AUC
Alberta Utilities Commission

Central Alberta Rural Electrification Association Limited

Application for a Declaration under the Hydro and Electric Energy Act

July 4, 2012

The Alberta Utilities Commission
Decision 2012-181: Central Alberta Rural Electrification Association Limited
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Application No. 1606623
Proceeding ID No. 886

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Fifth Avenue Place, Fourth Floor, 425 First Street S.W.
Calgary, Alberta
T2P 3L8

Telephone: 403-592-8845
Fax: 403-592-4406

Website: www.auc.ab.ca

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1 Introduction

1. In rural Alberta, electric distribution service is generally provided to Albertans by two public distribution utilities, FortisAlberta Inc. (FortisAlberta) and ATCO Electric Ltd. (ATCO Electric), and, for members of rural electrification associations (REAs), by the REAs. Currently, the geographic service areas of the public distribution utilities and the REAs overlap. The geographic service areas of the public distribution utilities do not overlap with each other and the geographic service areas of the REAs do not overlap. In some areas of rural Alberta, some Albertans, who are not members of an REA, receive service from the public distribution utility while other Albertans, who are members of an REA, are served by the REA even though all of these Albertans may reside in the same geographic area of the province. In addition, the facilities of the REAs and the public distribution utilities are intermingled so that an REA member or a public distribution utility customer might receive service through a combination of facilities owned by the REA and by the public distribution utility. Both the REA and the public distribution utility in a geographic area have received regulatory approval for their overlapping geographic service areas, and electricity customers have been divided up based on statutory provisions that require the REAs and the public distribution utilities to enter into operating agreements that include REA membership provisions.

2. This situation of intermingled customers and service providers in the same geographic area is not common in other jurisdictions where it is typical that electric distribution service is provided by a monopoly in any one geographic area. The existence of more than one service provider for the provision of electric distribution service in overlapping geographic service areas is a reflection of the historical development of the provision of electricity service to rural Albertans.

3. This is an application brought by Central Alberta Rural Electrification Association Limited (CAREA), one of several REAs operating in the province, seeking a declaration from the Alberta Utilities Commission (AUC or the Commission) to clarify the legislative provisions in light of changes in the regulatory environment.

4. CAREA was incorporated pursuant to the provisions and operation of the *Rural Utilities Act* in 1992. Initially it formed by the amalgamation of five REAs and subsequently, from 1992 through 2005, included another 11 REAs. CAREA has been a self-operating electric service provider since 1997, and in 2005 the Alberta Energy and Utilities Board issued an approval to CAREA to operate an electric distribution system in the service area set out in the order.[1] Currently, CAREA distributes electric energy and supplies electricity to its members. The CAREA service area overlaps with the FortisAlberta's service area.

[1] Exhibit 0055.02 – CAREA written evidence, January 17, 2011, page 2 Q.3, page 3 Q.7 and page 4 Q.8.

5. CAREA filed its application on September 30, 2010.[2] The application requested that the Commission issue the following orders and relief:

- A declaration that, for the purposes of Section 25 of the *Hydro and Electric Energy Act*, the CAREA approval entitles CAREA to serve any person in the CAREA service area wishing to obtain electricity for use on property.
- A declaration that, for the purposes of Section 25 and 26 of the *Hydro and Electric Energy Act*, FortisAlberta is restricted to, and shall provide, electric distribution service in the CAREA service area only to a consumer in that service area who is not being provided service by CAREA.
- That the foregoing relief be made effective as of and from January 1, 2012, or such other date that the Commission may determine.
- Such other directions, orders and declarations as are necessary in connection with the granting of the foregoing relief and the hearing of the within matter.

6. In essence, CAREA seeks a declaration that it is the monopoly service provider within its approved geographic service area. Persons currently served by FortisAlberta would continue to be served by FortisAlberta and any new electricity customers in its service area would be served by CAREA. If a new customer could not be served by CAREA, FortisAlberta would be required to serve that new customer.

2 Schedule and process

7. The Commission processed the application in two separate parts. The first part involved only the Commission and CAREA. In the first part of the process CAREA filed the evidence necessary to permit a full and satisfactory understanding of the issues that arose from CAREA's application.

8. CAREA filed written evidence regarding part one of the application on February 8, 2011. The Commission issued information requests to CAREA about its application and evidence on March 3, 2011. On May 9, 2011, CAREA responded to the Commission's information requests.

9. A motion was filed on May 18, 2011, by CAREA which included a request for an expedited process. In its motion, CAREA suggested that the application did not necessitate an oral hearing and also suggested a timeline for the application. The Commission issued a letter on June 2, 2011, to deal with the matters set out in the CAREA motion. The Commission process letter laid out steps for registered participants to respond to the CAREA motion by June 9, 2011, and for CAREA to reply by June 16, 2011.

10. Responses to the CAREA motion were filed by: South Alta REA, Lakeland REA, ATCO Electric, ECPOR Energy Alberta Inc., FortisAlberta, CAREA Employees, CAREA Member Support Coalition and the Office of the Utilities Consumer Advocate.

[2] Exhibit 0002.00 - CAREA application, pages 1 and 2.

11. The Commission issued a ruling regarding the CAREA motion on June 23, 2011, denying the relief requested by CAREA. In its ruling, the Commission noted that it was "premature, at that time, to decide on whether an oral hearing was required"[3] and the Commission considered the "need for full and comprehensive information from all parties take precedence over expediency, especially in significant cases."[4]

12. At this point, the Commission considered the first part of the application to be complete and issued a process letter on June 23, 2011, laying out steps for the second part of the application:

Process Step	Date
Intervener information requests to CAREA	July 14, 2011
CAREA responses to Intervener information requests	October 2011[5]
Intervener evidence	November 16, 2011
Information requests to Interveners on evidence	November 30, 2011
Intervener responses to information requests	December 14, 2011
CAREA rebuttal evidence	January 11, 2012

13. On January 24, 2012, the Commission issued a notice (revised on January 25, 2012) advising parties that oral argument would commence on April 4, 2012. Parties were invited to pre-file written argument by March 23, 2012.

14. The Commission received letters from FortisAlberta on March 7, 2012, and ATCO Electric on March 8, 2012, regarding "recent consideration by arbitrators of matters raised by CAREA which overlap the matters raised by CAREA in its Application to the Commission." The Commission considered both letters as motions to allow for the results of the arbitration to be filed as evidence in this proceeding and granted the motions. The arbitration award was filed as evidence in the proceeding on March 21, 2012.

15. The Commission received written arguments from CAREA, FortisAlberta, ATCO Electric, the Office of the Utilities Consumer Advocate, AltaLink Management Ltd. (AltaLink), CAREA Member Support Coalition and Lakeland REA in advance of the oral argument proceeding. CAREA, FortisAlberta, ATCO Electric and AltaLink appeared before the Commission for oral final argument on April 4 and April 5, 2012.

16. In reaching the determinations set out within this decision, the Commission has considered all relevant materials comprising the record of this proceeding. Accordingly, references in this decision to specific parts of the record are intended to assist the reader in understanding the Commission's reasoning relating to a particular matter and should not be taken as an indication that the Commission did not consider all relevant portions of the record with respect to that matter.

[3] Exhibit 0069.01 - AUC ruling on CAREA motion filed on May 18, 2011, page 7.
[4] Exhibit 0069.01 - AUC ruling on CAREA motion filed on May 18, 2011, page 7.
[5] The deadline for the CAREA responses to intervener information requests was extended to allow for the Commission to respond to motions filed by FortisAlberta and ATCO Electric requesting that the Commission compel CAREA to provide further and better responses to the original intervener information requests. The motions were granted in part and CAREA provided an amended response on October 6, 2011, and further responses on October 18, 2011.

3 Referenced legislative provisions

17. This application requires the analysis of several acts and regulations. To assist the reader, the Commission has identified and summarized the material legislative provisions referenced in this proceeding in Appendix 3.

4 Background and history of REAs

18. The Commission provides this general overview of the development of rural electrification in Alberta in order to provide context to the issues under consideration in this proceeding. In doing so, the Commission has, in addition to reviewing the materials filed on the record regarding the development of rural electrification, reviewed past regulatory approvals granted by its predecessor boards regarding the service areas approved for rural electrification associations in Alberta.

19. Rural electrification in Alberta started in the 1940s, when utilities began providing service to farms that were located close to utility-owned transmission lines that connected larger urban centers. For those rural areas far from existing transmission lines, the cost of installing a distribution network was unjustifiable for the existing utility companies. Building and maintaining the rural distribution network would result in unacceptably high rates for rural customers. In light of this, studies were performed by both the utility companies and the provincial government[6] on how best to approach rural electrification.

20. The provincial government, through a letter directed to both companies operating in Alberta at that time; Calgary Power Company Limited (Calgary Power), and Canadian Utilities Limited (later Alberta Power Limited)[7] requested that the utility companies proceed at once to put into effect a rural electrification program for Alberta and to provide services to farms in their areas presently served by their main transmission lines at a uniform rate of four dollars gross a month. In return for implementing the rural electrification program, the utility companies would receive a subsidy for an amount equal to 50 per cent of the annual corporation income tax collected by the government.[8] Calgary Power's president, in his reply to the letter, acknowledged that the company's current major expenditures for power plants and transmission lines would need significant capital investments that would make raising capital for the rural distribution system very hard and also noted that the low rate to be charged would not provide any return on the investment. Further, it was suggested that farmers should organize themselves into co-operatives to provide the capital cost of the rural distribution systems and receive service from utility companies at a correspondingly lower rate and that the government should give any subsidies it was considering to these co-operatives in aid of construction.[9]

[6] Exhibit 0055.04 - Schedule 2: 1948 Tri-Party Master Form Agreement, Rural Electrification in Alberta – Historical Development, page 1.

[7] The successor to Calgary Power Company Limited's distribution operation is FortisAlberta. Currently, Canadian Utilities Limited is the parent company of ATCO Electric. In 1972, Canadian Utilities Limited integrated its electrical services under the name of Alberta Power Limited, which in 2010, got transferred to ATCO Power.

[8] Exhibit 0097.01 – ATCO Electric response to CAREA-AEL-4(b), Attachment 1 – Letter from the Office of the Premier, July 11, 1947, page 3.

[9] Exhibit 0097.01 – ATCO Electric response to CAREA-AEL-4(b), Attachment 1 – Letter from G.A. Gaherty, President Calgary Power Ltd to Premier E. C. Manning, August 28, 1947, page 6.

21. In 1948, the provincial government passed legislation enabling the creation of farmer-owned rural electrification associations. It also provided a government guarantee for loans to REAs so that the associations could finance the capital cost of constructing a distribution network and, following construction, take ownership of these lines (including transformers and substations).[10]

22. In order to take advantage of the government programs, rural residents were required to form co-operative associations. Under the *Co-operative Association Act*, 1946, ten or more persons wishing to join together to obtain and distribute power amongst each other could form a co-operative.[11] Once incorporated, the co-operative association firstly had to advise the Alberta Power Commission as to the cost, route, service area and number of persons accepting and not accepting service in order to get the certificate of approval from the Alberta Power Commission; and secondly it had to enter into an agreement with an electric power company for the supply of power. Only after these steps had been completed, could the REA apply for loans under the *Rural Electrification Revolving Fund Act*, 1953.[12]

23. From their inception in the late 1940s until the early 1970s, REAs were given authority to serve in specific geographic areas under Section 97 of the *Public Utilities Board Act* (formerly Section 82).[13] These initial service area grants did not explicitly restrict service to only members of the association. However, the agreements made between REAs and the power companies at this time did specifically limit who the REAs could serve.

24. Initially, the REAs contracted directly with the utilities to have the utilities construct, maintain, operate and administer the REA's electric distribution systems, and to supply electric power to REA's members for use on property for farm purposes.[14] Over the last 65 years, through a series of contracts between the REAs and utilities, which contracts were supported and required by the regulatory framework in effect, and along with varying forms of government subsidies, some REAs became wire owners and took responsibility for the operation of

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[10] Exhibit 0055.04 – Schedule 2: 1948 Tri-Party Master Form Agreement, Rural Electrification in Alberta – Historical Development, page 1.

[11] Exhibit 0090.01 – CAREA amended response to ATCO-CAREA-6(b), page 1.

[12] Exhibit 0090.01 – CAREA amended response to ATCO-CAREA-6(b), pages 3 and 4.

[13] **1948, Order # 11437 (P.U. 5528)**: "Application…under the provisions of Section 82, Subsection (3) of the Public Utilities Act by Gladys Rural Electrification Association Limited…for the approval by the Board of the supply of electric power ***to such area*** by the Association. And the Association having filed with the board a copy of the contract which it proposes to enter into with its customers in such area, setting forth the terms upon which it is willing to supply such electric power and the rates therefor:….***And it appearing that no other general source of power is available in the said area***:".
1954, Order # 15464 (P.U. 6503): "Application…under the provisions of Section 82, Subsection (3) of the Public Utilities Act …**and by a petition of a majority of the residents of the area hereinafter described, for the approval by the Board of the supply of electric power to such area**… **And it appearing that no other general source of power is available in the said area**:…It is ordered that the supply … of electric power in that part of the province of Alberta, more particularly described as follows (long description of geographic area) be and the same is hereby approved, the boundaries of the said area being marked in green on the plan which is annexed and signed as relative hereto and forming a part of this order".
1968, Order # 28874 (P.U. 5846): "It is ordered that the supply … of electric power in that part of the province of Alberta, more particularly described as follows (long description of geographic area) be and the same is hereby approved, the boundaries of the said area being marked in green on the plan which is annexed and signed as relative hereto and forming a part of this order".
1971, Order # 30149 (P.U. 7817): (Same as above).

[14] Exhibit 0055.02 – CAREA written evidence, January 17, 2011, page 5 Q.10.

distribution systems to serve their members.[15] As the REAs were able to manage their own operations, they retained the utility companies to only supply electric energy to the REA members and to perform other services such as billing the customers, supply of materials and dealing with any insurance claims. Details of these arrangements can be found in the 1997 Wire Owners Agreement between CAREA and TransAlta.[16]

25. In 1971, two pieces of legislation changed the nature of the governance of electric utilities in the province. These were the creation of the new Energy Resources Conservation Board (formerly the Oil and Gas Conservation Board) and the enactment of the *Hydro and Electric Energy Act*. The original *Hydro and Electric Energy Act* defined a service area as "the area in which an electric distribution system may distribute electric energy" and established the Energy Resources Conservation Board (ERCB) as the agency responsible for service area approvals and amendments. The original *Hydro and Electric Energy Act* did not mention REAs, but approvals issued from 1971 on gradually began to define the service area of an REA as service to its members within its defined geographic service area.[17] Beginning in 1975, the ERCB began issuing service area approvals for all REAs in the province each of which included the explicit limitation that the REAs can provide service only to "members".[18] From 1975 through to 1978, the ERCB worked its way alphabetically through the REAs and issued new service area approvals with this explicit limitation clause. It also reissued service area approvals to the utility companies with more specific wording than had previously been the case.

26. In 1977, a section was added to the *Hydro and Electric Energy Act* which, for the first time, related specifically to REAs. It provided terms of settlement should an REA choose, or be required, to abandon all or part of its system. This provision still exists in a modified form as Section 29 of the current *Hydro and Electric Energy Act* and by reference in Section 32 of the *Hydro and Electric Energy Act*, has direct application to REAs.

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[15] Exhibit 0093.01 – ATCO Electric evidence, page 3.

[16] Exhibit 0055.07 – 1997 Agreement between CAREA and TransAlta, June 6, 1997.

[17] **1972, Approval # HE7206**: "The Energy Resources Conservation Board, pursuant to section 22 of the Hydro and Electric Energy Act…hereby orders as follows: …The operation of electric distribution systems by Calgary Power Ltd., within the service area referred to in clause 2 is approved… 3. **The service area … shall not include … (b) any other service area defined by an order of the board, or in which customers without restriction as to class or occupation were served on June 1st, 1971, by another electric distribution system under authority provided for in previous legislation.**"
1972, Approval # HE 7236: "The operation of an electric distribution systems by Iddesleigh – Jenner REA Ltd., within the service area referred to in clause 3 is approved… **Nothing contained herein shall be construed as preventing the serving by Calgary Power Ltd. of consumers for requirements not supplied by Iddesleigh - Jenner REA** … the service area is as shown on the attachment hereto marked Appendix A."

[18] **1975, Approval # HE 75100**: "the operator shall serve within its service area only members of the Montana REA Ltd…. nothing in this Approval shall be construed as granting to the Operator a service area exclusive of any other service area prescribed by order of the Board".
1981, Approval # HE 8110: "the operator shall serve within its service area only members of the Beisecker REA Ltd…. nothing in this Approval shall be construed as granting to the Operator a service area exclusive of any other service area prescribed by order of the Board".
1992, Approval # HE 9214: "the operator shall serve within its service area only members of the Central Alberta REA Ltd…. Subject to the exclusive right to supply members of CAREA, nothing in this Approval shall be construed as granting to the Operator a service area exclusive of any other service area prescribed by order of the Board".

27. The *Hydro and Electric Energy Act* was modified again in 1982 with the addition of Section 26 which provided that:

> the Board may approve the construction or operation of an electric distribution system if [it] is satisfied that it is for the purpose of providing service to a consumer in that service area who is not being provided service by the distribution system approved to distribute electric energy in that service area.

28. In 1993, a bill was tabled in the Alberta legislature (Bill 344) calling for the enactment of the *Rural Electrification Act*. The proposed act distinguished between service areas and franchise areas both in the definition section and in the body of the act. Section 12(2), for example, stated that "[t]he chief officer may… amend or replace any approval by altering *either* the franchise area or the service area, or both, in accordance with the regulations." This bill was never enacted by the legislature but it does serve to highlight the distinct difference between the terms "service area" and "franchise area".

29. The *Electric Utilities Act* was introduced in 1995. This act confirmed, through what was originally Section 1(1)(aa) and which would later become Section 1(1)(ww), that the service area of an REA would be defined as service to its members within the geographic service area approved under the *Hydro and Electric Energy Act.*

30. In 1998, a provision dealing specifically with service areas was added to Section 40.1 of the *Electric Utilities Act*. This section declared that both REAs and municipalities operate within the service area of the "entitled electric distribution system with whom arrangements for the supply of electricity existed on May 17th 1995." The term, "entitled electric distribution system" was defined in both the 1995 and the 1998 versions of the *Electric Utilities Act* as the distribution system owned by the electric utilities existing at the time, ATCO Electric, Utilicorp, Enmax, Edmonton Power, the City of Lethbridge and the City of Red Deer. Section 40.1 allowed the REA or municipality to give notice in writing to the entitled distribution system's owner that it "no longer wishes [its] service area ... to be considered part of the entitled owner's system." If such notice was given, Section 40.1(3) stated that it would "(a) reduce the size of the entitled distribution system's service area, and (b) create a service area for the electric distribution system owned by the municipality or rural electrification association giving the notice". Section 40.1 disappeared in the 2003 overhaul of the *Electric Utilities Act.* There is no record in Hansard explaining why this section was added in 1998 or why it was removed in 2003.

31. In August of 1999, a *Rural Electrification Association Regulation* was made pursuant to Section 71 of the *Electric Utilities Act*. This regulation was introduced to address the circumstances that would follow once the integrated operating agreements that were in place between the REAs and the public utilities expired. Section 3 stated that:

> After the termination of a contract, the persons who were the parties to the contract may agree that the electric distribution system owned by the REA may serve as the electric distribution system for persons in addition to the persons who were described in the contract as customers of the REA, if those additional persons agree to become members of the REA.

32. The *Roles, Relationships and Responsibilities Regulation* was proclaimed on May 9, 2000. This regulation, like the *Rural Electrification Association Regulation*, was also intended to address the integrated electric distribution systems that existed between the REAs

and the public utilities. However, rather than addressing the consequences that would follow after the termination of the integrated operating agreements between REAs and the public utilities, Section 14(1) required owners in a single geographic area to "establish new arrangements relating to the integrated operation of those electric distribution systems", thereby assuring that there would always be an integrated operating agreement in place. The *Rural Electrification Association Regulation* expired on December 31, 2003, while a new *Roles, Relationships and Responsibilities Regulation* was made in 2003.

5 Summary of the positions of the parties

33. CAREA's principal arguments in support of its application are:

a) The proper interpretation of the governing legislative provisions with respect to service areas does not support the notion of shared or overlapping service areas, nor the act of customer choice in the selection of the provider of electric distribution service. Section 101 of the *Electric Utilities Act* demonstrates the Legislature's intent to protect the right of an owner of an electric distribution system to operate within its designated service area, including by legislating the prohibition of customer choice as a means to protect the owner's rights. For the purposes of Section 101(1) of the *Electric Utilities Act*, the Commission must, consistent with the legislative scheme in Alberta, interpret the phrase "the owner of the electric distribution system in whose service area the property is located" as being the service area granted to CAREA under Approval No. U2005-179.[19]

b) Further evidence of the Legislature's intent with respect to a prescriptive and exclusive geographic service area granted to owners of distribution facilities, including rural electrification associations, is given by the definition of the term "service area" under the *Electric Utilities Act*.

c) Since the structure of the Alberta electric industry was changed to allow for distribution system owners to gain system access service to transmission, and to have an open and unrestricted market to obtain power to serve their distribution customers in their exclusive service areas, the Alberta electric industry now closely resembles the structure of the natural gas industry in Alberta. In the natural gas industry, natural gas co-ops have always operated their distribution systems within an exclusive service area or franchise area under the *Gas Distribution Act*. REAs are not different from natural gas co-ops as both are legal entities formed and subsisting under the provisions of the *Rural Utilities Act*. Persons in the franchise areas of gas co-ops become members of the co-op to receive gas service, not to demonstrate their support for or adherence to "co-operative principles". There are no qualifications or exceptions under the *Gas Distribution Act* to permit a person seeking service to choose between providers on the basis of refusing to become a member of a gas co-op.

d) The exercise by consumers of customer choice goes against the terms of the integrated operating agreements that have been in place since 1948 between each of CAREA and FortisAlberta and their respective predecessors. Under these agreements, CAREA has permitted FortisAlberta, under contract and as a matter of privilege and

[19] REA – Amalgamation Approval No. U2005-179, Application No. 1398635, May 20, 2005.

consent extended by CAREA, to operate and provide service in CAREA's service area so as to serve FortisAlberta's customers.

34. FortisAlberta, ATCO Electric and AltaLink responded in opposition to CAREA's application as follows:

a) While Section 101 of the *Electric Utilities Act* does not permit customer choice, the definition of service area found in the *Electric Utilities Act* for an REA service area is defined with reference to both geographical and membership limits.[20] That is, on a plain reading, the definition of service area found in Section 1(1)(ww) of *Electric Utilities Act* indicates that an REA service area is defined by two parameters: geography and status as a member.[21] While the service areas of CAREA and FortisAlberta overlap geographically, for the purpose of Section 101(1), the service areas are effectively rendered mutually exclusive by the parties' respective constraints: "CAREA serves all members and only members; and FortisAlberta cannot serve persons eligible to be members of CAREA and who choose to become members".[22]

b) Further, CAREA's interpretation of Section 101(1) does not account for the legislative provisions which require that an REA act on co-operative principles, including voluntary membership.[23]

c) The integrated operating agreements are a required element of the statutory scheme under which CAREA operates and it should not be considered superseded by Section 101(1) of the *Electric Utilities Act* as stated by CAREA. To determine CAREA's service area rights, both the legislation and the eligibility requirements in the integrated operating agreement should be considered together.[24,25] As such, CAREA can serve only persons that choose to become members and are eligible to become members as determined by the eligibility provision of the integrated operation agreements.[26,27]

d) The comparison to gas co-ops operating within an exclusive franchise area does not support CAREA's position as the legislative framework pursuant to which gas co-ops operate and obtain franchise area approvals is fundamentally different from the legislative framework the REAs emerged from and under which they are governed today.[28]

[20] Exhibit 0118.01 – AltaLink written argument, page 6, paragraph 19.
[21] Exhibit 0092.01 – FortisAlberta evidence, page 6.
[22] Exhibit 0120.02 – FortisAlberta written argument, page 10, paragraphs 32 and 33.
[23] Transcript, Volume 1, page 398.
[24] Exhibit 0092.01 – FortisAlberta evidence, page 11 and Exhibit 0093.01 – ATCO Electric evidence, page 2.
[25] Exhibit 0120.02 – FortisAlberta written argument, page 17, paragraph 65 and Exhibit 0117.01 – ATCO Electric written argument, page 12, paragraph 32.
[26] Exhibit 0093.01 – ATCO Electric evidence, page 2.
[27] Exhibit 0092.01 – FortisAlberta evidence, page 11 and Exhibit 0120.02 – FortisAlberta written argument, page 12.
[28] Exhibit 0117.01 – ATCO Electric written argument, page 16, paragraph 43.

e) It is not the REAs but the utility companies that have the base rights and obligations to serve as demonstrated by Approval No. HE 8416 and Decision 2003-048.[29] In Approval No. HE 8416, Section 3(2)(b), is the REA-specific condition that defines the service area of an REA as being an area that is defined by both geography and by pertaining to and only to a person who is eligible to be and chooses to be a member.[30] Decision 2003-048 described REAs service areas as "service areas superimposed upon these larger utilities (ATCO Electric and Aquila now FortisAlberta) service areas. Consequently, all REAs are located in a service area belonging to either ATCO Electric or Aquila."[31]

6 Discussion of issues and Commission findings

6.1 Legislative scheme and the scope of Section 101 of the Electric Utilities Act

6.1.1 Service area

35. It is the position of CAREA that the governing legislative provisions, and in particular, Section 101(1) of the *Electric Utilities Act*, do not support the notion of shared or overlapping service areas nor the act of customer choice in the selection of the provider of electric distribution service. Thus, CAREA claims that any person who is in CAREA's service area, as set out in Approval No. U2005-179, must take service from CAREA.

36. In information request AUC-CAREA-13(d),[32] the Commission asked the following question:

> **Quote:** "CAREA further submits the granting of the within requested relief will not prejudice Fortis (…)"
>
> "Additionally, nothing in the within application will operate to alter the service area or assets of Fortis."
>
> "If the CAREA application is granted, customers in the CAREA Service Area receiving electric distribution service from Fortis as of the date the Commission's declaration becomes effective (the "Effective Date") will continue to receive their service from Fortis after the Effective Date."
>
> …
>
> **(d)** Assuming CAREA is successful in this application please explain what would happen if a customer did not want to join CAREA in order to obtain electric distribution service. Would the customer be able to receive electric distribution service from FortisAlberta Inc.? If not why not?

37. CAREA responded as follows:

> **(d)** CAREA submits the scenario put forth by the Commission in this question would be contrary to law. It is not a matter of consumers "not wishing to join CAREA in order

[29] Decision 2003-048: Battle River Rural Electrification Association Ltd. – Application to Operate the Electric Distribution Systems of Battle River, Central Community, Fenn and Fort Rural Electrification Associations Ltd. as a Single Electric Distribution System Designated as Battle River Rural Electrification Association Ltd., Application No. 1270094, June 17, 2003.
[30] Exhibit 0092.01 – FortisAlberta evidence, page 7.
[31] Exhibit 0092.01 – FortisAlberta evidence, page 8 and Exhibit 0117.01 – ATCO Electric written argument, page 13, paragraph 36.
[32] Exhibit 0057.02 – CAREA response to AUC-CAREA-13(d), pages 24 to 26.

> to obtain electric distribution service"; such preference is in substance and fact customer choice and contrary to law. Consumers wishing to obtain electricity for use on property must, pursuant to Section 101(1) of the EUA, make arrangements for the purchase of electric distribution service from the owner of the electric distribution system in whose service area the property is located.
>
> As a matter of law, consumers can no more refuse to apply to (or "join" or make arrangements with), for example, the City of Red Deer's electric service provider for electric distribution service and choose another distribution system owner for the purposes of receiving the service within Red Deer's municipal limits, than consumers in CAREA's service area can.
>
> If CAREA's application is granted, any person in CAREA's Service Area not making arrangements with CAREA for the purchase of electric distribution service would be in contravention of Section 101(1) of the *Electric Utilities Act* and in contravention of the Commission's decision/order granting this application.[33]

38. In further support of its position that customers do not have the right to choose their service provider, CAREA argued that its interpretation of Section 101 of the *Electric Utilities Act*, reflects the position taken by the Commission's predecessor, the Alberta Energy and Utilities Board, and that of the Commission in previous decisions.[34] For example, at page 5 of Decision 2006-057[35] the Alberta Energy and Utilities Board stated:

> In addition, the Board notes that generation and retail services have been deregulated through industry restructuring and are now open to competition and, thus, provide a degree of customer choice. However, the wires part of the electric industry continues to be regulated, such that customers are not provided with an opportunity to choose their own wire provider.

39. FortisAlberta and ATCO Electric reject CAREA's interpretation of the legislation and argue, *inter alia*, that CAREA's service area has always been conditioned by the requirement to only serve its members[36] and further, that the issue of customer choice as articulated by CAREA, does not arise. That is, if a person chooses to become a member of CAREA, he is served by CAREA. There is no question of choice contrary to Section 101(1) of the *Electric Utilities Act* as a member must take service from the REA operating in that service area.[37]

40. Section 101 of the *Electric Utilities Act* states:

> **Owner's right to provide electric distribution service**
> **101(1)** A person wishing to obtain electricity for use on property must make arrangements for the purchase of electric distribution service from the owner of the electric distribution system in whose service area the property is located.
>
> **(2)** If the person has an interval meter and receives electricity directly from the transmission system, the person may, with the prior approval of

[33] Exhibit 0057.02 – CAREA response to AUC-CAREA-13(d), pages 24 to 26.
[34] Decision 2006-057: MEG Energy Corporation at page 5. See also Decisions 2010-115: Grande Cache Coal Corporation and Decision 2012-002: Grande Cache Coal, Part 2 as noted at paragraphs 35 to 42 of CAREA written argument.
[35] Decision 2006-057: MEG Energy Corporation – Construct and Operate a 25-kV Electrical Distribution System, Application No. 1416005, June 15, 2006.
[36] Exhibit 0120.02 - FortisAlberta written argument, page 12, paragraphs 39 to 40.
[37] Exhibit 0117.01 - ATCO Electric written argument, page 11, paragraphs 27 and 28.

> (a) the owner of the electric distribution system in whose service area the person's property is located, if any, and
>
> (b) the Independent System Operator,
>
> enter into an arrangement directly with the Independent System Operator for the provision of system access service.
>
> **(3)** No person other than the owner of an electric distribution system may provide electric distribution service on the electric distribution system of that owner.

41. In response to the arguments of FortisAlberta that CAREA's service area is not only defined as a geographic area but also by the requirement for membership, CAREA argued that the requirement for membership in an REA has evolved significantly. It is CAREA's position that today, membership in an REA is not a distinguishing factor when applying the provisions found in Section 101(1) of the *Electric Utilities Act*. That is, an application to CAREA for electric distribution service is one and the same as applying to CAREA for membership.[38]

42. CAREA recently amended its standard by-laws to provide that membership in CAREA occurs:

> a) when a person makes arrangements for the purchase of electric distribution service with CAREA, and
>
> b) pays the membership fee.[39]

43. CAREA relies principally on the provision found in Section 101(1) of the *Electric Utilities Act* to support its position. As noted above, this subsection states:

> **101(1)** A person wishing to obtain electricity for use on property must make arrangements for the purchase of electric distribution service from the owner of the electric distribution system in whose service area the property is located. (emphasis added)

44. This provision references several terms which are defined under the *Electric Utilities Act*, including: "service area", "owner" and "electric distribution system".

45. Critical among these defined terms, is the definition of service area found in Section 1(1)(ww) of the *Electric Utilities Act* which states:

> (ww) "service area" means the area determined under the *Hydro and Electric Energy Act* from time to time in which
>
> (i) the owner of an electric distribution system may distribute electricity, or
>
> (ii) a rural electrification association may distribute electricity to its members;

46. In its response to AUC-CAREA-8, CAREA argued that applying for membership in the association is analogous to a consumer applying to FortisAlberta or ATCO Electric for service. CAREA argued that because it is an owner of an electric distribution system and therefore meets the definition in Section 1(1)(ww)(i), the reference to Section 1(1)(ww)(ii) is not determinative.

[38] Exhibit 0057.02 - CAREA response to AUC-CAREA-9(a), page 16.
[39] Exhibit 0123.02 - CAREA Standard By-laws, page 2.

47. The Commission does not agree with this interpretation. If, as CAREA states, the reference to a rural electrification association distributing to its members is not necessary, there would be no requirement to include Section 1(1)(ww)(ii) in the definition of service area. In the Commission's view, the legislature intended there to be a distinction between the service area of an owner of a distribution utility when that owner is a rural electrification association and the service area of an owner of a distribution utility when the owner is a public utility such as FortisAlberta or ATCO Electric.

48. As noted in *Sullivan on the Construction of Statutes*, fifth edition, at page 359, "when words are read in their immediate context, the reader forms an initial impression of their meaning. …But any impression based on immediate context must be supplemented by considering the rest of the Act, including the other provisions of the Act and its various components." Further, at page 364, the author notes "[w]hen analyzing the scheme of the Act, the court tries to discover how the provision or parts of the Act work together to give effect to a plausible and coherent plan. It then considers how the provision to be interpreted can be understood in terms of that plan. …The fundamental presumption in scheme analysis is being able to grasp and explain the basic structure on which the Act is built and how the various parts and provisions were meant to function within this structure to achieve the desired goal, or more often, the desired mix of goals."

49. A review of the *Electric Utilities Act* reveals that the act consistently distinguishes between public distribution utilities, such as FortisAlberta or ATCO Electric, and a rural electrification association. For example, in Section 1(1)(o) of the *Electric Utilities Act* an "electric utility" is defined, in part, as:

> (o) "electric utility" means an isolated generating unit, a transmission facility or an electric distribution system that is used
>
> (i) directly or indirectly for the public, or
>
> (ii) to supply electricity to members of an association whose principal object is to supply electricity to its members, (emphasis added)
>
> …

50. As well, the act provides a definition for a rural electrification association in Section 1(1)(vv). The section defines a rural electrification association as an association under the *Rural Utilities Act* that has as its principal object the supply of electricity to its members. Further, the legislative provisions under the *Electric Utilities Act* and the *Hydro and Electric Energy Act* consistently reference members in relation to rural electrification associations.[40]

51. Accordingly, the Commission finds that the service area of an REA is defined by the reference to the members of the REA within the geographic service area granted.

6.1.2 Membership in a rural electrification association is voluntary

52. CAREA has asserted that the reference to "arrangements" under Section 101(1) of the *Electric Utilities Act* includes an application for membership in the association. Applying this

[40] See for example, Section 32(3) of the *Hydro and Electric Energy Act* which defines "rural electrification association" as an association as defined in the *Rural Utilities Act* and that has as its principal object the supplying of electric energy in a rural area to the members of that association. Under the *Electric Utilities Act*, references to members in the context of rural electrification association can be found at sections 1(1)(t), 1(1)(vv), 1(1)(ww) and 103(4).

interpretation to the definition of arrangements, CAREA then argues that as Section 101(1) of the *Electric Utilities Act* compels a person to make arrangements, given the use of the word "must" in the phrase, membership in the association cannot be a voluntary exercise for a person who happens to reside in the geographic service area of an REA. In other words, if a person moves into the geographic service area of an REA, the person must apply for membership in the REA as part of the arrangements the person must make to receive service.

53. The Commission does not accept this argument. Doing so would require the Commission to ignore the provisions of the *Rural Utilities Act* and the nature of a co-operative association as a voluntary organization. To do so would be contrary to the statutory interpretation principle of coherence which recognizes that statutes are intended to work together.[41]

54. CAREA's current enabling legislation is the *Rural Utilities Act*. Section 3(1) of the *Rural Utilities Act* states, *inter alia*:

> **Application to incorporate**
> **3(1)** Five or more persons who desire to be associated together in a co-operative association with the principal object of supplying any one or more of the following:
>
> (a) electricity;
>
> …
>
> to its members primarily in a rural area may apply to be incorporated under this Act. (emphasis added)

55. As can be seen from this provision, the very nature of the establishment of an REA is a willingness of members to be associated together for supply of electricity to themselves. This view is further reinforced when read in conjunction with the definition of co-operative principles found in the *Cooperatives Act*.[42] Section 2(1) of the *Cooperatives Act* states:

> **Cooperative Principles**
> **2(1)** For the purposes of this Act, a cooperative is organized and operated, and carries on business, on a cooperative basis if
>
> (a) membership is available to persons who can use the services of the cooperative and who are willing and able to accept the responsibilities of and abide by the terms of membership. (emphasis added)

56. Further, if membership in a rural electrification association were not voluntary, it would not be necessary to address the circumstances of withdrawal from membership as set out in Section 11 of the *Rural Utilities Act* including the fact that a departing member is not able to withdraw any portion of that customer's equity greater than one dollar unless the directors of the rural electrification association and the Director under the *Rural Utilities Act* agree.[43] Just as the decision to become a member of a rural electrification association is a voluntary exercise, so too is the act of withdrawing from membership.

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[41] "It is presumed that the provisions of legislation are meant to work together, both logically and teleological, as parts of a functioning whole. The parts are presumed to fit together logically to form a rational, internally consistent framework…" Ruth Sullivan, *Sullivan on the Construction of Statutes*, 5th Ed. at 325 – as cited in Exhibit 0121.01 - CAREA written argument, page 20, paragraph 93.

[42] Section 27 of the *Rural Utilities Act* provides that the Minister may cancel the incorporation of an association if, after investigation it is determined by the Director that the affairs of the association are not being conducted in accordance with co-operative principles.

[43] Section 11 of the *Rural Utilities Act*.

57. Rather than interpreting the requirement to make arrangements under Section 101 of the *Electric Utilities Act* as a provision that overrides the voluntary nature of a rural electrification association as established under the *Rural Utilities Act*, the reference to making arrangements can be read together with the phrase "for the purchase of electric distribution service." In this context, "making arrangements" concerns the tasks necessary to purchase distribution service which can be applied readily to either customers of a public distribution utility or members of an association. This interpretation would not require the Commission to disregard the provisions of the *Rural Utilities Act*.

6.2 The 1997 TransAlta CAREA agreement

58. CAREA and FortisAlberta (as the successor to TransAlta Utilities Corporation's distribution business), are parties to an integrated operation agreement as required by Section 9 of the *Roles, Relationships and Responsibilities Regulation.*[44] There is no dispute among the parties that this agreement is a requirement of the *Roles, Relationships and Responsibilities Regulation*, nor is there any dispute that the 1997 TransAlta CAREA agreement is an agreement that complies with the requirements of the *Roles, Relationships and Responsibilities Regulation*.[45]

59. The 1997 TransAlta CAREA agreement includes provisions establishing membership and other eligibility requirements.[46] Under the agreement, customers who want to receive service from CAREA must be approved as a member by the Board of Directors of CAREA and have an interest in land where the customer, within two years, intends to use or rent the land for agricultural activity or, if the land is 10 acres or greater, establish a residence on the land.

60. FortisAlberta and ATCO Electric both argue any interpretation of the *Electric Utilities Act* or the *Hydro and Electric Energy Act* regarding the nature of service area rights of CAREA must take into consideration the membership requirements found in the 1997 TransAlta CAREA agreement.[47]

61. CAREA argues that the agreement pre-dates the introduction of customer choice prohibitions brought about by Section 101 of the *Electric Utilities Act* and further that the *Roles, Relationships and Responsibilities Regulation*, as a secondary piece of legislation, cannot be relied upon to circumscribe the clear prohibition against customer choice found in Section 101(1) of the *Electric Utilities Act*, nor can the *Roles, Relationships and Responsibilities Regulation* be relied on to impact the clear authority granted to REAs to establish their own membership criteria under the *Rural Utilities Act*.[48]

62. The Commission does not consider that there is a conflict between the provisions of the *Roles, Relationships and Responsibilities Regulation* and that of Section 101 of the *Electric Utilities Act* given the Commission's finding that the legislative scheme defines the service area of an REA as being the members served within the geographic service area. As such, there is no need for the Commission to find that the terms and conditions regarding membership as agreed to by the parties are now invalid as a result of the operation of Section 101 of the *Electric Utilities Act*.

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[44] Exhibit 0055.07 - Schedule 5 – 1997 TransAlta CAREA Agreement, June 6, 1997. TransAlta Utilities Corporation was the successor to Calgary Power Ltd. Its distribution facilities are now owned by FortisAlberta.
[45] Exhibit 0121.01 - CAREA written argument, page 13, paragraph 51.
[46] See Section 3.01 of the 1997 TransAlta CAREA agreement (Exhibit 0055.07 – Schedule 5).
[47] Exhibit 0120.02 - FortisAlberta written argument, page 17, paragraphs 65 to 71.
[48] Exhibit 0121.01 - CAREA written argument, page 16, paragraph 65.

63. Rural electrification association service area approvals must be considered in accordance with the provisions of the *Hydro and Electric Energy Act*, Section 101 and the definition of service area under Section 1(1)(ww) of the *Electric Utilities Act*, and Section 10 of the *Roles, Relationships and Responsibilities Regulation*, all of which recognize membership as a defining characteristic of the service area of an REA. Section 10 of the *Roles, Relationships and Responsibilities Regulation* specifically requires that membership be addressed in the operating agreement. In the Commission's view, the statutory scheme does not permit an operating agreement to dispense with any membership criteria to effectively remove membership as a requirement for REA customers.

6.3 Self-supply and the prohibition of customer choice

64. The Commission has considered CAREA's argument that the legislative scheme and Section 101 of the *Electric Utilities Act* prohibit customer choice and, as a result of that prohibition, the Commission is entitled to declare that the granting of a service area to CAREA under the *Hydro and Electric Energy Act* is the grant of an exclusive right to serve customers within its service area.

65. The Commission agrees that Section 101 of the *Electric Utilities Act* grants an exclusive right to the owner of the electric distribution system in whose service area the property is located to serve persons wishing to obtain electricity for use on their property. However, there are exceptions to this exclusive right. Allowing some customers in specific circumstances to supply distribution services to themselves is also part of the legislative scheme. There are a number of examples in the legislation that allow a distribution customer to choose not to take service from the distribution utility and to make arrangements to supply and serve itself.

66. Each of the decisions of the Commission or its predecessor relied upon by CAREA to support the concept of no choice, was an example of the exercise of a customer's choice to supply and serve itself.[49] Examples of where the legislative scheme provides a customer with the option to serve itself include:

- Industrial system designation pursuant to Section 4 of the *Hydro and Electric Energy Act*.
- Self-distribution at 750 volts or less pursuant to Section 24(1) of the *Hydro and Electric Energy Act*.
- Self-distribution where the distribution does not cross a public highway pursuant to Section 24(1) of the *Hydro and Electric Energy Act*.
- Service at a transmission level directly from the Alberta Electric System Operator (AESO) pursuant to Section 101(2) of the *Electric Utility Act*.

67. The Commission has briefly examined these legislative provisions with a view to understanding how these provisions operate within the context of the general premise found in Section 101(1) of the *Electric Utilities Act* and the general legislative scheme in which electric services are provided to Alberta customers.

Industrial System Designation

68. In 1977, through Bill 34, an amendment to the *Hydro and Electric Energy Act*, the legislature introduced the concept of an industrial system designation (ISD). This amendment to

[49] See Decision 2006-057: MEG Energy Corporation, Decision 2010-115: Grande Cache Coal Corporation and Decision 2012-002: Grande Cache Coal Corporation - Part 2.

add in the definition and provision for industrial system designations was not specifically mentioned in the Hansard records, however, it is apparent from a review of the Hansard record at the time Bill 34 was introduced that the government was concerned about power shortages and the ability of the ERCB to respond to emergencies. Given this climate, it is reasonable to assume that large industrial customers were similarly concerned about the reliability of their supply and were looking for a way to take measures to secure their own supply of energy.

69. Over time, security concerns gave way to economic pressures. That is, industries sought ISD status because it has been more economic for them to generate their own supply and serve their own operations on their property. This is particularly true in the case of industrial operations that can make use of co-generation facilities.

70. Section 4 of the *Hydro and Electric Energy Act*, confers on the Commission jurisdiction to make a determination as to whether to grant ISD status to an applicant. As obtaining ISD status provides an exemption to the legislative framework that establishes the incumbent distribution company as the primary service provider to a customer, there are several hurdles that must be met by the customer.[50] It is notable that even if a customer cannot meet the statutory requirements for ISD status, the Commission retains the authority under Section 4(5) of the *Hydro and Electric Energy Act* to nonetheless permit the ISD designation in the interests of promoting increased efficiency in the industrial operational process or production and consumption of electric energy as a result of the integration of the electric system with the industrial operations which are served by the electric system.

Section 24 of the Hydro and Electric Energy Act

71. Section 24 of the *Hydro and Electric Energy Act* provides another example where a "person wishing to obtain electricity for use on property" does not have to "make arrangements for the purchase of electric distribution service from the owner of the electric distribution system in whose service area the property is located" as required by Section 101 of the *Electric Utilities Act.*

72. The exemption found in the *Hydro and Electric Energy Act* states:

> **Exemption from Part 3**
> **24(1**) A person distributing or proposing to distribute electric energy solely on land of which the person is the owner or tenant for use on that land and
>
> (a) not across a public highway, or
> (b) across a public highway if the voltage level of the distribution is 750 volts or less
>
> is not subject to this Part unless the Commission otherwise directs.

73. The Commission has the discretion to "otherwise direct" the application of Part 3 of the *Hydro and Electric Energy Act* which, as noted above, addresses issues of service area and requires, among other matters, Commission approval to construct or operate an electric

[50] Decision 2009-020A: Imperial Oil Resources Ventures Ltd. – Reasons for Industrial System Designation, Application No. 1563332, Proceeding ID No. 97, February 10, 2009, discusses in some detail the test that must be met to achieve ISD status.

distribution system within a service area. Unless it is not in the public interest to do so, once a party has met the requirements for a Section 24 exemption, the exemption has been permitted.

74. Recent decisions of the Commission and the Alberta Energy and Utilities Board that have discussed the operation of a Section 24 exemption are Decision 2010-115[51] and Decision 2006-057, respectively.[52]

Section 101 of the Electric Utilities Act

75. The exemptions noted above provide customers with the ability to either serve their electricity needs from their own generation source (ISD designation) or, if they are operational within a confined space (do not cross a public highway) or use a low voltage to distribute within their property.

76. If a customer does not self-generate, it may choose to take service at the transmission level directly from the AESO and then use its own wires from that point of service to provide electricity to its operations. It cannot do so unless it meets the requirements of Section 101(2) of the *Electric Utilities Act*. As well, in order to use its own distribution system, the customer must also meet the exemption requirements under Section 24 of the *Hydro and Electric Energy Act*, discussed above. Setting aside the issue of Section 24 of the *Hydro and Electric Energy Act*, a customer who would like to be served directly from the AESO must first receive the approval of the distribution company and the AESO.[53]

77. It is apparent that the legislature has provided for customer choice in circumstances where the customer is choosing to provide for its own supply (self-supply) in specific and well-defined circumstances. The Commission asked CAREA and FortisAlberta during oral argument whether the opportunity for persons to choose to join an REA is also an exception to the general prohibition against customer choice.[54] The parties did not agree with this characterization. Nevertheless, the Commission considers that the opportunity for five or more persons who desire to be associated together in a co-operative association with the principal object of supplying electricity to themselves and for qualified persons to choose to become a member of an existing REA is a form of customer self-supply and is therefore consistent with the legislative scheme.

78. Finally, the provisions of the *Rural Utilities Act*, which establish the rights and obligations of membership, clearly demonstrate that on becoming a member, the member has a vested interest in the ownership of the electric distribution system. This is not the case with a public utility.[55] Customers of a public utility do not have any ownership interest in the assets of

[51] Decision 2010-115: Grande Cache Coal Corporation – Application for an Exemption Under Section 24 and a Connection Under Section 18 of the *Hydro and Electric Energy Act*, Application No. 1605319, Proceeding ID No. 238, March 15, 2010.
[52] Decision 2006-057: MEG Energy Corporation.
[53] Decision 2006-050: EPCOR Distribution Inc. discusses the Board's jurisdiction to review the consent provisions as set out in a distribution utility's terms and conditions of service set out in their tariff.
[54] Transcript, Volume 1, page 340, Lines 01-17 Commission question;
Transcript, Volume 1, page 341, Lines 02-22 FortisAlberta response;
Transcript, Volume 1, page 241, Lines 14-25 and page 242 Lines 01-05 Commission question;
Transcript, Volume 1, page 242, Lines 06-23 and page 243 Lines 01-09 – CAREA response.
[55] See for example, Section 11 of the *Rural Utilities Act* and Section 17(7) of the *Rural Utilities Regulation* regarding the treatment of a member's equity when a member withdraws its membership and Section 25(4) of the *Rural Utilities Regulation* regarding the distribution of equity to members winding up REA affairs.

the utility.[56] An REA is not simply an owner of an electric distribution system, its customers are the owners of the electric distribution system and as such, this membership requirement puts these customers in a similar position of self-supply as that of other customers who are choosing to serve themselves under other statutory provisions.

6.4 Self-supply is consistent with the history of REAs

79. CAREA asserts in its rebuttal evidence, that REAs have always held exclusive geographic service areas and that the contracts with the vertically integrated public utilities are supportive of this argument of exclusivity. Specifically, CAREA claimed that "the REA service areas are 'superimposed' upon the transmission grid service area of the VIUs [vertically integrated utilities] and not the electric distribution service area."[57] As such, CAREA asserts that because its service area authority was created before the distribution service area authorities of FortisAlberta and ATCO Electric, its service area takes priority.

80. FortisAlberta takes issue with CAREA's assertions on the basis that these assertions are "all grounded on assumptions not supported by the statutory regime in place (i.e. the very nature of an REA service area) and/or by leaps to new interpretations that run counter to decades of operations under, and articulations of, the framework. For instance, the interpretation urged in paragraph 33 of the CAREA rebuttal ignores the longstanding and unbroken restrictions of CAREA's rights to serve being limited to its "members"."[58]

81. ATCO Electric also rejects CAREA's position that its service area was superimposed on a transmission service area arguing that "REA approvals were granted with full knowledge of the governing membership eligibility provisions as well as any reservations made by the Utilities to serve those persons who were not REA members and there is no basis to suggest that REAs have ever had exclusive service areas."[59] Given this historical restriction, it is more logical to suggest that CAREA's limited service area is "superimposed upon FortisAlberta's broader service."[60]

82. As noted in Section 4 above, in the late 1940s, there were two electric utilities operating in Alberta; Calgary Power and Alberta Power Limited. Electricity service was in its infant stage of development in the province and the two utilities were focused on building generation and transmission as their priority. The government of the day was intent on these two utilities bringing forward distribution services to the rural areas of the province however, the utilities could not secure the financing in addition to the financing required to build generation and transmission. The government considered two alternative options to bring distribution service to rural Alberta: (1) it could build it and own the facilities as a government entity or (2) it could provide the financing for consumers to make arrangements to build the services for their own use. The government chose the latter option and provided financing to associations of consumers, who, in turn contracted with the electric utilities to build and operate the distribution services for them. This was the genesis of the rural electrification associations.[61]

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[56] *ATCO Gas & Pipelines Ltd. v. Alberta (Energy & Utilities Board)* (Stores Block) 2006 SCC 4 at paragraph 79.
[57] Exhibit 0098.02 - CAREA rebuttal evidence, page 7, paragraphs 27 to 29.
[58] Exhibit 0120.02 - FortisAlberta written argument, page 18, paragraphs 76 to 77.
[59] Exhibit 0117.01 - ATCO Electric written argument, page 14, paragraphs 37.
[60] Exhibit 0117.01 - ATCO Electric written argument, page 13, paragraphs 34.
[61] Exhibit 0097.01 - ATCO Electric response to CAREA-AEL-4(b), attachment 1 – Letter from the Office of the Premier, July 11, 1947, page 3 and Exhibit 0090.01 – CAREA amended response to ATCO-CAREA-6(b), page 1.

83. From the 1940s until the early 1970s, when the *Hydro and Electric Energy Act* was introduced, REAs were given authority to serve in specific geographic areas under Section 97 of the *Public Utilities Board Act*. While these initial service area grants did not explicitly restrict service to only members of the association, such a restriction can be inferred.[62] Moreover, the agreements in existence between REAs and the utilities clearly limited service of the REAs to its members. Since the mid-1970s, service approvals for REAs have all included references to membership.

84. From its review, the Commission finds that historically, whether by agreement or through legislative approvals, REAs have service areas defined not only geographically but also by membership. As such, the Commission does not accept CAREA's assertion that its service area was "superimposed" on a transmission service area. Therefore, the approval of the public distribution utility's service area is not secondary to that of the REA.

6.5 Rural gas co-operatives, exclusive franchises and the obligation to serve

85. CAREA argues that the Commission should view membership requirements in the same manner as it would membership requirements for rural gas co-operatives, that is, as a formality to receiving service and not as "support for or adherence to co-operative principles".[63]

86. In support of this position, CAREA notes that, rural gas co-operatives, like REAs, are legal entities formed and subsisting under the provisions of the *Rural Utilities Act*. Further, like REAs, persons living in the service areas of the rural gas co-operatives become members of the co-op to receive service and, more importantly, there are no qualifications or exceptions provided for under the *Gas Distribution Act* that would permit a person to choose between providers on the basis of refusing to become a member of a gas co-op.[64] Last, with the restructuring of the electric industry to permit distribution system owners to gain access to transmission, the electric industry now closely resembles the structure of the natural gas industry in Alberta.[65]

87. While the Commission acknowledges that there are similarities between REAs and rural gas co-operatives, for example, the recourse to the Commission by members regarding complaints about the application of the tariff to a consumer or the supply of the commodity by market through an intermediary transmission system,[66] there are legislative differences between the two co-operatives that prevent the Commission from accepting CAREA's position.

88. The fundamental difference between the two types of co-operatives concerns the obligation to provide service. Rural gas co-operatives in Alberta have exclusive franchise service areas as provided for under Section 18 of the *Gas Distribution Act*. The exclusive franchise service area conferred on rural gas co-operatives by Section 18 of the *Gas Distribution Act* also imposes on the rural gas co-operative a "duty to offer and provide gas service to all potential

[62] For example, when the language of Order # 15464 (P.U. 6503) is examined, there is a clear requirement that a vote from persons was required before approval would be granted.
[63] Exhibit 0121.01 - CAREA written argument, page 18, paragraph 82.
[64] Exhibit 0098.02 - CAREA rebuttal evidence, page 9, paragraphs 36 to 38 and Exhibit 0121.01 – CAREA written argument, page 18, paragraphs 80 to 82.
[65] Exhibit 0098.02 - CAREA rebuttal evidence, page 9, paragraph 36.
[66] Section 30 of the *Gas Distribution Act* and Section 7 of the *Distribution Tariff Regulation*.

consumers within the distributor's franchise area". There is no corresponding legislative provision imposing a similar duty on REAs.[67]

89. CAREA has recognized in its evidence, that it does not have a legislative obligation to serve persons. In response to AUC-CAREA 9(l), CAREA states:

> The holder of an approval under Section 26 of the *Hydro and Electric Energy Act* would provide distribution service to those consumers not being provided electric distribution service by CAREA in CAREA's approved service area. However, to be clear, in order to be serviced by the Section 26 holder, the "non-member" would have to be under 16 years of age and not have an interest in land.[68]

90. However, CAREA has also submitted in evidence that it has never refused to provide distribution service to any applicant who meets the requirements for membership and that it would have no reason to change this practice in the future.[69]

91. The Commission accepts CAREA's evidence that it has never refused to provide membership to anyone who has sought it; however, the fact remains that CAREA has the legislative discretion to do so if it considers the circumstances warrant such a refusal. As well, CAREA also has the legislative authority under Schedule 3, Standard By-laws, Section 18(1) of the *Rural Utilities Regulation* to expel a member from the association.

92. There cannot be a grant of exclusive franchise without a corresponding duty to provide service.

93. It is also significant that Section 9(5) of the *Rural Utilities Act* specifically refers to the provision by rural co-operatives of natural gas, water or sewage disposal service to non-members of those organizations. There is no legislative authority which would permit a rural electrification association to develop supplemental by-laws to establish terms of service to non-members. The deliberate omission of electricity from the permission granted in Section 9(5) is a material distinction which further illustrates the differences between rural gas co-operatives and rural electrification associations.

94. Accordingly, the Commission finds that comparisons between rural gas co-operatives and REAs do not support CAREA's assertion that an exclusive geographic franchise has, in effect, been granted to CAREA. The legislative distinctions between them serve only to highlight how the legislature could have addressed REA service areas in the *Electric Utilities Act* or the *Hydro and Electric Energy Act* had there been an intention to provide REAs with exclusive rights to provide service. But the legislature did not do so. The ability to consider whether to admit a person as member and expel members as well as the concurrent inability to serve non-members are significant distinctions between REAs and rural gas co-operatives.

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[67] Section 18 of the *Gas Distribution Act* requires the owner of a rural gas utility (rural gas co-operative) to offer and provide gas service to all potential consumers within its franchise area. See also Section 127 of the *Electric Utilities Act*.

[68] Exhibit 0057.02 - CAREA response to AUC-CAREA-9(l), page 17.

[69] Exhibit 0057.02 - CAREA response to AUC-CAREA-9(k), page17, and Transcript, Volume 1, page 486.

6.6 Public interest

95. The Commission has found that the current practice of some Albertans, who are not members of an REA, receiving service from the public distribution utility while other Albertans, who are members of an REA, receiving service by the REA, despite all of these Albertans residing in the same geographic area of the province, is supported by the legislative scheme. However, the Commission has the authority pursuant to Section 29 of the *Hydro and Electric Energy Act*, when in the opinion of the Commission it is in the public interest to do so, to alter the boundaries of the service area of an electric distribution system or order that an electric distribution system cease to operate in a service area or part of it. In addition, the Commission has the authority (pursuant to Section 27 of the *Hydro and Electric Energy Act*) to prescribe conditions on any approvals granted. The Commission has therefore considered whether, in the public interest, it could or should alter the current approvals of CAREA and FortisAlberta to give effect to the relief requested by CAREA.

96. ATCO Electric specifically addressed public interest considerations in paragraphs 46 to 49 of its written argument. ATCO Electric argued that the declarations sought by CAREA are not in the public interest because:

> (1) "the discretion to refuse service is fundamentally at odds with the exclusive service area that CAREA is seeking"
>
> (2) "if this discretion is exercised such that REAs refuse to serve high capital cost customers", economies of scale will be lost resulting in higher rate increases for the public distribution utilities which is "not consistent with the economic, orderly and efficient development and operation of electric distribution in Alberta"
>
> (3) "absent regulation or mandatory reliability performance measures and reporting, REAs could plan to serve large load without sufficient regard to upstream or downstream impacts to non-REA customers both inside and outside the REA's service area"[70]

97. Similar positions were articulated by FortisAlberta in sections 9 and 10 of FortisAlberta's written argument.[71]

98. CAREA takes the view that it is not in the public interest to continue to have overlapping geographic service areas. CAREA argues that due to FortisAlberta's maximum investment level policies (customer contributions), it is unable to compete for customers. Consequently, if the relief CAREA seeks, namely to have first priority to serve any customer residing in its geographic service area is not granted, and CAREA and other REAs are forced to compete for customers with the public distribution utilities, the REAs will be unable to grow their customer base and will face financial and operating challenges to serve their remaining customers. CAREA has argued that forcing it to divert financial and human resources to compete for customers is contrary to the rationale for exclusive service areas and its very existence is under threat.[72]

[70] Exhibit 0117.01 - ATCO Electric written argument, pages 17 and 18, paragraphs 46 to 49.
[71] Exhibit 0120.02 - FortisAlberta written argument, page 18, paragraphs 76 to 77.
[72] Exhibit 0121.01 - CAREA written argument, page 34, paragraphs 195 to 199.

99. The current CAREA service area approval in effect under Section 25 of the *Hydro and Electric Energy Act* was granted by Approval No. U2005-179. This approval contains the following conditions:

> 1. The Distribution System shall be in accordance with the Application and shall be operated only within the service area here prescribed, unless otherwise specified by order of the Board:
>
> (1) The service area of the Distribution System shall be as shown on the attachments herein marked as Appendices A and B to this Approval.
>
> (2) Notwithstanding sub-clause (1) hereof, the Operator shall serve within its service area only members of Central Alberta REA.
>
> 2. Subject to the exclusive right to supply the members of the Central Alberta REA, nothing in this Approval shall be construed as granted to the Operator a service area exclusive of any other service area prescribed by order of the Board. (emphasis added)[73]

100. The FortisAlberta service area approval in effect under Section 25 of the *Hydro and Electric Energy Act* is granted by Approval No. HE 8416 as amended by Approval No. HE 8416A (which altered the geographic service area). Approval No. HE 8416 states, *inter alia*:

> **3(2)** The service area shall not include
>
> (a) any area designated as the service area of any other operator of an electric distribution system, and
>
> (b) any member of any Rural Electrification Association within the service area designated as the service area of that Rural Electrification Association, unless with the written consent of the said Rural Electrification Association.[74]

101. The Commission recognizes that the fundamental economic rationale for regulating electrical distribution companies is that there is an assumption that distribution service is a natural monopoly. As such, it would not be economically efficient for there to be competition and duplication of these services.[75]

102. Notwithstanding this recognition, rural electrification associations were created and have grown along-side public electric utilities, both of which are now providing distribution services in overlapping geographic areas, although not to the same customers. The distinguishing feature which has enabled both the REAs and the public distribution utilities to determine who would serve a rural customer has always and continues to be whether the customer is a member of an REA. The determination of who is eligible to become a member of an REA has changed over the years from farmers to more general agricultural operations to the current practice of allowing eligibility to be negotiated between the public distribution utility and the REA as part of the operating agreement.

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[73] Exhibit 0055.03 – Schedule 1: Approval No. U2005-179, page 1.

[74] Exhibit 0057.07 – CAREA response to AUC-CAREA-3(a) Attachment, Amendment of Approval No. HE 8416A; Transcript, Volume 1, pages 79 and 80 and Exhibit 0121.01 – CAREA written argument, pages 21 and 22, paragraphs 101 and 102.

[75] Alfred E. Khan, *The Economics of Regulation – Principles and Institutions*, (Cambridge: the MIT Press, 1988) at Volume 2, pages 1 to 3 and 5 to 6 as referenced in Exhibit 0121.01 – CAREA written argument at paragraph 101.

103. Recognizing that it is not optimal to have duplication of facilities, the Alberta government has attempted to put in place legislative solutions to address this duplication. The *Roles, Relationships and Responsibilities Regulation, 2003* was enacted to address this issue. Under Part 2 of the *Roles, Relationships and Responsibilities Regulation*, the rural electrification association and the owners of a public distribution system must enter into an integrated operation agreement.[76] CAREA and FortisAlberta are currently operating under such an agreement dated June 6, 1997 (the 1997 Agreement).[77] The 1997 Agreement addresses operational issues such as sharing facilities and also addresses membership issues, which it is required to address under the *Roles, Relationships and Responsibilities Regulation*.

104. The public interest must be ascertained first by reference to the legislative scheme and, most particularly, what the legislature intended. The Alberta government has created the overlapping service areas through legislation, and the current legislative scheme supports the current practice. The legislative scheme also provides for operating agreements to address the potential for inefficiency in the provision of distribution services and also provides customers with the ability to choose to serve and supply themselves by becoming members of an REA.[78] The Commission does not consider that it would be within its jurisdiction to, in the public interest, impose conditions on the current service area approvals to give effect to the remedy sought by CAREA because that remedy would be inconsistent with the legislative framework established for REAs and would render some parts of the legislative framework meaningless. The Commission's authority to impose conditions on service area approvals and to make changes to service areas in response to changing circumstances does not amount to a grant of the authority to change legislation in response to changing circumstances.

6.7 Issue estoppel (*res judicata)*

105. Concurrent with this application before the Commission, CAREA and South Alta Rural Electrification Association Limited had also brought forward an arbitration matter pursuant to the Section 10 of the 1997 Agreement against FortisAlberta regarding the issue of who can provide electric service and whether a consumer can choose not to become a member of the rural electrification association and thereby take service from FortisAlberta. The arbitration was heard in August 2011 and a decision of the arbitral tribunal was released January 17, 2012. Copies of the Arbitration Award and the Amended Notice of Arbitration were filed on the record of this proceeding.[79]

106. On February 14, 2012, the REAs involved in the arbitration proceeding filed a motion in the Court of Queen's Bench for leave to appeal the Arbitration Award.[80] The questions of law sought to be determined on appeal include, *inter alia*, whether the arbitral tribunal erred by failing to consider that electric distribution consumers have no choice in the selection of their distribution providers, by virtue of Section 101(1) of the *Electric Utilities Act* and Section 25 of the *Hydro and Electric Energy Act*. At the time of the release of this decision, the court had heard the motion but has not issued any decision regarding the leave application.

[76] See *Roles, Relationships and Responsibilities Regulation*, sections 9 and 10.
[77] Exhibit 0055.07 – Schedule 5, 1997 TransAlta CAREA agreement, June 6, 1997.
[78] *Memorial Gardens Association (Canada) Ltd. v. Colwood Cemetery Co*. [1958] S.C.R. 353 at page 4. "The meaning in a given case must be ascertained by reference to the context and to the objects and purposes of the statute in which it is found".
[79] Exhibit 0125.01 - Amended Notice of Arbitration and Exhibit 0115.01 –CAREA Arbitration Panel Award.
[80] Exhibit 0103.01 – FortisAlberta Letter to AUC with attachment.

107. Given the nature of this proceeding and the grounds raised in the leave application before the Court of Queen's Bench, the Commission has considered whether the doctrine of *res judicata* or issue estoppel prevents it from releasing its decision.

108. The Supreme Court has held that *res judicata* may apply in administrative matters. In *Danyluk v. Ainsworth Technologies Inc. [2001]* 2 S.C.R. (Danyluk), the Supreme Court said at paragraphs 20 through 22:

> The law has developed a number of techniques to prevent abuse of the decision-making process. One of the oldest is the doctrine estoppel *per rem judicatem* with its roots in Roman law, the idea that a dispute once judged with finality is not subject to relitigation ....The bar extends both to the cause of action thus adjudicated (variously referred to as claim or cause of action or action estoppel), as well as precluding relitigation of the constituent issues or material facts necessarily embraced therein (usually called issue estoppel)...
>
> These rules were initially developed in the context of prior court proceedings. They have since been extended, with some necessary modifications, to decisions classified as being of a judicial or quasi-judicial nature pronounced by administrative officers and tribunals. In that context the more specific objective is to balance fairness to the parties with the protection of the administrative decision-making process, whose integrity would be undermined by too readily permitting collateral attack or relitigation of issues once decided.
>
> The extension of the doctrine of issue estoppel in Canada to administrative agencies is traced back to cases in the mid-1800s by D. J. Lange in The Doctrine of Res Judicata in Canada (2000), at p. 94 et seq., including Robinson v. McQuaid (1854), 1 P.E.I.R. 103 (S.C.), at pp. 104-5, and Bell v. Miller (1862), 9 Gr. 385 (U.C. Ch.), at p. 386. The modern cases at the appellate level include Raison v. Fenwick (1981), 120 D.L.R. (3d) 622 (B.C.C.A.); Rasanen, supra; Wong v. Shell Canada Ltd. (1995), 15 C.C.E.L. (2d) 182 (Alta. C.A.); Machin v. Tomlinson (2000), 194 D.L.R. (4th) 326 (Ont. C.A.); and Hamelin v. Davis (1996), 18 B.C.L.R. (3d) 112 (C.A.). See also Thrasyvoulou v. Environment Secretary, [1990] 2 A.C. 273 (H.L.). Modifications were necessary because of the "major differences that can exist between [administrative orders and court orders] in relation, *inter alia*, to their legal nature and the position within the state structure of the institutions that issue them": R. v. Consolidated Maybrun Mines Ltd., [1998] 1 S.C.R. 706, at para. 4. There is generally no dispute that court orders are judicial orders; the same cannot be said of the myriad of orders that are issued across the range of administrative tribunals.

109. As further set out by the Supreme Court in Danyluk at paragraph 25:

> The preconditions to the operation of issue estoppel were set out by Dickson J. in Angle, supra, at p. 254:
>
> (1) that the same question has been decided;
>
> (2) that the judicial decision which is said to create the estoppel was final; and,
>
> (3) that the parties to the judicial decision or their privies were the same persons as the parties to the proceedings in which the estoppel is raised or their privies.

110. The inquiry does not end there. Even if the preconditions are satisfied, the courts may still determine, as a matter of discretion, whether to apply issue estoppel. In Danyluk at paragraph 33, the Supreme Court stated:

> The rules governing issue estoppel should not be mechanically applied. The underlying purpose is to balance the public interest in the finality of litigation with the public interest in ensuring that justice is done on the facts of a particular case. (There are corresponding private interests.) The first step is to determine whether the moving party (in this case the respondent) has established the preconditions to the operation of issue estoppel set out by Dickson J. in Angle, supra. If successful, the court must still determine whether, as a matter of discretion, issue estoppel ought to be applied: British Columbia (Minister of Forests) v. Bugbusters Pest Management Inc. (1998), 50 B.C.L.R. (3d) 1 (C.A.), at para. 32; Schweneke v. Ontario (2000), 47 O.R. (3d) 97 (C.A.), at paras. 38-39; Braithwaite v. Nova Scotia Public Service Long Term Disability Plan Trust Fund (1999), 176 N.S.R. (2d) 173 (C.A.), at para. 56.

111. In the current circumstance, the first two preconditions have not been satisfied. As is clear from the grounds set out in the motion to appeal, the arbitral tribunal did not, in providing its determination on the matter, focus on the legislative scheme. Rather, a review of the Arbitration Award reveals that the arbitral tribunal focused its attention on the interpretation of the terms of the 1997 Agreement. Unless and until the Court of Queen's Bench makes any determination on the legislative provisions identified in the motion, the question before the Commission in this proceeding has not been previously determined.

112. Consequently, the Commission does not consider the doctrine of *res judicata* or issue estoppel to prevent the Commission from issuing its determination on the matter before it.

113. The Commission has also considered what effect, if any, could result if the appeal proceeds and a different determination is reached from that of the Commission in this proceeding.

114. The possibility of different outcomes in parallel proceedings is not fatal. In *McKinley v. British Columbia Tel (1996)*, 23 B.C.L.R. (3rd) 367, the British Columbia Supreme Court noted with approval the decision of the Ontario Court in *Lehman v. Davis (1993)*, 1 C.C.E.L. (2d) 15, stating at paragraph 64 of McKinley:

> …the possibility of different findings is both commonplace and permissible as between criminal and civil courts and board or tribunal proceedings…
>
> The British Columbia Court of Appeal ultimately dismissed the McKinley appeal because, as was later revealed, there in fact were not two concurrent proceedings. However, that court declined to comment on the lower court's ruling or exercise of direction – McKinley v. BC Tel, [1997] B.C.J. No. 2179 (C.A.) at para. 6.

115. The appeal application before the Court of Queen's Bench is still at a very early stage. No hearing on the merits has commenced and a decision from that court is not imminent. Conversely, the applicant, CAREA, has stressed the urgency of receiving a decision from this Commission on the issues before it. The issue of *res judicata* does not require the Commission to withhold its decision nor does the possibility of a different outcome between the determination of the Commission in this proceeding and that of the court. For these reasons, the Commission has released its decision.

7 Decision

116. The application of CAREA is denied.

117. In the course of this proceeding, the authority of the Commission to issue a declaration was explored. As the Commission has denied the application of CAREA, it is not necessary to decide whether it has the authority to issue declaratory relief in these circumstances.

Dated on July 4, 2012.

The Alberta Utilities Commission

(original signed by)

Willie Grieve, QC
Chair

(original signed by)

Tudor Beattie, QC
Commission Member

(original signed by)

Moin A. Yahya
Commission Member

Appendix 1 – Proceeding participants

Name of organization (abbreviation) counsel or representative
Alberta Community and Co-operative Association Russell Wolf
ATCO Electric Ltd. Allison M. Sears
Alberta Federation of Rural Electrification Associations Ltd. (AFREA) Al Nagel
AltaLink Management Ltd. Alan Ross
Roy and Linda Anderson
Benjamin Natural Gas Co-Op Ltd. Mariah Valstor
Odiel Braet
Central Alberta Rural Electrification Association Limited (CAREA) Douglas I. Evanchuk
CAREA Member Support Coalition Terry Scheiris
CAREA Employees Thomas Hartman
Consumers' Coalition of Alberta James A Wachowich
County of Forty Mile Coulee #8 Dale Brown
Chain Lakes Gas Co-op Limited J E Grose
Craig DeCoursey
EPCOR Energy Alberta Inc. Don Gerke
ENMAX Energy Corporation Randy Stubbings

Name of organization (abbreviation) counsel or representative
ENMAX Power Corporation Kurtis Hildebrandt
Foothills Natural Gas Co-op Ltd. John Armstrong
FortisAlberta Inc. Terence Dalgleish
Industrial Power Consumers Association of Alberta Monte Forster
Just Energy Alberta Lp Nola Ruzycki
Roland Lefebure
Lakeland Rural Electrification Association Limited Avis Maranchuk
Colin and Barbara Mathewson
Municipal District of Willow Creek No. 26 Cynthia Vizzutti
Manning REA Bryan Shields
Scarlett Nelson
County of Northern Lights Theresa Van Oort
North Parkland Power Rural Electrification Association Limited Glenn Nicol
Peace Grove Worsley REA Lori Jobson
Rockyview Gas Co-op Ltd. David C. Gabel
Rosebud Gas Co-Op Ltd. Ray J. Moen

Name of organization (abbreviation) counsel or representative
South Alta Rural Electrification Association Limited Baynish Bassett
Sturgeon County Mayor Donald Rigney
Office of The Utilities Consumer Advocate Thomas Marriott
Wild Rose Rural Electrification Association Ltd. Stuart Fox-Robinson
Richard Yakabuski
Calgary Independent Reporters Inc. Kara Boutilier

The Alberta Utilities Commission

Commission Panel
Willie Grieve, QC, Chair
Tudor Beattie, QC, Commission Member
Moin A. Yahya, Commission Member

Commission Staff
Catherine Wall (Commission counsel)
Maria Baitoiu

Appendix 2 – Oral proceeding – registered appearances

Name of organization (abbreviation) counsel or representative
ATCO Electric Ltd. Allison M. Sears
AltaLink Management Ltd. Alan Ross
Central Alberta Rural Electrification Association Limited (CAREA) Douglas I. Evanchuk
FortisAlberta Inc. Terence Dalgleish

Appendix 3 – Summary of legislative provisions

The Commission has identified and summarized the material legislative provisions referenced in this proceeding in the below table. This summary is provided for the convenience of the reader and should not be relied on as a substitute for the actual language found in the legislative provisions.

Name of Act	Section	Summary
Alberta Utilities Commission Act	8	Power of Commission to do all things necessary for the exercise of its powers and performance of its duties. Commission has all powers, rights, protections and privileges provided for under legislation. Commission has authority to hear and determine all questions of law or fact.
	11	Commission has the power of Queen's Bench Judge for matters necessary for due exercise of its jurisdiction or to carry out any of its powers.
	23(1)(a)(b)	Commission has general power to order person to act or cease to act as may be required under legislation or pursuant to any decision, order or rule of the Commission.
Cooperatives Act	1(1)(k)	Definition of "cooperative basis".
	2(1)(a)	Cooperative basis requires membership availability to persons who can use the service and who are willing and able to accept the responsibilities of membership.
Distribution Tariff Regulation	7	Person who uses, receives or pays for service provide by a rural electrification association under a distribution tariff may appeal to the Commission a charge, rate or toll but may not appeal the rate structure of the rural electrification association. Commission may vary, adjust or disallow the charge, rate or toll being appealed.
Electric Utilities Act	1(1)(1.1)	Definition of "electric distribution service".
	1(1)(m)	Definition of "electric distribution system"
	1(1)(o)	Definition of "electric utility".
	1(1)(q)	Definition of "electricity services".
	1(1)(jj)	Definition of "owner".
Electric Utilities Act (contd.)	1(1)(vv)	Definition of "rural electrification association".

Name of Act	Section	Summary
	1(1)(ww)	Definition of "service area".
	3(1)	Nothing in the Electric Utilities Act requires any person to transfer or divest itself of any property or any change in the boundaries of the service area of an electric distribution system.
	5(a) and (h)	Purposes of the Electric Utilities Act including to provide for an efficient electric industry structure (part a) and to provide for a framework so that the Alberta electric industry can, where necessary, be effectively regulated in a manner that minimizes the costs of regulation and provides incentives for efficiency (part h).
	101	Distribution owner's right to provide electric distribution service.
	102(1)	Distribution owner's obligation to prepare a distribution tariff.
	102(2)(a) and (c)	Approval of distribution tariffs by either Commission or, if an REA, by the board of directors of the REA.
	105	Duties of owners of electric distribution systems.
	127(b)	Obligations of owners of electric utilities to not withhold a service the Commission has ordered it to provide.
	142(1)(c)	Lieutenant Governor in Council may make regulations respecting the treatment of rights and obligations of REAs under contracts that were in existence on April 30, 1998, and made with owners of electric utilities where necessary to carry out the purposes of the Electric Utilities Act.
Gas Distribution Act	16(3) and (4)	Rural gas utility franchise area approval must exclude boundaries of urban municipalities unless the municipality agrees otherwise.
	17(2)	Boundaries of a franchise area must avoid conflict with the boundaries of existing gas utility systems.

Name of Act	Section	Summary
	18	Rural gas utility holding a franchise area approval has exclusive right to serve and duty to offer and provide gas service within distributor's franchise area, subject to some consumer exceptions as listed.
	30	Jurisdiction of Commission to review terms of service, charges, rates or tolls on receipt of complaint from consumer. Commission may vary, adjust or disallow the term, charge, rate or toll. Commission may also, after hearing a complaint, require a rural gas co-operative to supply and deliver gas to a complainant.
Hydro and Electric Energy Act	1(1)(j)	Definition of "person".
	1(1)(m)	Definition of "service area".
	2	Purposes of the act.
	4	Jurisdiction of Commission to grant industrial system designation status.
	24	Exemption from the application of Part 3 of the Act which requires Commission approval to distribute electric energy.
	25	Prohibits operation of an electric distribution system and the alteration of a service area without Commission approval. Commission approval must designate a service area.
	26	Commission authority to approve the construction or operation of an electric distribution system in the service area of another electric distribution system. Commission may do so if satisfied that it is for the purpose of providing service to a consumer in that service area who is not being provided service by the distribution system approved to distribute electricity in that service area.
Hydro and Electric Energy Act (contd.)	27	Commission authority to grant approval as applied for, grant an approval for changes to a service area, deny an approval and prescribe any conditions on an approval.
	28	As a starting point, service areas were those as of June 1, 1971.
	29 and 32	Commission may alter boundaries of a service area when in public interest to do so. When it does in the case of an REA,

Name of Act	Section	Summary
		Commission may order compensation.
Municipal Government Act	33 and 46	Exclusive right of municipality to provide a municipal utility service.
Roles, Relationships and Responsibilities Regulation, 2003	7(a)	Definition of "integrated operation agreement".
	7(b)	Definition of "rural electrification association".
	9	Obligations for parties to complete new integrated operation agreements including the settlement of any disputes through arbitration.
	10	Disputes regarding the interpretation of "members" of a rural electrification association under integrated operation agreement to be determined through arbitration.
Rural Utilities Act	1(a)	Definition of "association".
	3(1)(a)	Application to incorporate requires 5 or more persons who desire to be associated together in a co-operative association with principle object of supplying electricity to its members primarily in a rural area.
	9(5)	Supplemental by-laws for natural gas, water or sewage disposal service may establish service to non-members.
Rural Utilities Act (contd.)	10	Restriction of liability of members other than to membership dues and fees. Rights and conditions of membership as set out in by-laws in an association.
	11	Consequences on withdrawal from membership. No right to recover any customer contributions paid.
	18	Association's authority to impose levies on its members.
	22	Right of association to remove works and consequences to membership status, including termination of membership if no agreement to remove.

Name of Act	Section	Summary
	25(4)	Distribution of equity to members on winding up of REA affairs.
	26	Authority of Director to conduct an inquiry into affairs of association.
	27	Authority of Minister on report of Director after investigation that the affairs of an association, including, whether the association is conducting its affairs in accordance with co-operative principles, to appoint Director as official director of association, direct Director to call a general meeting or cancel the incorporation of the association.
Rural Utilities Regulation	13(1)	Treatment of proceeds from sale of assets that used to be provided to a member association when it ceases to provide utility service to a member because of a change in the member's service status.
	Schedule 3 - 17	Standard by-laws – Membership requirements.
	Schedule 3 - 18	Standard by-laws – Expulsion of members.