

Electronic Notification

June 22, 2011

To: all interested parties

**Ruling on Motion of Mr. Lucien A. Kurata on behalf of [REDACTED]
Western Alberta Transmission Line
AltaLink Management Ltd.
Application No. 1607067
Proceeding ID No. 1045**

Motion

1. On April 20, 2011, the Alberta Utilities Commission (AUC or the Commission) received a motion from Mr. Lucien A. Kurata, on behalf of [REDACTED], requesting that the Commission request or compel: the production of all third-party documents submitted to Cabinet which determined the Western Alberta Transmission Line (WATL) project to be critical transmission infrastructure, the identification of all persons involved in this determination, and the production of any needs justification documents of the government of Alberta in respect of the WATL application, and to adjourn this proceeding in consideration of the aforementioned issues.
2. On April 21, 2011, the Commission sought feedback from interested parties on the proposed requests and received a total of five responses by the April 28, 2011 deadline.
3. The 566 Corridor Group and [REDACTED] representing the Medicine River Landowners Group supported [REDACTED] motion. Arguments submitted in support of the motion were that the information was necessary in order for the Commission to properly and fully consider the extent of the social and economic impacts of the proposed WATL project and that the needs documentation would be helpful as a reference point.
4. AltaLink Management Ltd. (AltaLink) opposed the motion. AltaLink submitted that the motion was premature and deficient as it was not supported by affidavit evidence, and requested irrelevant documents. AltaLink also submitted that the motion did not establish any basis for an adjournment. AltaLink added that granting the adjournment would be prejudicial to AltaLink. The Alberta Electric System Operator opposed the motion for the same reasons.
5. Mr. Kurata, on behalf of [REDACTED] responded to AltaLink's submission on April 28, 2011. Mr. Kurata submitted that AltaLink misinterpreted the motion, that the motion was not premature, was relevant and would not prejudice AltaLink.
6. The Commission has considered the above-mentioned submissions on the motion and has asked that I inform you of its ruling.

Commission findings

7. In making its ruling, the Commission considered Section 17 of the *Alberta Utilities Commission Act*, which states:

17(1) Where the Commission conducts a hearing or other proceeding on an application to construct or operate a hydro development, power plant or transmission line under the *Hydro and Electric Energy Act* or a gas utility pipeline under the *Gas Utilities Act*, it shall, in addition to any other matters it may or must consider in conducting the hearing or other proceeding, give consideration to whether construction or operation of the proposed hydro development, power plant, transmission line or gas utility pipeline is in the public interest, having regard to the social and economic effects of the development, plant, line or pipeline and the effects of the development, plant, line or pipeline on the environment.

(2) The Commission shall not under subsection (1) give consideration to whether critical transmission infrastructure as defined in the *Electric Utilities Act* is required to meet the needs of Alberta.

8. The Commission observes that the motion acknowledges the effect of subsection 17(2) of the *Alberta Utilities Commission Act* and seeks the information in question under subsection 17(1) which directs the Commission to “give consideration to whether construction or operation of the proposed transmission line is in the public interest.”¹ The Commission notes that the motion is not accompanied by an affidavit that sets out the evidentiary basis for the motion.

9. In the Heartland proceeding, the Commission dealt with a similar motion as follows:

27. The Heartland application is the Commission’s first opportunity to consider a facility application for critical transmission infrastructure in accordance with the new provisions introduced through the *Electric Statutes Amendment Act*. As is frequently the case when any new legislation is introduced, some parties have raised questions about the correct interpretation of these new provisions. In the Commission’s view, the effective interpretation of this new legislation is best achieved by considering the reasoned arguments of all potentially affected parties within the context of the formal hearing and based upon the evidentiary record.²

10. The Heartland proceeding is ongoing and a ruling will be made in that proceeding in due course based on the evidence and arguments proffered. In the WATL proceeding, there is no evidence yet before the Commission. Therefore, Commission finds that the motion is premature because there is no evidentiary record on which to base an interpretation of Section 17 of the *Alberta Utilities Commission Act* and the manner in which the information in question will assist the Commission in its interpretation of this section. However, the issue may be argued in this proceeding based on the evidentiary record developed and in light of any ruling that may be made in the Heartland proceeding prior to that time.

11. Furthermore, the Commission notes that the motion acknowledges that third-party documents submitted to the Executive Council may be subject to privilege. However, no

¹ Meggison Reply to AltaLink Management Limited Response, April 28, 2011, page 1.

² Exhibit 774.01AUC-457, AUC ruling on Shaw motion, paragraph 27.

submissions were made or evidence provided that the proceeding before the Commission is one wherein documents of the Executive Council should be disclosed or compelled seeing that the documents in question may be subject to privilege. The Commission cannot make a decision in a factual vacuum and without reasoned arguments.

12. Finally, the Commission observes that subsection 22(1) of the Alberta *Freedom of Information and Privacy Act* and Section 69 of the federal *Access to Information Act* dictate that the head of a public body must refuse to disclose to an applicant information that would reveal the substance of deliberations of the Executive Council or Privy Council, including any advice, recommendations, policy considerations or draft legislation or regulations submitted or prepared for submission to the Executive Council or Privy Council. The types of documents sought by the applicant fit the description of documents that may not be disclosed under the *Freedom of Information and Privacy Act*.

13. For these reasons, the Commission denies the motion and as a result there is no need for the requested adjournment.

Yours truly,

(original signed by)

Giuseppa Bentivegna
Commission Counsel