



North Parkland Power REA Ltd.

Rural Electrification Association Boundary Change

December 20, 2019

Alberta Utilities Commission

Decision 25038-D01-2019

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Proceeding 25038

Application 25038-A001

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The Commission may, within 30 days of the date of this decision and without notice, correct typographical, spelling and calculation errors and other similar types of errors and post the corrected decision on its website.

1 Decision summary

1. In this decision, the Alberta Utilities Commission considers whether to approve an application from North Parkland Power REA Ltd. to expand its service area boundary. After consideration of the record of the proceeding, and for the reasons outlined in this decision, the Commission finds that approval of the boundary change is not in the public interest.

2 Introduction

2. North Parkland Power REA Ltd. (North Parkland) is a rural electrification association (REA) formed pursuant to the *Rural Utilities Act* that operates within FortisAlberta Inc.'s (Fortis) service territory, which covers much of central and southern Alberta.

3. Tri "M" Farms is a consumer located in the exclusive service territory of Fortis, adjacent to the REA boundary of North Parkland. Due to the expansion of its agricultural operation, Tri "M" Farms had applied to become a member of North Parkland.

4. North Parkland filed an application with the AUC to expand its service area boundary to include the property on which Tri "M" Farms is located. The application was filed pursuant to sections 25, 26 and 29 of the *Hydro and Electric Energy Act* and sections 8, 9 and 23 of the *Alberta Utilities Commission Act*. The application was registered on October 30, 2019, as Application 25038-A001.

5. On November 8, 2019, the Commission issued a notice of hearing outlining an expedited process, which included a one-day hearing to be held in Edmonton on December 9, 2019, and permitted North Parkland, Tri "M" Farms and Fortis the opportunity to participate.

3 Views of parties

3.1 Views of Tri "M" Farms

6. Tri "M" Farms is a current customer of Fortis located in the southeast quarter of Section 3, Township 46, Range 24, west of the Fourth Meridian, in the vicinity of Bon Accord, Alberta. In 2019, Tri "M" Farms expanded its agricultural operation to include grain handling and drying facilities (the expansion). To power the expansion, Tri "M" Farms rented diesel-operated generators.

7. Tri "M" Farms approached Fortis for an estimate of the cost of electricity that would be required to supply additional power for its expansion. According to Tri "M" Farms, the quote received from Fortis was cost prohibitive, due in part to the seasonal nature of the expansion and Fortis lacking a rate for seasonal high-demand facilities.

8. Knowing that it is within metres of the REA boundary of North Parkland, Tri “M” Farms requested a quote from North Parkland. After reviewing the quote, Tri “M” Farms determined that receiving service from North Parkland would be more economical and, therefore, preferable.

9. In the event that Tri “M” Farms is unable to receive service from North Parkland, it stated that it would purchase a diesel-operated generator to power its expansion rather than receive service from Fortis.

10. Murray Mulligan of Tri “M” Farms testified that he did not believe the boundary change would affect any other party.¹

3.2 Views of North Parkland

11. North Parkland stated that, as a not-for-profit association, it can provide Tri “M” Farms with service at a lower cost than Fortis can. Although acknowledging that there would be customer contributions associated with construction if Tri “M” Farms received service from North Parkland compared to no customer contribution requirements if service was received from Fortis, North Parkland stated that Tri “M” Farms still favoured becoming a member of the REA even accounting for the customer cost of construction.

12. North Parkland submitted a cost estimate for the construction cost of \$36,568.91, including a potential government grant of \$5,250.00, and indicated that it was more economical than Fortis’s construction cost of \$65,294.07. North Parkland submitted that the evidence clearly favoured North Parkland in terms of construction cost.

13. North Parkland submitted that, in making its decision, the Commission should focus on what the customer wants. Counsel for North Parkland, stated that:

Simply put, Mr. Mulligan is aware of and weighed all the factors that are relevant to him and has come here to tell you he has made his own decision to voluntarily seek REA membership. He's an experienced, successful, very sophisticated businessman, and respectfully, sir, when it comes to keeping score, using a 20-year-old score card or not, sir, his wishes and assessment should prevail over those of Fortis and, with respect, sir, I would submit even under those of the Commission.²

14. North Parkland submitted that an “arbitrary” boundary 30 metres from the expansion was all that was preventing Tri “M” Farms from realizing its preferred choice to become an REA member, which was contrary to the public interest.

15. North Parkland also noted Mr. Mulligan’s assertion that, should the application be denied, Tri “M” Farms would continue to use diesel-operated generation instead of receiving service from Fortis for the expansion. North Parkland argued that Fortis would not be losing a customer if the application was approved.

¹ Transcript, page 19, lines 14-19.

² Transcript, page 119, line 23 to page 120, line 7.

16. North Parkland disagreed with Fortis's assertion that it was ineligible to file the application under Section 29 of the *Hydro and Electric Energy Act*. North Parkland stated that it clearly qualified as an "interested person" as specified in Subsection 29(1) of the act that reads:

The Commission, on the application of an interested person or on its own motion,

(a) when in its opinion it is in the public interest to do so, and

(b) on any notice and proceedings that the Commission considers suitable,

may alter the boundaries of the service area of an electric distribution system, or may order that the electric distribution system shall cease to operate in a service area or part of it at a time fixed in the order.

17. In response to Fortis's argument that it did not agree to the expedited process, North Parkland noted that Subsection 29(1)(b) of the *Hydro and Electric Energy Act* allows for the Commission to determine the appropriate notice and proceedings for the application.

18. With respect to providing compensation to Fortis for the use of Fortis's facilities, North Parkland submitted that the Wire Owners Agreement³ (wire owners agreement) contains all matters concerning the joint use of the distribution system. North Parkland contended that there was no basis in law to allow for the Commission to make a direction with respect to compensation, as the only provisions permitting this relate to the reduction of service areas, which is not applicable in the current application.

19. North Parkland disagreed with Fortis's assertion that the directions contained within Decision 2003-041⁴ for the service area boundary alteration filed by South Alta Rural Electrification Association Ltd. were applicable to any REA beyond that specified in the decision.

20. North Parkland stated that no concerns with respect to safety or service reliability of its system were raised.

3.3 Views of Fortis

21. Fortis confirmed that there would be no customer construction contribution required for the service connection, and stated that the only concern raised by Tri "M" Farms was related to Fortis's rate structure. Fortis submitted that the rate schedule, 61 for general service, which would apply to Tri "M" Farms service, was approved by the Commission. As a regulated utility, Fortis stated that it does not have the discretion to set investment at levels that are not consistent with its approved distribution tariff.

22. Fortis submitted that the Commission may only vary, adjust or disallow certain charges, rates or tolls charged under an REA rate structure under two circumstances. The first was when the charge, rate or toll had been appealed and the second was when the charge, rate or toll does not accord with the rate structure established by an REA.

³ Exhibit 25038-X0015, FortisAlberta Service Area Boundary Evidence – North Parkland REA, PDF pages 11-49, November 25, 2019.

⁴ Decision 2003-041: South Alta Rural Electrification Association Ltd. – Service Area Boundary Alteration, Application 1277912, May 27, 2003).

23. As there had been no appeal and North Parkland's rate structure had not been put into evidence, Fortis asserted that the Commission's jurisdiction to assess North Parkland's rate structure had not been engaged. Fortis expressed concern that the only issue raised was a cost comparison between the two rate structures, stating that the appropriate forum for the Commission to assess Fortis's distribution tariff would be in Fortis's upcoming Phase II proceeding.

24. As the nearest mainline of North Parkland to Tri "M" Farms is nearly two kilometres away, while Fortis's facilities are only 300 metres away, Fortis submitted that North Parkland would not be able to connect Tri "M" Farms in a more economical or timely manner than Fortis itself.

25. Fortis explained that the higher estimated construction costs provided by Fortis were likely the result of Fortis's preliminary design having more of the line underground than North Parkland's preliminary design, as well as factors such as winter construction, given that the quote was provided in February.⁵

26. Fortis submitted that, in the case of North Parkland connecting the customer through Fortis's facilities, the application was vague on how Fortis customers would be compensated for use of Fortis's facilities. Fortis indicated that compensation for this purpose was not contemplated under the wire owners agreement between the parties and that direction from the Commission would be required. If compensation was not provided, Fortis argued that the application would not be in the public interest as an REA member would receive service subsidized by Fortis's customers.

27. Fortis submitted that Subsection 3.01(c) of the wire owners agreement dictates that North Parkland cannot provide service for the purpose of commercial grain drying. Although the customer confirmed that the operation was strictly for personal use, Fortis reasoned that it would be advantageous for Tri "M" Farms to take service from Fortis, should Tri "M" Farms wish to expand to a commercial operation in the future.

28. Further, Fortis rejected the argument that Section 26 of the *Hydro and Electric Energy Act* applied to this application. Section 26 reads:

Notwithstanding section 25, the Commission may approve the construction or operation of an electric distribution system in the service area of another electric distribution system if the Commission is satisfied that it is for the purpose of providing service to a consumer in that service area who is not being provided service by the distribution system approved to distribute electric energy in that service area.

29. Fortis asserted that Tri "M" Farms is a current customer and Fortis's provision of quotes for the necessary upgrades and costs to service the expansion indicates its ongoing willingness to provide service for Tri "M" Farms.

30. Fortis further contended that North Parkland was not entitled under Subsection 29(1) of the *Hydro and Electric Energy Act* to file an application at its own discretion. Using Decision 2003-041 as its basis, Fortis submitted that prior to filing the application,

⁵ Transcript, page 98, line 16 to page 99, line 16.

North Parkland should have conducted good faith negotiations with Fortis. As stated in Decision 2003-041:

The Board notes that this is the second dispute between South Alta and Aquila that it has had to deal with through a public hearing process. The Board further notes that the Master Agreement contains a dispute resolution process. In the Board's view a concerted effort by both parties at using the dispute resolution process in the current and previous disputes, could have resulted in a resolution of the disputes, thereby eliminating the need for a public hearing. Accordingly, the Board directs the parties to attempt to resolve future service area boundary disputes through the dispute resolution process in the Master Agreement. Parties will be required to demonstrate to the Board that good faith negotiations took place, before an application is accepted.

31. Fortis argued that there was no serious attempt made by North Parkland to work with Fortis outside of, and prior to, the Commission process. Fortis stated that North Parkland's quote to Tri "M" Farms contravened the wire owners agreement, which states that "neither party shall quote upon costs for construction or commence construction for the benefit of such applicant until it is determined whether such applicant is qualified as a Customer or as a Member."⁶ Further, Fortis did not agree to the expedited process as indicated in North Parkland's application and stated that the application relies on matters that are out of scope for the present proceeding, including Fortis's investment levels and approved rate schedules.

4 Commission findings

32. When considering the current application and the effects of any boundary change, it is important to understand the history behind the current service area boundaries for electric utility service providers.⁷

33. The purpose of REAs is to provide electricity service to rural customers who would otherwise find the service to be cost-prohibitive, due to their distance from established electricity transmission or distribution lines. REAs therefore operate within the service territories of other regulated public utilities, such as Fortis. An important distinction between REAs and public distribution utilities is that the public distribution utilities are obligated to provide service to all customers within their statutory service areas, while the REA provides service only to its members within its statutory service area.

34. With the introduction of the *Electric Utilities Act* in 1995, the service area of an REA was defined as the area where an REA may distribute electricity to its members as determined by the *Hydro and Electric Energy Act*. REAs and public distribution utilities are required to make arrangements between them to facilitate the integrated operation of the electric distribution systems.

35. The Commission considers that service area boundaries for electric utility service providers were established purposefully in accordance with the legislation. Constantly changing service area boundaries creates uncertainty for both utilities and customers, which interferes with the orderly, economic and efficient operation of the Alberta Interconnected Electric System

⁶ Exhibit 25038-X0015, FortisAlberta Service Area Boundary Evidence – North Parkland REA, PDF page 35, November 25, 2019.

⁷ For an in-depth exploration of the historical processes and legislation involved in the establishment of REAs, please consult Decision 2012-181, paragraphs 18-32.

(AIES). Therefore, in the absence of extraordinary circumstances, the boundaries as they currently exist should be respected.

36. The Commission finds that it must assess this type of application on its own unique merit. As stated in Decision 2003-041, the Commission's predecessor, the Alberta Energy and Utilities Board (EUB or the board):

... recognizes that its governing legislation contemplates changes to service area boundaries, however it is of the view that such changes would only be appropriate where clear and compelling reasons establish that such an alteration would be in the public interest. While the determination of the public interest would generally involve an assessment of the application's impacts on safety, costs, and security of service, the Board considers each application to be unique.

37. Further, the Commission acknowledges that Fortis has provided quotes for the customer's requested service expansion. The Commission accepts Fortis's argument that Section 26 of the *Hydro and Electric Energy Act* does not apply.

38. Given the above, the Commission must decide whether the application is in the public interest under sections 25 and 29 of the *Hydro and Electric Energy Act*, weighing the wishes of the consumer against the concerns brought forth by Fortis.

39. In the absence of evidence to the contrary, the Commission accepts that Tri "M" Farms believes that receiving service from North Parkland would be economically beneficial. The Commission also finds, based on the testimony of Mr. Mulligan, that customer cost is the sole reason that this application was brought forward.⁸

40. The Commission notes that the nearest facilities capable of connecting the customer's expansion to the AIES are Fortis facilities. It is unclear how North Parkland could connect the expansion using its own facilities at lesser cost; it is assumed that North Parkland, if its application was approved, intended to use Fortis's facilities.

41. The Commission agrees with North Parkland's assertion that use of another party's facilities is contemplated in the wire owners agreement for those areas where service areas overlap and are not subject to direction of the Commission. However, the Commission is of the opinion that, in the absence of direct compensation from North Parkland to Fortis, customers of Fortis would be subsidizing service to Tri "M" Farms if the REA service boundary was expanded.

42. Both Fortis and North Parkland are experienced distribution utility operators. Based on this, the Commission finds that regardless of whether Fortis or North Parkland were to serve Tri "M" Farms, there would be no material difference related to the safety or reliability of the electricity service.

43. The Commission recognizes that Fortis's rates have been approved by the Commission as just and reasonable and are not in the scope of the present application. Should a customer or party disagree with the approved distribution tariff, there is provision for that customer or party

⁸ Transcript, page 18, line 22 to page 19, line 7.

to intervene when the Commission considers cost allocations in future Phase II⁹ applications from Fortis. Fortis stated that it would be submitting such an application in the near future to the Commission where all REAs can argue a case for a different tariff rate for circumstances similar to Mr. Mulligan's.

44. The Commission also notes that generally customers are not at liberty to choose distribution providers, as stated in Decision 2003-041:

In addition, the Board notes that while generation and retail services have been deregulated through the restructuring of the Alberta Electric Industry and are now open to competition and, thus, customer choice, the wires part of the industry is still regulated, providing no opportunity for a customer to choose his own wire services provider.

45. The Commission also accepts that, although the directions provided in Decision 2003-041 were specific to South Alta Rural Electrification Association Ltd., the Commission expects that in the future, REAs and other distribution facility owners will purposefully engage in good faith discussions before resorting to the filing of applications.

46. In weighing the evidence before it, the Commission finds that the personal economic benefit of becoming a member of the REA, as alleged by the consumer, would be the only material benefit of granting the application. This must be considered against the fact that Tri "M" Farms is located within Fortis's statutory service area, there are no safety and reliability concerns, Fortis stated that it is willing and able to provide service and has the facilities close and available to connect to, with just and reasonable rates as approved by the Commission, and Fortis customers would be subsidizing this proposed service if North Parkland did not compensate Fortis for use of Fortis's facilities. In addition, Mr. Mulligan, as a sophisticated business owner, has the option and resources necessary to provide alternative service in the form of generators in the event he finds Fortis's rates to be too high for his high-demand, short-term seasonal needs.

47. Based on the foregoing, the Commission does not consider the boundary change to be in the public interest.

5 Decision

48. Pursuant to sections 25 and 29 of the *Hydro and Electric Energy Act*, the Commission denies the application to expand the service area boundary of North Parkland Power REA Ltd.

Dated on December 20, 2019.

Alberta Utilities Commission

(original signed by)

Neil Jamieson
Commission Member

⁹ A Phase II proceeding assigns/allocates a utility's costs (or revenue requirement) and determines the rates to be charged to rate classes to recover the revenue requirement. Phase II proceedings also address the utility's terms and conditions of service.

Appendix A – Proceeding participants

| Name of organization (abbreviation) Company name of counsel or representative |
|----------------------------------------------------------------------------------|
| North Parkland Power REA Ltd. D. Evanchuk |
| FortisAlberta Inc. B. Hunter |
| Tri "M" Farms M. Mulligan |

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|--------------------------------------------------------------------|
| Alberta Utilities Commission |
| Commission panel N. Jamieson, Panel Chair |
| Commission staff A. D'Aoust (Commission counsel) T. McCusker |

Appendix B – Oral hearing – registered appearances

| Name of organization (abbreviation) Name of counsel or representative | Witnesses |
|--------------------------------------------------------------------------|----------------------|
| Tri "M" Farms | M. Mulligan |
| North Parkland Power REA Ltd. D. Evanchuk | V. Zinyk M. Hamer |
| FortisAlberta Inc. B. Hunter | T. Dettling |