



## **Finlay Group**

**Complaint Regarding FortisAlberta Inc.  
Distribution Line Rebuild Project**

**February 3, 2016**

**Alberta Utilities Commission**

Decision 20799-D01-2016

Finlay Group

Complaint Regarding FortisAlberta Inc. Distribution Line Rebuild Project

Proceeding 20799

Application 20799-A001

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Published by the:

Alberta Utilities Commission

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## 1 Background

1. In this decision, the Alberta Utilities Commission decides on a complaint filed by a group of landowners with concerns about a proposal by FortisAlberta Inc. (Fortis) to rebuild a distribution line in the Red Deer area. The existing distribution line (Line 262) is a 25-kilovolt (kV) three-phase distribution line along the municipal reserve on the east side of Range Road 275 owned and operated by Fortis. Line 262 is shown on the following map.



2. On August 21, 2015, Mr. Michael Niven QC filed a letter of complaint with the Commission, on behalf of a number of clients, including Ms. Beverly Finlay and Mr. Peter Fleck (the Finlay group). A list of the members of the Finlay group is attached to this decision as [Appendix A](#). The Finlay group expressed concerns about Fortis' proposed rebuild of the distribution line related to visual impacts and environmental degradation. The Finlay group also questioned whether Fortis properly investigated routing alternatives for the proposed rebuild.

3. The Commission created Proceeding 20799 to consider the Finlay group's complaint.

4. Between September 3, 2015 and January 20, 2016, the Finlay group and Fortis filed submissions with the Commission regarding the proposed distribution line rebuild. The submissions related to the potential impacts of tree removal and vegetation loss, alternative construction methods, and alternative routes for the proposed rebuild. The submissions also included details of a meeting between the two parties held on November 13, 2015.

5. On January 22, 2016, the Commission advised parties that it would review the submissions and would issue its decision in due course.

## 2 Issues

6. Fortis, as the owner and operator of Line 262, proposed to rebuild this distribution line in place, along its existing alignment. It submitted that the rebuild was required due to load growth and customer commitments for new load in the Red Deer area.

7. The Finlay group is comprised of 15 families located along Range Road 275 south of Township Road 380. The group raised a number of concerns with the proposed rebuild of the distribution line such as visual impact and environmental degradation, Fortis' proposed and alternative construction methods, and alternative routes for the rebuild.

### Alternative construction methods and routes

8. Fortis proposed to use a construction method known as “lean and rebuild” for the rebuild of the distribution line along the existing alignment. In response to an information request from the Commission, Fortis stated that “lean and rebuild” refers to a method by which an existing power line is excavated and leaned to allow a new power line to be set and strung in the same alignment. The existing power line would typically be leaned towards property, away from the road, because leaning a power line towards the road can reduce vertical clearances under which traffic has to travel, which would create potential safety concerns.

9. Fortis described the following advantages of the “lean and rebuild” method:

- System integrity and customer service can remain intact during new construction. Because the power lines will typically remain energized and the existing loop-feeds remain intact throughout the process, customers are not affected by power interruptions.
- New construction can proceed outside of “minimum approach distances” required by the *Alberta Electric Utility Code*. The result is that the working crew can safely work around the energized system.
- “Lean and rebuild” requires little in the way of specialized equipment and training when compared to the use of standard “live-line” procedures.<sup>1</sup>

10. Fortis submitted that the existing power line must have adequate clearance from the ground, vegetation and existing structures to be safely leaned. It explained that the “lean and rebuild” method cannot be implemented under certain physical conditions. Fortis stated that

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<sup>1</sup> Exhibit 20799-X0012, FAI-AUC-2015SEP29-001, page 1.

removal of existing vegetation would be required for the proposed rebuild to ensure adequate clearance if the existing power line were leaned towards property lines.

11. The Finlay group has concerns with the removal of trees within the municipal reserve between Township Road 380 and Waskasoo Creek if Fortis uses the “lean and rebuild” construction method because the existing distribution line would be leaned towards trees and vegetation.

12. The Finlay group consequently suggested two alternative construction methods for the portion of the rebuild along Range Road 275.

13. The first alternative method would be to lean the existing power line towards the road, which would create outages for customers along Range Road 275. This method would not require the removal of most of the mature trees in the municipal easement, but may require the closing of one side of the road.

14. The second alternative method would be a sectional live-line approach along Range Road 275. The Finlay group stated that in an effort to save the trees, all of the customers along this section agreed to accept the power outages required for a live-line construction method.

15. Fortis is of the view that the alternative methods suggested by the Finlay group would all have a level of negative impact to safety, reliability, and cost of the project. The alternative method to lean the existing power line towards the road would increase construction costs and would create an increased hazard to the construction crew because the energized lines would be directly overhead of where the equipment would be placed. Fortis stated that although it could safely implement this construction method proposed by the Finlay group, maintaining safety standards would be more complex, time consuming, and costly.

16. Fortis submitted that the suggested live-line construction method would require the use of specialized equipment, the use of specially trained crews, extra construction time, and increased costs. Fortis stated that its proposed “lean and rebuild” construction method would be the most cost effective solution for customers, both during the construction period and in terms of minimizing ongoing vegetation management costs along the line.

17. Fortis examined the option of temporary generation to the affected landowners during the construction phase. This method would require that each of the services connected to the distribution line be provided with a separate generator, which would require an electrician to tie each generator into the landowner’s electric service entrance, and that such generators would need to operate for approximately one week. This method was dismissed by Fortis because of the high cost and the extra work required.

18. In addition to alternative construction methods, the Finlay group posited that Fortis had other options for the route of the proposed rebuild. The proposed Fortis rebuild would include a double-circuit distribution line along the existing route of the single-circuit distribution line along Range Road 275. The Finlay group suggested that Fortis could instead build one of the two proposed circuits along Township Road 380. This would eliminate a double-circuit distribution line along Range Road 275, which would reduce the necessity to clear the trees along

Range Road 275; and splitting the two lines into two single-circuit lines would also improve the reliability of the system.

19. Fortis countered that the single-circuit proposal put forward by the Finlay group would add over one kilometre to the length of the distribution line and would have the distribution line traversing wetlands, a railway crossing and a highway crossing, and also create lighting standard conflicts. This option would increase the cost and timeline significantly and was not considered to be a viable option by Fortis.

### **Trees and vegetation**

20. Fortis stated that its proposed rebuild along Range Road 275 would follow the alignment of the existing distribution line on a county road allowance and that it has received approval from the County of Red Deer for the use of road allowance and municipal reserve. Fortis anticipated that vegetation would have to be removed along the existing alignment on the east side of Range Road 275, located 800 metres south of Township Road 380.

21. Fortis submitted that the approval to remove this vegetation was secured through the approval from the County of Red Deer as the landowner of the 4.6-metre municipal reserve and the road allowance; and a power line easement registered on the land title certificate for the northwest quarter of Section 32, Township 37, Range 27, west of the Fourth Meridian, the property of Ms. Finlay.

22. The Finlay group opposed the removal of trees along Range Road 275 because its members rely on the trees for privacy and noise reduction. Fortis countered that this section of Range Road 275 is a dead-end road and that most of the traffic and noise is associated with the same residents that are expressing this concern.

23. The Finlay group disagreed with Fortis' plan to utilize the existing power line easement on Ms. Finlay's property. The group views the right-of-way easement on Ms. Finlay's property as ineffective because no transmission line was built by Calgary Power, a predecessor of Fortis, prior to September 1, 1980, the end date of the 15-year period stated on the right-of-way easement for the construction of a transmission line. The position of the Finlay group is that the right-of-way easement was meant for a transmission line and not a distribution line, as proposed by Fortis for the rebuild project.

24. In response to an information request from the Commission, Fortis stated that its position is that the right-of-way easement on Ms. Finlay's property is valid and provides Fortis with proper legal rights to carry on the activities for the distribution line rebuild.

25. The right-of-way easement on Ms. Finlay's property states that:

the right, liberty, privilege and easement of a right of way [...] for the erection, installation, construction, operation, maintenance, inspection, patrol, removal, replacement, reconstruction, relocation and repair of its electrical transmission lines and all works, equipment, apparatus and appurtenances as may be necessary or convenient in connection therewith for the transmission conveyance and distribution of electric energy within, upon or over the said lands.<sup>2</sup>

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<sup>2</sup> Exhibit 20799-X0030, FAI-AUC-2016JAN11-002, page 2.

26. According to Fortis, the scope of the rights granted to Fortis under the right-of-way is not strictly limited to transmission lines, as put forward by the Finlay group, but would allow Fortis to include, within the category of facilities listed on the right-of-way easement, facilities for the "...distribution of electric energy ..." over the property.

27. Fortis added that the right-of-way was properly relied upon by Calgary Power during the original construction of the distribution line adjacent to Ms. Finlay's property. Construction of the distribution line was carried out within the 15-year period referred to by the Finlay group in the right-of-way easement. This, in turn, allows Fortis to proceed with the proposed rebuild project.

28. In the interest of resolving the Finlay group's complaint, Fortis committed to implement work-around methods that would allow it to perform the necessary work without having to rely upon the right-of-way easement and to preserve the current trees that are located on Ms. Finlay's property. Fortis stated that the implementation of such work-around methods would lead to an increase in the costs of the project and in the ongoing vegetation management activities required as a result of leaving the current trees on Ms. Finlay's property intact. However, Fortis considered that the potential consequences of further delays to completion of the project would outweigh the impact of the incremental costs associated with implementing the work-around methods on lands adjacent to Ms. Finlay's property.

29. Fortis submitted that its proposed construction method for the rebuild of Line 262 would be the best for the project from a safety, reliability and cost perspective.

### **3 Findings**

30. The statutory scheme for the construction and operation of distribution systems in Alberta is different than the scheme for the construction and operation of transmission lines. Under the *Hydro and Electric Energy Act*, Commission approval is required for new or amended transmission lines.

31. Because electric distributions systems are, by their very nature, extensive, the Commission does not issue approvals for each new or amended line. Rather, the Commission assigns and approves distribution service areas to distribution service providers. The distribution service provider is then empowered, through that approval, to determine where new electric distribution facilities are required and to upgrade existing facilities as necessary.

32. Most distribution lines are located on road allowances and easements obtained from landowners. Distribution line assignments within a municipality are administered by the municipality. Rural distribution is most often administered by the Rural Utilities Branch of Alberta Agriculture and Forestry, with involvement from the municipal district. Other than for resolution of complaints or disputes, the AUC has no direct oversight or approval role for the routing, abandonment, removal or reclamation of distribution lines.

33. Section 105 of the *Electric Utilities Act* sets out the duties that each owner of an electric distribution systems has. Those duties include:

...

- (b) to make decisions about building, upgrading and improving the electric distribution system for the purpose of providing safe, reliable and economic delivery of electric energy having regard to managing losses of electric energy to customers in the service area served by the electric distribution system;
- (c) to operate and maintain the electric distribution system in a safe and reliable manner;

...

- (m) to respond to inquiries and complaints from customers respecting electric distribution service;

...

34. The Commission's authority to consider and decide on the Finlay group's complaint comes from its general powers set out in Section 8 of the *Alberta Utilities Commission Act* and its general supervisory powers over all public utilities set out in Section 85 of the *Public Utilities Act*. In addition, Section 6 of the *Hydro and Electric Energy Act* authorizes the Commission to inquire into or investigate matters relating to the observance of safe and efficient practices in the public interest in the distribution of electric energy in Alberta. Similarly, Section 87 of the *Public Utilities Act* authorizes the Commission to investigate any matter concerning a public utility.

35. Based on the foregoing, the Commission finds that its role in deciding the Finlay group's complaint is to determine whether Fortis, in its proposal to rebuild Line 262, properly exercised its statutory duties, as set out in the *Electric Utilities Act*. In other words, the Commission must decide if Fortis' proposal to rebuild Line 262 in place will result in an electric distribution system that is safe, reliable, economic and efficient.

36. The Finlay group has not questioned the need to upgrade Line 262. Rather, its concerns focus on the impacts that Fortis' proposed rebuild will have on its members and their respective properties. To address these concerns, the Finlay group proposed alternative routing and construction methodology to mitigate the impact of the project on existing trees located along the right-of-way for Line 262.

37. The Commission acknowledges that the alternatives proposed by the Finlay group would mitigate, to some degree, the impact of the rebuild on existing trees along the right-of-way. However, the Commission finds that this resultant benefit is far outweighed by the considerable disadvantages associated with each of the alternatives proposed by the group.

38. In the Commission's view, the Finlay group's proposal to lean existing Line 262 toward the road rather than away from the road while construction of the new line is ongoing is inferior to Fortis' proposal from a safety and economic perspective. The live-line replacement proposed by the Finlay group suffers from the same shortcomings. Lastly, the group's proposal to construct two single-circuit lines rather than a double-circuit line is more costly and less efficient than the proposed route and also introduces further impacts along a new route.



39. The Commission is satisfied that none of the alternatives proposed by the Finlay group is superior to Fortis' plan to rebuild the line. The Commission nonetheless encourages Fortis to continue to work with the members of the Finlay group to mitigate, to the extent possible, the impact of the project on existing trees in the right-of-way.

#### **4 Decision**

40. The Commission dismisses the complaint by the Finlay group. Fortis may proceed with the distribution line rebuild along Range Road 275 as proposed, including any work-around methods it considers necessary to address outstanding concerns about the right-of-way easement on Ms. Finlay's property at the northwest quarter of Section 32, Township 37, Range 27, west of the Fourth Meridian.

Dated on February 3, 2016.

#### **Alberta Utilities Commission**

*(original signed by)*

Anne Michaud  
Commission Member

**Appendix A – Members of the Finlay Group**

Dr. Robert Furness and Barbara Torpey
Kathleen Lindsay
Ken and Bonnie Haslop
Gerald and Karen Marshall
Dr. Gordon Neil
Calvin and Jayne Madsen
Bryan and Marci Duncombe
Kevin and Jena Braun
Peter and Doris Fleck
Neil McRobbie
Beverley Finlay
Wayne Jarvis and Arlene MacKenzie
Milt and Terry Thulien
Graham and Jolene Keogh
Peter and Nicola Julien