



Rocky REA Ltd.

Rural Electrification Association Boundary Change

December 20, 2019

**Alberta Utilities Commission**

Decision 25039-D01-2019

Rocky REA Ltd.

Rural Electrification Association Boundary Change

Proceeding 25039

Application 25039-A001

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## 1 Decision summary

1. In this decision, the Alberta Utilities Commission considers whether to approve an application from Rocky 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. Rocky REA Ltd. (Rocky) 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. Simon Stelfox is a consumer located in the exclusive service territory of Fortis, adjacent to the REA boundary of Rocky. Mr. Stelfox had recently constructed a four-season building and applied to become a member of Rocky.

4. Rocky filed an application with the AUC to expand its service area boundary to include the property of Mr. Stelfox. 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 25039-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 10, 2019, and permitted Rocky, Mr. Stelfox and Fortis the opportunity to participate.

6. The Commission notes that on December 9, 2019, a similar hearing for a different REA boundary change application was held in Edmonton in Proceeding 25038. Although the applications are considered separate and will be assessed on the unique circumstances of each application, the transcript of the hearing for Proceeding 25039 does, at times, reference the hearing held the day before.

## 3 Views of parties

### 3.1 Views of Mr. Stelfox

7. Mr. Stelfox stated that his family had owned the southern half of Section 26, Township 37, Range 9, west of the Fifth Meridian in Clearwater County since 1954. Historically, electrical service had been cost prohibitive due to the remote location of the half-section. The lack of a sufficient, consistent power supply had previously forced his family into perpetual three-season use and exposed his family to development constraints, recurrent theft and trespass.

8. In August of 2016, Mr. Stelfox contacted Rocky to provide an initial quote for electrical service after Mr. Stelfox had begun woodlot activities on the property, which was owned by his parents at the time. In September of 2016, Rocky provided an initial quote of \$26,000 and offered to fund 100 per cent of the cost, repayable over 15 years at an interest rate of 4.5 per cent. Satisfied with the offer, Mr. Stelfox began to invest in buildings and underground infrastructure.

9. In March of 2018, Mr. Stelfox acquired the southwest quarter of Section 26, Township 37, Range 9, west of the Fifth Meridian. In the summer of 2018, Mr. Stelfox was informed that with the land transfer, his quarter section was adjacent to Rocky's REA boundary and not within it.

10. Mr. Stelfox received multiple quotes from Fortis but found them to be cost prohibitive, indicating that he had received a quote as high as \$90,000. In June of 2019, Mr. Stelfox stated that he received a quote of \$75,000 from Fortis, which required a one-time up-front charge with no financing.

11. Mr. Stelfox expressed concern that "outdated" service area boundaries were putting him at the mercy of a monopolistic situation, and that the reasons REAs were originally established (to provide power to remote areas where it was not thought to be economically feasible) is the situation he finds himself in today.

12. In March of 2019, after Mr. Stelfox had endured one winter without power at his building site, Mr. Stelfox contacted Rocky again indicating his preference to become a member of the REA.

13. Mr. Stelfox also indicated his preference to become a member of Rocky from the perspective of customer service, as the REA employees addressed him by name and remembered details of his situation, while Fortis's customer service felt less personalized and more bureaucratic. Mr. Stelfox submitted that he does not intend to receive service from Fortis if the boundary change is denied.

### **3.2 Views of Rocky**

14. Rocky stated that, as a not-for-profit association, it can provide Mr. Stelfox with service at a lower cost than Fortis can. In its application, Rocky indicated that the customer contribution would be \$31,114.56 plus GST if Mr. Stelfox received service from Rocky, compared to the \$75,000 customer contribution if service was provided by Fortis.

15. Rocky submitted that, in making its decision, the Commission should also focus on what the customer wants. Rocky stated that:

And the man has come and asked, for the reasons that he's given, that he be allowed to be a member of a co-op, and you can tell that he has philosophical beliefs. He wants to be part of a community-owned organization that functions on the basis of what I would believe to be the best organizational structure on the face of the planet. We're talking best business practices combined with principles of social responsibility. This just goes right up his alley. This is what he wants. And he also feels that he's going to get the kind of

service that -- the kind of personal service that he wants from a smaller cooperative organization.<sup>1</sup>

16. Rocky submitted that an “arbitrary” boundary 20 feet from the building site was all that was preventing Mr. Stelfox from realizing his voluntary choice to become an REA member, which was contrary to the public interest.

17. Rocky argued that Fortis would not be losing a customer if the application was approved, as Mr. Stelfox was not a current customer of Fortis and had confirmed that he would not take service from Fortis regardless of the application’s outcome.<sup>2</sup>

18. Rocky disagreed with Fortis’s assertion that it was ineligible to file the application under Section 29 of the *Hydro and Electric Energy Act*. Rocky 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.

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

20. Rocky also disagreed with Fortis that it was ineligible to file the application under Section 26 of the *Hydro and Electric Energy Act* as an alternative relief. 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.

21. Rocky stated that Section 26 can be applied when a consumer in a service area is not being provided service by the distribution system. Rocky reiterated that Mr. Stelfox has never received service from Fortis for his current building site, and that Fortis providing quotes to the customer did not satisfy the condition as expressed above.<sup>3</sup>

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<sup>1</sup> Transcript, page 59, lines 6-18.

<sup>2</sup> Transcript, page 114, lines 9-13.

<sup>3</sup> Transcript, page 159, line 24 to page 160, line 19.

22. With respect to providing compensation to Fortis for the use of Fortis's facilities, Rocky submitted that the Wire Owners Agreement<sup>4</sup> (wire owners agreement) contains all matters concerning the joint use of the distribution system.<sup>5</sup>

23. Rocky disagreed with Fortis's assertion that the directions contained within Decision 2003-041<sup>6</sup> 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.<sup>7</sup>

24. In response to Fortis's argument that Mr. Stelfox would not be eligible to receive service under Subsection 3.01(c) of the wire owners agreement due to his intention to harvest timber, Rocky stated that it was not the role of the Commission to determine eligibility as confirmed in Decision 21148-D01-2016:<sup>8</sup>

Further, Section 10 of the *Roles and Responsibilities Regulation* contemplates that issues regarding membership eligibility and whether a person is or is not a member of an REA will be decided by arbitration under the *Arbitration Act*. In the Commission's view, this proceeding is not the proper forum to consider the issue of Sunset Shores' eligibility to be an EQUS member.

25. Rocky submitted that Mr. Stelfox believes he would benefit from more personalized customer service, should he receive service from Rocky. Rocky stated that Mr. Stelfox was clearly frustrated and dissatisfied with Fortis's prior communications.<sup>9</sup>

26. Rocky stated that no concerns with respect to safety or service reliability of its system were raised.

### 3.3 Views of Fortis

27. Fortis confirmed that, whether the customer received service from Fortis or Rocky, a customer construction contribution would be required. While Fortis's cost estimate was higher, Fortis disputed the claim that it had quoted \$75,000 to Mr. Stelfox. Instead, Fortis submitted that its latest quote indicated that the customer construction contribution would be \$42,352, a difference of approximately \$8,400 compared to the quote provided by Rocky. Fortis argued that the difference was not significant enough to constitute a public interest finding.

28. Fortis submitted that the applicable rate schedules, 41 for small general service or 21 for farm service, were approved by the Commission. As a regulated utility, Fortis does not have the discretion to set investment at levels that are not consistent with its approved distribution tariff.

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<sup>4</sup> Exhibit 25039-X0018, FortisAlberta Service Area Boundary Evidence – Rocky REA, PDF pages 11-49, November 25, 2019.

<sup>5</sup> Transcript, page 16, lines 5-9.

<sup>6</sup> Decision 2003-041: South Alta Rural Electrification Association Ltd. – Service Area Boundary Alteration, Application 1277912, May 27, 2003).

<sup>7</sup> Due to the back-to-back nature of the two proceedings, counsel for Rocky alluded to this point in reference to the hearing the day before.

<sup>8</sup> Decision 21148-D01-2016: Sunset Shores RV Resort Inc. – Request for FortisAlberta Inc. to Remove Certain Facilities and Effect Permanent Disconnection, Proceeding 21148, Application 21148-A001, September 8, 2016.

<sup>9</sup> Transcript, page 119, lines 21-24.

29. 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.

30. As there had been no appeal and Rocky's rate structure had not been put into evidence, Fortis asserted that the Commission's jurisdiction to assess Rocky's rate structure had not been engaged. Fortis expressed concern that the only issue raised was a cost comparison between the two rate structures,<sup>10</sup> stating that the appropriate forum for the Commission to assess Fortis's distribution tariff would be in Fortis's upcoming Phase II proceeding.

31. Fortis submitted that the nearest existing line from the location of the requested service is 1.2 kilometres away, and is owned by Fortis. Contrarily, Rocky's closest existing distribution line is nearly four kilometers away, and to connect Mr. Stelfox would necessitate crossing a CN Rail line. Additionally, Fortis submitted that the geographical quarter containing the Fortis line is a Crown-owned parcel, and therefore the requested boundary change would include this Crown land in addition to Mr. Stelfox's property.

32. Based on the above, Fortis expressed doubt over Rocky's claim that the requested service connection could be completed within five business days. Fortis cited that the involvement of Crown land would necessitate consultation with Alberta Environment and Parks, the Alberta Aboriginal Consultation Office, and affected Indigenous groups. Thus, Fortis submitted that Rocky would not be able to connect Mr. Stelfox in a more economical or timely manner than Fortis itself.

33. Fortis submitted that, in the case of Rocky 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.

34. Further, Fortis contended that Mr. Stelfox's intended use of the electricity service, for "woodlot activities" or timber harvesting, rendered the application moot. Subsection 3.01(c) of the wire owners agreement dictates that Rocky cannot provide service for the purpose of natural resource handling, which includes timber harvesting. Fortis reasoned that, even if the service boundaries were changed as requested by the current application, Rocky would be unable to provide service to Mr. Stelfox for these activities.

35. Further, Fortis rejected the argument that Section 26 of the *Hydro and Electric Energy Act* applied to this application. While Mr. Stelfox is not a current Fortis customer, Fortis asserted that its provision of quotes for the necessary upgrades and costs to provide service indicates its willingness to provide service for Mr. Stelfox.

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<sup>10</sup> Exhibit 25039-X0018, FortisAlberta Service Area Boundary Evidence – Rocky REA, PDF page 9, November 25, 2019.

36. Fortis further contended that Rocky 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, Rocky 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.

37. Fortis argued that there was no serious attempt made by Rocky to work with Fortis outside of, and prior to, the Commission process. Further, Fortis did not agree to the expedited process as indicated in Rocky'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**

38. 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.<sup>11</sup>

39. 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 areas.

40. 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.

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

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<sup>11</sup> 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.



42. 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.

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

44. 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.

45. In the absence of evidence to the contrary, the Commission accepts that Mr. Stelfox believes that receiving service from Rocky could provide more personalized customer service while being economically beneficial.

46. The Commission notes that the nearest facilities capable of connecting the customer's expansion to the AIES are Fortis facilities, which Rocky intends to use to connect Mr. Stelfox if the application were to be approved.

47. The Commission agrees with Rocky'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 Rocky to Fortis, customers of Fortis would be subsidizing service to Mr. Stelfox if the REA service boundary was expanded.

48. Both Fortis and Rocky are experienced distribution utility operators. Based on this, the Commission finds that regardless of whether Fortis or Rocky were to serve Mr. Stelfox, there would be no material difference related to the safety or reliability of the electricity service.

49. 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 to intervene when the Commission considers cost allocations in future Phase II<sup>12</sup> 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.

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<sup>12</sup> 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.

50. 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.

51. 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.

52. The Commission agrees with Rocky that, should the boundary change be approved, Mr. Stelfox's eligibility to receive service from the REA would require arbitration under the *Arbitration Act*. In the Commission's view, this proceeding is not the proper forum to consider the issue of eligibility.

53. 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 primary material benefit of granting the application. This must be considered against the fact that Mr. Stelfox's land 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 closest facilities available to connect to, with just and reasonable rates as approved by the Commission, and Fortis customers would be subsidizing this proposed service if Rocky did not compensate Fortis for use of Fortis's facilities.

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

## **5 Decision**

55. 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 Rocky REA Ltd.

Dated on December 20, 2019.

### **Alberta Utilities Commission**

*(original signed by)*

Neil Jamieson  
Commission Member

**Appendix A – Proceeding participants**

Name of organization (abbreviation) Company name of counsel or representative
Rocky REA Ltd. D. Evanchuk
FortisAlberta Inc. B. Hunter
S. Stelfox

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
	S. Stelfox
Rocky REA Ltd. D. Evanchuk	J. Reglin D. Fischer
FortisAlberta Inc. B. Hunter	T. Dettling