

November 20, 2020

To: Parties currently registered in Proceeding 25469

**Alberta Electric System Operator  
Central East Transfer-out Needs Identification Document Application  
Proceeding 25469  
Application 25469-A001**

**ATCO Electric Ltd.  
Central East Transfer-out Needs Identification Document Application  
Proceeding 25469  
Application 25469-A002 to 25469-A007**

**AltaLink Management Ltd.  
Central East Transfer-out Needs Identification Document Application  
Proceeding 25469  
Application 25469-A008 to 25469-A010**

### **Ruling on standing of Métis Nation of Alberta**

1. In this ruling, the Alberta Utilities Commission determines the standing of the Métis Nation of Alberta (MNA) to participate in a public hearing in which the Commission will consider an application by the Alberta Electric System Operator (AESO) for approval of a needs identification document (NID), and facility applications by ATCO Electric Ltd. and AltaLink Management Ltd. for the Central East Transfer-out (CETO) Transmission Development Project. The CETO project would run east of Red Deer, Alberta to the Halkirk, Alberta area.

2. The MNA filed a statement of intent to participate in the proceeding as the representative of more than 3,872 of its members. The MNA states that its members, to whom it refers to as citizens, have harvesting and other rights affirmed in Section 35 of the *Constitution Act, 1982* that may be affected by the project.

3. Persons (including individuals and corporations) who have demonstrated that they have rights that may be directly and adversely affected by the Commission's decision on the applications are legally entitled to participate in the hearing. This permission to participate is referred to as standing.

4. The Commission has authorized me to communicate its decision on the MNA's standing.

## Statement of intent to participate

5. In a notice of hearing issued on October 13, 2020, the Commission directed any person who had concerns or objections to the applications to file a statement of intent to participate by November 12, 2020.

6. In its statement of intent to participate, the MNA stated that it has the authority to represent the interests of regional, rights-bearing Métis communities in the province of Alberta pursuant to its own *Métis Harvesting in Alberta Policy (2018)* and a legally binding agreement between the MNA and the government of Alberta. It added that by registering with the MNA, each individual MNA member has authorized the MNA to assert and advance collectively-held Métis rights, interests and claims on behalf of the member and his or her community.

7. The MNA stated that if the CETO project were approved, valuable Crown land within 1,500 metres of the project could be affected in ways that would affect the ability of its members to continue to exercise their rights in the project area. It also stated that at least 161 of its members reside within 100 kilometres of the project and are eligible to harvest in the project area. It specifically identified hunting animals and collecting plants for subsistence, cultural and economic practices as activities that would be affected by the project. It submitted that its members' right to harvest will be permanently, directly and adversely affected by the project, which it stated represents a use of land that is incompatible with the ongoing exercise of aboriginal rights by the Métis in Alberta. The MNA did not raise any concerns about the NID application.

## Statements of intent to participate from other Indigenous groups

8. While the Commission received statements of intent to participate from the Tsuut'ina Nation, the Blood Tribe and the Ermineskin Cree Nation, on November 20, 2020, it requested supplemental information from each of the groups and will consider their standing in a separate ruling.

## How the Commission determines standing

9. Section 9(2) of the *Alberta Utilities Commission Act* sets out how the Commission must determine standing:

**(2) If it appears to the Commission that its decision or order on an application *may directly and adversely affect the rights of a person*, the Commission shall**

- (a) give notice of the application in accordance with the Commission rules,
- (b) give the person a reasonable opportunity of learning the facts bearing on the application as presented to the Commission by the applicant and other parties to the application, and
- (c) hold a hearing. [emphasis added]

10. The meaning of the key phrase, “directly and adversely affect,” has been considered by the Court of Appeal of Alberta on multiple occasions, and the legal principles set out by the court guide the Commission when it determines standing. Standing is determined by application of a two-part test. The first test is legal: a person must demonstrate that the right being asserted is recognized by law. This could include property rights, constitutional rights or other legally recognized rights, claims or interests. The second test is factual: a person must provide enough information to show that the Commission’s decision on the application may “directly and adversely affect” the person’s right, claim or interest.<sup>1</sup>

## **Ruling**

11. The Commission is satisfied that the MNA is authorized to represent the interests of its members for the purpose of asserting and defending the collectively-held rights of the historical and contemporary Métis communities to which its members belong. It is also satisfied that portions of the project are located within or in close proximity to lands, in particular Crown lands, that are frequented or travelled by MNA members for the purpose of harvesting or for traditional cultural practices. In addition, a traditional land use study that was shared between the MNA and AltaLink Management Ltd. appears to identify one or more locations where vegetation clearing for project infrastructure could remove traditional foods and medicinal plants harvested by MNA members, and where access to Crown land used by MNA members to hunt game could be disrupted during the construction phase of the project.<sup>2</sup>

12. The MNA has demonstrated that some of its members have legal rights that may be directly and adversely affected by the Commission’s decision on the facilities applications. The Commission consequently grants the MNA standing in the facilities applications, in its capacity as the organization that has been authorized by its members to represent their interests.

## **Costs eligibility**

13. Persons who have been granted standing in the facilities applications 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 in accordance with the Commission’s Rule 009: *Rules on Local Intervener Costs*. The MNA members who are active within or near to the project lands are eligible to potentially recover the costs they incur to participate in this proceeding.

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<sup>1</sup> *Cheyne v Alberta (Utilities Commission)*, [2009 ABCA 94](#); *Dene Tha’ First Nation v Alberta (Energy and Utilities Board)*, [2005 ABCA 68](#) [*Dene Tha’*].

<sup>2</sup> Exhibit 25469-X0294, AML CETO - Appendix J Indigenous Relations (J-9 to J-11), PDF pages 24 to 27, summarizes a number of issues raised by the MNA with reference to the traditional land use study, however, the study itself has not been filed with the Commission. Information that would identify the exact locations where the concerns arise has been redacted from the document, which was filed by AltaLink Management Ltd.

14. 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. The Commission encourages parties with similar interests and positions to work together to ensure that any expenditures are minimized and costs are not duplicated.

### **Further process**

15. In accordance with the Commission's November 18, 2020 ruling on the AESO's request to extend the deadline for responses to intervenor information requests, the revised process schedule is set out below for convenience:

<b>Process step</b>	<b>Date</b>
AESO technical session	December 8, 2020
Intervenors' information requests (questions) to applicants	December 17, 2020
Applicants' deadline to respond to information requests	January 20, 2021
Motion day to address outstanding information request issues	February 3, 2021
Intervenors' written evidence deadline	February 17, 2021
Information requests to intervenors	February 26, 2021
Intervenors' deadline to respond to information requests	March 12, 2021
Applicants' reply evidence deadline	March 22, 2021
Commencement of hearing	March 31, 2021

16. If you have any questions, please contact the undersigned at 403-592-4360 or by email at [rob.watson@auc.ab.ca](mailto:rob.watson@auc.ab.ca), or contact Gary Perkins at 403-592-3280 or by email at [gary.perkins@auc.ab.ca](mailto:gary.perkins@auc.ab.ca).

Yours truly,

Rob Watson  
Commission Counsel