

September 25, 2019

To: Parties currently registered on Proceeding 24687

**ATCO Power Canada Ltd.
Valleyview Power Plant Expansion
Proceeding 24687
Application 24687-A001**

Ruling on standing

1. In this ruling, the Alberta Utilities Commission decides whether to hold a public hearing to consider an application by ATCO Power Canada Ltd. for approval to add a 35-megawatt natural gas-fired turbine generating unit to the Valleyview Power Plant (the project) located near Valleyview, Alberta.
2. The Commission issued a notice of application for Proceeding 24687 on July 29, 2019. The Commission received a statement of intent to participate (SIP) from the Peavine Metis Settlement.
3. The Commission must hold a hearing if the Peavine Metis Settlement has demonstrated that it has rights that may be directly and adversely affected by the Commission's decision. This is called "standing." Standing gives the Peavine Metis Settlement the right to participate fully in a hearing, including giving evidence, questioning of witnesses, and providing argument.
4. The Commission has authorized me to communicate its decision on standing. For the reasons set out below, the Commission has decided that the Peavine Metis Settlement does not have standing in this proceeding.

How the Commission determines standing

5. 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]

6. The standing test applies to all persons, companies, organizations and Indigenous groups who want to participate in Commission hearings. The test has two parts. First, you must demonstrate that your right or interest is recognized by law. Second, you must provide some concrete information that shows that if the Commission approves the project, your rights may be directly and adversely affected. The first part of the test is legal; the second part of the test is factual. Both parts of the test must be satisfied before the party seeking participation rights will be granted standing.

7. To satisfy the factual part of the test, the party seeking to participate must show some degree of location or connection between the work proposed and the right asserted.¹ This means, for example, that sufficient information about the traditional activity; i.e., hunting, fishing, trapping or traditional use, should be provided. In addition, proximity of the exercise of traditional activity to the proposed project should be confirmed, and the project's effect on the activity or the right-holder's ability to undertake the activity, should be described.

Statement of intent to participate

8. In its SIP,² the Peavine Metis Settlement submitted that the project would be located in its traditional land use area and expressed an interest in mitigating environmental impacts such as impacts on wildlife, air and water quality, noise, soil and plant disruption. Concerns expressed by the Peavine Metis Settlement include environmental and socio-economic effects including cumulative effects, impacts on Indigenous interests protected by Section 35 of the *Constitution Act*, 1982, and safety and security during the construction and operation of the project.

9. In response to a Commission request for further information on potential site-specific impacts from the project, the Peavine Metis Settlement submitted that it had completed a site visit and determined that it had no concerns with the project. However, the Peavine Metis Settlement also asserted that it holds inherent rights that have been infringed upon by the project, and that it had been advised by its counsel to proceed with its intervener application notwithstanding its determination that it has no concerns with the project.³

Ruling

10. Regardless of any determination on the first part of the standing test, the Commission finds that the Peavine Metis Settlement has not met the second part of the test and is therefore denied standing in this proceeding.

11. In its statement of intent to participate the Peavine Metis Settlement provided a general assertion of traditional uses in or near the project area. The Peavine Metis Settlement subsequently acknowledged that it has no concerns with the project but is maintaining its objection on the advice of counsel.

¹ *Dene Tha' First Nation v. Alberta (Energy and Utilities Board)*, 2005 ABCA 68, at paragraph 14.

² Exhibit 24687-X0017, Peavine Métis Statement of intent to participate.

³ Exhibit 24687-X0024, Peavine Métis email to AUC re Power Plant Expansion.

12. As the Commission has previously found, general statements of concern do not, without more detailed information, meet the factual test for standing. It is incumbent upon a person seeking standing in an AUC proceeding to provide the Commission with sufficient information to demonstrate a causal connection between the proposed project and its potential direct and adverse effect on the asserted rights.

13. Based on the information provided, the Commission finds that the Peavine Metis Settlement has not demonstrated that the rights it has asserted may be directly and adversely affected by the Commission's decision in this proceeding. As no party with standing has objected to the application, the Commission will not hold a public hearing to consider the application.

14. If you have any questions please contact me at 403-592-4394 or by email at meghan.anderson@auc.ab.ca.

Yours truly,

Meghan Anderson
Commission Counsel