

# Bulletin 2019-20

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## **Interim direction on Indigenous consultation**

The Alberta Utilities Commission regulates the construction and operation of utility projects. The Commission has the authority to consider and address potential adverse impacts to Aboriginal and treaty rights as provided in Section 35 of the *Constitution Act, 1982*, when deciding whether approval of a utility project is in the public interest. This authority has been confirmed in recent decisions of the Supreme Court of Canada and by the Alberta government.

In June 2019, the Commission announced in Bulletin 2019-10: *AUC Rule 007 - Initiation of a review and stakeholder consultation process* that it would review its processes and procedures to ensure that the application requirements for consultation with First Nations and Métis are clear. Initial feedback received from Indigenous groups and industry indicated strong support for clear application requirements, alignment with the Alberta government's consultation process, and more opportunities for external participation. Based on this feedback, the Commission has decided to separate development of Indigenous consultation processes and procedures from the AUC Rule 007: *Applications for Power Plants, Substations, Transmission Lines, Industrial System Designations and Hydro Developments* review project to allow more time for discussion. In addition, the scope of the Commission's review of Indigenous consultation processes and procedures will include AUC Rule 020: *Rules Respecting Gas Utility Pipelines*. The Commission's goal is to have updated processes and procedures with clear Indigenous consultation application requirements completed by the fall of 2020.

As interim measures, the Commission is putting in place the following:

- I. Interim Indigenous consultation and information requirements for proponents.
- II. A new statement of intent to participate form for Indigenous groups (pilot).

The purpose of the new form is to help Indigenous groups provide the necessary information to demonstrate to the Commission how the rights being asserted may be directly and adversely affected by a proceeding. The AUC is piloting the use of the form and is seeking feedback on the format and its effectiveness.

- III. Indigenous engagement web page.

The web page is designed to help Indigenous groups understand the regulatory process and how they can get involved. It also provides guidance to proponents on Indigenous consultation.

## **Interim consultation and information requirements**

A utility project applicant must develop a participant involvement program that includes Indigenous groups if there is a potential for the project to affect Section 35 rights. While this is not an entirely new requirement, Rule 007 and Rule 020 do not currently specify how Indigenous consultation should occur in the context of a participant involvement program.

The following interim consultation and information requirements codify existing best practices and will apply to all new transmission lines, substations, power plants, hydro projects, industrial system designations and gas utility pipelines filed on or after **March 1, 2020**.

1. If the Alberta government, through the Alberta Consultation Office (ACO) or otherwise, directed consultation for related approvals (i.e., *Public Lands Act*, *Water Act*, *Environmental Protection and Enhancement Act*, *Historical Resources Act*, *Government Organization Act*, etc.), the applicant must provide:
  - a. A copy of the pre-consultation assessment, the adequacy assessment, and the specific issues and response table (if prepared).
  - b. A status update, including a summary of discussions, the concerns that have been raised, and how these concerns are being addressed (if consultation is ongoing).
2. If the Alberta government, through the ACO or otherwise, indicated that a pre-consultation assessment was not required, the applicant must provide a copy of that direction.
3. If advice from the Alberta government was not sought by the applicant, the applicant must summarize the steps it took to identify and consult with Indigenous groups. Applicants are encouraged to use the Alberta government's [Landscape Analysis Indigenous Relations Tool \(LAIRT\)](#) to inform their decisions about consultation. If no steps were undertaken to identify and consult with Indigenous groups, the applicant must provide an explanation for that decision.
4. If consultation with Indigenous groups was undertaken, the applicant must provide a summary of such consultation as part of the participant involvement program.

## **Indigenous statement of intent to participate form pilot project**

Persons or groups who want to participate in an AUC facility proceeding are required to fill out a statement of intent to participate form. Through the form, interested persons can provide information about the potential effects of a proposed project on their rights and interests.

The new Indigenous statement of intent to participate form recognizes the importance of rights provided in Section 35 of the *Constitution Act, 1982*, and seeks information specific to the assertion of Section 35 rights and the potential effects of a proposed project on those rights. Indigenous groups can use the new form effective immediately. The Commission is piloting the use of the form and seeks feedback on the format and its effectiveness.

## **Indigenous engagement web page on the AUC website**

The Commission has launched a new page on its website that is devoted to Indigenous engagement. The new page is designed to help Indigenous groups understand the regulatory process and to provide information on how to get involved in proceedings. The new web page also provides guidance to proponents on Indigenous consultation.

If you have questions or feedback on the AUC's interim requirements, the pilot form, or the new Indigenous engagement web page, please contact Amanda Spyce at [amanda.spyce@auc.ab.ca](mailto:amanda.spyce@auc.ab.ca) or by phone at 403-592-4547, or JP Mousseau at [jp.mousseau@auc.ab.ca](mailto:jp.mousseau@auc.ab.ca) or by phone at 403-592-4452.

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