

March 25, 2021

To: Parties currently registered in Proceeding 26145

**AltaLink Management Ltd.
ATCO Electric Ltd.
Nilrem to Vermilion Transmission Development
Proceeding 26145
Applications 26145-A001 to 26145-A008**

Ruling on standing

1. In this ruling, the Alberta Utilities Commission decides whether persons who have filed a statement of intent to participate (SIP) in Proceeding 26145 have demonstrated that they have rights that may be “directly and adversely affected” by the Commission’s decision on applications by AltaLink Management Ltd. and ATCO Electric Ltd. for approval of the construction and operation of new transmission facilities in the Hardisty to Vermilion area. Such a person may participate fully in the hearing, including giving evidence, questioning of witnesses, and providing argument. This permission to participate is referred to as standing.
2. The Commission issued notice for Proceeding 26145 and received SIPs from the landowners listed in Schedule A, the Consumers’ Coalition of Alberta (CCA) and the Métis Nation of Alberta (MNA).
3. The Commission has authorized me to communicate its decision on standing. As set out in detail below, the Commission has decided that the persons listed in Schedule A have standing, the CCA does not have standing but has been granted limited participatory rights, and the MNA has not provided sufficient information to meet the standing test.

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 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

6. The Court of Appeal of Alberta has stated that for the purposes of the first, legal part of the standing test, a constitutional, legal or an equitable interest is sufficient.²

7. The Court of Appeal of Alberta has stated that for the purposes of the second, factual part of the standing test, reliable information must be provided that makes a causal connection between the development or work proposed for the Commission’s approval and the legal rights asserted by the person seeking standing. Specifically in relation to the standing of Section 35 rights-holders or traditional land users, the court has established a number of principles.

8. First, the Commission is not required to grant standing when a person merely asserts a possible Aboriginal or treaty right. Some degree of location or connection between the work proposed for the Commission’s approval and the right asserted is necessary. “Hard information” about locations where Section 35 rights-holders are active and are hunting or trapping (if that is the assertion) must be provided to the Commission; “vague and adroitly-worded assertions of rights” is not sufficient.³

9. Second, the mere fact that a project is situated within the traditional lands of a rights-bearing group is not sufficient to meet the standing test. The group must provide specific information that shows how the development or work proposed could affect its members’ rights.⁴

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 SIP that it receives.

Ruling

Persons listed in Schedule A

11. The Commission is satisfied that the persons listed in Schedule A have demonstrated that they have legal rights that may be directly and adversely affected by the Commission’s decision on the applications. The persons listed in Schedule A all own land in close proximity to the proposed project and have demonstrated that the Commission’s decision on the application has the potential to result in a direct and adverse effect on them. The potential effects described by

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’* at para 11.

³ *Dene Tha’* at para 18.

⁴ *O’Chiese First Nation v Alberta Energy Regulator*, 2015 ABCA 348.

these persons include proximity of the project, decreased property values, interference with agricultural operations including aerial spraying and weed control, negative effects on health and safety, electrical interference, noise concerns, and effects on the environment.

Consumers' Coalition of Alberta

12. The CCA filed a SIP requesting full participation in the applications to address cost-related matters that impact ratepayers.⁵ The CCA stated that it considers the applications to have considerable impact on ratepayers, with (plus 20 per cent/minus 10 per cent) capital expenditure estimates ranging from \$163.9 million to \$172.6 million for AltaLink and ATCO Electric preferred and alternate routes, respectively. The CCA indicated it had several concerns with the applications relating to the costs of the proposed development; specifically:

- Opportunities to save costs based on the project's in-service date.
- AltaLink's use of steel monopoles compared to ATCO Electric's use of H-frame structures, including whether AltaLink's assumptions and conclusions are reasonable and whether H-frame structures have a cost advantage over monopoles.
- Procurement costs for steel monopoles compared to H-frame structures.
- Forecast indirect project costs.
- Opportunities to save costs based on substation design.

13. 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*.

14. The CCA's concerns relate to how the applications, if approved, may affect ratepayers. In the past, the CCA has intervened and been granted standing in needs identification document (NID) applications for transmission proposals, based on the Commission's view that the approval of a NID application has the potential to affect all Alberta electricity ratepayers. In this case, the Commission has already approved the need for the proposed development,⁶ and the only applications before it are for the construction and operation of the facilities required to meet that need.

15. Given the nature of the applications, the Commission finds that the CCA has not demonstrated that it holds legal rights that may be directly and adversely affected by the

⁵ Exhibit 26145-X0160.

⁶ Decision 23429-D01-2019, Alberta Electric System Operator, Amended Provost to Edgerton and Nilrem to Vermilion Transmission System Reinforcement Needs Identification Document, April 10, 2019.

Commission's decision on the facility applications. The Commission accordingly denies the CCA standing in this proceeding.

16. That said, the Commission is the master of its own process and has broad discretion to allow any party to participate in its proceedings. Given the particular issues raised by the CCA in its SIP, namely the potential costs of the proposed transmission development and the differing approaches chosen by AltaLink and ATCO for the project, as well as the CCA's comments on the materiality of project costs, the Commission exercises its discretion to allow the CCA to participate in the proceeding. This exercise in discretion is made on the basis of the specific issues raised in the CCA's SIP, summarized above; consequently, the scope of the CCA's participation is strictly limited to those matters.

17. The CCA will be eligible to recover the costs of its participation in these circumstances, notwithstanding that it is not a "local intervener" within the meaning of Rule 009: *Rules on Local Intervener Costs* and Section 22 of the *Alberta Utilities Commission Act*. The Commission has broad discretion under Section 21(1) of the Act to decide whether, and to whom, to award costs. As noted by the Court of Appeal of Alberta in *ATCO Gas and Pipelines Ltd v Alberta (Utilities Commission)*, "nothing in either Section 21(2) or Section 22 derogates from the Commission's general discretion under Section 21(1) to issue costs orders relating to those appearing in proceedings before it, whether as applicants or interveners."⁷

18. The Commission emphasizes that eligibility to claim costs does not guarantee recovery of those costs. The Commission directs that the CCA file a budget by **April 1, 2021**, in accordance with Section 6 of Rule 022: *Rules on Costs in Utility Rate Proceedings*, which outlines the reasonable fees and disbursements the CCA anticipates it will incur in association with its intervention in this proceeding.

Métis Nation of Alberta

19. The MNA filed a SIP⁸ indicating that the proposed project is located within the administrative boundary of the MNA Region 2 and Region 3. The MNA indicated that the project is within harvesting Area 'D' of the *Métis Harvesting in Alberta Policy* (2018) and that at least 3,872 citizens of the MNA are registered and approved to harvest in Area 'D.'

20. The Commission requested additional information from the MNA on February 10, 2021,⁹ and specifically about the concerns raised by the MNA with respect to the potential impacts of the proposed project on the collectively held rights, claims and interests of the Métis in Alberta. The Commission indicated that the concerns raised in the MNA's SIP are general in nature and that further information is required to allow it to determine the degree of location or connection between the proposed transmission project and the Métis rights and interests asserted. The Commission requested that the MNA provide this additional information by March 17, 2021. The MNA did not file any information by the requested deadline.

⁷ *ATCO Gas and Pipelines Ltd v Alberta (Utilities Commission)*, 2014 ABCA 397 at para 95.

⁸ Exhibit 26145-X0112.

⁹ Exhibit 26145-X0120.

21. The Commission is not satisfied that the information provided in the MNA's SIP is sufficient to meet the second, factual part of the standing test. As noted above and indicated in its February 10th letter, the Commission requires sufficient information to demonstrate some degree of location or connection between the proposed project and the rights asserted by the MNA. For the second part of the test to be met, the Commission must be able to conclude that the exercise of a particular right or rights at a certain location or locations within or near to the project lands (or on other lands to which the project lands provide a right of access) could be adversely affected if the project were to proceed.

22. The MNA's SIP does not identify a specific location where particular rights are being exercised; instead, the Commission is left to conclude, or is invited to conclude that all Section 35 rights are being exercised throughout all of the lands listed by the MNA at all times, and that the project may have an impact on all of that activity. The Commission considers that the lack of location-specific details is akin to the situation described in *O'Chiese First Nation v Alberta Energy Regulator* (referred to above), wherein the First Nation provided no specific information about where or how its rights might be affected but instead asserted that any project within its traditional territory would adversely affect its rights. The Commission therefore denies standing to the MNA.

23. If you have any questions about the matters addressed in this ruling, please contact the undersigned at kim.macnab@auc.ab.ca or 403-592-4385.

Yours truly,

Kim Macnab
Commission Counsel

Attachment

Schedule A - Persons with standing in Proceeding 26145

Name
Representative
Alternate/Alternate Variant Opposition Group
W.L. (Bill) McElhanney
Jim and Heather Barss
Greg Fischer
Teri Griffiths
Vernon and Annette Haun
Dayne Larson
Doug Larson
Philip and Evelyn Larson
Trisha and Shaun Rue
Duncan and Laurel Thompson
Heather Thompson
William (Bill) Tobman
Rosyth Area Landowners
Blake Moser
Stewart and Catherine Crone
Noel Flaade
Blake and Kelsey Moser
Todd and Lynn Moser
Individuals who filed SIPs and are not currently affiliated with a group
Ron Bourgeault
Ryan O'Connor
Alfred and Judy Fleming
Ryan O'Connor
John and Barb Fleming
Ryan O'Connor
David Kufeldt

Dianne Kufeldt
Karen Heinemann
Darryl MacKay
Garret Raasok
Steven and Gwenda Raasok
Carla Schroeder
Adam and Jennifer Stuart Ryan O'Connor
John Stuart Ryan O'Connor
Larry Stuart
Shirley Wonsik