



# AUC

Alberta Utilities Commission

**ATCO Electric Ltd.**

**Sale and Transfer of the  
Delburne West Rural Electrification Association**

**Delburne West Rural Electrification Association**

**Application for Permission to  
Cease and Discontinue Operations**

**February 26, 2014**

**The Alberta Utilities Commission**

Decision 2014-044: ATCO Electric Ltd.

Sale and Transfer of the Delburne West Rural Electrification Association

Application No. 1610142

Delburne West Rural Electrification Association

Application for Permission to Cease and Discontinue Operations

Application No. 1610236

Proceeding ID No. 2955

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**and No. 1610236**  
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## **1 Introduction**

1. On December 5, 2013, ATCO Electric Ltd. (ATCO Electric) applied to the Alberta Utilities Commission (AUC or the Commission) on behalf of the Delburne West Rural Electrification Association (Delburne REA) for the sale and transfer of the Delburne REA's electric distribution system and related assets to ATCO Electric, pursuant to sections 25, 27, 29 and 32 of the *Hydro and Electric Energy Act*, RSA 2000 c. H-16. The purchase price for the electrical distribution system assets of the Delburne REA is \$2,452,325 as set out in the Sale of Distribution System and Termination of Services Agreement between the Delburne REA and ATCO Electric dated July 31, 2013 (the purchase and sale agreement). The ATCO Electric application was registered as Application No. 1610142.

2. ATCO Electric requested that the Commission provide a stage one approval (approval of the sale and transfer transaction found to be in the public interest) and a stage two approval (approval of the prudence of the purchase price) required in connection with the acquisition of a rural electrification association (REA). ATCO Electric requested approval to treat the impact of the acquisition of the Delburne REA as a Commission directed Y factor adjustment to its performance-based regulation (PBR) rates. ATCO Electric's PBR rates were approved in Decision [2012-237](#): Rate Regulation Initiative, Distribution Performance-Based Regulation (the PBR decision).<sup>1</sup> ATCO Electric submitted that it would address the rate implications in 2014 as part of its annual PBR rate application process for 2015.

3. On December 23, 2013, the Commission suspended further consideration of the application until the earlier of when:

- a. ATCO Electric advised the Commission that it withdrew its request for approval of a Y factor adjustment in respect of the purchase of the Delburne REA or provided the Commission with a request for other procedural direction; or
- b. the Commission received an application from the Delburne REA for permission to cease to operate its electric distribution system in its service area pursuant to Section 29 or Section 30 of the *Hydro and Electric Energy Act*.

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<sup>1</sup> Decision 2012-237: Rate Regulation Initiative, Distribution Performance-Based Regulation, Application No. 1606029, Proceeding ID No. 566, September 12, 2012.

4. On January 13, 2014, the Delburne REA filed an application for approval to “cease and discontinue operations” of the Delburne REA in accordance with sections 29(1) and 30(1) of the *Hydro and Electric Energy Act* “on the basis that the Delburne REA’s assets are to be sold and transferred pursuant to Section 32 of the *Hydro and Electric Energy Act*, in accordance with the terms of agreement” reached with ATCO Electric.<sup>2</sup> The Delburne REA application was registered as Application No. 1610236.

5. The Commission combined the ATCO Electric application and the Delburne REA application to be considered jointly as Proceeding ID No. 2955.

6. On January 14, 2014, the Commission issued an information request to the Delburne REA to confirm that the Delburne REA had received all required documentation, resolutions and approvals under the *Rural Utilities Act* to support the Delburne REA’s application for permission to cease and discontinue operations of the Delburne REA. The Delburne REA responded to the information request on January 22, 2014. The Commission considers the close of the record of Proceeding ID No. 2955 to be January 22, 2014.

## 2 Background

### *Process leading to the applications*

7. The Delburne REA is the operator of an electric distribution system in the Delburne area located east of Red Deer, Alberta.

8. The original service area boundary in which the Delburne REA’s electric distribution system was to operate was originally approved on December 19, 1977, by way of Approval No. HE 77169, and was modified in Amendment of Approval No. HE 77169A, dated February 10, 1988.

9. On November 2, 2011, the Delburne REA board of directors requested a formal offer from ATCO Electric to purchase the electric distribution system and related assets of the Delburne REA. ATCO Electric responded to the request on November 2, 2012, with an offer to purchase.

10. A notice was mailed to members advising them of a special general meeting to vote on the ATCO Electric offer to purchase. A notice of the special general meeting date was also published in various local print media.

11. On May 11, 2013, the Delburne REA held a special general meeting to vote on the offer from ATCO Electric to acquire the Delburne REA. The extraordinary resolution put forward by the Delburne REA’s board of directors for the sale and transfer was approved by a quorum of Delburne REA members. The minutes of the meeting indicated that 63 registered members attended.

12. A resolution approving the sale and transfer of the Delburne REA, and the execution of the purchase and sale agreement was passed by the board of directors on July 31, 2013. The

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<sup>2</sup> Exhibit 3 ATCO Electric is submitting this letter on REA’s behalf regarding Delburne REA’s formal request seeking permission to cease and discontinue operations.

purchase and sale agreement was executed that same date. The purchase and sale agreement included a purchase price calculated on the basis of replacement costs new, less depreciation, along with other terms of the sale.

13. On September 20, 2013, ATCO Electric, on behalf of the Delburne REA, applied to the Rural Utilities Division of Alberta Department of Agriculture and Rural Development to approve the resolutions of the Delburne REA for the sale and transfer of the Delburne REA's electrical distribution system and related assets to ATCO Electric. On October 10, 2013, the director of the Rural Electrification Associations for the province of Alberta approved the application. A copy of the director's letter was submitted as part of the application.

14. The purchase and sale agreement filed in this proceeding indicates the purchase price for the Delburne REA was \$2,452,325 calculated on the basis of replacement costs new, less depreciation. The purchase and sale agreement also stipulates that customer contributions to construction costs of the Delburne REA would be transferred to ATCO Electric on the closing date.

15. On December 5, 2013, ATCO Electric filed its application commencing this proceeding and requesting approval for the sale and transfer of the Delburne REA's assets to ATCO Electric, pursuant to sections 25, 27, 29 and 32 of the *Hydro and Electric Energy Act*.

16. On January 13, 2014, the Delburne REA filed its application for approval to "cease and discontinue operations" of the Delburne REA in accordance with sections 29(1) and 30(1) of the *Hydro and Electric Energy Act* on the basis that its assets are to be sold and transferred to ATCO Electric pursuant to Section 32 of the *Hydro and Electric Energy Act*.

### ***Proposed rate adjustment for ATCO Electric***

17. On September 12, 2012, the Commission issued the PBR decision. The PBR decision approved PBR plans for five distribution companies, including ATCO Electric, for a five-year term commencing January 1, 2013. PBR replaces traditional cost-of-service regulation as the annual rate-setting mechanism for utility rates. The PBR framework provides a formula mechanism for the annual adjustment of rates independent of the underlying costs incurred by the companies. In general, the companies' going-in rates are adjusted annually by means of an indexing mechanism that tracks the rate of inflation relevant to the prices of inputs the companies use, less an offset to reflect the productivity improvements the companies can be expected to achieve during the PBR plan period. There are certain adjustments that distribution companies can apply for treatment outside the indexing mechanism including K factor, Y factor and Z factor adjustments as described in the PBR decision.

18. On December 14, 2012, ATCO Electric filed an application<sup>3</sup> with the AUC requesting a Z factor adjustment with respect to the impact of the purchase of certain rural electrification associations. ATCO Electric stated that the Delburne REA acquisition was not part of the Z factor adjustment application because the required special general meeting of the Delburne REA did not occur until approximately five months after the Z factor adjustment application was filed. ATCO Electric noted that the sale closed within approximately one month

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<sup>3</sup> ATCO Electric Ltd. - Rate Regulation Initiative, Performance-Based Regulation, Z Factor Adjustment Application, Application No. 1609120, Proceeding ID No. 2301.

of the acquisition of the Peace Country REA, for which ATCO Electric was given approval to make an adjustment to its rates in the decision that dealt with its Z factor adjustment application, Decision 2013-296.<sup>4</sup>

19. AUC Decision 2013-296 was issued on August 9, 2013. In that decision, the Commission provided in paragraphs 98 and 99 certain guidance with respect to the filing of future applications for a rate adjustment during the PBR term related to an REA acquisition. ATCO Electric submitted in the present application, that it did not have the benefit of the clarification and guidance provided in Decision 2013-296, from the Commission prior to the initiation and completion of the Delburne REA acquisition. As such, ATCO Electric was unable to follow the Commission's process for REA acquisitions as set out in Decision 2013-296.

20. ATCO Electric indicated that it could not undo the process related to the Delburne REA acquisition following the Delburne REA's requested formal offer on November 2, 2011, and ATCO Electric's response on November 2, 2012. Further, according to ATCO Electric, it was not possible to re-start the process.

21. As a result of the above, ATCO Electric requested that the Commission approve the stage one and stage two approvals for the Delburne REA acquisition, and allow ATCO Electric to treat the impact of the acquisition as a Commission directed Y factor adjustment. ATCO Electric stated that it would address the rate implications in 2014 as part of its annual performance-based rate application process for 2015.

### **3 Commission findings**

#### ***Stage one public interest***

22. The Delburne REA and ATCO Electric have agreed to the sale and transfer of the Delburne REA's electric distribution system, as indicated in the purchase and sale agreement. In the following section, the Commission must consider whether the sale and transfer is in the public interest, given the documentation on the record of the proceeding. If the Commission approves the sale and transfer, the Commission must then assess the prudence of the sale and whether ATCO Electric may treat the acquisition as a Y factor adjustment in rates.

23. The *Rural Utilities Act* sets out the governance requirements to be followed by an REA in authorizing a sale of its facilities. Section 23 of the *Rural Utilities Act* provides that an association may, by extraordinary resolution, authorize the sale of all its works to a utility company. The Commission has reviewed the Delburne REA's application to cease its operations as well as the purchase and sale agreement, and observes that the supporting documentation including applicable resolutions were submitted as a part of ATCO Electric's application and the Delburne REA's application. The Commission relies on the confirmation of the Delburne REA that the registered members' and board of directors' resolutions filed in ATCO Electric's application were complete and are sufficient to satisfy the requirements contained in the *Rural Utilities Act*.<sup>5</sup>

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<sup>4</sup> Decision 2013-296: ATCO Electric Ltd. – Rate Regulation Initiative, Performance-Based Regulation, Z Factor Adjustment Application, Application No. 1609120, Proceeding ID No. 2301, August 9, 2013.

<sup>5</sup> Exhibit 6: Information Response No. 1 to the Alberta Utilities Commission, AUC- ATCO Electric-1 PDF 2.

24. The Delburne REA has applied to the AUC for permission to “cease and discontinue operations” of the Delburne REA in accordance with sections 29(1) and 30(1) of the *Hydro and Electric Energy Act*. Section 29(1) requires the Commission to determine if it is in the public interest to grant a request by an REA to “cease to operate in a service area.” In considering an application under Section 30 of the *Hydro and Electric Energy Act* for approval “to discontinue the operation” of an electric distribution system or to “discontinue the distribution of electric energy,” the Commission may make any order that it considers “just and proper and in the public interest.”

25. In assessing the public interest the Commission has considered that the Delburne REA’s assets and operations are located within ATCO Electric’s service area. The Commission has also considered and relied upon the agreement of ATCO Electric to continue to provide service to the members served by the Delburne REA and to “operate, maintain, replace, reconstruct, alter or upgrade”<sup>6</sup> the facilities it acquires. Further, the Commission observes that the Delburne REA approached ATCO Electric to request a formal offer and that the majority of the Delburne REA’s members voted in favour of the sale and transfer of its facilities.

26. In assessing the public interest, the Commission further considered the evidence that the director of Rural Electric Associations for the province of Alberta has approved the resolutions relating to the sale and transfer pursuant to the *Rural Utilities Act*. In Decision 2014-040,<sup>7</sup> the Commission commented on how it views an applicant’s compliance with the requirements of another government agency:

... the Commission regards compliance with the existing regulatory requirements administered by other public or government departments or agencies to be important elements when deciding if ... approval of a project is in the public interest.<sup>8</sup>

27. In line with the above approach, the Commission considers that approval from the director of Rural Electric Associations provides support that the sale and transfer of the Delburne REA is in the public interest.

28. Under Section 32(1) of the *Hydro and Electric Energy Act*, the Commission may transfer the service area of an REA that has been directed to cease operations under Section 29 or authorized to discontinue operation under Section 30 to another person. Section 32(1) of the *Hydro and Electric Energy Act* states:

**Rural electrification association**

**32(1)** If a rural electrification association

(a) under an order made under section 29,

- (i) has the size of its service area reduced, or
- (ii) ceases to operate in a service area or part of it, or

<sup>6</sup> Sale of Distribution System and Termination of Services Agreement, paragraph 3.

<sup>7</sup> Decision 2014-040: 1646658 Alberta Ltd. – Bull Creek Wind Project, Application No. 1608556, Proceeding ID No. 1955, February 20, 2014.

<sup>8</sup> Decision 2014-04, paragraph 620. See also. EUB Decision 2001-111: EPCOR Generation Inc. and EPCOR Power Development Corporation MW Genesee Pow Plant Expansion, Application No. 2001173, December 21, 2001, page 4.

- (b) on being authorized under section 30 to do so, discontinues the operation of its electric distribution system, the Commission may, when in the Commission's opinion it is in the public interest to do so and on any notice and proceedings that the Commission considers suitable, by order transfer to another person the service area or part of it served by the rural electrification association.

29. When it has granted an order under Section 30, the Commission may, under Section 32(2)(a), provide for the transfer of the facilities of an REA, the operation of an REA's electric distribution system and for the payment of compensation.

30. For the above reasons, the Commission finds it prudent that the Delburne REA's operations and related assets be transferred to ATCO Electric. Accordingly, the Commission hereby directs the Delburne REA's operations and related assets be transferred to ATCO Electric because the Delburne REA's assets and operations are located within ATCO Electric's service area. The Commission finds that it is appropriate for compensation to be paid and notes that the parties have agreed on the amount of compensation payable. In making its finding, and as noted above, the Commission considers that the director of Rural Electric Associations for the province of Alberta has approved the sale.

31. Based on the foregoing, the Commission considers that it is in the public interest to grant the Delburne REA's application to "cease to operate" in its service area pursuant to Section 29(1) of the *Hydro and Electric Energy Act* and to authorize the Delburne REA to "discontinue the operation" of an electric distribution system or to "discontinue the distribution of electric energy" pursuant to Section 30, provided however that, the facilities are transferred to, and operated by, ATCO Electric pursuant to the terms of the purchase and sale agreement. Accordingly, the Commission directs the transfer of the Delburne REA service area to ATCO Electric pursuant to Section 32(1) of the *Hydro and Electric Energy Act* and further directs the Delburne REA to sell, and ATCO Electric to purchase and operate, the Delburne REA assets in accordance with the terms of the purchase and sale agreement pursuant to Section 32(2) of the *Hydro and Electric Energy Act*.

### ***Stage two prudence***

32. In granting the above stage one approval to the Delburne REA to cease or to discontinue operations and directing the sale and transfer of the Delburne REA assets to ATCO Electric, the Commission has not made any findings on the prudence of the purchase price to be paid by ATCO Electric to the Delburne REA. The Commission also has not considered the manner in which the purchase price might be included in the rates of ATCO Electric. This section of the decision will consider these issues.

33. ATCO Electric submitted that the purchase price presented to the board of directors of the Delburne REA was determined on the basis of replacement costs new, less depreciation (RCN-D). The Commission has previously determined that the use of RCN-D is generally an acceptable valuation methodology for determining the purchase price to be paid when an electric

distribution utility acquires the facilities of an REA.<sup>9</sup> As noted by the Commission in Decision 2013-296:

The Commission recognizes that the AUC has previously determined that the use of RCN-D is an acceptable valuation for the purchase of an REA by a Commission-regulated utility in certain circumstances. In the Commission's view, to now deny the acceptability of RCN-D in the instant case, in the face of ample precedent that this valuation method has been accepted in the past, would be unfair to the parties to the REA purchase agreements.<sup>10</sup>

34. The Commission considers that the circumstances of the within application are consistent with prior approvals for the use of RCN-D for the determination of the purchase price to be paid by an electric distribution utility for the facilities of an REA. Accordingly, the Commission finds the \$2,452,325 purchase price to be paid by ATCO Electric to the Delburne REA to be reasonable.

#### *ATCO Electric rate adjustment*

35. As noted in Decision 2013-296:

Should the application under either Section 29 or Section 30 be granted, the Commission may, by order under Section 32(2)(a), provide for the transfer of operation of the REA electric distribution system and related assets to the electric distribution company, and for the payment of compensation. The Commission may also determine the amount of the compensation payable pursuant to Section 32(2)(b) if the parties are unable to agree. The Commission considers that a Commission order directing the transfer of facilities to an electric distribution company, the operation of the facilities by the distribution company and the payment of compensation to the REA may satisfy the requirements for a Commission directed Y factor adjustment as contemplated in paragraph 632 of Decision 2012-237.<sup>11</sup>

36. In order to qualify for a Y factor adjustment to its PBR rates, ATCO Electric must be able to demonstrate that the Delburne REA acquisition occurred as the result of a specific Commission direction. As stated above, the Commission has issued such a direction under Section 32 of the *Hydro and Electric Energy Act* after having granted the Delburne REA's application to cease to operate in its service area under Section 29(1) and authorizing the Delburne REA to discontinue its operations under Section 30. The Commission also notes that this application is ATCO Electric's first opportunity to request Commission approval to recover the revenue requirement impacts associated with the purchase of REA assets as a Commission directed Y factor adjustment.

37. Based on the foregoing, the Commission grants ATCO Electric's application to treat the Delburne REA acquisition as a Y factor adjustment to its PBR rates. The Commission directs

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<sup>9</sup> Decision 2010-309: FortisAlberta Inc. 2010-2011 Distribution Tariff – Phase I, Application No. 1605170, Proceeding ID. 212, July 6, 2011. And Decision 2013-296: ATCO Electric Ltd. - Rate Regulation Initiative, Performance-Based Regulation, Z Factor Adjustment Application, Application No. 1609120, Proceeding ID No. 2301, August 9, 2013.

<sup>10</sup> Decision 2013-296, paragraph 94.

<sup>11</sup> Decision 2013-296, paragraph 99.

ATCO Electric to address the rate implications in 2014 and 2015 arising from this decision as part of its next annual PBR rate adjustment filing.

#### 4 Order

- (1) Pursuant to Section 32 of the *Hydro and Electric Energy Act*, the Commission authorizes the sale and grants the transfer of the REA's electric distribution system to ATCO Electric. The Commission grants the application of the Delburne West Rural Electrification Association to cease to operate in its service area pursuant to Section 29(1) of the *Hydro and Electric Energy Act* and authorizes the Delburne West Rural Electrification Association to discontinue its operations under Section 30 of the *Hydro and Electric Energy Act* as set out in Appendix 1 – Discontinuation of Distribution System – Approval No. U2014-72 – February 26, 2014, to Delburne West Rural Electrification Association (Appendix 1 will be distributed separately.)
- (2) The service area of the Delburne West Rural Electrification Association is hereby transferred to ATCO Electric Ltd. pursuant to Section 32(1) of the *Hydro and Electric Energy Act*.
- (3) The Commission rescinds REA Approval No. HE 77169 as amended in Approval No. HE 77169A effective upon closing of the Sale of Distribution System and Termination of Services Agreement presently scheduled for February 26, 2014. The Delburne West Rural Electrification Association is directed to sell, and ATCO Electric Ltd. is directed to purchase and operate, the electric distribution system of the Delburne West Rural Electrification Association in accordance with the terms of the Sale of Distribution System and Termination of Services Agreement between Delburne West Rural Electrification Association and ATCO Electric Ltd. dated July 31, 2013, pursuant to Section 32(2) of the *Hydro and Electric Energy Act*.
- (4) ATCO Electric Ltd. shall address the 2014 and 2015 rate implications of this decision as a Y factor adjustment in its next annual PBR rate adjustment filing.

Dated on February 26, 2014.

#### The Alberta Utilities Commission

*(original signed by)*

Neil Jamieson  
Commission Member