

December 1, 2020

Consumers' Coalition of Alberta
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**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 Applications
Proceeding 25469
Application 25469-A002 to 25469-A007**

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

Ruling on Consumers' Coalition of Alberta's standing and comments on budget

1. In this ruling, the Alberta Utilities Commission determines the standing of the Consumers' Coalition of Alberta (CCA) 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 Commission also considers the budget filed by the CCA for its proposed participation in the proceeding.
2. The Commission issued a notice of hearing in this proceeding on October 13, 2020. The CCA filed a statement of intent to participate on November 12, 2020. On November 13, 2020, the Commission requested that the CCA file two separate budgets outlining the reasonable fees and disbursements it anticipates it will incur in association with its intervention in this proceeding in relation to both the AESO's NID application, and ATCO and AltaLink's facility applications.
3. The Commission has authorized me to communicate its decision on standing and comments on the budget filed by the CCA.

How the Commission determines standing

4. 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]

5. The meaning of the key phrase, “directly and adversely affect,” has been considered by the Alberta Court of Appeal 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

6. To determine if a right is “directly” affected, the court has said that “[s]ome degree of location or connection between the work proposed and the right asserted is reasonable.”² When considering the location or connection, the Commission looks at factors such as residence and the frequency and duration of the applicant’s use of the area near the proposed site.³

7. The Commission summarized court decisions relating to the meaning of the phrase “directly and adversely affected” in a decision issued in 2015 and concluded that to pass the test for standing, “the potential effects associated with a decision of the Commission must be personal rather than general and must have harmful or unfavourable consequences.” The Commission further commented that the court decisions “highlight the need for persons seeking standing to demonstrate the degree of connection between the rights asserted and potential effects identified.”⁴

8. Except in the case of critical transmission infrastructure, two approvals from the Commission are required to build new transmission capacity in Alberta. The first is an approval of the need for expansion or enhancement to the system pursuant to Section 34 of the

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

² *Dene Tha’*.

³ *Sawyer v Alberta (Energy and Utilities Board)*, [2007 ABCA 297](#).

⁴ Decision 3110-D02-2015: Market Surveillance Administrator allegations against TransAlta Corporation et al., Phase 2 Preliminary matters: Standing and Restitution, Proceeding 3110, September 18, 2015.

Electric Utilities Act. The second is a permit to construct and a licence to operate the facilities pursuant to sections 14 and 15 of the *Hydro and Electric Energy Act*.

9. For the purposes of the NID application stage of the approval process, the matters the Commission considers when deciding on the need identified by the AESO are set out in Section 38 of the *Transmission Regulation*. It is the Commission's view that the approval of a NID application has the potential to affect all Alberta electricity ratepayers as they bear the costs of new transmission facilities approved in conjunction with a NID approval.

10. The Commission assesses the potential for a "direct and adverse effect" on a case-by-case basis. It considers the specific circumstances of each proposed project application and each statement of intent to participate that it receives. In the past, the Commission has decided that general or broad concerns about a proposed project will generally be insufficient to establish standing, unless a more specific link or connection to the demonstrated or anticipated characteristics of a proposed project is established.

Ruling

11. The CCA commonly 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*.

12. The CCA's concerns relate to how the applications, if approved, may affect ratepayers. As stated above, it is the Commission's view that the approval of a NID application has the potential to affect all Alberta electricity ratepayers. As such, the Commission finds that the CCA has standing to participate in this proceeding as it relates to the NID application.

13. The CCA also cited a number of specific issues that it wishes to address in the facility applications, including selection of structure type, the need for full disclosure of costs to landowners, and pipeline parallels setbacks and costs. However, the CCA did not assert that any of its members has a legal right that may be directly and adversely affected by the Commission's decisions on the facility applications.

14. While the Commission accepts that the CCA is interested in the outcome of the entire proceeding, it finds that the CCA has not demonstrated that its legal rights, or the legal rights of its members, may be directly and adversely affected by the facility applications. The Commission therefore finds that the CCA does not satisfy the standing test in relation to the facility applications.

15. Notwithstanding, the Commission considers that in these circumstances it is reasonable to exercise its discretion to grant the CCA limited participation in the facility applications. The Commission will therefore allow the CCA to issue certain information requests (IRs) to AltaLink and ATCO, to cross-examine their witnesses and to file argument. These IRs must be limited to the information filed on the record about the anticipated costs of the proposed facilities that will

ultimately be borne by ratepayers. The CCA is not permitted to issue IRs on matters related to site-specific impacts or other matters unrelated to the costs of the proposed facilities.

Comments on budget

16. In accordance with Section 3.1 of Rule 022: *Rules on Costs in Utility Rate Proceedings*, the CCA is eligible to file a costs claim seeking recovery of the costs of its participation in the NID application in this proceeding.

17. The Commission has previously determined that the CCA is not eligible to claim costs as a local intervener under Rule 009: *Rules on Local Intervener Costs* and Section 22 of the *Alberta Utilities Commission Act* with respect to its participation in facility applications. While it retains discretion to award costs to participants who are not local interveners, it is not yet apparent to the Commission whether the CCA's participation in the facility applications in this proceeding will contribute to a better understanding of the issues before it.

18. In addition, the budget filed by the CCA appears to contain errors and does not comply with the requirements set out in Section 6.2 of Rule 022.

19. The Commission directs the CCA to resubmit its budget by **December 7, 2020**, outlining the reasonable fees and disbursements it anticipates it will incur in association with its intervention in this proceeding. The revised budget must:

- Meaningfully and comprehensively address the requirements listed in Section 6.2 of Rule 022. The revised budget must specifically include a summary of the issues the CCA intends to address on both the NID and facility applications, why those issues are material to the CCA, and the nature and scope of the work that each professional will carry out to address the identified issues.
- Be reviewed for errors to ensure that the information submitted relates to Proceeding 25469 and not other proceedings such as "AML 2012 2013 Heartland Deferral Account Reconciliation Application".

20. The Commission also observes that the CCA estimated its argument-related costs to be approximately \$105,000. The Commission directs the CCA to revise its estimate to account for a two-hour time limited oral argument.

21. Should you have any questions, please contact the undersigned at 403-592-4360 or by email at rob.watson@auc.ab.ca.

Yours truly,

Rob Watson
Commission Counsel