

December 16, 2020

To: Parties currently registered in Proceeding 25469

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

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

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

Ruling on standing of the Blood Tribe

1. In this ruling, the Alberta Utilities Commission determines the standing of the Blood Tribe to participate in a public hearing in which the Commission will consider an application by the Alberta Electric System Operator for approval of a needs identification document, 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. Persons 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.
3. The Commission has authorized me to communicate its decision on the Blood Tribe's standing.

Statement of intent to participate

4. 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. The Blood Tribe filed a statement of intent to participate on November 12, 2020.

5. In its statement of intent to participate, the Blood Tribe stated that although it wished to participate in the proceeding, it had been delayed in responding to the Commission's notice of hearing due to band elections and recent weather events.

6. The Commission considered that additional information was required to make a determination on standing for the Blood Tribe¹ and on November 20, 2020, requested that the Blood Tribe provide additional details of the specific impacts that the proposed project may have on the Blood Tribe, by November 30, 2020.

7. The Commission has not received any response from the Blood Tribe.

How the Commission determines standing

8. Subsection 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]

9. The standing test applies to all persons, companies, organizations and First Nations who want to participate in Commission hearings. The test has two parts. First, the party seeking to participate must demonstrate that they have a right or interest that is recognized by law. Second, they must provide some reliable information demonstrating that if the Commission approves the transmission project, those rights may be directly and adversely affected. The first part of the test is legal; the second part of the test is factual. Both parts of the test must be satisfied before the party seeking participation rights will be granted standing.

10. In the case of asserted Aboriginal and treaty rights as provided in Section 35 of the *Constitution Act, 1982*, to satisfy the legal part of the standing test it is not enough to merely assert a possible right. There must be sufficient evidence on the record to satisfy the Commission of the existence of a rights-bearing community in the area and there is a proven or credible assertion of Aboriginal and treaty rights.

11. To satisfy the factual part of the test, the party seeking to participate must show some degree of location or connection between the work proposed and the right asserted.² This means, for example, that sufficient information about the traditional activity; i.e., hunting, fishing,

¹ Exhibit 25469-X0407, AUC letter to Blood Tribe – Request for additional information.

² *Dene Tha' First Nation v. Alberta (Energy and Utilities Board)*, 2005 ABCA 68, at paragraph 14 ; *O'Chiese First Nation v Alberta Energy Regulator*, 2015 ABCA 348, paragraphs 42 to 45.

trapping or traditional use, should be provided. In addition, proximity of the exercise of traditional activity to the proposed project should be confirmed, and the project's effect on the activity or the right-holder's ability to undertake the activity, should be described.

Ruling

12. The Commission is satisfied that the Blood Tribe has legal rights that its members exercise within the Blood Tribe's traditional territory. In this case, however, the Commission finds that the Blood Tribe has not met the second, factual part of the test and is therefore denied standing in this proceeding.

13. The Commission observes in this regard that the Blood Tribe did not specify any concerns with the project's potential effects on its rights. After reviewing the Blood Tribe's submission, the Commission requested that the Blood Tribe provide additional details of the specific impacts of the proposed project on the Blood Tribe to allow the Commission to determine the degree of location or connection between the proposed transmission project and the rights held by the Blood Tribe. As noted above, the Blood Tribe did not respond to the Commission's request for additional information.

14. Based on the evidence on the record, the Commission considers that the Blood Tribe has not asserted any traditional uses in or near the project area and has not provided any information that establishes a causal connection between the project and its effect on any rights it holds. The Commission consequently finds that there is insufficient information on the record to demonstrate that the Blood Tribe may be directly and adversely affected by the Commission's decision in this proceeding.

15. Should you have any additional questions please contact me at 403-492-4360 or by email at rob.watson@auc.ab.ca or Amanda Spyce 403-592-4547 or by email amanda.spyce@auc.ab.ca.

Yours truly,

Rob Watson
Commission Counsel
Facilities Division