

February 19, 2020

To: Parties currently registered on Proceeding 25140

**AltaLink Management Ltd.
Red Deer Area Transmission Development – Decommission and Salvage of
Remaining Portions of Transmission Lines 80L and 716L
Proceeding 25140
Applications 25140-A001 to 25140-A004**

Ruling on standing

1. In this ruling, the Alberta Utilities Commission decides whether to hold a public hearing to consider applications by AltaLink Management Ltd. relating to the decommissioning and salvage of transmission lines 80L and 716L between the West Lacombe 958S Substation and the Wetaskiwin 40S Substation, located in Lacombe County, Ponoka County, the County of Wetaskiwin, the city of Wetaskiwin, Indian Reserve No. 138 (Ermineskin Cree Nation) and Indian Reserve No. 137 (Samson Cree Nation).
2. The Commission must hold a hearing if persons who have filed a statement of intent to participate in Proceeding 25140 have demonstrated that they have rights that may be “directly and adversely affected” by the Commission’s decision. Such persons may participate fully in the hearing, including giving evidence, questioning witnesses and providing argument. This permission to participate is referred to as standing.
3. The Commission issued a notice of application for Proceeding 25140 on December 19, 2019. The Commission received statements of intent to participate from Kathy and Mark Matejka, Joseph Fromhold ostensibly on behalf of the Asini Wachi Nehiyawak (Mountain Cree) Traditional Band (AWNTB), and Maureen Orr.
4. The Commission has authorized me to communicate its decision on standing.

Ruling

5. The Commission grants standing to Kathy and Mark Matejka and denies standing to the AWNTB (as submitted by Joseph Fromhold) and Maureen Orr.

Kathy and Mark Matejka

6. Kathy and Mark Matejka stated that they own land on which some of the transmission poles proposed for removal are situated.
7. AltaLink stated it will use the following salvage methodology to remove the transmission pole structure 80L827, which is located on the property of Kathy and Mark Matejka:

AltaLink will cut the poles near ground level, then grind each remaining pole down to a depth of between 10 to 20 cm below the ground surface. The portion of the wooden poles that re buried deeper will be left in place and will be covered with clean top soil.¹

8. Kathy and Mark Matejka stated that they are concerned that the salvage methodology proposed in the applications will leave obstructions that will interfere with their farming operations and create safety issues. They also stated that the proposed activities must avoid disturbing a culturally sensitive site on their land.

9. The Commission finds that Kathy and Mark Matejka have legal rights that may be directly and adversely affected by the project and grants them standing in the proceeding. The Commission notes that AltaLink's salvage methodology is a condition of the *Historical Resources Act* approval issued by Alberta Culture and Tourism.²

10. Kathy and Mark Matejka fall within the definition of "local intervener" in Section 22 of the *Alberta Utilities Commission Act* and are therefore eligible to file a costs claim seeking recovery of the costs of their participation in this proceeding. The Commission's Rule 009: *Rules on Local Intervener Costs* applies to costs claims for this proceeding.

11. The Commission emphasizes that eligibility to claim costs does not guarantee full recovery of those costs. Any claims for costs must be filed after this proceeding is concluded, in accordance with Rule 009, and cost recovery is subject to the Commission assessing the value of a party's contribution to the proceeding.

Asini Wachi Nehiyawak (Mountain Cree) Traditional Band

12. The Commission has determined that Mr. Fromhold has not provided information that demonstrates that the AWNTB has legally recognized rights that may be directly and adversely affected by the Commission's decision on the applications. The letter under Mr. Fromhold's signature, in which he indicates that he is the head of the AWNTB and which supplements the statement of intent to participate stated:

This project lies within the Traditional Lands of the ASINI WACHI NEHIYAWAK (Mountain Cree) Traditional Band (AWNTB).

The AWNTB is recognized by the Government of Canada as a Band that that has historic and traditional land lands to which they are still the legal title holders, and fall under the Supreme Court mandated Duty To Consult legislation laws.

The AUC and AltaLink have failed in their duties under Canadian Law to Consult the AWNTB on matters pertaining to the [decommissioning] and ground disturbance posed by the [decommissioning] of this line.

Nor has AltaLink provided the AWNTB with the required data that would allow us to make an Informed Decision and give Informed Consent for this project, as is required by

¹ Exhibit 25140-X0002, Application, PDF page 21.

² Exhibit 25140-X0014, Appendix H, PDF page 8.

Law. At no time has AltaLink followed the consultation protocols required by the AWNTB (see attached).

Both the UAC and AltaLink are and have been fully aware of the existence of and interests of the AWNTB for a decade and have consistently and knowingly failed to deal with these matters with the AWNTB.

This is a willful breach of Canadian law and is subject to legal action.

[Due] to the failures of the AUC and AltaLink, the AWNTB [withholds] any consent of approval for the above development.

This is a breach of law.

13. Mr. Fromhold asserts that the AWNTB has legal rights and interests derived from its status as a band that is recognized by the Government of Canada, however, no information is provided to substantiate that claim. In addition, Mr. Fromhold did not assert that the AWNTB has treaty rights, nor did he provide information tending to indicate that the AWNTB has a credible claim that it holds aboriginal rights (including aboriginal title) protected by Section 35 of the *Constitution Act, 1982*. The Commission understands that aboriginal rights claims give rise to unique and inherent evidentiary difficulties and that persons claiming rights protected under Section 35 should not be forced to bear “an impossible burden of proof.”³ However, an aboriginal right claimant must still provide some reliable information that addresses the legal requirements for establishing the existence of an aboriginal right, as follows:

Stripped to essentials, an aboriginal claimant must prove a modern practice, tradition or custom that has a reasonable degree of continuity with the practices, traditions or customs that existed prior to contact. The practice, custom or tradition must have been “integral to the distinctive culture” of the aboriginal peoples, in the sense that it distinguished or characterized their traditional culture and lay at the core of the peoples’ identity. It must be a “defining feature” of the aboriginal society, such that the culture would be “fundamentally altered” without it. It must be a feature of “central significance” to the peoples’ culture, one that “truly made the society what it was” (*Van der Peet, supra*, at paras. 54-59 (emphasis in original)). This excludes practices, traditions and customs that are only marginal or incidental to the aboriginal society’s cultural identity, and emphasizes practices, traditions and customs that are vital to the life, culture and identity of the aboriginal society in question.⁴

14. The Commission is therefore unable to conclude that the AWNTB is an aboriginal-rights holding community or that it has a credible assertion of such rights: none of the information needed to establish such a claim has been provided. Similarly, Mr. Fromhold does not identify asserted rights or interests that could be directly and adversely affected by the Commission’s decision on the applications, or how those rights and interests could be affected. As such, the Commission has insufficient information to determine whether the decommissioning and salvage project proposed in the applications may be located within the AWNTB’s traditional territory or how the proposed project may otherwise affect the AWNTB’s legal rights.

³ *Mitchell v. M.N.R.*, 2001 SCC 33, paragraph 27.

⁴ *Mitchell v. M.N.R.*, 2001 SCC 33, paragraph 12, citing *R. v. Van der Peet*, [1996] 2 S.C.R. 507, and *Delgamuukw v. British Columbia*, 1997, [1997] 3 S.C.R. 1010.

15. To this end, the Commission contacted Mr. Fromhold following receipt of his initial statement of intent to participate to seek further information in respect of both the legal rights or interests that AWNTB asserts would be affected by the applications and how the Commission's decision could directly and adversely affect those rights.⁵ Mr. Fromhold declined to provide such information. In the absence of such information, the Commission finds that AWNTB has not established that it has legal rights that could be directly and adversely affected by the applications. Accordingly, the AWNTB is denied standing in this proceeding.

16. The AWNTB also asserted that it is owed a duty to consult that both the Commission and AltaLink have failed to meet. The Commission notes that a duty to consult may be owed to Indigenous groups when the Crown is aware of an asserted or proven aboriginal right and contemplates conduct that may affect that right. Given the Commission's finding above that the AWNTB has not demonstrated any proven or asserted rights that could be affected by the Commission's decision on the applications, the Commission does not find that a duty to consult with AWNTB arises from the applications.

Maureen Orr

17. Maureen Orr stated that she lives on land in Ponoka County and that AltaLink must access her land to remove the transmission line. Specifically, she indicated that her concern relates to a delinquent payment by AltaLink that is owed as compensation for those access rights. She did not describe any other concerns about the decommissioning and salvage project proposed in the applications.

18. The Commission has concluded that while Ms. Orr resides on land that AltaLink may need to access to undertake the project, her concerns about outstanding compensation for the right to access her lands are not concerns for which the Commission can provide a remedy or relief. The payment of compensation for land access is a matter that must be addressed in another forum; likely the civil courts of Alberta or the Surface Rights Board. Ultimately, if Ms. Orr is owed compensation for land access related to transmission lines 80L and 716L, the Commission's decision on the applications will not affect her right to payment. The Commission therefore finds that Ms. Orr has not demonstrated that the Commission's decision on the application could directly and adversely affect any legal right she may have to payment for land access. As such, Ms. Orr is denied standing in this proceeding.

⁵ Exhibit 25140-X0027, AUC letter to J. Fromhold re Proceeding 25140.

Schedule

19. The Commission will issue a full schedule for an oral hearing process in a notice of hearing in due course. In the interim, the Commission has scheduled the following submission deadlines:

Process step	Date
Intervenors written information requests to the applicant	March 20, 2020
Applicant's written information responses	April 3, 2020

20. Should you have any questions, please contact the undersigned at 403-592-3280, or by email at gary.perkins@auc.ab.ca, or contact the lead application officer Steven Yang at 403-592-4371, or by email at steven.yang@auc.ab.ca.

Yours truly,

Gary Perkins
Commission Counsel