



Stry Rural Electrification Association

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

ATCO Electric Ltd.

Sale and Transfer of the Stry Rural Electrification Association

May 21, 2015

Alberta Utilities Commission

Decision 20308-D01-2015

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Proceeding 20308

Applications 20308-A001 and 20308-A002

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Decision 20308-D01-2015
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1 Introduction

1. On March 26, 2015, the Stry Rural Electrification Association (Stry REA), applied to the Alberta Utilities 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 Stry REA's assets were to be sold and transferred pursuant to Section 32 of the *Hydro and Electric Energy Act*. The Stry REA application was registered as Application 20308-A001.

2. On April 1, 2015, ATCO Electric Ltd. (ATCO Electric) applied to the AUC for approval of the sale, transfer and operation of the Stry REA assets pursuant to Section 32 of the *Hydro and Electric Energy Act*. The ATCO Electric application was registered as Application 20308-A002. The Commission considered the applications jointly.

2 Discussion

3. The Stry REA operates an electric distribution system located in the Stry, Alberta rural region.

4. The service area boundary of the Stry REA's electric distribution system was originally approved by Approval HE 75133 on September 15, 1975. This approval was amended in Approval HE 75133A on July 17, 1978, Approval HE 75133B on March 28, 1979, Approval HE 75133C on June 4, 1979, and Approval HE 75133D on November 16, 1983.

5. On April 27, 2012, the Stry REA board of directors requested a formal offer from ATCO Electric to purchase its electric distribution system.

6. The Stry REA indicated that on or about July 16, 2014, it mailed a notice to each of its members advising that an information meeting would be held to "discuss the pros and cons of selling the [Stry] REA"¹ on July 30, 2014, and a special general meeting would be held on August 8, 2014.

¹ Exhibit 20308-X0001, 2015-03-26 Stry REA - AUC Application, Stry Rural Electrification Association Ltd. letter, PDF page 3, paragraph 3.

7. On August 8, 2014, a special general meeting of the Stry REA members was held and the members voted on the formal offer from ATCO Electric: 75 per cent of the Stry REA members voted in favour of the extraordinary resolution to sell and transfer the Stry REA and its assets to ATCO Electric. The Stry REA submitted that 252 out of 427 members attended the special general meeting.

8. The Sale of Distribution System and Termination of Services Agreement (the agreement) between the Stry REA and ATCO Electric was dated January 22, 2015. 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 Stry REA was \$10,912,934. ATCO Electric submitted that the evaluation 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.

9. ATCO Electric requested that the Commission approve the acquisition of the Stry REA and allow ATCO Electric to treat the impact of the acquisition as an AUC directed Y factor adjustment to its performance-based regulation (PBR) rates. ATCO Electric will address the rate implications in 2015 as part of its annual rate application process.

10. On March 2, 2015, the Stry REA applied to the Rural Utilities Division of Alberta Department of Agriculture and Rural Development to approve the resolutions of the Stry REA for the sale and transfer of the Stry REA's electric distribution system and related assets to ATCO Electric. On March 16, 2015, the director of rural electrification associations for the province of Alberta approved the sale. A copy of the director of rural electrification associations' letter was submitted as part of the Stry REA application.

3 Commission findings

Stage one: public interest

11. The Stry REA and ATCO Electric have agreed to the sale and transfer of the Stry 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.

12. The *Rural Utilities Act* sets out the governance requirements to be followed by a rural electrification association 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 Stry 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 resolution of the Stry REA Board of Directors and the board resolution letter to ATCO Electric was included with the application.

13. The Commission understands that, prior to the Stry REA application being submitted to the Commission, the director of rural electrification associations 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*.

14. The Stry 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 a rural electrification association to “cease to operate in a service area.”

15. The Commission also considers that it may make any order that it considers just and proper and in the public interest.

16. In assessing the public interest, the Commission has considered that the Stry 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 Stry REA and to “operate, maintain, replace, reconstruct, alter or upgrade”² the facilities it acquires. Further, the Commission observes that the Stry REA approached ATCO Electric to make a formal offer and that 75 per cent of the Stry REA’s members voted in favour of the sale.

17. The Commission further considered the evidence that the director of rural electrification associations for the province of Alberta has approved the resolutions relating to the sale and transfer pursuant to the *Rural Utilities Act*.³ In Decision 2014-040,³ 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.⁴

18. In line with the above approach, the Commission considers that approval from the director of rural electrification associations provides support that the sale and transfer of the Stry REA is in the public interest.

19. Under Section 32(1) of the *Hydro and Electric Energy Act*, the Commission may transfer the service area of a rural electrification association 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:

² Exhibit 20308-X0001, 2015-03-26 Stry REA - AUC Application, Sale of Distribution System and Termination of Services Agreement, PDF page 11, paragraph 3.

³ Exhibit 20308-X0002, 2015-03-26 Stry REA - AUC Application, Certificate from Director of Rural Electrification Associations for the Province of Alberta, PDF page 15.

⁴ AUC Decision 2014-040: 1646658 Alberta Ltd. Bull Creek Wind Project, Proceeding 1955, Application 1608556, Proceeding 1955, February 20, 2014 (Errata issued March 10, 2014), PDF page 124, paragraph 620. See also Alberta Energy and Utilities Board Decision 2001-111: EPCOR Generation Inc. and EPCOR Power Development Corporation MW Genesee Pow Plant Expansion, Application 2001173, December 21, 2001, page 4.

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.

20. 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 a rural electrification association, for the operation of a rural electrification association's electric distribution system and for the payment of compensation.

21. For the above reasons, the Commission finds it in the public interest that the Stry REA's operations and related assets be transferred to ATCO Electric. Accordingly, the Commission hereby directs the Stry REA's operations and related assets be transferred to ATCO Electric as the Stry 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 electrification associations has approved the sale.

22. Based on the forgoing, the Commission considers that it is in the public interest to grant the Stry REA's application to "cease to operate" in its service area pursuant to Section 29(1) 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 Stry REA service area to ATCO Electric pursuant to Section 32(1) of the *Hydro and Electric Energy Act* and further directs the Stry REA to sell, and ATCO Electric to purchase and operate, the Stry 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

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

24. ATCO Electric submitted that the purchase price presented to the Stry REA membership 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.⁵ 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.⁶

25. 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 Stry REA to be prudent.

Rate implications

26. On September 12, 2012, the Commission issued Decision [2012-237](#): Rate Regulation Initiative, Distribution Performance-Based Regulation (the PBR decision).⁷ 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 that provide treatment for certain costs not accounted for within the context of the indexing mechanism.

27. The Commission notes that the Stry REA requested that the Commission direct ATCO Electric to purchase its electric distribution system. The Commission also notes that ATCO Electric requested that the Commission approve the acquisition of the Stry REA and allow ATCO Electric to treat the impact of the acquisition as an AUC directed Y factor adjustment to its PBR rates. The Commission further notes that ATCO Electric stated it would address the rate implications in 2015 as part of its annual rate application process. The Commission grants ATCO Electric approval to treat the acquisition of the Stry REA as a Y factor adjustment to its PBR rates and directs ATCO Electric to address the rate implications arising from the sale as part of its next annual PBR rate adjustment filing.

⁵ Decision 2010-309: FortisAlberta Inc. 2010-2011 Distribution Tariff – Phase I, Application 1605170, Proceeding 212, July 6, 2011. And Decision 2013-296: ATCO Electric Ltd. - Rate Regulation Initiative, Performance-Based Regulation, Z Factor Adjustment Application, Application 1609120, Proceeding 2301, August 9, 2013.

⁶ Decision 2013-296: ATCO Electric Ltd. - Rate Regulation Initiative, Performance-Based Regulation, Z Factor Adjustment Application, Application 1609120, Proceeding 2301, August 9, 2013, paragraph 94.

⁷ Decision 2012-237: Rate Regulation Initiative, Distribution Performance-Based Regulation, Proceeding 566, Application 1606029, September 12, 2012.

4 Order

It is hereby ordered that:

- (1) The Commission grants the application of the Stry 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 20308-D02-2015 – May 21, 2015, to Stry Rural Electrification Association (Appendix 1 will be distributed separately).
- (2) The service area of the Stry 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 Rural Electrification Association Approval HE 75133, as amended, effective upon closing of the Sale of Distribution System and Termination of Services Agreement.
- (4) The Stry Rural Electrification Association is directed to sell, and ATCO Electric Ltd. is directed to purchase and operate, the electric distribution system of the Stry Rural Electrification Association in accordance with the terms of the Sale of Distribution System and Termination of Services Agreement between Stry Rural Electrification Association and ATCO Electric Ltd. dated January 22, 2015, 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 20308-D03-2015 – May 21, 2015 (Appendix 2 will be distributed separately).

Dated on May 21, 2015.

Alberta Utilities Commission

(original signed by)

Tudor Beattie, QC
Commission Member