



# AUC

Alberta Utilities Commission

## **Warwick Rural Electrification Association Application for Permission to Cease and Discontinue Operations**

### **ATCO Electric Ltd. Sale and Transfer of the Warwick Rural Electrification Association**

**December 18, 2014**

**The Alberta Utilities Commission**

Decision 2014-359: Warwick Rural Electrification Association  
Application for Permission to Cease and Discontinue Operations  
Application No. 1610940

ATCO Electric Ltd.  
Sale and Transfer of the Warwick Rural Electrification Association  
Application No. 1610946

Proceeding No. 3481

December 18, 2014

Published by

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**Warwick Rural Electrification Association**  
**Application for Permission to Cease and Discontinue Operations**

**ATCO Electric Ltd.**  
**Sale and Transfer of the Warwick**  
**Rural Electrification Association**

**Decision 2014-359**  
**Application No. 1610940 and**  
**Application No. 1610946**  
**Proceeding No. 3481**

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## **1 Introduction**

1. On October 21, 2014, the Warwick Rural Electrification Association (Warwick REA) applied to the Alberta Utilities Commission (AUC or the Commission) for approval to cease and discontinue the operation of its electric distribution system pursuant to Section 29(1) of the *Hydro and Electric Energy Act* on the basis that the Warwick REA's assets were to be sold and transferred pursuant to Section 32 of the *Hydro and Electric Energy Act*. The Warwick REA application was registered as Application No. 1610940.

2. On October 23, 2014, ATCO Electric Ltd. (ATCO Electric) applied to the AUC for approval of the sale, transfer and operation of the Warwick REA assets pursuant to Section 32 of the *Hydro and Electric Energy Act*. The ATCO Electric application was registered as Application No. 1610946. The Commission considered the applications jointly as Proceeding No. 3481.

3. ATCO Electric requested that the Commission approve both applications by November 12, 2014, so that ATCO Electric could finalize the transfer of the Warwick REA assets by December 5, 2014.

## **2 Discussion**

4. The Warwick REA operates an electric distribution system in a rural region located in east central Alberta.

5. The service area boundary of the Warwick REA's electric distribution system was originally approved on October 14, 1977, by way of Approval No. HE 77126. This approval was amended in Amendment of Approval No. HE 77126A, dated March 7, 1979, and in Amendment of Approval No. HE77126B, dated February 18, 1980.

6. On June 2, 2014, the Warwick REA Board of Directors requested a formal offer from ATCO Electric to purchase its electric distribution system.

7. In its application, the Warwick REA indicated that, on or before July 25, 2014, it had mailed a notice to each of its members advising that a special general meeting would be held on August 20, 2014. A notice of the special general meeting was also published in various local print media.

8. On August 20, 2014, at a special general meeting of the Warwick REA members, ATCO Electric presented its purchase offer. The Warwick REA membership voted 75 per cent in favour of accepting ATCO Electric's sale proposal. The Warwick REA submitted that 150 out of 206 members attended the special general meeting.

9. The Memorandum of Agreement (the agreement) between the Warwick REA and ATCO Electric was executed on August 27, 2014. The agreement included the purchase price along with other terms of the sale. The agreement, which was filed in this proceeding, indicated that the purchase price for the Warwick REA was \$4,263,954.00. The Warwick REA submitted that the valuation methodology used to ascertain the purchase price was based on the replacement costs new less depreciation (RCN-D) formula that had been approved previously by the Commission.

10. On August 27, 2013, the Warwick REA applied to the Rural Utilities Division of Alberta Department of Agriculture and Rural Development to approve the resolutions of the Warwick REA for the sale and transfer of the Warwick REA's electric distribution system and related assets to ATCO Electric. On October 14, 2014, the Director of Rural Electrification Associations for the province of Alberta (Director of REAs) approved the sale. A copy of the Director of REAs' letter was submitted as part of the Warwick REA application.

11. The Commission received correspondence dated November 5, 2014, from Mr. Gerald Hill. In his letter, Mr. Hill indicated that he was a member of the Warwick REA and stated that he wished to draw the Commission's attention to certain matters including an allegation that the vote held by the Warwick REA did not comply with the requirements of the *Rural Utilities Act*.

12. The Commission afforded the Warwick REA and ATCO Electric an opportunity to comment on Mr. Hill's submission, and gave Mr. Hill an opportunity to respond to the comments.

13. The Warwick REA's Board of Directors submitted that the vote was validly held. ATCO Electric also made a similar submission.

14. The Commission did not receive a response from Mr. Hill.

15. On December 10, 2014, the Commission wrote to the Director of REAs. The Commission provided a copy of Mr. Hill's letter to the Director of REAs and requested confirmation that the Director of REA's approval of the Warwick REA's resolutions dated October 14, 2014, was still valid.

16. The Director of REAs, replied in an email on December 17, 2014, and confirmed that the approval of the resolutions was valid and indicated that he was of the opinion that the Warwick REA had complied with all the requirements of the *Rural Utilities Act*.

### 3 Commission findings

#### Stage one: public interest

17. The Warwick REA and ATCO Electric have agreed to the sale and transfer of the Warwick 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.

18. 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 an extraordinary resolution, authorize the sale of all of its works to a utility company. The Commission has reviewed the Warwick REA's application to cease and discontinue its operations as well as the purchase and sale agreement and observes that supporting documentation was included. The Commission notes that the Board of Directors' resolutions and a copy of the minutes of the meeting during which the registered members approved the extraordinary resolution for the sale were included in the application.

19. The Commission understands that, prior to the Warwick REA application being submitted to the Commission, the Director of REAs had determined that the applicable resolutions and other documents, which were filed on the record of the proceeding, were sufficient to satisfy the requirements contained in the *Rural Utilities Act*. The Commission also considers that the Director of REAs has reviewed Mr. Hill's concerns and has confirmed that the Warwick REA's resolutions were valid and sufficient to satisfy the requirements of the *Rural Utilities Act*. Specifically, with respect to Mr. Hill's concern relating the vote of the Warwick REA's membership approving the sale, the Director of REAs has indicated that he is of the opinion that the vote and subsequent resolutions, were valid.

20. As stated above, the Warwick REA has applied to the Commission for permission to cease and discontinue operations in accordance with Section 29(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." The Commission also considers that it may make any order that it considers just and proper and in the public interest.

21. In assessing the public interest, the Commission has considered that the Warwick 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 Warwick REA and to "operate, maintain, replace, reconstruct, alter or upgrade"<sup>1</sup> the facilities it acquires. Further, the Commission observes that the Warwick REA approached ATCO Electric to make a formal offer and that the majority of the Warwick REA's members voted in favour of the sale.

22. The Commission further considered the evidence that the Director of REAs has approved the resolutions relating to the sale and transfer pursuant to the *Rural Utilities Act*. In Decision [2014-040](#) (Errata), the Commission commented on how it views an applicant's compliance with the requirements of another government agency:

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<sup>1</sup> Sale of Distribution System and Termination of Services Agreement, paragraph 3.

...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>2</sup>

23. In line with the above approach, the Commission considers that approval from the Director of REAs provides support that the sale and transfer of the Warwick REA is in the public interest. The Commission has considered the concerns expressed by Mr. Hill as well as the submissions from the Warwick REA and ATCO Electric. The Commission is of the opinion, based on the record of the proceeding, that it may rely on confirmation by the Director of REAs that the vote was held and that all applicable resolutions were passed in accordance with the requirements of the *Rural Utilities Act*.

24. 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

(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.

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

26. For the above reasons, the Commission finds it prudent that the Warwick REA's operations and related assets be transferred to ATCO Electric. Accordingly, the Commission hereby directs the Warwick REA's operations and related assets be transferred to ATCO Electric as the Warwick 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 REAs has approved the sale.

27. Based on the forgoing, the Commission considers that it is in the public interest to grant the Warwick REA's application to "cease to operate" in its service area pursuant to Section 29(1)

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<sup>2</sup> AUC Decision 2014-040: 1646658 Alberta Ltd. Bull Creek Wind Project, Application No. 1608556, Proceeding No. 1955, February 20, 2014, 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.

of the *Hydro and Electric Energy Act* provided 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 Warwick REA service area to ATCO Electric pursuant to Section 32(1) of the *Hydro and Electric Energy Act* and further directs the Warwick REA to sell, and ATCO Electric to purchase and operate, the Warwick 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**

28. In granting the above stage one approval to the Warwick REA to cease or to discontinue operations and directing the sale and transfer of the Warwick 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 Warwick 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.

29. ATCO Electric submitted that the purchase price presented to the Board of Directors of the Warwick REA was determined on the basis of 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 electric distribution utilities acquire the facilities of REAs.<sup>3</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>4</sup>

30. The Commission considers that the circumstances of the application are consistent with prior approvals for the use of RCN-D for the determination of the purchase price to be paid. Accordingly, the Commission finds the purchase price to be paid by ATCO Electric to the Warwick REA to be prudent.

### **Rate implications**

31. On September 12, 2012, the Commission issued Decision 2012-237: Rate Regulation Initiative, Distribution Performance-Based Regulation (the PBR decision).<sup>5</sup> 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

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<sup>3</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 No. 2301, August 9, 2013.

<sup>4</sup> Decision 2013-296: ATCO Electric Ltd. - Rate Regulation Initiative, Performance-Based Regulation, Z Factor Adjustment Application, Application No. 1609120, Proceeding No. 2301, August 9, 2013, paragraph 94.

<sup>5</sup> Decision 2012-237: Rate Regulation Initiative, Distribution Performance-Based Regulation, Application No. 1606029, Proceeding No. 566, September 12, 2012.

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 that provide treatment for certain costs not accounted for within the context of the indexing mechanism.

32. The Commission notes that although the Warwick REA requested that the Commission direct ATCO Electric to purchase its electric distribution system, ATCO Electric has not applied for any adjustments to its rates from its acquisition of the Warwick REA.

33. Further, the Commission observes that ATCO Electric has requested that the Commission's decision on the application be completed by November 12, 2014, to allow time to finalize the transfer by December 5, 2014, so that ATCO Electric can begin providing service to the former Warwick REA members under the applicable rate class. Given the date of this decision, the Commission expects that ATCO Electric may require additional time to address the acquisition.

#### 4 Order

It is hereby ordered that:

- (1) The Commission grants the application of the Warwick Rural Electrification Association to cease to operate in its service area pursuant to Section 29(1) of the *Hydro and Electric Energy Act* as set out in Appendix 1 – Discontinuance of Distribution System – Approval No. U2014-555 – December 18, 2014, to Warwick Rural Electrification Association (Appendix 1 will be distributed separately.)
- (2) The service area of the Warwick 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 77126, as amended, effective upon closing of the Sale of Distribution System and Termination of Services Agreement.
- (4) The Warwick Rural Electrification Association is directed to sell, and ATCO Electric Ltd. is directed to purchase and operate, the electric distribution system of the Warwick Rural Electrification Association in accordance with the terms of the Sale of Distribution System and Termination of Services Agreement between Warwick Rural Electrification Association and ATCO Electric Ltd. dated August 27, 2014, pursuant to Section 32(2) of the *Hydro and Electric Energy Act*, as set out in Appendix 2 – Sale and Transfer of Distribution System – Approval No. U2014-557 – December 18, 2014 (Appendix 2 will be distributed separately.)



Dated on December 18, 2014.

**The Alberta Utilities Commission**

*(original signed by)*

Henry van Egteren  
Commission Member