

Alberta Utilities Commission

IN THE MATTER OF the *Alberta Utilities Commission Act*, R.S.A. 2000, c. A-37.2, the *Electric Utilities Act*, R.S.A. 2000, c. E-5.1 and the *Hydro and Electric Energy Act*, R.S.A. 2000, c. H-16;

- and -

IN THE MATTER OF an application filed by Altalink Management Ltd and EPCOR Distribution & Transmission Inc. for approval of the proposed **HEARTLAND TRANSMISSION PROJECT** referred to as **APPLICATION NO. 1606609, PROCEEDING ID 457**

BETWEEN:

STUART SHAW, KAREN SHAW, KEVIN SHAW, ERIN SHAW, VIVIAN LESPERANCE, ERIC LESPERANCE, ROB SHAW, JAMES SHAW, SANDRA SHAW, AND BLAINE SHAW (“SHAWS”)

Applicants

- and -

ALTALINK MANAGEMENT LTD AND EPCOR DISTRIBUTION & TRANSMISSION INC.

Respondents

SHAW WRITTEN CLOSING AGRUMENT

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TABLE OF CONTENTS

	Page
I. INTRODUCTION	1
II. FACTS	2
A. Genesis of the Heartland Project	2
Provincial Energy Strategy	2
B. AESO’s Disregard for Economics, Competitiveness & Prov. Energy Strategy	4
C. AESO’s Rationales for the Heartland Project	7
1) First Rationale – Support of New Industrial Development in the AIHA ..	11
2) Second Rationale – Connection to East 500 kV Fort McMurray Line	24
3) Third Rationale – Connection to EATL	24
D. Transmission Projects and Impacts on Rates	25
Troubling Relationship between Altalink and SNC-Lavalin	26
E. Social and Economic Impacts	28
III. LEGAL ARGUMENT	33
Public Interest and the Commission	33
AESO and Altalink Incorrect on the Commission’s Public Interest Mandate .	34
RELIEF REQUESTED	46

“I guess my concern is the socioeconomic impacts, . . . my biggest concern is that the lights may go out—will go out not in mass, as predicted by Alberta Energy, if we don't build the proposed [Heartland] line, but one by one as businesses in Alberta find they can no longer compete due to high fixed electricity costs that are far higher than in their competing jurisdictions. But unlike the lights which Alberta Energy warned will go out will shortly and come back on, the lights I just mentioned will be extinguished permanently.”

Testimony of Mayor Donald Rigney, Sturgeon County, past Chairman and current Board Member of the Alberta Industrial Heartland Association

I. INTRODUCTION

1. Several members of the Shaw family own farm lands and reside on lands adjoining the proposed Heartland Project. The Shaw's primary concern is that no cost-benefit assessment has been conducted for the Heartland Project and that the evidence presented in this hearing demonstrates that the negative social and economic effects of the Heartland Project significantly outweigh any benefits.
2. The Shaws will demonstrate in this written closing argument that despite the Heartland Project having been designated as “critical transmission infrastructure”, applying the evidence before the Commission to the applicable statutory provisions requires that the Commission deny Altalink's application for the Heartland Project on the grounds that both Altalink and AESO have failed to demonstrate that building the Heartland Project at this time is in the public interest. .

II FACTS

A. Genesis of the Heartland Project

“Provincial Energy Strategy”

3. The genesis of the Heartland Project is the AESO Long-Term System Plan 2009 (Exhibit 517.02) and the Alberta Government’s 2008 Provincial Energy Strategy (Exhibit 517.03).

4. There are 30 references within the AESO Long-Term System Plan 2009 to the Alberta Government’s 2008 Provincial Energy Strategy. In many of these references, AESO claims that the Provincial Energy Strategy was an important factor in how it developed the transmission plan; that the AESO plan is needed to facilitate the Provincial Energy Strategy; and that AESO sought to align its plan with the Provincial Energy Strategy.

Exhibit 517.03 pages 10, 12, 14, 17, 18, 57, 58, 317, and 321.

5. However, while the Provincial Energy Strategy advocates enhancing Alberta electricity transmission infrastructure, the strategy also emphasizes the importance of:
 - maintaining “a competitive business community”;¹
 - keeping “our energy industry competitive”;²
 - achieving the goal of the “future competitiveness of industry and attractiveness of the economic and social climate in Alberta”;³

¹ Exhibit 517.03, Provincial Energy Strategy, December 2008, pages 5 and 21.

² Ibid, page 16.

- increasing value-added activities within Alberta;⁴
 - developing a “platform for continued economic growth and success”;⁵ and
 - “tapping more of what we are currently leaving in the ground, developing our substantial unconventional gas (coalbed methane, shale gas, tight sands)”.⁶
6. Importantly, the Provincial Energy Strategy clarifies that the government is not seeking a reinforcement of the transmission system at any economic cost no matter how high, but rather a strengthening the transmission system that ensures “adequate supply of competitively priced electricity for Albertans”.⁷ [emphasis added]
7. Thus, the Provincial Energy Strategy is the starting point for the Heartland Project because AESO interpreted the Provincial Energy Strategy as supporting AESO’s decision to conceive the Heartland Project and the lines which will connect to it (EATL and the East 500 kV Fort McMurray line).

³ Ibid, page 38.

⁴ Ibid, page 2. The Provincial Energy Strategy also describes the Alberta Industrial Heartland as an area where the province envisions value-added industries be attracted to locate. See pages 34 and 37 of Exhibit 517.03.

⁵ Ibid, page 20.

⁶ Ibid, page 27.

⁷ Ibid, page 43.

B. AESO's Disregard for Economics, Competitiveness and the Provincial Energy Strategy

8. Given that AESO asserts that it developed its 2009 Long-Term System Plan based on, and to align with, the government's Provincial Energy Strategy, one would expect that AESO's plan would address 'competitiveness', 'attractiveness of the economic and social climate in Alberta', impacts on 'value-added activities' and 'economic growth', and opportunities of 'tapping unconventional gas'. However, AESO plan does not do so.
9. Instead, AESO's plan proposes billions of dollars of new transmission lines (\$16.588 billion according to pages 12 to 14 of the AESO plan) without regard for the social and economic impacts of the proposed lines and without assessment of the impact of the transmission build on rates for delivered electricity to Albertans and our businesses.
10. The evidence in these proceedings reveals that there are significant cost and macro-economic implications of a transmission project of the scale and sophistication of the Heartland Project, yet AESO's plan offers the following scant and simplistic justification for the Heartland Project at page 40:

The oilsands industry is expected to continue its growth and is the primary driver of the need for new electricity infrastructure development in the northeastern part of Alberta. There are two main components of load associated with extracting and processing bitumen. The first component includes facilities associated with extracting bitumen from the oilsands. This can be in the form of a mining-type operation that extracts the oilsands from its original location and moves it to a processing facility where bitumen is separated from sand. It can also be in the form of in situ recovery of bitumen directly out of the oilsands formation. In Alberta, most of this

activity is located in the Fort McMurray, Cold Lake and Peace River areas (i.e., where the oilsands formations exist).

The second component of oilsands load is the demand for power associated with upgrading bitumen into synthetic crude oil in a refinery-type facility. These facilities can either be located close to bitumen extraction sites (e.g., Fort McMurray area) or in another area with bitumen piped to the facility (e.g., Fort Saskatchewan/Heartland area).

Over the last five years the annual rate of oilsands investment has steadily risen, exceeding \$18.1 billion in 2007. Although oil prices have decreased from their record levels in 2008, world oil supplies continue to diminish and investment in the oilsands industry is expected to be strong over the long term. The December 2008 Canadian Association of Petroleum Producers (CAPP) oil production forecast, predicts continued increases in average production with the moderate forecast predicting bitumen production levels of 3.3 million barrels per day (b/d) by 2020.

11. The AESO Long-Term System Plan 2009 contains no cost-benefit study of the Heartland Project. There is nothing that compares the costs of the transmission lines with any economic or other benefits. Nor is there any cost-benefit analysis of the other proposed transmission lines that AESO has proposed be built and connected to the Heartland Project (EATL and East 500 kV Fort McMurray line).
12. AESO's plan has no assessment of whether the Albertans, businesses, and public institutions (schools, hospitals, municipalities, public service and recreational institutions) that will be forced to pay the costs of the new transmission lines can afford those lines. AESO's plan does not assess whether the transmission lines proposed are the least expensive of the various alternative mixes of generation and transmission. AESO's plan is silent on competitiveness impacts of the rising rates that will be imposed if the AESO projects are approved by the Commission.
13. Despite the Provincial Energy Strategy's emphasis on promoting a competitive business climate and encouraging value-added businesses, incredulously AESO

witnesses testified during cross-examination that: “We do not do economic analysis around rate impacts”.

Transcripts, Volume 15, pages 3539 and 3540.

14. The fact that AESO’s plan advocates the building of billions of dollars in new transmission lines without conducting detailed economic analysis is troubling in its own right given the reality that the full cost of transmission is paid by Alberta consumers—with no contribution from Altalink or the generators. More troubling is that to the very limited extent that the AESO Long-Term System Plan 2009 contains any economic analysis, its predictions for load growth and future transmission requirements—the very data it uses to justify the projects—are based on outdated economic information from 2007 and 2008.
15. There are only three references in the main body of AESO’s plan that refer to AESO’s underlying macro-economic assumptions:
 - a) Page 14:

While Alberta’s existing transmission system has served us well, no new major transmission facilities have been built in the last two decades. During that time, Alberta has grown significantly. For the past several years, growth has been equal to adding two cities the size of Red Deer to the power system every year. For more information about Alberta’s load growth, refer to the AESO’s Future Demand and Energy Outlook in Appendix C.
 - b) Page 19:

As indicated in Appendix C, the AESO’s Future Demand and Energy Outlook indicates Alberta’s growth in demand will average about three per cent annually over the long term.
 - c) Page 31:

The 2007 load forecast presented in Appendix C was a major input for developing the long-term transmission plan presented in this

document. The AESO recognizes that many factors affect load growth, and that actual load in the future could be higher or lower than forecast.

Exhibit 517.02

16. Surprisingly, AESO’s much-referenced “Appendix C” relies on Conference Board of Canada GDP outlook as of March 2007 and March 2008 as follows at page 131:

1.2 Alberta’s GDP growth
GDP is a function of consumer spending, private and public investment, exports and imports. The following is a comparison of the FC2007 and FC2008. Over the last two decades, Alberta had the highest rate of GDP growth in Canada, averaging 3.8 per cent per year.

Table 1.2-1: GDP forecast comparison

Year	The Conference Board of Canada Provincial Outlook 2007 Released: March 2007 (%)	The Conference Board of Canada Provincial Outlook 2008 Released: March 2008 (%)
2006	7.0 (not final)	6.7
2007	5.0	3.4 (not final)
2008	4.2	3.4
2009	3.7	3.6
2010	3.9	3.7
2018	2.6	2.8
2028	2.6	2.6

Actuals in bold

17. Of course, it is common knowledge that Alberta and much of the developed world were in a period of rapid growth and record-high oil prices from 2006 through to late 2008. In 2009, Alberta and the developed world entered a historically deep and prolonged recession.
18. It is clear that AESO’s plan simply assumed that the rapid growth that Alberta was experiencing in first quarters of 2007 and 2008 would continue unabated. Importantly, AESO’s plan was conceived prior to the collapse of oil prices in 2009

and the world-wide recession that impacted not only Alberta but also the global customers for Alberta's raw commodities and value-added products.

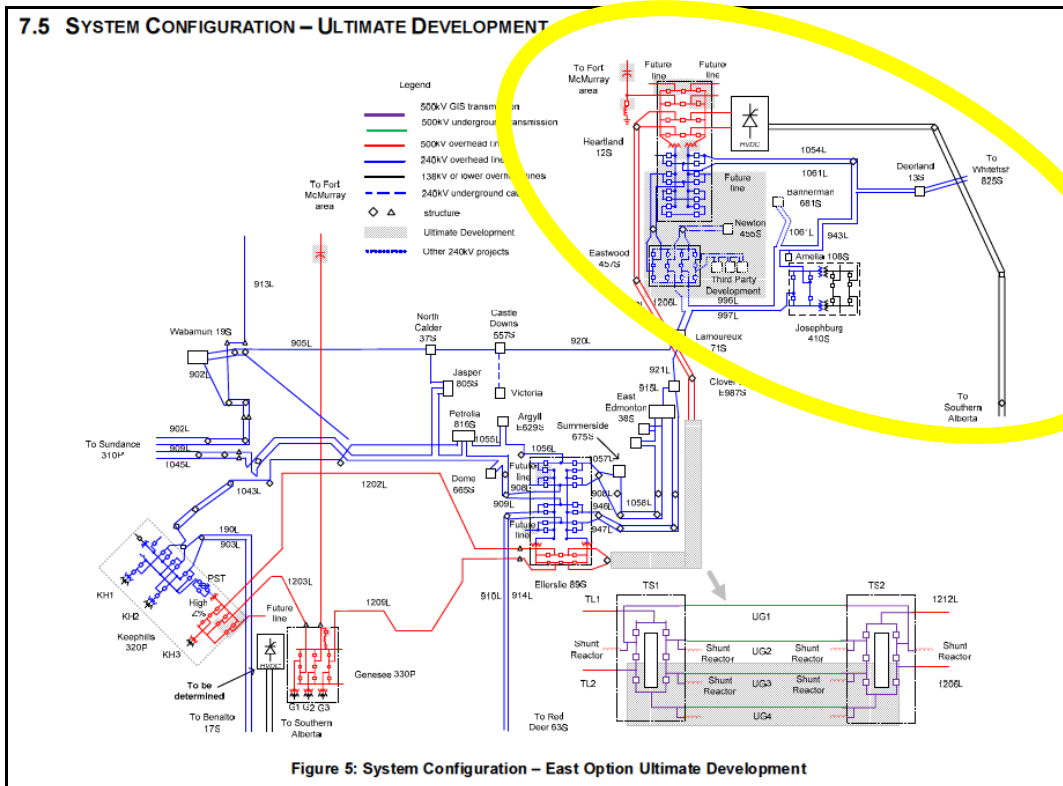
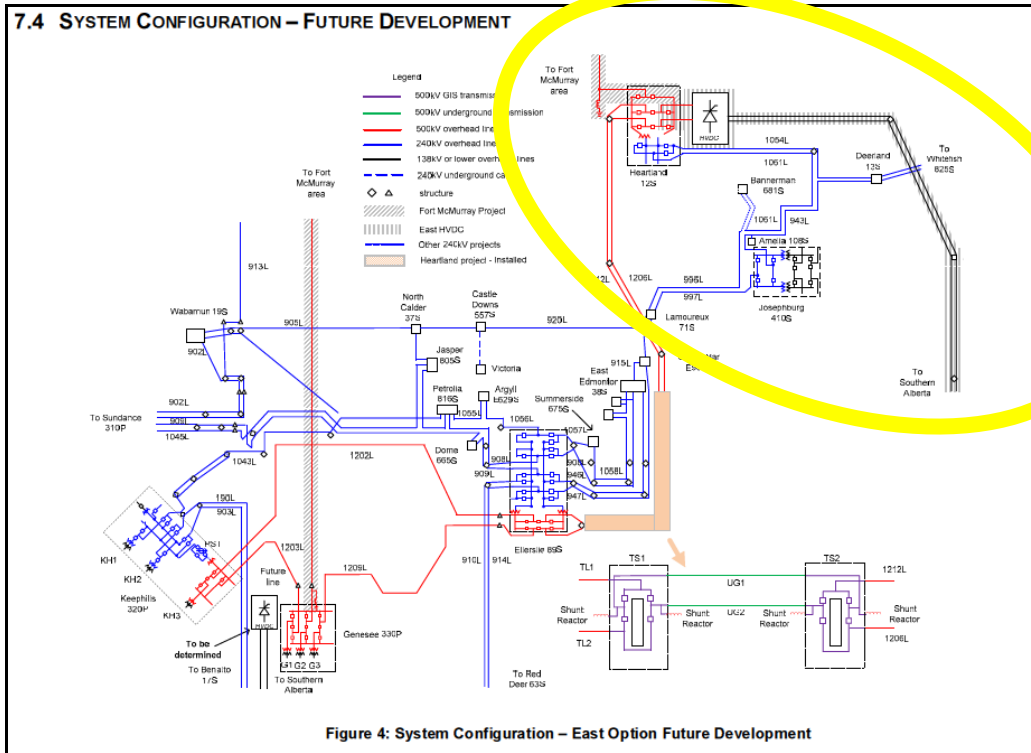
C. AESO's Rationale for the Heartland Project

19. AESO stated the following purposes for the Heartland Project at page 5 of Exhibit 238.0, AESO Functional Specifications document:

Alberta's Industrial Heartland (the "Heartland") is a 317 square kilometer area located northeast of the City of Edmonton and spans the borders of the City of Fort Saskatchewan, and Strathcona, Sturgeon and Lamont Counties. The Heartland is one of Canada's largest processing centres for the petroleum, petrochemical and chemical industries.

The purpose of the Heartland bulk transmission system development project (the "Project") is to provide 240 kV and 500 kV transmission facilities to meet the load growth in the Edmonton, Heartland and Northeast Alberta regions, and to provide interconnection to the East HVDC. [emphasis added]

20. AESO further illustrated its vision for the inter-connection of the Heartland Project with both the proposed EATL and East 500 kV Fort McMurray projects in the system schematic drawings in Exhibit 238.0, AESO Functional Specifications and Exhibit 488.01 AESO's letter re compliance with the Transmission Regulation as follows:



21. The evidence with respect to these rationales is detailed in the following paragraphs. Examining the evidence as to the rationales for the Heartland Project is essential in order to assess whether approval of the Heartland Project is in the public interest, having regard to the social and economic effects of the project.

1) First Rationale -- Support of New Industrial Development in the Alberta Industrial Heartland Region

22. AESO (and Altalink) led evidence intended to create the impression that the Heartland Project is intended to support new industrial development in the Alberta Industrial Heartland Region, in particular, several new bitumen upgrading refineries.
23. Altalink proffered that “. . . the Heartland Project will enable the Heartland area to have timely and reliable access to the most economic source of generation at competitive prices, which supports the economic development in the area.” However, beyond making this statement, Altalink testified that it had no economic data, nor had it completed any economic analysis which would support this bare assertion.

IR Response WILSON24.AML/EPCOR-008 (Update), p. 2

24. Donald Rigney, past chairman and current board member of the Alberta Industrial Heartland Association testified before the Commission that his association does not support the proposed Heartland Project given its adverse economic effects, impacts on industry competitiveness, and potential to discourage industries from locating in the Heartland region. Mr. Rigney is also the Mayor of Sturgeon County.

25. The Alberta Industrial Heartland Association is an association comprised of the municipalities within the geographic area of Alberta's Industrial Heartland. Mayor Rigney testified that:

Q. And for the benefit of the Commission, who are the members of the Alberta Industrial Heartland Association?

A. MR. RIGNEY: Well, we are the largest petroleum and petrochemical refining complex in Canada, and it's comprised of Lamont County, Sturgeon County, Strathcona County, Fort Saskatchewan, and most recently Edmonton has joined us.

Transcripts, Volume 23(a), page 5923

26. The highlights of Mayor Rigney testimony with respect to the validity and economic benefits of AESO's purported rationale in support of the Heartland Project are set out in the following paragraphs. (The reference to the page numbers of Volume 23(a) of the Transcripts appears in square brackets.)
27. Mayor Rigney confirmed that the vision and "the purpose of the Alberta Industrial Heartland is to provide a home for large, heavy value-added industry in Alberta". [5920] This is consistent with AESO's and Altalink's description of the Alberta Industrial Heartland.
28. Mayor Rigney's testimony also reveals how the Alberta Industrial Heartland Association's goals align with the goals of the Provincial Energy Strategy to increase value-added activities, and, in particular, increase the amount of upgrading of oil sands bitumen that occurs within Alberta. Mayor Rigney testified that the Industrial Heartland Association believes:

. . . quite strongly that the next 50 or more years, despite many claims to the contrary by many other neighbours around the world about our heavy oil, that this is our future, a big part of our future, and our natural advantage going forward. Simply because we are located between

the richest and – the Heartland is located quite simply between the richest and fastest growing economies on earth and contains 51 percent of the world's liquid, and liquid is key here, investable resource.

We've got a long way to go, and this is what we're trying to do in the Heartland. Currently Alberta processes or refines the lowest percentage of their production of any jurisdiction in North America, including Alaska and Wyoming. We've got a stated policy of refining or upgrading two-thirds of our production, and with the recent advent of a million barrels a day of extract and export raw we are fast moving from two-thirds to one-third. [5921]

. . .

We do have to diversify, and that diversification will only occur if the Heartland is successful and we can diversify around that strength going forward. Otherwise we will just be extract and export and we will revert to being hewers of wood and drawers of water.

So I know that's a fairly lengthy answer, but that's what we're trying to do in the Heartland. [5922]

29. Mayor Rigney's testimony also echoed the Provincial Energy Strategy's goal of recognizing the dramatic shift in the market fundamentals with respect to the availability and price of natural gas and shale gas, namely the provincial strategy of 'tapping more of what we are currently leaving in the ground, developing our substantial unconventional gas (coalbed methane, shale gas, tight sands)' as follows:

The fundamental of what I'm going to present here today is the fact that historically if gas has been \$4 a million BTU, oil has been \$6. Right now gas is \$3 and oil is \$12 to \$15. That is going to be fundamental to everything we do going forward, and I think it's essential that we recognize that and we will -- we will see a considerable shift in how we do business. [5923]

30. Mayor Rigney testified as to the Association's concerns over how grossly AESO overestimated the future load forecasts in the AESO Long-Term System Plan 2009. He explained that even if all industrial projects proposed for the Heartland were to

proceed—and without any co-generation—AESO’s predictions for load were grossly overstated:

Q . And you've explained to me that the Heartland Association over the years has done some of its own analysis and had dialogue with Alberta Energy and AESO and others about what needs might be required to achieve the vision you've described for the Heartland. Can you speak to that for me, please?

A. MR. RIGNEY: Yes. We've had some considerable concerns around this. The Heartland's 2009 forecast for load, assuming full buildout, our all-project scenario is currently an 8th to half of AESO's base case and our all-projects is a 9th to a third of AESO's base case. And that assumes no cogeneration.

We know that -- I believe Shell is doing 174 megawatts. Northwest is in that mix. Because they gasify and use all their heat, they will not be generating or cogenerating. [5924] [emphasis added]

31. Mayor Rigney also confirmed that the numerous bitumen upgraders that AESO had assumed would be proceeding to create new load were in fact not proceeding:

But most significantly with the going from 8 to 9 upgraders to 5 to possibly 1, probably hopefully 1, we've seen the loss of about at least a million barrels a day in upgrading. And at roughly 1 megawatt per thousand barrels it varies whether you gasify or coke, et cetera. That's easily the loss of over a thousand megawatts of demand. We're fairly comfortable with these numbers, so ... [5925] [emphasis added]

32. Mayor Rigney testified that beginning in October 2009 the Association took demonstrative steps to educate AESO as to the scope of its error on load predictions. (As noted in the AESO Long-Term System Plan 2009, AESO makes its load predications based on a number of scenarios including “all projects”—all known planned projects proceed to construction—and “base case”—assumes a moderate growth forecast.)

Q. Now, have you had any meetings with AESO and Alberta Energy where you discussed this issue and any concerns that the Association had about it?

A. MR. RIGNEY: Yeah. We -- on October 16th we met with -- the Heartland met with Alberta Energy and the AESO. That meeting came about as a result of myself and Neil Shelley of the Heartland publically and privately, I guess, voicing concerns about what we thought were wildly flawed assumptions contained in the AESO's documentation and statements; primarily around the number of upgraders being built.

It was our understanding that the AESO's 'all-project' scenario envisioned 8 to 9 upgraders and their 'base case' scenario 5 upgraders. In fact Clause 2, 1, 2 on page 14 of the AESO's bulk transmission development document of May 30th, '08, stated: "There are currently five new oil upgraders at various stages of development targeted for completion within the next five years." This was incorrect.

In fact, knowing what we know about building upgraders, it begs credibility that this could even be considered possible. Our number was only one at the time, and it was already under construction. That was a fairly easy estimate. And we said as much publically and privately.

Consequently I was contacted by, I believe, the minister's office, I think it was Minister Smith at the time, and my MLA Jeff Johnson; and Neil Shelley was contacted by Peter Watson, the deputy minister, and we were advised our comments were causing difficulty and concern and we were asked to refrain from making any further public comment until they could present their case to us.

We agreed to this and a meeting was scheduled, which occurred on October 16th, 2009. And Tim Grant from the assistance deputy minister was there. Jeff Nish was there.

. . . Neil Brausen from AESO; myself; Neil Shelley; Ed Gibbons from Edmonton; Reeve Wayne Woldanski from Lamont; Joyce Tustian of the City of Edmonton; John Elzinga, Fort Saskatchewan; Collin Steffes of Sturgeon County. And there may have been a few more and, I apologize, I just can't remember their names or who was there.

We did have an agenda, and the purpose was to exchange information on the future development within the Heartland, as well as the development of the Heartland Transmission Project. I don't know if the order of the agenda was followed exactly, but I did find an agenda and I did send that to you, Keith, and I did bring a copy today, which I would be happy to provide.

Neil Shelley and Tim made a brief introduction and set out the objectives. And Neil Shelley read off what was actually -- and what our expectations were for development and power demand. Neil then presented the case for cogeneration and local, what we felt

significantly lower cost electrical production within the Heartland natural gas.

Then Tim and Neil then presented an overview of the rationale and objectives of the transmission project.

We concluded -- in conclusion we attempted to formalize a future engagement and consultation to keep the lines of communication open and -- but we weren't successful in doing that.

Our expectations for development were that only one upgrader would be completed by 2013, not 5, as stated by AESO. Hindsight has proven we were right. There will only be one new upgrader completed in the Heartland by 2013, and not five. Our 'all-projects' demand for power was one-sixth to two-thirds of AESO's 'base case'. Our 'all-project' demand for power was one-seventh to half of AESO's 'all projects'. On that we were wrong. Today our 'all-project' demand for power is even less than we predicted in '09. It is now one-eighth to a half versus what I said earlier, one-sixth to two-thirds of AESO's 'base case'. And our 'all-project' estimate of demand is a ninth to a third of AESO's versus former one-seventh, one half. [5924 – 5928]

33. Mayor Rigney also explained how the Alberta Industrial Heartland Association encouraged AESO to pause and reevaluate the prediction of load and the Heartland Project in view of the new realities of the Alberta and global economies:

Our position was, clearly, we weren't going to lose any industry as a result of slowing things down. It had clearly already been lost in order to reassess, I guess firstly -- firstly and, most importantly, the impact on demand associated with the cancellation of 80 percent of the upgraders, and, two, the impact on competitiveness and the socioeconomic benefits we would lose by building this [transmission] system when it was becoming very clear that natural gas was going to offer a long-term cheaper, simpler, cleaner, and far more competitive alternative to what was here being proposed and the lights weren't going to go out if we did so, as Alberta Energy had stated. [5928]
[emphasis added]

34. Mayor Rigney further testified that the Association had explained to AESO how there was enough capacity and transmission infrastructure available without the

Heartland Project in order to allow development of the Heartland Industrial area to proceed:

We had enough spare capacity in the Heartland based on a megawatt per thousand barrels per day and upgrader increments of 125,000 barrels per day, which is what Northwest had spoken for, though their first phase is, in fact, only 77,000 barrels a day, but we do have enough capacity to build at least one new upgrader.

And I also advised that one of ATCO's initial suggestions when Fort Hills was in the mix was to route spare capacity available in Edmonton via a 240 kV line along the North Saskatchewan. Actually at the time, although it sure wasn't subject to public hearings, and I know how much more difficult those can be, it did seem to meet with fairly little opposition and general approval. [5929]

35. Mayor Rigney also testified about the efforts that the Association made to secure support from AESO and Alberta Energy for the Industrial Heartland to have the opportunity to build gas-fired generation within the Heartland region right next to the load and thereby avoid the requirement for expensive and inefficient transmission lines:

Neil [Shelly, Executive Director of the Association] then presented the case for generating next to the load with natural gas. He made the case that reserves were increasing. The good news is that Alberta's reserves are increasing significantly. The bad news is that with gas-shale, the same news. The bad news is the same as happening everywhere else in North America in the world.

He pointed out that our numbers showed that it was cheaper than generating with coal at Wabamun and the associated high transmission losses and costs with the mega lines.

We pointed out that, as I think everybody knows, that if you burn coal, only 30 percent of the energy goes down the line. With gas, it's 40 percent. With cogen combined cycle and heat utilization -- this is significant because you can do this in the Heartland -- it's 80 percent.

It's also cleaner, 50 percent less CO2 emissions and easier to sequester than in the Wabamun area, especially with the enhanced pipeline being developed. [5933]

36. Mayor Rigney expressed his concern that AESO was locked into an old-world coal paradigm that ignored major developments with respect to global gas reserves:

This is a key assumption that we did disagree on because of the tectonic shift we've seen over the last few years. It's becoming ever more clear with gas reserves going from 25 to 35 years, world gas reserved to over 250 years today at current uses.

When we pointed that out, the response was that if that was -- if it was not the case that coal was cheaper and gas could be shown to be a better alternative, the gas would be piped to Wabamun and they would convert generation to natural gas and sequester carbon from there.

None of this, I hate to say, made a lot of sense to us. We were concerned about the statement that they would make this, let alone to us, but I don't know what to say about that.

In conclusion we stated that the cancellation of the upgraders with the loss of at least 1,000 megawatts of demand or more, plus what was happening, the same happening in McMurray and the evolving gas revolution, as a minimum, this or **these lines had to be halted and the NID process redone. Fundamental assumptions had changed. In fact, everything had changed and there was nothing to lose and everything to gain by redoing the NID.** We were, in fact, in a new normal and none of the old assumptions were valid any more. We asked for continuation of the consultation and a process to do so. It was clear there was a high level of frustration. We did not see eye to eye. It was clear to us that their mind was made up and there was no changing it. It was clear to us, too, that Alberta Energy and AESO were working lock step in this matter.

Neil Shelley asked Tim Grant to take six months to a year to address these fundamental changes and their assumptions and reevaluate their NID. Tim's response to Neil was to the effect that we did the plan, **this is political, we want to put this to bed as soon as possible.** [5934 – 5935] [emphasis added]

37. Mayor Rigney also clarified that the Association did not ask for the proposed transmission lines:

Q. Did the Alberta industrial Heartland association ask AESO for this project, for these lines?

A. MR. RIGNEY: No.

Q. And based on your review of -- your interaction and all the work that you've done over the last few years on this topic, is it the industrial Heartland's association's view that you require these transmission lines in order to achieve your growth vision and your goals for the Heartland?

A. MR. RIGNEY: No, we're trying to build industry. And when we brought this matter before the Capital Region Board for a request for a slowdown and a revisit of the NID, I made the motion, Mayor Mandell (phonetic) seconded it. It was passed by every member except the mayor of Leduc, and he was incredulous that we just wouldn't jump at the chance for all this mega industry. And, you know, valid point, but what is becoming every more clear is that we are truly in the midst of a gas revolution. **[5936]**

38. Mayor Rigney confirmed that the Heartland Project would hurt the Association's economic goals for the region:

Q. MR. WILSON: . . . In the Industrial Heartland Association's view, would approving the Heartland project help or hurt the Industrial Heartland Association's economic goals from being achieved?

A. MR. RIGNEY: Well, to the degree that we could -- we would attract users that are large users of electricity, **it would hurt them**. Most everybody does use electricity, so it would hurt them to some degree.

For instance Agrium, about 85 to 95 percent of their variable cost of production is natural gas. Twice in the lifetime they have shut down or been close to shutting down because of that. Now they're seeing record profits. But we still estimate it would add somewhere around 12 to \$15 million -- I can't remember if that's a month or a year -- to their operating costs, which my concern is those would be passed on to the farmers, who in turn can't pass that on to the retailer.

Any electrical users -- and we've already seen some of them. Any large electrical users, this would put them at a significant disadvantage and they would have no choice but to not locate here or relocate.

On the other hand we believe very strongly that cogeneration behind the fence or within the Heartland using natural gas combined cycle and secondary heat offers a far cheaper ... You know, generally coal puts 30 percent of the energy down the line, natural gas 30 to 50, and -- but if you do the combined cycle secondary heat up to 80 percent, and it's more environmentally acceptable and half the CO 2 and far more -- that is far more inducive to developing value-added industry in the Heartland, in my mind, than these lines would be. [5940]
[emphasis added]

39. The Alberta Industrial Heartland Association's evidence of the harmful economic effects is shared by the major industries operating within the Heartland and the same industries that the Association and the Alberta Provincial Energy Strategy had hoped to attract to the Heartland region.
40. The Industrial Power Consumers Association of Alberta (IPCAA) represents Alberta's major industries (oil and gas, oil sands, petrochemical, steel, metal fabricating, agriculture, among others). IPCAA has completed a number of reviews of the proposed Heartland Project and the other AESO projects that the Heartland will connect to the provincial grid (EATL and East 500 kV Fort McMurray line).
41. The Shaws Submissions filed with the Commission on February 28, 2011 (Exhibit 736.01) included attachments H and I as follows:
 - H. IPCAA Presentation to the Alberta Government, November 2009; and
 - I. IPCAA Letter to the Alberta Government, October 26, 2010.
42. IPCAA's November 2009 presentation to the Alberta Government details:

- a) the significant role that IPCAA's members serve within Alberta's economy in terms of jobs, value-added processing, and provincial wealth creation (pages 4 to 9);
 - b) how the increasing cost of delivered electricity has eroded the competitive advantage that many Alberta businesses once had (pages 7 to 11);
 - c) the unprecedented level of transmission spending proposed by AESO and how it will make Alberta businesses uncompetitive relative to competing jurisdictions in Canada (pages 10, 6 and 7);
 - d) the inaccuracy of the fears propagated by Altlalink's advertisements and AESO to the effect that 'the lights will out and we will have brown outs' (page 13);⁸
 - e) the abundance of capacity remaining in the existing transmission grid (page 15);
 - f) the shift toward gas-fired and 'distributed generation' (page 18);
 - g) the exaggeration of future savings that might accrue from the construction of AESO's proposed lines (page 20);
 - h) the failure of AESO to account for 'self reliance strategy' of oil sands producers and their construction of behind-the-fence generation (page 21); and
 - i) the false sense of urgency driving AESO's approach (page 23).
43. IPCAA's 2009 review concludes as follows with respect to the social and economic consequences of proceeding with the AESO plan (page 24):

⁸ AESO lead system engineer, Mr. Neil Brausen, confirmed during cross-examination that the grid is stable and there is no danger of the lights going out or 'Alberta being one cold snap away from a blackout'. Transcripts, Volume 15, page 3538.

THE LOSERS

- Primary losers are industrials, commercials and residential consumers
- Leads to uncompetitive industries and job losses
- Increases Alberta's reliance on export of raw commodities and hinders diversification

Unnecessarily mortgaging Alberta's future

24

44. In attachment I to the Shaws' February 28, 2011 Submissions (Exhibit 736.01) IPCAA provides an updated assessment of the AESO plan including the Heartland Project (IPCAA Letter to the Alberta Government, October 26, 2010). IPCAA reaches the same conclusion as the Alberta Industrial Heartland Association with respect to the inaccuracy of AESO's prediction of load growth among other concerns including the following:

- a) that overbuilding the transmission system as AESO proposes has caused Alberta businesses to investigate "mitigation strategies such as:
 - generating electricity on their own property
 - shifting production and jobs outside of Alberta
 - reducing investment in Alberta." (page 3)

- b) that AESO has consistently underestimated the actual project costs;

"Heartland: AESO estimated that the project cost for the east route would be \$287 million; the facilities application for the same route has been submitted at a cost of \$580 million. You need to ask how the cost can double in only 12 months—and

this is for a known technology sited on an existing utility corridor, all during a recession.” (page 5)

- c) that Alberta’s major industries “cannot afford this transmission development plan and it is unnecessary” and “Alberta’s competitiveness is at risk”. (page 7)

45. IPCAA’s letter concludes—much in the same manner as did the Alberta Industrial Heartland Association—that:

“The transmission development plan has been developed and approved [by AESO] based on a false sense of urgency without a prudent level of assessment related to the following:

- cost to consumers
- level of demand destruction driven by high transmission costs
- proper needs assessment to objectively remove the ‘myths’ driving the false sense of urgency
- cost benefit analysis.” (page 7)

46. The evidence before the Commission as to the validity of AESO first rationale for the Heartland Land is clear. Both the region and industries that AESO claims want the Heartland Project and that AESO predicted there would be sufficient load growth to justify the line have clearly stated that AESO is simply wrong. The evidence of the Industrial Heartland Association and IPCAA is that proceeding with the Heartland Project on the basis of this rationale (it’s needed for the Heartland) will in fact cause economic harm, make Alberta less competitive and drive value-added activities out of the Heartland and Alberta.

47. In this regard, the evidence is clear that the Heartland Project will also undermine the Provincial Energy Strategy.

2) Second Rationale -- Connection to East 500 kV Fort McMurray Line

48. A second rationale that AESO has proffered for the Heartland Project is to provide a connection between the coal-fired generators at Lake Wabamun with AESO's proposed East 500 kV Fort McMurray line. This line is listed as "critical transmission infrastructure" in the Schedule to the Act.

49. However, AESO recently filed with the Commission its draft AESO Long-Term System Plan 2011. That plan proposes to delay the East 500 kV Fort McMurray line from the year 2014 to the year 2017. Clearly, "critical transmission infrastructure" does not mean 'urgent'.

3) Third Rationale -- Connection to EATL

50. A third rationale that AESO has described to justify the Heartland Project is to provide a connection between the coal-fired generators at Lake Wabamun with AESO's proposed EATL project.

51. However, neither the 2009 nor the draft 2011 AESO Long-Term Plans have yet to complete the design for how, if at all, the end point of the EATL will be connected to the existing grid west of the EATL end point: Brooks, Alberta. (See pages 87 and 88 of the draft 2011 plan.)

52. AESO's current cost estimate for the EATL is \$1.776 Billion (Exhibit 1143). It is simply cannot be in the public interest to approve a transmission line (the Heartland Project) that will effectively be the starting point for the EATL when the design work for how EATL will be connected to the grid has not yet even begun. The specifications could change and there could no longer be the need for the Heartland to connect to EATL or for EATL itself.

D. Transmission Projects and Impacts on Rates

53. The Heartland Project is expected to cost in excess of \$580 million. This cost estimate is simply that—an estimate. Alberta Government policy allows Altalink to spend more than the estimate. No prior approval is required by Altalink to spend more than the estimate. There are no prior cost approval mechanisms. To the extent that there is any review of project costs, it occurs after the costs have been incurred.⁹
54. As identified in AESO quarterly reports, it is common for the as-built costs of Alberta transmission lines to be greater than 100% from the cost estimates made by AESO in the Commission-approved needs applications.¹⁰ As a result, the actual cost of Heartland Project could escalate to more than a billion dollars.
55. The cost of this project plus a 9.25% rate of return on investment will be included in the transmission rates that all Albertans, businesses, and public facilities must pay in monthly transmission charges. This fact was confirmed numerous times by Altalink and AESO throughout the hearing.
56. Alberta Government policy directs that all consumers of electricity pay the costs of the transmission system. Furthermore, the policy directs that all consumers pay for all transmission lines regardless of whether the users' electricity needs are serviced by a particular transmission line. Put another way, Albertans, businesses and public facilities that use electricity from the transmission system will be required to

⁹ AESO has proposed a Competitive Procurement Process however that process has not been implemented for any of the first three CTI lines: Heartland, EATL or WATL.

¹⁰ See page 4 of attachment I to Exhibit 736.01.

pay a proportionate share of the entire transmission system, not just what Altalink and its parent company, SNC-Lavalin, choose to spend on Heartland Project.

57. It is submitted that because all consumers of electricity are forced to pay for all transmission lines, assessing the socio-economic impact of only one proposed project without due consideration of the costs the other planned and approved lines would prevent the Commission—or anyone else—from seeing the true potential impact on Albertans, businesses, and public institutions (schools, hospitals, municipalities, public service and recreational institutions). Hence, it is our view that the Commission has duty to give consideration to the broader cost impacts associated not only with the Heartland Project and the lines it is to interconnect with (EATL and East 500 kV Fort McMurray line) but also the existing grid and the significant expansions proposed in the AESO Long-Term System Plan. Such a calculation was performed by IPCAA, submitted as Exhibit 1143, and is discussed in a section below.

Troubling Relationship between Altalink and SNC-Lavalin

58. Altalink testified that it will be “hiring” SNC-Lavalin to do the engineering, procurement, and construction management on the Heartland Project and WATL.

Transcript, Volume 10(a), pages 2011 to 2018

59. It was also confirmed during cross-examination that SNC-Lavalin is in the process taking ownership of 100% of Altalink (Exhibit 947). Altalink will be a wholly-owned subsidiary of SNC-Lavalin. Yet Altalink also testified that it will not be putting in place any tendering or other transparent processes to ensure fairness in SNC’s service pricing or to avoid collusion between the non-arm’s length companies.

Transcripts, Volume 10(a), pages 2013 to 2018.

60. The non-arm's length relationship between Altalink and SNC-Lavalin is a serious concern to the Shaws. It is submitted that it is a matter that the Commission must treat with the utmost of seriousness given the absence of prior checks-and-balances on costs and given that all Albertans, businesses, and public facilities must pay increased monthly transmission charges that will ultimately flow through Altalink to SNC-Lavalin.
61. Altalink can incur costs without needing any prior approval. Indeed, Altalink illustrates this daily by its obscene level of radio, television, and newspaper advertising—advertising that Altalink has done to promote its opportunity to build this and other transmission lines.

Transcripts, Volume 10(a), pages 2018 to 2022.

62. The fact that AESO would assign projects to Altalink given Altalink's non-arm's length relationship with SNC-Lavalin is another factor for the Commission to consider in its assessment of whether it is in the public interest to approve the Heartland Project. The nature of the relationship increases the risk of costs that the project will escalate, resulting in unnecessary burdens on Albertans, businesses and public institutions.

E. Social and Economic Impacts

63. The Shaw witness panel included the following cross-section of Alberta's economy:
- a) Karen Shaw, landowner, cattle producer, and Sturgeon County Councillor;
 - b) Sheldon Fulton, Executive Director, IPCAA;
 - c) Dawn Soetaert, Treasurer, West Country Hearth Senior's Living and Care Facility;
 - d) Chris Jager, President, AltaSteel, a steel mill;
 - e) Jay Esterer, CEO, Endura Manufacturing, a paint manufacturing, distribution and sales company;
 - f) Dan Majeau, President, Sturgeon Valley Pork, a locally-owned and operated pork processing plant;
 - g) Jonathan Avis, President, Saxby Foods, a manufacturer of frozen desert products sold throughout North America;
 - h) Ted Johnston, President and CEO, Alberta Food Processors Association;
 - i) Don Rigney, Mayor of Sturgeon County, former Chairman of the Alberta Industrial Heartland Association and current Board member.
64. Mr. Sheldon Fulton of IPCAA provided a compilation of the total costs of known Alberta transmission projects as of May 13, 2011 in Exhibit 1143 as follows:

The following table sets out all of the projects that are anticipated or in progress due to either NID approvals or directions from the AESO that have not entered rate base as of 2009. The estimates are based on the latest available data with the source of data identified:

		2009 AESO Plan	Current 2011 est	% Change	Source	Notes
CTI	CTI-WATL	1060	1540	45.3%	AltaLink Appl. To AUC Feb 28, 2011 pg 262	Includes AFUDC Allow. at 8.5%
	CTI-EATL	1330	1776	33.5%	ATCO Appl. To AUC Mar 25, 2011 pg 51	Includes ATCO est of \$177M for AFUDC
	CTI-Heartland	387	580	49.9%	AltaLink Appl. To AUC Sep 27, 2010 pg 397	Application included AFUDC
	CTI-Ft Mac	2045	2610	27.6%	Cost Summary provided to TFCMC	includes AFUDC est at 8.5%
	CTI-Calgary	100	109	9.0%	original CTI est - AESO 2009 Plan	includes AFUDC est at 8.5%
	CTI Total	4922	6615	34.4%		
Renewable	Renew-SATR	1004	1830	82.3%	Cost Summary provided to TFCMC Mar 11, 2011	
	Renew-South	900	975	8.3%	AESO 2009 LTTSP	includes AFUDC est at 8.5%
	Renew Total	1904	2805	47.3%		
	Near Complete	570	1100	93.0%	Cost Summary Report to TFCMC April 11, 2011	
Other Bulk	Oth Bulk	550	600	9.1%	AESO 2009 LTTSP	includes AFUDC est at 8.5%
Regional	Regional	3869	4595	18.8%	LTTSP with updates to TFCMC	includes AFUDC at 8.5%
	Total	11815	15715	33.0%		

Table 1 - Transmission Costs - May 2011

The total for all transmission projects is currently \$15.7 billion.

65. Mr. Fulton also testified as to the rate increases for delivered electricity that will result if all projects proceed (Exhibit 1143):

Figure 1 - Impact of \$15.7B in transmission capital costs on Revenue Requirements

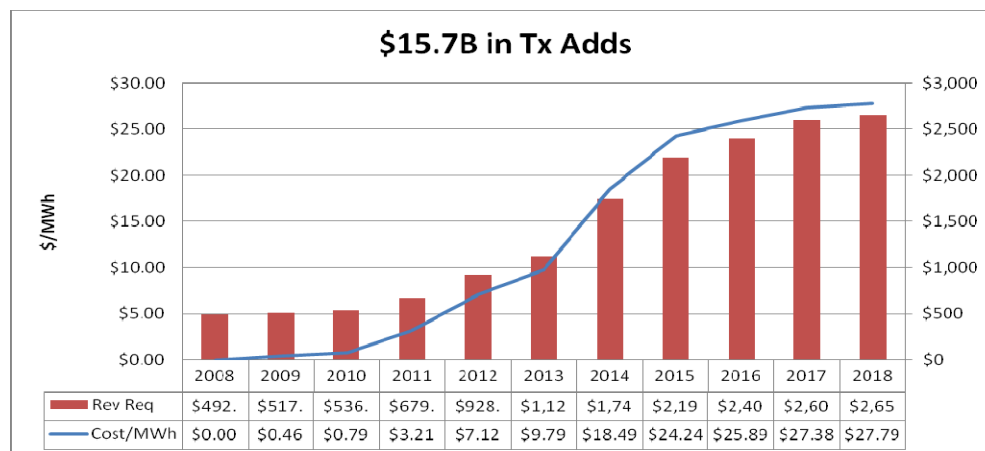
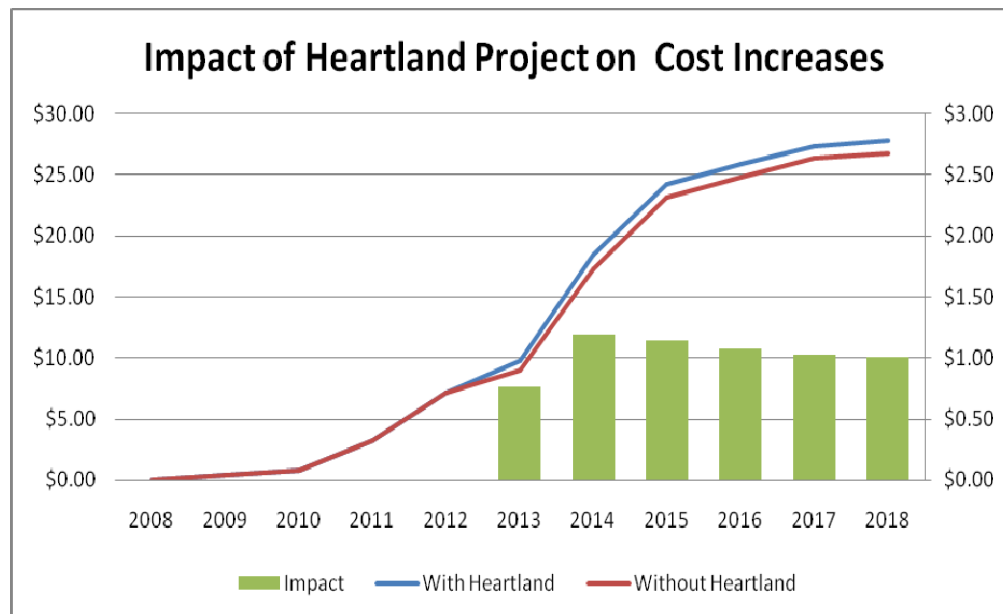


Figure 2 - Impact of Heartland Project on Incremental Tx Costs per MWh



66. Each witness on the Shaw panel explained impacts of rising utility rates resulting from the AESO's proposed transmission build. Their testimony included:
- the harmful impacts from having to increase costs of services which could hurt Albertans, such as seniors, who live on fixed incomes;
 - rising production costs is low-margin businesses that will force manufacturers out of business;
 - loss of competitiveness that will result from Alberta businesses having far higher costs of delivered electricity than their competitors;
 - loss of sales and lost purchasing power from other Alberta businesses including Alberta farmers;
 - creating an incentive for value-added processing and related industries to relocate outside of Alberta; and
 - an over-all reduction in the competitiveness of the Alberta economy and job losses.

67. Mr. Ted Johnston of the Alberta Food Processors testified that his members are the largest employers of manufacturing jobs in Alberta and operate electricity-intensive businesses with low margins in a global market. He explained how both the federal and provincial governments are working to improve the global competitiveness of this industry by encouraging electricity-intensive automation. Mr. Johnston explained that his members are very concerned that the increases in the costs of delivered electricity could negate any gains that the industry is achieving through automation.

Transcripts, Volume 22, pages 5670 to5682

68. Mr. Johnston also shared with the Commission the results of a survey that his association had conducted with its members with respect to the economics of delivered electricity costs on their businesses. He explained that 51% of his members said that electricity costs were either a significant or critical input cost. Further, 52% of his surveyed members said that they cannot pass increased electricity costs onto buyers and that the result of significant increases in the cost of delivered electricity would be “disastrous” to their business.

Transcripts, Volume 22, pages 5673 to5862

69. The fact that AESO has proposed such a massive build for our transmission system and its resultant economic consequences is not surprising. Indeed, separate studies, one by the Fraser Institute (Exhibit 736.12), another by the University of Calgary School of Public Policy (Exhibit 736.11) and even a third study which was commissioned by the Utility Consumers’ Advocate’s Office (Exhibit 736.14: UDC Report) concluded that the AESO has no incentive to seek cost-effective solutions to electricity transmission and AESO suffers no adverse consequence from over-building the transmission system.

70. From an evidentiary perspective the hearing was completely one-sided on the matter of the social and economic effects of the construction and operation of the proposed Heartland Project. The Heartland Project and its interconnected lines proposed by AESO will have a serious and negative effect on Alberta's economy. The resulting job losses, business closures, loss of competitiveness, and increased costs to public institutions such as schools, hospitals, recreational facilities and other non-profit service providers will have adverse social effects.
71. Neither Altalink nor AESO fully explained why they felt they could ignore the social and economic impacts of the AESO plan, but the fact of the matter is that they did not lead evidence on the social and economic benefits.
72. Hence, it is our submission, that based on the evidence the only conclusion that the Commission can reach factually is that the social and economic harm of the project outweighs any benefits.
73. We now turn to consideration of what the Commission is legally required to consider in making its decision on this application.

III. LEGAL ARGUMENT

Public Interest and the Commission

74. The Alberta Legislature has vested in you, the Commission panel hearing this case, a vitally important role with respect to the review and approval of proposed new transmission lines. Section 17(1) of the *Alberta Utility Commission Act* (AUCA) which states:

Public interest

17(1) Where the Commission conducts a hearing or other proceeding on an application to construct or operate a hydro development, power plant or transmission line under the *Hydro and Electric Energy Act* or a gas utility pipeline under the *Gas Utilities Act*, it shall, in addition to any other matters it may or must consider in conducting the hearing or other proceeding, give consideration to whether construction or operation of the proposed hydro development, power plant, transmission line or gas utility pipeline is in the public interest, having regard to the social and economic effects of the development, plant, line or pipeline and the effects of the development, plant, line or pipeline on the environment. [Emphasis added]

75. It is our submission that the Commission is statutorily required to consider and weigh the social and economic impacts of the Heartland Application despite the project being classed as “critical transmission infrastructure” (CTI).

76. In 2009, the Alberta Legislature modified the pre-existing process for approving transmission lines. Through Bill 50, the Legislature passed into law the *Electric Statutes Amendment Act*. That Act amended three existing statutes: the *Alberta Utility Commission Act* (AUCA); the *Electric Utilities Act* (EUA), and the *Hydro and Electric Energy Act* (HEEA).
77. Prior to Bill 50, all proposed transmission lines were required to undergo two separate and sequential public hearing processes. The first hearing considered the “need” for a proposed transmission line: mandated by sections 34, 35 and 36 of the EUA. The second hearing focused on the location (routing) of the proposed transmission line under the HEEA.
78. Bill 50 removed the requirement for a separate hearing to assess “need” and consolidated the process into a single hearing process for proposed transmission lines that are designated by the Legislature as CTI.

AESO and Altalink Incorrect on the Commission’s Public Interest Mandate

79. In the early stages of this proceeding, we filed Information Requests regarding the social and economic impacts of the application. Altalink objected and asserted that once a proposed transmission line has been designated as CTI, then the Commission’s role is reduced to considering the location only and, in Altalink’s own words:

The legislation leaves no room for debate in this proceeding about whether the Heartland Project . . . is in the public interest, or whether it should be larger, smaller, or different from the project described in Section 2 of the Schedule to the EUA.

Accordingly, questions regarding the social and economic costs and benefits of the Heartland Project to Albertans, questions regarding whether it is intended for local use or export, questions whether it is appropriately sized, and questions regarding the effects of the Heartland Project on the economy generally are not questions that the AUC is required to consider, and are not relevant.

80. It is our submission that Altalink's characterization of the wording and legislative intent of the statutory scheme resulting from Bill 50 is incorrect at law and improperly seeks to narrow the jurisdiction of the Commission to the prejudice of the Shaws, other interveners, all Alberta electricity users and the Alberta economy.
81. A review of the legislative history illustrates the broader scope and jurisdiction of the Commission in this matter.¹¹
82. The tables below show the wording of Bill 50 as it was introduced for first reading in the Legislature and then compares it to the wording that was ultimately approved by the Alberta Legislature:

¹¹ *Driedger on the Construction of Statutes*, 3rd ed. Toronto: Butterworths, 1994, explains the instances where legislative history and excerpts from *Hansard* are proper tools to aid in statutory interpretation in Chapter 18. Noteworthy here is the quotation adopted by *Driedger* wherein the House of Lords in *Pepper (Inspector of Taxes) v. Hart* [1992] 3 W.L.R. 1032 (H.L.) concluded as follows (p. 474):

. . . the exclusionary rule should be relaxed so as to permit reference to Parliamentary material where (a) legislation is ambiguous or obscure, or leads to an absurdity; (b) the material relied upon consists of one or more statements by a minister or other promoter of the Bill together if necessary with such other Parliamentary material as is necessary to understand such statements and their effect; (c) the statement relied upon are clear.

Table 1 – Legislative History of Section 17 of AUC Act re Public Interest

Bill 50 Proposed	Law as Enacted
<p>Alberta Utilities Commission Act</p> <p>Public interest</p> <p>17(1) Where the Commission conducts a hearing or other proceeding on an application to construct or operate a hydro development, power plant or transmission line under the <i>Hydro and Electric Energy Act</i> or a gas utility pipeline under the <i>Gas Utilities Act</i>, it shall, in addition to any other matters it may or must consider in conducting the hearing or other proceeding, give consideration to whether construction or operation of the proposed hydro development, power plant, transmission line or gas utility pipeline is in the public interest, having regard to the social and economic effects of the development, plant, line or pipeline and the effects of the development, plant, line or pipeline on the environment.</p> <p>(2) Subsection (1) does not apply to critical transmission infrastructure as defined in the <i>Electric Utilities Act</i>.</p>	<p>Alberta Utilities Commission Act</p> <p>Public interest</p> <p>17(1) Where the Commission conducts a hearing or other proceeding on an application to construct or operate a hydro development, power plant or transmission line under the <i>Hydro and Electric Energy Act</i> or a gas utility pipeline under the <i>Gas Utilities Act</i>, it shall, in addition to any other matters it may or must consider in conducting the hearing or other proceeding, give consideration to whether construction or operation of the proposed hydro development, power plant, transmission line or gas utility pipeline is in the public interest, having regard to the social and economic effects of the development, plant, line or pipeline and the effects of the development, plant, line or pipeline on the environment.</p> <p>(2) The Commission shall not under subsection (1) give consideration to whether critical transmission infrastructure as defined in the <i>Electric Utilities Act</i> is required to meet the needs of Alberta.</p>

Table 2 – Legislative History of Powers of the Commission under the HEEA

Bill 50 Proposed	Law as Enacted
<p>Hydro and Electric Energy Act</p> <p>Power of Commission re applications 19(1) On an application for an approval, permit or licence under this Part, or for an amendment of an approval, permit or licence, the Commission may grant the approval, permit, licence or amendment subject to any terms and conditions that it prescribes or may deny the application.</p> <p>(1.1) Notwithstanding subsection (1), the Commission shall not refuse an approval of a transmission line or part of a transmission line designated as critical transmission infrastructure as defined in the <i>Electric Utilities Act</i> on the basis that, in its opinion, it does not meet the needs of Alberta or is not in the public interest.</p> <p>(2) Without restricting the generality of subsection (1), the Commission may do one or more of the following:</p> <p>(a) require changes in the plans and specifications of a hydro development, power plant or transmission line;</p> <p>(b) require changes in the location of a hydro development, power plant or transmission line;</p> <p>(c) prescribe a date before which the construction of, or operation of, the hydro development, power plant or transmission line must commence;</p> <p>(d) prescribe the location and route of the transmission line as precisely as it considers suitable;</p> <p>(e) prescribe the location of the right of way of the transmission line and the relationship of its boundaries to the transmission line or any part of the transmission line.</p>	<p>Hydro and Electric Energy Act</p> <p>Power of Commission re applications 19(1) On an application for an approval, permit or licence under this Part, or for an amendment of an approval, permit or licence, the Commission may grant the approval, permit, licence or amendment subject to any terms and conditions that it prescribes or may deny the application.</p> <p>(1.1) Notwithstanding subsection (1), the Commission shall not refuse an approval of a transmission line or part of a transmission line designated as critical transmission infrastructure as defined in the <i>Electric Utilities Act</i> on the basis that, in its opinion, it does not meet the needs of Alberta.</p> <p>(2) Without restricting the generality of subsection (1), the Commission may do one or more of the following:</p> <p>(a) require changes in the plans and specifications of a hydro development, power plant or transmission line;</p> <p>(b) require changes in the location of a hydro development, power plant or transmission line;</p> <p>(c) prescribe a date before which the construction of, or operation of, the hydro development, power plant or transmission line must commence;</p> <p>(d) prescribe the location and route of the transmission line as precisely as it considers suitable;</p> <p>(e) prescribe the location of the right of way of the transmission line and the relationship of its boundaries to the transmission line or any part of the transmission line.</p>

83. As is evident, the legislative history shows that the Alberta Legislature originally intended that the Commission would not be allowed to consider whether CTI could

be evaluated or denied on the basis that the proposed line is not in the public interest. However, the Legislature amended the legislative wording so that the broad public interest mandate of the Commission would continue with respect to all transmission lines including CTI. The resulting legislation continued the Commission's authority to deny an application where the Commission finds that a proposed transmission line is not in the public interest.

84. The Alberta *Hansard* recorded the following statement by the then Minister of Energy Mel Knight, the sponsor of the Bill, when the amendments to Bill 50 were approved by the Legislature:

The amendments that we tabled last week include the opportunity here for us to clarify the issues and concerns that people had brought forward relative to the Alberta Utilities Commission's mandate to operate in the public interest.

Mr. Chairman, amendment A1 deals with that issue. What we have done is clarified the wording to make it very distinct that this piece of legislation deals only with the need that had been demonstrated by AESO for these pieces of critical transmission infrastructure. The amendment indicates that the need will not be heard by the Utilities Commission; however, everything else relative to these pieces of infrastructure will be heard by the AUC, and they must make their decision with the public interest in mind. Public interest would include things such as the economics around the issues, the issues of health if they arise, issues of environmental concern, and the like.

I think that this amendment is a good amendment that allows us to bridge a concern that has been expressed and expressed here on the floor of the Legislature relative to the issue of being sure that we are not – and I would repeat that, Mr. Chairman: we are not removing the AUC's mandated requirement to do their work and

come to their conclusions, bearing in mind the public interest.

[Emphasis added] (*Hansard*, November 23, 2009, page 1963)

85. The Minister's words reveal the Legislature's intention that the Commission would continue to have broad public interest discretion with respect to CTI lines.¹²
86. The Minister's description of the breadth of the Commission's jurisdiction and public interest mandate with respect to reviewing CTI is a far cry from Altalink's assertion that the Commission only has a narrow, perfunctory role over routing, and nothing else.
87. Altalink ignores the legal provisions that require the Commission to assess whether a CTI line is in the public interest. Instead, Altalink focuses on one anomalous and oddly drafted provision in the HEEA which provides:
- Critical transmission infrastructure**
13.1(1) In this section, "critical transmission infrastructure" means critical transmission infrastructure as defined in the *Electric Utilities Act*.
- (2)** The construction, connection and operation of a transmission line or part of a transmission line that is designated as critical transmission infrastructure is required to meet the needs of Alberta and is in the public interest.
88. Section 13.1(2) does not mean that the Commission cannot consider the public interest. Nor does it mean that a CTI line is deemed to be in the public interest.

¹² The legal authority to utilize *Hansard* to assist in statutory interpretation is described in foot note 11.

89. It is our submission that section 13.1(2) must be read in conjunction with its companion statutes: the AUCA and EUA. In doing so, one can see that 13.1(2) of HEEA simply means that a proposed CTI line that is ultimately approved by the AUC after a hearing is a transmission line that is in the public interest. Reading section 13.1 in this manner makes the section consistent with the provisions in section 19 of the HEEA, and, more importantly, section 17 of the AUCA. This interpretation also aligns with the statements of the Minister in *Hansard* and gives effect to the dominant purpose of the legislation—promotion of the public interest.
90. The statutory interpretation principle of *in pari materia* supports interpreting section 13.1(2) of HEEA in this manner. Professor Ruth Sullivan, in the seminal text, *Driedger on the Construction of Statutes*, 3rd ed. Toronto: Butterworths, 1994, (“*Driedger*”) at page 285 states:

Statutes enacted by a legislature that deal with the same subject are presumed to be drafted with one another in mind, so as to offer a coherent and consistent treatment of the subject.

...

In effect, the several statutes are construed together as if they constituted a single Act, and the presumptions of coherence and consistent expression apply to these statutes as if they were part of a single Act.

91. Support for this interpretation is also found in a number of other sources and legal principles: (1) the purpose sections of the HEEA; (2) application of the *expressio unius est exclusio alterius* principle in the context of section 3(1) of the HEEA; and (3) the principle that the specific provisions in the home statute override any conflicting provisions in the peripheral statute.

92. *Dreidger* explains the important role of purpose statements in interpreting statutes at page 264:

Purpose statements play an important role in modern regulatory legislation. Such legislation establishes a general framework within which powers are conferred to achieve particular goals or to give effect to particular policies. Purpose statements expressly set out these policies and goals.

93. Furthermore, our courts have ruled purpose statements are to be given weight and taken seriously. *Driedger* explains:

In *R. v. T.(V.)* the Supreme Court of Canada suggested that it was prepared to take purpose statements seriously. It rejected the suggestion that a purpose statement is merely a preamble that does not carry the same force as a substantive provision. [Page 267]

94. The purpose statements in the HEEA emphasize the importance of the public interest with respect to the approval of transmission lines—not just routing:

Purposes of Act

2 The purposes of this Act are

- (a) to provide for the economic, orderly and efficient development and operation, in the public interest, of hydro energy and the generation and transmission of electric energy in Alberta,
- (b) to secure the observance of safe and efficient practices in the public interest in the development of hydro energy and in the generation, transmission and distribution of electric energy in Alberta,

95. The principle of statutory interpretation known as *expressio unius est exclusio alterius* means the express reference to one thing implies the exclusion of all others. *Dreidger* describes the principle as follows:

An implied exclusion argument lies whenever there is reason to believe that if the legislature had meant to include a particular thing within the ambit of its legislation, it would have referred to that thing expressly. Because of this expectation, the legislature's failure to mention the thing becomes grounds for inferring that it was deliberately excluded.

96. And elsewhere at page 170:

One of the most striking features of legislative drafting is its avoidance of stylistic variation. As much as possible, drafters strive for uniform and consistent expression. Once a pattern of words has been devised to express a particular purpose or meaning, the pattern is used for this purpose or meaning each time the occasion arises.

97. If the Legislature had intended to prevent the Commission from considering public interest with respect to CTI lines, the Legislature could have used language parallel to the following found in section 3 of the HEEA:

Guidance to Commission

3(1) Where the Commission is considering

(a) an application under section 11 for the construction or operation of a generating unit as defined in the *Electric Utilities Act*, or

(b) an application under section 18 for connection of a generating unit as defined in the *Electric Utilities Act*,

the Commission, for the purposes of the consideration required to be given by the Commission under section 17 of the *Alberta Utilities Commission Act* and in order to determine whether the purposes of this Act will be achieved,

(c) shall not have regard to whether the generating unit is an economic source of electric energy in Alberta or to whether there is a need for the electric energy to be produced by such facility in meeting the requirements for electric energy in Alberta or outside Alberta, and

- (d) must have regard for the purposes of the *Electric Utilities Act*. [Emphasis added]

98. The important point here is that the Legislature has shown that it knows how to give guidance to the Commission and specifically how to express its intention to exclude section 17 of the AUCA from consideration by the Commission. If the Legislature had intended to prevent the Commission from considering whether the social and economic effects of a proposed transmission line (CTI or any other kind) are in the public interest, it could have used parallel language to section 3 of HEEA but it did not do so.
99. Furthermore, a purposive analysis of statutes can be used to establish priority as between statutory provisions. *Dreidger*, at page 181, states:
- By examining overlapping provisions in their relevant legislative context, the courts are sometimes able to place them in a single scheme and assign them a ranking or priority based on their role in that scheme. Conflict is thus avoided by subordinating one provision to another in a way that gives effect to the dominant purpose of the legislature.
100. The express wording of section 17(1) of the AUCA has an overriding quality to it. Section 17(1) does not just say that the Commission must consider the public interest. It goes much further. It states that the Commission “shall, in addition to any other matters it may or must consider in conducting the hearing or other proceeding, give consideration to whether construction or operation of the proposed . . . transmission line . . . is in the public interest, having regard to the social and economic effects of the . . . line . . .” [Emphasis added]

101. It is our respectful submission that the Commission is obligated and is subject to a positive legal duty to consider whether the construction and operation of the proposed Heartland Project is in the public interest having regard to the social and economic effects of the proposed project:
- a) the legislative drafting shows that the Legislature removed the requirement for a separate “needs” hearing and consolidated the process into a single hearing process for CTI lines;
 - b) in order to achieve the streamlined process, the Legislature exempted CTI lines from sections 34, 35 and 36 of the EUA and deemed the “need” requirement to have been satisfied;
 - c) deeming the “need” requirement to be satisfied does not preclude the Commission from reviewing the social and economic effects of the proposed CTI line to determine whether the line should be approved or denied on the basis of a public interest analysis under section 17(1) of the AUCA; and
 - d) the legislative history of Bill 50 and the Legislature’s deliberate removal of provisions that would otherwise have prevented the Commission from having the jurisdiction to deny a CTI line, show that the Legislature intended the Commission to continue to have the authority to either approve or deny a CTI line based on the social and economic effects of the operation of the line.

102. Accordingly, it is our respectful submission, that Altalink's assertions that the Commission's new role post-Bill 50 is merely perfunctory with respect to approving route selection is incorrect at law.
103. The statutory provisions applicable to this proceeding require the Commission to weigh and assess the evidence of social and economic impact as part of your public interest decision-making. The abundance of evidence—indeed, the only evidence—before you is that the Heartland Project and its interconnecting lines will cause serious, real and permanent social and economic harm to Alberta. Hence, it is our submission that the Commission must deny the Heartland Project on the grounds that it is not in the public interest.
104. Furthermore, AESO has demonstrated by its decision to significantly delay other CTI lines in its draft 2011 Long-Term System Plan that the CTI designation does not mean 'urgent' and the evidence the Commission received that most of the proposed bitumen upgraders for the Heartland region have been cancelled militates in favour of denying the application when juxtaposed with the 'rate shock' and competitiveness impacts of an approval.
105. Finally, it is our submission that a denial of the application would be consistent with and help achieve the objectives of the Provincial Energy Strategy.
106. A separate explanation as to why the Commission must deny the 240 kV add-on line that was included in the Heartland Project application is set out in Appendix A to these submissions.
107. We conclude our closing argument with the following excerpts from the Shaw witness panel:

Q. MR. WILSON: So what would you like the Commission to do? And it will be my job in argument to explain to the Commission what my view as a lawyer is as to what their range of options are, but not placing that burden on you:

A. MR. RIGNEY: Quite simply I would ask the Commission not to let [the project] happen. I would ask that they stop the process significantly and revisit this needs identification document. I am frustrated that we have pitted neighbour against neighbour and community against community. . . . I think we have to put a little more scrutiny on Alberta Energy and AESO and to seek the truth which, you know, I strongly believe will show that what is currently proposed is most definitely not in the public interest. So I'd ask that the Commission do that and try and lay a little light on this. Thank you.

Transcripts, Volume 23(b), page 5941

Mr. JOHNSTON: I think the message is clear. This industry cannot bear the cost of this massive overbuild. Nobody came and asked us what the effect would be on this important industry and the ripple effect to the farmers of Alberta. We are courting a significant impact to the social and economic fabric of this entire province. Ladies and gentlemen, we can only hope that you will act to stop the madness.

Transcripts, Volume 23(a), page 5862


IV. RELIEF REQUESTED

108. It is our respectful submission that upon applying the evidence in these proceedings to the applicable statutory provisions that the Commission is obligated to deny the Heartland Project application.

All of which is respectfully submitted this 20th day of June, 2011.

WILSON LAW OFFICE

Per:


I. KEITH WILSON
Solicitor for the Shaws

1. The Commission must deny the 240 kV add-on line that was included in the Heartland Project.
2. The 240 kV line starts at the proposed Heartland Substation and ends in the industrial area east of the North Saskatchewan River.
3. AESO and Altalink confirmed during cross-examination that no needs identification document has been prepared, submitted or approved by the Commission for this 204 kV line.
4. The 240 kV Line is not “critical transmission infrastructure”. Here is the complete list of CTI:

Schedule

Critical Transmission Infrastructure

Each of the critical transmission infrastructure described in this Schedule includes all associated facilities required to interconnect a transmission facility described in this Schedule to the interconnected electric system.

The following transmission facilities are designated as critical transmission infrastructure:

1(1) Two high voltage direct current transmission facilities between the Edmonton and Calgary regions, with a minimum capacity of 2000 megawatts each, generally described as follows:

(a) one facility with a northern terminal in the vicinity of the existing Keephills - Genesee generating units and the southern terminal at or in the vicinity of the existing Langdon 102S substation, and

(b) one facility, located east of the facility described in clause (a) and geographically separated from that facility for the purposes of ensuring reliability of the transmission system,

with a northern terminal at or in the vicinity of a new substation to be built in the Gibbons - Redwater region and a southern terminal

(i) at or in the vicinity of the existing West Brooks 28S substation, or

(ii) at or in the vicinity of a new substation to be located in the Raymond - Bow Island region.

(2) The terminals referred to in subsection (1)(a) and (b) shall have an initial capacity of at least 1000 megawatts each and be expandable to a minimum capacity of 2000 megawatts each in accordance with section 41.4(1) of this Act.

- 2 One double circuit 500 kV alternating current transmission facility connecting to the 500 kV transmission system on the south side of the City of Edmonton and to a new substation to be built in the Gibbons - Redwater region.
- 3 A new 240 kV substation to be built in the southeast area of the City of Calgary.
- 4 Two single circuit 500 kV alternating current transmission facilities from the Edmonton region to the Fort McMurray region, generally described as follows:
 - (a) a facility from a new substation to be built in the Thickwood Hills area, approximately 25 km west of the Fort McMurray Urban Service Area, to a substation at or in the vicinity of the existing Brintnell 876S substation;
 - (b) a facility at or in the vicinity of the existing Brintnell 876S substation, to a substation in the vicinity of the existing Keephills - Genesee generating units;
 - (c) a facility, located east of the facilities described in clauses (a) and (b) and geographically separated from those facilities for the purposes of ensuring reliability of the transmission system, from a new substation to be built in the Gibbons - Redwater region to a new substation to be built in the Thickwood Hills area, approximately 25 km west of the Fort McMurray Urban Service Area.

2009 c44 s2

5. The 240 kV portion of the Heartland Project is not included in the list.
6. The inclusion of item 3 in the Schedule shows that the Alberta Legislature knows what a 240 kV line is and could have included a 240 kV line in the Schedule with respect to the Heartland Project but the Alberta Legislature did not do so. Again, the 240 kV line is not CTI.
7. Careful analysis of the preamble to the Schedule reveals that the words in the preamble also do not support inclusion of the 240 kV line as CTI either. The preamble to the Schedule states:

Each of the critical transmission infrastructure described in this Schedule includes all associated facilities required to interconnect a **transmission facility** described in this Schedule to the interconnected electric system.

8. Since the purpose of the 240 kV line is to connect the proposed Heartland Substation with industrial users in the Heartland region, the question becomes is the start point of the 240 kV line—ie., the Heartland Substation—a “transmission facility”.

9. In order for the proposed Heartland Substation 12S to be a “transmission facility” it has to meet the definition in the Act. Section 1(bbb) of the *Electric Utilities Act* defines “transmission facility” as:

1(bbb) “**transmission facility**” means an arrangement of conductors and transformation equipment that transmits electricity from the high voltage terminal of the generation transformer to the low voltage terminal of the step down transformer operating phase to phase at a nominal high voltage level of more than 25 000 volts to a nominal low voltage level of 25 000 volts or less, and includes

(i)transmission lines energized in excess of 25 000 volts,

(ii)insulating and supporting structures,

(iii)substations, transformers and switchgear,

(iv)operational, telecommunication and control devices,

(v)all property of any kind used for the purpose of, or in connection with, the operation of the transmission facility, including all equipment in a substation used to transmit electric energy from

(A) the low voltage terminal,

to

(B)electric distribution system lines that exit the substation and are energized at 25 000 volts or less,

and

(vi)connections with electric systems in jurisdictions bordering Alberta,

but does not include a generating unit or an electric distribution system;

10. During cross-examination Altalink confirmed that it does not consider the Heartland Substation to be a “transmission facility” (Transcripts, Volume 9(b), pages 1982 and 1983):

Q. MR. WILSON: Now a technical question: Would any of you consider the proposed Heartland 12S substation to be a **generation transformer**?

A. MR. BOWDEN: Sorry, sir, did you mean a generation substation?

Q. No, **generation transformer**.

A. MR. BOWDEN: No, there is no generation that I am aware of proposed for Heartland.

Q. Would you consider it to be a **high voltage terminal** of a generation transformer?

A. MR. BOWDEN: No. This is a fairly standard 500 kV transmission substation. So it will have normal transmission class type transformers.

11. Similarly, during cross-examination, AESO confirmed that it too does not consider the Heartland Substation to be a “transmission facility” (Transcripts, Volume 15, page 3549):

Q. MR. WILSON: The 240 kV line. Is the start point for that line the Heartland industrial substation, or the proposed Heartland substation, S12 or whatever it’s called?

A. Mr. BRAUSEN: Correct. This project does include an amount of 240 kV double-circuit transmission that would originate in the Heartland substation and then interconnect into the existing lines to the east of the station.

Q. And is the Heartland substation a **generation transformer**?

A. MR. BRAUSEN: Sorry. Could you repeat your question?

Q. Is the Heartland substation a **generation transformer**?

A. MR. BRAUSEN: No, it is not. It’s a substation.

Q. Thank you. And can you confirm that there was no need identification document prepared for the 240 kV line?

A. MR. BRAUSEN: That is correct.

12. It is our submission that regardless of any decision that the Commission makes on the main Heartland Project application, the Commission must deny the 240 kV add-on line:
- a. The 240 kV line is not listed in the Schedule to the Act wherein CTI projects are defined;
 - b. The wording of the preamble to the Schedule references CTI as including ‘associated facilities required to interconnect a “transmission facility” described in the Schedule to the interconnected electric system’;
 - c. Both Altalink and AESO have confirmed through their testimony that the starting point for the 240 kV add-on line is not a “transmission facility” as that term is defined in the Act;
13. Therefore, the 240 kV line must be denied because no needs identification assessment has been prepared or approved as required by the Act.