

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 Ermineskin Cree Nation

1. In this ruling, the Alberta Utilities Commission determines the standing of the Ermineskin Cree Nation 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 Ermineskin Cree Nation'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 Ermineskin Cree Nation filed a statement of intent to participate on November 12, 2020.

5. In its statement of intent to participate, the Ermineskin Cree Nation submitted that the proposed CETO project is within its traditional territory and would potentially affect the ability of its members to exercise their Aboriginal and treaty rights.

6. The Commission considered that additional information was required to make a decision on standing for the Ermineskin Cree Nation. On November 20, 2020, the Commission requested that the Ermineskin Cree Nation provide a response to Question 2 of the statement of intent to participate form for Indigenous groups and provide a traditional land use map with the project area overlaid by November 30, 2020.¹

7. The Commission has not received a response from the Ermineskin Cree Nation.

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,

¹ Exhibit 25469-X0408, AUC letter to Ermineskin Cree Nation – 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.

for example, that sufficient information about the traditional activity; i.e., hunting, fishing, 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 Ermineskin Cree Nation has legal rights that its members exercise within the Ermineskin Cree Nation's traditional territory. In this case, however, the Commission finds that the Ermineskin Cree Nation has not met the second, factual part of the test and is therefore denied standing in this proceeding.

13. The Commission acknowledges with regard to the second part of the test that the Ermineskin Cree Nation expressed general concerns with the project's potential effects on various asserted land uses around the project area. After reviewing its submission, the Commission requested that the Ermineskin Cree Nation provide additional details including a response to Question 2 of the statement of intent to participate form for Indigenous groups and provide a traditional land use map with the project area overlaid so that the Commission could determine the degree of location or connection between the proposed transmission project and the rights asserted.

14. As noted above, the Ermineskin Cree Nation did not respond to the Commission's request for additional information. Based on the evidence on the record, the Commission considers that the Ermineskin Cree Nation has provided only a general assertion of traditional uses in or near the project area. General statements of concern do not, without more detailed information and an evidentiary basis, meet the factual test for standing. There must be specific information that establishes a causal connection between the project and its effect on the asserted rights. Based on the information initially provided in the Ermineskin Cree Nation's statement of intent to participate, and in the applications filed in this proceeding, the Commission cannot conclude that such a causal connection has been established. The Commission consequently finds that there is insufficient information on the record to demonstrate that any rights asserted by the Ermineskin Cree Nation 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
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