



**Kingman Rural Electrification Association Ltd.
Application for Permission to Cease and
Discontinue Operations**

**FortisAlberta Inc.
Sale and Transfer of the Kingman Rural
Electrification Association**

September 1, 2015

Alberta Utilities Commission

Decision 20552-D01-2015

Kingman Rural Electrification Association Ltd.

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Proceeding 20552

Applications 20552-A001 and 20552-A002

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1 Introduction

1. On June 19, 2015, the Kingman Rural Electrification Association Ltd. (Kingman 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 Kingman REA's assets were to be sold and transferred pursuant to Section 32 of the *Hydro and Electric Energy Act*. The Kingman REA application was assigned application number 20552-A002.

2. Also on June 19, 2015, FortisAlberta Inc. (Fortis) applied to the AUC for approval of the sale, transfer and operation of the Kingman REA assets pursuant to Section 32 of the *Hydro and Electric Energy Act*. The application was registered as application number 20552-A001.

3. Fortis requested that the Commission consider the applications jointly, therefore the Commission combined the applications into Proceeding 20552.

4. On June 23, 2015, the AUC issued a filing announcement that was automatically emailed to all eFiling users that had chosen to be notified of filing announcements issued by the Commission.

5. The Commission received a statement of intent to participate from the EQUUS REA Ltd., Lakeland Rural Electrification Association Ltd., North Parkland Power REA Ltd. and Rocky Rural Electrification Association Ltd. (collectively, the intervening REAs). The intervening REAs sought intervener status on the basis that there are legal and policy oriented issues that are of a substantial and material interest to them.

6. On July 29, 2015, the Commission received a statement of intent to participate from the Office of the Utilities Consumer Advocate (UCA). The UCA sought the opportunity to test the applications on the basis that Fortis' application and the Kingman REA's application would affect the rates of those consumers.

7. The Commission issued a ruling on August 27, 2015, denying the intervening REAs and the UCA standing in the proceeding for the reasons set out in that ruling. A copy of the Commission's standing ruling is attached as Appendix A.

2 Discussion

8. The Kingman REA operates an electric distribution system located in the Kingman, Alberta rural region.

9. The service area boundary of the Kingman REA's electric distribution system was originally approved on July 18, 1977, by way of Approval No. HE 7758. This approval was subsequently amended in:

- Amendment of Approval No. HE 7758A, dated January 11, 1979
- Amendment of Approval No. HE 7758B, dated July 23, 1985
- Amendment of Approval No. HE 7758C, dated January 21, 1987
- Amendment of Approval No. HE 7758D, dated February 10, 1998

10. On December 7, 2014, the Kingman REA Board of Directors requested a formal offer from Fortis to purchase its electric distribution system.

11. In its application, the Kingman REA indicated that on March 31, 2015, it had mailed a notice to each of its members advising that a special general meeting would be held on April 18, 2015. A notice of the special general meeting was also published in a local newspaper.¹

12. On April 18, 2015, a special general meeting of the Kingman REA members was held and the members voted on the formal offer presented by Fortis. The Kingman REA members voted 81 per cent in favour of the extraordinary resolution to sell and transfer the Kingman REA assets to Fortis. The Kingman REA submitted that 107 out of 211 members cast ballots at the special general meeting.

13. The Asset Purchase Agreement between the Kingman REA and Fortis was dated May 7, 2015. The agreement included the purchase price along with other terms of the sale. The agreement, which was filed on the record of this proceeding, indicated that the purchase price for the Kingman REA was \$5,120,000. Fortis 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.

14. On June 3, 2015, the Kingman REA applied to the Rural Utilities Division of Alberta Department of Agriculture and Rural Development for approval of the resolutions of the Kingman REA for the sale and transfer of the Kingman REA's electric distribution system and related assets to Fortis. On June 8, 2015, the Director of rural electrification associations for the province of Alberta approved the resolutions. A copy of the Director of rural electrification associations' approval letter was submitted as part of the Kingman REA application.

¹ Exhibit 20552-X0020.

3 Commission findings

3.1 Stage one: public interest

15. The Kingman REA and Fortis have agreed to the sale and transfer of the Kingman REA's electric distribution system, as indicated in the asset purchase 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 purchase price.

16. 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 Kingman REA's application to cease and discontinue its operations and the asset purchase agreement and observes that supporting documentation, such as the resolution of the Kingman REA Board of Directors and the agenda of the special general meeting, was included with the application.

17. The Commission understands that, prior to the Kingman REA application being submitted to the Commission, the Director of rural electrification associations had determined that the applicable resolutions were sufficient to satisfy the requirements contained in the *Rural Utilities Act*.

18. As stated above, the Kingman 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."

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

20. In assessing the public interest, the Commission has considered that the Kingman REA's assets and operations are located within the Fortis service area. The Commission has also considered and relied upon the agreement of Fortis to continue to provide service to the members served by the Kingman REA and to "operate, maintain, replace, reconstruct, alter or upgrade"² the facilities it acquires. Further, the Commission observes that the Kingman REA approached Fortis to make a formal offer and that 81 per cent of the Kingman REA members eligible to vote at the special general meeting voted in favour of the sale to Fortis.

21. The Commission further considered the evidence that the Director of rural electrification associations has approved the resolutions relating to the sale and transfer pursuant to the

² Exhibit 20552-X0006 – Asset Purchase Agreement, Section 8(b)(ii).

Rural Utilities Act. 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

22. In line with the above approach, the Commission considers that the approval of the sale by the Director of rural electrification associations provides support that the sale and transfer of the Kingman REA's assets and operations is in the public interest.

23. 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.

24. 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.

25. For the above reasons, the Commission finds that the transfer of the Kingman REA operations and related assets to Fortis is in the public interest. The Commission accordingly directs that the Kingman REA operations and related assets be transferred to Fortis. 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.

26. Based on the foregoing, the Commission finds that it is in the public interest to grant the Kingman 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 Fortis pursuant to the terms of the asset purchase agreement. Accordingly, the Commission

³ AUC Decision 2014-040: 1646658 Alberta Ltd. Bull Creek Wind Project, Proceeding. 1955, Application 1608556, February 20, 2014. Errata issued on March 10, 2014.

⁴ AUC Decision 2014-040, paragraph 620. See also EUB Decision 2001-111: EPCOR Generation Inc. and EPCOR Power Development Corporation MW Genesee Pow Plant Expansion, Application 2001173, December 21, 2001, page 4.

directs the transfer of the Kingman REA service area to Fortis pursuant to Section 32(1) of the *Hydro and Electric Energy Act* and further directs the Kingman REA to sell, and Fortis to purchase and operate, the Kingman REA assets in accordance with the terms of the asset purchase agreement pursuant to Section 32(2) of the *Hydro and Electric Energy Act*.

3.2 Stage two: prudence

27. After granting the above approval to the Kingman REA to cease or to discontinue operations and directing the sale and transfer of the Kingman REA assets to Fortis, the Commission must now assess the prudence of the purchase price to be paid by Fortis to the Kingman REA.

28. Fortis submitted that the purchase price presented to the Kingman 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

29. 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 Fortis to the Kingman REA to be prudent.

3.3 Rate implications

30. The Commission also assessed the manner in which the purchase price might be included in the rates of Fortis.

31. 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, 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

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, Proceeding 2301, Application 1609120, August 9, 2013.

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

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

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 Kingman REA requested that the Commission direct Fortis to purchase its electric distribution system, Fortis has not applied for any adjustments to its rates from its acquisition of the Kingman REA.

4 Order

33. It is hereby ordered that:

- 1) The Commission approves the application of the Kingman Rural Electrification Association Ltd. to cease to operate in its service area pursuant to Section 29(1) of the *Hydro and Electric Energy Act* and grants the approval set out in Appendix 1 – Discontinuance of Distribution System – Approval 20552-D02-2015, to Kingman Rural Electrification Association Ltd. (Appendix 1 will be distributed separately).
- 2) The service area of the Kingman Rural Electrification Association Ltd. is hereby transferred to FortisAlberta Inc. pursuant to Section 32(1) of the *Hydro and Electric Energy Act*.
- 3) The Commission rescinds Approval HE 7758, as amended, effective upon closing of the asset purchase agreement.
- 4) The Kingman Rural Electrification Association is directed to sell, and FortisAlberta Inc. is directed to purchase and operate, the electric distribution system of the Kingman Rural Electrification Association Ltd. in accordance with the terms of the asset purchase agreement between Kingman Rural Electrification Association Ltd. and FortisAlberta Inc. dated May 7, 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 20552-D03-2015. (Appendix 2 will be distributed separately).

Dated on September 1, 2015.

Alberta Utilities Commission

(original signed by)

Anne Michaud
Commission Member

Appendix A – Standing Ruling



KingsmanREARulingA
ug27_0035.pdf

(consists of 8 pages)

August 27, 2015

To: Interested Parties

**Kingman Rural Electrification Association Ltd.
Cease and Discontinue Operation of the Kingman Rural Electrification Association
Application 20552-A002**

**FortisAlberta Inc.
Sale and Transfer of the Kingman Rural Electrification Association
Application 20552-A001**

Proceeding 20552

Ruling on standing

1. In this ruling, the Alberta Utilities Commission must determine whether to grant standing to EQUUS REA Ltd., Lakeland Rural Electrification Association Ltd., North Parkland Power REA Ltd. and Rocky Rural Electrification Association Ltd. (collectively, the intervening REAs) in the above-referenced proceeding. The Office of the Utilities Consumer Advocate (UCA) has also sought standing in this proceeding.
2. For the reasons set out below, the Commission has denied standing to the intervening REAs and the UCA. The Commission has instructed me to communicate its decision and its reasons to interested parties.

Background

3. The Kingman Rural Electrification Association Ltd. (Kingman REA) filed an application requesting permission to cease and discontinue operations in its service area pursuant to sections 29 and 30 of the *Hydro and Electric Energy Act*. FortisAlberta Inc. (Fortis) filed Application 20552-A001 with the Commission on June 19, 2015, requesting approval for the sale and transfer of the Kingman REA assets to Fortis effective October 1, 2015, pursuant to Section 32 of the *Hydro and Electric Energy Act* (Fortis' application). The Commission issued a letter dated July 3, 2015, indicating that both applications would be considered in Proceeding 20552.
4. On June 23, 2015, the AUC issued a filing announcement which was automatically emailed to all eFiling users that had chosen to be notified of filing announcements issued by the Commission. On July 3, 2015, the Commission issued a letter to Fortis and the Kingman REA acknowledging receipt of the applications and outlining the anticipated review timeline.

5. On July 20, 2015, the intervening REAs jointly filed a statement of intent to participate on the record of Proceeding 20552.

6. Each of the intervening REAs is the owner of an electric distribution system in Alberta and is a rural electrification association (REA) as defined in the *Rural Utilities Act*. All of the intervening REAs operate within service areas that overlap the service area of Fortis, with the exception of Lakeland REA, whose service area overlaps that of ATCO Electric Ltd.

7. The intervening REAs sought intervener status on the basis that there are legal and policy oriented issues that are of a substantial and material interest to them. Specifically, they contended that they would be directly and adversely affected by the Commission's consideration of:

- The interpretation and application of the public interest considerations required under Section 32(1) for the transfer of a service area of a rural electrification association to another person.
- The interpretation and application of Section 32(2)(b), including provisions for the transfer of the facilities of a rural electrification association.
- The exercise by the Commission of its jurisdiction and discretion in respect of the foregoing.¹

8. The intervening REAs also expressed concern that the Commission had not (as of the date of their submission) issued notice of the application and noted that no notice was provided for similar applications in the past that were approved under Section 32 of the *Hydro and Electric Energy Act* for the sale and transfer of REAs to ATCO Electric Ltd.

9. On July 29, 2015, the Commission received a statement of intent to participate from the Office of the Utilities Consumer Advocate. The UCA sought the opportunity to test the application on the basis that Fortis' application as well as the Kingman REA's application affects the rates of consumers.

How the Commission determines standing

10. When determining standing, the Commission is guided by Section 9(2) of the *Alberta Utilities Commission Act* which states:

- (2) If it appears to the Commission that its decision or order on an application may directly and adversely affect the rights of a person, the Commission shall
- (a) give notice of the application in accordance with the Commission rules,
 - (b) give the person a reasonable opportunity of learning the facts bearing on the application as presented to the Commission by the applicant and other parties to the application, and
 - (c) hold a hearing.

¹ Exhibit 20552-X0032.

11. If the Commission finds that a person has standing pursuant to Section 9(2) of the *Alberta Utilities Commission Act* it must hold a hearing to consider the person's concerns about the subject application. Further, persons with standing have the right to fully participate in the hearing. The Commission considers this to include the right to file evidence in support of their position, the right to question or cross-examine the applicant(s) on its evidence, and the right to make argument.

12. This provision and the factors to be assessed in determining whether to grant standing have been considered by the Alberta Court of Appeal.

13. In *Cheyne v. Alberta (Utilities Commission)*, the Alberta Court of Appeal confirmed the application of a two-part test for standing. First, a person must demonstrate that the right he or she is asserting is recognized by law. Second, a person must provide some information that shows that the Commission's decision on the application may directly and adversely affect his or her rights. The first part of the test is legal; the second part of the test is factual. For the factual part of the test, the Alberta Court of Appeal has stated that "some degree of location and connection between the work proposed and the right asserted is reasonable."²

14. In *Sawyer v. Alberta (Energy and Utilities Board)*, the Alberta Court of Appeal commented further on the factual component of the standing test and stated that "...in considering the location or connection, the Board is entitled to look at factors such as residence, the presence or absence of other wells in the area, and the frequency and duration of the applicant's use of the area near the proposed site."³

15. The Commission assesses the potential for direct and adverse effect on a case-by-case basis, having regard for the specific circumstances of each application. The expression of general or broad concerns about an application, without some link or connection to the demonstrated or anticipated characteristics of the applied-for application will generally be an insufficient basis for establishing the potential for a direct and adverse effect.

16. Section 32 of the *Hydro and Electric Energy Act* articulates the Commission's role when a REA is sold and transferred to a utility.

17. Section 32 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

² *Cheyne v. Alberta (Utilities Commission)*, 2009 ABCA 94.

³ 2007 ABCA 297 at para 16.

transfer to another person the service area or part of it served by the rural electrification association.

...

18. REAs are governed by the *Rural Utilities Act* under the supervision of the Director of Rural Electrification Associations for the Province of Alberta (Director of REAs).

19. The sale of a REA to an investor-owned utility is governed by the provisions of Section 23 of the *Rural Utilities Act*, which provides as follows:

Sale of works

23 An association may, by extraordinary resolution, authorize the sale of all its works to a utility company or to a municipality or Metis settlement.

20. The Commission has a broad public interest mandate but it is not equivalent to the public interest mandate exercised by the legislature. The Alberta Court of Appeal has confirmed that portions of the public interest may fall under the purview of the Commission whereas other portions of the public interest may be the responsibility of another government body. In *Maxim Power Corp. v. Alberta (Utilities Commission)*, the court stated as follows:

Considering the same issue twice does not minimize costs or make for effective regulation. Nor does the possibility of conflicting decisions. This result does not undermine section 5's other objectives. Rather, it simply means that the Legislature assigned the responsibility for determining one element of market efficiency (level playing field) to the Minister rather than to the Commission.⁴

21. In *Shaw v. Alberta Utilities Commission* ABCA 378, the Alberta Court of Appeal confirmed the following:

The Commission went on to note that, although the effect of the *Electric Statutes Amendment Act* was to transfer the first public interest determination to government as part of the need assessment, the Commission retains its jurisdiction to make the second public interest determination, whether the proposed facilities minimize, or mitigate to an acceptable degree, the potential adverse impacts on more discrete parts of the community: para 153. The Commission explained its view of the limits on its jurisdiction as follows, at para 154:⁵

22. The court at paragraphs 38 to 49 went on to state:

In a complex legislative scheme such as this one, it is necessary to have regard to the entire scheme in order to ascertain legislative intent. The interpretation adopted by the Commission and urged on us by the respondents, does not interfere with the harmonious operation of the various pieces of legislation that govern the Commission's approval of transmission lines. The Commission's interpretation is also in keeping with the operation of the legislative scheme in practice, and in particular the two-stage approach to new transmission developments established by the statutory scheme for non-critical infrastructure projects.

⁴ *Maxim Power Corp. v. Alberta (Utilities Commission)*, 2010 ABCA 213 at para 43.

⁵ *Shaw v. Alberta Utilities Commission* ABCA 378 at para 20.

23. In Decision [2011-436](#),⁶ the Commission articulated its role when deciding its public interest mandate:

... the Commission must not address the matters which the legislature has already addressed...

Commission ruling

24. Unless the Commission chooses to exercise its discretion to allow parties to participate in its proceedings, a person seeking standing must demonstrate that there is the potential for a direct and adverse effect resulting from the Commission's determination of the application before it.

25. With respect to the legal portion of the standing test, the Commission understands that each of the intervening REAs is asserting rights in respect to its electric distribution system. However, for the reasons that follow, Fortis' application pursuant to Section 32 of the *Hydro and Electric Energy Act*, does not have the potential to directly and adversely affect the rights asserted by the intervening REAs. Fortis' application, if approved, would increase its service area; however, this increase in service area would not overlap with any of the intervening REAs' service areas. Accordingly, the increase in service area alone is insufficient to establish a connection between the application and the rights held by the intervening REAs.

26. The intervening REAs have sought to intervene in this proceeding to make submissions on legal and policy issues regarding the "high number of recent acquisitions of REAs by investor-owned Utilities in Alberta, and the transfer of purchased REA assets to such utilities".⁷ The Commission finds that the intervening REAs do not have a legal interest in broader policy considerations relating to the purchasing of REAs by investor-owned utilities and over which the Commission has no jurisdiction. Also, such legal and policy issues are too broad to establish a potentially direct and adverse effect on the intervening REAs as a result of Fortis' application because the scope of Fortis' application is restricted to the purchase of the Kingman REA and not to broader policy issues such as the "high number of recent acquisitions of REAs by investor-owned Utilities in Alberta, and the transfer of purchased REA assets to such utilities."⁸

27. Also, the intervening REAs assert that they are impacted by the Commission's "interpretation and application of the public interest considerations" relating to Section 32 of the *Hydro and Electric Energy Act*. This is not the first time that the public interest under Section 32 of the *Hydro and Electric Energy Act* has been considered by the Commission. For example, the Commission stated at paragraph 16 of Decision [20308-D01-2015](#):⁹

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" the facilities it acquires. Further, the Commission

⁶ Decision 2011-436: AltaLink Management Ltd. and EPCOR Distribution & Transmission Inc. – Heartland Transmission Project, Proceeding 457, Application 1606609, November 1, 2011, paragraph 160.

⁷ Exhibit 20552-X0032.

⁸ Ibid.

⁹ Decision 20308-D01-2015: Stry Rural Electrification Association – Application for Permission to Cease and Discontinue Operations and ATCO Electric Ltd. – Sale and Transfer of the Stry Rural Electrification Association, Proceeding 20308, Applications 20308-A001 and 20308-A002, May 21, 2015.

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.

28. The current application is similar to the application approved in Decision 20308-D01-2015 insofar as both the REA and the investor-owned utility had reached a mutual agreement for the sale and transfer of the REA's assets to the investor-owned utility. The Commission also observes that neither Fortis nor the Kingman REA has raised any issue with the interpretation and application of Section 32 of the *Hydro and Electric Energy Act*. Consequently, the Commission is not persuaded that further clarification of the application of Section 32 of the *Hydro and Electric Energy Act*¹⁰ is needed and that granting standing to the intervening REAs is required.

29. Further, the legal and policy considerations referred to by the intervening REAs are not matters to be considered by the Commission when it makes its public interest determination in considering Fortis' application. The legislature has retained jurisdiction over the sale of REAs and is responsible for determining whether, and on what terms, investor owned-utilities may purchase REAs. Based on the provisions of the *Rural Utilities Act*, the legislature has not placed restrictions on the number of REA acquisitions by investor-owned utilities. For the Commission to reconsider whether a REA may sell its electric distribution system and related assets to an investor-owned utility would be contrary to the legislation. The Commission's public interest mandate relates to the transfer of a REA's service area to another person such as an investor-owned utility and certain specific matters relating to the payment of compensation. A sale from a REA to a utility company is not automatically deemed to be in the public interest. The Commission's role is to ensure that distribution service will continue. As stated above, the legislature has reserved for itself the public interest as it pertains to the sale of REAs and has enacted Section 23 of the *Rural Utilities Act* in this regard.

30. The effect of Section 23 of the *Rural Utilities Act* and Section 32 of the *Hydro and Electric Energy Act*, is that any condition or term of approval imposed by the Commission must be for the purpose of ensuring the continued distribution of electric energy in the service area that was formerly served by the REA or other matters specified in Section 32(2) (such as the payment of compensation). To that end, the Commission may review the purchase and sale agreement and rely on the Director of REAs to confirm that all requirements of the *Rural Utilities Act* have been met when determining if the transfer of a service area is the public interest under Section 32 of the *Hydro and Electric Energy Act*.

31. In their statement of intent to participate, the intervening REAs noted that matters and issues of general application between REAs and investor-owned utilities in Alberta were addressed in Proceeding 886. The Commission disagrees that this decision is relevant to this discussion. The application in Proceeding 20552 is of a fundamentally different nature than the application considered in Proceeding 886.

32. Proceeding 886 was an application brought by a REA seeking a declaration from the Commission to clarify certain legislative provisions, namely sections 25 and 26 of the *Hydro and Electric Energy Act*, in light of changes in the regulatory environment. Proceeding 886 resulted in the Commission issuing Decision [2012-018](#),¹¹ in which in paragraph 6 it stated:

¹⁰ See also Decision 2013-404, Decision 2011-238, Decision 2011-087, and Decision 2012-296.

¹¹ Decision 2012-181: Central Alberta Rural Electrification Association Limited – Application for Declaration under the Hydro and Electric Energy Act, Proceeding 886, Application 1606623, July 4, 2012.

In essence, CAREA [the REA] 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.

33. Because the application in Proceeding 886 was for a declaration and a clarification of legislative provisions under the *Hydro and Electric Energy Act*, it involved broad policy issues applicable to REAs and electric distribution utilities operating in Alberta. Accordingly, these parties were permitted to participate in Proceeding 886.

34. With respect to the concern raised about notice, as described in Section 22 of Rule 001: *Rules of Practice*, if the Commission is considering making a decision on an application without a hearing, the Commission may issue a notice of application. Conversely, if the Commission considers that its decision or order would not directly and adversely affect the rights of a person pursuant to Section 9 of the *Alberta Utilities Commission Act*, it may elect not to issue a notice of application or require a hearing. When making its determination on notice, the Commission considers the nature of the application and whether the REA and the utility have consented to the sale and transfer. Fortis' application will not affect any other party's rights or interests in accordance with Section 9 of the *Alberta Utilities Commission Act* given that both the Kingman REA and Fortis have agreed to the sale and transfer of the Kingman REA's service area to Fortis.

35. The Commission denies standing to the UCA for the reasons that follow. The Kingman REA was initially incorporated pursuant to the provisions and operation of the *Rural Utilities Act*. Section 3(1) of the *Rural Utilities Act* states, among other things:

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)

36. The Kingman REA, like other REAs in Alberta, operates on the basis of voluntary membership within a certain geographic territory. As is evident from a reading of Section 3 of the *Rural Utilities Act*, the very nature of the establishment of a 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 cooperative principles found in the *Cooperatives Act*. 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)

37. The legislature has enacted provisions in the *Rural Utilities Act* to allow a REA to voluntarily stop providing utility service to its members. The legislature has not granted to the Commission the public interest determination of whether a REA should sell its electric distribution system. Rather, the legislature has reserved for itself the public interest determination of whether and to whom a REA may sell and on what terms a REA may sell its electric distribution system. The collective membership of a REA may choose to voluntarily wind-up its organization pursuant to sections 23 to 26 of the *Rural Utilities Act*. Based on the provisions of the *Rural Utilities Act*, the Commission's public interest mandate does not extend to preventing the members of an existing REA from electing to cease its operations.

38. Further, a REA is entitled to agree with an investor-owned utility on the price for its electric distribution system and related assets and the Commission, when awarding compensation, may only determine the price of the sale if an agreement has not been reached pursuant to Section 32(2) of the *Hydro and Electric Energy Act*. Once the REA and the investor-owned utility have agreed to a sale, the Commission may grant an order for the REA to discontinue operations or cease operating in its service area as well as for the transfer of the REA's service area pursuant to sections 29, 30 and 32 of the *Hydro Electric Energy Act*.

39. As the Commission understands it, the UCA's mandate is to represent the interests of Alberta's residential, farm and small business customers. In this application, the customers are the members of the Kingman REA. The membership of the Kingman REA has voted in favour of the sale and the Kingman REA has passed the applicable resolutions necessary to wind-up the Kingman REA. The legislature has left the decision to sell a REA to the parties. The legislation is designed in such a way that REA consumers make their own choice to sell (including all the terms of the sale) to Fortis. Further, should the application be approved, any adjustment to Fortis customers' rates arising as a consequence would be addressed in a future rates application. Accordingly, the Commission finds that the UCA's participation in this proceeding would serve no purpose.

40. On August 24, 2015, the intervening REAs submitted substantially similar concerns regarding Proceeding 20733. The intervention requested that the Commission consider establishing a joint proceeding to address the Fortis applications arising under both Proceedings 20552 and 20733. Given its decision on standing in this proceeding, the Commission does not see a need to and will not join the two proceedings.

41. If you have any questions, please feel free to contact the undersigned at 403-592-4499 or shanelle.sinclair@auc.ab.ca.

Yours truly,

Shanelle Sinclair
Commission Counsel