

October 12, 2018

To: Persons currently registered on Proceeding 23653

**Alberta Electric System Operator, AltaLink Management Ltd. and  
Canadian Natural Resources Limited  
Kirby North Central Processing Facility Connection Needs Identification Document and  
Facility Applications**

**Proceeding 23653  
Applications 23653-A001 to 23653-A004**

**Ruling on standing**

1. In this ruling, the Alberta Utilities Commission decides whether to hold a public hearing to consider electric transmission development applications by the Alberta Electric System Operator (AESO), AltaLink Management Ltd. (AltaLink) and Canadian Natural Resources Limited. (CNRL). The applications were filed for approval of a needs identification document and facilities for the Kirby North Central Processing Facility Connection, to be located south of Conklin, Alberta.
2. The Commission must hold a hearing if persons who have filed a statement of intent to participate in Proceeding 23653 have demonstrated that they have rights that may be, “directly and adversely affected” by the Commission’s decision on the applications. Such a person may participate fully in the hearing, including giving evidence, questioning witnesses, and providing argument. This right to participate is referred to as standing.
3. The Commission issued a notice of applications for Proceeding 23653 on July 26, 2018. The Commission received a statement of intent to participate from ISH Energy Ltd. (ISH Energy) on August 8, 2018. CNRL filed a letter dated August 17, 2018, addressing the concerns raised by ISH Energy about potential impacts to ISH Energy’s pipelines near the proposed facilities.
4. On October 1, 2018, ISH Energy stated that it does not consider the corrosion services study completed on behalf of CNRL to be complete and final. ISH Energy also stated that it does not consider the recommended mitigation measures proposed by CNRL to be adequate.
5. On October 2, 2018, CNRL submitted a letter to the Commission requesting a technical meeting among CNRL, ISH Energy, AltaLink and the AUC.
6. On October 3, 2018, AltaLink submitted a letter to the Commission indicating that it is working with ISH Energy to complete a baseline study to determine the effects of AltaLink’s existing transmission lines on ISH Energy’s pipelines and to identify reasonable AC mitigation measures. AltaLink also requested a technical meeting among CNRL, ISH Energy, AltaLink and the AUC.

7. On October 10, 2018, ISH Energy submitted a letter to the Commission agreeing to a technical meeting with CNRL and AltaLink.

8. In this proceeding, the Commission is considering standing in relation to two different types of applications: (i) a need application, filed by the AESO requesting approval of the need identified and the preferred option to meet that need; and (ii) facility applications, filed by CNRL and AltaLink requesting approval of the specific routing and siting of the facilities required to meet the need identified.

9. The Commission has authorized me to communicate its decision on standing. For the reasons that follow, the Commission finds that ISH Energy has standing in relation to CNRL's facility applications. The statement of intent to participate did not question the need for the project filed by the AESO or identify concerns with the facility application filed by AltaLink.

### **How the Commission determines standing**

10. 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]

11. The meaning of the key phrase, “directly and adversely affect,” has been considered by the Alberta Court of Appeal 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.<sup>1</sup>

12. To determine if a right is “directly” affected, the court has said that, “[s]ome degree of location or connection between the work proposed and the right asserted is reasonable.”<sup>2</sup> When considering the location or connection, the Commission looks at factors such as residence and the frequency and duration of the applicant's use of the area near the proposed site.<sup>3</sup>

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<sup>1</sup> *Cheyne v Alberta (Utilities Commission)*, [2009 ABCA 94](#); *Dene Tha' First Nation v Alberta (Energy and Utilities Board)*, [2005 ABCA 68](#) [Dene Tha'].

<sup>2</sup> Dene Tha'.

<sup>3</sup> *Sawyer v Alberta (Energy and Utilities Board)*, [2007 ABCA 297](#).

13. The Commission summarized court decisions relating to the meaning of the phrase, “directly and adversely affected,” in a decision issued in 2015 and concluded that to pass the test for standing, “the potential effects associated with a decision of the Commission must be personal rather than general and must have harmful or unfavourable consequences.” The Commission further commented that the court decisions, “highlight the need for persons seeking standing to demonstrate the degree of connection between the rights asserted and potential effects identified.”<sup>4</sup>

14. 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 statement of intent to participate that it receives. In the past, the Commission has decided that general or broad concerns about a proposed project will normally be insufficient to establish standing, unless a more specific link or connection to the demonstrated or anticipated characteristics of a proposed project is established.

### **Ruling**

15. The facility applications filed by CNRL describe the approximately 13 kilometres of new 138-kilovolt single-circuit transmission line it proposes to construct from its approved Margie 1034S Substation to AltaLink’s transmission line 789L, in order to meet the need identified by the AESO. For facility applications, the Commission must consider whether approval is in the public interest having regard to the social, economic and environmental effects associated with the project. Standing in facility applications is therefore generally granted to those who demonstrate legal rights, usually property rights, that may be directly and adversely affected by the Commission’s decisions on the applications.

16. ISH Energy stated that it owns and operates pipelines in Legal Subdivision 2, Section 30, Township 74, Range 8, west of the Fourth Meridian, within 200 metres of the transmission development proposed by CNRL. ISH Energy is concerned that potential AC interference could pose a risk to its pipelines, and it wants the Commission to consider this concern when it makes decisions on the project.

17. The Commission is satisfied that ISH Energy has legal rights that may be directly and adversely affected by the Commission’s decision on CNRL’s applications. As such, ISH Energy has met the test for standing with respect to CNRL’s facility applications.

18. The Commission believes that the technical meeting proposed by CNRL and AltaLink could be beneficial to the parties concerned with the facility applications, and that it will likely result in some process efficiencies and obviate the need for another round of information requests. Given that the parties concerned are in support of such a meeting, the Commission directs those parties to hold a technical meeting as soon as practical, on a mutually agreeable date, to advise the Commission in writing of the date of such meeting, and once the meeting has occurred, to submit the meeting minutes to the Commission and on the public record.

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<sup>4</sup> Decision 3110-D02-2015: Market Surveillance Administrator Allegations against TransAlta Corporation et al., Phase 2 Preliminary matters; Standing and Restitution, Proceeding 3110, September 18, 2015.

19. If you have any questions, please contact the undersigned at 403-592-3280 or by email at [gary.perkins@auc.ab.ca](mailto:gary.perkins@auc.ab.ca).

Yours truly,

Gary Perkins  
Commission Counsel