

October 24, 2019

To: Parties currently registered on Proceeding 24827

**ATCO Gas and Pipelines Ltd.
Northwest Calgary Connector Pipeline Project
Proceeding 24827
Application 24827-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 Gas and Pipelines Ltd. for approval to install approximately 14.3 kilometres of new 508-millimetre outside diameter high-pressure sweet natural gas pipeline, in northwest Calgary, primarily on the west side of Stoney Trail from the existing Bearspaw Control Station to the proposed Big Hill Springs Control Station, where it ties into the existing East Calgary Lateral Pipeline.
2. The Commission must hold a hearing if persons who have filed a statement of intent to participate in Proceeding 24827 have demonstrated that they have rights that may be “directly and adversely affected” by the Commission’s decision. Such a person may participate fully in the hearing, including giving evidence, questioning of witnesses, and providing argument. This permission to participate is referred to as standing.
3. The Commission has authorized me to communicate its decision on standing.

Statements of intent to participate

4. On September 5, 2019, the Commission issued a notice of hearing for Proceeding 24827. In the notice, the Commission directed any person who had concerns or objections to the application to file a statement of intent to participate by October 16, 2019.
5. The Commission received numerous statements of intent to participate in response to the notice of hearing, including from persons who stated that they own, occupy or manage land near the proposed pipeline project.
6. The concerns raised by the persons who own, occupy or manage land near the proposed pipeline project include the routing of the proposed pipeline, decreased property values, negative impact on future land development, property access during construction, visual effects, increased noise, negative health effects, impacts on safety, quality of public consultation and effects on the environment.

How the Commission determines standing

7. 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]

8. The meaning of the key phrase, “directly and adversely affect,” has been considered by the Court of Appeal of Alberta 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.¹

9. 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.”² 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.³

10. 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.”⁴

11. 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 generally be insufficient to establish

¹ *Cheyne v Alberta (Utilities Commission)*, 2009 ABCA 94; *Dene Tha’ First Nation v Alberta (Energy and Utilities Board)*, 2005 ABCA 68 [*Dene Tha’*].

² *Dene Tha’*.

³ *Sawyer v Alberta (Energy and Utilities Board)*, 2007 ABCA 297.

⁴ 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.

standing, unless a more specific link or connection to the demonstrated or anticipated characteristics of a proposed project is established.

Ruling

12. The Commission is satisfied that the persons listed in Schedule A, all own or occupy land located on, or directly adjacent to, the proposed pipeline right-of-way, or are within close proximity of the proposed pipeline right-of-way, and have demonstrated that they have legal rights that may be directly and adversely affected by the Commission's decision on the application. The potential effects and concerns described by these persons include proximity of the project, decreased property values, negative impact on future land development, visual effects, increased noise, negative health effects, and effects on the environment that affect them or their property.

13. Mr. Pat Green filed a statement of intent to participate in which he indicated his opposition to the proposed pipeline project. The Commission understands that Mr. Green's property is not directly adjacent to the proposed pipeline right-of-way and is located more than 400 metres from its edge. The Commission finds that Mr. Green failed to provide sufficient information to demonstrate that he has legal rights or interests that may be directly and adversely affected by the proposed pipeline.

14. The Commission will afford Mr. Green an opportunity to provide additional information regarding his land location that would allow the Commission to locate his property in relation to the project. Mr. Green should file a response by **October 31, 2019**. The Commission will re-assess Mr. Green's standing based on any response filed by then.

15. The persons who have been granted standing are eligible to potentially recover the costs of their participation in this proceeding, as they fall within the definition of "local intervener" in Section 22 of the *Alberta Utilities Commission Act*. Rule 009: *Rules on Local Intervener Costs* applies to costs claims for this proceeding.

16. The Commission emphasizes that eligibility to claim costs does not guarantee full recovery of any costs. Any claims for costs must be filed after this proceeding is concluded, in accordance with Rule 009, and costs recovery is subject to the Commission assessing the parties' contribution to the proceeding. The Commission encourages parties with similar interests and positions to work together to ensure that any expenditures are minimized and costs are not duplicated.

17. If you have any questions, please contact the undersigned at 403-592-4360 or by email at rob.watson@auc.ab.ca

Yours truly,

Rob Watson
Commission Counsel

Attachment

Schedule A - Persons and organizations with standing in Proceeding 24827

Name	Representative
Brenda Lynch	
Carmela Chan	Ackroyd LLP
Carmelo Silvestro	
Darlene Campbell	
Denise Morey	
Don Aultman	
Ernie Anderson	
Galen Enns	
Gary Kaye	
Harbinder Singh Heer	Badyal Toor
Harmeet Kaur Randhawa	Badyal Toor
Jatinder Wadh	Badyal Toor
Jaymal Ruparell	Ackroyd LLP
Li Ming Cong	
Manjinder Singh Dhani	Badyal Toor
Marion Enns	
Normand Tisserand	
Stephen Thomas	
Sukhvinder Singh Wahid	Badyal Toor
Sunpreet Shergill	
Ulla Kalny	