



ATCO Electric Ltd.

Application for Orders Relating to the City of Lloydminster Annexation

November 9, 2023

Alberta Utilities Commission

Decision 28016-D01-2023

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City of Lloydminster Annexation

Proceeding 28016

Application 28016-A001

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Contents

1	Decision summary	1
2	Background	1
3	Discussion of issues and Commission findings	2
3.1	Annexed distribution service area and REA members are being served by the REA within the annexed boundaries.....	2
3.2	Proposed purchase price	4
3.3	Transfer of land rights.....	4
3.4	Devonia REA’s consultation concerns	6
4	Order	7

1 Decision summary

1. In this decision, regarding an application from ATCO Electric Ltd., the Alberta Utilities Commission:

- (a) Confirms ATCO Electric’s service area boundaries as presented in the application;
- (b) Alters, as required, the Devonian Rural Electrification Association Ltd.’s (Devonia REA) service area boundaries to align with ATCO Electric’s exclusive service area;
- (c) Orders, consistent with Bylaw No. 22-2022, passed by the City of Lloydminster, the transfer, as soon as is practicable, of Devonian REA members and the facilities serving them located within the municipal boundaries of the City of Lloydminster to ATCO Electric; and
- (d) Orders that the compensation payable to Devonian REA for the transfer of its facilities, under Section 29(4) of the *Hydro and Electric Energy Act*, shall be \$73,975.89.

2 Background

2. On February 10, 2023, ATCO Electric filed an application requesting:

- (a) Confirmation of the current limits of ATCO Electric’s exclusive service area boundaries as determined by applicable Electric Distribution System Municipal Franchise Agreements (MFAs);
- (b) Alteration, as required, of the Devonian REA service area boundaries, to prevent incursion into exclusive service areas governed by MFAs;
- (c) An order to transfer Devonian REA members located within the municipal boundaries of the City of Lloydminster, and the facilities serving them, to ATCO Electric effective March 31, 2023;¹ and
- (d) An order confirming that the compensation payable to Devonian REA, according to Section 29(4) of the *Hydro and Electric Energy Act*, is \$73,975.89.

¹ This date was based on the transfer deadline contained in the City of Lloydminster’s bylaw for the transfer of service. Parties were informed in a letter dated February 28, 2023 (Exhibit 28016-X0007) that, given the minimum required process steps, a decision by this date was likely untenable.

3. In its application, ATCO Electric noted that it had attempted to work with Devonia REA to come to an agreement that would give effect to the required customer and asset transfers. At the time that ATCO Electric filed this application, ATCO Electric and Devonia REA had not come to such an agreement.
4. The Commission issued notice of the proceeding on March 7, 2023, with statements of intent to participate (SIPs) due by March 28, 2023. SIPs were filed by Devonia REA and the City of Lloydminster. While Devonia REA expressed concerns over the proposal, the City of Lloydminster's SIP stated that it wished to provide evidence if the legitimacy of its bylaw was called into question during the proceeding.
5. The Commission issued its first round of information requests (IRs) to ATCO Electric and Devonia REA on April 25, 2023, with ATCO Electric and Devonia REA providing their responses on May 9, 2023 and May 10, 2023, respectively.
6. The Commission issued its second round of IRs to ATCO Electric and Devonia REA on June 8, 2023. Both parties responded on June 22, 2023.
7. The Commission issued its third round of IRs to ATCO Electric and Devonia REA on August 23, 2023, with Devonia REA and ATCO Electric providing their responses on September 4, 2023 and September 6, 2023, respectively.
8. The Commission considers that the record for this proceeding closed on September 6, 2023.
9. The Commission reviewed the entire record for this proceeding in coming to this decision; lack of reference to a matter addressed in evidence or argument does not mean that it was not considered.

3 Discussion of issues and Commission findings

3.1 Annexed distribution service area and REA members are being served by the REA within the annexed boundaries

10. In Decision 22164-D01-2018,² the Commission examined legislative and public interest considerations to determine whether to alter electric distribution service area boundaries to align with MFAs entered into between FortisAlberta Inc. and various municipalities whose corporate boundaries had expanded through annexation and as a result of this expansion, overlapped with an existing REA service area. In the instances examined in Proceeding 22164, there were REA members being served by REAs within the annexed distribution service area. For the reasons set out in Decision 22164-D01-2018, the Commission confirmed FortisAlberta's exclusive franchise areas to correspond to the corporate limits of the municipalities.
11. Further, the Commission stated that any existing REA member taking electric distribution service from one of the affected REAs, within the corporate limits of a municipality whose corporate boundaries had expanded through annexation, could continue to be served by the REA

² Decision 22164-D01-2018: FortisAlberta Inc. - Application for Orders Confirming Boundaries of FortisAlberta Inc. Exclusive Municipal Franchise Areas, Proceeding 22164, Application 22164-A001, July 16, 2018.

until such time as the municipality passed a bylaw requiring the REA members in the municipality to take electric distribution service from FortisAlberta.³

12. On November 3, 2022, the City of Lloydminster passed Bylaw No. 22-2022, requiring all individuals located within the municipal service area to take electric distribution services from ATCO Electric.⁴

13. The municipality's authority, including that relating to the purported grant of exclusivity in the MFA is found in the provisions of the *Municipal Government Act*.⁵ The Commission's authority relating to the approval of such agreements is founded in the provisions of the *Electric Utilities Act*⁶ and its authority relating to service area designations is conferred by the provisions of the *Hydro and Electric Energy Act*. Part 3 of Decision 22164-D01-2018 sets out the applicable statutory provisions in detail.⁷

14. The Commission adopts its findings from Decision 22164-D01-2018 that in circumstances where municipal boundaries have expanded through annexation resulting in the overlap of an exclusive distribution service area granted under an MFA and an existing REA service area, the alteration of the REA service area is in the public interest because altering the boundaries:⁸

- (a) Harmonizes the service areas to reflect the boundaries governed by the MFAs.
- (b) Best supports the public policy objective of avoiding unnecessary duplication of electrical facilities.
- (c) Is most consistent with the legislated purpose of municipalities and REAs.
- (d) Best supports the broad public policy goals of the *Municipal Governance Act* as a whole, and the intent of the legislature in empowering municipalities.

15. Accordingly, the Commission confirms the current limits of ATCO Electric's exclusive service area as determined by the MFA, orders the alteration of the service area of Devonian REA as shown in Appendix 1 of ATCO Electric's application, and orders the transfer of Devonian REA customers located within the municipal boundaries of Lloydminster and the facilities serving them to ATCO Electric. The transfer of Devonian REA assets and members within the corporate limits of the City of Lloydminster is to be completed as soon as is practicable, in accordance with the terms of the City of Lloydminster's Bylaw No. 22-2022.

³ Decision 22164-D01-2018, paragraph 153(c).

⁴ Exhibit 28016-X0001, ATCO Electric Application for Orders Relating to the Lloydminster Annexation, PDF page 18.

⁵ Municipal Government Act, RSA 2000, c M-26.

⁶ Electric Utilities Act, SA 2003, c E-5.1

⁷ Decision 22164-D01-2018, paragraphs 23-37.

⁸ Decision 22164-D01-2018, paragraph 98; Decision 25644-D01-2021: FortisAlberta Inc., Application for Orders Confirming the Boundaries of FortisAlberta Inc. Exclusive Municipal Franchise Areas, Application 25644-A001, Proceeding 25644, February 17, 2021, paragraph 27.

16. The matter of compensation payable to Devonian REA is discussed in the next section of this decision.

3.2 Proposed purchase price

17. With its application in Proceeding 28016, ATCO Electric included a copy of the proposal it had provided to Devonian REA.⁹ The proposal contained *Appendix A, Site Maps & Asset Breakdown*, which summarized the location and power pole for each site included in the annexation area. The appendix also included the new construction cost and Reproduction Cost New Less Depreciation (RCN-D) for each asset.

18. In its round one IR responses, Devonian REA indicated that, other than some minor concerns about potentially overstated depreciation values, it did not object to ATCO Electric's proposed purchase price of \$73,975.89.¹⁰

19. In its round two IR responses, ATCO Electric explained that the potentially overstated depreciation amounts were due to the total amount in question having been amalgamated across assets on the sites, replaced and existing, rather than applying strictly to the recently replaced assets in question.¹¹ The Commission finds this to be a reasonable explanation.

20. Given that Devonian REA does not object to the price, and that there do not appear to be any accounting or valuation concerns, the Commission confirms that the compensation payable to Devonian REA, in accordance with Section 29(4) of the *Hydro and Electric Energy Act*, is \$73,975.89.

3.3 Transfer of land rights

21. The primary issue in this proceeding concerns the transfer of land rights from Devonian REA to ATCO Electric. In its final proposal to Devonian REA, ATCO Electric included the following terms:¹²

3. The 10 Electric Service Sites and one (1) section of mainline include all poles, conductors, transformers, meters and all other related equipment and material used in and forming part of the electric distribution system owned by Devonian REA presently serving Devonian REA customers, **including land rights**. [Term 3]

4. Subsequent to the execution of this Transfer Agreement and before the Closing Date... **Devonian shall assign to ATCO suitable permanent land access rights** for ATCO to operate and maintain the Electric Service Sites and the one (1) section of mainline. [Term 4] [emphasis added]

22. In its round one IR responses, Devonian REA indicated that its main concerns with ATCO Electric's proposal surrounded the proposed transfer of land and land access rights. Devonian REA "was not willing to provide 'suitable permanent land access rights' as per Term 4," and was uncertain about "assigning a Member's Property Rights as per Term 3."¹³

⁹ Exhibit 28016-X0001, ATCO Electric Application for Orders Relating to the Lloydminster Annexation, PDF pages 21-25.

¹⁰ Exhibit 28016-X0021, Answers to questions from AUC, 2(b) and (c).

¹¹ Exhibit 28016-X0027, ATCO Electric's Responses to AUC (Round 2), ATCO-AUC-2023JUN08-001(a).

¹² Exhibit 28016-X0001, ATCO Electric Application for Orders Relating to the Lloydminster Annexation, PDF page 23.

¹³ Exhibit 28016-X0021, Answers to questions from AUC, 2(d).

Devonia REA's concerns were driven by the fact that it derives rights-of-way (ROWs) "up to 15 meters wide (up to 7.5 meters on either side of the facilities)" from its members through its Electrical Service Contract,¹⁴ which does not grant Devonia REA permanent, assignable or transferable land or land access rights from its members. Therefore, Devonia REA did not feel that it had the ability to transfer the ROWs in question to ATCO Electric.

23. In response, ATCO Electric submitted that the Commission had "clear authority" to order the transfer of land rights required to operate and maintain electric distribution facilities, pursuant to Section 32(2)(b)(iv) of the *Hydro and Electric Energy Act*. ATCO Electric indicated that no issue would arise if the Commission ordered Devonia REA to transfer the utility ROWs, while arguing that it would not be in the public interest to transfer the electric distribution facilities without corresponding land rights, due to the added time and expense ATCO Electric would require to obtain rights to access its own equipment and facilities.¹⁵

24. Land access rights for utilities are typically contained within easements that can be registered against title. In this case, Devonia REA ensured land access through a contractual arrangement with each member. That contractual arrangement may be impacted once the Commission orders the change in service area boundaries and the transfer of current REA members to ATCO Electric. The Commission agrees with ATCO Electric's assertion that transfer of land access rights is a key part of the overall transfer order.

25. Sections 32(1)(a) and 32(2)(b)(iv) of the *Hydro and Electric Energy Act* state the following:

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.

(2) When the Commission makes an order under subsection (1), it may

[...]

(b) Provide for any of the following

[...]

- (iv) any other matters that may be necessary with respect to the transfer of the service area or part of it or with respect to the transfer of any facility

¹⁴ Exhibit 28016-X0033, Our ELECTRIC SERVICE CONTRACT December 2012 Version, Section 7.1.

¹⁵ Exhibit 28016-X0036, ATCO Electric Responses to the AUC – Round 3, ATCO-AUC-2023AUG23-001, PDF pages 1-6.

associated with the electric distribution system from the rural electrification association to another person. [emphasis added]

26. As indicated in the previous section, Devonian REA under an order made under Section 29 will have the size of its service area reduced. The broad wording of Section 32(2)(b)(iv), provides the Commission with the necessary authority to address “any other matters that may be necessary” to effect the transfer of the distribution system from an REA to another person. This authority includes all aspects required for the transfer. The Commission concludes this includes land access rights to allow the gaining utility to operate and maintain the distribution facilities and service customers. Any other interpretation could result in unreasonable outcomes, for example, that the recipient utility be required to negotiate or seek other means of access to land while simultaneously being responsible and accountable for those facilities. The Commission concludes that Section 32(2)(b)(iv) provides exactly what it purports to, which includes needed authority to direct that the land rights and land access rights required to operate and maintain the subject electric distribution facilities also flow to ATCO Electric. Further, the Commission notes that land rights for the affected Devonian REA assets have been included in the RCN-D purchase price in ATCO Electric’s proposal.

27. Accordingly, the Commission orders the transfer of the land rights and land access rights with respect to the transfer of the subject facilities associated with the electric distribution system from Devonian REA to ATCO Electric in accordance with Section 32(2)(b)(iv) of the *Hydro and Electric Energy Act*.

28. With respect to the ability of Devonian REA to actually transfer the land rights, the Commission notes that this is a private contractual matter between ATCO Electric and Devonian REA and the Commission leaves it to the parties to facilitate such a transfer in the manner they see fit.

3.4 Devonian REA’s consultation concerns

29. Devonian REA raised concerns regarding ATCO Electric’s consultation process on the service area annexation and REA member transfer. Based on the consultation record provided by ATCO Electric, it appears that, aside from an email sent to Devonian REA on April 9, 2020, which sparked no follow-up, ATCO Electric did not begin consulting with Devonian REA until November 30, 2022. The City of Lloydminster’s bylaw was approved on November 3, 2022, with the Order in Council dated January 26, 2022.

30. In response to a round one IR, ATCO Electric provided its entire written consultation record with Devonian REA. The Commission notes that, for many phone conversations and in-person meetings, it appears that there were no minutes taken and no documented follow-up between the parties. This is particularly apparent in the time period from January 23, 2023 to March 7, 2023, which includes meetings between ATCO Electric and Devonian REA that took place after ATCO Electric filed the subject application with the Commission.

31. Based on IR responses received regarding, in particular, land-rights issues, the Commission is of the opinion that further consultation between the parties, in advance of filing the application, could potentially have made the Commission’s process more efficient and better addressed the concerns presented by Devonian REA.

32. The Commission encourages parties to engage in meaningful, well-documented discussions and attempt to reach understanding and agreement in as many areas as possible before presenting an application to the Commission. This includes beginning discussions in a timely manner; making notes and demonstrating follow-up between parties for all pertinent interactions; and demonstrating attempts to understand other parties' concerns.

4 Order

33. It is hereby ordered that:

- (a) ATCO Electric Ltd.'s service area boundaries are confirmed as presented in the application.
- (b) The Devonian Rural Electrification Association Ltd. service area boundaries are altered as required to align with ATCO Electric Ltd.'s exclusive service area.
- (c) Consistent with the bylaw passed by the City of Lloydminster, Devonian Rural Electrification Association Ltd. members and the facilities serving them located within the municipal boundaries of the City of Lloydminster are to be transferred, as soon as is practicable, to ATCO Electric Ltd.
- (d) The compensation payable to Devonian Rural Electrification Association Ltd. for the transfer of its facilities, under Section 29(4) of the *Hydro and Electric Energy Act*, shall be \$73,975.89, as proposed by ATCO Electric Ltd.

34. Concurrently with the issuance of this decision, the Commission issues the amended service area approval for Devonian REA as Approval 28016-D02-2023.

Dated on November 9, 2023.

Alberta Utilities Commission

(original signed by)

Matthew Oliver, CD
Commission Member