variation 1 would have less potential environmental impact than common route variation 2.

787. Based on the above, the Commission finds that approval of the west route option, with the common route variation 1, would be in the public interest from an environmental perspective.

⁷⁶³ Transcript, Volume 15, 3104, lines 3 to 8.

⁷⁶⁴ Transcript, Volume 14, page 3017, lines 6 to 19.

12.9 Noise

788. The noise sources associated with this project are the Thickwood Hills 500-kV Substation, the Livock 500-kV Substation and the conductors of the 500-kV transmission line. Construction noise and noise from the implosive splicing process are also discussed.

12.9.1 Views of Alberta PowerLine

789. Alberta PowerLine submitted a noise impact assessment prepared by ATCO Emissions Management for the Thickwood Hills 951S Substation⁷⁶⁵ and a noise study by Midgard Consulting Inc. for the 500-kV transmission lines⁷⁶⁶ as part of its application. The noise impact assessment considered the noise contribution from the Thickwood Hills 500-kV Substation, the Livock 500-kV Substation and the transmission line. For the proposed Thickwood Hills 500-kV Substation, the predicted sound level is 27 dBA which is well below the permissible sound level of 40 dBA specified in Rule 012: *Noise Control*. Alberta PowerLine stated that the sound contribution from the Thickwood Hills 500-kV Substation would be insignificant and non-cumulative because it is more than 10 dBA below the permissible sound level.⁷⁶⁷ Alberta PowerLine stated that low frequency noise is not expected to be an issue because the calculated C-weighted minus A-weighted levels are below 20 dB.⁷⁶⁸ It added that noise levels at the Thickwood Hills 951S Substation would increase temporarily during construction; however, no receptors are located within 1.5 kilometres of the site. Therefore, compliance with Rule 012 at the most impacted receptor was assured during construction and subsequently. With respect to the Livock 500-kV Substation, no significant noise producing equipment is proposed.⁷⁶⁹ The existing Livock 939S Substation currently complies with Rule 012.

790. Alberta PowerLine stated that noise from the transmission line at the edge of the right-of-way will be significantly lower than the permissible sound level of 40 dBA.⁷⁷⁰ The noise impact assessment predicted sound levels at the edge of the right-of-way under fair weather conditions to be 24.3 dBA in the stand-alone configuration and 25.2 dBA where it paralleled AltaLink Management Ltd.'s transmission line 913L.⁷⁷¹ In the corrections to the noise impact assessment, Alberta PowerLine stated that there was no difference between the cumulative sound level and the ambient sound level; hence, the transmission line would have no impact on sound levels.⁷⁷² Alberta PowerLine stated that it would not conduct post-construction noise monitoring because the sound levels are substantially below the permissible sound level. Alberta PowerLine stated the project is 10 decibels below the nighttime permissible sound level and 20 decibels below the daytime permissible sound level.⁷⁷³

791. Alberta PowerLine confirmed that the cumulative noise impact of the proposed transmission line and other sources, such as gravel operations, was considered at a high level but was not investigated with much detail due to the low levels of noise produced by the

⁷⁶⁵ Exhibit 21030-X0049, Attach 10 - Thickwood Hills 500kV NIA Report.

⁷⁶⁶ Exhibit 21030-X0050, Attach 10 - Noise and Electromagnetic Study.

⁷⁶⁷ Transcript, Volume 18, page 3679, lines 12 to 25.

⁷⁶⁸ Exhibit 21030-X0049, Attach 10 - Thickwood Hills 500kV NIA Report, PDF page 11.

⁷⁶⁹ Exhibit 21030-X0002, Application - Final, PDF page 104.

⁷⁷⁰ Exhibit 21030-X0050, Attach 10 - Noise and Electromagnetic Study, PDF pages 3 to 4.

⁷⁷¹ Exhibit 21030-X0050, Attach 10 - Noise and Electromagnetic Study, PDF page 1.

⁷⁷² Transcript, Volume 6, page 1070, lines 19 to 24.

⁷⁷³ Transcript, Volume 6, page 1071, lines 1 to 12.

transmission line.⁷⁷⁴ Alberta PowerLine stated that the only time there would be significant noise in relation to the transmission line would be during construction. There would not be any significant noise produced by the transmission line during its operation.⁷⁷⁵

792. Alberta PowerLine stated that the proposed transmission line may produce audible noise due to the corona effect. The corona is the electrical breakdown of air ions around the conductor as a result of high or non-uniform electric fields. The effect is more prevalent on rough surfaces, sharp edges, or anything protruding from the conductor.⁷⁷⁶ Alberta PowerLine explained that corona from the transmission line may generate crackling and hissing noises, as well as low continuous tonal humming. It stated that the current research does not suggest that the associated audible noise results in adverse effects on the health, behaviour, or productivity of fauna.⁷⁷⁷ Alberta PowerLine stated the main mitigation for corona noise relates to transmission line design, ensuring that there are no loose hardware or nicks,⁷⁷⁸ and that it is very unusual for transmission lines to cause concentrated noise, which is more common with distribution lines, due to the splicing technique used. Alberta PowerLine would use implosive splicing to join the conductors, which results in a smoother surface, therefore reducing the likelihood of the corona phenomenon.⁷⁷⁹

793. Implosive splicing utilizes a small explosion to fuse the conductor. It is required approximately every four kilometres for all conductor wires. Alberta PowerLine indicated that the wires would be spliced at the same time for a given location to reduce the frequency of explosions and reduce the nuisance of the noise and⁷⁸⁰ that it would not use implosive splicing within 200 metres of residences to further reduce the impact of the noise. In addition, Alberta PowerLine would contact all residences within one mile of any implosive splicing to inform the residents of the activity.⁷⁸¹ It would ensure all implosive splicing activities within three kilometres of a residence would be restricted to the hours of 8 a.m. to 8 p.m.⁷⁸²

794. Should the need arise to address the issue of corona noise post-construction, Alberta PowerLine stated it would verify to determine if there was loose hardware, or sharp edges or abrasions on the line. If there was, the hardware would be tightened or the abrasions could be smoothed out.⁷⁸³ It would identify where the noise is emanating from and try to address it.⁷⁸⁴

12.9.2 Views of the interveners

795. ERLOG members expressed noise concerns associated with electrical noise, sound impacts and annoyances from operation of the proposed transmission line on the east route option. The members also expressed concerns with noise associated with surveying, construction

⁷⁷⁴ Transcript, Volume 2, page 345, line 14 to page 346, line 2.

⁷⁷⁵ Transcript, Volume 2, page 344, lines 14 to 21.

⁷⁷⁶ Transcript, Volume 6, page 1067, lines 7 to 9.

⁷⁷⁷ Exhibit 21030-X1205.02, Clean Version of Revised APL Reply Evidence, PDF page 22.

⁷⁷⁸ Transcript, Volume 6, page 1018, line 9 to page 1019, line 13.

⁷⁷⁹ Transcript, Volume 6, page 1065, lines 18 to 23.

⁷⁸⁰ Transcript, Volume 6, page 1073, lines 3 to 10.

⁷⁸¹ Transcript, Volume 6, pages 1071 to 1073.

⁷⁸² Transcript, Volume 18, page 3681, lines 11 to 13.

⁷⁸³ Transcript, Volume 6, page 1018, lines 10 to 24.

⁷⁸⁴ Transcript, Volume 6, page 1019, lines 10-13.

and project associated traffic.⁷⁸⁵ They were concerned that noise would affect their enjoyment of the natural surroundings and cause sleep disturbance. Mrs. Dumbeck stated members of her family have hectic jobs in the city and moved out to the country to get away from the hustle and bustle of the city.⁷⁸⁶ The Bartons stated that they and their horses are highly sensitive to end-of-spectrum high and low frequency noise and the proposed transmission line would affect them.⁷⁸⁷ Mr. Dumbeck expressed similar concerns with end-of-spectrum high and low frequency noise, stating they can hear the buzzing from appliances and low frequency rumblings.⁷⁸⁸ He stated that he often hunts on his property and if the proposed transmission line were approved, he could not hunt because of the sound.⁷⁸⁹

796. The South of 43 Group members stated there would be a low frequency hum from the line. They are concerned that the noise would negatively impact the school and interfere with learning.⁷⁹⁰ Ms. Holtz stated that she does not want to hear the noise from the transmission line and doubted Alberta PowerLine's statement that there would be no difference in noise in a home near the line and those far away from the line.⁷⁹¹ The South of 43 Group is also concerned about the cumulative noise impact of the transmission line and the nearby gravel operation when considered together.⁷⁹²

797. Some Aboriginal groups raised concerns that the transmission line would invite more human activity in the area, which would scare the animals away. Elder Donald Lanstron of Beaver Lake Cree Nation submitted that animals notice anything related to humans immediately and run away if they hear noise. He stated that the increased human activity will make it more difficult for him to hunt.⁷⁹³ Elders, Eric Lameman⁷⁹⁴ and Gary Smallface⁷⁹⁵ of Beaver Lake Cree Nation expressed similar concerns with noise.

12.9.3 Commission findings

798. As mentioned above, Alberta PowerLine filed two expert reports on noise with respect to the Thickwood Hills 951S Substation and the 500-kV transmission line. The consultants who prepared the reports, Mr. Oakley and Mr. Arthur Küpper, also testified at the oral hearing. No other expert evidence was filed with respect to noise.

799. Mr. Oakley's curriculum vitae indicates that he has over 30 years of power industry experience and that he conducted corona and field effect modelling for transmission projects for ATCO Electric Ltd. Mr. Oakley presented expert evidence on noise associated with transmission lines. Mr. Küpper is a Senior Acoustical Engineer, responsible for the preparation, technical review of noise impact assessments, and other acoustical studies. The Commission accepts that Mr. Oakley and Mr. Küpper possess the necessary qualifications, expertise and experience to provide expert evidence on the noise and corona effects from transmission lines and substations.

⁷⁸⁵ Exhibit 21030-X0892, Submissions of the East Route Landowner Opposition Group, PDF page 10.

⁷⁸⁶ Transcript, Volume 13, page 2731, lines 15 to 24.

⁷⁸⁷ Exhibit 21030-X0897, C - ERLOG Member Submissions, PDF page 7.

⁷⁸⁸ Exhibit 21030-X0897, C - ERLOG Member Submissions, PDF page 36.

⁷⁸⁹ Transcript, Volume 13, page 2730, line 22 to page 2731, line 10.

⁷⁹⁰ Transcript, Volume 15, page 3196, lines 6 to 12.

⁷⁹¹ Transcript, Volume 15, page 3242, lines 4 to 16.

⁷⁹² Transcript, Volume 2, page 344, lines 10 to 13.

⁷⁹³ Exhibit 21030-X1037, Appendix A -Executed_Affidavit_-_Donald_Lanstron, PDF page 2.

⁷⁹⁴ Exhibit 21030-X1039, Appendix A -Executed_Affidavit_-_Eric_Lameman, PDF page 3.

⁷⁹⁵ Exhibit 21030-X1040, Appendix A -Executed_Affidavit_-_Gary_Smallface. PDF page 2.

800. The Commission is satisfied that Alberta PowerLine conducted noise modelling and monitoring in accordance with Rule 012. Because there is no noise producing equipment proposed to be installed at the Livock 939S Substation as part of this project, no increase in noise is expected and no noise impact assessment is required at Livock 939S Substation.

801. The Commission accepts that the cumulative noise levels of 27 dBA predicted for the Thickwood Hills 500-kV Substation are below the permissible sound levels of 40 dBA nighttime, set out in Rule 012.

802. The Commission is also satisfied that the predicted sound level of 24.3 dBA at the edge of the right-of-way in the stand-alone configuration and the predicted sound level of 25.2 dBA when paralleling the existing transmission line 913L are below the permissible sound level and diminish with distance.

803. With respect to the cumulative impacts of the transmission line and the gravel operations, Rule 012 states that the noise from a facility, measured cumulatively with noise from other energy-related facilities, shall not exceed the permissible sound level. However, the gravel operations are not energy-related facilities. In addition, the sound level from the transmission line is very low at the right-of-way; consequently its noise contribution to the surrounding area would be insignificant and would decrease with distance.

804. The evidence before the Commission is that corona noise will be minimized based on the design of the proposed transmission line and the splicing technique to be used, and that it may also be mitigated by tightening or properly installing transmission line equipment, or smoothing the conductor. Further, Alberta PowerLine has committed to undertaking such measures to mitigate corona noise and to investigating and resolving noise issues to ensure compliance with Rule 012.

805. Alberta PowerLine must mitigate the impacts of construction noise on nearby residences in accordance with Rule 012. The Commission finds that Alberta PowerLine's notification and setbacks for its implosive splicing activities adequately mitigate the impacts of the construction noise.

806. Sound levels from the project including construction activity favour neither the west route option nor the east route option.

13 Impacts on traditional land and resource use

13.1 Gunn Métis Local 55

807. Gunn Métis Local 55 is one of the Aboriginal groups that participated in the hearing and expressed concerns about the potential effects of the project's approval on their traditional land and resource use in the vicinity of the proposed transmission line.⁷⁹⁶ Gunn Métis Local 55 hired Willow Springs Strategic Solutions Inc. (Willow Springs) to provide evidence on their members' respective traditional land uses. Mr. Dermot O'Connor testified at the hearing on behalf of

⁷⁹⁶ Traditional land and resource use means the historical use of the land and water by an Aboriginal group for cultural, subsistence and other purposes. It refers to the use of land by Aboriginal people for any traditional purpose, and encompasses activities such as hunting, fishing, gathering, and cultural ceremonies.

Willow Springs. Two members of Gunn Métis Local 55 appeared at the hearing, Murleen Crossen - President of Gunn Métis Local 55 and Tracey Friedel who is Vice-president of Gunn Métis Local 55 and responsible for consultation.

808. In its written submissions, Gunn Métis Local 55 stated that it represents the Aboriginal rights and interests of the Lac Ste. Anne Métis community. Dr. Friedel explained that the larger Lac Ste. Anne Métis community is recognized by the government of Alberta as a historic and contemporary Métis community based on the criteria set out by the Supreme Court of Canada in *R v. Powley*.⁷⁹⁷ Many members of Gunn Métis Local 55 have received a harvesting letter from the government of Alberta. These harvesting letters were filed in this proceeding by Gunn Métis Local 55. The “community of people represented by the [Gunn Métis Local 55] are genealogically, geographically, culturally and spiritually across time ...[connected to the] landscape today known as west central Alberta”.⁷⁹⁸

809. Gunn Métis Local 55 intervened in the proceeding because the proposed transmission line would traverse through areas where many of the members of the Lac Ste. Anne Métis community reside and where Gunn Métis Local 55 has extensive documented patterns of land use, most notably the Lac Ste. Anne trails from Onoway to Lac Ste. Anne, which are connected to a series of other pathways. In addition, there are trails used for traditional practices along the west route option and the southern portion of the common route.

13.2 Willow Springs Strategic Solutions Inc. report

810. Willow Springs prepared a report on behalf of Gunn Métis Local 55 on the current and historic patterns of Lac Ste. Anne Métis community traditional knowledge and use in the project area (the Willow Springs Report). Specifically, Willow Springs was retained to establish current and historic use patterns of the proposed transmission line right-of-way and the local area.^{799,800}

811. The Willow Springs Report states that it is designed to answer the following questions:

- What are the Lac Ste. Anne Métis community’s historic and current patterns of land use and knowledge of the project areas?
- How might the project affect the Lac Ste. Anne Métis community and what are some of its main concerns over potential effects to land use as a result of the project activities and operations?
- From the perspective of community members, how might some of these effects be reduced, avoided, mitigated or offset?

812. The Willow Springs Report identified Gunn Métis Local 55’s concerns with potential project effects on traditional harvesting activities, and describes members’ input on potential avoidance, mitigation or offset measures. The Willow Springs Report focused on traditional

⁷⁹⁷ *R. v. Powley*, [2003] 2 S.C.R. 207, 2003 SCC 43.

⁷⁹⁸ Transcript, Volume 14, page 2987, lines 9 to 11.

⁷⁹⁹ The local area is area surrounding and including the project footprint, where there is a reasonable potential for immediate environmental effects due to ongoing project activities, and is defined as a 2-km-wide band centered on the proposed transmission line routes.” In other words, this is a one km buffer on either side of the right-of-way as defined by CH2M.

⁸⁰⁰ Transcript, Volume 14, page 2995, lines 11 to 13.

knowledge and use within the local project area, namely within one kilometre on either side of the proposed transmission line right-of-way. Willow Springs used the same spatial parameter of one kilometre on either side of the transmission line CH2M had used in the EA report.

813. Mr. O'Connor described the Willow Springs Report as an overview study or a desktop study and indicated that it was based primarily on information that Gunn Métis Local 55 had collected from Elders, land users, and knowledge holders between 2013 and 2016.⁸⁰¹

814. The Willow Springs Report is divided into three sections. The information in the first section is not project specific, the second section describes known traditional land use impacts within one kilometre of the right-of-way, and the third section sets out the findings of a focus group held with members of Gunn Métis Local 55. Data sources for current and historic patterns of traditional land use include:

- Oral history and traditional land use interviews with Gun Métis Local 55 members completed between 2013 and 2016.
- Primary/archival sources on Lac Ste. Anne Métis community occupancy (Scrip records).
- Secondary historical research and scholarly literature.
- The findings of a project-specific traditional knowledge and use focus group workshop on April 6, 2016 attended by six Gunn Métis Local 55 members.⁸⁰²
- In addition to project-specific land use, occupancy and traditional knowledge, participants discussed concerns with potential project impacts and suggested possible mitigation, offset or avoidance measures.

815. With respect to the archival sources of community occupancy, Mr. O'Connor explained that he used a database he created previously for Gunn Métis Local 55 which contains all of the past land use research. That information is categorized by hunting, fishing, snaring, historical home sites, cabin sites, and traditional trails or travel ways. He confirmed at the hearing that most of the data was collected long before Gunn Métis Local 55 knew about the project.⁸⁰³

816. Data that coincided with the local area, including current residential occupancy and farming was included. Willow Springs submitted that there are at least three traditional land use sites within one kilometre of the project.⁸⁰⁴

817. The focus group workshop was attended by six Gunn Métis Local 55 community members. All participants indicated that they reside in either the Parkland or Lac Ste. Anne counties. One participant owns property within 800 metres of the project.

⁸⁰¹ Transcript, Volume 14, page 2995, lines 4 to 10.

⁸⁰² Transcript, Volume 14, page 3000, line 18.

⁸⁰³ Transcript, Volume 14, page 3000, lines 15 to 16.

⁸⁰⁴ Transcript, Volume 14, page 2999, lines 11 to 15.

818. The primary concerns from the focus group related to the following:

- indiscriminate use of herbicides affecting local food sources
- large footprint of towers and use of guy wires
- large right-of-way and workspace area causing linear disturbances to forest and Crown land and effects on wildlife and harvesting
- impact of project operations on wildlife and related effects to harvesters
- destruction of indigenous plant habitat and reduced opportunities to harvest
- potential disturbance or contamination of aquatic resources and fish habitat
- visual or aesthetic disturbances and reduced enjoyment of local environment

819. Focus group participants also questioned the need for the project and requested additional information on measures to source alternative electrical energy for the oilsands operations that would not require long distance power transmission. Overall, the results of the focus group were that many aspects of the traditional Métis way of life such as hunting, fishing, and plant or berry gathering are actively maintained and practiced within the local area today.

820. The Willow Springs Report also made recommendations for the siting of the project. One of these recommendations is that, where possible, the route should follow existing linear disturbances to reduce the impact of new rights-of-way on Crown land.⁸⁰⁵

13.3 Gunn Métis Local 55 members' submissions

821. One of Gunn Métis Local 55's primary concerns was that the project, if approved, would impact its members harvesting, and exercise of their traditional rights. The Gunn Métis Local 55 members submitted that it is difficult to find places nearby to harvest berries and medicinal plants, and therefore, community members must travel farther to find undeveloped Crown land to locate the resources they are seeking. Further development would exacerbate the pre-existing damage to its members' hunting, gathering, harvesting, and fishing and other traditional activities which are critical to their traditional lifestyle. They proposed that clearing of the right-of-way could increase access to the lands by non-Aboriginal hunters and construction noise could drive animals away, thereby negatively impacting its members who depend on hunting for food.

822. Gunn Métis Local 55 filed affidavits of four community members and maps showing some of its members' use of traditional resources in proximity to the project. The affidavits indicated that these members use the project's right-of-way, and the area immediately surrounding the right-of-way, for harvesting and other traditional activities.

823. Dr. Friedel testified that, in addition to her role as vice-president of Gunn Métis Local 55, she is also the chair of its Community and Industry Relations Committee. She stated that she is a Lac Ste. Anne Métis and is responsible for leading consultation activities on behalf of the community with respect to industrial development on Gunn Métis Local 55's traditional lands.⁸⁰⁶

824. Ms. Crossen indicated that her home is approximately four kilometres from the proposed transmission line, and that deceased Gunn Métis Local 55 member, Gayle Findlay, owned a

⁸⁰⁵ Exhibit 21030-X1002, Tab 1 TKU Expert Report - GML 55 Alberta Powerlines Final, PDF page 10.

⁸⁰⁶ Transcript, Volume 14, page 2986, lines 8 to 16.

home within 800 metres of the transmission line. Similarly, Dr. Friedel testified that her family home, where she grew up and where her father still resides, is located within 800 metres of the transmission line right-of-way.⁸⁰⁷ Dr. Friedel testified that she uses lands within the project area for traditional purposes.

825. Gunn Métis Local 55 submitted that Alberta PowerLine's application is devoid of Métis-specific information. In the course of its consultations with Alberta PowerLine, Gunn Métis Local 55 requested funding to complete additional studies to understand the impacts of the project on its members; however, Alberta PowerLine refused to provide support in this regard.⁸⁰⁸ Dr. Friedel explained that in a letter dated July 12, 2016, Alberta PowerLine provided a proposal to work with Gunn Métis Local 55's members to identify site-specific concerns. Gunn Métis Local 55 declined the proposal because the hearing was imminent, the work would not be completed in advance of the hearing, and the proposal did not contemplate funding. This proposal was also unacceptable to the Gunn Métis Local 55 because its members can be hesitant to provide their land use information to individuals and corporations outside of the community, and the process had no oversight from a regulatory body.

826. According to Gunn Métis Local 55, in a meeting on April 24, 2015, Alberta PowerLine indicated that it was not prepared to provide capacity funding, including funding for a traditional land use study or the costs associated with the Gunn Métis Local 55's review of the applications. Gunn Métis Local 55 also requested GIS shapefiles⁸⁰⁹ to assess the impacts of the route but Alberta PowerLine declined to provide them. Gunn Métis Local 55 submitted that it wished to continue working with Alberta PowerLine. It requested that the Commission not approve the project and order Alberta PowerLine to engage in meaningful consultation with it. Alternatively, Gunn Métis Local 55 requested that the Commission impose the following conditions on the project's approval:

- Alberta PowerLine be required to work with Gunn Métis Local 55 to help complete the work plan that it first identified in July 2015 or, at worse, the one identified in May of 2016.
- Alberta PowerLine must complete a special use vegetation survey in consultation with Gunn Métis Local 55.
- Alberta PowerLine must conduct meaningful consultation to support further study of Gunn Métis Local 55 traditional land use.
- Work with Gunn Métis Local 55 to develop construction plans that will minimize impacts to its members; that Alberta PowerLine will not use herbicides in the right-of-way.
- That the application [is] modified to reduce the footprint of the towers and avoid the use of guyed wire structures.⁸¹⁰

⁸⁰⁷ Transcript, Volume 14, page 2985, line 13 to page 2986, line 4.

⁸⁰⁸ Transcript, Volume 14, page 2990, lines 12 to 18.

⁸⁰⁹ Geographic information system (GIS) is a system designed to capture, store, manipulate, analyze and manage and present spatial or geographic data.

⁸¹⁰ Exhibit 21030-X1001, Written Submissions of GML 55, pages 8 to 9.

827. Gunn Métis Local 55 confirmed that the GIS shapefiles were provided by Alberta PowerLine in November of 2015.

13.4 Views of Alberta PowerLine

828. Alberta PowerLine retained CH2M to provide reply evidence on the project's potential impacts on traditional land and resource use. As described below, it was the evidence of Alberta PowerLine that given the mitigation measures proposed, the project should not result in impacts on the traditional land use of members of the Aboriginal groups.

829. According to its evidence, Alberta PowerLine has been engaged with Gunn Métis Local 55 since early 2015. Alberta PowerLine's Aboriginal liaison team as well as CH2M, both of which have expertise in traditional land use, reviewed the information submitted by Gunn Métis Local 55.⁸¹¹ The information provided by Gunn Métis Local 55 included trails and travel ways, habitation sites, hunting, fishing, trapping, guiding, planning, harvesting and sacred sites along and in close proximity to the project.

830. Alberta PowerLine explained that it had requested that Gunn Métis Local 55 provide the locations of specific traditional land use sites. Based on the information received, Alberta PowerLine stated that it understood that the Gunn Métis Local 55 members' current uses included trails and travel ways, hunting, fishing, plant gathering and a sacred area. In its reply evidence, Alberta PowerLine listed these sites in a table that included the approximate distances between specific geographic locations and the project.

831. Gunn Métis Local 55 identified the Lac Ste. Anne Trail and a network of trails used for resource harvesting activities that intersects with the west route option and the southern portion of the common route.⁸¹² CH2M concluded that the project has the potential to disturb trails and travel ways, hunting, fishing, plant gathering and sacred sites that may be located on the right-of-way during construction and site-specific maintenance. Due to safety concerns along the right-of-way during construction, the Gunn Métis Local 55 members may not have full access to the trails.

832. Alberta PowerLine committed to discuss, and to the extent reasonably possible, adopt avoidance or mitigation measures to minimize potential impacts on these sites. For example, with respect to the Lac Ste. Anne Trail, possible mitigation measures may include adjusting structure placement to ensure towers do not disturb the trail, use of lay-down mats to prevent disturbance of the area, and ensuring the trail is left unobstructed post-construction. However, it does not expect construction to permanently affect trails used by the Gunn Métis Local 55 members. Alberta PowerLine expects that during operations, the Gunn Métis Local 55 members would be able to use the project right-of-way for accessing trails.

833. Based on the locations and sites identified by Gunn Métis Local 55, CH2M anticipated that the project would have minimal effect on trapping, fishing, hunting and gathering activities. Alberta PowerLine specified that the majority of the project land near Gunn Métis Local 55's area is private and not Crown land, and concluded that it does not expect the project to result in a substantial impact to land available for traditional land and resource activities.

⁸¹¹ Transcript, Volume 7, page 1320, lines 7 to 9.

⁸¹² Exhibit 21030-X1002, Tab 1 TKU Expert Report - GML 55 Alberta Powerlines Final, pages 27 and 41; and Transcript, Volume 20, page 4234.

834. Further, Alberta PowerLine confirmed in its reply evidence that it is committed to continuing to consult and engage Gunn Métis Local 55 throughout the project and would provide notice of construction activities near the Lac Ste. Anne Trail identified by Gunn Métis Local 55.

835. In response to a request for an undertaking, Alberta PowerLine filed a letter dated July 12, 2016 in which it indicated that, should Gunn Métis Local 55 retain a consultant to “gather GIS data, perform analysis, create maps and document the process, methods and data limitations (includes fees, expenses, and travel)” it would ensure that experienced Alberta PowerLine representatives attend all of the meetings and site visits to record the information provided, including GIS data and map creations, any concerns raised, as well as previously proposed mitigation measures.

836. In its letter it offered to provide an undisclosed amount of direct funding to the Gunn Métis Local 55 to support consultation activities. The funding offered included Elder honoraria and transportation costs associated with field visits. However, no agreement was reached.

837. Alberta PowerLine committed to notifying Gunn Métis Local 55 when and where construction would occur to aid in minimizing interference with traditional land use activities. In addition, the majority of the Crown lands traversed by the project would be constructed under frozen conditions which would reduce the potential for conflict with these traditional land use activities. The disturbance of cultural use sites and disruption of resource harvesting activities is expected to be confined to the construction period, be restricted to the project footprint, be of short-term in duration, and be reversible and minor in magnitude. The Gunn Métis Local 55 members would also be able to access traditional land use sites once construction is complete. Alberta PowerLine submitted that given the mitigation measures proposed, the project should not result in impacts on the traditional land use of members of the Aboriginal groups.

13.5 Views of Beaver Lake Cree Nation

838. Beaver Lake Cree Nation is the other Aboriginal group that participated in the hearing and expressed concerns about the potential effects of the project’s approval on their traditional land and resource use in the vicinity of the proposed transmission line.⁸¹³ Beaver Lake Cree Nation retained Certes Applied and Natural Sciences (Certes) to provide evidence on their members’ respective traditional land uses. Ms. Keely Winnitoy and Mr. George Jennings appeared at the hearing on behalf of Certes.

839. Five members of Beaver Lake Cree Nation appeared at the hearing. Clayton Cunningham from the Intergovernmental Affairs and Industry Relations office for Beaver Lake Cree Nation appeared with the following four Elders: Elder Kurtis Gladue, Elder Eric Lameman, Elder Gary Smallface and Elder James Gladue.

840. Beaver Lake Cree Nation consists of approximately 1,139 members who have, for generations, hunted, gathered, fished and trapped in their traditional territory. Beaver Lake Cree Nation is a “band” under the *Indian Act* and is a signatory to Treaty 6. Its reserve, I.R. Beaver Lake 131, is located in east-central Alberta, on the southwestern shores of Beaver Lake

⁸¹³ Traditional land and resource use means the historical use of the land and water by an Aboriginal group for cultural, subsistence and other purposes. It refers to the use of land by Aboriginal people for any traditional purpose, and encompasses activities such as hunting, fishing, gathering, and cultural ceremonies.

approximately 15 kilometres south of Lac La Biche, and approximately 116 kilometres from the east route option and 165 kilometres from the west route option.⁸¹⁴

841. Beaver Lake Cree Nation indicated that its members have exercised and continue to exercise their Aboriginal and treaty rights in the vicinity of the project. If approved, the project will take up Crown land, thereby reducing the amount of land available to the Beaver Lake Cree Nation members to engage in and teach subsequent generations their traditional land use activities. Their traditional activities include hunting, gathering, fishing, trapping and other traditional land use activities that are integral parts of the Beaver Lake Cree Nation's culture. In addition, the project would contribute to the cumulative effects of development which have negatively affected the Beaver Lake Cree Nation members' ability to exercise their rights.

842. Although the reserve is not traversed by the transmission line, the Beaver Lake Cree Nation members exercise their treaty harvesting rights on Crown lands throughout their traditional territory. Additionally, the proximity of the project to Beaver Lake Cree Nation's main reserve increases the likelihood that traditional land use activities not documented through the traditional land use study occur in the area.

843. Members access Crown lands along both the east and west route options, north of the Athabasca River. Along the west route option, the Beaver Lake Cree Nation members identified accessing townships W-14 to W-29 on the route maps Alberta PowerLine provided. Along the east route option, members identified accessing townships E-12 to E-22 on the Alberta PowerLine maps.

844. All members of Beaver Lake Cree Nation who gave affidavits identified past or current plant gathering sites in the project area and each member expressed concern about the effects of the project on gathering such as the direct removal of vegetation during the project's construction. Elder Dwayne Bergsma-Frenchman stated that he was last in the project area 15-years previously and would return if the area would remain "clean and undisturbed".⁸¹⁵ Members also noted that plant habitat beyond the project footprint would be altered as a result of clearing, as some plants such as blueberries grow best in shady conditions that would be impacted by clearing. Elder K.Gladue discussed gathering diamond willow fungus for spiritual ceremonies. The affidavit data regarding habitation or camping sites indicated that people would camp seasonally when out hunting or gathering, and that members usually learned about camping from family members. Some of the members who gave affidavits said that they had camped in the project area while hunting, including the Slave Lake area.⁸¹⁶ In addition to concerns about effects on traditional land use activities, the Beaver Lake Cree Nation members who gave affidavits also communicated that the project will be a loss for nature and the environment and expressed concerns about impacts of the transmission lines and right-of-way maintenance activities on wildlife.

845. Beaver Lake Cree Nation classified the project's impacts on their rights as long-term because the transmission line would be in service for at least 35 years and there is currently no predicted date by which reclamation would begin. Given the life of the project, the Beaver Lake

⁸¹⁴ Exhibit 21030-X1045, PDF page 9.

⁸¹⁵ Exhibit 21030-X1038, Appendix_ Executed Affidavit _ Dwayne Bergsma-Frenchman.

⁸¹⁶ Exhibit 21030-X1038 through to Exhibit 21030-X1045.

Cree Nation members will be unable to pass on their traditional knowledge related to sites in the project area to the next generation.

846. Beaver Lake Cree Nation was concerned that the applications contain no information about Aboriginal traditional land use activities nor any assessment of the projects impact(s) on Aboriginal land use. Specifically, Alberta PowerLine's routing criteria, which favour siting the project on Crown land, did not take into account traditional land use in siting the project. In their view, Alberta PowerLine should have worked with Beaver Lake Cree Nation's members, and other Aboriginal communities, to conduct traditional land use studies early in the route planning process. They stated that this information should have been collected in advance of filing the applications with the Commission.

13.6 Testimony on traditional land and resource use

847. The following excerpts were selected by the Commission from the testimony of Beaver Creek Nation Elders and members in regard to their personal and community knowledge and experiences.

But if there's an existing right-of-way somewhere, or it was mentioned by the elders here yesterday or my colleagues that it could be if they're by the road if it's possible instead of going into opening more virgin land and destroying it, that's my concern is our forests. There is not too much of them left.⁸¹⁷ (Elder J. Gladue)

The land has already been disturbed already, and there's no animal or -- that's going to go there. They don't go there very often.⁸¹⁸ (Elder J. Gladue)

And my grandfather used to say, you know, they use so much equipment, they bulldoze the land, it's like peeling Mother Earth's skin, and everything that she grows is gone...the diamond willow has a lot of significance in our culture. For me, like I use it, or arena directors and our powwows use that for a walking stick, and one would have to be at a powwow to know what a walking stick is, to see it, to witness something like that... And these are the things that we get from our land in order to conduct ceremonies.⁸¹⁹ (Elder J. Gladue)

...people speak of reclamation, it doesn't work. Once you've hurt something, you've stripped something down, you've put herbicides down, reclamation or not, it will never grow back the same way.⁸²⁰ (Elder Lameman)

We sit by the fire, we gather our thoughts, we talk about old days, then we talk about how things are starting to disappear. You know, dense forest -because everything is there, everything is at our fingertips there, not like when there's Alpac, or whoever has gone through, or transmission lines, it's cleared away, and we can't sit there and talk about what's going to happen the next day or what happened in the past, those days will be gone.⁸²¹ (Elder J. Gladue)

⁸¹⁷ Transcript, Volume 17, page 3594, lines 13 to 19.

⁸¹⁸ Transcript, Volume 17, page 3595, lines 4 to 6.

⁸¹⁹ Transcript, Volume 16, page 3544, lines 5 to 25.

⁸²⁰ Transcript, Volume 16, page 3534, lines 21 to 25.

⁸²¹ Transcript, Volume 16, page 3550, lines 5 to 13.

...our children don't realize what it is that we're losing, if we don't pass that knowledge on, then what have they got? They have nothing. They can't be going into the bush when there's only four, five, six tree standing, that's not a bush.⁸²² (Elder J. Gladue)

13.7 Certes Report

848. As stated above, Certes was retained to conduct a traditional land use overview (the Certes Report) for Beaver Lake Cree Nation. The Certes Report discussed Beaver Lake Cree Nation's historic and current traditional land use, and drew preliminary conclusions regarding the project's anticipated impacts on Beaver Lake Cree Nation's traditional land use. Proposed mitigation measures to reduce the project's impacts on Beaver Lake Cree Nation's traditional land use were also included.

849. The Certes Report is based on two sets of information: the traditional land use study conducted by Beaver Lake Cree Nation and Certes in 2015, for which 59 Beaver Lake Cree Nation members were interviewed regarding their traditional land use and exercise of rights; and six affidavits were sworn by the Beaver Lake Cree Nation members in February and March of 2016 on use of the project area and concerns with the project's potential impacts discussed above. Certes was not involved in the collection of the affidavits; this process was led by Beaver Lake Cree Nation Intergovernmental Affairs and Industry Relations Department.

850. The traditional land use study was conducted in 2015 and was not undertaken with reference to or knowledge of Alberta PowerLine's project. A structured questionnaire was administered by a Beaver Lake Cree Nation research team (trained by Certes) to 59 Beaver Lake Cree Nation members to obtain details of traditional land use sites and activities. The Beaver Lake Cree Nation members who gave interviews were selected based on their past or present engagement in traditional land use activities. Elders were given priority in the interview process. Following this, both previously and presently used traditional land use sites were mapped under the interviewee's direction by Beaver Lake Cree Nation research team. Details were then recorded for each site mapped during the interview, including: the activities done at the site, the species used, seasonality of use, how the site was learned about, method of access to the site, duration and timeframe of use, and barriers to use of the site. Following the interviews with the Beaver Lake Cree Nation members, the recorded spatial data was digitized and the site forms were entered into a database.

851. Certes explained that the affidavits it relied upon were the same affidavits filed on the record of this proceeding in support of Beaver Lake Cree Nation's statement of intent to participate. The affidavits followed a semi-structured interview format, employing a standard questionnaire to solicit information about current traditional land use sites and activities with a focus on the project area. The Beaver Lake Cree Nation members who gave the affidavits were specifically sought out based on their knowledge of the lands in and around the project area. The traditional land use activities identified in the affidavits included hunting, fishing, gathering, trapping, camping, traveling and ceremonial uses of the land. Information recorded on each traditional land use activity included duration of the activity during the interviewee's lifetime and species of plant or animal, if collected. The Beaver Lake Cree Nation members were also asked how their land use activities have changed over time, whether they currently pass on knowledge regarding traditional land use or plan to do this, how they think their traditional land

⁸²² Transcript, Volume 16, page 3545, lines 20 to 24.

use activities would be affected by the project, and whether they have any concerns about the project.

852. The most common impacts described by the Beaver Lake Cree Nation members in their affidavits included:

- Increased access to the project area which will result in more people in the area, who will cause more disturbance, pollution and pressure on resources, with related effects on all traditional land use activities.
- Removal or disturbance of vegetation and related effects on plant gathering.
- Loss or disturbance of animal habitat, sensory disturbances on wildlife, and related effects on hunting and trapping.
- Reductions in water quality and fish habitat and related effects on fishing.

853. The preliminary assessment presented in the Certes Report discussed the following seven categories of traditional land use: fishing, gathering, hunting, trapping, habitation, spiritual or ceremonial, and travel. The preliminary assessment is based on the assumption that all industrial development projects primarily affect traditional land use through the following mechanisms:

- Effects on Sites and Access = changes, including direct disturbance, to land use sites or access to these sites.
- Effects on Conditions = changes to aspects of the natural or human environment that may deter individuals from engaging in land use, such as sensory impacts related to noise, visual or aesthetic disturbance, odours, loss of solitude or peace, or changes that result in perceptions or observations of contamination or concerns regarding personal safety.
- Effects on Resources = changes to land, water, air or to harvested species, including decreased quality or health of resources, decreased quantity or abundance of resources, direct loss or disturbance of vegetation communities, wildlife mortality or movement away from project areas, loss or fragmentation of habitat, and/or increased pressure on species due to competition from other land users.

854. The Certes Report concluded that while the available evidence indicates that site-specific project effects on Beaver Lake Cree Nation are likely, further research, including “ground-truthing” and additional interviews, is required in order to determine the precise nature and extent of those impacts.

855. At the hearing Ms. Winnitoy explained that her role was to prepare the report and clarified that she had not read the caribou protection plan completed for the project.⁸²³

13.8 Beaver Lake Cree Nation requested conditions

856. Beaver Lake Cree Nation stated that it is not against all development, but wants to make sure development is balanced with the need to protect its members’ way of life for future

⁸²³ Transcript, Volume 16, page 3571.

generations. It requested certain conditions relating to developing mitigation and avoidance measures, ongoing engagement and inclusion in the reclamation process. Specifically, in its opening statement, Beaver Lake Cree Nation requested that the Commission impose the following conditions on the project's approval. Alberta PowerLine should be required to:

- Work with Beaver Lake Cree Nation to develop measures to mitigate or avoid impacts on Beaver Lake Cree Nation based on the findings of the aforementioned study.
- File a monitoring program with the Commission that would cover the life of the project, and include a description of how Alberta PowerLine took Aboriginal traditional knowledge and traditional land use studies into consideration in developing the program. The monitoring program must be shared with affected Aboriginal communities.
- File a pre-construction plan for identifying Beaver Lake Cree Nation potentially-affected traditional land use sites or resources that arise from detailed routing and design. This plan should describe the methods to identify the sites and resources, and summarize consultation. This plan must be shared with potentially-impacted Aboriginal communities.
- File a report describing the pre-construction traditional land use investigations undertaken to identify potentially-affected traditional land use sites or resources, including diamond willows. This report should include Alberta PowerLine's methods, a description of traditional land use sites, a summary of any new mitigation measures and explain any outstanding issues or concerns. Alberta PowerLine must share this report with potentially-affected Aboriginal communities.
- Conduct a project-specific traditional land use study in collaboration with Beaver Lake Cree Nation. The project-specific study should address Beaver Lake Cree Nation's traditional land use, project impacts and recommended mitigation. This study would be focused on the portions of the project area located on Crown land and include ground-truthing and site visits, particularly with respect to gathering locations identified by members. Beaver Lake Cree Nation submitted that the study and development of mitigation measures ought to be done in advance of any approval for the project, or at the very least before construction begins on the right-of-way located on Crown lands.
- Take reasonable steps to ensure that those sites are avoided or otherwise protected where there are rare, unique or significant localized plant communities that are central to Beaver Lake Cree Nation's traditional practices located on or immediately next to the right-of-way or new access. Alberta PowerLine should consult Beaver Lake Cree Nation about its proposed protection measures, and demonstrably incorporate traditional ecological knowledge shared by Beaver Lake Cree Nation with Alberta PowerLine into the development of these measures. Alberta PowerLine should monitor the effectiveness of any mitigation measures and annually provide a report to the Commission and affected Aboriginal communities for the life of the project.
- Provide at least two weeks' notice to Beaver Lake Cree Nation to enable its members to collect and harvest medicinal, ceremonial and other traditionally important plants and species, including diamond willow fungus, prior to commencing construction in identified traditional land use areas.

- File an access management plan which includes a summary of its consultations about the plan with potentially-affected Aboriginal groups.⁸²⁴

857. At the hearing, Alberta PowerLine made several commitments to further consult with Beaver Lake Cree Nation. However, it was important to Beaver Lake Cree Nation that these commitments be made legally binding, either through a condition to the project's approval, or by entering into an agreement with Beaver Lake Cree Nation.

13.9 Alberta PowerLine reply

858. Alberta PowerLine responded to the contention that the application materials were deficient and do not have sufficient information regarding potential impacts on traditional land and resource use. It submitted that the Commission has, on the record before it, substantial information on potential impacts to traditional land use and sufficient information to identify and assess the project's potential impacts. In this regard, it referred to the EA report prepared by CH2M that evaluated effects of the project on species and habitat, including species of cultural and traditional importance, native vegetation, and fish and fish habitat; and CH2M's reply evidence to address specific concerns raised by the interveners, including the project's impacts on traditional land and resource use.⁸²⁵

859. Certain traditional land use sites identified by Beaver Lake Cree Nation in its written evidence were identified by Alberta PowerLine in its reply evidence, to which it added a chart setting out these sites.⁸²⁶ Alberta PowerLine added that additional traditional land and resource use information provided by the Beaver Lake Cree Nation members, and information gathered through ongoing consultation, will be incorporated into project design and planning.⁸²⁷

860. Alberta PowerLine contended that the project footprint will impact a very small portion of the areas identified by Beaver Lake Cree Nation.⁸²⁸ In this regard, Mr. Jennings confirmed that the applied-for routes are outside of the core of Beaver Lake Cree Nation's traditional territory.⁸²⁹

861. Further, the project would be constructed under frozen conditions which is designed to reduce the potential for conflict with Aboriginal parties' traditional land and resource use. Alberta PowerLine added that Beaver Lake Cree Nation's members would be able to access the traditional land and resource use sites once construction is completed. Mr. Martin testified that the disturbance of cultural use sites and disruption of resource harvesting activities is expected to be restricted to the construction period, limited to the project footprint; short-term in duration; reversible; and minor in magnitude.⁸³⁰

862. Alberta PowerLine noted that both the Willow Springs Report and Elder J. Gladue stated that it would be preferable to have the transmission line follow linear disturbances instead of being routed through previously undisturbed territory. Therefore, Alberta PowerLine argued that

⁸²⁴ Exhibit 21030-X1563, Opening statement, mutatis mutandis.

⁸²⁵ Exhibit 21030-X1204.02, Reply Evidence_7September2016_Clean (003).

⁸²⁶ Transcript, Volume 18, page 3726, lines 3 to 8.

⁸²⁷ Transcript, Volume 18, page 3727, lines 18 to 21.

⁸²⁸ Exhibit 21030-X1205.02, Clean Version of Revised APL Reply Evidence, PDF page 194.

⁸²⁹ Transcript, Volume 16, page 3555, lines 1 to 4.

⁸³⁰ Transcript, Volume 18, page 3728, lines 2 to 7.

because the west route option follows substantially more existing linear disturbance, it better minimizes impacts to traditional land and resource use.⁸³¹

863. Alberta PowerLine submitted that the imposition of the requested conditions is not warranted for a number of reasons. Firstly, Alberta PowerLine has committed to minimizing project-related impacts including effects to Beaver Lake Cree Nation's harvesting practices. Secondly, Alberta PowerLine offered to conduct site visits with Beaver Lake Cree Nation's members to identify specific areas of concern where diamond willow fungus is currently harvested and is working towards identifying appropriate mitigation measures such as leaving certain trees in place where possible, or affording opportunities for members to harvest fungus prior to clearing.⁸³² Thirdly, Alberta PowerLine would identify the location of diamond willow or limit tree trimming to topping diamond willow trees as a preliminary mitigation measure and would discuss further mitigation measures with the Beaver Lake Cree Nation members.⁸³³ If Beaver Lake Cree Nation's members were to identify specific harvesting sites on the right-of-way, Alberta PowerLine committed to discussing mitigation measures and, to the extent reasonably possible, avoid these locations. Avoidance measures may include not locating structures or access roads on the site, flagging or temporarily fencing of the site where the traditional resource is located. Mitigation measures include restricted traffic, use of lay-down mats or other temporary protective materials to protect sites with active vegetation harvesting.⁸³⁴ Fourthly, Alberta PowerLine indicated that it is prepared to consider involving Beaver Lake Cree Nation's members as monitors in certain locations throughout construction activities.⁸³⁵ Finally, Alberta PowerLine would provide a minimum of two weeks' advance notice of construction and maintenance activities in specific areas of cultural importance identified by Beaver Lake Cree Nation.⁸³⁶

864. In addition, Alberta PowerLine indicated that it would prepare an access management plan to the project right-of-way for the traditional land use areas identified by Beaver Lake Cree Nation.⁸³⁷

13.10 Commission findings

865. In assessing the project's potential adverse impacts on traditional land and resource use by the Beaver Lake Cree Nation and Gunn Métis Local 55 members, the Commission considered all the relevant information before it, including:

- The applications and supporting documents, and all other material information regarding the consultation undertaken by Alberta PowerLine with Beaver Lake Cree Nation and Gunn Métis Local 55.
- The views of Beaver Lake Cree Nation and Gunn Métis Local 55, as expressed in their affidavits and oral evidence, presentations, written evidence, and final arguments.

⁸³¹ Transcript, Volume 18, page 3715, lines 4 to 8.

⁸³² Exhibit 21030-X1205.02, Clean Version of Revised APL Reply Evidence, PDF page 199; and Exhibit 21030-X1204.02 - Reply Evidence_7September2016_Clean (003), PDF page 42.

⁸³³ Transcript, Volume 13, page 1799.

⁸³⁴ Exhibit 1205, PDF page 42.

⁸³⁵ Transcript, Volume 8, page 1535, lines 11 to 25.

⁸³⁶ Exhibit 21030-X1204.02, Reply Evidence_7September2016_Clean (003), PDF page 42.

⁸³⁷ Transcript, Volume 8, page 1502, lines 12 to 21.

- Proposed mitigation measures that would avoid or mitigate project impacts on traditional land and resource use of Beaver Lake Cree Nation and Gunn Métis Local 55.

866. For the purposes of assessing standing in this proceeding, the Commission stated that it was prepared to assume, without deciding, that each Aboriginal group is entitled to exercise its Aboriginal and, if applicable, treaty rights in the areas asserted in their respective submissions. In line with this approach, the Commission has presumed, without deciding, that Beaver Lake Cree Nation and Gunn Métis Local 55 and their respective members are entitled to exercise Aboriginal and, if applicable, treaty rights in the areas they identified. No party to the proceeding contested that either Gunn Métis Local 55 or Beaver Lake Cree Nation is entitled to exercise their Aboriginal rights within the traditional territory used by their members, as asserted.

867. Pursuant to Rule 007, applicants are to make reasonable efforts to engage with potentially-affected Aboriginal groups and to file relevant information with the Commission. This may include evidence on the nature of the interests and concerns of Aboriginal groups potentially affected by the project, the concerns that were raised, and the manner and degree to which the applicant has addressed or will address those concerns. This complements the technical information that addresses impacts of a project on, among other things, wildlife and vegetation. In many instances, the applicant may be in a position to respond to Aboriginal concerns about a project before an application is filed and while the project is still in the early stages of development. The consultation process conducted prior to the hearing is of paramount importance and may impact the nature of the application materials filed with the Commission. The Commission's full reasons with respect to consultation are found in Section 6.

868. Under Section 17 of the *Alberta Utilities Commission Act*, in assessing the potential impacts of the project and determining whether it is in the public interest, the Commission considers the nature and extent of the concerns of Aboriginal groups in the context of how the project may affect their traditional land and resource use. The Commission then weighs the interests and concerns of Aboriginal groups with other economic, social and environmental effects of the project.

869. The oral hearing provided an opportunity for Aboriginal groups to share their traditional knowledge with the Commission. The Commission values this traditional knowledge. It provides important context and information and allowed the Commission to better understand the nature and extent of the interests and concerns of Beaver Lake Cree Nation and Gunn Métis Local 55, and how the project may affect their traditional land and resource use. The Commission appreciated the Beaver Lake Cree Nation and Gunn Métis Local 55 members' decision to describe their traditional land and resource use and this information was of assistance to it in making its decision on the applications.

870. In support of their conclusions and recommendations, both Willow Springs and Certes stated that a full scale traditional land and resource use study would have to be conducted to understand the project's impacts. The Commission accepts that Mr. Jennings, Ms. Winnitoy and Mr. O'Connor have expertise in conducting traditional land and resource use studies, and found their evidence on the information they had relied upon in drafting their respective reports to be useful. However, neither Willow Springs nor Certes had been retained to conduct a full scale traditional land and resource use study for this project and each partly relied on historical data. Ms. Winnitoy explained that the 2015 study that formed the basis of the Certes Report was not

completed in relation to the project and Mr. O'Connor relied on previously-collected data in combination with further information from a focus group.

871. In assessing the weight of these consultants' evidence, the Commission has taken into account their familiarity with the project. Ms. Winnitoy explained that she had gone through the project materials quickly and not in a lot of detail⁸³⁸ and appeared unfamiliar with some of the project mitigation measures, including those proposed for the North Saskatchewan River and the Caribou Protection Plan.⁸³⁹ Mr. O'Connor was also unfamiliar with some of Alberta PowerLine's proposed mitigation measures, including its commitment to visit the right-of-way with the Gunn Métis Local 55 members.⁸⁴⁰

872. Both Beaver Lake Cree Nation and Gunn Métis Local 55 contended in their written submissions that the applications did not have sufficient information on potential impacts on traditional land and resource use.

873. The applications, as filed, were sufficient to be deemed complete and for the Commission to issue a notice of hearing. However, when evaluating the sufficiency of the applications to arrive at a decision on whether to approve the project, the Commission has taken into account all materials filed by the applicants and not only the information initially filed in support of the applications in December of 2015. Hence, should the Commission find in making this decision that there is insufficient information before it to determine the project's potential impacts on asserted Aboriginal rights, it may exercise its discretion under Section 19 of the *Hydro and Electric Energy Act* to either deny the applications before it or impose conditions requiring Alberta PowerLine to complete a traditional land and resource use assessment.

874. The Commission's rules do not require applicants for transmission lines to include traditional land and resource use assessments as a part of their application. For the following reasons, the Commission is satisfied that the materials filed on the record of this proceeding are sufficient to identify potential impacts on the exercise of Aboriginal rights.

875. Alberta PowerLine provided a summary of its Aboriginal consultation and an environmental assessment when it filed its applications for the project in 2015. As discussed earlier in Section 6, Alberta PowerLine began consulting with Gunn Métis Local 55 before the applications were filed, and with Beaver Lake Cree Nation after its concerns became known. The evidence indicated that, upon request, Alberta PowerLine provided shapefiles to assist any Aboriginal group in identifying areas where their members exercise their rights.

876. The Commission also finds that the routing approach adopted by Alberta Powerline considered the impacts on Aboriginal traditional land and resource use. In this regard, Alberta PowerLine sought to parallel existing transmission lines or other linear disturbances to the extent possible. This approach reduces the project footprint and minimizes fragmentation of the landscape which, in turn, reduces the potential effects of the project on the environment and on Aboriginal traditional land and resource use. The Commission notes that witnesses from both Gunn Métis Local 55 and Beaver Lake First Nation stated that paralleling existing linear disturbances reduces the project's impact on traditional land and resource use.

⁸³⁸ Transcript, Volume 15, page 3580, line 18.

⁸³⁹ Transcript, Volume 15, page 3575, line 3.

⁸⁴⁰ Transcript, Volume 15, page 3093, lines 7 to 9.

877. In its original applications, Alberta PowerLine stated that it would continue to consult with stakeholders, including Aboriginal groups⁸⁴¹ throughout the project⁸⁴² and Alberta PowerLine subsequently committed to visiting the right-of-way with members of Aboriginal groups to identify further traditional land and resource use sites.

878. Both Gunn Métis Local 55 and Beaver Lake Cree Nation have requested that Alberta PowerLine fund a traditional land and resource use study and impose other conditions on the project's approval. The Commission is of the view that it is not necessary to require Alberta PowerLine to conduct studies on traditional land and resource use by these Aboriginal groups. Both Gunn Métis Local 55 and Beaver Lake Cree Nation were aware of the project prior to early 2016⁸⁴³ and both have had an opportunity to put forward technical experts, challenge Alberta PowerLine's evidence, and present their traditional knowledge. Evidence of traditional land and resource use was filed and presented during the course of the proceeding, including Elders' and members' first-hand knowledge and expertise on potential project impacts. The Commission finds that Beaver Lake Cree Nation and Gunn Métis Local 55 had a sufficient opportunity to present evidence of specific impacts of the project on their traditional land and resource use in this proceeding.

879. Alberta PowerLine's reply evidence describes the specific sites where traditional land and resource use may occur, as identified by the Aboriginal groups in this proceeding, and proposes avoidance or mitigation measures to minimize disturbance. Alberta PowerLine also committed to visiting the right-of-way with members of Aboriginal groups to identify further traditional land and resource use sites, to continue to engage with potentially-affected Aboriginal groups throughout the life of the project and to incorporate any additional mitigation measures into the final environmental protection plan. Alberta PowerLine's representatives testified that it will be able to either; (a) avoid siting project components on identified traditional land and resource use sites by moving project components such as transmission line structures along the right-of-way or (b) employ mitigation measures, such as the use of lay-down mats to protect plant species during construction. For these reasons, the Commission will not order Alberta PowerLine to complete traditional land and resource use studies.

880. The Commission recognizes that the project, by introducing industrial development into the area, could create some impacts to traditional land and resources use sites that are not easily mitigated. In order to better identify and address potential adverse impacts on specific, identifiable traditional land and resource use sites along, or in close proximity to, the right-of-way, the Commission would impose the following conditions to an approval of the project:

- Within four months of the date of this decision, Alberta Powerline shall make representatives available to conduct up to three site visits with each of Gunn Métis Local 55 and Beaver Lake Cree Nation, along the specific portions of the right-of-way where members of Gunn Metis Local 55 and Beaver Lake Cree Nation carry out their traditional land and resource use, to allow members of these Aboriginal groups an opportunity to identify specific traditional land and resource use sites. Alberta PowerLine must provide

⁸⁴¹ Exhibit 21030-X0003, Attach 03 - Public Involvement Program – Final, PDF page 172.

⁸⁴² Exhibit 21030-X0003, Attach 03 - Public Involvement Program – Final, PDF page 8.

⁸⁴³ Gunn Métis Local 55 received shapefiles from Alberta PowerLine since in 2015 and the Beaver Lake Cree Nation filed a statement of intent to participate on the record of this proceeding in February 2016.

reasonable notice of the date and times of the site visit(s) to both Gunn Métis Local 55 and Beaver Lake Cree Nation.

- Alberta PowerLine shall provide relevant information concerning construction activities such as clearing in areas where members of Gunn Métis Local 55 or Beaver Lake Cree Nation conduct their traditional land and resource use at least two weeks prior to construction.

881. Alberta PowerLine has committed to specific mitigation measures discussed above including continuing to engage with potentially-affected Aboriginal groups throughout the life of the project and to incorporate any additional mitigation measures into the final environmental protection plan. The Commission expects Alberta PowerLine to do so in a meaningful way, and to address concerns brought forward by Aboriginal groups, to the extent possible.

882. With the implementation of these conditions and commitments, the Commission finds that Alberta PowerLine has taken reasonable steps to mitigate the project's potential impacts on their traditional land and resource use. In making this finding, the Commission has relied on Alberta PowerLine's representation that it will be able to locate and avoid, or use mitigation measures to protect, the traditional land and resource use sites identified along the right-of-way.⁸⁴⁴ The Commission has also taken into account its finding on the project's environmental impacts and on Alberta PowerLine's proposed mitigation measures with respect to species harvested by the Gunn Métis Local 55 and Beaver Lake Cree Nation members.

14 Business impacts

883. The Commission received submissions and argument on the impact that the proposed transmission lines would have on a number of businesses. For the common portions of the transmission lines, it heard evidence from gravel operators, MWC, a landowner planning a campground on land currently mined for gravel, and Brion, the licensee of an oilsands SAGD operation. With respect to the east route option, the Commission heard the concerns of Austin Powder Company (Austin Powder), the owner of an explosive storage site. The Commission also received information on impacts to agricultural businesses, which are addressed in the agricultural impacts section of this decision.

884. Two groups of gravel operators opposed the routing of the south common portion of transmission line 12L41. The first group, Dunhill Group Inc. and 1531486 Alberta Ltd., have gravel holdings in the northwest quarter of Section 27, Township 53, Range 3, west of the Fifth Meridian and the southwest quarter of Section 34, Township 53, Range 3, west of the Fifth Meridian respectively and are concerned about the potential impacts of the proposed transmission line on future gravel mining operations. They opposed the routing of the proposed transmission line adjacent to their future gravel operations. The second group consisted of Burnco Rock Products Ltd. (Burnco), Lehigh Hanson Materials Limited and Tricycle Lane Ranches Ltd. The proposed transmission line would traverse the gravel pit operations and lands to be developed into gravel pit operations of this group. Burnco has gravel operations at two locations, the Keephills location north of the North Saskatchewan River and the Highway 16

⁸⁴⁴ Transcript, Volume 18, page 3724, line 24 to page 3725, line 4.

location west of Westland Park subdivision. Lehigh Hanson Materials Limited has one gravel operation for which, at the time of the hearing, mining had not begun.

14.1 Views of Alberta PowerLine

885. In its routing of the proposed transmission line, Alberta PowerLine considered known and approved developments and specified that approved and existing developments received more weight than those at the conceptual plan stage. In its weighting, it considered that the exact location of an approved development is known.

14.1.1 Gravel operators

886. In relation to the gravel operations of Burnco, Alberta PowerLine argued that for the Burnco Keephills location, the transmission line structures would be placed outside or directly on the edge of the mining area. Although when questioned, Mr. Ulrich Scheidegger of Burnco agreed that the transmission line structures would be placed on public land, he indicated that one transmission line structure had the potential to impact Burnco land because of the land required to sustain the transmission line structure base.⁸⁴⁵ Further, Burnco's evidence stated that the area is not currently permitted for gravel⁸⁴⁶ extraction operations because the development permit for the Keephills location was amended to remove the area where this transmission line structures would be placed.⁸⁴⁷

887. At the Highway 16 location, Alberta PowerLine placed some of the proposed transmission line structures in areas where the gravel had been partially mined. Although one transmission line structure is proposed to be placed on the Lehigh Hanson Materials Limited lands, which have yet to be mined, Alberta PowerLine stated that it would work with Lehigh Hanson Materials Limited to facilitate gravel extraction prior to the construction of the proposed transmission line. Alberta PowerLine contended that in any event, one transmission line structure is a small area compared to the entire quarter section which Lehigh has for gravel extraction.

888. Alberta PowerLine argued that three of the transmission line structures at the Highway 16 location are outside of the area presently approved for gravel extraction⁸⁴⁸ and noted that both the South of 43 Group and Burnco filed the permits issued to Burnco for the Highway 16 operation which showed that there was a 1,000 foot buffer between the gravel operations and Westland Park subdivision. Extraction of gravel is therefore not permitted where the transmission line routing is proposed, adjacent to Westland Park subdivision.

889. For a transmission line routed through a gravel pit operation, occupational health and safety requirements do not allow extraction within 30 metres of a transmission line on either side of the right-of-way. Alberta PowerLine stated that it had researched the occupational health and safety requirements and found that an acceptance could be obtained from Occupational Health and Safety, Alberta Labour, to mine gravel in the 30-metre set back area and under the

⁸⁴⁵ Transcript, Volume 11, page 2227, lines 12 to 19.

⁸⁴⁶ The term gravel was used interchangeably with the term aggregate throughout examination, which describes sand, rocks, gravel, crushed stone and shale.

⁸⁴⁷ Exhibit 21030-X0945, Burnco_Part 9_pages238 to 350, PDF page 100.

⁸⁴⁸ Transcript, Volume 18, page 3747, lines 14 to 16.

right-of-way.⁸⁴⁹ An acceptance is a waiver to be able to mine in the setback area and within the right-of-way of a transmission line.

890. It is Alberta PowerLine's understanding that an application for an acceptance could not be made until the transmission line was constructed and mining was about to occur near the transmission line.⁸⁵⁰ Alberta PowerLine acknowledged that only the gravel operator could apply for the acceptance to mine under the transmission line, but committed to working with Burnco and do everything possible to help with the process.

891. Alberta PowerLine added that it would raise the height of the clearance of the transmission line over the gravel operations to 16.9 metres, from 12.5 metres, to assist in accommodating mining operation and equipment beneath the line. Alberta PowerLine stated that during consultation Burnco indicated that it would be able to work with a 16.9-metre clearance. Alberta PowerLine recognized that some gravel pit operations would not be permitted near the transmission line, but that as long as the clearance requirements are maintained to safely work near the proposed transmission line it is feasible to extract gravel in the transmission line area.⁸⁵¹ Burnco later clarified that it believes Lehigh Hanson Materials Limited indicated that it would be able to work around the 16.9-metre clearance but that Burnco still had concerns.⁸⁵²

892. Alberta PowerLine stated that it worked with Burnco to place structures where some excavation had already occurred and land had already been reclaimed, on the northwest quarter of Section 22, Township 53, Range 3, west of the Fifth Meridian.⁸⁵³ The planned gravel excavation in the southwest quarter of Section 22, Township 53, Range 3, west of the Fifth Meridian would not to occur until 2024.⁸⁵⁴

893. Under cross-examination about a transmission line structure placement in an end pit lake, Mr. Merrifield stated that Alberta PowerLine had worked with Burnco and Tricycle Lane Ranches Ltd. to span the end pit lake, which would require the placement of two transmission line structures on Tricycle Lane Ranches Ltd. lands on either end of the lake. Because Tricycle Lane Ranches Ltd. did not want the additional transmission line structure on its lands, Alberta PowerLine decided not to span the end pit lake and placed one transmission line structure south of Tricycle Lane Ranches Ltd. property and one structure in the end pit lake.⁸⁵⁵ Mr. Kostyk testified that maintaining a transmission line structure located in a lake is not unusual and would require similar maintenance to the transmission line located in the muskeg area.⁸⁵⁶

894. Alberta PowerLine acknowledged that because of this placement of the transmission line structure in the end pit lake, Burnco would be required to re-open and re-notify parties to obtain regulatory approvals. Alberta PowerLine stated that this was considered when developing the route. However, parties who appealed in the regulatory process for the change in approvals would be required to demonstrate new impacts and, in Alberta PowerLine's view, no new

⁸⁴⁹ Transcript, Volume 1, page 197, lines 11 to 18.

⁸⁵⁰ Transcript, Volume 1, page 201 line 25 to page 202, line 6.

⁸⁵¹ Transcript, Volume 2, page 235, lines 3 to 14.

⁸⁵² Transcript, Volume 11, page 2246, lines 20 to 21.

⁸⁵³ Transcript, Volume 1, page 209, lines 6 to 12.

⁸⁵⁴ Transcript, Volume 1, page 209, lines 13 to 19.

⁸⁵⁵ Transcript, Volume 1, page 211, lines 11 to 19.

⁸⁵⁶ Transcript, Volume 2, page 254, lines 5 to 12.

impacts were created by this transmission line structure placement.⁸⁵⁷ Nevertheless, Alberta PowerLine did acknowledge that there was risk involved in applying to amend such an approval.

14.1.2 MWC Investments Inc.

895. One of MWC's concerns is that the proposed transmission line would restrict the amount of gravel that could be extracted on its land prior to the development of a campground. In response, Alberta PowerLine stated that it located its transmission line structures on lands that Burnco has already mined, and the structures would not reduce the amount of gravel that Burnco would extract from MWC's property.

896. With respect to MWC's future campground development, Alberta PowerLine stated that, at the time of the application, the county had not received an application for the campground, or issued municipal permits for the development, and that the campground development was at the conceptual plan stage only.⁸⁵⁸ Alberta PowerLine added that the planned campground would be compatible with the proposed transmission line and provided an example of two 500-kV transmission lines adjacent to a campground within Daroga State Park in Washington State, USA. According to Alberta PowerLine, the Daroga State Park campground example was a good comparison to MWC's campground as both would have campsites adjacent to a transmission line, and a transmission line that crosses a body of water used for recreational purposes.⁸⁵⁹

897. Alberta PowerLine stated that it located the proposed transmission line such that it would span the proposed lake at the narrowest crossing location, and contended that with minor alterations to the campground conceptual plan, such as the relocation of a road and the removal of five campsites to be located on the right-of-way, the campground would be compatible with the transmission line. Alberta PowerLine stated that it previously investigated a route option that avoided the MWC land, but found that the option was not viable.⁸⁶⁰ Alberta PowerLine added that placing the transmission line to the east edge of the property would increase the proximity of the transmission line to the existing Westland Park subdivision.⁸⁶¹ With respect to visually screening, Alberta PowerLine indicated that although vegetation heights must be limited along the right-of-way, trees could be planted outside of the right-of-way to screen the transmission line. It added that it would work with MWC to allow compatible vegetation to be planted within the right-of-way. Alberta PowerLine also indicated that the trees currently planted for the campground are outside of the proposed right-of-way and would be available for transplanting in accordance with MWC's current plans.⁸⁶²

14.1.3 Brion Energy Corporation

898. Alberta PowerLine noted that the approved Brion project area is large. Alberta PowerLine views transmission lines and SAGD operations as compatible developments and attempted to find ways to minimize potential conflicts so that both industrial developments

⁸⁵⁷ Transcript, Volume 1, page 215, lines 6 to 12.

⁸⁵⁸ Transcript, Volume 2, page 265, lines 8 to 11.

⁸⁵⁹ Transcript, Volume 18, page 3753, lines 4 to 11.

⁸⁶⁰ Exhibit 21030-X1205.02, Clean Version of Revised APL Reply Evidence, PDF pages 56 to 59.

⁸⁶¹ Transcript, Volume 18, page 3752, lines 7 to 12.

⁸⁶² Transcript, Volume 18, page 3752, lines 17 to 20.

could be located in a common area.⁸⁶³ It added that an existing transmission line, 9L57, traverses the development area,⁸⁶⁴ as well as two new transmission lines 9L19 and 9L28.⁸⁶⁵

899. Alberta PowerLine stated that although it is aware that Brion has an approved area to develop its SAGD operation, the approval and related land rights dispositions do not provide Brion with exclusive rights to all of the land and that other surface dispositions may be issued for Crown land in Brion's approved area over the course of Brion's planning horizon.⁸⁶⁶ Alberta PowerLine added that it had reviewed public lands standing reports to identify all the different dispositions on the land base. The report contained a consultative notification for companies, in this case, for Brion. Alberta PowerLine explained that the notation required it to consult with Brion because Brion has an approval for its oilsands development, the MRCP, even if there was no SAGD development in the MRCP area where the transmission line route was proposed. Alberta PowerLine consulted Brion to understand its plans to develop the MRCP and its operations.⁸⁶⁷

900. In an effort to make refinements to the transmission line routing, throughout 2015, Alberta PowerLine asked Brion for specific planned surface locations for future development, such as well pads, roads and pipelines.⁸⁶⁸ Alberta PowerLine indicated that Brion was not agreeable to any routing within the MRCP and did not provide an adequate level of detail for future planned well pad locations until after the application was filed with the Commission.⁸⁶⁹ It received this information in 2016 and developed common route variations 1 and 2 in an attempt to alleviate Brion's concerns, based on the information then available, because final locations of Brion's SAGD facilities in the area of the proposed transmission line were not known.⁸⁷⁰ Moreover, the transmission line would be constructed prior to any anticipated Brion facilities in the area and Brion could adjust the location of its facilities.⁸⁷¹

901. Common route variation 1 incorporates a jog around a well pad that was planned by Brion in its most current information. Common route variation 2 which resembles Brion's proposed route, locates the transmission line around the MRCP project area, is longer and parallels less existing linear disturbances. Alberta PowerLine stated that the preferred route and common route variation 1 follow existing transmission line and pipeline corridors and are in proximity of existing all-weather access roads. Common route variation 2 follows less existing linear disturbances and is not located near all-weather access roads.⁸⁷² Brion supported common route variation 2. While Alberta PowerLine is prepared to construct that route, it was not prepared to make it the preferred route, because it follows less linear disturbances and is not preferred by Alberta Environment and Parks.⁸⁷³

⁸⁶³ Transcript, Volume 7, page 1297, line 23 to page 1298, line 7.

⁸⁶⁴ Transcript, Volume 14, page 2948, lines 4 to 10.

⁸⁶⁵ Transcript, Volume 18, page 3783, lines 10 to 14.

⁸⁶⁶ Exhibit 21030-X1205.02, Clean Version of Revised APL Reply Evidence, PDF page 63.

⁸⁶⁷ Transcript, Volume 7, page 1300, line 18 to page 1301, line 22.

⁸⁶⁸ Transcript, Volume 7, page 1306, line 21 to page 1307, line 2.

⁸⁶⁹ Exhibit 21030-X1205.02, Clean Version of Revised APL Reply Evidence, PDF page 62.

⁸⁷⁰ Transcript, Volume 7, page 1310, lines 10 to 24.

⁸⁷¹ Transcript, Volume 18, page 3783, lines 19 to 22.

⁸⁷² Transcript, Volume 18, page 3784, lines 1 to 12.

⁸⁷³ Transcript, Volume 18, page 3782, lines 11 to 17.

902. Alberta PowerLine submitted that the preferred routing is consistent with the Lower Athabasca Regional Plan, which states that industrial operators, along with the diversity of commercial operators that directly and indirectly support oilsands development, must work together to better integrate their activities on public lands. Alberta PowerLine stated that the routing of the transmission line in areas of industrial development and following linear developments integrated the land use, concentrated land disturbance to a more localized area, and reduced land fragmentation.⁸⁷⁴

903. Alberta PowerLine indicated that its practice of routing transmission lines with existing development is consistent with regional planning initiatives such as the Lower Athabasca Regional Plan because it reduces further land fragmentation.⁸⁷⁵ The Lower Athabasca Regional Plan states:

The LARP [Lower Athabasca Regional Plan] will make integrated land management between all industrial operators on public land a necessary element of doing business. This will result in better co-ordination of industrial activities, such as shared road networks and infrastructure on public lands; reducing land disturbance of the productive forest land base and minimizing timber shortfalls; and reducing environmental impacts through minimizing the extent and duration of land disturbance footprint.⁸⁷⁶

904. Alberta PowerLine stated its routing is consistent with the Lower Athabasca Regional Plan's integrated land management goals because it traverses areas that have previous industrial development and follows linear disturbances.⁸⁷⁷

905. In addition, Alberta PowerLine indicated that the Comprehensive Regional Infrastructure Sustainability Plan for the Athabasca Oil Sands Area recommends the development of multi-use corridors when planning infrastructure. Alberta PowerLine added that the portion of the common route north of Township Road 83 is located in the Comprehensive Regional Infrastructure Sustainability Plan's multi-use corridor for 98 kilometres.⁸⁷⁸

906. Alberta PowerLine confirmed that it is required to follow the Lower Athabasca Regional Plan, as directed in Rule 007.⁸⁷⁹ While the Regional Outcome Number 1 is that the economic potential of the oilsands resource is optimized, Alberta PowerLine submitted that another regional outcome supports integrated land management in an effort to minimize disturbance and co-ordinate operations.⁸⁸⁰ It stated that the Lower Athabasca Regional Plan does not indicate that any one regional outcome is more important than another.⁸⁸¹

907. Alberta PowerLine has also committed to allowing Brion to use the transmission line right-of-way for future development to further minimize landscape footprint and fragmentation.⁸⁸²

⁸⁷⁴ Exhibit 21030-X1205.02, Clean Version of Revised APL Reply Evidence, PDF page 66.

⁸⁷⁵ Exhibit 21030-X1205.02, Clean Version of Revised APL Reply Evidence, PDF pages 65 to 66.

⁸⁷⁶ Exhibit 21030-X1487, Lower Athabasca Regional Plan 2012-2022 Approved 2012-08, PDF page 25.

⁸⁷⁷ Exhibit 21030-X1205.02, Clean Version of Revised APL Reply Evidence, PDF page 66.

⁸⁷⁸ Exhibit 21030-X1205.02, Clean Version of Revised APL Reply Evidence, PDF page 67.

⁸⁷⁹ Transcript, Volume 7, page 1313, lines 18 to 25.

⁸⁸⁰ Exhibit 21030-X1487, Lower Athabasca Regional Plan 2012-2022 Approved 2012-08, PDF page 19.

⁸⁸¹ Transcript, Volume 18, page 3187, lines 5 to 9.

⁸⁸² Exhibit 21030-X1205.02, Clean Version of Revised APL Reply Evidence, PDF page 68.

908. In its consultation with Brion, Alberta PowerLine has stated that it “would not object to Brion conducting underground SAGD operations beneath the 12L44 transmission line, provided all SAGD activities conform to applicable regulatory requirements and do not directly conflict with structure foundations. In a telephone conversation between Brion and Alberta PowerLine representatives, Alberta PowerLine confirmed that “directly conflict with structure foundations” was limited to the potential collision of SAGD wells with the foundations or anchor systems required for its power line.⁸⁸³

14.1.4 Austin Powder Company

909. Alberta PowerLine stated it consulted with Austin Powder during the consultation period prior to filing its application, and that Austin Powder did not indicate any concerns with the transmission line.⁸⁸⁴ It was upon review of Austin Powder’s evidence, that it learned that the explosive storage facilities require a setback diameter of 760 metres from the transmission line. Alberta PowerLine stated that it would consider potential mitigation measures, such as alignment shifts to respect the necessary setback requirements for Austin Powder’s facilities.⁸⁸⁵ Alberta PowerLine noted that other mitigation measures include a reduction in net explosive quantity, which would reduce the setback distance, or the relocation of Austin Powder storage facilities. Alberta PowerLine pointed to Austin Powder’s statement that it would likely reduce its net explosive quantity in its storage facility if a residence encroached onto the residential setback.⁸⁸⁶ Alberta PowerLine committed to continue working with Austin Powder to adopt mitigation or avoidance measures, should the east route option be approved.⁸⁸⁷

14.2 Views of the interveners

14.2.1 Gravel operators

910. Dunhill Group Inc. and 1531486 Alberta Ltd. acknowledged Alberta PowerLine’s amendment to move transmission line 12L41 off their lands. Regardless, Dunhill Group Inc. and 1531486 Alberta Ltd. maintained that they continued to be opposed to the transmission line routing adjacent to their land on the property line. They contested Alberta PowerLine’s definition that a property line is a linear disturbance.

911. Burnco argued that gravel is a non-renewable resource and it is increasingly becoming of very limited quantity within 40 kilometres of the city of Edmonton. There are also a number of expenses incurred in establishing a gravel pit operation. A gravel pit operation potentially requires approvals from seven different regulators before it can operate a mining location, and permitting can take time. Mr. Scheidegger of Burnco testified that it took four years to obtain a permit for the Highway 16 location, and approximately 10 years to obtain approvals for the Keepphills location.⁸⁸⁸ Road and intersection development was also required for trucking the gravel off the Highway 16 site, and cost approximately \$4.5 million in an up-front cost to Burnco.⁸⁸⁹ Burnco was also required to post funds for reclamation of the site in the event that the company went into insolvency. Mr. Scheidegger testified that the impact of the proposed

⁸⁸³ Exhibit 21030-X0891, Brion Written Evidence, PDF pages 5 to 6.

⁸⁸⁴ Exhibit 21030-X1205.02, Clean Version of Revised APL Reply Evidence, PDF page 89.

⁸⁸⁵ Transcript, Volume 18, page 3780, line 25 to page 3781, line 6.

⁸⁸⁶ Transcript, Volume 13, page 2770.

⁸⁸⁷ Transcript, Volume 18, page 3781, lines 7 to 15.

⁸⁸⁸ Transcript, Volume 11, page 2156, lines 1 to 6.

⁸⁸⁹ Transcript, Volume 11, page 2188, lines 7 to 13.

transmission line on the gravel operation is far greater than to other potential adjacent lands, which have different uses such as agriculture.⁸⁹⁰

912. Mr. Cory Pichota explained that the mine plan is very important in order to reduce hauling distance and eliminate double handling of topsoil material. Mr. Scheidegger stated that changes in operational plans because of the transmission line routing may require amendments to several of Burnco's permits and, in such cases, it would incur additional costs.⁸⁹¹

913. Burnco indicated that its permit for the Highway 16 operations initially had a 1,000-foot buffer surrounding two subdivisions that bordered the gravel operations but that it subsequently, applied for, and was successful in obtaining, a permit to extract gravel and build a silt pond within the 1,000-foot buffer. Burnco submitted that it has plans to apply for an additional development permit to extract gravel within the 1,000-foot setback adjacent to Westland Park subdivision.⁸⁹² Burnco stated that it will not be mining the buffer zone next to Westland Park subdivision for another seven to 10 years. The timeline for fully mining the Highway 16 pits is approximately 22 years.⁸⁹³

914. Mr. Scheidegger of Burnco acknowledged that permission to mine under the transmission line right-of-way and in an offset area of 30 metres of the right-of-way can be obtained from Occupational Health and Safety. This is done by way of an acceptance. The process for requesting an acceptance of gravel mines is a new one as previously only an agreement with the right-of-way holders was needed to operate next to the right-of-way. Mr. Scheidegger's concerns were that Alberta PowerLine had given a verbal commitment to assist in gaining the acceptance but not committed to this in writing and during past operations it has been difficult to get responses from right-of-way holders for access.⁸⁹⁴

915. Burnco produced cost estimates of the stranded gravel that would be caused by the proposed placement of the transmission line structures and right-of-way at both the Highway 16 and the Keephills locations. Burnco estimated losses of recoverable income from sterilized gravel under the structures of \$2.2 million and \$1.6 million for the Highway 16 and Keephills operations respectively.⁸⁹⁵ If it was unable to access the right-of-way plus a 30-metre offset, Burnco estimated losses of \$10.5 million and \$10.9 million for the Highway 16 and Keephills operations respectively.⁸⁹⁶ In calculating the sterilized gravel for the Keephills site, Burnco admitted that it included sterilized gravel from the quarter section that was not permitted for gravel extraction at this time.⁸⁹⁷

916. Burnco and Alberta PowerLine discussed mining the areas where transmission line structures were to be located in advance of the construction of the line, but Burnco indicated that this is not possible due to its mining sequence.⁸⁹⁸

⁸⁹⁰ Transcript, Volume 11, page 2203, lines 13 to 17.

⁸⁹¹ Transcript, Volume 11, page 2200, lines 20 to 24.

⁸⁹² Transcript, Volume 11, page 2178, lines 20 to 23.

⁸⁹³ Transcript, Volume 11, Page 2182, line 23.

⁸⁹⁴ Transcript, Volume 11, page 2241, line 16 to 23.

⁸⁹⁵ Exhibit 21030-X0945, Burnco_Part 9_pages 238 to 350, PDF page 103.

⁸⁹⁶ Exhibit 21030-X0945, Burnco_Part 9_pages 238 to 350, PDF page 105.

⁸⁹⁷ Transcript, Volume 11, page 2240, lines 13 to 16.

⁸⁹⁸ Transcript, Volume 11, page 2201, line 21 to page 2202, line 3.

917. After consultation with Alberta PowerLine about the transmission line structure placement in the end pit lake, Burnco acknowledged that Alberta PowerLine contemplated using multiple transmission line structures to span the end pit lake. However, Burnco indicated that such placements would sterilize more gravel and that it preferred the transmission line structure location in the end pit lake, all other things being equal.⁸⁹⁹ Burnco stated that it was very likely that part of this end pit lake was within the 1,000-foot buffer zone around Westland Park subdivision.

918. Burnco acknowledged that the south half of the Keepphills location was not permitted for gravel extraction at this time. The development permits were removed because further environmental study of sturgeon habitat was required.⁹⁰⁰

919. Lehigh Hanson Materials Limited expressed concerns about the transmission line's effects on its gravel operation.⁹⁰¹ Mr. Kevin John testified that although Lehigh Hanson Materials Limited indicated to Alberta PowerLine that it thought it could manipulate its mining plan to first incorporate mining under the transmission line structures, Lehigh Hanson Materials Limited remains unclear on the occupational health and safety issues or whether it could even operate in the right-of-way. Without gaining a better understanding of the occupational health and safety requirements, it is not certain about the potential impacts of the proposed transmission line on its operations. Although it had approval to commence gravel operations at its site in August 2016, because of the uncertainty of the transmission line, Lehigh Hanson Materials Limited decided to wait for a decision on the project so it would fully understand how to proceed.⁹⁰² Lehigh Hanson Materials Limited agreed with Burnco that the transmission line routing should not go through its gravel operations.

920. Mr. John contested Alberta PowerLine's statement that only one transmission line structure would affect its land, as it believes two additional structures, on the north and south border of the land, would create impacts.⁹⁰³ Mr. John later conceded that Lehigh Hanson Materials Limited was unable to mine within the road allowance where the transmission line structures were placed. However, its land would be affected because it could not excavate land adjacent to the structures that provides support for the structures, and a side slope for the structure would be on its land.⁹⁰⁴

14.2.2 MWC Investments Inc.

921. MWC Investments Inc. owns land upon which Burnco currently operates a gravel mine. When the mine is exhausted, Burnco will have to reclaim the land to include a lake.⁹⁰⁵ MWC has plans to develop the reclaimed land into a large campground consisting of 355 campsites and 15 lake lots. MWC stated the proposed west route option would go through the lake and the campground and that the presence of the transmission line would make it impossible for the campground to be constructed. Mr. Robin Selte testified that construction for the campground has started in that approximately \$30,000 worth of trees has been planted. and the lake has been

⁸⁹⁹ Transcript, Volume 11, page 2202, lines 9 to 19.

⁹⁰⁰ Transcript, Volume 11, page 2225, lines 21 to 22.

⁹⁰¹ Transcript, Volume 11, page 2257, line 20 to page 2258, line 9.

⁹⁰² Transcript, Volume 11, page 2260, line 17 to page 2261, line 8.

⁹⁰³ Transcript, Volume 11, page 2262, lines 14 to 18.

⁹⁰⁴ Transcript, Volume 11, page 2263, lines 16 to 20.

⁹⁰⁵ Transcript, Volume 19, page 3920, lines 5 to 8.

registered with the province. MWC submitted that should the transmission line be approved, it was unsure if it would go ahead with its plans to develop a campground and residential lake lots.⁹⁰⁶

922. Mr. Selte testified that he has had numerous discussions with Parkland County, completed multiple plans and made changes to these plans at the request of the county. It had not applied for a development permit⁹⁰⁷ because the Parkland County permit would require construction to begin within one year of approval, and that gravel extraction would continue for another eight years.⁹⁰⁸ It stated that if the transmission line were located on the east edge of the property, it would have an impact but that it would still be comfortable going ahead with the project.⁹⁰⁹

923. MWC Investments Inc. disagreed that the operation of a campground by a transmission line was commercially viable.⁹¹⁰ Mr. Selte stated the lake would be the prime attraction to draw people to the site and for purchasers of residential lots and that the economic risk would be too high because people may not come to a campground if the transmission line crosses the lake and is near the campsites.⁹¹¹

924. MWC Investments Inc. argued that Alberta PowerLine's example of two 500-kV transmissions lines adjacent to a campground within Daroga State Park in Washington State, USA is not representative of its campground because that campground is publically owned by the municipality and is not a privately-owned commercial establishment.⁹¹² It also stated that it appeared the transmission line is located on the edge of the campground and not in the middle of it. It added that there was no evidence on the record to show if the presence of the transmission line affects attendance and economic viability.⁹¹³

14.2.3 Brion Energy Corporation

925. Brion explained that its oilsands SAGD project, the MRCP, would be constructed in four phases to reach an ultimate design capacity of approximately 150,000 barrels of bitumen per day. The proposed transmission line intersects the MRCP, and Brion is concerned that the transmission line would hinder its future development plans and may affect the efficient and economical recovery of bitumen. The MRCP has an approval from the Alberta Energy Regulator,⁹¹⁴ construction began in February 2012, and it is expected to commence operations in December 2016. Brion explained that the commercial scheme approval shows a project area and a development area as defined in Alberta Energy Regulator Directive 78: *Regulatory Application Process for Modifications to Commercial In Situ Oil Sands Projects*.⁹¹⁵ Mr. Devan Newman of Brion stated that the project area contains economically recoverable bitumen. The development area represents the initial area of development for which the specific placement of well pads is

⁹⁰⁶ Transcript, Volume 19, page 3924, line 21 to page 3925, line 3.

⁹⁰⁷ Transcript, Volume 12, page 2356, lines 3 to 5.

⁹⁰⁸ Transcript, Volume 12, page 2363, line 13.

⁹⁰⁹ Exhibit 21030-X1155, MWC Investments Inc. SIP and Transcript, Volume 12, page 2364, lines 12 to 15.

⁹¹⁰ Transcript, Volume 2, page 272, lines 17 to 23.

⁹¹¹ Transcript, Volume 12, page 2357, lines 2 to 20 and Volume 19, pages 3922 to 3923.

⁹¹² Transcript, Volume 2, page 274, lines 12 to 24.

⁹¹³ Transcript, Volume 19, page 3923, lines 22 to 24.

⁹¹⁴ Commercial Scheme Approval No. 11715, December 21, 2011.

⁹¹⁵ Exhibit 21030-X1545, Highlighted copy of Directive 78.

approved.⁹¹⁶ The proposed preferred transmission line route goes through the project area and not the development area.

926. The first phase of the MRCP is designed to produce 35,000 barrels of bitumen per day and is expected to recover over 1.7 million barrels of bitumen over the course of the SAGD project. Brion stated that the MRCP will include approximately 1,000 well pairs from 200 surface pads. It stated that horizontal wells and associated surface infrastructure are continuously optimized and subject to location changes as more geological data and operational results are collected during the course of the SAGD project. The exact locations can only be finalized after the data and results are collected.⁹¹⁷ As operation of the MRCP continues, the well pairs' production rates will decline and additional well pads will be required to maintain the designed capacity levels at the central processing facility. This expansion of wells will begin closest to the central processing facility and gradually expand throughout the Alberta Energy Regulator-approved project area.

927. Mr. Newman took issue with Alberta PowerLine's statement that development in the project area was speculative.⁹¹⁸ Brion argued that development in the project area was not speculative; rather it could not confirm the precise location of future development within the project area. Brion estimated that sustaining well pads in the preferred route area could be required as early as 2026, and Brion would have to amend its scheme approval to expand the development area in 2024, approximately.⁹¹⁹ Mr. Newman clarified that the initial well pads will hit peak oil rate within two to four years, at which time, the development area will produce 35,000 barrels of bitumen per day for a short period of time. As oil rates drop, future sustaining well pads will be required to sustain the operating capacity of 35,000 barrels per day. These new sustaining pads will be developed in the project area.⁹²⁰

928. At the time the MRCP application was submitted to the Alberta Energy Regulator, Brion had conducted a total of 71 stratigraphic delineation wells and 5.1 km² of three-dimensional seismic wells. Brion stated it has now conducted 276 stratigraphic delineation wells, 7.2 km² of three-dimensional seismic wells and 57 kilometres of two-dimensional seismic wells.⁹²¹ The seismic and delineation wells are required to determine the final placement of well pairs and well pads and represent a significant annual capital investment. The drilling of delineation wells will continue. Planning activities for phase 2 are underway, and one of the areas included in this phase is affected by the proposed transmission line. Brion estimated that construction of the well pads potentially affected by the transmission line could begin by 2026.⁹²² Brion stated that the final placement of the well pairs and well pads follow a "just in time" approach to ensure the most up-to-date information is considered to optimize capital expenditures.⁹²³

929. Brion submitted that the proposed transmission line could affect the placement of future well pads and well pairs which would affect the efficient and economic recovery of bitumen. Based on current information, Brion stated that the proposed preferred route would intersect a

⁹¹⁶ Transcript, Volume 14, page 2922, line 14 to page 2923, line 5.

⁹¹⁷ Exhibit 21030-X0891, Brion Written Evidence, PDF page 2.

⁹¹⁸ Transcript, Volume 14, page 2923, lines 11 to 15.

⁹¹⁹ Transcript, Volume 14, page 2950, lines 10 to 16.

⁹²⁰ Transcript, Volume 14, page 2923, line 16 to page 2924, line 24.

⁹²¹ Exhibit 21030-X0891, Brion Written Evidence, PDF page 4.

⁹²² Exhibit 21030-X0891, Brion Written Evidence, PDF page 5.

⁹²³ Exhibit 21030-X0891, Brion Written Evidence, PDF pages 4 to 5.

well pad and two multi-use corridors and it would have to either relocate its well pad by 305 metres or to the opposite end of the drainage box.⁹²⁴ However, the final location of the drainage box has to be identified before the final locations of the well pad and supporting multi-use corridor can be determined.

930. Brion stated that the relocation of a well pad while maintaining the same drainage box would require longer horizontal well lengths, resulting in increased risks to drilling and production. It estimated that the additional drilling to move the well pad 305 metres would cost \$6.48 million, assuming a six well pair pad.⁹²⁵ The relocation would require the multi-use corridor to increase by 252 metres, the cost of which would be approximately \$2.24 million, and introduce a number of risks, including the drilling into a pre-existing well. Brion also anticipated that accommodating the transmission line would lead to poorer reservoir performance due to higher heat loss over the increased distance, which lowers the quality of steam, decreases the oil rate and increases operating costs.

931. According to Brion, the relocation of the drainage box is not expected to increase the cost or risks associated with drilling and production, but would increase the total distance and cost of the supporting multi-use corridor. The corridor includes an access road, power line, and three above-ground pipelines. Brion anticipated that an additional 1.26 kilometres of multi-use corridor would be required at an estimated cost of \$11.21 million.⁹²⁶ Brion added that the relocation of the drainage box has a great environmental impact to the Thickwood Fen. Where possible, Brion has committed to minimizing surface development within Thickwood Fen.

932. Brion acknowledged that Alberta PowerLine was amenable to wells being drilled beneath transmission line structures,⁹²⁷ and added that, should it have to drill its wells beneath the transmission line structures, it would design them to avoid contact with the transmission line foundations and anchoring system.

933. Brion also submitted that the preferred transmission line route is anticipated to cross two multi-use corridors and indicated that the costs of alterations to its multi-use corridor to cross the right-of-way of ATCO Electric Ltd.'s existing 240-kV transmission line⁹²⁸ totalled \$1.01 million in 2013. Accordingly, Brion anticipated that two crossing locations would cost approximately \$2.02 million. Brion requested that Alberta PowerLine pay these costs because the MRCP was approved prior to the filing of the transmission line application, but Alberta PowerLine has refused.⁹²⁹

934. Brion notes that Alberta PowerLine filed route amendments on June 6, 2016, adding two route variations in the area. Common route variation 1 proposed a small jog around a conceptual well pad location. Common route variation 2, which closely resembles the route proposed by Brion, is supported by Brion because it substantially addresses its concerns.⁹³⁰

⁹²⁴ A drainage box is a subsurface area which represents an optimized resource recovery plan given available geological data and optimized surface facility plans.

⁹²⁵ Exhibit 21030-X0891, Brion Written Evidence, PDF page 7.

⁹²⁶ Exhibit 21030-X0891, Brion Written Evidence, PDF page 8.

⁹²⁷ Exhibit 21030-X0891, Brion Written Evidence, PDF page 6.

⁹²⁸ Exhibit 21030-X0891, Brion Written Evidence, PDF pages 9 to 10.

⁹²⁹ Exhibit 21030-X0756, APL-BRION-2016FEB22 Information Request Responses.

⁹³⁰ Exhibit 21030-X1167, Letter to AUC re Brion Energy Application Amendment - July 11, 2016, PDF page 3.

935. Brion stated it did not support common route variation 1 designed to avoid the well pad, because the final location of the well pads has not been determined, causing the same issues it had with the preferred route.⁹³¹ According to Brion, it was equally likely that both the preferred route and the common route variation 1 would affect a well site.

936. Brion disagreed with Alberta PowerLine's generalization that transmission lines are compatible with oilsands operations. It stated that just because transmission lines can be seen in areas of oilsand development does not mean any transmission line can be built through the operation. Brion argued that the phase of development has to be considered; in this case, the MRCP is in the early phase of development, and the area that the transmission line proposes to cross has not yet been developed. If the location of the well pads had already been determined, the routing of the transmission line could be accommodated, however, given the uncertainty of the well pad locations, the only way to route the transmission line through the MRCP is to avoid economically recoverable bitumen.⁹³²

937. Mr. Newman testified that routing the transmission line and associated right-of-way through economically recoverable bitumen did not reflect principles of orderly development and is inconsistent with the first regional outcome of the Lower Athabasca Regional Plan, which states that the economic potential of the oilsands resource should be optimized.⁹³³ In argument, Brion contended that the Commission must administer its powers under the *Hydro and Electric Energy Act* with a view to promoting orderly development, in a harmonized manner, with development approved under the *Oil Sands Conservation Act*. It further argued that approval of the proposed preferred route was contrary to the Commission's legal duty to promote orderly, efficient and economic development. In support of its argument, it cited Decision 21306-D01-2016 in which the Commission states that the provisions of the *Hydro and Electric Energy Act* and the *Oil Sands Conservation Act* should be interpreted in a harmonized manner.⁹³⁴ It added that the approval of the preferred route would be inconsistent with the first regional outcome of the Lower Athabasca Regional Plan, which is to optimize the economic potential of the oilsands.⁹³⁵ It is inconsistent because of the likely negative impacts of the preferred route on economically recoverable bitumen and on development costs. Brion relied upon Section 8.1 of the *Alberta Utilities Commission Act* to argue that the Commission is legally bound by the Lower Athabasca Regional Plan. It acknowledged that although this plan establishes a number of regional outcomes, no outcome takes precedence over another, and also recognizes that environmental protection is an important feature of this plan.

938. Brion contended that common route variation 2 promotes the integration of industrial activities on the landscape which is another regional goal of the Lower Athabasca Regional Plan, because it would route the proposed transmission line between two separate areas of economically recoverable bitumen. Consequently, this route is consistent with the plan.

⁹³¹ Exhibit 21030-X1167, Letter to AUC re Brion Energy Application Amendment - July 11, 2016, PDF page 2.

⁹³² Transcript, Volume 14, page 2933, line 18 to page 2934, line 15.

⁹³³ Transcript, Volume 14, page 2917, lines 9 to 19.

⁹³⁴ Transcript, Volume 20, pages 4168 to 4172. See also Decision 21306-D01-2016, Determination of Compensation for 9L66/9L32 Transmission line Relocation, August 16, 2016.

⁹³⁵ Exhibit 21030-X1487, PDF page 36.

14.2.4 Austin Powder Company

939. Austin Powder, an explosive storage and sales business, has been operating in the area for 30 years. It stated that this particular storage site located on the northeast quarter of Section 24, Township 60, Range 27, west of the Fourth Meridian is its largest site in Alberta. Mr. Allan Stanley testified that if the proposed transmission line were located on the east route option, it would have to relocate its storage area. Mr. Stanley added that there would be substantial expense associated with finding a new site and reclaiming the current site. He estimated that moving off the site and reclaiming the land would cost \$350,000 but was unsure about the cost of a suitable replacement site. Such a move would also affect the employees that live in the area.⁹³⁶ The current site has eight, specially-built elevated steel buildings with protective linings of gravel and plywood.⁹³⁷

940. Austin Powder submitted that the explosive storage area is regulated by the Explosive Regulatory Division of Natural Resources Canada and must be at a designated distance from other storage areas, roads, power lines and inhabited buildings.⁹³⁸ It stated that it would be difficult to find a replacement site given the setback distances required from facilities such as transmission lines, houses and hospitals.⁹³⁹ The current setback from transmission lines is 760 metres⁹⁴⁰ which would not allow for relocation of the storage facilities on the current site.⁹⁴¹ Mr. Stanley stated that the setback distance was a function of the quantity of explosives stored; a smaller quantity results in a decreased setback. In the past, it has had to reduce the quantity of explosives to accommodate a new home.⁹⁴² However, in argument, Austin Powder reiterated that in the case of the transmission line, it would have to relocate⁹⁴³ because a reduction in the quantity of explosives at its largest site would adversely affect its business operations.⁹⁴⁴ It further argued that the explosive storage site is a special constraint, similar to airports and schools, that warrants particular consideration and should be mitigated. Austin Powder argued that there is no such constraint on the west route option.⁹⁴⁵

14.3 Commission findings

14.3.1 Gravel operators

941. Although the Commission considers that transmission lines and gravel operations are compatible industrial uses, it has nonetheless considered the potential impacts of the proposed transmission line on gravel operations.

942. Because Alberta PowerLine moved the routing of the proposed transmission line off the Dunhill Group Inc. and 1531486 Alberta Ltd. lands, there are no impacts to their future gravel operations for the Commission's consideration.

⁹³⁶ Transcript, Volume 13, page 2719, line 23 to page 2720, line 7.

⁹³⁷ Exhibit 21030-X0892, Submissions of the East Route Landowner Opposition Group, PDF page 14.

⁹³⁸ Exhibit 21030-X0897, C - ERLOG Member Submissions, PDF page 3.

⁹³⁹ Transcript, Volume 13, page 2720, lines 9 to 14.

⁹⁴⁰ Exhibit 21030-X1140, ERLOG Information Responses, PDF page 10.

⁹⁴¹ Transcript, Volume 13, page 2722, line 25 to page 2723, line 2.

⁹⁴² Transcript, Volume 13, page 2769, line 19 to page 2770, line 17.

⁹⁴³ Transcript, Volume 13, page 2772, lines 5 to 7.

⁹⁴⁴ Transcript, Volume 20, page 4128, line 18 to page 4129, line 1.

⁹⁴⁵ Transcript, Volume 20, page 4130, lines 2 to 11.

943. At the Burnco Highway 16 location, the placement of three of the transmission line structures is proposed in the 1,000-foot buffer zone between the Westland Park subdivision and the gravel operation. The Commission notes that gravel extraction is not currently permitted in this area. Consequently, the Commission finds that the proposed transmission line routing in this buffer zone is not likely to sterilize any gravel resources. In addition, the Commission considers Burnco's proposal that it may be allowed to mine within the buffer zone in the future to be speculative.

944. In the north half of Section 22, Township 53, Range 3, west of the Fifth Meridian, Alberta PowerLine proposed to place the transmission line structures in locations where Burnco has already partially mined. The Commission considers that this will lessen the impact on the gravel operations in this area.

945. The Commission finds that the proposal to place a transmission line structure in an end pit lake at northwest of Section 15, Township 53, Range 3, west of the Fifth Meridian does not preclude routing in this location. Alberta PowerLine submitted that this is not a unique situation. In addition, Mr. Scheidegger of Burnco stated that, given the option between this structure placement and the placement of two structures to span the lake, Burnco would accept the end pit lake placement.

946. The Commission also notes that Alberta PowerLine has committed to assist Burnco in obtaining an acceptance from Occupational Health and Safety to mine within the transmission line right-of-way and within the 30-metre setback from the right-of-way. In addition, Alberta PowerLine has designed this section of the transmission line to provide for a clearance of 16.9 metres, using self-supporting structures. This will allow Burnco to carry out gravel operations in proximity to the line. The Commission considers that these measures will mitigate somewhat the potential impacts on gravel operations.

947. Burnco does not currently have a mining development permit for the Keepphills location, on the southeast quarter of Section 26, Township 51, Range 3, west of the Fifth Meridian. On the north half of Section 26, Township 51, Range 3, west of the Fifth Meridian, Alberta PowerLine's transmission line structures are proposed to be placed on public land and not in areas where gravel mining will occur under the current development permit. Accordingly, the placement of the transmission line will not impact gravel operations at this location.

948. Burnco filed estimates of the losses it will incur if it is unable to mine in certain areas because of the transmission line. However, these estimates include gravel in areas where it may not have a current mining development permit. In the Commission's view, these elements of the estimate are speculative. In addition, given the proposed mitigation measures, some of the estimated losses may not materialize. Accordingly, the Commission finds the losses are likely overestimated and therefore, unreliable.

949. With respect to Lehigh Hanson Materials Limited's mining operations, mining has not begun and, as a result, Lehigh Hanson Materials Limited acknowledged that it may be able to adjust its mining plan to begin mining gravel on the proposed right-of-way prior to construction of the transmission line.⁹⁴⁶ Lehigh Hanson Materials Limited also confirmed that two of the transmission line structures are to be placed in road allowances on the north and south borders of

⁹⁴⁶ Transcript, Volume 11, page 2258, lines 19 to 25.

its land and that it is not allowed to extract gravel from those road allowances. Nonetheless, Lehigh Hanson Materials Limited's operations may be impacted by the side slope required for these two transmission line structures. The Commission finds that the placement of the transmission line structures on the road allowances and the potential to mine the area prior to the commencement of construction largely mitigates the impacts on Lehigh Hanson Materials Limited's gravel operations.

950. Given the above, the Commission finds that, although there is potential for some losses from foregone gravel in proximity to the proposed transmission line, the quantum of these losses is not well understood. In addition, the Commission finds that Alberta PowerLine has taken reasonable measures to mitigate the impact of the transmission line on gravel operations. For all the above reasons, the Commission is not persuaded that the south common route should be altered so as to avoid gravel operations.

14.3.2 MWC Investments Inc.

951. As in all its decisions on routing, the Commission considers developments that have received municipal approval or which are in the process of obtaining an approval in its deliberations. However, future developments that are at the conceptual planning stage are speculative because they may change depending on matters such as amendments to municipal bylaws, the economy, a change in circumstances of the landowner, or the inability to secure municipal or other government approvals.

952. The evidence before the Commission is that MWC has not applied for a municipal development permit from Parkland County for its proposed campground and residential lots because gravel operations have not yet ceased, and there are constraints associated with the timing of construction under a development permit. Although some activities have been undertaken by MWC, including tree planting and the registration of the proposed end pit lake with the province, the campground and residential lot development are still at the conceptual planning stage. Nonetheless, the Commission assessed the potential impacts of the proposed transmission line on the proposed development.

953. There was no definitive evidence in this proceeding that a transmission line and a campground are not compatible. In the conceptual plan, some campground sites are located within the proposed right-of-way and would have to be relocated. This can be accomplished because the campground plan is still at the conceptual stage. In this regard, Alberta PowerLine also indicated that it would work with MWC to allow compatible vegetation to be planted within the right-of-way and trees to be planted outside of the right-of-way. Further, the proposed alignment of the transmission line across the lake at the narrowest point also contributes to the visual shielding of the transmission line from the campground and residential lots, and reduces the area taken up by the transmission right-of-way. The Commission is satisfied that Alberta PowerLine has taken reasonable steps to minimize the potential impacts of the proposed transmission line on the campground and residential lot development.

954. The Commission accepts the evidence of Alberta PowerLine that routing the proposed transmission line on the east side of the property away from the lake would place the transmission line closer to the existing Westland Park subdivision. In this regard, the Commission finds that the impacts to permanent residences in the subdivision outweigh the

impacts to the guests of the campground and the small number of residential lots in proximity to the transmission line.

955. For all the above reasons, the Commission is not persuaded that the south common route should be altered so as to avoid the campground and residential lots.

14.3.3 Brion Energy Corporation

956. Consistent with its previous decisions, the Commission interprets its powers under the *Hydro and Electric Energy Act* with a view to promoting orderly development in a harmonized manner with developments approved under the *Oil Sands Conservation Act*. The Commission is persuaded, for the reasons set out below, and given its findings in Section 12 of this decision on environmental impacts, that common route variation 1 would adequately promote orderly, efficient and economic development, pursuant to the *Hydro and Electric Energy Act* and the *Oil Sands Conservation Act*.

957. Similarly, the Commission finds that approval of the proposed common route variation 1 would be consistent with the Lower Athabasca Regional Plan, when that plan is read as a whole. In this regard, Brion acknowledged that the Lower Athabasca Regional Plan establishes a number of regional outcomes and that no outcome takes precedence over another, and further, that environmental protection is an important feature of this plan. The Commission also considers that the common route, common route variation 1 and common route variation 2, all promote the integration of industrial activities on the landscape, which is also a goal of the Lower Athabasca Regional Plan.

958. The Commission finds that transmission lines and SAGD oil sands operations are compatible developments, given the presence of three existing transmission lines within Brion's development area. The Commission also finds that it is in the public interest to group industrial development in a common area, in an effort to reduce new environmental impacts. In the Commission's view, common route variation 2 would introduce a new disturbance in an area that is largely undisturbed by industrial development, and create additional environmental impacts, as discussed in Section 12 of this decision. For these reasons the common route and common route variation 1 are preferable to common route variation 2.

959. The Commission accepts the evidence of Alberta PowerLine that Brion can use the transmission line right-of-way for future development to the extent reasonably possible, to further minimize landscape footprint and fragmentation.⁹⁴⁷ The Commission also accepts that the economic recovery of the bitumen or development costs of Brion's oil sands SAGD project may be affected if either the common route or common route variation 1 were approved. However, the evidence before the Commission is that the impact on the recovery of bitumen cannot be reasonably ascertained because well pads have not been finalized in the SAGD project area where the common route or common route variation 1 would be located. The information filed by Brion in April 2016 and events since that time, further underscore the fact that the potential impact on bitumen recovery is uncertain. At that time, the common route was expected to intersect a well pad and two multi-use corridors and Brion would have to either re-locate its well pad by 305 metres or relocate the well pad to the opposite end of the drainage box. However, at the hearing, Mr. Newman of Brion testified that the final location of the well pad and supporting

⁹⁴⁷ Exhibit 21030-X1205.02, Clean Version of Revised APL Reply Evidence, PDF page 68.

multi-use corridor may change because the final location of the drainage box will be based on new information.⁹⁴⁸ Considering that the construction of the well pads that will be potentially impacted by the transmission line may not begin until 2026, and given that the most up to date information is considered in establishing well sites, the Commission finds that the potential impact of the common route or common route variation 1 on economically-recoverable bitumen may change as the project unfolds.

960. Common route variation 1 was developed to avoid the proposed well pad and the cost of its relocation, and the potential impacts to the economic and efficient recovery of bitumen at that location. Accordingly, the Commission finds that common route variation 1 is preferable to the common route.

14.3.4 Austin Powder Company

961. When comparing the west route option with the east route option, the only business impact identified in the proceeding is on the east route option, with respect to Austin Powder. Therefore, the Commission finds that this favours the west route option from a business impact perspective.

962. However should the east option be approved, the Commission finds that while the transmission line on the east route option would affect Austin Powder's business, certain mitigation measures can be implemented to minimize these impacts. For example, the quantity of explosives may be reduced or relocated to other storage sites to decrease the required setback distance from a transmission line. Mr. Stanley of Austin Powder testified that this remedy has already been implemented at a different site to accommodate a residence that encroached on the setback distance. The Commission is satisfied that Alberta PowerLine has adopted adequate mitigation or avoidance measures, including alignment shifts to respect the necessary setback, should the east route option be approved.

15 Associated applications

15.1 AltaLink Management Ltd. application to alter Sunnybrook 510S Substation

15.1.1 Views of AltaLink Management Ltd.

963. AltaLink Management Ltd. is the owner of the Sunnybrook 510S Substation pursuant to Permit and Licence 21150-D02-2015.⁹⁴⁹ The substation is located approximately 1.3 kilometres north of Genesee located in the southwest quarter of Section 36, Township 50, Range 3, west of the Fifth Meridian and in the northwest quarter of Section 25, Township 50, Range 3, west of the Fifth Meridian.

964. The AESO indicated that modifications to Sunnybrook 510S Substation are required to accommodate the termination of the proposed Fort McMurray West 500-kV Project. It applied to the Commission for approval of a needs identification document for those modifications and

⁹⁴⁸ Transcript, Volume 14, page 2934, lines 16 to 19.

⁹⁴⁹ Permit and Licence 21150-D02-2015, Proceeding 21150, December 18, 2015.

received Commission approval on November 19, 2015.⁹⁵⁰ The AESO directed AltaLink Management Ltd. to submit the associated facility application on December 1, 2015.

965. AltaLink Management Ltd.'s applications⁹⁵¹ to modify Sunnybrook 510S Substation and construct a new 500-kV transmission line to accommodate the termination of Alberta PowerLine's proposed 500-kV transmission line 12L41, were filed pursuant to sections 14, 15 and 21 of the *Hydro and Electric Energy Act* on December 8, 2015.

966. AltaLink Management Ltd. stated that due to the proposed alignment of transmission line 12L41, the termination of the transmission line at the west bay is the only option. The following alterations to Sunnybrook 510S Substation are proposed:

- The addition of one 500-kV circuit breaker.
- The addition of one 500-kV shunt reactor bank and one spare shunt unit.
- The addition of one line neutral reactor and one spare neutral reactor.
- Salvage of a portion of the existing fenceline and the expansion to the fenceline by approximately 85 metres by 65 metres to accommodate the new equipment.
- Associated substation equipment.

967. AltaLink Management Ltd. is also applying to construct and operate approximately 100 metres of new 500-kV transmission line, to be designated as 1241L, to connect Alberta PowerLine's transmission line 12L41 to Sunnybrook 510S Substation.

968. AltaLink Management Ltd. stated that the alteration of the substation, and the installation of the new transmission line will occur on previously leased land and that no new land will be required. Upon completion of the alteration, Sunnybrook 510S Substation will contain the following major equipment.⁹⁵²

- Direct-current switchyard:
 - four 500-kV 392 megavolt-ampere (MVA) converter transformers
 - one 500-kV triple tuned direct-current filter bank
 - three 500-kV direct-current air core smoothing reactors, including one spare reactor
- Alternating-current switchyard:
 - 17 500-kV circuit breakers
 - one 500-kV shunt reactor bank and one spare shunt unit
 - two line neutral reactors, including one spare neutral reactor

⁹⁵⁰ Proceeding 20736.

⁹⁵¹ Applications 21030-A007 and 21030-A008.

⁹⁵² Exhibit 21030-X0167, AML Sunnybrook 510S Upgrade – Application, PDF pages 11 to 12.

Reactive power compensation bank 1:

- one 500-kV 150-megavolt-ampere reactive (MVAR) alternating current capacitor sub-bank
- one 500-kV 130-MVAR alternating current filter sub-bank
- one 500-kV 150-MVAR alternating current filter sub-bank
- two 500-kV 110-MVAR shunt reactors, including one spare shunt unit

Reactive power compensation bank 2

- one 500-kV 150-MVAR alternating current filter sub-bank
 - one 500-kV 130-MVAR alternating current filter sub-bank
- two 138-kV 15-MVA station service transformers
 - three 138-kV circuit breakers
 - two 25-kV metal clad multi-cell switchgears
 - one metallic return transfer breaker
- One telecommunications tower and associated telecommunications equipment.

969. AltaLink Management Ltd. stated that the new 1241L transmission line will not have any structures and will utilize Alberta PowerLine's dead-end structure to connect to transmission line 12L41. Approximately 100 metres of buried fibre optic cable will be installed for the length of AltaLink Management Ltd.'s new transmission line and will be connected to its existing telecommunication systems.

970. AltaLink Management Ltd. conducted a participant involvement program, which notified stakeholders within a minimum of 800 metres, and consulted with stakeholders within a minimum of 100 metres of the Sunnybrook 510S Substation. In total, 10 stakeholders were identified, including one landowner.⁹⁵³ AltaLink Management Ltd. stated that no consultation with First Nations was required because this project is not on Crown land or on sites of Aboriginal traditional land and resource use. It stated it was not aware of any outstanding concerns from stakeholders.

971. AltaLink Management Ltd. does not expect environmental impacts from the project because it would occur primarily within or directly adjacent to the existing substation. The lands for the fenceline expansion and transmission line 1241L are previously-disturbed (stripped and graded) terrain and do not have native vegetation.

972. AltaLink Management Ltd. submitted the scope and a map of the proposed alterations to the Sunnybrook 510S Substation to Alberta Environment and Parks for review and has not received feedback. It conducted an online search of databases for species occurrences within the project area and identified a peregrine falcon nest and a western (Boreal) toad breeding pond. Both species are listed as a threatened species or species of special concern under the *Wildlife Act*. AltaLink Management Ltd. added that the proposed upgrades to the

⁹⁵³ Exhibit 21030-X0167 - AML Sunnybrook 510S Upgrade – Application, PDF page 15.

Sunnybrook 510S Substation are outside of the Government of Alberta's recommended year-round setbacks for a peregrine falcon nest and a western (Boreal) toad breeding pond.⁹⁵⁴

973. AltaLink Management Ltd. stated that construction, scheduled to start in 2018, would be during the migratory bird nesting period. It stated that no vegetation clearing is required and that it would conduct appropriate mitigation measures should avian nests or amphibians be encountered.

974. AltaLink Management Ltd. has received *Historical Resources Act* approvals from Alberta Culture and Tourism. It stated it would engage Alberta Culture and Tourism in the unlikely event that historical resources are discovered.

975. AltaLink Management Ltd. conducted a noise impact assessment for the proposed reactor bank additions and the existing energy-released sources in the area. It assessed the audible noise contribution at the five closest receptors, ranging between 1.7 and 2.7 kilometres from the substation. The noise impact assessment concluded that Sunnybrook 510S Substation is expected to be in compliance with Rule 012 after the proposed alterations.

976. AltaLink Management Ltd. is proposing an in-service date of December 3, 2018. It estimated the alterations to the Sunnybrook 510S Substation will cost \$34.7 million (plus 20 per cent/minus 10 per cent) to be allocated entirely as system costs.

15.1.2 Views of the interveners

977. Several interveners submitted information requests to AltaLink Management Ltd. These requests pertained to issues outside of AltaLink Management Ltd.'s Sunnybrook 510S Substation and were not relevant to the alteration of Sunnybrook 510S Substation or new transmission line 1241L.

978. The Wong Group asked to cross-examine AltaLink Management Ltd. at the hearing⁹⁵⁵ but later withdrew this request.⁹⁵⁶

979. Beaver Lake Cree Nation also expressed an intention to cross-examine AltaLink Management Ltd. at the hearing.⁹⁵⁷ AltaLink Management Ltd. submitted that none of the information filed by Beaver Lake Cree Nation suggested any interest in the Sunnybrook 510S Substation vicinity. Beaver Lake Cree Nation later indicated it did not wish to cross-examine AltaLink Management Ltd.⁹⁵⁸

15.1.3 Commission findings

980. The Commission has reviewed the applications and has determined that they meet the requirements for a substation alteration, and construction and operation of a new transmission line. The Commission finds AltaLink Management Ltd.'s participant involvement program to be adequate and it meets the requirements of Rule 007. The Commission is satisfied that there are no outstanding technical, routing, environmental or noise concerns associated with the alteration

⁹⁵⁴ Exhibit 21030-X0167, AML Sunnybrook 510S Upgrade – Application, PDF page 18.

⁹⁵⁵ Exhibit 21030-X1318, Process Submissions of the Wong Group.

⁹⁵⁶ Exhibit 21030-X1436, Wong Group Examination of AltaLink Management Ltd.

⁹⁵⁷ Exhibit 21030-X1444, Cross-examination of AltaLink Management Ltd.

⁹⁵⁸ Exhibit 21030-X1469, Reply to AltaLink's Correspondence Re: Cross-Examination.

and operation of the substation, nor are there any outstanding public or industry objections or concerns. The Commission notes that no objections to AltaLink Management Ltd.'s applications were received following the issuance of a notice of hearing for the combined proceeding on December 29, 2015.

981. The Commission finds that anticipated environmental impacts are minimal for the following reasons: the work is taking place in and adjacent to the existing Sunnybrook 510S Substation; the land has been previously disturbed and the Sunnybrook 510S Substation is outside of the recommended setback distances from any identified threatened species or species of special concern. No vegetation removal is required.

982. The Commission accepts the conclusions of the noise impact assessment and finds that the proposed alterations to the Sunnybrook 510S Substation are in compliance with Rule 012.

983. Based on the foregoing, the Commission considers the application to be in the public interest in accordance with Section 17 of the *Alberta Utilities Commission Act*, and approves the application.

15.2 ATCO Electric Ltd. application to alter Livock 939S Substation

15.2.1 Views of ATCO Electric Ltd.

984. ATCO Electric Ltd. is the owner of Livock 939S Substation within the Municipal District of Opportunity No. 17, pursuant to Permit and Licence U2013-186.⁹⁵⁹ The substation is located approximately 70 kilometres northeast of the hamlet of Wabasca-Desmarais at the northwest quarter of Section 18, Township 85, Range 19, west of the Fourth Meridian, the west half of Section 19, Township 85, Range 19, west of the Fourth Meridian and the southeast quarter of Section 24, Township 85, Range 20, west of the Fourth Meridian.

985. The AESO indicated that modifications to Livock 939S Substation are required to accommodate the termination of the proposed Fort McMurray west project. It applied to the Commission for approval of a needs identification document for those modifications and received Commission approval on November 19, 2015. The AESO directed ATCO Electric Ltd. to submit the associated facility application on December 1, 2015, to facilitate a land transfer to Alberta PowerLine for the 500-kV switchyard, located adjacent to the Livock 939S Substation and provide 25-kV station service.

986. ATCO Electric Ltd.'s application⁹⁶⁰ to modify the Livock 939S Substation was filed pursuant to sections 14 and 15 of the *Hydro and Electric Energy Act* on December 8, 2015.

987. ATCO Electric Ltd. stated that the proposed alteration is minor in nature because one 25-kV circuit breaker will be added to the substation and no alterations to the fenceline are needed. The circuit breaker is required to provide electricity service to the control building and other operational facilities at Alberta PowerLine's proposed 500-kV switchyard. It also stated that it will amend the existing Livock Department Miscellaneous Lease to remove approximately 285 metres by 665 metres of land and transfer it to Alberta PowerLine for the 500-kV switchyard.

⁹⁵⁹ Substation Permit and Licence U2013-186, Proceeding 2116, April 4, 2013.

⁹⁶⁰ Proceeding 21030, Application 21030-A009, ATCO Electric Ltd., December 8, 2015.

⁹⁶⁰ Exhibit 21030-0182-Attch1_Livock Modifications_Text.

988. Upon completion of the alteration, Livock 939S Substation will contain the following major equipment:⁹⁶¹

- one 25-kV circuit breaker
- one 180/240/300-MVA, 240/144-kV load tap changer transformer
- one 360/480/600-MVA, 240-kV transformer
- six 240-kV circuit breakers
- two 144-kV circuit breakers
- one self-supporting telecommunication tower and associated communications equipment
- other substation equipment and an enclosure surrounded by a chain link fence

989. ATCO Electric Ltd. conducted a participant involvement program for the alteration with public notification commencing on August 28, 2015 and consultation taking place between September and October of 2015. It distributed project information packages, containing project information, maps and contact information, to all land interest holders, occupants and residents within 800 metres of the Livock 939S Substation boundary and also provided the information packages to municipalities and government departments. Because the substation is located on Crown land, ATCO Electric Ltd. consulted with Alberta Environment and Parks, but received no objections or concerns.⁹⁶²

990. Although there were no known potential impacts to Aboriginal traditional land and resource use because the alteration occurs within the fenceline, ATCO Electric Ltd. notified the Bigstone Cree Nation, the Chipewyan Prairie First Nation, and the Fort McMurray First Nation. It stated that no concerns were expressed.

991. ATCO Electric Ltd. stated an application for *Historical Resources Act* clearance was not submitted because no new land would be affected by the alteration. It noted that it received *Historical Resources Act* clearance from Alberta Culture and Tourism during the original application for Livock 939S Substation.

992. ATCO Electric Ltd. stated that because the alteration occurs within the fenced boundary and no site excavation is involved, environmental impacts would be minimal. Additional brushing is not required and no adverse effects to soil or groundwater resources during construction are predicted. It confirmed that there have never been polychlorinated biphenyl containing assets, nor reportable releases at the substation site.

993. ATCO Electric Ltd. stated a noise impact assessment was not prepared for the alteration because no noise-producing equipment will be added to the substation.⁹⁶³

994. ATCO Electric Ltd. requested an in-service date of June 2019. It estimated the cost of the alteration to be \$2,610,875 (plus 20 per cent/ minus 10 per cent, 2015 dollars), to be allocated entirely as system costs.

995. ATCO Electric Ltd. stated that no objections or concerns were received in regard to the addition of the 25-kV circuit breaker at Livock 939S Substation.

⁹⁶¹ Exhibit 21030-X0182, Atch1_Livock Modifications_Text, PDF page 2.

⁹⁶² Exhibit 21030-X0182, Atch1_Livock Modifications_Text, PDF page 6.

⁹⁶³ Exhibit 21030-X0182, Atch1_Livock Modifications_Text, PDF page 10.

15.2.2 Commission findings

996. The Commission has reviewed the application and has determined that it meets the requirements for a substation alteration. The Commission finds ATCO Electric Ltd.'s participant involvement program to be adequate and that it meets the requirements of Rule 007. There are no outstanding technical, routing, environmental or noise concerns associated with the alteration and operation of the substation, nor are there any outstanding public or industry objections or concerns. The Commission notes that no objections to the alteration at Livock 939S Substation were received following the issuance a notice of hearing for the combined proceeding on December 29, 2015.

997. The Commission finds environmental impacts to be minimal as the work is within the existing Livock 939S Substation. No additional clearing or land disturbance is required for the project.

998. The Commission is satisfied that a noise impact assessment is not required by Rule 012 because the 25-kV circuit breaker is not noise producing equipment.

999. Based on the foregoing, the Commission considers the application to be in the public interest in accordance with Section 17 of the *Alberta Utilities Commission Act* and approves the application.

15.3 ATCO Electric Ltd. application to alter transmission line 9L913

15.3.1 Views of ATCO Electric Ltd.

1000. ATCO Electric Ltd. is the owner of 240-kV transmission line 9L913 in the Barrhead-Mitsue area pursuant to Permit and Licence AP 83-23.⁹⁶⁴ The transmission line is approximately 98 kilometres long and connects ATCO Electric Ltd.'s Mitsue 732S Substation, located at the northeast quarter of Section 29, Township 72, Range 4, west of the Fifth Meridian to AltaLink Management Ltd.'s 913L transmission line at the southwest quarter of Section 1, Township 63, Range 4, west of the Fifth Meridian.

1001. In Alberta PowerLine's transmission line application, the proposed west route option travels through the Fort Assiniboine Sandhills Wildland Provincial Park, in the vicinity of transmission line 9L913. To avoid additional clearing within Fort Assiniboine Sandhills Wildland Park, Alberta PowerLine requested that its 500-kV transmission line 12L41 be co-located with ATCO Electric Ltd.'s transmission line 9L913 within the existing Crown easement. ATCO Electric Ltd. considered the changes to be minor, that the description of transmission line 9L913 would not change and that a new permit and licence for transmission line 9L913 would not be required. ATCO Electric Ltd. accordingly filed its application⁹⁶⁵ on December 14, 2015 requesting this minor line alteration, pursuant to Section 11 of the *Hydro and Electric Energy Regulation*.

1002. The alterations to transmission line 9L913 are only required if the west route option is approved to locate the proposed transmission line 12L41 on a double-circuit structure along with transmission line 9L913. In total, six 240-kV/500-kV double-circuit structures will be required within the northeast quarter of Section 2, Township 64, Range 4, west of the Fifth Meridian and

⁹⁶⁴ Permit and Licence AP 83-23, Application 821074, June 14, 1983.

⁹⁶⁵ Application 21030-A015.

in the southeast, southwest, and northwest quarters of Section 11, Township 63, Range 4, west of the Fifth Meridian. In addition, a temporary bypass for transmission line 9L913 will be required on an existing clearing during the construction of the double-circuit structures on the existing right-of-way.⁹⁶⁶ The temporary bypass will be approximately 1.5 kilometres long and will be built within the existing cleared transmission line 9L913 easement.

1003. ATCO Electric Ltd. stated that the temporary bypass will be removed following the construction and commissioning of the new double-circuit structures and all structure holes will be backfilled with clean compacted sand. It will replace subsoil and topsoil to a depth comparable to the surrounding area.

1004. ATCO Electric Ltd. consulted with affected landowners, occupants, the municipality and Alberta Environment and Parks. It did not anticipate significant impacts to landowners and has not received any concerns or objections to the alteration.

1005. ATCO Electric Ltd. does not foresee any significant environmental impacts caused by the alteration because the co-location within the existing easement will minimize disturbance. Alberta Environment and Parks is in support of the alteration.⁹⁶⁷

1006. ATCO Electric Ltd. stated it would enter into an agreement with Alberta PowerLine to build approximately one kilometre of transmission line 12L41 on new double-circuit structures within the existing easement of ATCO Electric Ltd.'s 240-kV transmission line 9L913 through the Fort Assiniboine Sandhills Wildland Provincial Park, will continue to hold Crown dispositions for the easement, and will be the owners of the new double-circuit structures. It will enter into an agreement with Alberta PowerLine for the co-location and operation of the 12L41 circuit on ATCO Electric Ltd.'s facilities. The cost of the alteration will be borne by Alberta PowerLine.

1007. ATCO Electric Ltd. requested an in-service date of June 1, 2019.

15.3.2 Commission findings

1008. ATCO Electric Ltd. has provided information on the need, nature, extent, affected land, land ownership and the timing of the work, in accordance with the requirements of Section 12 of the *Hydro and Electric Energy Regulation*.

1009. ATCO Electric Ltd. has demonstrated that the alteration is of a minor nature, no other person is directly and adversely affected by the proposal and no adverse environmental impact will be caused by the proposed alterations, thereby meeting the requirements of Section 11 of the *Hydro and Electric Energy Regulation*. The Commission therefore approves the requested alteration.

15.4 ATCO Electric Ltd. Thickwood Hills transmission development

15.4.1 Views of ATCO Electric Ltd.

1010. The AESO indicated that the proposed Thickwood Hills 240-kV development was required to establish a northern termination point for the Fort McMurray West project, and

⁹⁶⁶ Exhibit 21030-X0229, Letter of Enquiry, PDF page 2.

⁹⁶⁷ Exhibit 21030-X0229, Letter of Enquiry, PDF page 3.

subsequently the Fort McMurray East 500-kV transmission line. It applied to the Commission for approval of a needs identification document for the Thickwood Hills transmission development in Proceeding 3588 and received approval from the Commission on March 12, 2015.⁹⁶⁸ The AESO directed ATCO Electric Ltd. to submit the facility application for the Thickwood Hills transmission development on December 1, 2015, in accordance with Section 35 of the *Electric Utilities Act*.

1011. ATCO Electric Ltd.'s applications⁹⁶⁹ to construct and operate a substation and transmission lines in the Thickwood Hills area were filed, pursuant to sections 14, 15 and 18 of the *Hydro and Electric Energy Act* on December 18, 2015. The Thickwood Hills transmission development consists of the following new facilities:

- A new 240-kV substation, designated as Thickwood Hills 951S Substation.
- Two single-circuit 240-kV transmission lines within a combined right-of-way, connecting Thickwood Hills 951S Substation to existing transmission line 9L01 in an in-out configuration. A portion of existing transmission line 9L01 will be combined with one of the new 240-kV lines and designated as transmission line 9L01; while another portion of the existing line will be combined with the other new 240-kV line to be re-designated as transmission line 9L30.
- Two single-circuit 240-kV transmission lines connecting Thickwood Hills 951S Substation to existing transmission line 9L07 in an in-out configuration. A portion of transmission line 9L07 will be combined with one of the new 240-kV transmission lines and remain designated as 9L07; while another portion of transmission line 9L07 will be combined with the other new 240-kV line to be re-designated as transmission line 9L112. The remaining portion of transmission line 9L112 between the two connection points will be salvaged.

1012. Thickwood Hills 951S Substation will be located approximately 16 kilometres west of the Urban Service Area of Fort McMurray in the Regional Municipality of Wood Buffalo, more specifically in the northeast quarter of Section 32, Township 89, Range 11, west of the Fourth Meridian, the northwest quarter of Section 33, Township 89, Range 11, west of the Fourth Meridian, the southeast quarter of Section 5, Township 90, Range 11, west of the Fourth Meridian and the SW quarter of Section 4, Township 90, Range 11, west of the Fourth Meridian. The substation will consist of a 240-kV switchyard, owned by ATCO Electric Ltd., and a 500-kV switchyard, applied for and owned by Alberta PowerLine. Thickwood Hills 951S Substation will contain the follow major equipment:

- eight 240-kV circuit breakers
- one 100-MVAR, 240-kV capacitor bank
- one +200/-100-MVAR, static VAR compensator system
- one 225-kW back-up propane generator
- one self-supporting telecommunications tower, approximately 34 metres in height

⁹⁶⁸ Decision 3588-D01-2015, NID Approval 3588-D02-2015.

⁹⁶⁹ Applications 21030-A010 to 21030-A014 and Exhibits 21030-X0196 to 21030-X0227.

1013. ATCO Electric Ltd. stated that an 800 metre by 850 metre site is needed for its 240-kV switchyard and Alberta PowerLine's 500-kV switchyard. The 240-kV switchyard will encompass 400 metres by 800 metres with a fenced area of approximately 140 metres by 183 metres⁹⁷⁰ and the 500-kV switchyard for the Fort McMurray West project will encompass the remaining 450 metres by 800 metres. ATCO Electric Ltd. stated it applied to Alberta Environment and Parks for two separate Department Miscellaneous Lease surface dispositions for the two switchyards, totalling approximately 68 hectares.⁹⁷¹

1014. ATCO Electric Ltd. prepared a noise impact assessment for Thickwood Hills 951S Substation. The significant continuous noise sources at the proposed substation will be one 240 kV +200/-100-MVAR Static VAR Compensator System, which comprises three dual coil Thyristor Controlled Reactor air-core reactors, and one 100-MVAR, 240-kV capacitor/filter bank. It stated that the specific details of the static VAR compensator system were not yet available and that equipment noise level assumptions were made using previous ATCO Electric Ltd. projects as examples. The results of the noise impact assessment stated that the noise impact assessment would comply with the daytime permissible sound level but would not comply with nighttime permissible sound level at a distance of 1.5 kilometres, as defined in Rule 012. ATCO Electric Ltd. stated the predominant noise source is the static VAR compensator system and its tendering design package stipulated that the successful bidder must design the system so that the maximum cumulative sound level contribution under worst case operating conditions would not exceed 37 dBA at 1,800 metres from the static VAR compensator system. Should this noise specification not be feasible, the successful bidder would employ mitigation measures such as noise shields and barriers, to reduce the overall noise contribution at the nearest receptor.⁹⁷²

1015. ATCO Electric Ltd. stated that a review of manufacturer sound levels, once detailed equipment selection is complete, will be undertaken prior to equipment installation and to ensure continued compliance with Rule 012. ATCO Electric Ltd. noted that there are no residences within 1,500 metres of the proposed substation and therefore did not anticipate impacts to the public.⁹⁷³

1016. ATCO Electric Ltd. proposed that the new portions of transmission lines 9L01 and 9L30, approximately 20 kilometres in length, be constructed in parallel on a combined right-of-way. The minimum right-of-way width is 62 metres.⁹⁷⁴ Each transmission line will be constructed on single-circuit H-frame structures, approximately 18 to 23 metres in height with a typical span length of 180 to 220 metres.⁹⁷⁵ The transmission lines will be located on two steel lattice G-tower structures, approximately 25 to 35 metres tall, where it crosses existing transmission line 9L07.⁹⁷⁶

1017. ATCO Electric Ltd. proposed that the new portions of transmission lines 9L07 and 9L112, approximately 2.4 kilometres and 3.4 kilometres in length respectively, be constructed on single-circuit H-frame structures, approximately 10 to 23 metres in height with a typical span length of 180 to 220 metres. Where the transmission lines are routed in a cross-country

⁹⁷⁰ Exhibit 21030-X1213, ATCO-TWHApplicationAmendment_Text_20160804, PDF page 2.

⁹⁷¹ Exhibit 21030-X0196, Atch1-ThickwoodHills_Development_Application_text, PDF page 13.

⁹⁷² Exhibit 21030-X0641, ATCO-AUC IR Responses (1-6), PDF page 8.

⁹⁷³ Exhibit 21030-X0196, Atch1-ThickwoodHills_Development_Application_text, PDF pages 38 to 39.

⁹⁷⁴ Exhibit 21030-X0196, Atch1-ThickwoodHills_Development_Application_text, PDF page 16.

⁹⁷⁵ Exhibit 21030-X0196, Atch1-ThickwoodHills_Development_Application_text, PDF page 15.

⁹⁷⁶ Exhibit 21030-X1213, ATCO-TWHApplicationAmendment_Text_20160804, PDF page 2.

alignment, they will be placed in a 34-metre wide right-of-way. In instances where they parallel existing transmission lines, a 26-metre wide right-of-way is used.⁹⁷⁷

1018. To accommodate the in-out configurations into Thickwood Hills 951S Substation, the existing transmission lines 9L01⁹⁷⁸ and 9L07⁹⁷⁹ will need to be altered. Transmission line 9L01 currently connects Ruth Lake 848S Substation to Dover 888S Substation. Following the alteration, the portion of transmission line 9L01 connecting Ruth Lake 848S Substation to Thickwood Hills 951S Substation will remain as transmission line 9L01 and the portion connecting Thickwood Hills 951S Substation to Dover 888S Substation will be redesignated as transmission line 9L30. Transmission line 9L07 currently connects Dawes 2011S Substation to Dover 888S Substation. Following the alteration, the portion of transmission line 9L07 connecting Dawes 2011S Substation to Thickwood Hills 951S Substation will remain as transmission line 9L07 and the portion of the transmission line connecting Thickwood Hills 951S Substation to Dover 888S Substation will be re-designated as transmission line 9L112.

1019. With respect to the portion of transmission line 9L07 to be salvaged, ATCO Electric Ltd. indicated that approximately 3.2 kilometres of the existing line will be salvaged between the proposed connection points of transmission lines 9L07, in LSD 10, Section 31, Township 89, Range 11, west of the Fourth Meridian, and 9L112 in LSD 7, Section 7, Township 90, Range 11, west of the Fourth Meridian.⁹⁸⁰ ATCO Electric Ltd. stated it would remove the poles, conductors and guyed wires and would engage Alberta Environment and Parks regarding the preferred process for releasing the disposition for the salvaged right-of-way back to the Crown.⁹⁸¹

1020. ATCO Electric Ltd. indicated that a temporary bypass is required to ensure the continued operation of transmission line 9L01 during construction of the Thickwood Hills 951S Substation. The bypass would be constructed between the proposed transmission lines 9L01 and 9L30 within the Thickwood Hills 951S Substation Department Miscellaneous Lease boundary, approximately 47 metres outside of the substation fenceline. ATCO Electric Ltd. stated that no additional tree clearing is required.⁹⁸²

1021. The Thickwood Hills transmission development falls within the Lower Athabasca Regional Plan and is located within the Central Mixedwood Subregion of the Boreal Forest National Region. ATCO Electric Ltd. stated this project is consistent with the Lower Athabasca Regional Plan, it follows existing linear disturbances where possible and the project avoids areas with key wildlife and biodiversity zones, does not include Fort Assiniboine Sandhills Wildland Provincial Park, Public Land-use Zones, Provincial Recreational Areas, Public Land Areas, nor identified tourism destinations. The project will not result in ambient air quality conditions exceeding framework limits and does not require the use of ground water. ATCO Electric Ltd. stated that proper consultation was conducted with area stakeholders, including four First Nations in the routing and siting planning stage.⁹⁸³

⁹⁷⁷ Exhibit 21030-X0196, Atch1-ThickwoodHills_Development_Application_text, PDF page 19.

⁹⁷⁸ Permit and Licence U2004-130.

⁹⁷⁹ Permit and Licence U2015-55.

⁹⁸⁰ Exhibit 21030-X0196, Atch1-ThickwoodHills_Development_Application_text, PDF page 20.

⁹⁸¹ Exhibit 21030-X0641, ATCO-AUC IR Responses (1-6), PDF page 3.

⁹⁸² Exhibit 21030-X1213, ATCO-TWHAApplicationAmendment_Text_20160804, PDF page 3.

⁹⁸³ Exhibit 21030-X0196, Atch1-ThickwoodHills_Development_Application_text, PDF page 28.

1022. ATCO Electric Ltd. stated the area is predominately forest and wetlands, generally flat, and has a land use of mixed forestry and oil and gas development. In determining the location of Thickwood Hills 951S Substation and the associated transmission lines, ATCO Electric Ltd. reviewed a 14- by 24-kilometre study area. The study area contains one third-party recreational Protective Notation, put in place to protect recreational snowmobile trails, and one environmentally significant area.

1023. The site for Thickwood Hills 951S Substation was selected based on the location of existing transmission lines, avoidance of sensitive areas, and sufficient and compatible lands. ATCO Electric Ltd. stated the selected site is in close proximity to an all-weather access road and does not anticipate significant local or regional environmental impacts. It added that the project foot print, including Thickwood Hills 951S Substation, overlaps an environmentally significant area for approximately 76 hectares and that any route option within the study area that connects to Thickwood Hills 951S Substation would traverse this environmentally significant area.⁹⁸⁴

1024. CH2M conducted an environmental evaluation for the Thickwood Hills transmission development project.⁹⁸⁵ To avoid loss or decline in value or function of environmentally significant areas located within the project footprint, CH2M recommended reducing clearing to only what is required for infrastructure development and operation, reducing, or avoiding additional work in or around these environmentally significant areas, and conducting activities in dry or frozen ground conditions, if feasible. CH2M stated that the potential environmental effects on aquatic and water resources can be reduced with the implementation of recommended mitigation measures such as the use of existing water crossings. General wetland mitigation measures were recommended for implementation prior to and during construction, in or near wetlands to reduce disturbance. These mitigation measures included reducing construction traffic in wetlands, locating transmission line structures at least 30 metres from the ordinary high watermark, and allowing natural regrowth of wetland vegetation.

1025. A desktop vegetation review was conducted followed by early-season and late-season vegetation surveys. Vegetation field surveys observed two ACIMS-listed vegetation species (cat-tongue liverwort [S2S4] and *Blasia* liverwort [SU]) and one ACIMS-listed rare ecological community (turned sedge marsh) on the project footprint. The potential environmental effects of the project on vegetation are similar to other transmission line developments in this region of the province. CH2M recommended that appropriate mitigation measures be applied during construction to avoid disturbance of native vegetation, disturbance of rare vegetation and rare ecological communities, and the introduction or spread of weeds.⁹⁸⁶

1026. Similarly, a desktop review and wildlife field surveys were conducted to evaluate wildlife and wildlife habitat. The project footprint is within an environmentally significant area but is not located within the caribou range.⁹⁸⁷ The desktop review and field surveys found 17 wildlife species with conservation status that are potentially within the study area. CH2M recommended paralleling existing linear features, minimizing habitat disturbance, installation of bird deterrents, construction outside of bird migration periods and the implementation of appropriate setbacks as

⁹⁸⁴ Exhibit 21030-X0196, Atch1-ThickwoodHills_Development_Application_text, PDF pages 30 to 31.

⁹⁸⁵ Exhibit 21030-X0197, Atch2-ThickwoodHills_Environmental_Evaluation.

⁹⁸⁶ Exhibit 21030-X0197, Atch2-ThickwoodHills_Environmental_Evaluation, PDF page 60.

⁹⁸⁷ Exhibit 21030-X0197, Atch2-ThickwoodHills_Environmental_Evaluation, PDF page 62.

mitigation measures to minimize wildlife impacts. It stated that additional mitigation measures may be recommended following proposed wildlife field work scheduled in 2015 and 2016.⁹⁸⁸ ATCO Electric Ltd. stated it will utilize environmental mitigation measures throughout project execution.⁹⁸⁹

1027. When siting the transmission lines, ATCO Electric Ltd. attempted to find the shortest and most direct route, while considering the use of existing linear disturbances and minimizing disturbance to wetlands and other environmentally significant areas. ATCO Electric Ltd. worked with Alberta Environment and Parks to develop conceptual routes. Alberta Environment and Parks supported routing opportunities which incorporated reduced human-caused footprint on public land by following existing oil and gas developments.

1028. ATCO Electric Ltd. conducted a participant involvement program and notified landholders, agencies, and other potential interested parties within 800 metres of the preliminary route options and within 1,500 metres of the preliminary substation siting option. Individual consultation was conducted with all landowners, occupants, agencies, industries, First Nations and other interested parties directly affected or adjacent to the proposed route rights-of-way and Thickwood Hills 951S Substation. It stated that there were no outstanding objections to the overall project to date but received one outstanding concern relating to trapping capability during construction activities. ATCO Electric Ltd. stated that it would continue to engage all trappers for the duration of the project.⁹⁹⁰

1029. In March 2015, ATCO Electric Ltd. engaged with industrial participants who had mineral lease rights in the project area to inform them of the nature of the project and to obtain the latest information on environmentally significant areas and future development plans in the project area. It conducted the first round of notification in June 2015, distributing project information, maps and contact information. From June to September 2015, ATCO Electric Ltd. conducted the first round of consultation. A second round of notification updating the project was distributed in October 2015. ATCO Electric Ltd. conducted additional consultation from October to December 2015.

1030. Based on information from First Nation communities, ATCO Electric Ltd. identified four First Nations as potential interest holders and provided notice to these four groups as early as 2014. On October 16, 2015, ATCO Electric Ltd. received direction from the Aboriginal Consultation Office to initiate consultation with the four identified First Nations, Athabasca Chipewyan First Nation, Fort McKay First Nation, Fort McMurray First Nation and Mikisew Cree First Nation. These communities confirmed an interest in the project and ATCO Electric Ltd. continued to work with them to identify and mitigate any concerns. ATCO Electric Ltd. also notified the Bigstone Cree Nation and the Métis Nation of Alberta – Region 1, but no comments were received from these Aboriginal communities.⁹⁹¹

1031. ATCO Electric Ltd. provided notification of its amendment application on June 16, 2016, distributing information about the project amendments to landholders, occupants, First Nations, and five trappers within 800 metres of the preliminary route options and within 1,500 metres of the preliminary substation siting option. ATCO Electric Ltd. attempted to contact and consult

⁹⁸⁸ Exhibit 21030-X0197, Atch2-ThickwoodHills_Environmental_Evaluation, PDF page 67.

⁹⁸⁹ Exhibit 21030-X0196, Atch1-ThickwoodHills_Development_Application_text, PDF page 27.

⁹⁹⁰ Exhibit 21030-X0198, Atch3-ThickwoodHills_PIP_Report, PDF page 4.

⁹⁹¹ Exhibit 21030-X0198, Atch3-ThickwoodHills_PIP_Report, PDF pages 10 to 12.

with all directly-affected stakeholders and those adjacent to the proposed amendment areas, however, due to challenges related to the wildfire evacuation and subsequent re-entry, some stakeholders remained unreachable.⁹⁹² It noted that, of the stakeholders that were reached, none have expressed concerns with the amendments.

1032. ATCO Electric Ltd. preliminarily routed the proposed 9L112 transmission line adjacent to the proposed transmission lines 9L01/9L30 corridor and routed transmission line 9L07 adjacent to the final configuration of Alberta PowerLine's proposed 500-kV transmission project. Following feedback received during the participant involvement program ATCO Electric Ltd. made adjustments to the routing. These included an adjustment to avoid a planned mine expansion.⁹⁹³

1033. ATCO Electric Ltd. stated that the EMF levels at the edge of the right-of-way are far below the International Commission on Non-Ionizing Radiation Protection recommended public exposure guidelines and that field levels diminish with distance. It noted that the weight of scientific evidence does not support a cause and effect relationship between general health symptoms and exposure to EMF on humans or animals. Currently, there are no Canadian government standards for exposure to EMF at extremely low frequencies.⁹⁹⁴

1034. ATCO Electric Ltd. does not expect the transmission lines to have any impact on GPS systems and stated that interference with radio signals, if any, can be easily mitigated by moving the transmitter to a nearby location with a clean line of sight. It stated that no transmission line structures should be located close enough to affect the line of sight of satellite receivers. It also does not anticipate issues with cellular phone service and will work with TELUS to identify and mitigate any adverse impacts to telephone reception. ATCO Electric Ltd. stated that it would ground metal fences, buildings and structures where necessary, to minimize shocks from induced voltage. ATCO Electric Ltd. will also meet or exceed setbacks from active wells and meet regulatory standards to ensure transmission and pipeline facilities can be operated safely.⁹⁹⁵

1035. ATCO Electric Ltd. received *Historical Resources Act* clearance from Alberta Culture and Tourism on July 10, 2015 and October 21, 2015.

1036. ATCO Electric Ltd. estimates an in-service date of September 30, 2018 and the cost of the project to be \$133,187,931 (plus 20 per cent/minus 10 per cent, 2015\$). The entirety of the cost would be allocated as system cost.

1037. On August 5, 2016, ATCO Electric Ltd. filed minor amendments to applications 21030-A010 to 21030-A014. It revised the fenceline location and dimension, modified the typical corner structure type on transmission line 9L01 and transmission line 9L30 where it crosses existing transmission lines, and included a temporary bypass on transmission lines 9L01 and 9L30.⁹⁹⁶ ATCO Electric Ltd. stated that no additional environmental effects are anticipated as a result of the amendments. ATCO Electric Ltd. noted that the Fort McMurray wildfire burned approximately 85 per cent of the Thickwood Hills transmission development area, including the

⁹⁹² Exhibit 21030-X1213, ATCO-TWHAApplicationAmendment_Text_20160804, PDF page 4.

⁹⁹³ Exhibit 21030-X0198, Atch3-ThickwoodHills_PIP_Report, PDF page 7.

⁹⁹⁴ Exhibit 21030-X0196, Atch1-ThickwoodHills_Development_Application_text, PDF pages 39 to 40.

⁹⁹⁵ Exhibit 21030-X0196, Atch1-ThickwoodHills_Development_Application_text, PDF pages 42 to 43.

⁹⁹⁶ Exhibit 21030-X1213, ATCO-TWHAApplicationAmendment_Text_20160804.

substation site, the proposed transmission line 9L07 right-of-way and portions of the proposed transmission lines 9L01 and 9L30 right-of-way.⁹⁹⁷

15.4.2 Commission findings

1038. The Commission has reviewed the applications and has determined that the requirements of Rule 007 for the new Thickwood Hills 951S Substation and new or altered transmission lines 9L01, 9L30, 9L07 and 9L112 are met. The Commission finds ATCO Electric Ltd.'s participant involvement program to be adequate. There are no outstanding technical, routing, environmental or noise concerns associated with the construction and operation of the substation and transmission lines, nor are there any outstanding public or industry objections or concerns. The Commission notes that no objections to the Thickwood Hills transmission development project were received following the issuance of a notice of hearing for the combined proceeding on December 29, 2015. Furthermore, a notice of amendment was issued on August 18, 2016, in response to the amendments and no objections or concerns were received.

1039. The Commission finds that environmental impacts of the substation and associated transmission lines can be adequately minimized with the implementation of mitigation measures recommended by CH2M. ATCO Electric Ltd. committed to the mitigation measures outlined by CH2M.

1040. The Commission finds that the noise impact assessment for the proposed ATCO Electric Ltd. Thickwood Hills 951S 240-kV Substation satisfies the requirements of Rule 012 and recognizes that, should cumulative noise levels of the nighttime period exceed the permissible sound level of 40 dBA L_{eq} , noise control measures must be implemented to ensure compliance, pursuant to Rule 012.

1041. The Commission accepts ATCO Electric Ltd.'s approach of specifying the noise design specifications to limit noise emissions of the 240-kV static VAR compensator system in the tendering process for the equipment and its commitment to implement additional noise control measures as required to ensure compliance with Rule 012.

1042. Based on the foregoing, the Commission considers the application for the new Thickwood Hills 951S Substation and new or altered transmission lines 9L01, 9L30, 9L07 and 9L112 to be in the public interest in accordance with Section 17 of the *Alberta Utilities Commission Act*. Accordingly, the Commission approves the application.

16 Decision

1043. After careful consideration of the record of the Fort McMurray West 500-kV Transmission Line proceeding, and for the reasons provided elsewhere in this decision, the Commission finds that approval of the applications, as amended, is in the public interest having regard to the social and economic effects of the project and its effects on the environment. The Commission's specific conclusions on the Fort McMurray West 500-kV Transmission Project applications are as follows.

⁹⁹⁷ Exhibit 21030-X1213, ATCO-TWHApplicationAmendment_Text_20160804, PDF page 3.

1044. The Commission finds that overall, the south common route and the west route option for transmission line 12L41, and the north common route with the common route variation 1 option for transmission line 12L44 will result in lower social, economic and environmental impacts. In making this finding, the Commission accepted that west route alterations 1 and 2 will reduce impacts through the Slave Lake Caribou range and create the required set-backs from Highway 627.⁹⁹⁸ As well, the Commission accepted west route option alterations 3 and 4,⁹⁹⁹ because alteration 3 establishes a sufficient set back from Highway 33 and alteration 4 shifts the transmission line deflection point, as requested by an intervener. The Commission also accepted that west route option alterations 5 and 6¹⁰⁰⁰ will reduce impacts to several gravel operators and shift a segment of the line to follow an existing transmission line corridor. Lastly, the Commission accepted the amendment proposing the withdrawal of a portion of the west route option in favour of the west route option variation.¹⁰⁰¹

1045. The Commission finds that the potential impacts related to health, safety, noise and electrical effects are common to all proposed routes and that Alberta PowerLine has taken reasonable steps to mitigate these impacts to an acceptable degree. Accordingly, the Commission finds that the evidence does not support approving one route over the other.

1046. The Commission finds that the west route option has fewer potential impacts than the east route option with respect to property and residential impacts because the west route option parallels more existing linear disturbances such as transmission lines, and potentially affects fewer residences.

1047. The Commission finds that the west route option is a better route option than the east route option and east route option variation in terms of agricultural impacts. While agricultural impacts are similar on all routes, the east route option affects more agricultural lands. With the proposed mitigation measures, the Commission finds that Alberta PowerLine has taken reasonable steps to mitigate agricultural impacts to an acceptable degree.

1048. With respect to costs, the Commission finds that, although the east route option is less costly because it is shorter, this cost advantage is not sufficient in light of the additional residential and environmental impacts.

1049. The Commission finds the west route option is a better route because it minimizes the project's environmental impacts. This is largely because the west route option parallels substantially more existing linear disturbances especially through the caribou ranges.

1050. The Commission makes no finding on which route has a greater potential impact on traditional land and resource use. While some impacts on traditional land and resource use may arise from construction and operation of the project, Alberta PowerLine has proposed reasonable mitigation measures to address these impacts.

⁹⁹⁸ Exhibit 21030-X0270, Application Amendment_Main Text _19Jan2016.

⁹⁹⁹ Exhibit 21030-X1101, Application Amendment 2_Main Text_20160606.

¹⁰⁰⁰ Exhibit 21030-X1153, Application Amendment 3_Main Text_20160630.

¹⁰⁰¹ Before the amendment set out in Exhibit 21030-X1153 Alberta PowerLine had proposed the west route option, a diagonal route from segment W54 to W73, and a west route option variation, the amendment asked for the removal of the west route option from consideration and renamed the west route option variation as the west route option which also became the west route option.

1051. The potential business impacts on the gravel operators, MWC and Brion do not favour either the west route option or the east route option because the operations of these interveners are on a common portion of the route. However, given the potential impacts to the operations of Austin Powder, the Commission finds that the west route option will have fewer business impacts than the east route option.

1052. The Commission finds that common route variation 1 has fewer environmental impacts than common route variation 2. In addition, Alberta Environment and Parks favours either the common route or common route variation 1 in this area. The Commission accepts that SAGD activities can occur in the transmission line right-of-way. Common route variation 1 partially mitigates Brion's concerns because it allows the company to retain a currently planned well pair.

1053. The Commission finds that the following facilities are critical transmission infrastructure as defined in the *Electric Utilities Act* and approves these facilities for the Fort McMurray West 500-kV Transmission Project:

- Alberta PowerLine's 500-kV transmission line 12L41, including the repeater sites, from AltaLink Management Ltd.'s transmission line 1241L to Livock 939S Substation, following the west route option and Alberta PowerLine's west route amendments.
- Alberta PowerLine's 500-kV transmission line 12L44, from Livock 939S Substation to Thickwood Hills 951S Substation, following the common route and common route variation 1.
- Alberta PowerLine's 500-kV switchyard at Livock 939S Substation.
- Alberta PowerLine's Thickwood Hills 951S Substation.
- A connection order between Alberta PowerLine's 12L41 and AltaLink Management Ltd.'s transmission line 1241L.
- A connection order between Alberta PowerLine's Thickwood Hills 951S Substation to ATCO Electric Ltd.'s Thickwood Hills 951S Substation.

1054. The Commission's decision to approve the project is subject to the following conditions:

- Alberta PowerLine shall abide by the caribou protection plan as approved by Alberta Environment and Parks for the project.¹⁰⁰²
- Throughout the construction of the project, Alberta PowerLine shall engage in ongoing discussions with Alberta Environment and Parks about the impacts of the project on woodland caribou, and incorporate any additional mitigation measures recommended by Alberta Environment and Parks into the caribou protection plan.
- Within four months of the date of this decision, Alberta Powerline shall make representatives available to conduct up to three site visits with each of Gunn Métis Local 55 and Beaver Lake Cree Nation, along the specific portions of the right-of-way

¹⁰⁰² Page 2 of Undertaking 028. List of commitments Alberta PowerLine would be willing to accept as conditions of approval. Exhibit 21030-X1583.

where members of Gunn Metis Local 55 and Beaver Lake Cree Nation conduct their traditional land and resource use, to allow members of these Aboriginal groups an opportunity to identify specific traditional land and resource use sites. Alberta PowerLine must provide reasonable notice of the date and times of the site visit(s) to both Gunn Métis Local 55 and Beaver Lake Cree Nation.

- Alberta PowerLine shall provide relevant information concerning construction activities such as clearing in areas where members of Gunn Métis Local 55 or Beaver Lake Cree Nation conduct their traditional land and resource use at least two weeks prior to construction.

1055. It is the Commission's view that when an applicant makes commitments in relation to a project, it has satisfied itself that these activities will benefit both the project and the public. In its findings, the Commission states that it expects Alberta PowerLine to carry out its commitments which are summarized in Exhibit 21030-X1583¹⁰⁰³ and set out in [Appendix O](#). If a commitment made by Alberta PowerLine remains unfulfilled, an intervener on the approved route may request a review pursuant to Rule 016: *Review of a Commission Decision* and the Commission will make a decision on this request for review in accordance with Rule 016.

1056. After careful consideration of the record of the proceeding, and for the reasons given elsewhere in this decision, the Commission finds that approval of the following facilities is in the public interest, having regard to the social and economic effects of the facilities, and their effects on the environment:

- AltaLink Management Ltd.'s alterations to Sunnybrook 510S Substation.
- AltaLink Management Ltd.'s 500-kV transmission line 1241L.
- ATCO Electric Ltd.'s alterations to Livock 939S Substation.
- ATCO Electric Ltd.'s Thickwood Hills 951S Substation.
- ATCO Electric Ltd.'s alterations to 240-kV transmission line 9L01.
- ATCO Electric Ltd.'s 240-kV transmission line 9L30.
- ATCO Electric Ltd.'s alterations to 240-kV transmission line 9L07.
- ATCO Electric Ltd.'s 240-kV transmission line 9L112.
- ATCO Electric Ltd.'s alterations to 240-kV transmission line 9L913.

¹⁰⁰³ Exhibit 21030-X1583-APL Undertaking 028.

1057. Pursuant to sections 13, 14, 15, 18 and 19 of the *Hydro and Electric Energy Act*, the Commission approves the applications and grants to Alberta PowerLine, AltaLink Management Ltd. and ATCO Electric Ltd. the requested approvals which will be distributed separately.

Dated on February 10, 2017.

The Alberta Utilities Commission

(original signed by)

Anne Michaud
Panel Chair

(original signed by)

Mark Kolesar
Commission Vice-Chair

(original signed by)

Kate Coolidge
Acting Commission Member

Appendix A – Oral hearing – registered participants

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Name of organization (abbreviation) counsel or representative	Witnesses
Alberta PowerLine D. Sheehan S. Munro C. Prentice	C. Kostyk S. Merrifield R. Smart G. Doll S. Martin A. Küpper W. Bailey C. Oakley
Alberta Electric System Operator T. Sloan K. Miller	J. Mossing F. Ritter
Roy Ernst M. Niven N. Ramessar	P. Argenal R. Ernst
Wong Group M. Niven N. Ramessar	P. Argenal R. Skermer L. Akins P. Akins
Burnco Rock Products Ltd., Tricycle Lane Ranches Ltd., and Lehigh Hanson Materials Limited K. Wilson	U. Scheidegger K. Trimble C. Pichota K. John A. Naeem R. Berrien
MWC Investments Inc. I. Wachowicz	R. Selte
South of 43 Group P. Barrette D. Mallon	W. Lafoy E. Holtz L. Klause K. Krampf S. Krampf P. McGinnis L. Peaire R. Archer
Dunhill Group Inc. and 1531486 Alberta Ltd. D. Carter	T. Jones P. Wall
Jacob and Johanna Renz and Kenneth Treichel C. McCoy V. Hardman	K. Treichel H. Treichel R. Neufeld K. Skwarchuk M. Renz

Name of organization (abbreviation) counsel or representative	Witnesses
Barhead West Group D. Carter	H. Scholten W. Peetoom H. Peetoom K. Loitz R. Ward E. Szmyt
East Route Landowner Opposition Group R. Secord Y-S. Cheng	R. Berrien K. Taylor C. Wallis B. Gettel L. Brown B. Christenson A. Stanley J. Dundas C. Dumbeck D. Dumbeck A. Gosselin C. Gosselin W. Huppertz N. Jespersen M. Jespersen P. Letts F. Madell
Brion Energy Corporation M. Ignasiak J. Kennedy	D. Newman T. Cuthbert
Gunn Métis Local 55 D. Bishop E. Chipiuk	K. Kubiski D. O'Connor T. Friedel M. Crossen
Beaver Lake Cree Nation M. Conroy J. Buhler	C. Cunningham K. Winnitoy G. Jennings K. Gladue G. Smallface E. Lameman J. Gladue
Consumers' Coalition of Alberta J. Wachowich S. Gibbons	D. Levson T. Cline D. Madsen
Nick Tywoniuk	

Alberta Utilities Commission

Commission Panel

Anne Michaud, Commission Member, Panel Chair

Mark Kolesar, Commission Vice-Chair

Kate Coolidge, Acting Commission Member

Commission Staff

G. Bentivegna (Commission counsel)

S. Sinclair (Commission counsel)

K. Taylor

V. Choy

H. Ritchie

A. Drolet

J. Yau

J. Law

Appendix B – Interested parties who filed written submissions

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Name of organization (abbreviation) counsel or representative
Alberta PowerLine Deirdre Sheehan Shawn Munro Cassia Prentice
ATCO Electric Ltd. Deirdre Sheehan Shawn Munro Cassia Prentice
AltaLink Management Ltd. Brenden Hunter
Alberta Electric System Operator Keith F. Miller Tom Sloan
1531486 Alberta Ltd. Darryl Carter Patrice Brideau
Village of Alberta Beach
Alberta Environment and Parks
Alberta Wilderness Association
Alexis Nakota Sioux Nation
Assinger Lumber Ltd. Michael Crozier
Athabasca Chipewyan First Nation
Barrhead West Group Darryl Carter Patrice Brideau
Beaver Lake Cree Nation Meaghan Conroy Jessica Buhler
Bigstone Cree Nation Aryn Lajji
Buffalo Lake Metis Settlement Debbie Bishop Eva Chipiuk
Brion Energy Corporation Martin Ignasiak Jessica Kennedy
Burnco Rock Products Ltd. Keith Wilson
Cassidy and Jenell Fouillard
Consumers Coalition Of Alberta James Wachowich Shauna Gibbons
Darrell McLeod
Dave Franczak
David Brennan

Name of organization (abbreviation) counsel or representative
Department of the Justice and Solicitor General Angela E. Edgington Jamie R. Speer David L. Sharko
Diagonal Group James Laycraft
Doug Heron
Driftpile First Nation Keltie Lambert
Dunhill Group Inc . Darryl Carter Patrice Brideau
East Route Landowner Opposition Group (ERLOG) Richard Secord Yuk-Sing Cheng
Eddison Lee-Johnson
Enoch Cree Nation
Fort McKay First Nation Tarlan Razzaghi
Gunn Métis Local 55 Debbie Bishop Eva Chipiuk
Inland Aggregates Limited Darryl Carter Patrice Brideau
Jacob and Johanna Renz Cameron McCoy
Kathi Arnell
Kelly McNeilly
Kenneth Treichel Vernon Hardman
Lance and Irene McCann
Lehigh Hanson Materials Limited Keith Wilson
Métis Local 1909 Zachary Davis
Métis Local 1935 Debbie Bishop Eva Chipiuk
Métis Local 2002 Buffalo Lake Zachary Davis
Métis Local 2010 Athabasca Landing Zachary Davis
Métis Local 2907 Lac La Biche Zachary Davis
Métis Nation of Alberta Zachary Davis
Michel First Nation
Mikisew Cree First Nation GIR
MNA, Region 1 and Locals Zachary Davis

Name of organization (abbreviation) counsel or representative
MWC Investments Inc. Ian Wachowicz
Nick Tywoniuk
Norm and Maritta Renz Cameron McCoy
O'Chiese First Nation
Orica Canada Inc. Gavin Fitch Michael Barbero
Pam Dodds
Partridge Holdings Ltd. Gavin Fitch Michael Barbero
Paul First Nation
Rennie Arndt
Rob Huff
Robert Scheideman
Ronald D McLeod
Ronnie Junior McLeod
Roy Ernst Michael Niven Nicholas Ramessar
South of 43 Group Paul Barrette
Sucker Creek First Nation Meaghan Conroy Jessica Buhler
Summer Village of Larkspur
Suncor Energy Inc.
Swan River First Nation
Trevor Duley
Thomas Auger
Tricycle Lane Ranches Ltd Keith Wilson
Tyson and Gina Hove
Wabasca Métis local 90 Debbie Bishop Eva Chipiuk
Wong Group Michael Niven Nicholas Ramessar

Appendix C – Abbreviations

Aboriginal parties	Wabasca Métis Local 90, the Gunn Métis Local 55, the Fort McMurray Métis Local 1935/Fort McKay Métis Community Association, the Métis Nation of Alberta Lakeland Local Council 1909, Beaver Lake Cree Nation and the Sucker Creek First Nation
ACIMS	Alberta Conservation and Information Management System
AESO	Alberta Electric System Operator
Alberta	Alberta Justice and Solicitor General
Alberta PowerLine	Alberta PowerLine General Partner Ltd.
Berrien	Berrien Associates Ltd.
the Board	Alberta Energy and Utilities Board
Brion	Brion Energy Corporation
Brion route	Route proposed by Brion similar to common route variation 2
Burnco	Burnco Rock Products Ltd.
Burnco Berrien Report	<i>Review and Opinion of Two Sub-Segments on the Common Route Portion of the Alberta Power Line between Sunnybrook Substation and Livock Substation (Line 12L41)</i>
the Burnco landowners	Burnco Rock Products Ltd., Lehigh Hanson Materials Limited and Tricycle Lane Ranches Ltd.
Canada	Attorney General of Canada
CCA	Consumers' Coalition of Alberta
Certes	Certes Applied and Natural Sciences
CH2M	CH2M HILL Canada Limited
CTI	critical transmission infrastructure
EA report	<i>Environmental Assessment: Fort McMurray west 500 kV Transmission project and Related Facilities</i>
ELD	existing linear disturbances
EMF	electric and magnetic fields
ERLOG	East Route Landowner Opposition Group
ERLOG Berrien Report	<i>Review and Opinion of the West (Preferred) and East (Alternate) Routes between Sunnybrook Substation and Livock Substation (Line 12L41)</i>
GIS	geographic information system
Golder	Golder Associates Ltd.
GPS	global positioning system
Gravel operators	Burnco Rock Products Ltd., Lehigh Hanson Material Ltd., Tricycle Lane Ranches Ltd., Dunhill Group Inc. and 1531486 Alberta Ltd.

the Guidelines	<i>Government of Alberta's Guidelines on Consultation with First Nations on Land and Natural Resource Management (July 28, 2014)</i>
HRV	Historical Resource Value
ISO	Independent System Operator
kV	kilovolt
kV/m	kilovolt per metre
Lehigh	Lehigh Hanson Materials Limited
<i>lis inter partes</i>	a dispute between parties
M.D.	Municipal District
mG	milligauss
MRCP	MacKay River Commercial Project
MVA	Megavolt-ampere
MVAR	Megavolt-ampere reactive
Nican	Nican International Consulting Ltd.
PNA	Protective Notation Areas
the proceeding	Proceeding 21030
the project	Fort McMurray West 500-Kilovolt Transmission Project
Roy Ernst Report	<i>Review of the Alberta PowerLine's Fort McMurray West 500-kV Transmission Project Application, December 2015</i>
Rule 007	<i>Rule 007: Applications for Power Plants, Substations, Transmission Lines, Industrial System Designations and Hydro Developments</i>
Rule 012	<i>Rule 012: Noise Control</i>
SAGD	steam assisted gravity drainage
Serecon	Serecon Valuations Inc.
Wallis report	<i>Environmental Considerations for the Alberta Powerline Fort McMurray West 500kV Transmission Project</i>
Willow Springs	Willow Springs Strategic Solutions Inc.
Willow Springs Report	<i>Lac Ste. Anne Métis Traditional Knowledge and Use Report</i>
Wong Group Report	<i>Review of the Alberta PowerLine's Fort McMurray West 500-kV Transmission Project Application, December 2015</i>
WSAR	West Side Athabasca River

Appendix D – AUC first ruling on standing

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Appendix D - AUC
ruling on standing.pdf

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Appendix E – AUC ruling on standing of Schedule C parties and remaining parties

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Appendix E - AUC
ruling on standing of !

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Appendix F - AUC ruling on standing and participation

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Appendix F - AUC
ruling on CCA interve

(consists of 12 pages)

Appendix G – AUC ruling on Beaver Lake Cree Nation request for names of affiants

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Appendix G - AUC
ruling on Beaver Lake

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Appendix H – AUC ruling on confidentiality motion

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Appendix H - AUC
ruling on confidentiality

(consist of 7 pages)

Appendix I – AUC ruling on the process to consider the Notices of Questions of Constitutional Law

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Appendix I - AUC
ruling on the process

(consists of 3 pages)

Appendix J – AUC ruling on jurisdiction to determine the questions stated in the Notices of Questions of Constitutional Law

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Appendix J - AUC
ruling on jurisdiction t

(consists of 32 pages)

Appendix K – AUC ruling on request from South of 43 Group to review a ruling

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Appendix K - AUC
ruling on request from

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Appendix L – AUC ruling on reasonable apprehension of bias motion

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Appendix L - AUC
ruling on reasonable :

(consists of 9 pages)

Appendix M – AUC ruling on request to reconsider prior ruling

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Appendix M - AUC
ruling on request to r

(consists of 7 pages)

Appendix N – AUC ruling on objection to witnesses and amended reply evidence

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Appendix N - AUC
ruling on objection to

(consists of 4 pages)

Appendix O – Alberta PowerLine commitments

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Appendix O.pdf

(consists of 4 pages)

February 19, 2016

To: Parties currently registered in Proceeding 21030

**Fort McMurray West 500-kV Transmission Project
Proceeding 21030
Applications 21030-A001 to 21030-A015**

Ruling on standing

Introduction

1. In this ruling, the Alberta Utilities Commission must decide if persons who have filed a statement of intent to participate in Proceeding 21030 have demonstrated that they have rights that may be directly and adversely affected by the Commission's decision on the applications filed in the proceeding. A person who demonstrates the potential for direct and adverse effect is said to have "standing".
2. The Commission asked me to inform you of its ruling on the standing of registered participants in relation to the applications in Proceeding 21030.

Background

3. Alberta PowerLine L.P. (Alberta PowerLine) has applied to build the Fort McMurray West 500-kV Transmission Project (the project) in north central Alberta from the Wabamun area to the Fort McMurray area, under the *Hydro and Electric Energy Act*.
4. Alberta PowerLine has identified a preferred west route and an alternative east route. Both routes also contain variant options. In addition to the transmission line, Alberta PowerLine proposes to build and operate three optical repeater sites and expand the Livock 939S substation and the Thickwood Hills 951S substation.
5. ATCO Electric Ltd. and AltaLink Management Ltd. applied for alterations to their facilities associated with Alberta PowerLine's proposed transmission line.
6. The Commission issued a notice of hearing for Proceeding 21030 on December 29, 2015, informing interested parties that statements of intent to participate must be filed by February 12, 2016. In its notice, the Commission made an advance determination that persons who owned or resided on property located within 800 metres of the edge of the right-of-way of either the preferred or alternate routes or route options would have standing to participate in the hearing. This allowed interested parties to commence preparation of their interventions once the notice of hearing was issued.
7. The Commission received numerous statements of intent to participate, which related primarily to either of the proposed transmission line routes.

How the Commission determines standing

8. Standing before the Commission is determined by Section 9(2) of the *Alberta Utilities Commission Act*, which states:

(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.

9. In *Cheyne v. Alberta (Utilities Commission)*, the Alberta Court of Appeal characterized Section 9(2) as the equivalent of Section 26(2) of the *Energy Resources Conservation Act* and confirmed that there is a two-part test for standing. First, a person must demonstrate that the right he or she is asserting is recognized by law. Second, a person must provide some information that shows that the Commission's decision on the application may directly and adversely affect his or her rights. The first part of the test is legal; the second part of the test is factual. For the factual part of the test, the Alberta Court of Appeal has stated that "some degree of location and connection between the work proposed and the right asserted is reasonable."¹

10. In *Sawyer v. Alberta (Energy and Utilities Board)*, the Alberta Court of Appeal commented further on the factual component of the standing test and stated that "...in considering the location or connection, the Board is entitled to look at factors such as residence, the presence or absence of other wells in the area, and the frequency and duration of the applicant's use of the area near the proposed site."²

11. The Commission assesses the potential for direct and adverse effect on a case-by-case basis, having regard for the specific circumstances of each proposed project application and each application for standing. The Commission considers that the expression of general or broad concerns about a proposed project, without some link or connection to the demonstrated or anticipated characteristics of a proposed project will generally be an insufficient basis for establishing the potential for a direct and adverse effect. In the Commission's view, this is the very mischief that the Alberta Court of Appeal identified when it opined that "some degree of location or connection between the work proposed and the right asserted" is a necessary ingredient for standing.

12. If the Commission finds that a person has standing pursuant to Section 9(2) of the *Alberta Utilities Commission Act*, it must hold a hearing to consider the person's concerns about the subject application. Further, persons with standing have the right to fully participate in the hearing. The Commission considers this to include the right to file evidence in support of their

¹ *Dene Tha' First Nation v. Alberta* (Energy and Utilities Board), 2005 ABCA 68 at paragraph 14.

² 2007 ABCA 297 at paragraph 16.

position, the right to question or cross-examine the applicant(s) on its evidence and the right to make argument.

13. In the past, the Commission has allowed persons without standing the opportunity to provide a brief statement to the Commission that describes their views on the application. In exceptional circumstances the Commission may also allow parties without standing to fully participate in a hearing by filing evidence, cross-examining the applicant and giving argument. However, where all persons with standing withdraw their objections, the Commission may cancel the hearing even if parties without standing have expressed a desire to participate in that hearing.

Standing ruling

Persons within 800 metres of the project

14. As stated above, the Commission in its notice of hearing determined that persons that own or reside on property located within 800 metres of the edge of the rights-of-way (for the preferred or alternate routes) will have standing in this proceeding. In the Commission's view, such persons have rights that may be directly and adversely affected by the Commission's decision on the applications.

15. The Commission also finds that parties who own or occupy lands within 800 metres of other project components such as substations and optical repeater sites will also have standing in this proceeding. Landowners with standing who are not part of a group are listed in Schedule A.

16. Based on the above, groups with one or more members who own or reside on property located within 800 metres of the project also have standing in the proceeding pursuant to Section 9 of the *Alberta Utilities Commission Act*. It is the practice of the Commission to allow such groups to participate in Commission proceedings. A list of landowner groups with standing is in Schedule B. The Commission encourages individuals with similar interests to form groups. Participation as a group will reduce duplication of submissions and costs, and ensure an efficient hearing for all participants. In addition, persons who do not have standing may join a group of persons with standing.

17. However, the Commission reminds the groups that are formed that those members of their group who own or reside upon land outside of the 800 metres radius are not considered local interveners pursuant to the *Alberta Utilities Commission Act* and, as such, will not be eligible for costs under Rule 009: *Local Intervenor Costs*. Further details regarding costs for interveners may be found in Rule 009.

18. The Commission recognizes that membership in the landowner groups registered in Proceeding 21030 may increase. The Commission is prepared to allow individuals to join intervenor groups as the process proceeds and asks that counsel or the representative for each group provide an updated membership list to the Commission in their written evidence. The updated membership lists should set out the name of each landowner, their legal land description and whether that land is located within 800 metres of the transmission facilities proposed. The Commission also requests that individuals wishing to participate in this

proceeding, other than to present oral evidence to the Commission as part of the group, identify the scope of their individual participation at the time written evidence is filed.

Other parties with standing

19. The Commission finds that the Alberta Electric System Operator (AESO) has standing in Proceeding 21030. In its submission, the AESO stated that it has an interest in the applications filed by Alberta PowerLine by virtue of its role and responsibilities under the *Electric Utilities Act*. The Commission accepts that the AESO has legal rights sufficient to support an application for standing due to its responsibilities under the *Electric Utilities Act* and that the relationship between the project and the AESO's function as the transmission planner in Alberta demonstrates the requisite causal connection between the project and the AESO's legal rights.

Parties without standing

20. The Commission received a statement of intent to participate from the Alberta Wilderness Association, a public interest organization. The Alberta Wilderness Association stated that it is committed to assuring the protection of wildlife, wildlife habit, as well as unique and vital landscapes in Alberta. The Alberta Wilderness Association expressed concerns about the project's impact on caribou ranges and other protected areas and made specific suggestions to mitigate the project's environmental impacts.

21. In relation to the first part of the standing test, the Commission finds that the Alberta Wilderness Association has not shown that it has a legal right that may be directly and adversely affected by the project. The Alberta Wilderness Association has neither specified the rights and interests being asserted nor demonstrated how it may be directly and adversely affected by the Commission's decision on the application. In this respect, the Commission notes that the Alberta Wilderness Association does not have ownership rights or other legal interests that would establish a sufficient basis for standing. Based on the above, the Commission finds that the Alberta Wilderness Association would not be directly affected by a decision by the Commission on the applications.

22. In its statement of intent to participate, the Summer Village of Larkspur (the Summer Village) stated that it is located approximately 800 meters from the proposed east transmission line route where the route traverses the watershed of Long Island Lake and the adjacent wilderness areas. The Summer Village submitted that any further deterioration of this lake directly affects the use and enjoyment of the lake and surrounding wilderness areas and, consequently, it would be directly and negatively affected by the transmission line. The Summer Village also expressed concerns about the project's impact to the watershed.

23. The village of Alberta Beach (Alberta Beach) stated in its statement of intent to participate that the proposed transmission line would be located at the entrance corridor to the village at the intersection of Highway 633 and Range Road 32. The Council of Alberta Beach stated that it is concerned about the visual impacts and the negative effects that the project may have on future development in the area, as well as health risks associated with the transmission line. As such, Alberta Beach stated that it would like to pursue a route re-alignment.

24. The Commission finds that neither the Summer Village nor Alberta Beach have asserted legal rights that may be potentially directly and adversely affected by the applications. While the residents of the Summer Village and Alberta Beach may be entitled to standing if they own or occupy lands within 800 metres of the transmission line, on the basis of the submissions of the Summer Village or Alberta Beach, the Commission is not satisfied that either has legal rights that may be affected by the application.³

25. The Commission received submissions from Ronald McLeod, Darrel McLeod, and Ronald J. McLeod. These individuals stated that their support of the project is conditional upon receiving electricity from the proposed transmission line⁴ and that they wish to participate in the hearing.

26. Based on the information submitted, these parties are not entitled to standing by virtue of owning or residing on land within 800 metres on the project. Further, the information these parties asserted in their submissions did not establish how the project may directly and adversely affect their rights given their respective locations.

27. In accordance with its past practice, the Commission will exercise its discretion and allow parties without standing, identified above, to make a brief submission at the hearing. The Commission requests that parties advise the Commission of their intention to do so no later than May 15, 2016.

Further process

28. The Commission received statements of intent to participate from other groups and parties listed in Schedule C.

29. For certain groups listed in Schedule C, the Commission has reviewed the nature of the concerns raised and finds that insufficient information was provided in the statements of intent to participate. Letters requesting further information have been issued to these groups.

30. The Commission will afford the applicants an opportunity to comment on the standing of parties who do not own or reside upon lands within 800 metres of the project listed in Schedule C. These comments must be filed by March 4, 2016. The parties listed in Schedule C may reply to the applicants' comments by March 11, 2016.

31. Lastly, in order to allow the Commission to receive further information on the standing of parties listed in Schedule C, the Commission temporarily suspends the process schedule for these parties only, including the next step of issuing information requests to the applicants.

Yours truly,

Shanelle Sinclair
Commission Counsel

³ Exhibit 522.

⁴ Exhibit 21030-X0286 McLeodRDSIP.

Schedule A – Persons within 800 metres not currently belonging to a group

Name	Representative
Assinger Lumber Ltd.	Michael Crozier, Bryan & Company LLP
Brion Energy Corporation	
Kim Scheideman, Barry Scheideman, David Scheideman and Robert Scheideman	
Rob Huff and Kathi Arnell	
Tyson and Gina Hove	
David Brennan	
Madeleine Gravelle	David Campbell, David L. Campbell Professional Corporation
Roy Ernest	Michael Niven, Carscallen LLP Nicholas Ramessar, Carscallen LLP
Burnco Rock Products Ltd	Keith Wilson, Wilson Law Office
Tricycle Lane Ranches Ltd	Wilson Law Office Keith Wilson
Doug Heron	
Richard Weiss and Gary Weiss	
Austin Powder Ltd.	Trevor Geddes
Partridge Holdings Ltd.	Gavin Fitch, McLennan Ross Barristers & Solicitors Michael Barbero, McLennan Ross Barristers & Solicitors
Orica Canada Inc.	Gavin Fitch, McLennan Ross Barristers & Solicitors Michael Barbero, McLennan Ross Barristers & Solicitors
Vera Hohl	
Kenneth and Bernice Treichel	Vernon Hardman, Hardman Law Office
Jenell Fouillard (Patterson)	
Laura and Ken Peaire Stingley	
Paula McGinnis	
Ken Krampf	
Pam Dodds	
Larnie Edward Klause	

Art Sonnenberg	
Dave Franczak	
1531486 Alberta Ltd. (Peter Wall)	J. Darryl Carter, Stringam LLP
Dunhill Group Inc. (Terry Jones)	J. Darryl Carter, Stringam LLP
Dale Soetaert	J. Darryl Carter, Stringam LLP
Lehigh Hanson Materials Limited	J. Darryl Carter, Stringam LLP
Inland Aggregates Limited	J. Darryl Carter, Stringam LLP

Schedule B – Groups with standing

Group	Representative
East Route Landowners Opposition Group (ERLOG)	Richard Secord, Ackroyd LLP Yuk-Sing Chen, Ackroyd LLP
Barrhead West	J. Darryl Carter, Stringam LLP
Perterson Group	James B. Laycraft, James B. Laycraft Professional Corporation
Renz Family Group	Cameron McCoy, McCoy Law
Wong Group	Nicholas Ramessar, Carscallen LLP Michael Niven, Carscallen LLP

Schedule C – Persons for whom standing has not yet been determined

Name	Representative
Alexis Nakota Sioux	
Athabasca Chipewyan First Nation	
Beaver Lake Cree Nation	Meaghan Conroy, MacPherson Leslie & Tyerman LLP
Bigstone Cree Nation	Amyn Lalji, Miller Thomson LLP
Buffalo Lake Metis Settlement	
Driftpile First Nation	Annemarie Clarke, Witten LLP
Gunn Métis Local # 55	Debbie Bishop, Prowse Chowne LLP
Fort McKay First Nation	
O'Chiese First Nation	
Mikisew Cree First Nation	
Michel First Nation	
Swan River First Nation	
Sucker Creek First Nation	Meaghan Conroy, MacPherson Leslie & Tyerman LLP
Métis Nation of Alberta Bruce Gladue	
Métis Local 1935	Debbie Bishop, Prowse Chowne LLP
McMurray Métis	Debbie Bishop, Prowse Chowne LLP
Wabasca Métis Local 90	Debbie Bishop, Prowse Chowne LLP
Nick Tywoniuk	
Thomas Auger (Trap Line #2713)	
Warren and Kim Lafoy	

March 24, 2016

To: Parties currently registered in Proceeding 21030

**Fort McMurray West 500-kV Transmission Project
Proceeding 21030
Applications 21030-A001 to 21030-A015**

Second ruling on standing

1. Introduction

1. In this ruling, the Alberta Utilities Commission must decide if persons or groups who have filed a statement of intent to participate in Proceeding 21030 and have not been granted standing to date in this proceeding have demonstrated that they have rights that may be directly and adversely affected by the Commission's decision on the applications filed in the proceeding. A person who demonstrates the potential for direct and adverse effect is said to have "standing".

2. The Commission asked me to inform you of its ruling on the standing of registered participants in relation to the applications in Proceeding 21030.

2. Background

3. Alberta PowerLine L.P. (Alberta PowerLine) has applied to build the Fort McMurray West 500-kV Transmission Project (the project or the transmission line) in north central Alberta from the Wabamun area to the Fort McMurray area, under the *Hydro and Electric Energy Act*.

4. Alberta PowerLine has identified a preferred west route, as amended in the Slave Lake area, and an alternative east route (collectively, the transmission line routes). Both routes also contain variant options. The application states that a minimum right-of-way width is required for the transmission line to allow for conductor swing under heavy winds while maintaining a safe distance between the conductor and adjacent trees and buildings, and to provide adequate space for construction and maintenance access. The typical minimum right-of-way width required to provide sufficient space for structure placements and construction and maintenance access is 60 metres.

5. In addition to the transmission line, Alberta PowerLine proposes to build and operate three optical repeater sites, expand the Livock 939S substation and construct the Thickwood Hills 951S substation.

6. The project also includes applications by ATCO Electric Ltd. and AltaLink Management Ltd. to modify their facilities to accommodate the transmission line.

7. The Commission issued a notice of hearing for Proceeding 21030 on December 29, 2015, informing interested parties that statements of intent to participate had to be filed by February 12, 2016. A notice of amendment of the project's preferred west route in the Slave Lake area was subsequently issued.

8. The Commission issued its standing ruling for Proceeding 21030 on February 19, 2016. For certain groups who do not own or reside upon lands located within 800 metres of the project, listed in Schedule C of its ruling (Schedule C), the Commission found that insufficient information was provided in the statements of intent to participate and requested further information from these parties. It gave the applicants an opportunity to comment on the standing of parties listed in Schedule C, and these parties an opportunity to reply. The Commission also suspended the process schedule for all parties listed in Schedule C.

9. Letters requesting further information were issued to the following groups, listed in Schedule C, on February 19, 2016:

1. Athabasca Chipewyan First Nation
2. Beaver Lake Cree Nation
3. Bigstone Cree Nation
4. Fort McMurray Métis Local 1935
5. Gunn Métis Local 55
6. Métis Nation of Alberta
7. Mikisew Cree First Nation
8. Wabasca Métis Local 90

10. The Commission issued a process schedule to allow for the receipt of further information from parties listed in Schedule C. The process schedule was again revised on February 25, 2016, at the request of the Bigstone Cree Nation, as follows:

Process step	Date
Further information requested by the Commission from parties listed in Schedule C	March 4, 2016
Applicants' deadline to comment on the standing of parties in Schedule C	March 11, 2016
Parties reply to comments on their standing (if applicable)	March 18, 2016

11. On February 29, 2016, the Beaver Lake Cree Nation requested that the AUC reconsider its request for the names of individual members who provided affidavits. The Commission denied the Beaver Lake Cree Nation's request on March 2, 2016. The Beaver Lake Cree Nation provided the requested information on March 3, 2016.
12. On March 3, 2016, the Fort McMurray Métis Local 1935, Gunn Métis Local 55 and Wabasca Métis Local 90 filed further information in response to the AUC's requests on February 26, 2016.
13. On March 3, 2016, Alberta PowerLine filed a letter of non-objection received from a Schedule C party, Thomas Auger, and requested the withdrawal of Mr. Auger's statement of intent to participate on that basis.
14. As stated above, on February 19, 2016, Miller Thomson LLP on behalf of the Bigstone Cree Nation requested that the Commission extend the time for it to respond to the Commission's request for further information. This request was granted in a ruling dated February 25, 2016. The Bigstone Cree Nation requested a further extension to the deadline to provide additional information by way of a letter to the Commission filed on March 7, 2016. This request was denied by the Commission on March 8, 2016, for the reasons set out in that ruling.
15. The Mikisew Cree First Nation filed an additional submission on February 9, 2016.
16. On March 15, 2016, Ackroyd LLP on behalf of the Buffalo Lake Métis Settlement filed a request to file additional information by March 18, 2016 in support of its standing request. The Commission granted this request on March 16, 2016.
17. The Fort McKay First Nation filed additional submissions on the Commission's standing test on March 17, 2016.
18. A further submission was filed by the Summer Village of Larkspur on March 18, 2016.
19. The Commission received statements of intent to participate from the Hansen group, the South of 43 landowner group, Gloria Kirchner, and Lance and Irene McCann after the Commission issued its February 19, 2016 standing ruling.
20. No additional information was filed by the Athabasca Chipewyan First Nation or the Bigstone Cree Nation.

3. Views of the applicants

21. On March 9, 2016, the Commission received a submission on standing from Alberta PowerLine indicating that it takes no position on the standing of any individual, group or party listed in Schedule C. Alberta PowerLine requested that the Commission exercise its discretion to determine standing in accordance with the applicable law and its authority. Alberta PowerLine requested that, in determining whether the Schedule C parties have each established the requisite degree of location or connection between the project and the rights

asserted, the Commission consider whether each party has provided sufficient and specific factual details and evidence demonstrating the possibility of being directly and adversely affected, or substantiating possible direct harm.¹

22. No comments on standing were received from the other applicants in this proceeding, ATCO Electric Ltd. and AltaLink Management Ltd.

4. How the Commission determines standing

23. Standing before the Commission is determined by Section 9(2) of the *Alberta Utilities Commission Act*, which states:

(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.

24. In *Cheyne v. Alberta (Utilities Commission)*, the Alberta Court of Appeal characterized Section 9(2) as the equivalent of Section 26(2) of the *Energy Resources Conservation Act* and confirmed that there is a two-part test for standing. First, a person must demonstrate that the right he or she is asserting is recognized by law. Second, a person must provide some information that shows that the Commission's decision on the application may directly and adversely affect his or her rights. The first part of the test is legal; the second part of the test is factual. For the factual part of the test, the Alberta Court of Appeal has stated that "some degree of location and connection between the work proposed and the right asserted is reasonable."²

25. In *Sawyer v. Alberta (Energy and Utilities Board)*, the Alberta Court of Appeal commented further on the factual component of the standing test and stated that "...in considering the location or connection, the Board is entitled to look at factors such as residence, the presence or absence of other wells in the area, and the frequency and duration of the applicant's use of the area near the proposed site."³

26. The Commission assesses the potential for direct and adverse effect on a case-by-case basis, having regard for the specific circumstances of each proposed project application and each application for standing. The Commission considers that the expression of general or broad concerns about a proposed project, without some link or connection to the demonstrated or anticipated characteristics of a proposed project, will generally be an insufficient basis for

¹ Exhibit 21030-X0732, APL Standing Response page 2.

² *Dene Tha' First Nation v. Alberta (Energy and Utilities Board)*, 2005 ABCA 68 (*Dene Tha'*) at paragraph 14.

³ 2007 ABCA 297 at paragraph 16.

establishing the potential for a direct and adverse effect. In the Commission's view, this is the very mischief that the Alberta Court of Appeal identified when it opined that "some degree of location or connection between the work proposed and the right asserted" is a necessary ingredient for standing.

27. If the Commission finds that a person has standing pursuant to Section 9(2) of the *Alberta Utilities Commission Act*, it must hold a hearing to consider the person's concerns about the subject application. Further, persons with standing have the right to fully participate in the hearing. The Commission considers this to include the right to file evidence in support of their position, the right to question or cross-examine the applicant(s) on its evidence and the right to make argument.

5. Standing of parties identified in Schedule C

5.1 General matters

28. The Commission received requests from several aboriginal groups to consider whether the project would impact their aboriginal and treaty rights. The factual component of the standing test requires each party who seeks standing in an AUC proceeding to demonstrate the potential for a direct and adverse effect on its rights. It is incumbent upon parties to provide sufficient information in their statements of intent to participate.

29. The Commission is prepared to assume, without deciding, that each aboriginal group who filed a statement of intent to participate in this proceeding is entitled to exercise its aboriginal and, if applicable, treaty rights in the areas it asserted in its respective submissions. The Commission therefore finds, in relation to the first part of the standing test, that each aboriginal group presumably has legal rights which may be directly and adversely affected by the Commission's decision on the application.

30. Having determined that the aboriginal groups satisfied the first part of the standing test, the legal test, the Commission will determine if each aboriginal group has supplied sufficient evidence to show that its legal rights to conduct traditional activities may be directly and adversely impacted by the Commission's decision on the applications in this proceeding.

31. In its description of the factual test in the *Dene Tha'* decision, the Court of Appeal stated:

It was argued before us that more recent case law on *prima facie* infringement of aboriginal or treaty rights changed things. But the Board still needed some facts to go on. It is not compelled by this legislation to order intervention and a hearing whenever anyone anywhere in Alberta merely asserts a possible aboriginal or treaty right. Some degree of location or connection between the work proposed and the right asserted is reasonable. What degree is a question of fact for the Board.⁴

⁴ *Dene Tha'* at paragraph 14.

32. Many aboriginal groups submitted that the project would be located in their traditional territory and that the project, either alone or in combination with other industrial development in the region, would make it more difficult for their members to use their traditional territory to exercise their aboriginal and treaty rights.

33. The Commission finds that an assertion that the project is in the vicinity of areas in which aboriginal and treaty rights are exercised constitutes a general concern that does not, without more information, establish a causal connection between the project and the rights asserted that is sufficient to meet the factual component of the standing test. In making this finding, the Commission has considered, based on the information presented in the application, that access to and use of the transmission line right-of-way would not be prohibited once construction is complete.

34. Where an aboriginal group made efforts to show the specific areas where its members exercise their rights, the Commission was able to assess whether the project has the potential to directly and adversely affect the exercise of these rights.

5.1.1 Views of the Alexis Nakota Sioux Nation

35. In its statement of intent to participate, the Alexis Nakota Sioux Nation stated that it holds Treaty 6 rights and aboriginal rights.

36. The project is located directly within the Alexis Nakota Sioux Nation's traditional territory. If approved, the project would affect the exercise of its constitutionally-protected rights, including hunting, fishing, trapping, gathering and other activities incidental to the exercise of these rights because the project would overlap with areas important for the exercise of these treaty rights.⁵

In fact, the location of the proposed Transmission Line Project overlaps with an area of ANSN's [Alexis Nakota Sioux Nation] Territory that contains traditional resources that ANSN relies upon for the exercise of those rights, and which are important for the continuation of ANSN's Aboriginal and Treaty rights, and for its culture.⁶

37. The Alexis Nakota Sioux Nation stated that its home reserve, Reserve #133, is approximately three to five kilometres from the preferred west route, and seven to ten kilometres from the alternate east route. Given its location, the Alexis Nakota Sioux Nation submitted that the project would have a direct and adverse effect on its home reserve.

5.1.2 Commission findings

38. The Commission finds that because the project would traverse an area that overlaps with the location in which the Alexis Nakota Sioux Nation members exercise their aboriginal and treaty rights, it has demonstrated that the exercise of these rights may be directly and adversely affected by the approval of the project. The Commission therefore grants standing to the Alexis Nakota Sioux Nation in this proceeding.

⁵ Exhibit 21030-X0593, ANSN Statement of Intent to Participate at page 7.

⁶ Ibid at page 9.

5.1.3 Views of the Athabasca Chipewyan First Nation

39. In its February 12, 2016 statement of intent to participate the Athabasca Chipewyan First Nation expressed that the rights of its members would be adversely affected by direct, and cumulative impacts to its Treaty 8 rights to hunt, fish, trap, gather and other traditional pursuits. It stated that its “members actively use lands within the vicinity of the Application for a variety of purposes”.⁷

40. The Athabasca Chipewyan First Nation indicated that it has eight reserves.

41. In support of its application for standing, the Athabasca Chipewyan First Nation filed a document explaining the history of its people. It also expressed concerns about the woodland caribou, submitting a notice of application filed in Federal Court claiming that the Minister of Environment has failed or refused to exercise his duty to protect the woodland caribou.⁸

5.1.4 Commission findings

42. The information on the proximity of the areas where the members of the Athabasca Chipewyan First Nation exercise their aboriginal and treaty rights in relation to the project was general in nature. The Athabasca Chipewyan First Nation’s statement that its “members actively use lands within the vicinity of the Application for a variety of purposes” is not sufficient to establish a causal connection between the exercise of its aboriginal and treaty rights and the project’s potential direct and adverse impact on those rights. The Commission requested specific information on the proximity of these areas to the transmission line. However, no response was filed.

43. Further, based upon the Commission’s assessment, the Athabasca Chipewyan First Nation’s nearest reserve lands appear to be about 20 kilometres, at the closest point, from the transmission line’s right-of-way.

44. As a result, the Athabasca Chipewyan First Nation has not shown that its aboriginal and treaty rights may be directly and adversely affected by the approval of the project. Therefore, the Commission denies standing to the Athabasca Chipewyan First Nation in this proceeding.

5.1.5 Views of the Beaver Lake Cree Nation

45. The Beaver Lake Cree Nation’s statement of intent to participate, dated February 12, 2016, was filed by MacPherson Leslie & Tyerman LLP.

46. The Beaver Lake Cree Nation submitted that it enjoys constitutionally protected aboriginal and treaty rights within and surrounding the transmission line routes. The Beaver Lake Cree Nation stated that it is a signatory to Treaty 6. It objected to the project because of the taking-up of lands, which are suitable for the exercise of treaty harvesting rights and lands that are used by its members to exercise harvesting rights.

⁷ Exhibit 21030-X0530, February 12, 2016 Placeholder letter to AUC re West 500 KV Transmission Project.

⁸ Exhibit 21030-X0534, Appendix D Federal Court (Species at Risk-Woodland Caribou).

47. The Beaver Lake Cree Nation submitted that the traditional land use information comes in under the second branch of the *Dene Tha'* test, demonstrating that its members, in fact, use the lands, which will be impacted by the project. Six affidavits from the Beaver Lake Cree Nation's members were filed on the record of the proceeding stating that these individuals have engaged, and continue to engage, in traditional activities in specific areas that include lands that are traversed by the transmission line.

5.1.6 Commission findings

48. The Commission considers that the Beaver Lake Cree Nation members' affidavits contain specific information with respect to the exercise of aboriginal and treaty rights in relation to the project. The Commission finds that the specific information filed demonstrates a degree of location or connection between the project and the Beaver Lake Cree Nation's aboriginal and treaty rights necessary to meet the factual component of the standing test. Accordingly, the Commission grants standing to the Beaver Lake Cree Nation in this proceeding.

5.1.7 Views of the Bigstone Cree Nation

49. The Bigstone Cree Nation's statement of intent to participate, filed on February 12, 2016, indicated that it is represented by Miller Thomson LLP in this proceeding. It stated that the Bigstone Cree Nation's aboriginal and Treaty 8 rights would be directly and adversely affected should the AUC approve the project.

50. The statement of intent to participate further stated that the project is located in the heart of the Bigstone Cree Nation's traditional territory and approximately 2,800 members live in the "immediate vicinity" of the project.⁹ Further, the Bigstone Cree Nation has lands, including both Reserve lands and treaty entitlement lands, that are directly adjacent to the transmission line's preferred west route and alternate east route. The statement of intent to participate indicated, among other things, that:

- APL's [Alberta Powerline] proposed routes will pass in close proximity to five important fish-bearing lakes (North Wabasca, South Wabasca, Godin, Sandy and Calling) that are located within Bigstone's traditional territory.
- There are 30 to 40 traplines near the proposed East Route.
- Several cabins are located in close proximity to the proposed East and West routes. Additionally, cabins and camps are located on specific traplines.¹⁰

5.1.8 Commission findings

51. As stated above, the Commission denied the Bigstone Cree Nation's request for a second extension of time to submit further information in support of its application for standing. It is incumbent upon parties to provide the requisite information in support of an application for standing within the time prescribed in the process schedule.

⁹ Exhibit 21030-X0559, Bigstone Cree Nation Statement of Intent to Participate, February 12, 2016, page 1.

¹⁰ Exhibit 21030-X0559, Bigstone Cree Nation Statement of Intent to Participate, February 12, 2016, pages 2-4.

52. In its statement of intent to participate, the Bigstone Cree Nation stated that approximately 2,800 of its members live in the “immediate vicinity” of the project, that it “has lands including both reserve lands and treaty entitlement lands, that are directly adjacent to the transmission line’s preferred west route and alternate east route”, there are “30 to 40 traplines near the proposed East Route” and “several cabins are located in close proximity to the proposed East and West routes”. However, when asked to provide specific information on the proximity of the project to the residences of its members or the exercise of their aboriginal and treaty rights, no such information was filed in response to the Commission’s request.

53. Because no specific information was filed on the proximity of the areas where the aboriginal and treaty rights are exercised, the Commission finds that the Bigstone Cree Nation did not demonstrate that the exercise of its aboriginal and treaty rights may be directly and adversely affected by the approval of the project. Therefore, the Commission denies standing to the Bigstone Cree Nation in this proceeding.

5.1.9 Views of the Driftpile First Nation

54. On February 12, 2016, Witten LLP filed a statement of intent to participate on behalf of the Driftpile First Nation indicating that it holds Treaty 8 rights. Construction for the project would be within 120 kilometres of Reserve #150 and would cut through the Driftpile First Nation’s traditional lands in an area which is heavily used by its members for hunting, fishing and gathering food and medicinal plants.¹¹ It added that it has not had an opportunity to complete a technical review of the application or to gather project-specific traditional land use and occupancy information because of capacity funding issues. The Driftpile First Nation also stated that because the project would take up land and render lands inaccessible for harvesting, and may disrupt animals and fish, it is unreasonable to assume there are no adverse impacts on its aboriginal and treaty rights.

5.1.10 Commission findings

55. The Driftpile First Nation stated that the project would cut through its traditional lands in an area which is heavily used by its members for hunting, fishing, and gathering food and medicinal plants. However, the Driftpile First Nation did not file any specific information on where its members exercise their aboriginal and treaty rights in relation to the project. The Driftpile First Nation’s Reserve #150 is approximately 120 kilometres from the nearest project area. The Commission finds that the Driftpile First Nation has not shown a causal connection between the exercise of its aboriginal and treaty rights and the potential for the project to directly and adversely affect those aboriginal and treaty rights exercised, and consequently denies standing to the Driftpile First Nation in this proceeding.

5.1.11 Views of the Fort McKay First Nation

56. The Fort McKay First Nation filed its statement of intent to participate on February 12, 2016. It stated that the northern portion of the transmission line at approximately Townships 87 to 90, west of the Fourth Meridian, as well as the 9515 Thickwood Hills substation, are located within a portion of its traditional territory, which is a culturally important

¹¹ Exhibit 21030-X0604, Driftpile SIP.

area for the exercise of aboriginal and treaty rights to harvest traditional resources for food, cultural and spiritual purposes. Traditional resources include moose, caribou, beaver, and plants for food, hides, and domestic and medicinal purposes.

57. The project both intersects with and is within one to two kilometres of several traditional land use sites used by its members for hunting, gathering, and trapping traditional resources.

58. On March 17, 2016, the Fort McKay First Nation filed submissions on the Commission's standing test and its application for standing in this proceeding.

5.1.12 Commission findings

59. The Commission considered the Fort McKay First Nation's submission that there are several specific traditional activity sites both on, and within, two kilometers of the project. These submissions are relatively specific and show a degree of location or connection between the project and the Fort McKay First Nation's aboriginal and treaty rights to meet the factual component of the standing test. Accordingly, the Commission grants standing to the Fort McKay First Nation in this proceeding.

5.1.13 Views of the O'Chiese First Nation

60. In its statement of intent to participate, the O'Chiese First Nation stated that it is a signatory to Treaty 6 and submitted:

The area of the project is used by O'Chiese First Nation members in the exercise of their constitutionally protected Treaty and Aboriginal rights. Alberta PowerLine's project will impact the availability of lands and preferred conditions for the exercise of O'Chiese First Nation's constitutionally protected Treaty and Aboriginal rights.¹²

5.1.14 Commission findings

61. While the O'Chiese First Nation listed a number of general concerns that may arise from the project, it failed to provide specific information on how the exercise of its rights may be directly and adversely affected by the project. Therefore, the Commission finds that the O'Chiese First Nation has not shown a causal connection between the project and the potential for direct and adverse effect on its aboriginal and treaty rights and consequently denies standing to the O'Chiese First Nation in this proceeding.

5.1.15 Views of the Mikisew Cree First Nation

62. A statement of intent to participate was filed by the Mikisew Cree First Nation on February 12, 2016. The Mikisew Cree First Nation asserted aboriginal rights and treaty rights pursuant to Treaty 8. It stated:

¹² Exhibit 21030-X00520, Statement of intent to participate at page 1.

Harvesting and other rights-based activities, including in areas around the Project, provide food, medicinal plants, building materials, income, and other aspects of our livelihood, culture and well-being for our members.¹³

63. The Mikisew Cree First Nation added that the project is located approximately 50 kilometres south of Fort McKay and 20 kilometres northwest of Fort McMurray, where approximately half of the Mikisew Cree First Nation members reside.

64. In its response to questions from the Commission, the Mikisew Cree First Nation stated that there are potential direct impacts on approximately 50 identified traditional land use sites, which are intersected by the project footprint.

5.1.16 Commission findings

65. The Mikisew Cree First Nation's assertion that 50 traditional land use sites upon which its members have exercised their traditional activities are intersected by the project footprint is precise information. The Mikisew Cree First Nation also articulated the types of activities that its members claimed may be impacted by the project. The Commission therefore finds that the Mikisew Cree First Nation has established a causal connection between the project and the potential for direct and adverse effect on its aboriginal and treaty rights. Accordingly, the Commission grants standing to the Mikisew Cree First Nation in this proceeding.

5.1.17 Views of the Michel First Nation

66. On February 11, 2016, the Michel First Nation submitted a statement of intent to participate on the record of the proceeding. The Michel First Nation stated that it is a signatory to Treaty 6 and that the former Michel Reserve is located in the path of the project. Further, it stated that both transmission line routes "will impact the preferred lands available for the exercise of Michel First Nation treaty rights."¹⁴

5.1.18 Commission findings

67. While the Michel First Nation indicated that the project is located on lands that are available to its members to exercise their rights, it failed to provide explicit information on how the project's location may directly and adversely impact the exercise of these rights.

68. Further, the Michel First Nation did not provide detailed information on whether the exercise of its rights on its former reserve may be directly and adversely affected by the project.

69. As a result, the Commission finds that the Michel First Nation has not shown the potential for direct and adverse effect of the project on its members' rights, and denies standing to the Michel First Nation.

¹³ Exhibit 21030-X00546, Statement of intent to participate at page 1.

¹⁴ Exhibit 21030-X0521, Statement of intent to participate.

5.1.19 Views of the Swan River First Nation

70. In its statement of intent to participate dated February 11, 2016, the Swan River First Nation stated that it is comprised of “Woodland Cree peoples, [who] are original signatories to Treaty 8.”¹⁵ The Swan River First Nation explained that:

[the] area of the project is within an area of preferred use by ...[the Swan River First Nation members]for practising their Aboriginal and Treaty Rights. Cumulative effects has limited the areas within their territory where they can exercise their Rights. Swan River First Nation is very interested in understanding how the project may impact their harvesting (hunting, fishing, trapping, and gathering) and occupancy (camps, cabins, graves, trails, spiritual sites) and developing appropriate mitigation to minimize impacts.¹⁶

71. The Swan River First Nation added that its two Reserves (150E and 150F) are located east of the town of Slave Lake.

72. The Swan River First Nation requested that the Commission consider what impacts the project will have on its members’ ability to exercise aboriginal and treaty rights, which it characterized as a “complex task that requires a considerable amount of baseline data collection.”¹⁷

5.1.20 Commission findings

73. In response to the request for the Commission to determine what impact the project may have on the Swan River First Nation’s ability to exercise aboriginal and treaty rights, it is incumbent upon it to provide the Commission with sufficient information to establish that the project has the potential to directly and adversely affect the rights asserted.

74. The Swan River First Nation stated that the project is within an area of preferred use by its members for practising their aboriginal and treaty rights. However, the Swan River First Nation did not file sufficient information to demonstrate how the project has the potential to directly and adversely affect the exercise of its members’ aboriginal and treaty rights. Further, based on the Commission’s review, the Swan River First Nation’s reserves 150E and 150F are approximately 40 kilometres from the closest point of the project area. Accordingly, the Commission finds that the Swan River First Nation has not shown a causal link between the project and the potential direct and adverse effect on the exercise of its aboriginal and treaty rights. It therefore denies standing to the Swan River First Nation in this proceeding.

5.1.21 Views of the Sucker Cree First Nation

75. On February 12, 2016, MacPherson Leslie & Tyerman LLP filed a statement of intent to participate and supporting documents on behalf of the Sucker Cree First Nation. The Sucker Cree First Nation asserted both aboriginal and Treaty 8 rights in its submissions. It

¹⁵ Exhibit 21030-X0343, SIP-21030-F0124_0375.PDF, Statement of intent to participate.

¹⁶ Exhibit 21030-X0343, SIP-21030-F0124_0375.PDF, Statement of intent to participate.

¹⁷ Exhibit 21030-X0343, SIP-21030-F0124_0375.PDF, Statement of intent to participate.

stated that its traditional land-use evidence shows the overlap of the exercise of its members' rights with areas that will be affected by the project. Specifically:

There is documented to be 136 SCFN traditional use sites within 1 kilometre of the West Route Option and 3 traditional land use sites within 1 kilometre of the EAST Route Option.¹⁸

76. The Sucker Cree First Nation also expressed general concerns related to impacts to the North Saskatchewan River and the Athabasca River and its ability to hunt caribou.

5.1.22 Commission findings

77. The Commission considers that the information filed about the locations of harvesting and hunting sites demonstrates a degree of location or connection between the project and the exercise of the Sucker Cree First Nation's aboriginal and treaty rights. Accordingly, the Commission grants standing to the Sucker Cree First Nation in this proceeding.

5.1.23 Views of the Métis Nation of Alberta

78. The Métis Nation of Alberta's statement of intent to participate was filed on February 18, 2016, and stated that:

The Métis Nation of Alberta (MNA) has concerns with the cumulative effects of development on northern wetlands and ecosystems. The MNA is particularly concerned with the impact of this project to individual members of the nation who exercise Section 35 Métis rights along certain sections of the 500 KM length of the line including the proposed connection lines, substations and switchyards.¹⁹

5.1.24 Commission findings

79. The Commission considers that the information contained in the statement of intent to participate with respect to the Métis Nation of Alberta's members' exercise of aboriginal rights along some sections of the transmission line is general in nature. The Commission requested additional information but did not receive a response. Because no specific information was filed in support of the statement regarding the exercise of its members' Section 35 of the *Constitution Act* aboriginal rights in the project area, the Commission finds that the Métis Nation of Alberta has not demonstrated that the project, if approved, may directly and adversely affect the exercise of these rights. Therefore, the Commission denies standing to the Métis Nation of Alberta in this proceeding.

5.1.25 Gunn Métis Local 55

80. On February 12, 2016 Prowse Chowne LLP filed a statement of intent to participate and supporting documents on behalf of the Gunn Métis Local 55. The Gunn Métis Local 55 maintained that the project, if approved, may create harvesting and cultural impacts on its members. The Gunn Métis Local 55 also submitted a report from its consultants,

¹⁸ Exhibit 21030-X0590, 308791 – SCFN Statement of Intent to Participate – Alberta Powerline – v1 page 4.

¹⁹ Exhibit 21030-X0636, Metis Nation of Alberta SIP 2016-02-12.

Willow Springs Strategic Solutions, indicating that there are land use sites within five kilometres of the project.

81. In its submission dated February 26, 2016, responding to the Commission's request for further information, the Gunn Métis Local 55 filed affidavits of four community members and maps showing some of its members' use of traditional resources in proximity to the project. The affidavits indicated that these members use the project's right-of-way, and the area immediately surrounding the right-of-way, for harvesting and other traditional activities.

82. The Gunn Métis Local 55 also submitted that both Tracy Friedel and Murleen Crossen identify that their family homes are located within 800 metres of the proposed transmission line.

5.1.26 Commission findings

83. The information filed with respect to the Gunn Métis Local 55 members' exercise of traditional activities along some sections of the transmission line is relatively detailed because both the activities and their corresponding locations are described in the affidavits. The Commission finds that the Gunn Métis Local 55 has shown that the project, if approved, may directly and adversely affect the exercise of its members' aboriginal rights and accordingly grants standing to the Gunn Métis Local 55 in this proceeding.

5.1.27 Wabasca Métis Local 90

84. On February 12, 2016 Prowse Chowne LLP filed a statement of intent to participate and supporting documents on behalf of the Wabasca Métis Local 90. The Wabasca Métis Local 90 stated that the affidavits submitted on the record of the proceeding provide factual evidence that its members use both the transmission line right-of-way and the immediate area surrounding the right-of-way. For example, Mr. Charlie Shaw stated "Along the Project's West Route proposed right-of-way near Wabasca-Desmarais I have travelled, camped, hunted moose, elk and deer".²⁰

85. In its submission dated February 26, 2016, responding to the Commission's request for further information, the Wabasca Métis Local 90 explained that the information provided in the affidavits had not been sworn but that the information had been verified.

5.1.28 Commission findings

86. The Wabasca Métis Local 90 filed specific information with respect to its members' use of traditional lands for harvesting along some sections of the transmission line. The Commission finds that the Wabasca Métis Local 90 has shown that the project, if approved, may directly and adversely impact the exercise of its members' aboriginal rights and accordingly grants standing to the Wabasca Métis Local 90 in this proceeding.

5.1.29 Views of the Fort McMurray Métis Local 1935

87. On February 12, 2016, Prowse Chowne LLP filed a statement of intent to participate and supporting documents on behalf of the Fort McMurray Métis Local 1935. In its statement of intent to participate, the Fort McMurray Métis Local 1935 stated:

²⁰ Exhibit 21030-X0702, Wabasca - Response to Information Requests, page 3-4.

Both the Transmission Line and the substation are within territories that members of McMurray Métis have used for trapping, hunting and harvesting of plant materials and overlaps Registered Fur Management Area2676 which is held by a McMurray Métis member.²¹

88. The Registered Fur Management Area 2676 is 1.4 kilometres from the Thickwood Hills 951S substation and 800 metres from the transmission line.

5.1.30 Commission findings

89. The information provided with respect to the Fort McMurray Métis Local 1935 members' traditional activities, including the trap line located within 800 metres of the project, is precise. The Commission finds that the Fort McMurray Métis Local 1935 has shown that the project, if approved, may directly and adversely impact its members' aboriginal rights. Accordingly, the Commission grants standing to the Fort McMurray Métis Local 1935 in this proceeding.

5.1.31 Views of the Buffalo Lake Métis Settlement

90. Ackroyd LLP filed a statement of intent to participate on behalf of the Buffalo Lake Métis Settlement on February 11, 2016. It stated, in part:

Both routes of the proposed powerline cross through the Buffalo Lake Métis Settlement traditional lands. In addition we fear the project will impact our traditional land use through its impacts to the environment and the inevitable consequences on our hunting and harvesting activities. We are also concerned about the effect the construction and operation will have on wildlife - in particular migration patterns and bird populations.²²

91. On March 18, 2016 the Buffalo Lake Métis Settlement filed additional submissions, including a map and affidavits from its members indicating that its members exercise aboriginal rights both on the project lands and within 800 metres of the transmission line.

5.1.32 Commission findings

92. In its statement of intent to participate, which was supported by affidavits, the Buffalo Lake Métis Settlement indicated that the preferred west route crosses and is within 800 metres of traditional hunting and gathering areas utilized by its members. Because the project is within 800 metres from lands that are used for the exercise of aboriginal rights, the Commission finds that the Buffalo Lake Métis Settlement has shown a causal connection between the project and the potential for direct and adverse effect on its aboriginal rights. As a result, the Commission grants standing to the Buffalo Lake Métis Settlement in this proceeding.

5.1.33 Village of Alberta Beach

93. The Commission denied standing to the Village of Alberta Beach (Alberta Beach) in its February 19, 2016 ruling. On February 25, 2016, it submitted a request for the Commission to reconsider its decision. Alberta Beach confirmed that while it holds title to properties within its

²¹ Exhibit 21030-X0572, Statement of intent to participate page 3.

²² Exhibit 21030-X0519, System Generated PDF, Statement of intent to Participate.

municipal boundaries, none of these fall within 800 metres of the project. However, it has direction, control and management of the Rail Grade Road owned by the Province of Alberta, pursuant to Section 18 of the *Municipal Government Act*.

5.1.34 Commission findings

94. The new information brought forth by Alberta Beach is that it operates and manages a road located within 800 metres of the project. The Commission finds that the operation and management of a road on behalf of the Province of Alberta does not, without more information, establish a basis for standing. Further, no information was filed asserting that the project has the potential to directly and adversely affect the Rail Grade Road. The Commission therefore continues to deny standing to Alberta Beach.

5.1.35 South of 43 landowner group

95. On February 26, 2016, Prowse Chowne LLP filed a letter with the Commission indicating that it represents a group of landowners known as the South of 43 landowner group. The South of 43 landowner group is comprised of landowners and residents who own or occupy lands within 800 metres of the project.

5.1.36 Commission findings

96. The Commission issued a notice of hearing for Proceeding 21030 on December 29, 2015, indicating that persons who owned or resided on property located within 800 metres of the edge of the right-of-way of either the preferred west route or the alternate east route would have standing to participate in the hearing. With the exception of Kim Lafoy, the members of the South of 43 landowner group own or reside on property within 800 metres of the edge of the right-of-way of either the preferred west route or the alternate east route. Therefore, the Commission grants standing to the South of 43 landowner group in this proceeding.

5.1.37 Nick Tywoniuk

97. Nick Tywoniuk was listed in Schedule C. In his statement of intent to participate, he indicated that he owns property approximately 800 metres from the alternate east route. His concerns include adverse effects to the watershed of Long Island Lake and property impacts.²³

5.1.38 Commission findings

98. Mr. Tywoniuk's land location indicates that his property is approximately 1,200 metres from the transmission line right-of-way. Given the concerns expressed and his land location, the Commission is not persuaded that Mr. Tywoniuk's rights may be directly and adversely affected by the Commission's decision in this proceeding. Accordingly, the Commission denies Mr. Tywoniuk standing.

²³ Nick Tywoniuk also filed a submission on behalf of the Summer Village of Larkspur discussed below.

5.1.39 Kim and Warren Lafoy

99. Kim and Warren Lafoy were also listed in Schedule C.

100. In his February 11, 2016 statement of intent to participate, Warren Lafoy indicated that the project would affect his family and everyone in his subdivision in the event of an emergency evacuation because the transmission line would cross the only road that can be used as a safe evacuation route.²⁴

101. In a February 12, 2016 statement of intent to participate, Kim Lafoy expressed concerns with route selection, proximity of the transmission line to a public school and residences, health and safety, as well as property value, visual, noise and environmental impacts.²⁵

5.1.40 Commission findings

102. Taking into account that Warren and Kim Lafoy are not within 800 metres of the transmission line and the concerns raised, the Commission is not persuaded that their rights may be directly and adversely affected by the Commission's decision in this proceeding. Therefore the Commission denies standing to Warren and Kim Lafoy.

103. However, because Kim Lafoy is a member of the South of 43 landowner group, Kim Lafoy may participate in the proceeding as a member of that group.

5.1.41 Gloria Kirchner and Lance and Irene McCann

104. Gloria Kirchner and Lance and Irene McCann filed statements of intent to participate after the Commission issued its standing ruling on February 19, 2016. They indicated in their submissions that they own or occupy land located within 800 metres of the transmission line.

5.1.42 Commission findings

105. The Commission finds that these persons have standing based on their land locations.

5.1.43 Renz Family group

106. The transmission line route traverses property owned by Jakob and Johanna Renz. The Renz family group, composed of Jakob and Johanna Renz and Norm and Maritta Renz, was granted standing in the Commission's February 19, 2016 ruling because the Commission understood that Jakob and Johanna Renz, who have standing because of their land location, were members of that group. Based on the submissions received, Norm and Maritta Renz's property is located "a couple of kilometres" away from the project.²⁶

5.1.44 Commission findings

107. The Commission finds that based on their land location, Norm and Maritta Renz do not have standing in this proceeding. Since the issuing of the February 19, 2016 standing ruling,

²⁴ Exhibit 21030-X0535, Statement of intent to participate.

²⁵ Exhibit 21030-X0597, Statement of intent to participate.

²⁶ Exhibit 21030-X0543.

Jakob and Johanna Renz have filed separate submissions from those of the Renz family group. If Jakob and Johanna Renz are not members of the Renz family group, the Renz family group no longer has standing in this proceeding.

5.1.45 The Diagonal group

108. On March 17, 2016, Wilson Laycraft registered the Hansen group, which is composed of Alfred Hansen, Ruby Hansen, Judy Shifflet, Janet Hansen, Darryl Hansen, Don Hansen, Jamie Hansen, and Ross Atley, in this proceeding. It stated that these persons are the registered owners and occupiers of lands described as the Southwest quarter of Section 23, Township 55, Range 3, west of the Fifth Meridian, and the Southeast quarter of Section 23, Township 55, west of the Fifth Meridian, and that these lands are adjacent to and traversed by the preferred west route. Therefore, each of these persons will be directly and adversely affected by a decision of the Commission to approve the preferred west route.

109. Wilson Laycraft also filed a letter indicating that it was representing David Brennan and Cathy Drixler in this proceeding. These individuals are the registered owners and occupiers of lands described as the Northwest quarter of Section 14, Township 55, Range 3, west of the Fifth Meridian. It added that Mr. Brennan had previously filed a statement of intent to participate.

110. On March 21, 2016, Wilson Laycraft filed a letter indicating that the Peterson group, the Hansen group, Mr. Brennan, and Ms. Drixler would be participating in the proceeding as one group, referred to as the Diagonal group.

5.1.46 Commission findings

111. On the basis that the members of the Diagonal group own or occupy lands within 800 metres of the preferred west route, the Commission grants standing to the members of the Diagonal group.

112. The Commission previously determined in its February 19, 2016 ruling that Mr. Brennan and the Peterson group had standing. Ms. Drixler is a co-owner and occupier, along with Mr. Brennan, of lands described as the Northwest quarter of Section 14, Township 55, Range 3, west of the Fifth Meridian, which are located within 800 metres of the preferred west route. The Commission consequently also grants standing to Ms. Drixler in this proceeding.

5.1.47 Summer Village of Larkspur

113. The Summer Village of Larkspur filed further submissions on March 18, 2016, in which it asserted that the alternate east route will result in adverse visual and environmental impacts to its lands, Long Island Lake, and to surrounding lands used by its residents.

6.1.14 Commission findings

114. The Commission denied standing to the Summer Village of Larkspur in its February 19, 2016 ruling.

115. The Summer Village of Larkspur has not shown, in its additional submissions, that it is a landowner or occupies land within 800 metres of the project. The Commission finds that the Summer Village of Larkspur has not demonstrated that it has rights that may be directly and adversely affected by a decision of the Commission on the applications, and accordingly continues to deny standing to the Summer Village of Larkspur.

6. Conclusion

116. As stated in its February 19, 2016 ruling, in accordance with its past practice, the Commission will exercise its discretion and allow parties without standing identified above, to make a brief submission at the hearing. The Commission requests that parties advise the Commission of their intention to do so no later than May 15, 2016.

117. Parties without standing may also join a group as long as one group member has standing.

118. In the Commission's view many of the parties who filed statements of intent to participate in this proceeding raise similar issues. The Commission encourages parties with standing to band together to form a group, because the participation of groups contributes to the efficiency of a hearing and allows interveners to share the work of preparing and presenting an intervention. It should also be noted that costs awards to local interveners are affected by efficiencies that are gained, or which should have been gained, by a co-operative approach among interveners and intervener groups.

119. The Commission's revised process schedule for parties granted standing in this ruling is set out below.

Process step	Date
Intervenors' information requests (questions) to applicants deadline	April 4, 2016
Applicants' deadline to respond to information requests	April 13, 2016
Intervenors' written evidence deadline	April 22, 2016
Information requests (questions) to intervenors' deadline	April 29, 2016
Intervenors' deadline to respond to information requests	May 13, 2016
Applicants' reply evidence deadline	May 25, 2016
Commencement of hearing	June 6, 2016 at 9 a.m.

Yours truly,

Shanelle Sinclair
Commission Counsel

August 11, 2016

To: Parties currently registered on Proceeding 21030

**Fort McMurray West 500-kV Transmission Project
Proceeding 21030
Applications 21030-A001 to 21030-A015**

Ruling on standing and participation rights

Introduction

1. In this ruling, the Alberta Utilities Commission must determine standing and participation rights for the Consumers' Coalition of Alberta (CCA), Mr. R. Arndt, Mr. K. McNeilly, and Ms. K. Trithart and her family (Trithart family) in Proceeding 21030. A person who demonstrates the potential for direct and adverse effect is said to have "standing".
2. The Commission has asked me to inform interested parties of its ruling and its reasons for its ruling.

Background

3. Alberta PowerLine L.P. (Alberta PowerLine) has applied to build the Fort McMurray West 500-kV Transmission Project (the project) in north central Alberta from the Wabamun area to the Fort McMurray area, under the *Hydro and Electric Energy Act*.
4. Alberta PowerLine has identified a preferred west route and an alternative east route. Both routes also contain variant options. In addition to the transmission line, Alberta PowerLine proposes to build and operate three optical repeater sites and expand the Livock 939S Substation and the Thickwood Hills 951S Substation.
5. ATCO Electric Ltd. and AltaLink Management Ltd. applied for alterations to their facilities associated with Alberta PowerLine's proposed transmission line.
6. The Commission issued a notice of hearing for Proceeding 21030 on December 29, 2015, informing interested parties that statements of intent to participate had to be filed by February 12, 2016. In its notice, the Commission made an advance determination that persons who owned or resided on property located within 800 metres of the edge of the right-of-way of either the preferred or alternate routes or route options would have standing to participate in the hearing.
7. On June 6, 2016 and June 30, 2016, Alberta PowerLine filed amendments to its proposed routing options.

8. On June 23, 2016, the Commission issued notice of the June 6, 2016 amendments. It issued notice of the June 30, 2016 amendments on July 12, 2016.

9. On July 6, 2016, Mr. Arndt filed a statement of intent to participate with respect to the route amendments. Mr. Arndt has a trapper's cabin inside the proposed right-of-way and stated that the cabin could not be under a transmission line.¹

10. On July 7, 2016, Mr. McNeilly filed concerns about the amended proposed common route option and common route option route variation number two. Mr. McNeilly is concerned about the impacts of these proposed routes on his trapping area held under registered Fur Management Area 2573.² He did not indicate whether he was going to participate in the hearing and has not responded to the Commission's letter asking him if he was going to participate in the hearing.

11. The CCA filed a statement of intent to participate and submissions on July 14, 2016.³ On July 18, 2016, the Commission issued a letter outlining the process steps to consider the CCA's statement of intent to participate.

12. Alberta PowerLine and the Alberta Electric System Operator (AESO) filed submissions on July 21, 2016,⁴ and the CCA replied on July 25, 2016,⁵ in accordance with the process schedule.

13. On July 27, 2016, counsel for the Trithart family filed a statement of intent to participate and supporting documents indicating that their lands would be traversed by the project, as amended.⁶ The Trithart family submitted that, by the nature of their operations and proximity to the proposed transmission line, the proposed transmission line directly and adversely affected their farming operations.

14. The parties' submissions are summarized below. The Commission first considers the CCA's request for standing and subsequently the statements of intent to participate of the other above-mentioned persons. In making its decision, the Commission considered the full text of the submissions available on the record of Proceeding 21030.

Views of the CCA

15. The CCA is a coalition of two public interest groups: the Consumers' Association of Canada (Alberta Division), and the Alberta Council on Aging. As a collective, it is concerned with the tariffs, rates and charges of the various public utilities operating in Alberta and regulated by the AUC. The CCA requested that it be granted standing in Proceeding 21030 as a coalition representing utility ratepayers.

16. The CCA submitted that it has not been able to participate in Proceeding 21030 until this time given the substantial demands on its limited resources.

¹ Exhibit 21030-X1164 through to Exhibit 21030-X1166.

² Exhibit 21030-X1170.

³ Exhibit 21030-X1175 through Exhibit 21030-X1177.

⁴ Alberta PowerLine response Exhibit 21030-X1180 and AESO response Exhibit 21030-1181.

⁵ Exhibit 21030-X1188 through to Exhibit 21030-X1190.

⁶ Exhibit 21030-X1179.

17. The CCA explained that in Proceeding 1449,⁷ held to consider the AESO competitive process application, the AESO outlined the adjustment mechanisms in the competitive process project agreements. Adjustment mechanisms exist to adjust the cost of the proposed transmission line for route changes arising from the Commission's decision on the facility application and other change orders submitted by either the AESO or Alberta PowerLine. It added that it was particularly concerned with the costs associated with the amendments filed by Alberta PowerLine and noted that the deadline to express concerns with the amendments was July 22, 2016. The CCA's concerns with the project are as follows:

- a. CCA is concerned about the cost effectiveness of some of the proposed amendments, including:
 - i. Common Route Option Variation #1 at a cost of \$1.3 million and Option Variation #2 at a cost of \$9.8 million; and
 - ii. Withdrawal of the route involving the Diagonal Group resulting in an increase in the net present cost of \$4 million.
- b. Alberta PowerLine Route Amendments show costly zig-zagging of the route which need to be tested as they will negatively affect ratepayers;
- c. The Competitive Procurement Agreement between the AESO and Alberta PowerLine may allow, or even incent, Alberta PowerLine (APL) to pass costs through to ratepayers whenever possible and thus line route proposals need to be vetted to ensure the public interest is addressed;
- d. If it is confirmed that the AESO Competitive Procurement Agreement provides the AESO with full authority to delay all or portions of the project phases if current circumstances warrant such changes, this could provide significant cost savings to ratepayers;
- e. Lack of evidence to support the staging and sequencing of construction could result in underutilized and costly lines which is not in the public interest;
- f. Lack of public information regarding AESO milestones necessary to satisfy the requirements in the EUA for this project;
- g. Lack of public consultation of directly affected market participants by the AESO in order to establish specific milestones; and
- h. Declining economic conditions that impact oil sands developments and load growth in the Fort McMurray area resulting in a change in circumstances that require a review of the project stages and construction sequence.⁸

⁷ This proceeding resulted in Decision 2013-044: Alberta Electric System Operator, Competitive Process Pursuant to Section 24.2(2) of the Transmission Regulation, Part B: Final Determination, Application 1607670, Proceeding 1449, February 14, 2013. In this decision, the Commission approved, with conditions, the Alberta Electric System Operator's (AESO's) competitive process to determine who is eligible to apply to the Commission for the construction and operation of certain transmission facilities, pursuant to Section 24.2 of the *Transmission Regulation*, AR 86/2007. The Commission subsequently issued Decision 2013-255: Alberta Electric System Operator, Decision on Variance of AUC Decision 2013-044: Competitive Process Pursuant to Section 24.2(2) of the Transmission Regulation, Part B: Final Determination, Application 1609483, Proceeding 2555 July 9, 2013, which relieved the AESO from having to comply with paragraph 201 and Condition 9 of Decision 2013-044. The competitive bid process approved by the Commission was used in relation to the proposed transmission line.

⁸ Exhibit 21030-X1176, PDF page 2.

18. In support of its request for standing, the CCA cited Decision 2014-283⁹ and Decision 3585-D03-2016¹⁰ and submitted that the Commission affirmed in these decisions its expectation that interveners concerned about impacts of design decisions, including line routes, should raise their concerns in facility applications rather than waiting for a deferral account reconciliation application.

19. Further, the CCA requested costs recovery to support its intervention because, in the past, the Commission has exercised its discretion and industry associations have occasionally been granted standing in facility applications. Granting standing appears to occur when the Commission is of the view that the party applying for standing will aid the Commission in its understanding of issues so that it may make a fully-informed decision in the public interest. The CCA acknowledged that it did not meet the definition of a local intervener under Section 22 of the *Alberta Utilities Commission Act* and Rule 009: *Rules on Local Intervener Costs*. However, the Commission should use its discretion and confirm that the CCA is eligible to recover costs in Proceeding 21030 because the facility application is the appropriate legislative forum to address issues such as transmission line design, including line routes, project staging and related impacts on in-service dates. Further, the CCA is not in a position to fund an intervention.

20. In its reply submissions, the CCA noted that, while Alberta PowerLine opposed its request for standing, the AESO took no position other than expressing its concerns with the scope of the issues to be addressed in Proceeding 21030. The CCA stated:

It is clear that despite the submissions by the AESO and APL that the Project costs are established through a fixed price bid, the ultimate cost of the project can and will vary from that bid price. Further, the staging of the various construction phases of the Project can also have an impact on overall costs of the Project and when customers will ultimately begin paying for those costs. Decisions to vary the bid price and timing of the Project, must be visible to interveners and the Commission in the future and will be assessed by all market participants for years to come using information known at the time those decisions were made as well as additional information that the CCA expects will confirm its own less optimistic forecasts of reduced load requirements in the Fort McMurray area. The Commission must weigh whether or not it is in the public interest to permit such decisions to be made without further scrutiny and justification. To the extent that the Commission does determine that these broader concerns of the CCA are outside of the scope of proceeding ID 21030, the CCA respectfully requests that the Commission initiate as a separate proceeding the proceeding contemplated and recommended by the CCA in proceeding ID 20272 to address the issue of the AESO's load forecasts and understand based on current information whether or not the project is needed as currently outlined.¹¹

21. In response to the AESO's concerns related to the scope of the CCA's intended topics, the CCA stated that the concerns related directly to cost-related matters that arise through decisions made during the present applications. These cost-related matters impact ratepayers directly. The CCA reiterated that the issues raised are within the scope of Proceeding 21030 for

⁹ Decision 2014-283: ATCO Electric Ltd. 2012 Transmission Deferral Account and Annual Filing for Adjustment Balances, Application 1609720, Proceeding 2683, October 2, 2014.

¹⁰ Decision 3585-D03-2016: AltaLink Management Ltd. 2012 and 2013 Deferral Accounts Reconciliation Application, Proceeding 3585, Application 1611090-1, June 6, 2016.

¹¹ Exhibit 21030-X1191 at page 10.

the reasons set out in its reply and contends that it meets the standing test set out in Section 9(2) of the *Alberta Utilities Commission Act*.

Views of Alberta PowerLine

22. In its July 21, 2016 response to the CCA's request to intervene, Alberta PowerLine submitted that the CCA does not have standing because it does not satisfy the Commission's standing test set out in the *Alberta Utilities Commission Act*, consequently its request to participate in Proceeding 21030 should be denied.

23. In the alternative, if the Commission determined that the CCA may participate in Proceeding 21030, Alberta PowerLine submitted that the scope of its participation should be limited to matters related to the amendments because the CCA specifically relied on these amendments to justify its late request for participation. It added that the Commission and its predecessor have limited the participation of rates interveners in facility applications to applications that raise novel issues.

24. In response to the CCA's submission that its participation in Proceeding 21030 would "not prejudice any party," Alberta PowerLine submitted that the participation of the CCA at this late stage in the process would prejudice it, as discussed in more detail below:

APL submits that if the CCA is granted the participatory rights it is requesting, prejudice to APL cannot be remedied by merely extending the deadline for of APL's reply evidence to August 17, 2016. The CCA's proposal is one-sided, and would not, for instance, allow APL the procedural step of asking information requests on the CCA's Written Submission. More importantly, requiring APL to respond to the numerous issues outside the relevant scope of this Proceeding raised by the CCA, whether in reply evidence or under cross-examination, is in itself prejudicial to APL and contrary to regulatory efficiency.¹²

Alberta PowerLine requested that all documents filed by the CCA in support of its intervention be struck from the record and that the Commission confirm that the CCA is not eligible to recover costs.

Views of the AESO

27. On July 21, 2016, the AESO submitted in a letter that it takes no position regarding the CCA's request to participate, but contended that some matters that the CCA raised were beyond the scope of the AESO's limited participation in Proceeding 21030. The AESO stated that its participation in this proceeding is limited to providing evidence required by Section 38.1 of the *Transmission Regulation*. However, the CCA's submissions suggest that the CCA intends to cross-examine the AESO's witness on a number of matters which, in the AESO's view, extend beyond the scope of the Section 38.1 requirements. In the event the Commission permits the CCA to participate, as it relates to cross-examination of the AESO, the scope should be limited to the Section 38.1 requirements.

¹² Exhibit 21030-X1180 at page 10.

Discussion

Legal test to obtain standing before the Commission

28. Standing before the Commission is determined by Section 9(2) of the *Alberta Utilities Commission Act*, which states:

(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.

29. This provision and the factors to be assessed in determining whether to grant standing have been considered by the Alberta Court of Appeal.

30. In *Cheyne v. Alberta (Utilities Commission)*, the Court of Appeal characterized Section 9(2) as the equivalent of Section 26(2) of the *Energy Resources Conservation Act* and confirmed that the two-part test for standing under Section 26(2) applies to Section 9(2).¹³

31. In *Dene Tha' First Nation v Alberta (Energy and Utilities Board) (Dene Tha')* the Court of Appeal described that test as follows:

...s. 26(2) has two branches. First is a legal test, and second is a factual one. The legal test asks whether the claim right or interest being asserted by the person is one known to the law. The second branch asks whether the Board has information which shows that the application before the Board may directly and adversely affect those interests or rights. The second test is factual.¹⁴

32. In the *Dene Tha'* decision, the Court of Appeal addressed the relationship between the legal and factual tests and stated that “Some degree of location or connection between the work proposed and the right asserted is reasonable.”

33. In *Cheyne v Alberta (Utilities Commission)*, the Court of Appeal confirmed that the two-part test described in the *Dene Tha'* decision applies equally to Section 9(2) of the *Alberta Utilities Commission Act*.¹⁵

34. The meaning of the phrase “directly affected” was considered by the Alberta Court of Appeal in two decisions arising from the Public Health Advisory and Appeal Board under the *Public Health Act*. Under that act, only persons who were directly affected by a decision of a local board could appeal a local board’s decision to the Public Health Advisory and Appeal Board.

¹³ *Cheyne v Alberta (Utilities Commission)*, 2009 ABCA 94.

¹⁴ *Dene Tha' First Nation v Alberta (Energy and Utilities Board)*, 2005 ABCA 68.

¹⁵ *Cheyne v Alberta (Utilities Commission)*, 2009 ABCA 94.

35. In *Canadian Union of Public Employees, Local 30 v WMI Waste Management of Canada Inc.* (CUPE decision), the Court of Appeal found as follows:

[18] In our view, the Chambers Judge was correct in upholding the decision of [the Public Health Advisory and Appeal Board] to give the words “directly affected” the common law interpretation enunciated by Lord Hobhouse in *Re Endowed Schools Act* where he stated:

that term points to a personal and individual interest as distinct from the general interest which appertains to the whole community...

This court has previously held that it is necessary to interpret reasonably the term “affected” to make an Act having a right of appeal workable: *Re Pension Fund Properties and Development Appeal Board of City of Calgary*. The phrase “directly affected” must mean something more than “affected”. However, it cannot be given an expanded meaning simply by virtue of expanding social consciousness: *Canada (A.G.) v. Mossop*.

[19] In our view, the inclusion of the word “directly” signals a legislative intent to further circumscribe a right of appeal. When considered in the context of the regulatory scheme, it is apparent that the right of appeal is confined to persons having a personal rather than a community interest in the matter. (Citations removed)¹⁶

36. In *Friends of Athabasca Environmental Association v Public Health Advisory and Appeal Board* (FOTA decision), which was issued at the same time as the CUPE decision, the Court of Appeal stated:

The mandate of an administrative tribunal and its legal process must be construed in accordance with the legislative intent. In our view, that intent is clear. The use of the modifier “directly” with the word “affected” indicates an intent on the part of the Legislature to distinguish between persons directly affected and indirectly affected. An interpretation that would include any person who has a genuine interest would render the word “directly” meaningless, thus violating fundamental principles of statutory interpretation.¹⁷

37. In *Kostuch v Alberta (Director, Air & Water Approvals Divisions, Environmental Protection)* (Kostuch decision), the Court of Queen’s Bench had to determine if the Court of Appeal’s interpretation of the phrase “directly affected” in the CUPE and FOTA decisions also applied to the use of that phrase in the *Environmental Protection and Enhancement Act*.¹⁸ The Court of Queen’s Bench concluded that the meaning of “directly affected” is the same in both acts and endorsed the following analysis by the Environmental Appeal Board:

Two ideas emerge from this analysis about standing. First, the possibility that any given interest will suffice to confer standing diminishes as the causal connection between an approval and the effect on that interest becomes more remote. This first issue is a question of fact, i.e., the extent of the causal connection between the approval and how

¹⁶ *Canadian Union of Public Employees, Local 30 v WMI Waste Management of Canada Inc.*, 1996 ABCA 6 at paragraph 18-1.

¹⁷ *Friends of Athabasca Environmental Association v Public Health Advisory and Appeal Board*, 1996 ABCA 11 at paragraph 10.

¹⁸ *Kostuch v Alberta (Director, Air & Water Approvals Divisions, Environmental Protection)*, 1996 CanLII 10565 (AB QB).

much it affects a person's interest. This is an important point; the Act requires that individual appellants demonstrate a personal interest that is directly impacted by the approval granted. This would require a discernible effect, i.e., some interest other than the abstract interest of all Albertans in generalized goals of environmental protection. 'Directly' means the person claiming to be 'affected' must show causation of the harm to her particular interest by the approval challenged on appeal. As a general rule, there must be an unbroken connection between one and the other.¹⁹

38. The Commission's test for standing is arguably more stringent than the tests described above because it requires a person to demonstrate the potential for both direct and adverse effects arising from the Commission's decision. The Concise Oxford Dictionary succinctly defines the word adverse as "harmful; unfavorable."²⁰ The Merriam-Webster Online Dictionary similarly defines adverse as "bad or unfavourable: not good."²¹ In accordance with those definitions and the CUPE, FOTA and Kostuch decisions, this means that under Section 9(2) of the *Alberta Utilities Commission Act*, the potential effects associated with a decision of the Commission must be personal rather than general and must have harmful or unfavourable consequences. Further, when read together with the Dene Tha' decision, those decisions highlight the need for persons seeking standing to demonstrate the degree of connection between the rights asserted and potential effects identified.

39. Historically, the Commission and its predecessor the Alberta Energy and Utilities Board (the Board) has considered the issue of the intervention of consumer groups in facilities applications as follows:

The Board is not satisfied that participants whose only connection to this application is their status as customers of electrical service in the Province of Alberta have demonstrated the requisite direct and adverse impact upon their rights and will not, without further information, be granted standing in this proceeding. As set out above, any impact which this project may or may not have on rates will be determined at a future date and in a different process. Parties whose rights or status as potential customers may be affected by the inclusion or exclusion of this line in the rates will have the opportunity to have their concerns considered at that time.²²

40. However, in Decision 2014-283 and Decision 3524-D01-2016, the Commission provided further direction to parties on how the costs implications of projects may arise in future facilities applications.²³ At paragraphs 190 and 191 of Decision 2014-283, the Commission stated:

190. In the previous section, the Commission indicated that, on a practical level, decisions made at key points in the cycle of a project's development and execution, such as the design and functional specifications approved as part of facility applications,

¹⁹ *Ibid* at paragraph 25.

²⁰ *Concise Oxford Dictionary*, tenth edition, Oxford University Press, 2001.

²¹ *Merriam-Webster Dictionary*, <http://www.merriam-webster.com/dictionary/adverse>, retrieved on September 17, 2015.

²² Alberta Energy and Utilities Board Decision 2006-120: AltaLink Management Ltd. – 500 kV Transmission Line from Genesee Area to Langdon Substation in East Calgary and EPCOR Transmission Inc. – Alterations to the Genesee Substation to Accommodate the Proposed Transmission Line – Prehearing Meeting, Applications 1478550 and 1479163, November 23, 2006, page 3.

²³ Decision 3524-D01-2016, AltaLink Management Ltd. 2015-2016 General Tariff Application, Proceeding 3524, Application 1611000-1 May 9, 2011. Decision 2014-283: ATCO Electric Ltd. 2012 Transmission Deferral Account and Annual Filing for Adjustment Balances, Proceeding 2683, Application 1609720, October 2, 2014.

impact subsequent decisions in the execution of that project and can become irreversible. As such, the Commission intends to review the cost-related evidence and consider cost-related issues in facilities proceedings, and considers that participation by interveners who are focussed primarily on issues of cost and design, should be permitted in facility proceedings.

191. The Commission recognizes that expanding the scope of facility proceedings beyond the primary focus on the selection of the optimal route may complicate future facility proceedings. Accordingly, beyond recognizing the need in principle for there to be greater consideration of facility design and related cost issues in facility proceedings, the Commission will not make specific recommendations on the nature of the changes that could be made to the scope of participation and issues to be examined in facility proceedings within this decision. Issues of scope and participation are better determined by the Commission panel deciding that particular facility application before it.²⁴

41. As stated above, if the Commission finds that a person has standing pursuant to Section 9(2) of the *Alberta Utilities Commission Act* it must hold a hearing to consider the person's concerns about the subject application. Further, persons with standing have the right to fully participate in the hearing. The Commission considers this to include the right to file evidence in support of their position, the right to question or cross-examine the applicant on its evidence and the right to make argument.

42. While Section 9(2) of the *Alberta Utilities Commission Act* describes when the Commission must hold a hearing, it does not limit parties to a proceeding. The Commission has the authority to exercise its discretion to allow a person to participate in a proceeding although that person's rights may not be directly and adversely affected by the Commission's decision on an application. In doing so, the Commission may, in appropriate circumstances, permit a party to call evidence, cross-examine witnesses and submit argument, notwithstanding that its interests may not be directly and adversely affected. In this regard, Section 9(2) of the *Alberta Utilities Commission Act* does not restrict the persons that may participate in Commission proceedings. Although that section compels the Commission to grant standing to persons whose rights may be directly and adversely affected by its decision on an application, it does not restrict the Commission's authority to allow additional persons to participate in Commission proceedings.

43. The Commission has implicit authority to allow persons whose rights may not be directly and adversely affected by the Commission's decision on an application to participate in its process. The Commission's implicit authority comes from its ability to control its own procedure which flows from the Commission's powers to hold and conduct hearings pursuant to the *Alberta Utilities Commission Act*.

44. Provisions of the *Alberta Utilities Commission Act* relevant to the Commission's authority are as follows:

- Part 2 of the *Alberta Utilities Commission Act* deals with the conduct of Commission hearings. Section 13 of that part enables a division of the Commission to conduct hearings that the Commission may conduct under the *Alberta Utilities Commission Act* or other enactments.

²⁴ Decision 2014-283: ATCO Electric Ltd. 2012 Transmission Deferral Account and Annual Filing for Adjustment Balances, Proceeding 2683, Application 1609720, October 2, 2014, paragraphs 190 and 191.

- Section 8 of the *Alberta Utilities Commission Act* confers authority upon the Commission to do all things that are necessary for or incidental to the exercise of its powers and the performance of its duties and functions.
- Section 11 of the *Alberta Utilities Commission Act* is to similar effect as Section 8. Section 11 confers upon the Commission all the powers, rights, privileges and immunities that are vested in a judge of the Court of Queen's Bench for all matters necessary or proper for the Commission to exercise its jurisdiction or carrying any of its powers into effect.
- Section 76(1)(e) of the *Alberta Utilities Commission Act* enables the Commission to make rules of practice governing the Commission's procedure at hearings.

45. The Commission's authority to allow persons whose rights may not be directly and adversely affected by the Commission's decision on an application to participate in its proceedings is necessarily incidental to the Commission's express power to hold hearings and determine how hearings are conducted pursuant to the provision of the *Alberta Utilities Commission Act* set out above. Such persons may participate in the Commission's process at the Commission's discretion which can include the opportunity to present evidence, cross-examine the applicant and present argument. The Commission's implicit authority is reflected in court decisions that recognize that administrative tribunals with the power to hold hearings have discretion to allow persons to participate in the tribunal's hearing process.²⁵

Commission ruling

46. The CCA participates in AUC proceedings for the setting of gas and electricity rates. Ratepayers have the potential to be directly and adversely affected by the Commission's decisions on rates. The participation of the CCA as a single body to represent the collective interests of certain ratepayer groups is consistent with an efficient and effective regulatory process envisaged in the purposes section of the *Electric Utilities Act*.

47. The CCA's concerns relate to how the applications, if approved, may potentially impact ratepayers. The CCA also cited a number of specific grounds that it wished to address, including the costs of route alternatives and costs saving that may be achieved by staging the project's construction. However, the CCA did not assert any additional rights of its members that may be directly and adversely affected by the Commission's decisions on the applications in Proceeding 21030.

48. While the Commission accepts that the CCA is interested in the outcome of Proceeding 21030, it finds that the CCA has not demonstrated that its legal rights, or the rights of its members, may be directly and adversely affected by the applications in Proceeding 21030. The Commission finds that the CCA submission does not satisfy the standing test, taking into account the nature of applications and the issues raised in Proceeding 21030. The Commission therefore denies standing to the CCA.

²⁵ *Canada (Combines Investigation Act Director of Investigation & Research) v. Newfoundland Public Telephone Co.*, [1987] 2 S.C.R. 466 at para. 16; *Society of Composers, Authors and Music Publishers of Canada v. Canada (Copyright Board)*, [1993] F.C.J. 137 at page 16.

49. The Commission must now decide whether to exercise its authority to allow the CCA to participate in Proceeding 21030 notwithstanding that it has not met the standing test.

50. In making its decision whether to grant participation rights, the Commission takes into account whether the party requesting participation has relevant information that may assist the Commission in carrying out its duties or functions. As stated above, the CCA is a coalition of two public interest groups representing utility ratepayers concerned with the tariffs, rates and charges of the various public utilities operating in Alberta and regulated by the Commission.

51. One of the grounds cited by the CCA for intervening is the possible impact of different routing alternatives on the rates of customers. As stated above, Alberta PowerLine's view is that the CCA should not be permitted to file evidence because it does not meet the standing test and the AESO's view is that the terms of the competitive bid process, including events that would trigger financial adjustments, has previously been decided in Decision 2013-255 and Decision 2013-044.²⁶ When considering the applications in Proceeding 21030, the Commission is required by Section 17 of the *Alberta Utilities Commission Act* to have regard to whether the project is in the public interest, having regard to its social and economic effects, and its effects on the environment. This analysis may involve the costs of the proposed routes and possible alternatives. Given that the project is a critical transmission infrastructure project in Alberta for which the AESO used a competitive process to select the applicant, the Commission finds that the CCA's participation relating to costs of the project may be of assistance to the Commission.

52. With respect to the other issues raised by the CCA, the Commission is not making any determination regarding the relevance of such issues to the facility applications in Proceeding 21030 at this time because it has yet to hear the evidence and argument of the parties. However, parties may raise questions on the relevance of a particular line of questioning.

53. The Commission reminds the CCA that in the event that the evidence extends beyond the issues relevant to Proceeding 21030, it will weigh this evidence accordingly. Given the above considerations, the Commission considers it to be unnecessary to strike all or a portion of the CCA's submissions from the record of Proceeding 21030.

54. The Commission generally awards costs to local interveners for facility applications under the *Hydro and Electric Energy Act* pursuant to Section 22 of the *Alberta Utilities Commission Act* and Rule 009. The Commission awards costs for rate or rate related applications pursuant to Section 21 of *Alberta Utilities Commission Act* and Rule 022: *Rules on Intervener Costs in Utility Rate Proceedings*.

55. The Commission finds, as acknowledged by the CCA, that the CCA does not meet the definition of a local intervener and is not eligible to claim costs under Section 22 of the *Alberta Utilities Commission Act* or Rule 009.

56. However, the Commission may exercise its discretion to award costs under Section 21 of the *Alberta Utilities Commission Act*. In this case, the CCA seeks participation in Proceeding

²⁶ Decision 2013-255: Alberta Electric System Operator, Decision on Variance of AUC Decision 2013-044: Competitive Process Pursuant to Section 24.2(2) of the Transmission Regulation, Part B: Final Determination, Application 1609483, Proceeding 2555 July 9, 2013, Decision 2013-044: Alberta Electric System Operator, Competitive Process Pursuant to Section 24.2(2) of the Transmission Regulation Part B: Final Determination, Application 1607670, Proceeding 1449, February 14, 2013.

21030 to represent the interests of customers of regulated utilities in Alberta. The Commission finds that the CCA is eligible to recover its costs under Section 21 of the *Alberta Utilities Commission Act* and Section 3 of Rule 022. However, the Commission reminds the CCA that it is only eligible to recover those costs related to pursuing relevant issues in Proceeding 21030.

57. For the reasons discussed above, the Commission has decided to admit the CCA's statement of intent to participate and supporting documents onto the record of Proceeding 21030. The Commission is aware that the CCA's submission is not limited to issues raised by the project's route amendments. Section 6.2 of Rule 001: *Rules of Practice* provides that the Commission may, on its own initiative or on motion by a party, extend or abridge a time limit specified on any terms that it considers appropriate. Given that the Commission has found in paragraph 51 that the CCA's participation in Proceeding 21030 may be of assistance to it in rendering its decision on the applications and having regard to the principles of procedural fairness, it will exercise its discretion to admit the CCA's statement of intent to participate and supporting documents notwithstanding that the deadline has passed. In deciding how it will allow the CCA to participate, the Commission had regard to the stage of the proceeding and fairness to other parties.

58. Based on the above, the Commission will allow the CCA to participate in Proceeding 21030 by: (i) admitting the CCA's statement of intent to participate and supporting documents, available on the Commission's eFiling System, onto the record of Proceeding 21030; (ii) affording the CCA an opportunity to cross-examine parties adverse in interest during the hearing; (iii) granting the CCA an opportunity to seat witnesses; and (iv) granting the CCA an opportunity to submit argument and reply argument. However, to ensure fairness to the applicants, the Commission will allow the applicants to file information requests to the CCA on the CCA's submissions in Exhibit 21030-X1177 by August 17, 2016. Information responses from the CCA are due on August 29, 2016, and the applicants may file reply evidence on issues raised by the CCA by September 9, 2016.

59. Based on his statement of intent to participate, Mr. Arndt is granted standing because his trapper's cabin is within the right-of-way of one of the proposed routes.

60. Mr. McNeilly has not provided any specific information on how the project may directly and adversely affect his fur management registered area. Mr. McNeilly has not met the factual component of the standing test and is consequently denied standing.

61. Given that the Trithart family owns land to be traversed by the project, it has standing in Proceeding 21030.

62. If you have any questions, please contact the undersigned by phone at 403-592-4503 or by email at giuseppa.bentivegna@auc.ab.ca.

Yours truly,

Giuseppa Bentivegna
Commission Counsel

March 2, 2016

MacPherson Leslie & Tyerman LLP
Suite 2200, 10235 101 Street N.W.
Edmonton, Alberta T5J 3G1

Attention: Meaghan Conroy

Dear Ms. Conroy:

**Fort McMurray West 500-kV Transmission Project
Proceeding 21030
Applications 21030-A001 to 21030-A015**

Ruling on filing of the names of the affiants

1. The Alberta Utilities Commission is in receipt of your letter dated February 29, 2016, on behalf of the Beaver Lake Cree Nation requesting the Commission to reconsider its request for the names of the affiants contained in its letter of February 19, 2016. The Beaver Lake Cree Nation submits that the names of the members who swore the affidavits is not relevant to the determination of standing in Proceeding 21030.
2. The Commission has considered the request and has asked that I inform you of its ruling on the request.
3. The Commission finds the name of the affiant is relevant because the affiant states in the affidavit that he or she has “personal knowledge of the facts and matters hereinafter deposed to, except where they are otherwise stated to be made on information and belief, in which case I believe them to be true”.
4. Should the Beaver Lake Cree Nation wish the Commission to consider the information contained in the affidavits in support of its application for standing, please provide the names of the individuals by March 4, 2016.
5. If you have any questions, please contact me at 403-592-4503 or by email at giuseppa.bentivegna@auc.ab.ca.

Yours truly,

Giuseppa Bentivegna
Commission Counsel

March 9, 2016

To: Parties currently registered on Proceeding 21030

**Fort McMurray West 500-kV Transmission Project
Proceeding 21030
Applications 21030-A001 to 21030-A015**

Ruling on confidentiality motion

Introduction

1. In this ruling, the Alberta Utilities Commission must decide whether to grant a motion for confidentiality filed by Alberta PowerLine L.P. (Alberta PowerLine) on February 24, 2016.
2. The Commission has instructed the writer to communicate its ruling to interested parties.

Background

3. On February 19, 2016, Alberta PowerLine filed its responses to the information requests asked by the Commission.
4. In its responses, Alberta PowerLine stated that some of the information requested contains confidential competitive pricing information and that public disclosure of the requested information could cause harm to Alberta PowerLine and its partners. Alberta PowerLine also informed parties that it would file a motion for confidentiality for this information.
5. On February 24, 2016, Alberta PowerLine filed a motion for a confidentiality order under Section 13 of Rule 001: *Rules of Practice* on the basis that the information requested contains financial and commercial information that should not be placed on the public record of Proceeding 21030 (the motion). The information for which confidentiality is requested is described below:
 - Capital costs for the applied-for route options of the Fort McMurray West 500-kV Transmission Project to be provided in response to APL-AUC-2016FEB01-002.
 - Costs of alterations to transmission line 9L913 to be provided in response to APL-AUC-2016FEB01-011.
 - Structure cost information to be provided in responses to APL-AUC-2016FEB01-010(e), APL-AUC-2016FEB01-010(f), APL-AUC-2016FEB01-017(c), APL-AUC-2016FEB01-018(b) and APL-AUC-2016FEB01-018(c).¹(collectively, the costs information)

¹ Exhibit X21030-693 Confidential Motion as described in Exhibit 21030-X0648.

6. Alberta PowerLine stated that the costs information is competitive pricing information, the confidentiality of which ought to be maintained. It added that the Commission routinely grants confidential treatment to this class of information as expressly contemplated by Section 13 of Rule 001.

7. In the motion, Alberta PowerLine submitted that maintaining the integrity of the competitive bid process, protecting confidential competitive information disclosure, and preserving the contractual confidentiality provisions governing the costs information are all important interests that would be put at risk if the costs information were to be disclosed. With respect to the requirements of Section 13.4(a)(ii) of Rule 001, Alberta PowerLine also submitted that disclosure of the costs information could reasonably be expected to disadvantage and potentially harm the competitive position of Alberta PowerLine as well as its partners. This is because disclosure of the costs information would provide Alberta PowerLine's competitors, including parties that were unsuccessful participants in this project's competitive process and/or are prospective participants in other future competitive bid processes, with insight into Alberta PowerLine's successful bidding strategy.

8. Alberta PowerLine also requested that the need for an affidavit in support of its motion be waived in the circumstances.

9. Should the motion be granted, Alberta PowerLine requested that the Commission limit access to the information over and above the restrictions traditionally applied for confidential information by the Commission. Specifically, Alberta PowerLine requested:

...that the Commission restrict access to the Confidential Information to the Commission and necessary staff and counsel, on executing an appropriate undertaking. APL requests that any other parties wishing to execute an undertaking and access the Confidential Information be required to demonstrate a legitimate interest in the Confidential Information by way of further submissions in a process to be established by the Commission. APL submits that APL competitors should not be granted access to the Confidential Information under any circumstances as such access would be detrimental to APL's competitive position. APL reserves the right to make further submissions on those parties that legitimately may require access to the information to participate in the proceeding.²

10. Before ruling on Alberta PowerLine's motion, the Commission afforded any party who has been granted standing in Proceeding 21030 an opportunity to file a response to the motion by March 1, 2016, and granted Alberta PowerLine an opportunity to reply to any comments on the motion by March 4, 2016.

11. The Commission received the following responses to the motion:

- February 29, 2016 letter filed on behalf of Orica Canada Inc. (Orica).
- March 1, 2016 letter filed on behalf of the Barrhead West Group.
- March 1, 2016 letter filed on behalf of East Route Landowner Opposition Group (ERLOG).
- March 1, 2016 letter filed on behalf of the Peterson Group.

² *Ibid*, at paragraph 48.

- March 1, 2016 letter filed on behalf of Madeleine Gravelle, Gloria Kirchner, Lance McCann, Irene McCann, Glen Blaylock and Mary Blaylock (Gravelle et al).
- March 1, 2016 letter filed on behalf of the Wong Group and Roy Ernst (Ernst/Wong Group).
- March 1, 2016 letter filed on behalf of Jacob and Johanna Renz, the Renz Group, and Kenneth and Bernice Treichel (Renz Treichel Group).
- March 1, 2016 letter filed on behalf of Brion Energy Corporation (Brion).
- March 4, 2016 letter filed on behalf of Gunn Métis Local 55, Fort McMurray Métis Local 1935, Wabasca Métis Local 90, and the South of 43 Group.

(collectively, the interveners' submissions)

12. ERLOG, the Peterson Group, the Renz Treichel Group, Orica, and Brion did not take a position with respect to whether the costs information should be granted confidential treatment.

13. The Barrhead West Group, Gravelle et al, the Ernst/Wong Group, and the South of 43 Group opposed the motion. In their respective submissions, these parties stated, among other things, that there is no basis for Alberta PowerLine's assertion of harm.

14. Some of the interveners objected to Alberta PowerLine's proposed restrictions on access to the costs information should the motion be granted. These parties stated that the costs information should be provided to all interveners willing to execute a confidentiality undertaking.

15. Alberta PowerLine responded to the interveners' submissions on March 4, 2016.

16. In response to the Barrhead West Group, Gravelle et al, and South of 43 Group's comments that there is no basis for Alberta PowerLine's assertion of harm, Alberta PowerLine submitted that the fact that it has been selected as the successful bidder in the competitive process has no bearing on whether the costs information is confidential or competitively sensitive information over which Commission protection should be afforded. The potential harm to Alberta PowerLine and its partners from disclosure of the costs information is not relieved by the end of the bid process. In Alberta PowerLine's view, these submissions ignore the grounds advanced in the motion, which includes Alberta PowerLine's obligation to maintain the confidentiality of the costs information, harm to the integrity of the Alberta Electric System Operator's (AESO) competitive process, and harm to Alberta PowerLine's and its partners' competitive position in the marketplace and in future competitive bid processes.

17. Alberta PowerLine clarified that it is not taking the position that the costs information will not be disclosed in this proceeding, but rather that the costs information must be protected from public disclosure by imposing safeguards on its use.

18. In addition, Alberta PowerLine maintained that parties wishing to access the costs information must be required to demonstrate a legitimate interest in the costs information. Alberta PowerLine submitted that it is not unduly burdensome for interveners to identify their interest in accessing the costs information.

The test for confidentiality

19. The Commission is part of the system of administrative justice and must uphold an open public system. There is a strong presumption in favour of the open court principle in AUC proceedings to ensure the transparency of the Commission's process from the inception of a matter. Rule 001 reflects this presumption, specifically Section 13.1, whereby all documents filed prior to the commencement of a hearing or other proceeding must be placed on the record.

20. In prior decisions the Commission has considered that a confidentiality order should only be issued in limited circumstances because it is part of the system of administrative justice.³

21. Section 13.4 of Rule 001 describes when the Commission may issue a confidentiality order. That section states:

- 13.4** The Commission may, with or without a hearing, grant a request for confidentiality on any terms it considers appropriate
- (a) if the Commission is of the opinion that disclosure of the information could reasonably be expected
 - (i) to result in undue financial loss or gain to a person directly affected by the hearing or other proceeding, or
 - (ii) to harm significantly that person's competitive position,
 - or
 - (b) if
 - (i) the information is personal, financial, commercial, scientific or technical in nature,
 - (ii) the information has been consistently treated as confidential by a person directly affected by the hearing or other proceeding, and
 - (iii) the Commission considers that the person's interest in confidentiality outweighs the public interest in the disclosure of the proceeding.

22. When deciding whether to issue a confidentiality order, in addition to applying the test established in Section 13, the Commission must also bear in mind the direction of Canada's courts on such matters. In *Sierra Club of Canada v. Canada Minister of Finance*,⁴ the Supreme Court of Canada found that a confidentiality order under the Federal Rules of Court should only be granted when:

- (a) such an order is necessary in order to prevent a serious risk to an important interest, including a commercial interest, in the context of litigation because reasonable alternative measures will not prevent the risk; and
- (b) the salutary effects of the confidentiality order, including the effects on the right of civil litigants to a fair trial, outweigh its deleterious effects, including the effects on

³ AUC Decision 2011-199; Application 1607016; Proceeding 1077, May 5, 2011.

⁴ 2002 SCC 41 [*Sierra Club*].

the right to free expression, which in this context includes the public interest in open and accessible court proceedings.⁵

23. The Supreme Court of Canada in *Sierra Club* also emphasized that the risk in question must: (i) be real and substantial; (ii) be well grounded in the evidence; and (iii) pose a serious threat to the commercial interest in question.⁶ This is consistent with the requirement in Section 13.4 of Rule 001, which indicates that the party claiming confidentiality must point to the specific harm that would be caused if the information were placed onto the public record. Further, the interest at risk must be one which can be expressed in terms of a public interest in granting confidentiality.

Commission findings

24. The Commission grants the motion for the reasons that follow. In the Commission's view the costs information meets both the criteria established in *Sierra Club* and those set out in sections 13.4(a)(i) and 13.4(b) of Rule 001.

25. The costs information may be of interest to Alberta PowerLine's competitors and disclosure of the costs information may significantly harm Alberta PowerLine's competitive position in future bid processes. The Commission therefore finds that the requirements of Section 13.4(a)(i) of Rule 001 have been satisfied.

26. To satisfy the requirements for confidentiality treatment set out in Section 13.4(b)(i), Alberta PowerLine must persuade the Commission that the costs information is commercially sensitive in nature. Because the costs information is commercial pricing information, it meets the requirements of Section 13.4(b)(i) of Rule 001.

27. The Commission accepts Alberta PowerLine's submission that the costs information has been consistently treated as confidential by it and the AESO. The consistent treatment of the costs information as confidential is evidenced by Alberta Powerline's June 26, 2015 preliminary procedural request for exemption from TS43 of Rule 007: *Applications for Power Plants, Substations, Transmission Lines, Industrial System Designations and Hydro Developments*⁷ as well as the contractual provisions governing the bid process outlined in the motion. The Commission finds that Section 13.4(b)(ii) of Rule 001 has been met.

28. The Commission finds that the salutary effects of public disclosure of the costs information in the name of procedural fairness are outweighed by the deleterious effects to Alberta PowerLine in this instance. The costs information, if released, may harm Alberta PowerLine's and its partners' competitive position in the marketplace and future bidding processes. Further, the Commission agrees with Alberta PowerLine that the details of the costs information are an important component of the successful operation of a competitive process. Otherwise, participation in future competitive processes may be discouraged, resulting in a reduced bidder pool or the inclusion of risk premiums to address the adverse impacts of potential public disclosure. Therefore, the Commission finds that Alberta PowerLine's interest in maintaining confidentiality of the costs information outweighs the public interest in disclosure and therefore satisfies Section 13.4(b)(iii) of Rule 001 and the test in *Sierra Club*.

⁵ 2002 SCC 41 at para 53.

⁶ 2002 SCC 41 at paras 54-55.

⁷ Exhibit 21030-X0134.

29. Based on the foregoing, the Commission grants the motion for confidential treatment of the costs information for the purposes of Proceeding 21030.

30. The Commission also grants Alberta PowerLine's request that the need for a supporting affidavit be waived for this proceeding.

Parties seeking access to the costs information

31. Neither AltaLink Management Ltd. nor any other competitor of Alberta PowerLine has objected to the motion. The Commission grants Alberta PowerLine's request to disallow its competitors from accessing the costs information because allowing its competitors to access the information may significantly harm Alberta Powerline's competitive position.

32. The Commission will now consider Alberta PowerLine's request that the Commission limit access to the costs information over and above the restrictions traditionally applied for confidential information. Landowners and other interveners to the proceeding have expressed an interest in the costs information. As the Commission understands it, Alberta PowerLine is not objecting to any of the landowner groups who have filed comments on the motion receiving copies of the costs information. However, Alberta PowerLine is requesting that each party identify their legitimate interest in the costs information. Given the presumption of an open and transparent proceeding, Alberta PowerLine bears the onus of establishing whether a party to the proceeding should be denied access to the costs information. Moreover, the process as described below affords adequate protection to the costs information because it will allow Alberta PowerLine to object to specific individuals from accessing the information. The process is as follows:

- a. Any party who wishes to receive the costs information shall sign the confidentiality undertaking attached as Schedule A to this ruling and file it on the AUC eFiling System on the record of this proceeding. Individuals should also indicate if they are a member of an intervener group and provide their position or job title if they are seeking access on behalf of a corporate entity.
- b. If, after viewing the names of the individuals who have signed undertakings, Alberta PowerLine wishes to object to certain individuals being granted access to the costs information it may request that access to the costs information be denied. Should the Commission receive such a request, it will determine if further process is required and issue a ruling on whether the individual in question should be granted access to the costs information.
- c. Parties who have signed undertakings should coordinate with Alberta PowerLine or its counsel Bennett Jones LLP on how to receive access to the pricing information. The Commission directs Alberta PowerLine to respond within five business days to requests for copies of the pricing information. For clarity, Commission staff will not distribute the pricing information directly to parties.

33. In light of the functionality that may be gained through the provision of confidential documents electronically, the Commission requests that the information responses, as well as future confidential documents (i.e., evidence, arguments and reply) be sent to the AUC in the following manner: the confidential information should be located on an USB stick or other electronic

media device(s), and couriered to the Commission. The confidential information should be addressed to Shirley Hungar.

34. If you have any questions, please feel free to contact the undersigned at 403-592-4499 or shanelle.sinclair@auc.ab.ca.

Yours truly,

Shanelle Sinclair
Commission Counsel

Attachment

September 13, 2016

To: Parties currently registered in Proceeding 21030

**Fort McMurray West 500-kV Transmission Project
Proceeding 21030
Applications 21030-A001 to 21030-A015**

Commission ruling on the process to consider the Notices of Questions of Constitutional Law

1. On September 2, 2016, the Alberta Utilities Commission received Notices of Questions of Constitutional Law from the Wabasca Métis Local 90, the Gunn Métis Local 55, the Fort McMurray Métis Local 1935/Fort McKay Métis Community Association,¹ the Métis Nation of Alberta Association Lakeland Local Council 1909,² the Beaver Lake Cree Nation and the Sucker Creek First Nation (collectively, the aboriginal parties).
2. On September 6, 2016, Alberta Justice and Solicitor General (Alberta) submitted a letter to the Commission in which it took the position that the Commission does not have jurisdiction to consider the questions raised in the Notices of Questions of Constitutional Law. It requested that the Commission determine, as a preliminary matter, the question of its jurisdiction over the matters raised in the Notices of Questions of Constitutional Law.
3. Also on September 6, 2016, the Commission invited the applicants, the Attorney General of Canada (Canada), and the aboriginal parties to comment on Alberta's proposal to consider the jurisdictional question as a preliminary matter, by September 9, 2016.
4. On September 9, 2016, the applicants, Alberta PowerLine, ATCO Electric Ltd. and AltaLink Management Ltd., submitted that they support the process proposed by Alberta.
5. The Wabasca Métis Local 90, the Gunn Métis Local 55, the Fort McMurray Métis Local 1935, the Beaver Lake Cree Nation and the Sucker Creek First Nation objected to the process proposed by Alberta and submitted that matters concerning the Notices of Questions of Constitutional Law ought to be considered after the close of the evidentiary portion of the hearing in accordance with the process currently set out for Proceeding 21030. They added that delaying the start of the hearing would be unreasonable and would result in increased expense for the Commission and the parties to the proceeding.
6. No response was received from either Canada or the Métis Local 1909.

¹ The Fort McKay Métis Community Association has not been granted standing in Proceeding 21030.

² The Métis Local 1909 has been granted standing in Proceeding 21030 pursuant to Decision 21030-D01-2016 however, the Métis Nation of Alberta Association Lakeland Local Council 1909 has not been granted standing.

7. The writer has been authorized to write this letter on behalf of the Commission.

Commission ruling

8. The Commission will determine the question as to whether it has the jurisdiction to consider the matters raised in the Notices of Questions of Constitutional Law as a preliminary matter because it may impact the participation of Alberta and Canada in the proceeding, as well as the parties' evidence and submissions. To ensure a fair and efficient hearing, the Commission is of the view that the parties should, from the outset of the hearing, be cognizant of the Commission's determination of its jurisdiction over the questions raised in the Notices of Questions of Constitutional Law. Such an approach is aimed at saving hearing time and the resources of all the parties to the proceeding.

9. The Commission has set the following process schedule in relation to the jurisdictional question:

Process Step	Date
Submissions on the Commission's jurisdiction from Alberta, Canada, the applicants and the aboriginal parties	September 20, 2016
Reply from Alberta, Canada, the applicants and the aboriginal parties	September 27, 2016

10. Parties may address the adequacy of the Notices of Questions of Constitutional Law in accordance with the process schedule outlined above.

11. The evidentiary portion of the hearing will commence on October 12, 2016. A notice of delayed hearing commencement will be issued expeditiously.

12. If you have any questions, please feel free to contact the undersigned at 403-592-4499 or by email at shanelle.sinclair@auc.ab.ca.

Yours truly,

Shanelle Sinclair
Commission Counsel

cc:

Attorney General of Canada

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Alberta Justice and Solicitor General

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October 7, 2016

To: Parties currently registered in Proceeding 21030

**Fort McMurray West 500-kV Transmission Project
Proceeding 21030
Applications 21030-A001 to 21030-A015**

Ruling on jurisdiction to determine the questions stated in the Notices of Questions of Constitutional Law

1 Introduction

1. On September 2, 2016, the Alberta Utilities Commission received Notices of Questions of Constitutional Law (NQCLs) from the Wabasca Métis Local 90,¹ the Gunn Métis Local 55,² the Fort McMurray Métis Local 1935/Fort McKay Métis Community Association,³ the Métis Nation of Alberta Association Lakeland Local Council 1909,⁴ the Beaver Lake Cree Nation⁵ and the Sucker Creek First Nation.⁶

2. On September 6, 2016, Alberta Justice and Solicitor General (Alberta) submitted a letter to the Commission in which it took the position that the Commission does not have jurisdiction to consider the questions raised in the NQCLs. It requested that the Commission determine, as a preliminary matter, the question of its jurisdiction over the matters raised in the NQCLs. The Commission invited the applicants, the Attorney General of Canada (Canada), and the Aboriginal parties who filed the NQCLs to comment on Alberta's proposal to consider the jurisdictional question as a preliminary matter, by September 9, 2016. In a ruling dated September 13, 2016, the Commission ruled that it would determine the question as to whether it has the jurisdiction to consider the matters raised in the NQCLs as a preliminary matter for the reasons set out in the ruling and set out a process schedule in relation to the jurisdictional question.⁷

3. On September 13, 2016, the Beaver Lake Cree Nation and the Sucker Creek First Nation filed a letter from Canada⁸ in Proceeding 21030 in which the Attorney General of Canada indicated that it did not intend to intervene on the constitutional issues at this stage of the proceedings.

¹ Exhibits 21030-X1249 to X1255.

² Exhibits 21030-X1256 to X1265.

³ Exhibits 201030-X1228 to X1248.

⁴ Exhibits 21030-X1275 to X1277.

⁵ Exhibit 21030-X1270.

⁶ Exhibit 21030-X1271.

⁷ Exhibit 21030-X1331.

⁸ Exhibit 21030-X1334.

4. On September 15, 2016, the Métis Nation of Alberta Association Lakeland Local Council 1909 filed a letter withdrawing its NQCL filed in Proceeding 21030.⁹

5. On September 20, 2016, the Commission received submissions on the jurisdictional question from Alberta,¹⁰ the Beaver Lake Cree Nation¹¹ and Sucker Creek First Nation¹² (First Nations), AltaLink Management Ltd. (AltaLink),¹³ the Wabasca Métis Local 90, Gunn Métis Local 55, and Fort McMurray Métis Local 1935 (Métis Interveners),¹⁴ and Alberta PowerLine L.P. and ATCO Electric Ltd. (Alberta PowerLine).¹⁵ The Métis Interveners indicated in their joint submission that the Fort McKay Métis Community Association has withdrawn from the NQCL filed jointly with the Fort McMurray Métis Local 1935. On September 27, 2016, the Commission received responses to the submissions of September 20, 2016, from Alberta,¹⁶ AltaLink,¹⁷ the Métis Interveners,¹⁸ Alberta PowerLine,¹⁹ and the First Nations.²⁰

6. The submissions of the parties are summarized below. The Commission has reviewed and considered all of the submissions and reply submissions referenced above in their entirety. The summaries provided below are for the convenience of the reader only and the omission of any particular point or issues should not be taken to imply that the submissions on that point or issue were not considered. For the full submissions refer to the referenced exhibits.

7. In this ruling, the Commission determines the question of whether the NQCL filed by the First Nations and those filed by the Métis Interveners are adequate, and whether it has jurisdiction over the matters raised in the NQCLs.

8. The Commission has authorized the undersigned to inform the parties of its ruling and the reasons for it.

2 Adequacy of the NQCLs

2.1 Alberta's views

9. Alberta submitted in this regard that the notice requirements in the *Administrative Procedures and Jurisdiction Act* are designed to ensure that all affected participants are able to respond to the constitutional issues being raised. Participants are entitled to know what arguments the person or group filing the NQCL intends to make, and what evidence the person or group intends to bring forward in support of these arguments so that the participants can

⁹ Exhibit 21030-X1338.

¹⁰ Exhibits 21030-X1343 to X1349.

¹¹ Exhibits 21030-X1350 to X1355.

¹² Exhibits 21030-X1356 to X1361.

¹³ Exhibit 21030-X1362.

¹⁴ Exhibit 21030-X1363.

¹⁵ Exhibits 21030-X1364 to X1366.

¹⁶ Exhibits 21030-X1370 and 1371.

¹⁷ Exhibits 21030-X1372.

¹⁸ Exhibit 21030-X1373.

¹⁹ Exhibit 21030-X1375 to X1377.

²⁰ Exhibit 21030-X1378.

respond with evidence and submissions of their own. It contended that the Commission has no discretion to consider an inadequate NQCL and cited case law in support of its position.

10. Alberta also submitted specific arguments on the deficiencies in the NQCLs of the First Nations and the Métis Interveners. These are described below.

2.1.1 First Nations

11. Alberta argued that the First Nations have failed to provide the substance of their proposed evidence and the testimony of their witnesses on the topics identified in their NQCL. It contended that this approach does not comply with the mandatory requirements of the *Administrative Procedures and Jurisdiction Act* and the *Designation of Constitutional Decision Makers Regulation*, and that it is prejudicial to Alberta's ability to marshal evidence in response to the assertions of the First Nations and to know the case it has to meet.

12. Alberta further asserted that the First Nations failed to provide proper notice because the notice indicates that the First Nations may file additional evidence with respect to communications with the Alberta Consultation Office, Alberta PowerLine and ATCO Electric Ltd. and other consultation or accommodation-related evidence. It submitted that to allow the First Nations to rely on materials for which proper notice was not given would be prejudicial.

13. Alberta also argued the First Nations' NQCL fails to provide reasonable particulars of the proposed arguments because the NQCL does not identify which Crown decision(s) are at issue, the scope of the duty to consult that ought to be applied to each decision they are challenging, or why the duty has not been met in light of the applicable scope. It submitted that because the duty to consult does not exist at large, but arises in relation to a specific Crown decision, the identification of the Crown decision at issue is fundamental to assessing whether a duty to consult has been triggered and, if so, whether that duty has been met. In support, it cited the Supreme Court of Canada's (Supreme Court) decision in *Carrier Sekani*²¹ which states that to trigger a duty to consult, an Aboriginal group must show a causal connection between the proposed Crown conduct and a potential adverse impact on an Aboriginal claim or right and that the subject of the consultation is the impact on the claimed rights of the current decision under consideration.

2.1.2 Métis Interveners

14. Alberta submitted that neither the actual witnesses nor their proposed testimony are identified in the Métis Interveners' NQCLs. Alberta stated that without a list of witnesses and the substance of their anticipated testimonies, it has no knowledge of the case to be met and is not able to marshal evidence to respond to the matters raised in the NQCLs.

15. Alberta stated that the Alberta Court of Appeal has confirmed that, where a Crown decision has not yet been made and acted on, it is not appropriate to consider whether a right has been infringed. Alberta also submitted that the NQCLs filed by the Métis Interveners do not provide any particulars of their argument to which this binding case law is applicable.

²¹ *Rio Tinto Alcan Inc. v. Carrier Sekani Tribal Council*, 2010 SCC 43.

16. The NQCLs refer to unspecified “Métis Communities”. Where a duty to consult arises, it exists in relation to a specific Aboriginal collective. The duty is not owed to aboriginals at-large (i.e., no duty is owed to “Métis Communities” generally; however, there may be a duty to consult in relation to a specific Métis community). Alberta asserted that where no specific Métis community is identified, it is not possible to assess whether: (i) that community is owed a duty to consult; and (ii) if so, whether that community has been adequately consulted. Based on the above, Alberta contended that the question in the NQCLs about whether “Métis Communities” have a right to be consulted cannot be properly considered in the way it has been posed, because there is no duty owed to “Métis Communities” generally.

17. Alberta further submitted that the Métis Interveners have not provided reasonable particulars about the asserted duty to consult, what application or applications are at issue, their proposed arguments about the scope of the duty to consult that ought to be applied, and why it has not been met.

18. On the question of the rights asserted by the Métis Interveners, Alberta did not concede that any of the Métis Interveners have established Aboriginal rights, and that to date, no Alberta Métis collective has proven the existence of any Aboriginal rights. In support, it cited the *Hirse Korn* case.²² Alberta set out the test for the proof of a Métis right enunciated in *Powley*²³ and submitted that an Aboriginal group asserting a duty to consult must provide evidence to establish credibly asserted rights. While the NQCLs set out some case law relating to the credible assertions of rights, they do not provide particulars of the argument to demonstrate that the Métis Locals meet the *Powley* test. In addition, the NQCLs fail to provide reasonable particulars about how the project may cause an appreciable, clear, non-speculative impact on any rights being asserted.

2.2 Alberta PowerLine and AltaLink views

19. Neither Alberta PowerLine nor AltaLink made submissions on the adequacy of the NQCLs.

2.3 The First Nations and the Métis Interveners views

20. The First Nations and the Métis Interveners submitted that they have complied with the requirements of the *Administrative Procedures and Jurisdiction Act* and Schedule 2 of the *Designation of Constitutional Decision Makers Regulation*. In contrast to the NQCL in the EPCOR proceeding²⁴ which was filed late and did not request a constitutional remedy, here the First Nations are asking the Commission to refrain from finding that the project is in the public interest until the project’s impacts on the First Nations’ constitutionally protected rights are assessed and, if necessary, accommodated. Section 35 of the *Constitution Act, 1982* acts as a limit on the Commission’s jurisdiction because the Commission cannot find that a project is in the public interest unless and until Crown consultation is adequate. In support of their submissions on the adequacy of the NQCLs, the Métis Interveners cited the Clearwater Band

²² *R. v. Hirsekorn*, 2013 ABCA 242.

²³ *R. v. Powley*, 2003 SCC 43 [*Powley*].

²⁴ Decision 20581-D02-2016, EPCOR Distribution & Transmission Inc. Rosedale Substation Building Expansion, Proceeding 20581, Application 20581-A001, May 13, 2016.

Decision²⁵ in which the Joint Review Panel determined that in that case the NQCL and the written submissions filed with it contained sufficient information to satisfy the notice requirements of Section 12 of the *Administrative Procedures and Jurisdiction Act*.

21. In response to the submissions of Alberta, the First Nations stated that their NQCL provided more than sufficient information for Alberta to call evidence and respond to the matters raised. The purpose of a NQCL is to put governments on notice that the constitutionality of their legislation or actions is in question and to provide them with an opportunity to respond and to present evidence.²⁶ Further, there is no legislative or regulatory requirement for the provision of will-say statements. The *Designation of Constitutional Decision Makers Regulation* provides that the substance of the witnesses' proposed testimony should be included in the NQCL. The cases on which Alberta relies are inapplicable and distinguishable. The First Nations have provided the substance of their witnesses' proposed testimony and sufficient particulars of their argument to permit Alberta to respond to the merits of the issues raised. In addition, the First Nations stated that Alberta's claim of prejudice was surprising because Alberta had already decided that the project triggered a duty to consult the First Nations and that the scope of the consultation ought to be extensive.

22. The Métis Interveners submitted that Alberta is misinterpreting the requirements and intent of the NQCLs and is arguing the substance of the NQCLs rather than their adequacy. They argued that in *R. v. Aberdeen* no notice had been given to the Crown and the court found that "[t]he requirement of notice is to ensure that governments have a full opportunity to support the constitutional validity of their legislation, or to defend their action or inaction and ensure that the courts have an adequate evidentiary record in constitutional cases."²⁷ In this case, the Métis Interveners argued that the notice provisions had been met in accordance with *R. v. Aberdeen*. They further argued that *Gitksan Treaty Society v. HEU*,²⁸ and other cases cited by Alberta are distinguishable from the present case in that no notice was given in those cases. The Métis Interveners added that the Supreme Court has found that there can be *de facto* notice and that given "the Court's broad and inclusive approach with respect to adequacy of notice, Alberta's position on this matter is misguided and even seems to hinder the Commission's mandate of fair, efficient and orderly process."²⁹

23. The Métis Interveners contended that Alberta cannot claim it had no notice or inadequate notice because in a letter dated March 24, 2015, the Aboriginal Consultation Office stated:

The Aboriginal Consultation Office (ACO) has reviewed the revised Aboriginal Consultation Plan submitted on March 17, 2015 for the proposed Fort McMurray West 500kV Transmission Project. On the basis of our review we have concluded that the revised Aboriginal Consultation Plan is consistent with the requirement outlined in

²⁵ Report of the Joint Review Panel Established by the Alberta Energy and Utilities Board and the Government of Canada EUB Decision 2007-013: Imperial Oil Resources Ventures Limited, Application for an Oil Sands Mine and Bitumen Processing Facility (Kearl Oil Sands Project) in the Fort McMurray Area, February 27, 2007. EUB Decision 2007-013: Imperial Oil Resources Ventures Limited, Application for an Oil Sands Mine and Bitumen Processing Facility (Kearl Oil Sands Project) in the Fort McMurray Area.

²⁶ *Guindon v. Canada* 2015 SCC 41.

²⁷ *R. v. Aberdeen*, 2006 ABCA 164 at para 12.

²⁸ [2000] 1 FC 135.

²⁹ Exhibit 21030-X1373, page 7.

The Government of Alberta's Guidelines on Consultation with First Nations on Land and Natural Resource Management for projects requiring an EIA.

... the ACO will remain responsible for all substantive aspects of consultation and any procedural aspects not delegated to the proponent.

... ATCO ELECTRIC LTD. should notify the ACO of any assertions or concerns raised by Métis groups during engagement and through the regulatory process.³⁰

24. In May 2016, both the Fort McMurray Métis Community and the Fort Chipewyan Métis Community took the issue of whether Crown consultation is required with Métis communities to court. The Métis Interveners asserted that because the lawyers who appeared on behalf of the Crown in that case are the same lawyers appearing on behalf of the Crown in Proceeding 21030, the Crown should be aware of the nature of the questions contained in the NQCLs.

3 Jurisdiction of the Commission to determine the matters raised in the NQCLs

3.1 Views of Alberta, Alberta PowerLine and AltaLink

25. Alberta, Alberta PowerLine and AltaLink all argued that the Commission does not have the jurisdiction to consider the matters raised in the NQCLs. Their primary arguments are summarized below.

3.1.1 The Commission cannot consider the questions outside its mandate

26. The Commission is a statutory creation whose jurisdiction is confined to the areas over which the Legislature has assigned its authority. It has no inherent jurisdiction to determine issues outside the scope of its authority. Alberta, Alberta PowerLine and AltaLink all acknowledged that the Commission has the power to hear and determine all questions of law, and therefore has the power to decide constitutional questions under the *Administrative Procedures and Jurisdiction Act* and the *Designation of Constitutional Decision Makers Regulation*. Alberta also referenced the *Alberta Utilities Commission Act* which grants the Commission the power to do all things that are necessary for or incidental to the exercise of its powers and the performance of its duties and functions.

27. However, Alberta, Alberta PowerLine and AltaLink argued that the Commission only has jurisdiction to consider constitutional questions that relate to matters within its legislative mandate; nothing in the *Hydro Electric Energy Act* or the *Alberta Utilities Commission Act* grants the Commission jurisdiction to make determinations respecting the adequacy of Crown consultation.

3.1.2 There is no Crown entity before the Commission

28. The Crown's duty to consult arises when the Crown has knowledge, real or constructive, of the potential existence of the Aboriginal right or title and contemplates conduct that might adversely affect it. In the present case, Alberta, Alberta PowerLine and AltaLink submitted that the Crown duty to consult can only arise if the Commission itself is subject to the duty or if some

³⁰ As cited in Exhibit 21030-X1373, page 7.

Crown decision or conduct is under review in the proceeding. However, neither the Métis Interveners nor the First Nations have argued that the Commission has a duty to consult and the Commission does not make Crown decisions because it does not issue Crown approvals that are required for the project. The Crown dispositions for the project will be issued by Alberta Environment and Parks under the *Public Lands Act*.³¹ The role of the Commission in this proceeding is distinct and separate from the Crown's role. Further, nothing prohibits the Commission from granting an approval without assessing the adequacy of Crown consultation decisions or other approval decisions.

29. Alberta, Alberta PowerLine and AltaLink argued that neither the *Hydro and Electric Energy Act* nor the *Alberta Utilities Commission Act* grants the Commission the jurisdiction to oversee, supervise or adjudicate on Alberta's Crown consultation with the First Nations or the Métis Interveners, when considering an application brought by a private industry proponent (as opposed to a Crown agent). Alberta PowerLine added that the Commission is not a Crown decision maker under the *Government of Alberta's Guidelines on Consultation with First Nations on Land and Natural Resource Management* or the *Métis Settlements on Land and Natural Resource Management 2016* (the *Guidelines*).

30. In support of their position, Alberta, Alberta PowerLine and AltaLink cited *Dene Tha'*³² in which the Alberta Court of Appeal held that the Commission's predecessor, the Alberta Energy and Utilities Board (EUB), could not accurately be described as an emanation of the Crown and that the EUB did not have a supervisory role over the Crown's duty to consult with respect to Aboriginal and treaty rights. AltaLink also relied on decisions of the Commission in support of this position.

31. Alberta submitted that in similar circumstances, the Federal Court of Appeal in *Standing Buffalo* and in *Chippewas* determined that the National Energy Board (NEB) did not have to consider the adequacy of the Crown's consultation when considering applications for approvals by private industry proponents. In *Chippewas*, the majority of the court determined that the circumstances in *Carrier Sekani*³³ differed significantly from those in *Standing Buffalo*, because the applicant seeking approval from the British Columbia Utilities Commission was the Crown itself while in *Standing Buffalo* the Crown was not a party to the project approval proceedings. The court in *Chippewas* also noted that in *Carrier Sekani*, the Supreme Court indicated that where a tribunal lacks practical and effective remedies to deal with failures on the part of the Crown to comply with the duty to consult, the appropriate remedies must be sought in court.

32. Alberta, Alberta PowerLine and AltaLink relied on *Chippewas* for the proposition that holding a proponent's approval application in abeyance as leverage over the Crown is not an appropriate way to achieve the reconciliation of interests called for in the Supreme Court's *Haida* decision. AltaLink added that it would be an abuse of process for the First Nations and the Métis Interveners to collaterally attack the Commission's process with issues outside of its statutory process. It added that there would be no public interest in having the constitutional questions heard in Proceeding 21030.

³¹ The approvals will be issued after the Commission's decision on the applications in Proceeding 21030.

³² *Dene Tha' First Nation v. Alberta (Energy and Utilities Board)*, 2003 ABCA 372.

³³ *Rio Tinto Alcan Inc. v. Carrier Sekani Tribal Council*, 2010 SCC 43.

33. AltaLink further argued that the First Nations' and the Métis Interveners' concerns must be raised with the Crown directly, and that if the First Nations and the Métis Interveners are not satisfied with the Crown's response, they can seek judicial review before the court of competent jurisdiction.

3.1.3 A determination on Crown consultation is premature

34. Alberta and Alberta PowerLine argued that should the Commission approve the project, additional opportunities for consultation exist because Alberta PowerLine must apply to Alberta for other approvals prior to constructing the project. Alberta submitted that the Alberta Consultation Office has not made a decision on the adequacy of consultation in relation to the project and that consultation is ongoing. Therefore the assessment of whether Crown consultation has been adequate is better left until the consultation process is complete. AltaLink added that with respect to its application, no Crown approvals would be required because its facilities are proposed on private land.

35. Alberta submitted that the Commission has a mandate under its legislation to assess project-related impacts on the rights and interests of First Nations and other Aboriginal groups, and that the Commission's review process is suited to identifying those impacts, assessing proposed mitigation measures, and incorporating those findings into the Commission's decision on the project. The Commission and its hearing process play a valuable role in facilitating Crown consultation by providing Aboriginal groups with an opportunity to hear more about a project, raise their concerns and propose solutions, and have them addressed in a public hearing process. Alberta added that it is possible that the concerns of the First Nations and Métis Interveners may be addressed in the current proceeding. Alberta cited *Tsuu T'ina Nation v. Alberta Environment*,³⁴ wherein the Alberta Court of Appeal confirmed that the Crown may rely on opportunities for Aboriginal consultation that are available within existing regulatory and environmental review processes, subject to the Crown's overriding duty to consider their adequacy in any particular situation.

36. Regarding the requested remedies, Alberta, Alberta PowerLine and AltaLink reiterated that the Commission has no jurisdiction to review, assess or supervise other statutory decision makers in the regulatory process and has no statutory authority to grant any direction or order respecting any alleged failure of the Crown overall, or of any particular Crown decision maker, to adequately consult with the First Nations or the Métis Interveners.

3.2 Views of the First Nations and the Métis Interveners

37. The First Nations and the Métis Interveners submitted that the Commission has jurisdiction over the questions in the NQCLs and ought to exercise its jurisdiction based on its statutory mandate and the common law.³⁵

38. In relation to the common law, the First Nations submitted that the *Carrier Sekani* case provides a full answer to the jurisdictional question and cited certain passages in support of this conclusion.

³⁴ *Tsuu T'ina Nation v. Alberta (Environment)*, 2010 ABCA 137.

³⁵ The First Nations and Métis Interveners agreed with the view that that a tribunal's jurisdiction to consider issues related to Aboriginal consultation depends on its statutory mandate.

39. In *R v. Conway*, the Supreme Court held that a tribunal with the jurisdiction to determine questions of law also has the jurisdiction to determine constitutional questions, absent any clear legislative intent to the contrary.³⁶ It further held that administrative tribunals must act consistently with the *Constitution Act, 1982* when exercising their statutory functions. The Supreme Court in *Carrier Sekani* applied the *Conway* framework to hold that a tribunal with the power to determine questions of law has the jurisdiction to consider the adequacy of Crown consultation. The First Nations and the Métis Intervenors submitted that although the British Columbia Utilities Commission's public interest mandate in *Carrier Sekani* "focused mainly on economic issues", the court nonetheless held that the British Columbia Utilities Commission's public interest mandate was "broad enough to include the issue of Crown consultation with Aboriginal groups."

40. Based on the above, the First Nations and the Métis Intervenors submitted that such as in *Carrier Sekani*, the Commission's public interest mandate in this case is broad enough to include the issue of Crown consultation with Aboriginal groups. In support of their position, the Métis Intervenors also relied on *Paul*³⁷ in which the Supreme Court held that there was no principled basis for distinguishing Section 35 rights from other constitutional questions in the context of determining the jurisdiction of an administrative tribunal.

41. The First Nations and the Métis Intervenors submitted that the question of jurisdiction is determined on the basis of whether the Legislature intended to give the tribunal the power to determine such issues. They contended that the Commission is explicitly granted the power to determine all questions of constitutional law under the *Administrative Procedures and Jurisdiction Act* and the *Designation of Constitutional Decision Makers Regulation*. This act defines questions of constitutional law broadly; accordingly the Commission has jurisdiction over questions of Aboriginal consultation and accommodation. The Métis Intervenors further contended that a finding to the contrary would go against the intention of the act. The Métis Intervenors submitted extracts from the *Hansard* record in support of their submissions regarding the intention of the Legislature and added that the Legislature's intent is determined by examining the entire context, including the explicit and implied powers of the tribunal under the relevant legislation. They asserted, that in this case, the Legislature's intent is clear that the Commission has the jurisdiction to determine the constitutional questions raised in the NQCLs, including Crown consultation.

42. With respect to the Commission's power to determine all questions of law and fact, the Métis Intervenors submitted that Section 8 of the *Alberta Utilities Commission Act* clearly grants the Commission this power. Further, there is nothing in the legislation that demonstrates any intent to exclude any constitutional question raised from the Commission's jurisdiction. The First Nations and the Métis Intervenors pointed to the *Responsible Energy Development Act* which states that the Alberta Energy Regulator has no jurisdiction with respect to assessing the adequacy of Crown consultation. They argued that the Legislature made this change to override the common law and the *Administrative Procedures and Jurisdiction Act*, and that the fact that no such changes were made to the Commission's enabling legislation is evidence that the jurisdiction to consider the adequacy of Crown consultation remains with the Commission.

³⁶ *R v. Conway*, 2010 SCC 22.

³⁷ *Paul v. British Columbia (Forest Appeals Commission)*, 2003 SCC 55.

43. The First Nations and the Métis Interveners submitted that the Commission must exercise its statutory function in accordance with the *Constitution Act, 1982*. They contended that the Commission cannot find that a project is in the public interest in the absence of adequate consultation because the Supreme Court has held: “[a] decision maker who proceeds on the basis of inadequate consultation errs in law.”³⁸

44. The First Nations further contended that the Aboriginal Consultation Office does not have a mandate to determine the issues raised in the NQCLs because its activities are directed by the *Guidelines*. According to the *Guidelines*, the Aboriginal Consultation Office does not decide whether consultation is adequate, it simply makes a recommendation to the Commission because the Commission is the “Crown decision-maker” contemplated under the *Guidelines*. While the Aboriginal Consultation Office may be tasked with discharging the Crown’s duty to consult, it does not have the power to approve or reject the project applications, has no expertise with respect to transmission lines and their impacts, and does not have a statutory mandate to enforce the conditions of a permit or licence in the event the applications in Proceeding 21030 are approved. In short, the Aboriginal Consultation Office does not have the ability or power to effectively address the First Nations’ concerns regarding the project’s impacts on their constitutionally-protected rights. Only the Commission has the requisite power and expertise.

45. In addition, the First Nations submitted that meaningful consultation includes the development of measures and conditions that effectively and meaningfully mitigate a project’s impacts on treaty rights and only the Commission has the power to do this. The First Nations argued that the Commission, unlike the Aboriginal Consultation Office, has the mandate and power to make determinations that will determine whether the First Nations’ rights are impacted and the scope and extent of any impacts. In particular, the Commission has the power to decide whether to approve the project and impose conditions on the construction and operation of the project, including mitigation measures to reduce the impacts of the project on the First Nations’ rights. The permits and licences including any applicable conditions have the potential to promote or to undermine the reconciliation of treaty rights with the interests of other Albertans.

46. The First Nations stated that the Supreme Court has repeatedly emphasized the practical advantages and constitutional basis for allowing parties to assert constitutional rights before the most accessible forum available. Further, having an administrative tribunal address constitutional matters related to its mandate avoids costly and time-consuming processes before the courts. In this case, the Commission’s cost-recovery and relatively informal process make it more accessible to the First Nations than the courts.

47. The First Nations also responded to Alberta’s preliminary arguments made in its letter of September 6, 2016. They contended that the legal authorities relied on by Alberta in support of its arguments have been overtaken by subsequent developments in the common law. Respecting the first ground argued by Alberta, the three-part test relied on by Alberta is from the 1986 Supreme Court decision in *Mills v. The Queen* which was extended to tribunals in *Weber v. Ontario*.³⁹ The test was updated in the *Conway* decision. *Conway* clarifies that a tribunal with the jurisdiction to determine questions of law also has the jurisdiction to determine constitutional questions, absent any clear legislative intent to the contrary.

³⁸ *Beckman v. Little Salmon/Carmacks First Nation*, 2010 SCC 53, at para. 48.

³⁹ *Mills v. The Queen*, [1986] 1 S.C.R. 863 and *Weber v. Ontario Hydro* [1995] 2 S.C.R. 929.

48. With respect to the contention of Alberta that the Commission did not have a supervisory jurisdiction over the Crown based on *Dene Tha*, the First Nations and the Métis Interveners submitted that *Dene Tha* is inapplicable and distinguishable because the Alberta Court of Appeal decided that case on the basis of whether the First Nation met the test for standing under the *Energy Resources Conservation Act* and not on the issue of consultation. On the question of consultation, the Alberta Court of Appeal said it would not and could not decide whether the provincial Crown had a duty to consult. Further, *Dene Tha* was decided before *Mikisew*⁴⁰ which confirmed that the Crown has a duty to consult First Nations who are treaty beneficiaries and the basis for that duty is Section 35 of the *Constitution Act, 1982* and the honour of the Crown. Further, the Métis Interveners stated that *Dene Tha* was rendered prior to Part 2 of the *Administrative Procedures and Jurisdiction Act* coming into force and the enactment of the *Designation of Constitutional Decision Makers Regulation*. The First Nations and Métis Interveners also pointed to *Carrier Sekani*, which held that a tribunal's jurisdiction to determine questions of law includes the jurisdiction to determine the adequacy of Crown consultation. They further contended that lower court cases such as *Dene Tha* and *Standing Buffalo*⁴¹ have been overruled by *Carrier Sekani*.

49. In response to the Alberta, Alberta PowerLine, and AltaLink September 20, 2016 submissions, the Métis Interveners argued that the Commission's power is broad and that there is no limit on this power based on the parties before the Commission, the subject matter, or the potential remedy.

50. The First Nations submitted that in *Haida*⁴² and *Carrier Sekani*, the Supreme Court indicated that Aboriginal groups must be consulted on strategic, high-level decisions that affect their treaty and Aboriginal rights. In relation to the project, the Commission's approval is the strategic decision that will determine the project's impacts on the First Nations' rights because the Commission decides whether and where the project will be constructed and operated, and on what conditions.

51. The First Nations and Métis Interveners disagreed with the proposition of Alberta and the applicants that the principles set out in *Carrier Sekani* are limited to situations where the project proponent is the Crown or an agent of the Crown. However, the First Nations acknowledged that the law on this issue is unsettled and it is a question subject to vigorous debate amongst legal commentators. The Supreme Court recently granted leave to appeal to two cases from the Federal Court of Appeal, *Hamlet of Clyde River* and *Chippewas of Thames*, which will be heard together on November 30, 2016. Both appeals involved applications where the NEB was the final decision maker under its legislation. The First Nations contended that accepting the arguments of Alberta and the applicants would be tantamount to accepting that the Crown can avoid its duty to consult by delegating its decision-making powers to the Commission, and that this is not consistent with the case law or the honour of the Crown.

52. In response to the position taken by Alberta, Alberta PowerLine and AltaLink that the Commission does not have jurisdiction because the Crown is not a party before the Commission, that there is no Crown activity under review and that the Commission is not a Crown decision

⁴⁰ *Mikisew Cree First Nation v. Canada (Minister of Canadian Heritage)*, 2005 SCC 69 [Mikisew].

⁴¹ *Standing Buffalo Dakota First Nation v. Enbridge Pipelines Inc.*, 2009 FCA 308 [Standing Buffalo].

⁴² *Haida Nation v. British Columbia (Minister of Forests)*, 2004 SCC 73.

maker, the Métis Interveners pointed to an information response from Alberta PowerLine regarding discussions with the Aboriginal Consultation Office. The Métis Interveners argued that the Crown is involved in this process through the mechanisms of the Aboriginal Consultation Office.⁴³

53. The Métis Interveners also argued that any decision by the Crown that allows the taking up of Crown lands for any use that impacts Aboriginal rights is the same in law whether there is a Crown agent or not, and *Carrier Sekani* should not be limited to its facts. The impact is related to Crown action and the duty to consult is triggered.

54. The First Nations argued that the position of Alberta and Alberta PowerLine that consultation assessment is premature is flawed because the issue of correct timing of an adequacy determination goes to the substance of the arguments in the NQCL and not to jurisdiction. They submitted that courts and tribunals routinely assess consultation long before the final approval or permit is issued. The NQCL does not ask the Commission to determine whether consultation is adequate once and for all for the life of the project, but to assess whether consultation is adequate to the point of issuing an approval for the project. In support of its position, the First Nations cite the *Tsilhqot'in* case.⁴⁴

55. On the issue of consultation assessment being premature, the Métis Interveners submitted that this argument is fanciful because the Crown had not consulted with them and consultation will not happen after the Commission has made a decision.

56. In their response, the First Nations made submissions on the statutory scheme governing transmission lines. They stated that the proposed transmission line was designated critical transmission infrastructure by the lieutenant-governor in council without consultation with any Aboriginal groups, although the proposed line runs through many First Nations' and Métis communities' traditional territory. They pointed to the Alberta Court of Appeal decision in *Shaw*⁴⁵ which described the Commission's role in relation to critical transmission as assessing whether the proposed routing and siting of the transmission line and other facilities required to meet the need are in the public interest. As a result, the First Nations submitted that it is the Commission's decision that will determine, or largely determine, the extent and scope of the project's impacts on the First Nations' traditional land use.

57. The First Nations referred to sections 14 and 15 of the *Hydro and Electric Energy Act* which states that no person shall construct or operate a transmission line without a permit and licence from the Commission. This decision of the Commission is final for these permits and licences. They also cite Section 85 of the *Public Utilities Act* which grants the Commission supervisory powers over all public utilities.

58. The First Nations described their understanding that approvals are required for easements and vegetation clearing under the *Public Lands Act* and argued that nothing under that act can stop or significantly change the project once approved by the Commission, and can only be overturned through an appeal on a question of jurisdiction or a question of law. They added that

⁴³ Exhibit 21030-X1373, at para. 13.

⁴⁴ *Tsilhqot'in Nation v. British Columbia*, 2014 SCC 44.

⁴⁵ *Shaw v. Alberta (Utilities Commission)*, 2012 ABCA 378.

if there are significant amendments to the approved route, the holder of the permit and licence would have to apply to the Commission for approvals of such amendments, and also that Alberta has not provided an explanation of the future processes or how consultation will be assessed through the processes of such approvals.

59. In response to Alberta's assertions that the recourse for the First Nations is the courts, the First Nations argued that any legal challenge based on inadequate consultation does not automatically stay a Commission approval pending a determination by the court. Activities directly impacting First Nations' rights, such as clearing or construction, can occur pending a court decision and the duty to consult is meant to forestall such situations. Further, with respect to a stay, the Supreme Court has stated that injunctions offer a partial imperfect relief in relation to claims of inadequate consultation. They added that Alberta and Alberta PowerLine may argue that the court challenge is moot if construction has begun.

60. The First Nations contend that Alberta has mischaracterized the questions raised in the NQCL and the jurisdictional question to be determined. They submitted that supervising consultation is not the same as determining whether adequate consultation has taken place. As a result, Alberta's reliance on *Dene Tha* is misplaced because the Commission's jurisdiction to determine the NQCLs does not depend on whether it has the remedial power to supervise Crown consultation or to direct the Crown to carry out consultation in a particular manner. Further, they argued that the Commission has jurisdiction over the remedy requested in the NQCL to find that the project is not in the public interest, pursuant to its statutory mandate because Crown consultation has been inadequate. The Commission's public interest mandate is broad enough to include issues of Crown consultation with Aboriginal groups. In support, they cite *Cold Lake* in which Justice Berger stated that it is in the public interest of all Albertans to ascertain the duty to consult in keeping with the honour of the Crown. The First Nations asserted that the Commission has the power to refuse an application if it decides that the project is not in the public interest based on the failure to consult, and that the proponent, as the Crown's delegate, can do a better job of consultation and re-apply for the project or not.

61. In response to the submissions of Alberta PowerLine and AltaLink that the Commission has no jurisdiction because there is no Crown conduct to review, the First Nations submitted that these arguments go to the merits of the matters raised in their NQCL. However, they contended that the issuance of a Commission permit and licence is Crown conduct sufficient to trigger the duty to consult. The basis of this argument is the *Ocean Port* decision in which the Supreme Court stated that administrative tribunals "ultimately operate as part of the executive branch of government, under the mandate of the legislature".⁴⁶

62. In their response submissions, the First Nations clarified that their NQCL does not ask the Commission to engage in consultation. The Métis Interveners also clarified that the questions in the NQCLs were being raised in relation to the Alberta PowerLine applications and not to the AltaLink application.

⁴⁶ Exhibit 21030-X1350, at para. 41 citing *Ocean Port Hotel Ltd v. British Columbia (General Manager, Liquor Control and Licensing Board)*, 2001 SCC 52.

4 Ruling

63. The questions and relief sought are set out in the NQCLs as follows. The joint NQCL of the First Nations stated:

QUESTIONS OF CONSTITUTIONAL LAW

1. Has the Crown, through the regulatory process or otherwise, discharged its duty to consult and accommodate SCFN and BLCN with respect to adverse impacts arising from the Project on the rights guaranteed to SCFN and BLCN pursuant to Treaty, the *Natural Resources Transfer Agreement, 1930* and section 35 of the *Constitution Act, 1982*?
2. Can the Alberta Utilities Commission ("AUC") find the Project is in the public interest, pursuant to subsection 17(1) of the Alberta Utilities Commission Act, in the absence of adequate consultation with respect to adverse impacts arising from the Project on the rights guaranteed to SCFN and BLCN pursuant to Treaty, the *Natural Resources Transfer Agreement, 1930* and section 35 of the *Constitution Act, 1982*?

RELIEF SOUGHT

1. The AUC refrain from approving the Project until the Project impacts on the Constitutionally protected rights of SCFN and BLCN are assessed and avoidance and/or mitigation measures are developed to minimize those impacts; or
2. In the Alternative, the AUC refer the determination of the constitutional questions to a court, pursuant to section 13 of the *Administrative Procedures and Jurisdiction Act*, RSA 2000, c A-3.

64. Each of the NQCLs of the Métis Intervenors stated:

Questions:

1. Do the approvals sought by Alberta PowerLine L.P. ("APL") in AUC Application No. 21030 and associated secondary applications (the "Application") unjustifiably infringe the right to meaningful consultation with Métis Communities provided for in Section 35(1) of the *Constitution Act, 1982* and contrary to the *Constitution Act, 1930*?
2. Has the Crown met the Duty to Consult with the ML 90? If the answer is no, does the AUC have jurisdiction to approve a project in the face of the Crown's failure to meet its Section 35 obligation to consult and accommodate potentially impacted Aboriginal communities?

We intend to seek the following relief:

1. That the Application must be adjourned, and cannot be approved, until the Crown has met its duty to consult with ML 90.

65. Two issues have been raised in relation to the NQCLs. First, the adequacy of the NQCLs pursuant to the *Administrative Procedures and Jurisdiction Act* and the *Designation of Constitutional Decision Makers Regulation*. Second, the jurisdiction of the Commission to determine the adequacy of Crown consultation before making a determination on the applications before the Commission. To address these issues, the Commission first sets out the legislative provisions that apply to the applications in Proceeding 21030 and those applicable to the determination of the Commission's jurisdiction over the constitutional questions of law in the NQCLs, and then provides its analysis and findings on each issue.

4.1 Legislative framework

66. The NQCLs raise constitutional questions pertaining to sections 35(1) and (2) of the *Constitution Act, 1982* which state:

35(1) The existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed.

(2) In this Act, "aboriginal peoples of Canada" includes the Indian, Inuit and Métis peoples of Canada.

67. Alberta PowerLine is seeking approval to construct and operate the project and associated transmission facilities, between the Wabamun area and the Fort McMurray area. Alberta PowerLine has identified a preferred west route and an alternative east route, as well as an east route variant. AltaLink and ATCO Electric Ltd. have applied for approvals to alter their facilities associated with Alberta PowerLine's proposed transmission line. As the Fort McMurray West transmission line is defined as critical transmission infrastructure in the *Electric Utilities Act*, the Alberta Electric System Operator (referred to as the ISO in the provisions set out below) directed Alberta PowerLine to apply to the Commission to seek approval of the Fort McMurray West transmission line. All of the applications in Proceeding 21030 are made under sections 14(1), (2), and 15 of the *Hydro and Electric Energy Act*. In addition, the applications for the Fort McMurray West 500-kilovolt project are made under sections 41.3 and 41.4 (3) of the *Electric Utilities Act* and specific provisions of the Schedule to the *Electric Utilities Act*. These sections state:

Hydro and Electric Energy Act:

14(1) No person shall construct a transmission line or any part of a transmission line unless the person is the holder of a permit issued by the Commission.

(2) No person shall make a significant extension or alteration of a transmission line unless the Commission has amended the person's permit or issued a new permit to cover the extension or alteration.

15 No person shall operate a transmission line unless the person is the holder of a subsisting licence to operate the transmission line, issued by the Commission.

Electric Utilities Act:

Critical Transmission Infrastructure

41.3 Subject to the regulations, the Independent System Operator must, in a timely manner, direct a person determined under the regulations to make an application in a

timely manner to the Commission under the *Hydro and Electric Energy Act* for an approval of critical transmission infrastructure.

41.4(3) The facility referred to in section 4(a) of the Schedule shall be developed first, which may initially be energized at 240 kV, and the Independent System Operator shall, subject to the regulations, specify and make available to the public milestones that the Independent System Operator will use to determine the timing of the development of the facilities referred to in section 4(b) and (c) of the Schedule.

The Schedule to the *Electric Utilities Act*:

Each of the critical transmission infrastructure described in this Schedule includes all associated facilities required to interconnect a transmission facility described in this Schedule to the interconnected electric system.

The following transmission facilities are designated as critical transmission infrastructure:

...

Two single circuit 500 kV alternating current transmission facilities from the Edmonton region to the Fort McMurray region, generally described as follows:

- (a) a facility from a new substation to be built in the Thickwood Hills area, approximately 25 km west of the Fort McMurray Urban Service Area, to a substation at or in the vicinity of the existing Brintnell 876S substation;
- (b) a facility at or in the vicinity of the existing Brintnell 876S substation, to a substation in the vicinity of the existing Keephills - Genesee generating units;

...

68. Section 13.1 of the *Hydro and Electric Energy Act* also applies to the applications filed by Alberta PowerLine:

13.1(1) In this section, “critical transmission infrastructure” means critical transmission infrastructure as defined in the *Electric Utilities Act*.

(2) The construction, connection and operation of a transmission line or part of a transmission line that is designated as critical transmission infrastructure is required to meet the needs of Alberta and is in the public interest.

69. Under Section 19 of the *Hydro and Electric Energy Act*, the Commission may grant a permit or licence or an amendment to a permit or licence, may grant it with conditions, or may deny the application.

70. Section 8 of the *Alberta Utilities Commission Act* sets out the powers of the Commission in relation to any matter before it. It states:

8(1) The Commission has all the powers, rights, protections and privileges that are given to it or provided for under this Act and under any other enactment and by law.

(2) The Commission, in the exercise of its powers and the performance of its duties and functions under this Act or any other enactment, may act on its own initiative or motion and do all things that are necessary for or incidental to the exercise of its powers and the performance of its duties and functions.

(3) In addition to the powers, duties and functions conferred or imposed on the Commission by this Act or any other enactment, the Commission may carry out any other powers, duties and functions determined by the Lieutenant Governor in Council.

(4) The Lieutenant Governor in Council may, by order, require the Commission to carry out any function or duty specified in the order, including inquiring into, hearing and determining any matter or thing in respect of any matter within the jurisdiction of the Commission under this Act or any other enactment, and the Commission shall without unnecessary delay comply with the order.

(5) Without restricting subsections (1) to (4), the Commission may do all or any of the following:

- (a) hear and determine all questions of law or fact;
- (b) make an order granting the relief applied for;
- (c) make interim orders;
- (d) where it appears to the Commission to be just and proper, grant partial, further or other relief in addition to, or in substitution for, that applied for as fully and in all respects as if the application or matter had been for that partial, further or other relief.

(6) An order of the Commission takes effect at the time provided for by the order or, if no time is provided for, on the date of the order.

(7) The Commission may delegate any of the powers, duties and functions conferred or imposed on it under this or any other enactment to any member or any other person unless the regulations under section 75 prohibit the delegation.

71. Section 17 of the *Alberta Utilities Commission Act* applies to the applications in Proceeding 21030. It states:

17(1) Where the Commission conducts a hearing or other proceeding on an application to construct or operate a hydro development, power plant or transmission line under the *Hydro and Electric Energy Act* or a gas utility pipeline under the *Gas Utilities Act*, it shall, in addition to any other matters it may or must consider in conducting the hearing or other proceeding, give consideration to whether construction or operation of the proposed hydro development, power plant, transmission line or gas utility pipeline is in the public interest, having regard to the social and economic effects of the development, plant, line or pipeline and the effects of the development, plant, line or pipeline on the environment.

(2) The Commission shall not under subsection (1) give consideration to whether critical transmission infrastructure as defined in the *Electric Utilities Act* is required to meet the needs of Alberta.

72. Pursuant to sections 29 and 30 of the *Alberta Utilities Commission Act*, a decision of the Commission is final, subject to appeal on permission to the Alberta Court of Appeal.

73. Because questions of constitutional law are raised in Proceeding 21030, the *Administrative Procedures and Jurisdiction Act* applies. It states that a designated decision maker means a decision maker designated in a regulation made under the act as a decision maker that has jurisdiction to determine one or more questions of constitutional law. Section 11 of the act states that a decision maker has no jurisdiction to determine a question of constitutional law unless a regulation under the act has conferred jurisdiction on that decision maker to do so. Under this act, a question of constitutional law means a challenge to the applicability or validity of an enactment of the Parliament of Canada or the legislature of Alberta, or a determination of any right under the Constitution of Canada or the *Alberta Bill of Rights*. Section 12 of the *Administrative Procedures and Jurisdiction Act* states:

12(1) Except in circumstances where only the exclusion of evidence is sought under the *Canadian Charter of Rights and Freedoms*, a person who intends to raise a question of constitutional law at a proceeding before a designated decision maker that has jurisdiction to determine such a question

(a) must provide written notice of the person's intention to do so at least 14 days before the date of the proceeding

- (i) to the Attorney General of Canada,
- (ii) to the Minister of Justice and Solicitor General of Alberta, and
- (iii) to the parties to the proceeding,

and

(b) must provide written notice of the person's intention to do so to the designated decision maker.

(2) Until subsection (1) is complied with, the decision maker must not begin the determination of the question of constitutional law.

(3) Nothing in this section affects the power of a decision maker to make any interim order, decision, directive or declaration it considers necessary pending the final determination of any matter before it.

(4) The notice under subsection (1) must be in the form and contain the information provided for in the regulations.

74. The Alberta Utilities Commission is a designated decision maker under Schedule 1 of the *Designation of Constitutional Decision Makers Regulation* and has jurisdiction to determine "all questions of constitutional law".

4.2 Issue 1: Adequacy of notice

75. As noted above, Section 12 of the *Administrative Procedures and Jurisdiction Act* sets out the requirements for the notice of constitutional question where a person intends to raise a question of constitutional law in a proceeding before a designated decision maker. The notice must be in writing, given at least 14 days before the date of the proceeding, and must be in the form and contain the information provided for in the regulation under the act. No party contests the fact that the NQCLs in this case were given in writing and within the requisite time. As discussed above, Alberta argues that the NQCLs were not in the form and did not contain the information provided for in the *Designation of Constitutional Decision Makers Regulation*.

76. The form and content of the notice are set out in Schedule 2 of the *Designation of Constitutional Decision Makers Regulation*. The notice is to include the question of constitutional law that the person or group intends to raise, the relief sought, and the details of the argument are to be attached to the notice and are to include:

- The grounds to be argued and reasonable particulars of the proposed argument, including a concise statement of the constitutional principles to be argued, references to any statutory provision or rule on which reliance will be placed and any cases or authorities to be relied upon.
- The law in question, the right or freedom alleged to be infringed or denied or the Aboriginal or treaty right to be determined, as the case may be.
- The material and documents that will be filed with the decision maker.
- A list of witnesses intended to be called to give evidence before the decision maker and the substance of their proposed testimony.

77. In its consideration of the adequacy of the NQCL of the First Nations and those of the Métis Interveners, the Commission reviewed the NQCLs against the requirements set out in Schedule 2 of the *Designation of Constitutional Decision Makers Regulation*, because these requirements are mandatory. These requirements ensure that all affected participants are able to respond to the constitutional issues raised.

78. Alberta took issue with the contents of the NQCL of the First Nations and those of the Métis Interveners and these parties responded to the issues raised. After addressing the nature of the evidence required at this stage of the proceeding, the Commission addresses the NQCL of the First Nations separate from those of the Métis Interveners because the content of the NQCLs differ.

4.1.1 Evidentiary requirement

79. In its submissions on the adequacy of the NQCLs, Alberta raised numerous concerns regarding a lack of particularity of the proposed evidence addressing the following issues: the existence of Métis rights or the Aboriginal or treaty rights relied on; the potential impact of the project on such rights; the scope and extent of consultation required (which is based on a

preliminary assessment of the strength of claim and the seriousness of the potential impact; and whether the requisite consultation was provided.

80. However, it is important for present purposes to clearly distinguish between (i) the jurisdictional question addressed in this ruling and (ii) the evidentiary question that may have to be addressed subsequently. If the Commission determines it has jurisdiction to consider the adequacy of Crown consultation with Aboriginal peoples in the circumstances of the current applications, the evidentiary question would include the basis for and the scope of that Crown duty, and whether the Crown has discharged the duty to consult in relation to the applications in question.

81. The NQCLs raise (and this ruling will only address) the jurisdictional question. While the Commission acknowledges Alberta's concerns regarding the lack of particularity of certain evidence, it is only if the jurisdictional question is answered in the affirmative that some of these evidentiary concerns may arise and have to be resolved. However, the current focus is on the adequacy of the descriptions contained in the NQCLs for determining the jurisdictional question. For this specific purpose, the Commission turns to a consideration of the NQCLs filed by the First Nations and the Métis Intervenors.

4.1.2 First Nations NQCL

82. The NQCL states the questions of constitutional law raised by the First Nations and the relief sought. Attached to the notice are the details of argument, a list of cases and authorities, and a witness list and proposed testimony. The Commission notes that the witness list identifies the witnesses to be called for the Beaver Lake Cree First Nation and those for the Sucker Creek First Nation. Under the name of each witness, the topics of their testimony are listed as well as the exhibit numbers of evidence filed in Proceeding 21030 that the witness will address. In relation to evidence that will be filed, the Commission observes that the First Nations state that they may file additional evidence; however such evidence would have to be filed in accordance with the Commission's Rule 001: *Rules of Practice*. The Commission finds that overall the information provided in these documents is sufficiently detailed to meet the requirements of Schedule 2 of the *Designation of Constitutional Decision Makers Regulation*. The NQCL contains reasonable particulars regarding the First Nations' argument on the adequacy of Crown consultation on the applications before the Commission. Further, to ensure that no prejudice results to Alberta, if the Commission determines it has jurisdiction over the questions of constitutional law raised in the NQCL, Alberta would be afforded an opportunity to ask for additional information from the First Nations on the testimony of the witnesses identified in the NQCL and any information intended to be filed by the First Nations before filing its evidence.

4.1.3 Métis Intervenors

83. The Métis rights referred to in the NQCLs of the Métis Intervenors are asserted rights. The Commission is not persuaded by Alberta's submissions that the NQCLs are deficient because claimants must outline their claims with clarity, focusing on the scope and nature of the Aboriginal rights they assert. These are issues which require findings of fact. In this ruling, the Commission will not undertake such findings of fact, but review the NQCLs to determine whether the notices achieve the purpose of affording Alberta the fullest opportunity to address the issue of the asserted Métis rights and the constitutional questions raised in light of the

asserted rights.⁴⁷ The cases cited by Alberta⁴⁸ are cases where notice was not given and the tribunal or court could not proceed without notice being given. This is not the case before the Commission.

84. The Commission reviewed the contents of the notices against the requirements set out in Schedule 2 of the *Designation of Constitutional Decision Makers Regulation* and whether there is sufficient information overall to inform Alberta of the basis for the arguments raised in support of the questions of constitutional law in the notice and to allow it to prepare its case in response to the notices. Although the Commission considers that additional information would have been useful, the notices set out the nature of the asserted Métis rights in relation to the project, and refer to Aboriginal rights under Section 35(1) of the *Constitution Act, 1982*. The Commission finds that the Métis Interveners have provided reasonable particulars on their assertion of rights, the basis for their assertion, and arguments in support of their assertion. This determination is based on the details of the argument attached to the notices, as well as the documents filed on the record of Proceeding 21030 and a list of witnesses who will give evidence based on affidavits and documents filed in the proceeding. Although the notices lack particulars on the argument that the Métis Interveners meet the *Powley* test, may not list all the names of the witnesses, and lack particulars about the alleged adverse impacts of the project, the Commission finds that there is sufficient information when considering the information filed on the record and referred to in the notices to meet the requirements set out in Schedule 2 of the *Designation of Constitutional Decision Makers Regulation*. Again, the Commission's focus at this stage is only on determining whether the NQCLs are sufficient to address the jurisdictional question as a preliminary matter. Further, to ensure that no prejudice results to Alberta, if the Commission determines it has jurisdiction over the questions of constitutional law raised in the NQCLs, Alberta would be afforded an opportunity to ask for additional information from each of the Métis Interveners on their respective NQCL before filing its evidence.

4.2 Issue 2: Jurisdiction of Commission over the questions of constitutional law raised in the NQCLs

85. Although the questions of constitutional law are framed differently by the First Nations and the Métis Interveners, the essential question before the Commission is whether the Commission must assess whether the Crown has discharged its duty to consult with the First Nations or the Métis Interveners about potential adverse impacts on their respective First Nations' treaty rights and asserted Métis rights before making a determination on the applications before it, in the circumstances of Proceeding 21030. To answer this question, the Commission considers the role of the Commission in relation to the Crown duty to consult under its statutory framework, and whether the determinations the Commission is required to make in considering the current applications engage the need for a determination of the adequacy of Crown consultation.

⁴⁷ *Guindon v. R* 2015 SCC 41 at para. 19.

⁴⁸ *Gitksan Treaty Society v. HEU*, [2000] 1 FC 135; *Eaton v. Brant (County) Board of Education*, [1997] 1 SCR 241; *R v. Morrow*, 1999 ABCA 182; *R v. Gerlitz*, 2014 ABQB 247; *R v. Aberdeen*.

4.2.1 Role of administrative tribunals – General Principles

86. The Supreme Court held in *Carrier Sekani* that the duty of a tribunal to consider consultation and the scope of the duty depends on its statutory mandate; “[t]ribunals are confined to the powers conferred on them by their constituent legislation”.⁴⁹ The Supreme Court further states:

[56] The legislature may choose to delegate to a tribunal the Crown’s duty to consult. ...

[57] Alternatively, the legislature may choose to confine a tribunal’s power to determinations of whether adequate consultation has taken place, as a condition of its statutory decision-making process. In this case, the tribunal is not itself engaged in the consultation. Rather, it is reviewing whether the Crown has discharged its duty to consult with a given First Nation about potential adverse impacts on their Aboriginal interest relevant to the decision at hand.

[58] Tribunals considering resource issues touching on Aboriginal interests may have neither of these duties, one of these duties, or both depending on what responsibilities the legislature has conferred on them. Both the powers of the tribunal to consider questions of law and the remedial powers granted it by the legislature are relevant considerations in determining the contours of that tribunal’s jurisdiction: *Conway*. As such, they are also relevant to determining whether a particular tribunal has a duty to consult, a duty to consider consultation, or no duty at all.

87. In this matter, no party is arguing that the Commission has been delegated the Crown’s duty to consult or is itself engaged in direct consultation. Nor does the Commission consider that there is a basis for such a conclusion, given its function as a quasi-judicial tribunal.⁵⁰

88. Given the recent express guidance provided by the Supreme Court regarding the role of tribunals in consultation, the Commission finds that it is unnecessary to approach the jurisdictional question in the manner proposed by Alberta—i.e. by considering jurisdiction over the parties, the subject-matter and the remedy. The First Nations have argued that the legal test referenced by Alberta is outdated. The Commission prefers to approach questions on its role in consultation viewed through the lens of the questions as framed by *Carrier Sekani*, quoted above.

4.2.2 Statutory mandate of the Commission

89. The Commission’s statutory mandate in relation to the applications before it is set out above. The Commission has no other powers than those expressly set out in or implied from its legislation. The Commission is a quasi-judicial tribunal that hears and considers applications, in this case applications for the construction and operation of transmission lines. Notably, the applications at issue in the current proceeding are for facilities that are deemed to be “critical transmission infrastructure”. In its decision in Proceeding 21030, the Commission may determine questions of law and fact, and may approve or deny the applications. The Commission may approve the applications if the applications meet the Commission’s requirements, if

⁴⁹ *Carrier Sekani*, at para 55.

⁵⁰ *Quebec (Attorney General) v. Canada (National Energy Board)*, [1994] 1 S.C.R. 159, at page 184.

potential impacts may be mitigated, and if it considers the applications to be in the public interest in accordance with Section 17 of the *Alberta Utilities Commission Act*. If it decides to approve the applications, the Commission may impose conditions to minimize or mitigate potential impacts of the project. The Commission's decisions are final, but subject to appeal on permission to appeal from the Alberta Court of Appeal.

90. In relation to transmission lines that are considered to be critical transmission infrastructure such as in the present case, the Commission hears evidence from the applicant and interveners on the routing and siting of the proposed transmission line. Evidence is presented on potential impacts of the project on the environment and on the interveners, and their activities, and proposed mitigation measures in relation to the proposed routes, as well as on the participant involvement program of the applicant. The onus is on the applicant to demonstrate that it has met the Commission's requirements, that potential impacts are avoided or mitigated, and that the proposed route is in the public interest as elaborated in Section 17 of the *Alberta Utilities Commission Act*. In making its decision, the Commission weighs the evidence and considers whether the project is in the public interest.

91. There are no provisions in the Commission's governing legislation that expressly empower the Commission to make, or prohibit it from making, determinations on the adequacy of Crown consultation. However, the Commission is a designated decision maker empowered to hear all questions of "constitutional law" as defined under the *Administrative Procedures and Jurisdiction Act* and *Designation of Constitutional Decision Makers Regulation*. In their submissions, all parties acknowledged that the Commission has the power to hear questions of "constitutional law" as defined in the act. However, the parties differed on whether the Commission can determine, as a question of constitutional law, whether the Crown has discharged its duty to consult with holders of relevant Aboriginal interests in the circumstances of the current applications.

92. Alberta and the applicants take the position that the Commission's power to determine questions of constitutional law is limited to questions of constitutional law that are within its statutory powers and that arise in the applications before the Commission; while the First Nations and Métis Intervenors take the position that the Commission may determine any constitutional question based on the wording of the *Designation of Constitutional Decision Makers Regulation* and the lack of any provision in the Commission's governing legislation that prohibits the Commission from determining the adequacy of Crown consultation. The Commission finds that it may only determine questions of constitutional law "that are properly before it" as dictated by the Supreme Court in *Carrier Sekani*.⁵¹ Accordingly, the Commission now considers whether under its statutory mandate it may consider the adequacy of Crown consultation when the Crown is not an applicant or a participant in Proceeding 21030.

4.2.3 Crown duty to consult

93. In *Haida*, the Supreme Court stated that the duty to consult arises "when the Crown has knowledge, real or constructive, of the potential existence of the Aboriginal right or title and contemplates conduct that might adversely affect it."⁵² In *Carrier Sekani*, the court clarified that

⁵¹ *Carrier Sekani*, at para. 69.

⁵² *Haida*, at para. 35.

the test can be broken down into three elements: (1) the Crown’s knowledge, actual or constructive, of a potential Aboriginal claim or right; (2) contemplated Crown conduct; and (3) the potential that the contemplated conduct may adversely affect an Aboriginal claim or right.⁵³ It is useful to consider each of these three elements separately.

Element #1 – Knowledge by the Crown of a potential claim or right

94. The first element required to trigger the duty to consult is that the Crown must have real or constructive knowledge of a claim to the resource or land to which it attaches.⁵⁴ Given the differences in their respective claims, it is useful to consider this element separately for the First Nations and the Métis Interveners.

95. The First Nations are signatories to a treaty with the Crown. As the Supreme Court confirmed, this is clearly sufficient to meet the first element of the three-part test set out above. “In the case of a treaty the Crown, as a party, will always have notice of its contents.”⁵⁵

96. Alberta argues that the Métis Interveners have not established Aboriginal rights and that to date, no Alberta Métis collective has proven the existence of any Aboriginal rights. However, the Commission does not view this as fatal to the argument advanced by the Métis Interveners. As the Supreme Court has stated: “While the existence of a potential claim is essential, proof that the claim will succeed is not. What is required is a credible claim.”⁵⁶ The court has repeatedly indicated that the strength of such claims is a relevant factor:

Knowledge of a credible but unproven claim suffices to trigger a duty to consult and accommodate. The content of the duty, however, varies with the circumstances, as discussed more fully below. A dubious or peripheral claim may attract a mere duty of notice, while a stronger claim may attract more stringent duties. The law is capable of differentiating between tenuous claims, claims possessing a strong *prima facie* case, and established claims.”⁵⁷

97. In order to address the NQCLs at this stage of the proceedings, the Commission is not called upon to consider or make conclusions on the strength of the claim advanced by the Métis Interveners. However, the material put forward by the Métis Interveners suggests they have an asserted, unproven claim. For present purposes only—in addressing the NQCLs—the Commission is prepared to view this claim as sufficiently credible to meet the first element of the three-part test to trigger a duty to consult and accommodate.

Element #2 – Crown conduct or decision (general principles)

98. The second element required to trigger the duty to consult is that there must be Crown conduct or a Crown decision that engages a potential Aboriginal right. The Supreme Court has clarified that “such action is not confined to government exercise of statutory powers” and “not confined to decisions or conduct which have an immediate impact on lands and resources...[but]

⁵³ *Carrier Sekani*, at para. 31.

⁵⁴ *Haida*, at para. 35.

⁵⁵ *Mikisew*, at para. 34.

⁵⁶ *Carrier Sekani*, at para. 40.

⁵⁷ *Haida*, at para. 37.

extends to “strategic, higher level decisions” that may have an impact on Aboriginal claims and rights.”⁵⁸

99. For the reasons discussed below, this is the critical element in the current circumstances. This second element is addressed in greater detail in the section entitled “Crown Conduct or Crown Decision in the Current Applications”. However, first it is useful to review the third element of the three-part test.

Element #3 – Adverse effect of the proposed Crown conduct on an Aboriginal claim or right

100. The third element required to trigger the duty to consult is the possibility that the Crown conduct may affect the Aboriginal claim or right. In respect of this third element, the Supreme Court has stated: “The claimant must show a causal relationship between the proposed government conduct or decision and a potential for adverse impacts on pending Aboriginal claims or rights.”⁵⁹

101. The First Nations and the Métis Interveners have pointed to the potential adverse impacts of the project (the Fort McMurray West Transmission Project) and argued that it may prejudice a pending Aboriginal claim or right. Alberta and other parties have emphasized the subsequent Crown decisions that may be required for the project to proceed.

102. For present purposes, it is not necessary to resolve whether such potential adverse effects are considered to be physical in nature or “high-level management decisions or structural changes to the resource’s management.” Adverse effects sufficient to meet the third element of the test can arise from either physical effects or “high-level management decisions or structural changes” *provided* that there is Crown conduct or a Crown decision (the second element of the test). The Commission is prepared to assume, for the purposes of this ruling that the potential effects arising from a decision on the project would be sufficient to meet the third element of the test, *provided* that there is a causal connection to a Crown conduct or a Crown decision (the second element of the test) that arises within the applications currently before the Commission. Accordingly, it is necessary to return and focus in greater detail on the second element of the test.

4.2.3.1 Element #2 Crown conduct or Crown decision in the current applications (in depth)

103. It is important to be clear about what is the Crown conduct or decision that is said to give rise to the duty to consult. As confirmed by the Supreme Court:

Haida Nation ... confines the duty to consult to adverse impacts flowing from the specific Crown proposal at issue — not to larger adverse impacts of the project of which it is a part. The subject of the consultation is the impact on the claimed rights of the *current* decision under consideration.⁶⁰

⁵⁸ *Carrier Sekani*, at paras. 42-44, including the case cited therein.

⁵⁹ *Carrier Sekani*, at para. 45.

⁶⁰ *Carrier Sekani*, at para. 53.

104. It is not sufficient to point to potential adverse impacts arising from “the project”. The adverse impacts must be causally connected to the *current* decision under consideration.

105. Alberta has argued that the NQCLs lack particularity in identifying the Crown conduct or decision at issue. While the Commission has determined above that this lack of precision was not sufficient to vitiate the effectiveness of the notice required, the Commission does conclude that such precision is required to answer the jurisdictional question raised by the NQCLs.

106. In *Carrier Sekani*, the Supreme Court found that the Crown conduct or decision at issue was the conduct of BC Hydro—the applicant before the British Columbia Utilities Commission:

[81] Nor need the second element — proposed Crown conduct or decision — detain us. BC Hydro’s proposal to enter into an agreement to purchase electricity from Alcan is clearly proposed Crown conduct. BC Hydro is a Crown corporation. It acts in place of the Crown. No one seriously argues that the 2007 EPA does not represent a proposed action of the Province of British Columbia.

107. In the case before the Commission, the Crown is not a participant in Proceeding 21030 other than for purposes of the NQCLs. The Crown is not an applicant, there is no Crown conduct or a Crown decision that the Commission is tasked with considering.

108. The First Nations and Métis Intervenors submitted that the *Carrier Sekani* case provides a full answer to the jurisdictional question. In addition, the intent of the Legislature and the wording of the *Administrative Procedures and Jurisdiction Act* and *Designation of Constitutional Decision Makers Regulation* grant the Commission the power to determine all constitutional decisions. They argued that it is of no consequence to the Commission’s jurisdiction whether the Crown is a party before the Commission or the applicant is a private sector corporation and that *Carrier Sekani* overturned the Federal Court of Appeal decision in *Standing Buffalo*. The First Nations further contended that the issuance of a permit or licence by the Commission, which determines the route, is in itself a strategic decision which triggers the Crown duty to consult because the Commission’s decision to issue permits and licences will determine the route of the project, which in turn determines the impacts on the First Nations rights. The Commission is not persuaded by these arguments because, as noted above, the Commission considers that it may only determine constitutional questions where the necessary elements (including a Crown decision) arise in the applications before it, which is limited to determinations on the parties before it. The Commission has no statutory authority to adjudicate the adequacy of or direct Crown conduct when the Crown is not an applicant or a party. It is a significant fact that the Crown is not a party before the Commission in that the statutory remedies are only available to the Commission if the Crown is a party to Proceeding 21030. For this reason, the Commission does not accept the position of the First Nations and Métis Intervenors that the fact that the Crown is not a party to the proceeding is not material to the remedies being requested from the Commission.

109. Moreover, although not binding on the Commission, the Commission considers that the decision of the majority of the Federal Court of Appeal in *Chippewas* is persuasive because it considered similar circumstances as those before the Commission and made findings on the analogous issue of an administrative tribunal’s duty to assess Crown consultation before making

a determination on the applications before it.⁶¹ Further, the Federal Court of Appeal expressly considered the applicability of the *Carrier Sekani* decision in cases where the Crown is not before the tribunal or a decision of the Crown is not before the tribunal. The Commission understands that this decision is under appeal to the Supreme Court. However, at this time the decision of the majority of the Federal Court of Appeal stands.

110. In *Chippewas*, the Federal Court of Appeal confirmed that the principles set out in its decision in *Standing Buffalo* applied to the circumstance before it because these were similar to those in *Standing Buffalo*. The court held that the NEB “was not required, as a precondition to its consideration of that application, to determine whether the Crown was under a *Haida* duty, and if so, had discharged that duty, in respect of the Project.”⁶² Moreover, the court concludes that *Carrier Sekani* has not overruled *Standing Buffalo* because the Supreme Court did not address the issue of whether a tribunal is obligated to make the determinations on the Crown duty to consult (referred to as *Haida* Determinations in the *Chippewas* decision) in a proceeding in which the Crown does not participate as a party. The basis for the conclusion of the Federal Court of Appeal was that “[t]he circumstances in *Carrier Sekani* differed significantly from those in *Standing Buffalo*”.⁶³ The court states:

[36] In *Carrier Sekani*, the BC Crown, in the form of BC Hydro, was a party to an application to BCUC, seeking approval to enter into a power purchase agreement with RTA. Thus, there was a specific Crown action – entering into and performing the electricity purchase contract – that was subject to the approval of BCUC and that same action was alleged by the First Nation to constitute Crown conduct that engaged BC Hydro’s duty to consult. In those circumstances, the question of whether the BC Crown was under, and, if so, had discharged, a *Haida* duty was squarely before BCUC. Indeed, BCUC itself was of the view that it was empowered to make the requisite legal and factual determinations. If BC Hydro had a *Haida* duty and it was not discharged, then BCUC had the ability to prevent BC Hydro from taking the action that allegedly had an adverse impact upon an asserted interest of the First Nation.

...

[38] In *Carrier Sekani*, the party seeking an approval from BCUC was the Crown itself. In contrast, the Crown did not participate in the approval proceedings before the Board in *Standing Buffalo*. Instead, the party seeking approval from the Board was Enbridge, a private-sector corporation that was unrelated to the Crown.

[39] The non-participation of the Crown in the hearing process in *Standing Buffalo* is significant.

111. The Federal Court of Appeal further states that in *Carrier Sekani* because the Crown participated in the proceeding, the British Columbia Utilities Commission was in a position to make the factual findings required by the *Haida* Determinations in the normal adversarial context. The court also found it noteworthy that the implied power of a tribunal to undertake the *Haida* Determinations, stipulated in paragraph 69 of *Carrier Sekani*, refer to “constitutional issues that are properly before” the tribunal. In *Standing Buffalo* because the Crown was not a

⁶¹ *Engel v. Alberta (Executive Council)* 2015 ABQB 226, at para. 17.

⁶² *Chippewas*, at para 59.

⁶³ *Chippewas*, at para 35.

party to the project approval proceedings, it was not clear that the *Haida* Determinations were “properly before” the NEB.

112. The Federal Court of Appeal in *Chippewas of the Thames* also addresses the question of remedies requested. The Federal Court of Appeal states that the remedial powers of the British Columbia Utilities Commission and the NEB, differ in that:

[44] In *Carrier Sekani*, BCUC was in a position to deny the approval requested by BC Hydro if it determined that BC Hydro had a *Haida* duty but had not fulfilled it.

[45] In *Standing Buffalo*, the Board had no remedial power over the Crown. It was unable to deny a request from the Crown because the Crown had not requested anything from it. If the Board had decided to make the *Haida* Determinations (in the absence of evidence or argument from the Crown) and had concluded that the Crown has not fulfilled an applicable *Haida* duty, the Board’s only recourse – as asserted by SBFN – would have been to decline to adjudicate upon Enbridge’s pipeline construction application. Thus, the Board’s remedy would have been to effectively deny Enbridge’s approval request because of a failure on the part of the Crown.

[46] As stipulated by the Supreme Court in paragraph 61 of *Carrier Sekani* (reproduced above), a tribunal’s remedial powers, which are directed towards the promotion of the reconciliation of interests, are limited to those conferred upon it by statute. Holding the pipeline approval application under consideration in *Standing Buffalo* in abeyance as some sort of leverage over the Crown, so as to force it to become a participant in the hearing before the Board, would not, in my view, have been an appropriate way to promote the reconciliation of interests called for in *Haida Nation*.

113. In the present case before the Commission, the First Nations and Métis Interveners argued that the remedies requested by the First Nations are within the Commission’s jurisdiction to find that the project is not in the public interest because Crown consultation has been inadequate or as requested by the Métis Interveners to adjourn the applications on the basis of lack of consultation. The First Nations and the Métis Interveners submitted that they were not asking the Commission to give any direction to the Crown. However, the Commission considers that, as stated above by the Federal Court of Appeal, the result would be that the Commission would deny the applicants the approvals requested or hold the applications in abeyance because of a failure on the part of the Crown. Such an outcome would result in an indirect direction to the Crown in relation to its duty to consult. The Commission finds that it cannot do indirectly what it is not permitted to do directly. It has no jurisdiction over the Crown where the Crown is not a party to the proceeding. The Commission has no powers to direct the Crown to carry out Crown consultation or to make a decision on the adequacy of Crown consultation where the Crown is not before the Commission.

114. The First Nations argued that if the Commission were to grant permits and licences, Alberta PowerLine would be able to begin construction and it may not be able to obtain a stay of the decision of the Commission’s decision. They also argued that the level of consultation required under the *Guidelines* varied depending on the approval in question. In addition, the First Nations would not have recourse to an administrative tribunal if the Commission did not take jurisdiction over the assessment of the adequacy of Crown consultation. As noted above in

Carrier Sekani,⁶⁴ the First Nations have recourse to the courts if the Crown does not fulfill its duty to consult and accommodate. The Commission is not persuaded that these submissions address the question of the Commission's jurisdiction over the Crown duty to consult.

115. The Commission does not have jurisdiction over other Crown conduct or decisions that do not arise in the context of the applications before it. The Crown is responsible for Crown consultation and accommodation arising from the honour of the Crown. Alberta has adopted a policy on consultation⁶⁵ and *Guidelines*. The *Guidelines* apply to decisions of the Crown and Crown decision makers. Alberta PowerLine has been directed by the Aboriginal Consultation Office to consult with the First Nations on the project, but no such directive was given on consulting with the Métis Interveners. In the letters submitted on the record of the proceeding, the Aboriginal Consultation Office states that the matter of determining Crown consultation and accommodation remains with the Crown. The Commission does not accept the submissions of the First Nations that Alberta PowerLine has been delegated the duty to consult on the project before the Commission and is before the Commission as the delegate of the Crown. The Commission notes the submissions of Alberta that the Crown has yet to make decisions under the *Public Lands Act* or under other legislation and is conducting Crown consultation prior to the issuance of such approvals.

116. The Commission accepts the submissions of Alberta that it has not made a decision on the adequacy of Crown consultation and that assessing Crown consultation would be premature. Because the Commission and its hearing process play a valuable role in facilitating Crown consultation by providing Aboriginal groups with an opportunity to hear more about a project, raise their concerns and propose solutions, and have them addressed in a public hearing process, it is possible that the concerns of the Aboriginal groups may be addressed in the current proceeding. This approach was accepted in *Tsuu T'ina Nation v. Alberta (Minister of Environment)*,⁶⁶ wherein the Alberta Court of Appeal confirmed that the Crown may rely on opportunities for Aboriginal consultation that are available within existing regulatory and environmental review processes, subject to the Crown's overriding duty to consider their adequacy in any particular situation. Further, the Alberta Court of Appeal stated in *Métis Nation of Alberta Region 1*:⁶⁷

[14] The Joint Review Panel's determination that it is premature to consider the proposed constitutional question at this time is not a question of law, and is not subject to appeal. It is, in any event, entitled to great deference. There would be no point in considering whether the Crown has complied with its duty to consult, when the Crown itself acknowledges that it has not done so, and the Joint Review Panel has concluded that the consultation process is continuing, and that the hearing itself is part of that process.

117. Furthermore, the Commission is not persuaded by the submissions of the First Nations that the issuance of a permit and licence by the Commission is Crown conduct sufficient to trigger the Crown duty to consult as the Commission operates as part of the executive branch of government, under the mandate of the Legislature. Such an interpretation is not supported by the findings of the Supreme Court in *Carrier Sekani*. Moreover, the Supreme Court stated in

⁶⁴ *Carrier Sekani*, at para 63.

⁶⁵ The Government of Alberta's Policy of Consultation with First Nations on Land and Resource Management, 2013.

⁶⁶ 2010 ABCA 137.

⁶⁷ *Métis Nation of Alberta Region 1 v. Joint Review Panel* 2012 ABCA 352.

paragraph 44, “We leave for another day the question of whether government conduct includes legislative action.”⁶⁸

118. As discussed further below, to the extent that the Commission’s decision may itself have a potential impact on the asserted or established rights of the Aboriginal groups, the Commission is open to and notes that the parties have filed evidence concerning such potential impacts and possible mitigations. The Commission’s hearing process is designed to allow parties to bring forward evidence that will assist the Commission to make decisions on the potential impacts of routing and siting of the project and whether such potential impacts may be avoided or mitigated.

119. Based on the above, the Commission finds that it has no explicit or implicit duty to assess the Crown duty to consult before making determinations on the applications before it in Proceeding 21030, where the Crown is not a participant or an applicant before the Commission and no Crown decision is before the Commission. As a result, the Commission declines jurisdiction over adjudicating the adequacy of Crown consultation in the context of the current applications. In addition, the Commission will not be referring the questions of constitutional law to the Court of Queen’s Bench as requested in the alternative by the First Nations in their NQCL.

4.2.4 Remedies requested

120. The First Nations requested that the Commission refrain from approving the project until the project impacts on the constitutionally protected rights of the Sucker Creek First Nation and the Beaver Lake Cree Nation are assessed and avoidance or mitigation measures are developed to minimize those impacts. The First Nations submitted that the Commission has the mandate and power to make determinations that will determine whether the First Nations’ rights are impacted, the scope and extent of any impacts, as well as the power to determine conditions that govern the construction and operation of the project, including any mitigation measures to reduce the impact of the project on the First Nations’ rights. The Métis Interveners asked the Commission to adjourn the applications until the Crown has met its duty to consult. However, the questions of constitutional law posed by the Métis Interveners relate to the Crown duty to consult. The purpose of such consultation would be to determine adverse impacts on the asserted Métis rights and determining avoidance or mitigation measures.

121. The Commission notes that the First Nations and the Métis Interveners have filed evidence in Proceeding 21030 in relation to potential impacts on their rights. Assessing such impacts and potential mitigation measures need not relate to the adequacy of Crown consultation. Under its statutory mandate, the Commission makes decisions based on the evidence before it on potential impacts of routing and siting of the project and whether project impacts may be mitigated or avoided in determining whether the project is in the public interest. Factual determinations on potential impacts on the First Nations’ rights or asserted Métis rights may be made, as well as the manner in which such impacts may be mitigated.

122. The Commission has described its mandate and role as follows:

73. The Commission is an independent, quasi-judicial agency of the province of Alberta. As a quasi-judicial body, the Commission is similar in many ways to a court

⁶⁸ See *R. v. Lefthand*, 2007 ABCA 206 at paras. 37-40.

when it holds hearings and makes decisions on applications. Like a court, the Commission bases its decision on the evidence before it and allows interested parties to cross-examine the applicants' witnesses to test that evidence. Other similarities with judicial process include the power to compel witnesses to attend its hearings, and the obligation to provide a written decision with reasons. However, the Commission is not a court. It has no inherent powers. Its powers are set out in legislation. It is sometimes referred to as an expert tribunal because it deals frequently with specialized subject matter required to balance the public interest considerations it must address. Unlike a court proceeding, the Commission's proceedings are not matters between two or more competing parties to determine who wins and loses. In other words, the Commission's proceedings are not in the nature of a *lis inter partes* (a dispute between parties).

74. The Commission's proceedings are conducted to determine an outcome that meets the public interest mandate set out in the legislation. In the vast majority of its proceedings, the Commission is not limited to considering only the evidence presented to it by the applicant and by parties that may be directly and adversely affected. Indeed, it is the Commission's role to test the application to determine whether approval of that application would be in the public interest. If it chooses, the Commission may allow parties that may not be directly and adversely affected by the Commission's decision on the application to bring evidence relevant to assessing the factors that the Commission is required to consider in determining the public interest it is charged with considering in a particular proceeding. It is the role of the applicant to demonstrate that approval of its application would be in the public interest, and it is the role of the parties that may be directly and adversely affected by approval of the application to demonstrate how approval or denial of the application does or does not satisfy the public interest. They may do so by bringing evidence of the effects of the application on their own private interests and explaining how the public interest may be better served by accommodating their private interests, and they may use the evidence filed by all parties to the proceeding to argue what a better balancing of the public interest might be.

75. In performing its duty to test the application, the Commission not only actively tests the evidence by asking questions of the applicant and the parties but also by asking questions of any expert witnesses called by the applicant or the parties. In some cases, the Commission calls independent witnesses to address issues that the Commission considers important and wants to make sure are addressed in the record of the proceeding. ...

76. The Commission's objective is to determine whether the application as filed is in the public interest and, if not, what changes could be ordered by the Commission to most effectively balance the various public interest factors it must consider using its own expertise to consider the evidence it has before it.⁶⁹

123. The Commission has interpreted its public interest mandate as follows:

116. When deciding upon a transmission facility application, the Commission is directed by Section 17 of the *Alberta Utilities Commission Act* to consider whether construction and operation of the proposed transmission facilities is in the public interest, having regard for their social, economic and environmental effects. The Commission described its public interest mandate as follows, in Decision 2009-028:

⁶⁹ Decision 2011-436: AltaLink Management Ltd. and EPCOR Distribution & Transmission Inc. Heartland Transmission Project, Proceeding 457, Application 1606609, November 1, 2011, at paras. 73 to 76.

When considering an application for a transmission line the Commission is obliged by section 17 of the *Alberta Utilities Commission Act* to consider whether the proposed project is in the public interest having regard to its social and economic effects and its effect on the environment. The Commission recognizes that there is no universal definition of what comprises the “public interest” and that its meaning cannot be derived from strictly objective measures. The Commission acknowledges that the ultimate determination of whether a particular project is in the “public interest” will largely be dictated by the circumstances of each transmission facility application.

In the Commission’s view, assessment of the public interest requires it to balance the benefits associated with upgrades to the transmission system with the associated impacts, having regard to the legislative framework for transmission development in Alberta. This exercise necessarily requires the Commission to weigh impacts that will be experienced on a provincial basis, such as improved system performance, reliability, and access, with specific routing impacts upon those individuals or families that reside or own land along a proposed transmission route as well as other users of the land that may be affected. This approach is consistent with the EUB’s historical position that the public interest standard will generally be met by an activity that benefits the segment of the public to which the legislation is aimed, while at the same time minimizing, or mitigating to an acceptable degree, the potential adverse impacts on more discrete parts of the community.⁷⁰ [footnotes omitted]

124. The First Nations and the Métis Interveners are scheduled to participate in Proceeding 21030. They will have an opportunity to cross-examine Alberta PowerLine on the applications and potential impacts of the routing and siting of the project, as well as the extent of consultation between themselves and Alberta PowerLine on the transmission line. They will be presenting evidence on the potential impacts of the proposed routes and siting of the transmission line on their treaty rights, and asserted Aboriginal rights and interests, including potential adverse impacts, on hunting, fishing and harvesting activities. They are entitled to make argument on whether the applications meet the Commission’s requirements, whether the applications are in the public interest, and whether the Commission should attach conditions if the applications are granted, or whether the Commission should deny the applications. The Commission hopes that all parties will take advantage of the opportunity provided by the upcoming hearing to present their evidence and their views.

125. If you have any questions, please contact me at 403-592-4503 or by email at giuseppa.bentivegna@auc.ab.ca.

Yours truly,

Giuseppa Bentivegna
Commission Counsel

⁷⁰ Decision 2011-436: AltaLink Management Ltd. and EPCOR Distribution & Transmission Inc. Heartland Transmission Project, Proceeding 457, Application 1606609, November 1, 2011, at para. 116.

September 19, 2016

Paul Barrette
Prowse Chowne LLP
Suite 1300, 10020 - 101A Avenue
Edmonton, Alberta T5J 3G2

Dear Mr. Barrette:

**Fort McMurray West 500-kV Transmission Project
Proceeding 21030
Applications 21030-A001 to 21030-A015**

Request from the South of 43 landowner group to review a ruling to disallow late-filed evidence

1. On September 15, 2016, the South of 43 landowner group (South of 43) asked the Alberta Utilities Commission to review, or alternatively, reconsider a ruling it made on September 7, 2016, with respect to the admissibility of late-filed evidence in Proceeding 21030. The request for review was made under Rule 016: *Review of Commission Decisions* and the alternative request for reconsideration was made under Rule 001: *Rules of Practice*.
2. The Commission has decided to deny the South of 43's request to review or reconsider its ruling and vary its decision to disallow the late-filed evidence. It asked me to write to interested parties and provide its reasons for this decision.
3. It is not the Commission's practice to review its rulings on interlocutory matters absent extraordinary circumstances. In the Commission's view, the serial reconsideration of interlocutory decisions can delay proceedings, erode regulatory certainty and result in an inefficient regulatory process.
4. The Commission finds that the South of 43 has not established that extraordinary circumstances exist so as to justify a review or reconsideration of the Commission's decision to deny its request to file new evidence more than six months after the date for the filing of intervenor evidence has passed.
5. The South of 43 registered as an intervenor group in Proceeding 21030 on February 26, 2016, and filed evidence on April 22, 2016, in accordance with the process schedule. The South of 43 proposed a landowner-suggested route as part of its evidence. Alberta PowerLine L.P. filed its reply evidence on August 3, 2016, in accordance with the amended process schedule. In a request to file evidence dated September 2, 2016, the South of 43 stated that its proposed route has been adjusted "in specific response to concerns with the South of 43 Proposed Route raised at paragraphs 287 to 301 of the Alberta Powerline LP Reply

Evidence". The Commission denied the South of 43's request to file additional evidence relating to amendments to its proposed route in a ruling dated September 7, 2016.

6. If the South of 43 wanted the Commission to consider its proposed route, as amended, it ought to have done so in accordance with the process schedule. As stated in the Commission's September 7, 2016 ruling, interveners are not afforded a right to file reply evidence under the process schedule for Proceeding 21030. The Commission notes in this respect that counsel for the South of 43 have appeared before the Commission and its predecessors on numerous occasions and are familiar with the Commission's rules and practice.

7. The Commission's authority to review, vary, rescind or confirm its own decisions is found in Section 10 of the *Alberta Utilities Commission Act*. The Commission made Rule 016 in accordance with this authority. Although counsel for the South of 43 requested that the Commission review its September 7, 2016 ruling in accordance with Rule 016, no submissions with respect to the test for review were provided.

8. The Commission is of the view that this is sufficient to dispose of the South of 43's request. However, given the nature of the concerns expressed by the South of 43, the Commission will briefly address the allegation that the September 7, 2016 ruling was unfair and prejudicial.

9. The Commission established a process regarding the filing of evidence in Proceeding 21030. Under this process, the applications were filed, interveners filed written evidence, and the applicants were afforded a right to file rebuttal (or reply) evidence prior to the commencement of the oral hearing. This process was designed in accordance with the principles of procedural fairness and has been used by both the Commission and its predecessor to consider facility and rate applications.

10. Given that the South of 43 has filed evidence in this proceeding and its members will be afforded an opportunity to give oral evidence at the hearing, the Commission considers that allowing its September 7, 2016 ruling to stand will not prejudice the South of 43 or any other party to the proceeding.

11. If you have any questions, please contact me at 403-592-4499 or by email at shanelle.sinclair@auc.ab.ca.

Regards,

Shanelle Sinclair
Commission Counsel

September 30, 2016

To: Parties currently registered in Proceeding 21030

**Fort McMurray West 500-kV Transmission Project
Proceeding 21030
Applications 21030-A001 to 21030-A015**

Commission ruling on reasonable apprehension of bias motion

Introduction

1. In this ruling, the Alberta Utilities Commission must determine whether its decision to retain Keith Bergner gives rise to a reasonable apprehension of bias. Mr. Bergner was retained as counsel to assist the Commission's counsel with the issue of the Commission's jurisdiction, which was raised in the questions of constitutional law filed in this proceeding.
2. The Commission has asked that I inform you of its ruling.

Background

3. On September 2, 2016, the Commission received Notices of Questions of Constitutional Law from the Wabasca Métis Local 90, the Gunn Métis Local 55, the Fort McMurray Métis Local 1935/Fort McKay Métis Community Association,¹ the Métis Nation of Alberta Association Lakeland Local Council 1909,² the Beaver Lake Cree Nation and the Sucker Creek First Nation (collectively, the aboriginal parties).
4. In a letter dated September 6, 2016, Alberta Justice and Solicitor General (Alberta) took the position that the Commission does not have jurisdiction to consider the questions raised in the Notices of Questions of Constitutional Law. It requested that the Commission determine, as a preliminary matter, the question of its jurisdiction over the matters raised in the Notices of Questions of Constitutional Law (the jurisdiction question).
5. On September 13, 2016, the Commission issued a ruling indicating that it would determine the jurisdiction question as a preliminary matter.
6. The Commission issued a letter on September 22, 2016 stating that it had retained Mr. Bergner to assist with the question of its jurisdiction in this proceeding.³

¹ The Fort McKay Métis Community Association has not been granted standing in Proceeding 21030.

² The Métis Local 1909 has been granted standing in Proceeding 21030 pursuant to Decision 21030-D01-2016, however, the Métis Nation of Alberta Association Lakeland Local Council 1909 has not been granted standing.

³ Exhibit 21030-X1367, AUC Letter – Counsel Retained, paragraph 1.

7. By letter dated September 26, 2016, counsel for the Beaver Lake Cree Nation and the Sucker Creek First Nation (the First Nations) requested that the Commission reconsider its decision to retain Mr. Bergner on the ground that the hiring of Mr. Bergner may give rise to a reasonable apprehension of bias (the motion).

8. In their motion, the First Nations assert that Mr. Bergner has published at least one article where he “unequivocally draws a conclusion on an issue that is of serious controversy amongst the parties to this proceeding, in the case law and amongst commentators; namely, whether the jurisdiction of the AUC over the NQCLs is determined by the ownership (public or private) of the project proponent.” Mr. Bergner’s article entitled, “The Crown’s Duty to Consult and the Role of the Energy Regulator” was attached to the motion.⁴ The First Nations added that Mr. Bergner is not from academia, does not have a neutral background, and exclusively represents and advises industry and government in disputes with respect to aboriginal consultation.

9. The First Nations state in their motion that an informed person in this situation would have the following information:

[1] The AUC is carrying out a quasi-judicial function in making a determination on the jurisdictional question;

[2] The Aboriginal parties, on the one hand, and the Crown and the proponents on the other, have competing interpretations of the law with respect to the AUC's jurisdiction to determine the issues raised in the NQCLs;

[3] The AUC has a legislative mandate to hear and decide all questions of law, including the jurisdictional question;

[4] The AUC has experienced internal legal counsel. There is no legislative restriction on the matters that AUC counsel can advise on;

[5] The AUC has the benefit of legal argument on the jurisdictional question from a number counsel, including three provincial Crown counsel, two national firms acting as counsel for the proponents (Alberta Powerline and AltaLink) and two law firms representing the Aboriginal parties. There has been no suggestion that legal counsel for the parties have not been capable of setting out the competing case law and legal interpretations with respect to the jurisdictional question;

[6] Notwithstanding the above, the AUC has hired an outside lawyer to counsel it with respect to the jurisdiction question.

[7] Outside counsel is not from academia or a neutral background, but exclusively represents and advises industry and the government in disputes with respect to Aboriginal consultation;

⁴ Keith Bergner, "The Crown's Duty to Consult and the Role of the Energy Regulator" (2014) 2 *Energy Regulation Quarterly*.

[8] Moreover, outside counsel has published at least one article where he unequivocally draws a conclusion on an issue of serious controversy amongst the parties to this proceeding and in the case law.

[footnotes omitted and numbers added for convenience]

10. Counsel for the Wabasca Métis Local 90, the Gunn Métis Local 55, and the Fort McMurray Métis Local 1935 advised in a letter on September 27, 2016 that it was supporting the First Nations' motion on the grounds stated therein.⁵

Retention of Mr. Bergner

11. The Commission is a quasi-judicial body. By its nature it must be staffed with persons of experience and expertise. Section 68(1) of the *Alberta Utilities Commission Act* provides:

68(1) The Commission may

- (a) employ persons as the Commission considers necessary for the transaction of its business,
- (b) prescribe the duties, conditions of employment and remuneration of persons employed by it, and
- (c) from time to time engage the services of experts or persons having special technical or other knowledge to assist in carrying out the Commission's powers, duties and functions.

12. In Decision 2011-450,⁶ the Commission said the following with respect to its ability to seek the input of consultants and counsel in performing its legislative mandate:

Section 68 of the *Alberta Utilities Commission Act* authorizes the Commission to employ persons necessary for the transaction of its business and to engage experts and persons having "special technical or other knowledge" to assist the Commission in carrying out its powers, duties and functions. The Commission therefore, in addition to reliance upon the specialized expertise of its members, may retain the professional skills necessary to assist it in carrying out its public interest responsibilities. If the proceedings before the Commission were intended by the legislature to be conducted on a *lis inter partes* basis, like those before a court, it would not be necessary for the Commission to have a specialized expertise in utility matters nor would it be necessary for the Legislature to provide the Commission with the express power to retain specialized personnel. The Commission would rely solely on the parties to complete the record upon which it would make a decision.⁷

⁵ The Fort McKay Métis Community Association has not been granted standing in Proceeding 21030.

⁶ Decision 2011-450: ATCO Gas (A Division of ATCO Gas and Pipelines Ltd.) – 2011-2012 General Rate Application Phase I, Proceeding 969, Application 1606822, December 5, 2011.

⁷ Decision 2011-450 at paragraph 68.

13. Mr. Bergner was retained in accordance with the authority provided in Section 68(1)(c). An allegation of a reasonable apprehension of bias in relation to Mr. Bergner's retainer must be carefully considered against the test established by the Supreme Court of Canada (the Supreme Court).

Test for the reasonable apprehension of bias

14. The Supreme Court set out the law governing the reasonable apprehension of bias in *Committee for Justice and Liberty v. Canada (National Energy Board)*, as, "what would an informed person, viewing the matter realistically and practically – and having thought the matter through – conclude."⁸ In *Newfoundland Telephone Co. v. Newfoundland (Board of Commissioners of Public Utilities)*, the Supreme Court made the following comments on bias:

Although the duty of fairness applies to all administrative bodies, the extent of that duty will depend upon the nature and the function of the particular tribunal. See *Martineau v. Matsqui Institution Disciplinary Board*, 1979 CanLII 184 (SCC), [1980] 1 S.C.R. 602. The duty to act fairly includes the duty to provide procedural fairness to the parties. That simply cannot exist if an adjudicator is biased. It is, of course, impossible to determine the precise state of mind of an adjudicator who has made an administrative board decision. As a result, the courts have taken the position that an unbiased appearance is, in itself, an essential component of procedural fairness. To ensure fairness the conduct of members of administrative tribunals has been measured against a standard of reasonable apprehension of bias. The test is whether a reasonably informed bystander could reasonably perceive bias on the part of an adjudicator.⁹

15. The Supreme Court in *Wewaykum Indian Band v. Canada*, enunciated the following with respect to the apprehension of bias test:

76 First, it is worth repeating that the standard refers to an apprehension of bias that rests on serious grounds, in light of the strong presumption of judicial impartiality. In this respect, de Grandpré J. added these words to the now classical expression of the reasonable apprehension standard:

The grounds for this apprehension must, however, be substantial, and I ... refus[e] to accept the suggestion that the test be related to the "very sensitive or scrupulous conscience".

77 Second, this is an inquiry that remains highly fact-specific. In *Man O'War Station Ltd. v. Auckland City Council (Judgment No. 1)*, Lord Steyn stated that "This is a corner of the law in which the context, and the particular circumstances, are of supreme importance." As a result, it cannot be addressed through peremptory rules, and contrary to what was submitted during oral argument, there are no "textbook" instances. Whether the facts, as established, point to financial or personal interest of the decision-maker; present or past link with a party, counsel or judge; earlier participation or knowledge of the litigation; or

⁸ [1978] 1 S.C.R. 369.

⁹ [1992] 1 SCR 623.

expression of views and activities, they must be addressed carefully in light of the entire context. There are no shortcuts.¹⁰

16. The onus of demonstrating the apprehension of bias rests with the party alleging it.¹¹ A person alleging bias, or the perception of bias, must rebut the presumption of impartiality. The mere suspicion of bias is insufficient.¹² In this case, the motion articulated eight grounds in bulleted form, (reproduced in paragraph 9) which, taken as a whole, the First Nations argue create a reasonable apprehension of bias.

The reasonable apprehension of bias in the context of administrative tribunals

17. While the case law generally focuses on the reasonable apprehension of bias in a judicial context, the Commission considers that it applies equally here. The Commission's predecessor, the Alberta Energy and Utilities Board (EUB or the Board) explained some of the differences between the judicial decision making process and the Board's administrative decision making process in the following passage:

- c) Unlike Judges, and more like Ministers of the Crown, boards like the EUB employ staff who of necessity, must carry out a multitude of regulatory functions on behalf of and in the name of the Board. Judicial responsibility carries little analogy to ministerial responsibility, where Ministers are traditionally responsible for the actions of those they employ. Administrative tribunals in this respect are wedged somewhere between the two. What is indisputable is that public perception of a board's fairness can be influenced by any arm of the institution not just the actions of the Board's adjudicators.¹³

18. As observed by the Alberta Court of Queen's Bench, an allegation of bias against a tribunal is a serious allegation:

82 ... the words of Létourneau JA in *Arthur v Canada (Procureur général)*, 2001 FCA 223 at para 8, 283 NR 346 are apt:

An allegation of bias ... against a tribunal is a serious allegation. It challenges the integrity of the tribunal and of its members who participated in the impugned decision. It cannot be done lightly. It cannot rest on mere suspicion, pure conjecture, insinuations or mere impressions of an applicant or his counsel. It must be supported by material evidence demonstrating conduct that derogates from the standard.¹⁴

¹⁰ 2003 SCC 45.

¹¹ *R. v. S. (R.D.)*. See also *Continuing Care Employees' Bargaining Association et al. v. Alberta Union of Provincial Employees et al.* (2002), 2002 ABCA 148 2002 ABCA 148.

¹² *Boardwalk REIT LLP v Edmonton (City)*, 2008 ABCA 176 at para 29, 437 AR 199; *Lavesta Area Group v Alberta (Energy and Utilities Board)*, 2009 ABCA 155.

¹³ Decision 2007-075, Application No. 1478550 - AltaLink Management Ltd. Application No. 1479163 - Epcor Transmission Inc. Decision 2005-031 and Decision 2006-114.

¹⁴ *Jane Doe v Alberta (Deputy Minister of Executive Council)*, 2016 ABQB 2015 citing Létourneau JA in *Arthur v Canada (Procureur général)*, 2001 FCA 223 at paragraph 8.

19. Courts have held that the degree of impartiality or the appearance therefore depends on the nature of the tribunal and its function. The Supreme Court stated:

36 Once the matter reaches the hearing stage a greater degree of discretion is required of a member. Although the standard for a commissioner sitting in a hearing of the Board of Commissioners of Public Utilities need not be as strict and rigid as that expected of a judge presiding at a trial, nonetheless procedural fairness must be maintained. ...¹⁵

20. In line with the above approach, the Commission must decide whether retaining Mr. Bergner to assist Commission counsel in relation to the jurisdiction question would create a reasonable apprehension of bias on the part of the Commission panel members in Proceeding 21030. The First Nations must substantiate the claim that there is a reasonable apprehension that Mr. Bergner would give “biased” advice to Commission counsel, and as a result, that a reasonable person would conclude that the advice may influence the Commission panel in deciding the jurisdiction question.

21. The Commission is guided by case law applicable to allegations of bias, or the apprehension of bias, in the circumstances of a person engaged to assist an administrative tribunal.

22. In *Re Public Utilities Board Act, (Re PUBA)*,¹⁶ the Alberta Court of Appeal dealt with an advisor to the Public Utilities Board, one of the Commission’s predecessor boards, who had also been retained by an intervener. On appeal, the utility alleged a reasonable apprehension of bias. Although the court found that the advisor’s ongoing relationship with the Public Utilities Board could give rise to a reasonable apprehension of bias, it held that it did not have enough evidence on the facts of the case before it to determine the question of whether a reasonable apprehension of bias existed in the circumstances. Specifically, it lacked evidence on the nature of the matters in respect of which the advisor had been retained by each of the Public Utilities Board and the intervener, as well as evidence on the nature of the communications between the advisor and the members of the panel.

23. In *Alberta (Securities Commission) v. Workum*,¹⁷ the Alberta Court of Appeal considered the issue of whether there was apprehension of bias where an accountant of the Securities Commission provided expert testimony to a sitting panel. On the one hand, the Securities Commission stated that it was fully capable of conducting its own analysis of the accounting issues in the case. However, the panel used the accountant’s evidence to confirm its findings on a particular point. The appellant took issue with the accountant’s relationship to the panel. The court held that any bias on the part of the Securities Commission in favour of the accountant’s evidence was permitted by Section 16 of the *Securities Act*, which authorized the tribunal to hire and retain expert employees. Section 16 of that act provides:

¹⁵ *Newfoundland Telephone Co v Newfoundland (Board of Commissioners of Public Utilities)*, [1992] 1 SCR 623 at par agraph 22.

¹⁶ 42 Alta. L.R. (2d) 48 (C.A.)

¹⁷ 2010 ABCA 405.

16 The Commission may

- (a) appoint
 - (i) an Executive Director of the Commission,
 - (ii) a Secretary of the Commission, and
 - (iii) any other employees that it considers necessary,
- and
- (b) Obtain the services of persons having technical or professional knowledge required by the Commission in connection with its business.

24. The court specifically distinguished the *Re PUBA* decision on the grounds that the statutes at issue in *Re PUBA* contained no similar provisions authorizing the Board to hire and retain expert employees. As stated above, the Commission has a similar provision in Section 68 of the *Alberta Utilities Commission Act*.

25. A situation of bias in relation to expert evidence was also addressed by the Alberta Court of Appeal in *Syncrude Canada Ltd v. Michetti*.¹⁸ That case dealt with an Occupational Health and Safety/Workers' Compensation Board investigation into a workplace death. The Workers' Compensation Appeals Commission (WCAC) had received an expert report from Syncrude, and another expert report from a Dr. Cheng, who disagreed with Syncrude's report. At the same time however, Dr. Cheng had been hired by the WCAC as its "technical advisor" on the case, as it was customary for the WCAC to have advice from an expert. The court found that Dr. Cheng was too closely allied with the WCAC to give expert testimony.

26. In *Devon Canada Corporation v. Alberta (Energy and Utilities Board)*, the issue on appeal was whether a paper written by a Board staff member biased a sitting panel.¹⁹ After the evidentiary portion of the hearing but before the submission of final arguments, two members of the Board published a paper (the "staff paper") for presentation at a conference. The appellant submitted that the staff paper took a position on the specific issue being considered by a sitting panel. It added that even though it accepted that the panel did not and would not read the staff paper, it argued that the "biased" contents of the staff paper may be communicated to the sitting panel through the "advice, information and opinions" being given to that panel by the Board's staff. In its decision on the leave to appeal application, the court held that because the panel had not read the staff paper and there was no evidence of any direct contact between the author of the staff paper and the panel, there was no arguable issue. The court also said that the Board "...is a large and complex administrative body, and I find that it would be unreasonable to think that the opinions expressed by one or two staff members, in this context, could be found to "taint" all members of that body."²⁰

¹⁸ 1994 ABCA 381, 162 AR 16, 120 DLR (4th) 118 [*Michetti*].

¹⁹ 2003 ABCA 167.

²⁰ 2003 ABCA 167 at page 2.

27. There are indeed cases which suggest that there may be a reasonable apprehension of bias if an expert has a relationship either with the tribunal or a party to the proceeding and is employed by a sitting panel. However, none of these decisions address the perception of bias in a circumstance where there is no link between the consultant, the administrative body or any party to the proceeding. In the Commission's view, the case law suggests that there is a very high threshold for the type of conduct by a consultant involved in a tribunal proceeding that would cause a reasonable person to conclude that there is a perception of bias.

Commission ruling

28. For their allegation of a reasonable apprehension of bias to be successful, the First Nations must establish that a reasonable person would think that the existence of the interactions between Mr. Bergner and Commission counsel would not only influence the sitting panel, but also influence the panel to decide the jurisdiction question unfairly. A reasonable apprehension of bias must attach to the decision maker, namely, the Commission panel members in Proceeding 21030, and not merely to Mr. Bergner.

29. The threshold for establishing a reasonable apprehension of bias is high and requires an examination of the entire factual backdrop. As indicated in its letter to parties, the scope of Mr. Bergner's retainer is to assist Commission counsel with respect to the jurisdiction issue being determined by the Commission panel as a preliminary question in Proceeding 21030. Mr. Bergner has not had and would not have direct contact with the Commission panel assigned to Proceeding 21030. As such, the Commission must determine whether there is a reasonable apprehension of bias given the grounds identified in the motion and the nature of Mr. Bergner's participation in Proceeding 21030.

30. Eight grounds are alleged in support of the claim that there exists a reasonable apprehension of bias. The Commission considers the first two bullet points to be factual: the Commission is carrying out a quasi-judicial function in making a determination on the jurisdiction question and that parties to the proceeding have expressed different views on the law. With respect to bullet points 3 to 6 listed in paragraph 9, the Commission disagrees that these grounds, either individually or collectively, are relevant to an allegation of apprehension of bias in these circumstances.

31. In their motion, the First Nations state that Mr. Bergner has unequivocally drawn a conclusion on whether the Commission's jurisdiction over the matters raised in the Notices of Questions of Constitutional Law is determined by the ownership (public or private) of the project proponent. The Commission has reviewed the article filed in support of the motion and finds that the views expressed would not create a reasonable person to believe that Mr. Bergner is predisposed to a particular result, or has a closed mind with regard to the issues raised. The views expressed are an analysis of the law as it existed in 2014 and points to the existence of differences in the interpretation of the case law. Based on the above considerations, the Commission does not agree that the article creates a reasonable apprehension that Mr. Bergner would be unable to provide neutral advice to Commission counsel on the jurisdiction question based on the case law and the relevant statutory scheme.

32. With respect to the allegation that there is an apprehension of bias because Mr. Bergner has previously been retained by industry and governments, and not by aboriginal groups, the Commission finds that this information does not raise the perception of bias. In a situation such as this, where a particular expertise is sought, it is very likely that a consultant has advised other parties in the consultant's area of expertise. As a member of the Law Society of British Columbia, Mr. Bergner is bound by a Code of Conduct that contains detailed provisions on conflicts of interest and, prior to his retention, he confirmed to the Commission's General Counsel that he had no potential conflicts relating to this matter.

33. Based on collectively considering the eight grounds contained in the motion, the Commission finds that a reasonable apprehension of bias case has not been made.

34. Mr. Bergner has been retained for the sole purpose of assisting Commission counsel and his retention has been explicitly authorized by Section 68 of the *Alberta Utilities Commission Act*. While the Commission retains counsel and staff to assist in carrying out its functions, it alone will decide the jurisdiction question raised in Proceeding 21030. Mr. Bergner will neither be a decision maker with respect to this issue, nor will he be directly giving advice to Commission panel members. As such, the nature of the relationship between the Commission and Mr. Bergner further supports the view that the First Nations have not made a case for a reasonable apprehension of bias in this instance.

35. As stated earlier, the Supreme Court has held that the appearance of bias must be substantial, and not merely speculative. On this basis, the Commission finds that overall there is insufficient evidence in this case to demonstrate that the proposed involvement of Mr. Bergner in this proceeding points towards a reasonable apprehension of bias.

36. If you have any questions, please feel free to contact the undersigned at 403-592-4499 or by email at shanelle.sinclair@auc.ab.ca.

Yours truly,

Shanelle Sinclair
Commission Counsel

October 4, 2016

To: Parties currently registered in Proceeding 21030

**Fort McMurray West 500-kV Transmission Project
Proceeding 21030
Applications 21030-A001 to 21030-A015**

Ruling on request to reconsider prior ruling

Introduction

1. In this ruling, the Alberta Utilities Commission must consider a request to reconsider its September 7, 2016 ruling (the ruling) denying BURNCO Rock Products Ltd., Tricycle Lane Ranches Ltd. and Lehigh Hanson Materials Limited (the Burnco landowners) an opportunity to file additional evidence in Proceeding 21030 (the motion).
2. The Commission has asked that I inform you of its ruling on the request.

Requests and comments

3. Alberta PowerLine L.P. (Alberta PowerLine) has applied to build the Fort McMurray West 500-kV Transmission Project (the project) in north central Alberta from the Wabamun area to the Fort McMurray area, under the *Hydro and Electric Energy Act*. In its application Alberta Powerline proposed an East Route Option and a West Route Option as well as variants. However, some segments of the project's route are common to all route options.
4. The Commission issued a notice of hearing for Proceeding 21030 on December 29, 2015, which contained a process schedule allowing interveners to file written evidence and the applicants a right to file reply evidence.
5. Alberta PowerLine subsequently filed a number of amendments to its proposed routing options.
6. The Burnco landowners filed intervenor evidence in accordance with the process schedule established by the Commission. The BAR2 route was proposed in the Burnco landowners' intervenor evidence by their expert, Mr. Berrien. Alberta PowerLine commented on this evidence for the first time in its reply evidence, which was filed in accordance with the process schedule approved by the Commission.
7. On September 2, 2016, the Commission received a letter from the Burnco landowners requesting the Commission's leave to file a supplemental report from their expert Mr. Berrien and a supplemental drone video. Counsel for the Burnco landowners explained that Mr. Berrien's report "addresses Alberta PowerLine's concerns". In its September 7, 2016 ruling, the Commission held:

For the reasons that follow, the Commission denies Burnco's and the South of 43's requests for the opportunity to file additional evidence. ...the Commission set out the process schedule for the remaining process steps prior to the hearing scheduled for September 19, 2016. The Commission subsequently amended the process schedule and granted Alberta Powerline an extension to file its reply evidence until August 3, 2016. Alberta PowerLine filed its reply evidence in accordance with this deadline. The process scheduled allowed each intervenor an opportunity to file evidence and the applicants an opportunity to reply. Intervenor's are not eligible to reply to the applicant's rebuttal evidence. The Commission's process schedule is designed to promote a fair and efficient hearing that complies with the principles of procedural fairness. Based on the submissions filed, the Commission finds that neither the South of 43 nor Bunco has established sufficient grounds to warrant the inclusion of new evidence at this stage of the proceeding: neither has alleged that the additional evidence was not known to it or not discoverable on reasonable enquiry. As such, the documents filed as exhibits 21030-X1236, 21030-X1237, 21030-X1266 and 21030-X1268 will be struck from the record of Proceeding 21030.¹

8. In their motion, the Burnco landowners requested that the Commission reconsider its decision of September 7, 2016 denying the Burnco landowners the right to file evidence of routing improvements in documentary form. They submitted:

This motion is filed on the grounds that the Commission's conduct in allowing Alberta PowerLine to file several routing amendments in written form while at the same denying Landowners the right to do the same is unfair, prejudicial, arbitrary, and denies the Landowners their right to a fair procedure and gives rise to a reasonable apprehension of bias.

...

Transmission line route planning is an iterative process that needs to be responsive to changes occurring on the lands and new information that is exchanged by the parties.

The proceeding record shows that on a number of occasions the Commission has allowed Alberta PowerLine to unilaterally file written amendments and documentary evidence outside of the process schedule.²

9. The Burnco landowners also referred, in their motion, to the applicability of Rule 016: *Review of Commission Decisions*:

In a recent ruling, the Commission has asserted that Rule 016 applies to requests to reconsider a procedural decision. We do not agree that Rule 016 applies. If it does, sec. 7 of the Rule directs that the Commission "shall" hold a separate hearing on the procedural matter. We submit that Rule 016 is meant to apply to substantive decisions, not procedural ones. The Commission has broad discretion to review procedural decision

¹ Exhibit 21030-X1281. The Burnco landowners were referred to in this ruling as Burnco.

² Exhibit 21030-X1381.

independently of Rule 016. In any event, we are making this motion as though Rule 016 applies.³

Applicability of Rule 016

10. In their motion, the Burnco landowners refer to a Commission ruling on a motion made by other interveners in Proceeding 21030. In that case, the interveners' request for a review upon which the Commission ruled on September 19, 2016 was made under Rule 016. An alternative request for reconsideration was also made under Rule 001: *Rules of Practice*. In its September 19, 2016 ruling, the Commission stated:

It is not the Commission's practice to review its rulings on interlocutory matters absent extraordinary circumstances. In the Commission's view, the serial reconsideration of interlocutory decisions can delay proceedings, erode regulatory certainty and result in an inefficient regulatory process.

The Commission finds that the South of 43 has not established that extraordinary circumstances exist so as to justify a review or reconsideration of the Commission's decision to deny its request to file new evidence more than six months after the date for the filing of intervener evidence has passed.⁴

11. In line with the above approach, the Commission also finds, for the reasons outlined in this ruling, that the Burnco landowners have not established that extraordinary circumstances exist so as to justify a review or reconsideration of the ruling denying the Burnco landowners' request to file new evidence more than six months after the date for the filing of intervener evidence has passed.

12. However, given the grounds identified in the motion the Commission will briefly comment on whether its process is unfair and creates a reasonable apprehension of bias.

Intervener proposed routes

13. Section 19 of the *Hydro and Electric Energy Act* entitled "Power of Commission re applications" states that the Commission may "grant the approval, permit, licence or amendment subject to any terms and conditions that it prescribes or may deny the application." Section 19(2) of the *Hydro and Electric Energy Act* allows the Commission to order changes in the location of a transmission line; prescribe the location and route of the transmission line as precisely as it considers suitable; prescribe the location of the right-of-way of the transmission line and the relationship of its boundaries to the transmission line or any part of the transmission line.

14. When considering an application, the Commission's objective is to determine whether the application as filed is in the public interest and, if not, what changes could be ordered to most effectively balance the various public interest factors it must consider using its own expertise to consider the evidence it has before it.

³ Exhibit 21030-X1381.

⁴ Exhibit 21030-X1342, AUC ruling on request from South of 43 landowner group to review a ruling.

15. Interveners in past proceedings have proposed alternative routes in an attempt to persuade the Commission to exercise its authority to prescribe the route of the transmission line in the location suggested by the interveners. In some of its past decisions, the Commission has directed applicants to consult with landowners and investigate whether a more suitable routing for all parties can be achieved in a particular segment, and has required applicants to file an application for a new route in a defined area.⁵

16. In this proceeding, the Commission cannot approve the BAR2 route in its decision on the applications because Alberta Powerline is not seeking approval of the BAR2 route. The Commission can, however, deny all or a portion of Alberta PowerLine's proposed route and direct Alberta PowerLine to apply for a route segment in the location proposed by the Burnco landowners (i.e., the BAR2 route) pursuant to its authority to prescribe the location and route of a transmission line under the *Hydro and Electric Energy Act*. Should a new application for a route option in this area be filed, any potentially directly and adversely affected stakeholder, including the Burnco landowners, could then intervene in that proceeding.

Procedural fairness

17. In the Commission's view the question of whether further evidentiary process, and in particular, an opportunity to file reply evidence by the Burnco landowners, is necessary as part of the Commission's process to consider and decide the subject applications, is a matter of procedural fairness.

18. Section 20 of the *Alberta Utilities Commission Act* states that the Commission is not bound in the conduct of its hearings by the rules of law concerning evidence that are applicable to judicial proceedings.

19. The Commission notes that the courts have found that the jurisprudence is clear that an administrative tribunal such as the Commission is the master of its own process. For example, in *Prasad v. Canada (Minister of Employment and Immigration)*, Sopinka J., writing for the majority, held as follows:

16. [...] We are dealing here with the powers of an administrative tribunal in relation to its procedures. As a general rule, these tribunals are considered to be masters in their own house. In the absence of specific rules laid down by statute or regulation, they control their own procedures subject to the proviso that they comply with the rules of fairness and, where they exercise judicial or quasi-judicial functions, the rules of natural justice.⁶

20. *Baker v. Minister of Citizenship and Immigration*, is considered the leading authority on the participatory rights of parties. The Supreme Court began its analysis by re-stating the purpose of participatory rights at paragraph 22:

⁵ Decision 2012-327: AltaLink Management Ltd. Western Alberta Transmission Line Project, Proceeding 1045, Application 1607067, December 6, 2012, at paragraph 1065.

⁶ [1989] 1 S.C.R. 560, at pages 568-69, [1989] 1 S.C.J. No. 25, at para. 16 (S.C.C.)(Q.L.).

Although the duty of fairness is flexible and variable, and depends on an appreciation of the context of the particular statute and the rights affected, it is helpful to review the criteria that should be used in determining what procedural rights the duty of fairness requires in a given set of circumstances. I emphasize that underlying all these factors is the notion that the purpose of the participatory rights contained within the duty of procedural fairness is to ensure that administrative decisions are made using a fair and open procedure, appropriate to the decision being made and its statutory, institutional and social context, with an opportunity for those affected by the decision to put forward their views and evidence fully and have them considered by the decision-maker.⁷

21. The *audi alterum partem* principle, which requires the decision maker to provide adequate opportunity for those affected to present their case and respond to the case against them, does not confer an unqualified right to respond to an applicant's submissions. The Supreme Court indicated that what is required is that the parties be given the opportunity to put forward their arguments.⁸

22. The Commission has set a process that was clearly outlined in its notice of hearing for Proceeding 21030. This process has been consistently used by the Commission since its inception and is designed to comply with the principles of procedural fairness. All interveners in this proceeding, including the Burnco landowners, have been granted an opportunity to present their case in accordance with this process. In addition, for each of Alberta PowerLine's amendments to its applications, the Commission issued notice that stated:

[if] you feel you may be affected by these amendments to the applications you can provide input to the AUC to review before it makes its decision.⁹

23. The notices of amendment also specified a date for parties that are potentially affected by the amendments to file submissions relating to the amendment.

24. The Burnco landowners have not alleged that the further evidence they seek to file in Proceeding 21030 relates to any of the amendments.

25. The Commission is not persuaded that it is necessary to direct further process with respect to the BAR2 route in order to satisfy participatory rights required by the legal authorities. There is no statutory requirement to hold such a process and there is no exceptional circumstance which may necessitate consideration of further process.

⁷ *Baker v. Minister of Citizenship and Immigration* 1999 2 S.C.R. 817, paragraph 22.

⁸ See *Nicholson v Haldiman-Norfolk Regional Board of Commissioners of Police*, [1979] 1 S.C.R. 311 in which Chief Justice Laskin, for the majority, wrote: "In my opinion, the appellant should have been told why his services were no longer required and given an opportunity, whether orally or in writing as the Board might determine, to respond. [...] Such a course provides fairness to the appellant, and it is fair as well to the Board's right, as a public authority to decide, once it had the appellant's response, whether a person in his position should be allowed to continue in office to the point where his right to procedural protection was enlarged."

⁹ Exhibit 21030-X1219.

26. Lastly, a review of the Commission's past procedure when deciding applications under the *Hydro and Electric Energy Act* does not suggest that such further process should be implemented in Proceeding 21030.

Apprehension of bias

27. The Supreme Court set out the law governing the reasonable apprehension of bias in *Committee for Justice and Liberty v. Canada (National Energy Board)* as, "what would an informed person, viewing the matter realistically and practically – and having thought the matter through – conclude."¹⁰ In *Newfoundland Telephone Co. v. Newfoundland (Board of Commissioners of Public Utilities)*, the Supreme Court made the following comments on bias:

Although the duty of fairness applies to all administrative bodies, the extent of that duty will depend upon the nature and the function of the particular tribunal. See *Martineau v. Matsqui Institution Disciplinary Board*, 1979 CanLII 184 (SCC), [1980] 1 S.C.R. 602. The duty to act fairly includes the duty to provide procedural fairness to the parties. That simply cannot exist if an adjudicator is biased. It is, of course, impossible to determine the precise state of mind of an adjudicator who has made an administrative board decision. As a result, the courts have taken the position that an unbiased appearance is, in itself, an essential component of procedural fairness. To ensure fairness the conduct of members of administrative tribunals has been measured against a standard of reasonable apprehension of bias. The test is whether a reasonably informed bystander could reasonably perceive bias on the part of an adjudicator.¹¹

28. The Supreme Court in *Wewaykum Indian Band v. Canada*, enunciated the following with respect to the apprehension of bias test:

76 First, it is worth repeating that the standard refers to an apprehension of bias that rests on serious grounds, in light of the strong presumption of judicial impartiality. In this respect, de Grandpré J. added these words to the now classical expression of the reasonable apprehension standard:

The grounds for this apprehension must, however, be substantial, and I ... refus[e] to accept the suggestion that the test be related to the "very sensitive or scrupulous conscience".

77 Second, this is an inquiry that remains highly fact-specific. In *Man O'War Station Ltd. v. Auckland City Council (Judgment No. 1)*, Lord Steyn stated that "This is a corner of the law in which the context, and the particular circumstances, are of supreme importance." As a result, it cannot be addressed through peremptory rules, and contrary to what was submitted during oral argument, there are no "textbook" instances. Whether the facts, as established, point to financial or personal interest of the decision-maker; present or past link with a party, counsel or judge; earlier participation or knowledge of the litigation; or

¹⁰ [1978] 1 S.C.R. 369.

¹¹ [1992] 1 SCR 623.

expression of views and activities, they must be addressed carefully in light of the entire context. There are no shortcuts.¹²

29. The onus of demonstrating the apprehension of bias rests with the party alleging it.¹³ A person alleging bias, or the perception of bias, must rebut the presumption of impartiality. The mere suspicion of bias is insufficient.¹⁴

30. The Commission finds that the Burnco landowners have provided insufficient evidence to support the assertion that a reasonable person would perceive the Commission to be biased towards Alberta PowerLine in this proceeding given that the process adopted in this proceeding with respect to the filing of amendments and reply evidence has been used consistently by the Commission in past proceedings.

Conclusion

31. Consequently, the Burnco landowners' request to the Commission to reconsider its September 7, 2016 ruling is denied.

32. If you have any questions, please contact me at 403-592-4499 or by email at shanelle.sinclair@auc.ab.ca.

Yours truly,

Shanelle Sinclair
Commission Counsel

¹² 2003 SCC 45.

¹³ *R. v. S. (R.D.)*. See also *Continuing Care Employees' Bargaining Association et al. v. Alberta Union of Provincial Employees et al.* (2002), 2002 ABCA 148 2002 ABCA 148.

¹⁴ *Boardwalk REIT LLP v Edmonton (City)*, 2008 ABCA 176 at paragraph 29, 437 AR 199; *Lavesta Area Group v. Alberta (Energy and Utilities Board)*, 2009 ABCA 155.

October 7, 2016

To: Parties currently registered in Proceeding 21030

**Fort McMurray West 500-kV Transmission Project
Proceeding 21030
Applications 21030-A001 to 21030-A015**

Ruling on objection to witnesses and amended reply evidence

1. The Alberta Utilities Commission is in receipt of a letter dated September 29, 2016,¹ from counsel for Alberta PowerLine L.P. (Alberta PowerLine) objecting to the witnesses proposed by the following parties:

- Renz Family, and Kenneth and Bernice Treichel
- Gunn Métis Local 55, the Wabasca Métis Local 90, Fort McMurray Métis Local 1935 and Fort McKay Métis Community Association, Buffalo Lake Métis Settlement (the Métis Interveners)
- ERLOG
- Burnco Rock Products Ltd. (Burnco)
- Lehigh Hanson Materials Limited (Lehigh)
- Dunhill Group Inc. and
- 1531486 Alberta Ltd.²

2. Alberta PowerLine also expressed concern that, based on the contents of certain pre-filed opening statements, some interveners may intend to present new oral evidence that is well beyond the matters contained in their documentary evidence.

3. The Commission afforded the parties listed in paragraph 1 an opportunity to file a response to Alberta PowerLine's comments by October 4, 2016, and an opportunity for Alberta PowerLine to reply by October 6, 2016.

4. The Commission received a response from counsel for the Métis Interveners that they:

Disagree[d] with APL's interpretation of Rule 42.2 and the AUC's process letter. To suggest that "direct evidence to be delivered at the hearing must conform to applicable AUC rules, and as such, be limited to the materials properly on the record of this

¹ Exhibit 21030-X1380.

² For clarity the Fort McKay Métis Community Association is not a party to the proceeding because it has not been granted standing.

Proceeding” does not take into account testimony related to “matters set out in the documentary evidence or arising from evidence adduced in cross-examination” as directed by Rule 42.2. To limit the evidence of the interveners, as suggested by APL, would in affect restrict the witnesses from addressing any documentary evidence filed in reply or evidence adduced in cross-examination, and this is certainly contrary to Rule 42.2.³

5. Counsel for the Métis Intervenors stated that their lay witnesses are trappers or otherwise employed and that unless the Commission could guarantee certain dates for presentation of evidence, the Métis Intervenors could not guarantee which witnesses will be available.

6. Counsel for Burnco, Lehigh and Tricycle Lane Ranches Ltd. objected to Alberta PowerLine’s request that Lehigh be prohibited from testifying at the hearing. Counsel also objected to Alberta PowerLine’s interpretation of Section 42 of Rule 001: *Rules of Practice*.

7. Counsel for ERLOG filed a response indicating that they were unaware of the number of witnesses who would be presenting oral evidence at the hearing.

8. No response was received from the Renz Family, Dunhill Group Inc., 1531486 Alberta Ltd., or Kenneth and Bernice Treichel.

9. On October 6, 2016, Alberta PowerLine filed a response submission in which it provided:

The position taken by the Métis Intervenors and Gravel Intervenors would effectively mean that upon the filing of an application with the Commission, no further documentary evidence would need to be filed by intervening parties, who could instead provide an extended oral presentation of their views on the Application and how they may be impacted. Moreover, these positions would allow applicants to present no written reply evidence and to provide its response to any filed Intervener evidence for the first time through an extended oral presentation. That runs counter to, and would fundamentally undermine, the intent of the Commission process.⁴

10. The Commission also received a letter from Alberta PowerLine’s counsel on October 4, 2016, requesting to amend its reply evidence. Alberta PowerLine explained that its reply evidence was amended to correct “directionality and proximities of certain traditional land and resource use sites relative to the project” and typographical and referencing errors. The request was made pursuant to Section 15.1 of Rule 001.

11. The writer has been authorized to write this ruling on behalf of the Commission.

Ruling

12. The Commission is of the view that Rule 001 provides sufficient guidance on the matters that may be raised in direct evidence and notes that, among other things, Rule 001 states that it

³ Exhibit 21030-X1393, Ltr to AUC – October 4, 2016.

⁴ Exhibit 21030-X1400, APL Response to Intervener Comments, page 2.

is open to each party to present his or her case as he or she sees fit, within the process outlined in that rule. The Commission considers that its process should provide some flexibility as to the nature of the evidence that lay witnesses are able to present during hearings. With respect to persons without standing making submissions, the Commission reminds Alberta PowerLine that in its February 19, 2016 standing ruling, it advised:

In the past, the Commission has allowed persons without standing the opportunity to provide a brief statement to the Commission that describes their views on the application. In exceptional circumstances the Commission may also allow parties without standing to fully participate in a hearing by filing evidence, cross-examining the applicant and giving argument.

...

Based on the above, groups with one or more members who own or reside on property located within 800 metres of the project also have standing in the proceeding pursuant to Section 9 of the *Alberta Utilities Commission Act*. It is the practice of the Commission to allow such groups to participate in Commission proceedings. A list of landowner groups with standing is in Schedule B. The Commission encourages individuals with similar interests to form groups. Participation as a group will reduce duplication of submissions and costs, and ensure an efficient hearing for all participants. In addition, persons who do not have standing may join a group of persons with standing.⁵

13. For these reasons, the Commission will not limit the nature of the evidence to be brought forward by lay witnesses or persons without standing at this time.

14. Given that counsel for the Renz Family has not replied to Alberta PowerLine's concerns, the Commission will address the matter of whether Mr. Gettel may appear as an expert witness during the hearing.

15. In keeping with the efficiency of the hearing, the Commission expects all parties to be ready to present their evidence when called upon. Commission staff will work with parties and their respective counsel to make minor adjustments to the schedule to accommodate the availability of certain witnesses, if possible. Given the number of parties registered in Proceeding 21030, the Commission finds that it would cause undue delay to pre-schedule the evidence of certain witnesses or groups at this stage.

16. With respect to the identity and the number of lay witnesses who plan on presenting oral evidence on behalf of the interveners, the Commission requests that counsel for each intervener, or intervener group provide an approximate number, and names, if known, of the witnesses who will be presenting oral evidence at the commencement of the hearing on October 12, 2016. With respect to Alberta PowerLine's concerns for knowing the case to be met, the Commission finds that because the hearing process grants Alberta PowerLine an opportunity to present a rebuttal panel, there is no breach of the principles of procedural fairness.

⁵ Exhibit 21030-X0655, AUC ruling on standing, paragraphs 13 and 16.

17. The Commission will allow Alberta PowerLine to amend its reply evidence. Section 15.1 of Rule 001 provides that the Commission may allow a revision of all or any part of a document on any terms it considers appropriate. Based on the nature of the revisions, the Commission finds that no party to the proceeding will be prejudiced by the filing of the amended reply evidence at this stage in the proceeding.

18. If you have any questions, please contact me at 403-592-4499 or by email at shanelle.sinclair@auc.ab.ca.

Yours truly,

Shanelle Sinclair
Commission Counsel

Undertaking Number: 028

Transcript Reference: Page 1730, Volume 9, October 24, 2016

Undertaking:

To provide a list of all commitments APL would be willing to accept as conditions on approval.

Response:

The following list includes commitments made by APL. By nature of these being commitments made as part of application documents, evidence or APL testimony in proceeding 21030, APL does not believe it is necessary to make them conditions as part of the approval. However, APL does not object if the Commission is of the opinion that they should be specifically included as conditions of the approval.

ID	Commitment
1	Alberta PowerLine (APL) facilities will be built and operated in accordance with the authorizations granted pursuant to this facility application, and in accordance with the requirements of Section 39 of the <i>EUA</i> (Safe and Reliable Operation), the <i>Safety Codes Act</i> , Section 34 of the <i>HEEA</i> (Highway Authority Approvals), and applicable regulations and industry standards.
2	APL will comply with the <i>Water Act</i> and apply for any necessary approvals, prior to construction. If required, notification to Alberta Environment and Parks (AEP) will be filed to comply with the applicable Codes of Practice.
3	APL will comply with the <i>Wildlife Act</i> .
4	The Project will include preconstruction environmental surveys of wildlife, vegetation, and wetlands.
5	An Historical Resource Impact Assessment (HRIA) will be completed in accordance with Schedule A of the <i>Historical Resource Act</i> (HRA) and clearance will be obtained before the start of construction.
6	APL will submit the required information to the Transport Canada (TC) Navigable Waters Protection Officer for approvals of transmission line crossings over the North Saskatchewan River and Athabasca River.
7	APL will submit the required information to the TC civil aviation safety inspector and submit an application for Aeronautical Obstruction Clearance.
8	APL will provide NAV Canada structure design data for the proposed transmission lines following completion of transmission line design and construction.
9	APL will inspect the proposed facilities and declare them safe prior to being energized.
10	APL will comply with the <i>Fisheries Act</i> by following the Department of Fisheries and Oceans (DFO) guidance in <i>Canada's Measures to Avoid Causing Harm to Fish and Fish Habitat</i> in the event that any work takes place in watercourses, beds or banks.

ID	Commitment
11	APL commits to installing bird diverters as outlined in the Environmental Protection Plan (EPP), as well as where AEP identifies areas of concern.
12	APL will work with affected landholders during finalization of line design and construction, including to adjust structure placement, where reasonably practical.
13	APL will establish joint operating procedures with AltaLink Management Ltd. and ATCO Electric for the interconnection of facilities prior to energization.
14	APL will abide by the EPP for the project, and will update the Plan as required.
15	APL will abide by the Caribou Protection Plan as approved by AEP for the project.
16	APL will abide by its Best Management Practice regarding Crop Disease Protection and Noxious Weeds as included in the EPP.
17	APL will keep landholders informed of Project progression on their lands and follow applicable industry standards for operating and maintenance activities of the transmission line.
18	APL will work with the affected parties to identify the source of the issue and to mitigate interference or induced voltages that may be caused by APL's facilities in the event that issues with electrical interference or induced voltage issues are reported.
19	APL will ensure that fences are safely grounded where reasonably required due to proximity to the Project and ensure that existing electric fencing is not interfered with due to proximity to the Project.
20	APL will replace existing fences removed during construction and permit landowners to construct new fencing across the Project right-of-way.
21	APL will install brightly coloured plastic guy guards on all guyed structures in cultivated or grazing fields provided landowners do not object.
22	APL will install reflective marking on guy guards and/or metal cattle guards around the base of guy wires where requested by the landowner to improve visibility.
23	APL will work with landholders to address livestock management and access issues during construction operations as reasonably practical.
24	APL will contact all residences within 1.6 km (1 mile) of implosive splicing locations via phone call or personal visit to notify residents in that regard. APL will notify the RCMP and local municipal authorities of planned implosive splicing activities and schedules. APL will ensure that all implosive splicing activities within 3 km of any residence are restricted to the hours of 8 a.m. to 8 p.m. APL will not use implosive splicing within 200 m of any residence.
25	APL will design minimum vertical clearances of 16.9 m on Burnco and Lehigh Hanson gravel extraction areas identified in the facility application.
26	APL is committed to working with gravel operators to facilitate extraction activities occurring within the right-of-way to the extent reasonably practical.
27	APL will work with Brion Energy, where specific locations are identified, to determine if additional conductor clearance is required to facilitate future crossings and incorporate minimum clearance requirements as per industry standards.

ID	Commitment
28	APL will allow Brion to use APL's transmission line right-of-way for compatible future development (e.g. access road) to the extent reasonably practical to further minimize landscape footprint and fragmentation.
29	APL will work with pipeline owners in proximity to the transmission facilities to develop pipeline mitigation measures for existing facilities as appropriate. APL will also enter into the necessary third party crossing, proximity and/or encroachment agreements as per standard industry practice in regard to these facilities.
30	APL will work with the Village of Alberta Beach and applicable landowners to allow compatible land uses within the right-of-way that generate recreational opportunities or otherwise.
31	APL will repair any roads damaged by APL construction activities to pre-construction conditions.
32	APL will ensure all facilities are in compliance with noise requirements outlined in AUC Rule 012.
33	APL will work with landowners concerned with herbicide use on or immediately adjacent to their property to develop herbicide application mitigation strategies where requested and as appropriate.
34	APL will provide further educational materials to landowners within 1 year after construction is complete, to promote safety when conducting activities near high voltage powerlines.
35	APL will continue to consult and engage Aboriginal groups throughout the Project and will provide notice of construction activities for any specific areas of significant importance identified by an Aboriginal group. Where reasonably possible, APL will work with Aboriginal groups to accommodate their traditional use during construction.
36	APL will stop work if Aboriginal sacred sites are encountered during construction until appropriate mitigation is implemented.
37	APL will continue to communicate with each Aboriginal community to provide regular updates about the Project.
38	APL will engage with the appropriate Aboriginal group prior to initiating herbicide programs and will identify other methods of vegetation control for localized sites on the right-of-way identified for harvesting or ceremonial purposes that may be impacted by herbicide use.
39	APL will review the Post Reclamation Assessment Report with Aboriginal groups upon request.
40	APL will develop appropriate mitigation or avoidance measures for TLRU sites identified by BLCN that may be disturbed by the Project.
41	APL will continue to engage with BLCN to identify measures that will allow community members to maintain access to their traditional territory while still adhering to the safety and security measures required for the Project.

ID	Commitment
42	With respect to the specific concern of diamond willow fungus, APL offers to conduct site visits with BLCN to identify specific areas of concern where diamond willow fungus is currently harvested by BLCN and will work towards identifying appropriate mitigation measures, such as leaving certain trees in place (if possible) or affording opportunities for community members to harvest the fungus prior to clearing.
43	With respect to any GML specific TLRU sites that intersect the Project right-of-way, APL is committed to continuing to discuss, and to the extent reasonably practical, adopt avoidance or mitigation measures to minimize potential impacts on such sites.