

November 27, 2020

To: Parties currently registered in Proceeding 25469

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

**ATCO Electric Ltd.
Central East Transfer-out Transmission Development Facility Applications
Proceeding 25469
Applications 25469-A002 to 25469-A007**

**AltaLink Management Ltd.
Central East Transfer-out Transmission Development Facility Applications
Proceeding 25469
Applications 25469-A008 to 25469-A010**

Ruling on standing

1. In this ruling, the Alberta Utilities Commission determines the standing of the Route A Opposition Group (RAOP), and of Debbie and Betty Henderson 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 RAOP submitted a statement of intent to participate in the CETO proceeding on November 23, 2020, in which it indicated that its members include a number of individuals who filed separate statements of intent to participate, and that it anticipates more members joining the group in the future. The SIPs filed by members of the RAOP state that they own or reside on land near the proposed project and have concerns with the facility applications.

3. The Commission received a statement of intent to participate from Debbie and Betty Henderson by mail on November 25, 2020.

4. 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.

5. The Commission has authorized me to communicate its decision on standing of the RAOP and its members, and on Debbie and Betty Henderson.

How the Commission determines standing

6. 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]

7. 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.¹

Ruling

8. The Commission is satisfied that Brian Fletcher, Edward and Janet Fletcher, Lorne and Linda Haner, Roger and Malora Lee, Dale McNabb, Colby and Kelly Miles, Calvin Nixon, Erick and Sheryl Osterud, and Roma Farms Ltd. have demonstrated that they have legal rights that may be directly and adversely affected by the Commission’s decision on the facility applications. Each of these persons was either identified to be a member by RAOP, or referred to themselves as a member of RAOP in their individual statements of intent to participate. The aforementioned persons own, reside on or occupy property located within 800 metres of the finalized right-of-way of the proposed routes. The potential effects described by these persons include safety impacts, proximity to the proposed lines, impacts on property value, impacts on wildlife, land use and visual impacts, noise and impacts on agricultural operations.

9. When a landowner group requests standing in a Commission proceeding, the Commission generally considers it to have standing if it is authorized to represent one or more persons who have standing to participate. The Commission notes that the RAOP represents several persons who have standing and therefore grants standing to the RAOP as the representative of its members with standing. Further, consistent with its past practice, the Commission will exercise its discretion to allow participation in the proceeding by other

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

individuals not identified in this ruling who indicate that they intend to participate as a member of the RAOP.

10. The Commission received a statement of intent to participate from Jack Brodsky, filed on behalf of Earl Hawthorne. Mr. Brodsky submitted that his wife, Shirley, has power of attorney for Mr. Hawthorne, and that together they look after Mr. Hawthorne's affairs. Mr. Brodsky submitted that he is acting on behalf of Mr. Hawthorne, who owns land in proximity to the project and has concerns about the project including its impacts on agricultural activities, impacts on property values, safety impacts and noise.

11. The Commission is satisfied that Mr. Hawthorne has rights that may be directly and adversely affected by the Commission's decision on the applications and grants him standing in the proceeding. The Commission notes that Mr. Brodsky, on behalf of Mr. Hawthorne, is participating as a member of RAOG which has also been granted standing in the proceeding. Accordingly, the Commission considers that Mr. Brodsky is entitled to participate in the proceeding, both as a member of ROAG and in his capacity as a representative of Mr. Hawthorne.

12. The Commission is also satisfied that Debbie and Betty Henderson, who own property within 800 metres of the finalized right-of-way of the proposed routes, have demonstrated that they have legal rights that may be directly and adversely affected by the Commission's decision on the facility applications. They described potential effects, including destruction of native grass, impact to bird and wildlife habitats, management of agricultural operations during the construction period, health impacts and impacts on property value.

Costs eligibility

13. Persons who have been granted standing in the facility 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*.

14. The RAOP is eligible to potentially recover the costs incurred to represent those of its members that have been granted standing in this proceeding and have authorized the landowner group to represent them. In other words, the group's eligibility to make a local intervener costs claim is entirely dependent on it representing a person who is a local intervener. The RAOP may not be eligible for honoraria and personal disbursements associated with members who have not been determined to have standing.

15. 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

16. 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:

Process step	Date
AESO technical session	December 8, 2020
Interveners' 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
Interveners' written evidence deadline	February 17, 2021
Information requests to interveners	February 26, 2021
Interveners' deadline to respond to information requests	March 12, 2021
Applicants' reply evidence deadline	March 22, 2021
Commencement of hearing	March 31, 2021

17. If you have any questions, please contact the undersigned at 403-592-4360 or by email at rob.watson@auc.ab.ca, or contact Gary Perkins at 403-592-3280 or by email at gary.perkins@auc.ab.ca.

Yours truly,

Rob Watson
Commission Counsel