

Electronic Notification

June 21, 2011

AltaLink Management Ltd. (AltaLink)
Western Alberta Transmission Line (WATL)
Application No. 1607067
Proceeding ID No. 1045

Ruling on Standing

Background

1. On May 5, 2011, the Alberta Utilities Commission (AUC or the Commission) released Decision [2011-198](#).¹ In that decision, the Commission requested that certain persons provide further information about whether they had rights that may be directly and adversely affected by the Commission's decision on this application. The Commission required this information to determine whether those persons would have standing to participate in this proceeding.
2. The Commission established the following process schedule to receive this information:
 - a) Written submissions must be submitted on or before May 13, 2011.
 - b) The applicant was entitled to respond on or before May 20, 2011 to the written submissions.
3. The Commission required further information from the following persons:
 - a) Alberta Direct Connect Consumers Association (ADC)
 - b) ATCO Electric Ltd. (ATCO)
 - c) Capital Power Corporation (CPC)
 - d) ENMAX Corporation (ENMAX)
 - e) Mountain Cree Band
 - f) UPTAG Power Transmission Society (UPTAG)
 - g) Individuals listed on Schedule "C" and Schedule "D" of Decision 2011-198. These individuals indicated that they did not reside or own land within 800 metres of the edge of the rights-of-way on either the preferred route or the alternate route, and individuals that did not provide sufficient information for the Commission to determine how they may be affected by the Commission's decision on the application.

¹ Decision 2011-198: AltaLink Management Ltd. Western Alberta Transmission Line Project Process Meeting, Application No. 1607067, Proceeding ID No. 1045, May 5, 2011.

4. The Commission specifically requested that ADC address Alberta Energy and Utilities Board Decision [2006-120](#).² That decision dealt with standing for persons asserting so-called “ratepayer” interests in an application for Alberta Energy and Utilities Board approval to construct and operate a 500-kilovolt (kV) transmission line from Genesee to Langdon.

5. The Commission received further information from ATCO, Samson Cree Nation, ADC, CPC, ENMAX, Keoma Group and Mr. John Knight about the manner in which their rights may be directly and adversely affected by the Commission’s decision on this application. These submissions are summarized below.

Views of ATCO

6. ATCO argued that it would be required to address numerous similar issues for the Eastern Alberta Transmission Line (EATL) project application, assigned to it pursuant to the *Electric Statutes Amendment Act, 2009*, and would be prejudiced if it is denied the opportunity to have input into consideration of these issues in the WATL application.

7. ATCO submitted that it has statutory obligations under the *Hydro and Electric Energy Act*, the *Electric Utilities Act* and the *Transmission Regulation*. ATCO contended that a number of its rights and obligations under these enactments will be affected in general, and specifically, in regard to critical transmission infrastructure. ATCO argued that its legislative rights and obligations as a transmission facility owner provide a foundation for the rights it will assert and may be affected by the Commission’s decision on the application.

8. ATCO also submitted that it should be granted standing on a similar basis in which it was granted standing to participate in Proceeding ID No. 457 (Heartland Transmission project) and Proceeding ID No. 748 (Cassils-Bowmanton project).

Views of Samson Cree Nation

9. The Samson Cree Nation submitted that its aboriginal and treaty rights are constitutionally protected rights pursuant to Section 35 of *The Constitution Act, 1982*. The Samson Cree Nation stated that it has rights under Treaty 6 and the *Natural Resources Transfer Agreement, 1930*, which include the right to hunt, fish, trap, gather and conduct ceremonial activities within traditional Treaty 6 lands.

10. More specifically, the Samson Cree Nation submitted that the Samson Cree Nation reserve land is close to 800 metres away from the edge of the proposed alternate route and that traditional activities occur beyond the borders of the reserve. The Samson Cree Nation contended that in some instances the traditional harvesting areas of the Samson Cree Nation directly intersect with the WATL project area and provided affidavit evidence in support of the use of these harvesting areas. Also, the affidavits addressed the effects the proposed alternate route would impose on the Samson Cree Nation’s constitutionally protected rights to hunt, fish, trap and gather in the area.

² Decision 2006-120: AltaLink Management Ltd. 500 kV Electric Transmission Line from Genesee Area to the Langdon Substation in East Calgary and EPCOR Transmission Inc. Alterations to the Existing Genesee Substation to Accommodate the Proposed Transmission Line, Prehearing Meeting Decision, Application No. 1478550 and No. 1479163, November 23, 2006.

11. The Samson Cree Nation also submitted that the proposed WATL project would affect wildlife and wildlife habitat in the area which would in turn, affect the Samson Cree Nation's rights and current practice of harvesting, gathering, hunting, trapping and fishing in the area of the proposed WATL project.

Views of ADC

12. ADC requested standing from the Commission because the cost of routing alternatives, cost of structure options, and cost to implement and resulting system reliability would impact ADC members. ADC stated that the routing decision would have a significant impact on future transmission costs and may affect the businesses of ADC members. ADC argued that the only venue for the review of the relative merits of the proposed routing alternatives and associated costs and the implications to ADC members would be through the Commission's hearing for the application.

13. ADC submitted that the reasoning employed by the Commission in the Heartland Transmission project to allow the Industrial Power Consumers Association of Alberta (IPCAA) limited participation in the hearing should also apply to the ADC for the WATL project application.

Views of CPC

14. CPC submitted that it has interests in several existing generating facilities in the Keephills-Ellerslie-Genesee transmission area, including the proposed Keephills 3 generating facility. The proposed interconnection of the Keephills 3 project includes the upgrade of existing 240-kV transmission lines to 500-kV, which would be a part of the transmission system proposed to be connected to the WATL project.

15. CPC stated that it supports the application and does not currently expect to have an active role in the proceeding. However, to the extent issues arise during the course of the proceeding, CPC would advise the Commission of any intentions to increase its level of participation in the proceeding.

Views of ENMAX

16. ENMAX submitted that its statement of intent to participate was filed on behalf of ENMAX Corporation, which includes ENMAX Energy Corporation and ENMAX Power Corporation, which are both affiliates of ENMAX Corporation. Through these affiliates, ENMAX is an owner and developer of generation, transmission and distribution assets in Alberta that may be directly and adversely affected by the Commission's decision in this proceeding.

17. ENMAX submitted that its legal rights would be affected by the Commission's decision on this application as ENMAX has a vested interest in the development and operation of electricity infrastructure and that the Commission's decision in this proceeding may affect its existing business operations. ENMAX stated that it has received correspondence from the Alberta Electric System Operator (AESO) regarding the potential risk of impaired generating-unit operations due to the WATL project. ENMAX asserted that its right to operate generation facilities may be directly and adversely affected by the Commission's decision in this proceeding.

18. ENMAX noted that there are relatively few examples of a high-voltage direct current (HVDC) electric system operating in parallel to each other and to an alternate current system. ENMAX submitted that it is critical for ENMAX to be given the opportunity to understand the potential impact of such a network configuration on its generation and transmission facilities, and to have meaningful input into potential mitigation requirements.

Views of the Keoma Group

19. The Keoma Group provided street addresses for four of its members that are located within 800 metres from the proposed transmission line. The Keoma Group also stated that there are three additional members in the group that are located within 800 metres from the proposed transmission line, but that only the P.O. boxes of those members are available. If required by the Commission, the street addresses of those three additional members would be provided.

Views of Mr. John Knight

20. Mr. John Knight stated that he should be listed under Schedule “B” - Persons with Standing as he is a directly affected party and has provided his correct land location since his submission dated April 11, 2011, contained an incorrect land location.

Views of AltaLink

21. On May 20, 2011, AltaLink responded to the submissions from ADC and ENMAX.

22. AltaLink submitted that the Commission should deny standing to ADC to participate in the proceeding. Regarding the legal test for standing, AltaLink noted that in the Heartland proceeding, the Commission ruled that being a ratepayer, or group of ratepayers, is an insufficient basis for standing. AltaLink stated that ADC has not provided any evidence that one or more of its members have interest in land that is located within 800 metres of any of the proposed routes and that in a situation such as this; no ratepayer’s right is greater than another’s.

23. AltaLink added that the Commission’s discretion to grant IPCAA limited participation in the Heartland proceeding was based on different facts, parties and circumstances. AltaLink argued that the Commission granted IPCAA limited participation in the Heartland proceeding for specific reasons including that the Heartland application was the first critical transmission infrastructure project reviewed by the Commission, that the transmission alternatives proposed by the applicants in the Heartland project differed significantly in terms of cost, and the only venue for IPCAA to comment on cost of transmission alternatives would be the Heartland proceeding in the absence of a statutory needs assessment. AltaLink submitted that the projected cost difference between routes for the Heartland application is approximately \$429 million whereas, in the WATL application, the projected cost difference is approximately \$47 million. Therefore, the proposed routing alternatives in the WATL proceeding would have far less economic impact than the proposed routing alternatives in the Heartland proceeding.

24. AltaLink also submitted that the Commission should deny standing to ENMAX to participate in the proceeding. AltaLink noted that ENMAX did not state that it has interests within 800 metres of the WATL project.

25. AltaLink asserted that the AESO's request for information from ENMAX was made in the ongoing HVDC design studies undertaken by the AESO in the normal course of its mandate to plan and design the Alberta Interconnected Electric System. The request does not justify ENMAX to be granted standing in the proceeding.

26. AltaLink also disagreed with ENMAX's argument that it should be granted standing because it is a participant in the electricity market.

27. The Commission has considered the submissions received and has asked that I inform parties of its decision regarding the standing of the persons referred to above.

Commission ruling

28. Standing before the Commission is determined by subsection 9(2) of the *Alberta Utilities Commission Act* which states:

(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.

29. In *Cheyne v. Alberta (Utilities Commission)*,³ the Alberta Court of Appeal characterized Section 9(2) as the equivalent of Section 26(2) of the *Energy Resources Conservation Act* and confirmed that the two-part test for standing under Section 26(2) applies to subsection 9(2). The Court described that test as follows:

...s. 26(2) has two branches. First is a legal test, and second is a factual one. The legal test asks whether the claim right or interest being asserted by the person is one known to the law. The second branch asks whether the Board has information which shows that the application before the Board may directly and adversely affect those interest or rights. The second test is factual.⁴

30. The Commission is not satisfied that ATCO has shown that its proposed EATL project may be directly and adversely affected by the WATL application. The Commission notes that in Proceeding ID No. 457 (Heartland Transmission project) and in Proceeding ID No. 748 (Cassils-Bowmanton project) ATCO submitted that the location of the proposed facilities might impact the location of some of the facilities it would be proposing. Although the EATL application addresses a number of similar issues to the WATL application, the Commission finds that ATCO has not demonstrated that its rights may be directly and adversely affected or that exceptional circumstances exist in respect of its interest in this application.

³ *Cheyne v. Alberta (Utilities Commission)*, 2009 ABCA 94 at paragraph 13.

⁴ *Ibid.*

31. The Commission finds that Samson Cree Nation has standing to participate in this proceeding as a portion of its reserve land is approximately 800 metres from the edge of the right-of-way on the alternate route. The Commission finds that Samson Cree Nation has demonstrated that it has rights that may be directly and adversely affected by the Commission's decision on the application.

32. The Commission finds that CPC has standing to participate in this proceeding because CPC has existing generating facilities in the Keephills-Ellerslie-Genesee area that may be impacted by the WATL project.

33. The Commission finds that the Keoma Group and Mr. Knight have standing to participate in this proceeding as at least one member of the Keoma Group owns or resides on land within 800 metres of the proposed project and Mr. Knight owns property within 800 metres of the proposed project.

34. The Commission finds that ENMAX has standing to participate in this proceeding because of the potential risk to its generating-unit operations posed by the WATL project. The Commission is satisfied that ENMAX has demonstrated that its generation facilities may be directly and adversely affected by the Commission's decision in this proceeding.

35. In regard to ADC, the Commission finds that it does not have standing to participate in the WATL proceeding for the following reasons:

- a) The Commission notes that it allowed IPCAA to participate in the Heartland proceeding for specific reasons including that the transmission alternatives proposed in the Heartland project differed significantly in terms of cost. The Commission considered that the projected cost difference between routes for the Heartland application was approximately \$429 million whereas, in the WATL application, the projected cost difference is approximately \$47 million.
- b) Also, the Commission observes that ADC did not submit that it had any member with an interest within 800 metres of either the preferred or alternate routes. The Commission granted standing to IPCAA for the Heartland proceeding partly on the basis that the rights of seven of its members may be directly and adversely affected because they owned pipelines or other facilities that may be affected by the Commission's decision on the routing for the Heartland project.
- c) Furthermore, the Commission notes that ADC has not shown any reason that the Commission should not apply the following from Alberta Energy and Utilities Board Decision 2006-120, which states:

The Board is not satisfied that participants whose only connection to this application is their status as customers of electrical service in the Province of Alberta have demonstrated the requisite direct and adverse impact upon their rights and will not, without further information, be granted standing in this proceeding. As set out above, any impact which this project may or may not have on rates will be determined at a future date and in a different process. Parties whose rights or status as potential customers may be affected by the

inclusion or exclusion of this line in the rates will have the opportunity to have their concerns considered at that time.⁵

For the above noted reasons, the Commission finds that ADC has not shown that it has rights that may be directly and adversely affected.

36. The Commission confirms that the only persons with standing in this proceeding are those persons set out on the updated list of persons with standing, which is attached to this ruling. This list includes any person that is within 800 metres of the proposed transmission line or a group that has at least one member that is within the 800 metres who has filed a statement of intent to participate since the process meeting for this proceeding. The Commission finds that UPTAG, and other persons who did not submit further information to the Commission as requested in its Decision 2011-198, have provided insufficient information for the Commission to determine whether those persons have standing in this proceeding.

37. The Commission notes as of this date it has not received a submission from a person with standing in response to paragraph 35 of Decision 2011-198 that indicates they intend to participate in this proceeding both individually and as a member of a group.

Yours truly,

(original signed by)

Giuseppa Bentivegna
Commission Counsel

Attachment

⁵ Alberta Energy and Utilities Board Decision 2006-120, November 23, 2006.

Updated list of persons with standing

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Capital Power Corporation

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

ENMAX Corporation

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Knight, John

Larsen, Ken

Lausen, Gordon / Lausen Ranches Ltd. and Page, Jean B.

Linhof Farms Ltd.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

McLeod, Don / West Kathryn Development Ltd.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Russell, Lyle / Top Man Holdings Ltd.

Samson Cree Nation

[REDACTED]

[REDACTED]

[REDACTED]

Town of Crossfield

[REDACTED]

Utilities Consumer Advocate (UCA)

Valecourt, Jaromey and Jonn

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Wheatland County

[REDACTED]

Updated list of groups with standing

566 Corridor Group

Chinook Country Group

Glenniffer Lake Group

Kathryn School Council

Keoma Group

Lavesta Area Group

Midway Group

Owners Opposed to the Langdon Alternative Group

R. Secord Group

West Crossfield Group

Westcott/Hainstock Landowners Group