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Utilities Commission

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September 6, 2019

Sent via eFile

**BCUC INDIGENOUS UTILITIES REGULATION INQUIRY
EXHIBIT A-34**

Mr. David Austin
Stirling LLP
Suite 1460 - 701 West Georgia Street
PO Box 10156, LCD Pacific Centre
Vancouver, BC V7Y 1E4
daustin@stirlingllp.com

**Re: British Columbia Utilities Commission – Indigenous Utilities Regulation Inquiry – Project No. 1598998
– Daria Babaie Information Request Responses to the Collective First Nations**

Dear Mr. Austin:

Further to the August 12, 2019 Information Requests to Mr. Daria Babaie, on behalf of the Nuu-Chah-Nulth Tribal Council, Cowichan Tribes, Gitanyow First Nation, Homalco First Nation and BC First Nations Clean Energy Working Group (Collective First Nations), please find enclosed Mr. Babaie's responses.

Sincerely,

Original Signed By:

Patrick Wruck
Commission Secretary

/nd
Enclosure

**British Columbia Utilities Commission (BCUC)
Indigenous Utilities Regulation Inquiry**

**Response to Nuu-Chah-Nulth Tribal Council,
Cowichan Tribes, Gitanyow First Nation,
Homalco First Nation and B.C. First Nations
Clean Energy
Working Group (“Collective First Nations”)
Information Request No. 1 to Daria Babaie,
Ryezán Inc.**

**Prepared by:
Daria Babaie, P. Eng., CPA, CMA
Ryezán Inc.**

September 6, 2019

Response to Collective First Nations Information Request No. 1 to Daria Babaie, Ryezan Inc.

1. Reference: Exhibit A-13, 4.1 Electricity Transmission Companies, 4.1.1 PiikaniLink Limited Partnership, Background Information, page 6

“On April 27, 2017, AltaLink applied to the AUC requesting for sale and transfer of the 240 kV Line and substation equipment on Piikani Nation reserve to PiikaniLink L.P.”

1.1 Was this a newly constructed 240 kV Line and substation equipment or was it existing line and equipment?

Response:

On April 27, 2017, when AltaLink Management Ltd. (AltaLink) filed an application with the Alberta Utilities Commission (AUC) (the “AUC Proceeding 22612”) regarding sale and transfer of the 240 kV Line and substation equipment on Piikani Nation reserve to PiikaniLink L.P., these transmission facilities were AltaLink’s existing assets. The AUC Proceeding 22612 did not deal with the construction of any new lines or equipment.

The construction of the SW 240 KV line had started in July 2009. The SW 240 KV line had been energized in October 2010.

1.2 Is this line and equipment an integral part of AltaLink’s Southwest Project?

Response:

The line and equipment were an integral part of AltaLink’s Southwest Project. As noted above, no new project was constructed as part of the AUC Proceeding 22612. The AUC Proceeding 22612 did not deal with the construction of any new lines or equipment. The proceeding tested the transfer and sale of a portion of AltaLink’s 240kV transmission line to PiikaniLink LP and KainaiLink L.P. that were located on the Piikani Reserve No. 147 and on the Blood Reserve No. 148.¹

¹ AUC Decision dated November 13, 2018, AltaLink L.P. Transfer of Specific Transmission Assets to PiikaniLink L.P. and KainaiLink L.P. and the Associated 2017-2018 General Tariff Applications. http://www.auc.ab.ca/regulatory_documents/ProceedingDocuments/2018/22612-D01-2018.pdf

1.3 Please provide the details of this project and in particular the reason for it and a map of it.

Response:

Background to the AltaLink's application with the AUC for Sale and Transfer of the 240 kV Line and Substation equipment on Piikani Nation Reserve to PiikaniLink L.P.

As noted above, no new project was constructed as part of the AUC Proceeding 22612.

The particulars of the AltaLink's application with the AUC regarding sale and transfer of the 240 kV Line and substation equipment on Piikani Nation reserve to PiikaniLink L.P., were provided in detail in the following documents:

- AUC Decision 2009-028 dated March 10, 2009 regarding AltaLink Management Ltd. application for approval to construct and operate a 240 kV transmission line between Pincher Creek and North Lethbridge.²
- *"Immediate Attention for Piikani Nation Members IMPORTANT INFORMATION Altalink L.P., Transfer of Specific Assets to PiikaniLink L.P. and associated 2017-2018 General Tariff Application. AUC Proceeding 22612 Applications 22612-A001 to 22612-A004."*³ This document was issued by Piikani Nation and Piikani Resource Development Ltd. to Piikani Nation, as a part of the AUC Proceeding 22612 for the transfer of specific Assets to PiikaniLink L.P. and associated 2017-2018 General Tariff Application.

Summary Background:

- 1 The Alberta Electric System Operator (the "AESO") filed the original need application (the "Need Application) for upgrades to the southwest Alberta transmission system (SW Line) with the Alberta Energy and Utilities Board (EUB) in April 2004.
- 2 The AESO's Needs Identification Document (NID) identified the need for a new 240 kV transmission line and related facilities between the Pincher Creek Substation and the North Lethbridge Substation. The AESO explained that the need for these new 240 kV facilities was driven by the growing wind generation industry in southwest Alberta.
- 3 The EUB issued the Decision 2005-049 dated May 17, 2005 for approval of Need Application for the SW Line filed by the AESO.
- 4 In Decision 2005-049, the EUB approved the Need Application for the AESO's proposed 240 kV upgrade to the transmission. The EUB described the benefits of this upgrade to the transmission system being considered in that proceeding as follows:

² http://www.auc.ab.ca/regulatory_documents/ProceedingDocuments/2009/2009-028.pdf

³ <http://www.prdl.ca/uploads/4/1/6/9/41694341/piikanilinklp.pdf>

... the Board finds that the upgrades proposed in the NID to alleviate the constraint in the SW Transmission System and to improve system efficiency will result in an economic and efficient transmission system. The Board also believes that the proposed upgrades will result in a transmission system that is safe, reliable, robust, provides for non-discriminatory system access, and will facilitate an openly competitive market

- 5 In the proceeding related to the SW Line, the AESO had stated that its preferred route for the SW Line was to cross the Peigan Indian Reserve and the Blood Indian Reserve. Alternative routing had been rejected due to landowner concerns, additional required line and corresponding costs, and the necessity to traverse additional agricultural land. The transmission line route crossing the Blood and Piikani Reserves was preferred based upon environmental, economic and engineering considerations with minimal effects on residences.
- 6 The AESO's preferred option was to cross the Blood and Piikani Reserves. These lands fall under federal jurisdiction and required an environmental assessment under the Canadian Environmental Assessment Act and approval from the Department of Indian and Northern Affairs (INAC). The Mud Lake option was intended to bypass the Blood and Peigan Indian Reserves in case INAC approvals could not be obtained.
- 7 The AESO assigned AltaLink to prepare and submit to the EUB a facility application consistent with the approval issued to the AESO.
- 8 Chief and Council for the Peigan First Nation passed a Band Council Resolution approving the specific routing in July 2007.
- 9 On August 10, 2007, AltaLink filed Application No. 1521942 with the EUB for approval to construct and operate the new 240 kV transmission line between Pincher Creek and North Lethbridge. The proposed transmission line would cross both the Peigan and the Blood Indian Reserves and was the subject of a federal environmental assessment.
- 10 On January 1, 2008, the EUB was replaced by the Energy Resources Conservation Board and the AUC. Regulation of transmission facilities was transferred to the AUC which assumed regulatory oversight of the Application at that time.
- 11 In the Application No. 1521942 proceeding, AltaLink explained that the process of routing a transmission line on a First Nation reserve involves the following four steps:
 - Approval of the transmission line route by the First Nation;
 - Approval of the environmental assessment by the INAC;
 - Approval of the transmission permit language by the First Nation; and
 - Issuance of the transmission permit by INAC under section 28(2) of the *Indian Act*.
- 12 The environmental assessment was approved by INAC, and in June 2008, the Chief and Council passed a Band Council Resolution approving the Transmission Permit for the proposed line.

- 13 On July 29, 2008, AltaLink received approval from INAC to cross the Peigan and Blood Indian Reserves. Accordingly, AltaLink amended the Application by removing the two routes that bypassed the two First Nation reserves. AltaLink was now seeking approval of a single route between Pincher Creek and Lethbridge with three options for entering the City of Lethbridge
- 14 The hearing regarding AltaLink's Application No. 1521942 commenced on December 1, 2008. On December 10, 2008, the AUC heard the participants' arguments and reply arguments.
- 15 By Decision 2009-028 dated March 10, 2009, the AUC approved Altalink's Application No. 1521942 for a permit and license under the *Hydro and Electric Energy (HEEA) Act* to construct the SW Line, a portion of which was to be located upon the Piikani Reserve.
- 16 To obtain the required consent by the Piikani Nation for the granting of the Section 28 Permit of the *Indian Act* (Canada), the Piikani Nation and Altalink L.P. entered into a Project Commitment and Option Agreement (the "PCOA") and a Facilities Operations Accord (the "Accord") made on September 16, 2010.
- 17 Under section 2.1 of the PCOA, Altalink L.P. granted to the Piikani Nation an irrevocable option:
 - a) to require Altalink L.P. to transfer ownership of the PiikaniLink L.P Transmission Assets to a limited partnership to be formed among Altalink Management Ltd. as general partner, and Altalink L.P. and an entity controlled by the Piikani Nation as initial limited partners (the "New Limited Partnership"); and
 - b) which enabled the Piikani Nation to acquire at least 30% and up to 51% of the initial partnership units issued in the New Limited Partnership (the "Option").
- 18 In July 2009, the construction of the SW Line project was started. In October 2010, the SW Line was energized.
- 19 On February 10, 2014, the Piikani Nation exercised the Option and elected to acquire 51% of the initial partnership units issued by the New Limited Partnership.
- 20 By a Limited Partnership Agreement made as of March 6, 2017, among Altalink Management Ltd. as general partner, and AltaLink L.P. and Piikani Limited Partner as limited partners, each of Altalink Management Ltd., Altalink L.P. and Piikani Limited Partner agreed to form a new limited partnership, to facilitate the proposed transfer contemplated in an application to be filed with the AUC.
- 21 On April 27, 2017, AltaLink applied to the AUC requesting for sale and transfer of the 240 kV Line and substation equipment on Piikani Nation reserve to PiikaniLink L.P.

Reasons for the Piikani Nation Partnership with the AltaLink

The reasons for the Piikani Nation Partnership with the AltaLink are summarized in Piikani Nation notice to its members regarding sales and *transfer of AltaLink's specific assets to PiikaniLink L.P.* that states the following,

9.0 Referred to an opportunity, subject to approval by the Commission, for the Piikani Nation to invest in the Alberta electricity infrastructure, to participate in a joint venture with AltaLink L.P. under a limited partnership structure, and to acquire an ownership interest in new transmission facilities to be constructed on the Piikani Reserve. The materials further referenced the Piikani Nation being provided with opportunities for consultation and input into ongoing activities related to the PiikaniLink L.P. Transmission Assets, and potential employment opportunities on a competitive basis.⁴

The Map and the Route for the AltaLink's Transmission Line on Piikani Land

In the public hearing consultation⁵ respecting the its application 1521942 dated August 10, 2007 for construction and operation of transmission lines from the Pincher Creek area to the north Lethbridge area, AltaLink stated the following,

The proposed routing places the 240-kV transmission lines from Goose Lake Substation to the Peigan Substation on Piikani land. From the Peigan Substation to North Lethbridge Substation, the route would cross Blood land, Canadian Food Inspection Agency land, and City of Lethbridge land, as shown on Figure 1. AltaLink is also proposing 3 approaches into the City of Lethbridge as shown on Figure 2.

In the proceeding, AltaLink indicated that its process of selecting a preferred route attempted to minimize the overall potential impact of the transmission line by:⁶

- following existing linear disturbances;
- minimizing impacts on residential land uses;
- minimizing agricultural impacts;
- minimizing cost; and
- minimizing impacts on the environment.

The maps and the routes for the 240-kV transmission lines from Goose Lake Substation to the Peigan Substation on Piikani land are found in both AltaLink public hearing consultation notice and the AUC Decision 2005-049 dated March 10, 2009 (References #5 and #6).

⁴ Ibid.

⁵ http://www.auc.ab.ca/regulatory_documents/ProceedingDocuments/2008/1521942%20Hearing.pdf

⁶ http://www.auc.ab.ca/regulatory_documents/ProceedingDocuments/2009/2009-028.pdf

2. Reference: Exhibit A-13, 4.1 Electricity Transmission Companies, 4.1.2 KainaiLink Limited Partnership, Background Information, page 6

“On April 27, 2017, AltaLink applied to the AUC requesting for sale and transfer of the 240 kV Line on Kanai Nation reserve to KainaiLink L.P.”

2.1 Was this a newly constructed 240 kV Line or was it existing line?

Response:

On April 27, 2017, when AltaLink filed an application with the AUC regarding sale and transfer of the 240 kV Line and substation equipment on Kainai Nation reserve to KainaiLink L.P., these transmission facilities were AltaLink’s existing assets. The AUC Proceeding 22612 did not deal with the construction of any new lines or equipment.

2.2 Is this line and equipment an integral part of AltaLink’s Southwest Project?

Response:

The line and equipment were an integral part of AltaLink’s Southwest Project. As noted above, no new project was constructed as part of the AUC Proceeding 22612.

3. Reference: Exhibit A-13, “5. Newfoundland and Labrador”, page 17

3.1 Does the author, Mr. Babaie, have any formal legal training?

Response:

Mr. Babaie has no formal legal training. He has 25 years of leadership experience and expertise in rate applications and regulatory proceedings, regulatory accounting, audit and compliance, performance assessment, corporate governance, and utility management and engineering operations. Mr. Babaie is a professional engineer (P. Eng.) with a CPA designation.

4. Reference: Exhibit A-13, “11. Appendices A – Regulations and Defining Characteristics of Indigenous Utilities”

4.1 Of the First Nations, Tribes, Indian Reservations or like entities identified in Appendices A, which ones have entered into treaties?

Response:

The scope of the Consultant’s work was limited to regulation of Indigenous utilities and their defining characteristics. Specifically, the Consultant’s mandate was to address the following five questions, as listed below and stated in section 2 - Scope of the report, “Jurisdictional Review of the Regulation of Indigenous Utilities in Canada”:

1. Are there any utilities that are owned or operated in any province or territory, either wholly or in part by Indigenous peoples (referred to in this review report as “Indigenous utility” or “First Nation utility”)?
If so, what are the names of the Indigenous utility or Indigenous owner.
2. With respect to Indigenous utilities, has any board or commission received applications or undertaken reviews regarding:
 - i. exemptions from regulation, and/or
 - ii. different regulatory treatment compared to non-Indigenous utilities within the jurisdiction of board or commission?
3. If “yes” to question 2, were there written reasons? What conclusions were reached, and what principles or criteria (if any) did the board or commission apply in its decision?
4. Does any board or commission have any specific guidelines, policies, and practices for determining whether a current or future Indigenous utility would be regulated, and if so, what is the appropriate degree of regulation?
5. If Indigenous utilities are not regulated (or are exempt from regulation) by the board or commission, are they subject to regulation by other bodies or government? If so, what is the regulatory body?

Research related to Information Requests (IRs) 4.1 to 4.4 is not within the scope of the Consultant’s work.

4.2 Of the First Nations, Tribes, Indian Reservations or similar entities identified in Appendices A, which ones have passed Land Codes pursuant to the First Nations Land Management Act/Framework Agreement on First Nations Land Management?

Response:

Please see the response to the IR 4.1.

4.3 Of the First Nations, Tribes, Indian Reservations or similar entities identified in Appendices A, which ones have passed Land Codes pursuant to the First Nations Land Management Act/Framework Agreement on First Nations Land Management that contain provisions pertaining to utilities?

Response:

Please see the response to the IR 4.1.

5. Reference: Exhibit A-13, “12. Appendices B – Mandate of Canadian Provincial and Territorial Energy Regulators”

5.1 Are the decisions, orders or the like of the regulators listed in Appendices B subject to judicial review? If yes which ones?

Response:

In general, decisions and orders of regulators for both Indigenous and non-Indigenous utilities maybe subject to a judicial review in accordance with the provincial or territorial legislation. A review of the legislation with respect to the ability to seek judicial review is not within the scope of the Consultant’s work which is set out in section 2 - Scope of the report, “Jurisdictional Review of the Regulation of Indigenous Utilities in Canada”.