

ALBERTA ENERGY AND UTILITIES BOARD

Calgary Alberta

SOUTH ALTA REA SERVICE AREA BOUNDARY EXTENSION TO SERVE SE 20-11-15W4M

**Decision 99-6
Application No. 980580**

1 INTRODUCTION

1.1 Application

South Alta Rural Electrification Association (the REA), applied to the Alberta Energy and Utilities Board (the Board), pursuant to section 26 of the Hydro and Electric Energy Act (the H&E Act), for an extension of its service area boundary to include the South-east quarter of Section 20, Township 11, Range 15, West of the 4th Meridian. The subject location is currently within the service area of TransAlta Utilities Corporation (TransAlta). At the hearing, the REA amended its application to include the Northeast quarter section of Section 20 and all of Section 21, Township 11, Range 15, West of the 4th Meridian.

1.2 Intervention

In response to a public notice issued by the Board, TransAlta registered its objection to the application. Therefore, the Board subsequently scheduled a public hearing into the REA's application. The parties that appeared at the hearing are listed below. Alberta Power Limited (APL) attended the hearing for the purposes of cross-examination and argument but did not present any direct evidence.

1.3 Hearing

The application was considered at a public hearing in Taber, Alberta on the 3 March 1999, before Board members A. J. Berg, P.Eng., B. F. Bietz, P.Biol., and acting Board member J. R. Nichol, P.Eng.

THOSE WHO APPEARED AT THE HEARING

Principals and Representatives (Abbreviations used in Report)

Witnesses

South Alta REA (the REA)
K. L. Sisson, Q.C.

C. Van Buuren
R. Reti

TransAlta Utilities Corporation (TransAlta)
L. B. Ho

N. Millar
H. Willis
R. Beland

Alberta Power Limited (APL)
S. M. Munro

Cameron Farms Colony Limited (Cameron
Farms)
Alberta Energy and Utilities Board staff

J. Hofer

K. Gladwyn
D. A. Larder

2 ISSUES

The EUB believes that there was only one issue; that being whether it is in the public interest to extend the REA's service area so that it may supply electrical power to the lands in question.

3 IS IT IN THE PUBLIC INTEREST TO EXTEND THE REA BOUNDARY?

3.1 Views of the REA

The REA stated that Cameron Farms had requested service to the Southeast quarter of Section 20-11-15 W4M on 9 September 1998. On 29 September, the REA discovered that the subject location was approximately 300 metres (m) outside of its service area boundary and within TransAlta's service area.

The REA stated that it notified TransAlta on 21 October 1998 that it was building a line in TransAlta's service area. The REA stated that it was of the opinion that in order to serve the Cameron Farms, TransAlta would have to build a line from two miles away. Therefore, in the interest of both timing and economics, the REA made the decision to construct the line. The REA stated that it believed that it was protecting the customer's interests by completing the line so that it could be tested prior to freeze up.

The REA confirmed that, on 29 October 1998, it received a letter from the EUB stating that the REA did not have the right to serve the subject location. The REA stated that its Board of Directors met and made a decision to finish construction, notwithstanding the letter from the Board.

The REA stated that prior to the hearing it had offered to settle the boundary disagreement by suggesting to TransAlta that it serve Cameron Farms only until such time as TransAlta was in a position to serve the customer. It further stated that this is a very common practice, currently occurring in many places, between two adjacent utilities. The REA stated that TransAlta counter-offered by saying that it would purchase the approximately 300 m of line outside the REA boundary that the REA had already constructed. The REA allowed that TransAlta's counter-offer was prudent in that it meant not having to salvage the new line that had been built. However, the REA contended that extending its service boundary would serve the same purpose.

The REA stated that its irrigation service rate is currently 3.165 cents/kWh while TransAlta's rate is 5.59 cents/kWh. It contended that it would be in the public interest for the REA to serve Cameron Farms since its rate is approximately 2.4 cents/kWh less than TransAlta's. It further contended that its costs of providing service to Cameron Farms would be further reduced since TransAlta would have to pay the REA \$3360.00 to connect to the REA's existing line, a cost which TransAlta would pass along to the customer. It was the opinion of the REA that each customer should be able to choose the utility from which it wished to receive service.

The REA presented evidence that it believes that there are also convenience and safety issues around the integration of its distribution lines with those of TransAlta. It noted that when the lines are integrated, it is necessary to wait for TransAlta to dispatch a serviceman to disconnect its line before the REA can proceed to work on its own line, which in its view was both inconvenient and unsafe. It was the REA's belief that it should have control over the full length of a distribution line whenever this was practical. The REA contended that it believed that there is a concern on the part of Cameron Farms as to which company to call when there is a system concern since Cameron Farms currently receives service from both utilities.

The REA stated that in its view its application was without precedent since the EUB had not previously heard an application for the extension of a service area boundary. The REA noted that despite the rarity of such an occurrence, section 28 of the H&E Act clearly recognized that this situation may occur and, furthermore, allowed a distribution system owner up to one year to notify the Board of changes to its system. As a result, the REA stated that it did not believe that it was in contravention of the H&E Act by constructing its line prior to having its EUB approval in place. The REA also contended that section 28 clearly anticipated utilities may make errors with regards to their boundaries and allowed a year to correct those mistakes.

The REA further contended that, as per section 29 (2) of the H&E Act, since TransAlta does not currently have any facilities in place there is no compensation required. It also contended that changing the boundary affects only one class of customer leaving TransAlta to serve all but agricultural customers of 10 acres or more in size within the lands in question.

The REA committed to being able to serve Cameron Farms by the requested service date of 1 April 1999. It stated that since the line is already built and tested, all that is now required is one hour to install a meter at the service transfer point.

It was the opinion of the REA that approval of its application would result in a strengthening of the REA and that this was in the public interest for both financial and social reasons. The REA stated that:

- C a larger REA can offer more services than a smaller one;
- C a larger REA has lower administrative costs per member;
- C REA's provide economic power to farmers because they are non-profit organizations and are free of federal tax;
- C REA's strengthen the social and economic bonds of farmers, thus, strengthening the rural community;
- C REA's foster local employment opportunities and allow customers to know the linesmen and other REA workers; and
- C REA's provide a benefit to all farmers, whether they are REA members or not, by providing competition which results in associated lower costs for all farmers.

3.2 Views of TransAlta

TransAlta stated that its goal is to provide the lowest cost service to a customer and therefore would not build unnecessary new lines. In this case, TransAlta stated that it would tap off the closest line, either its own or an REA line. As a result, TransAlta believed it would be able to serve Cameron Farms in exactly the same manner as the REA was proposing. In fact, TransAlta noted that Cameron Farms is already a customer.

It was TransAlta's belief that it could serve Cameron Farms as economically as the REA could. It committed to not charge Cameron Farms the connection contribution fee of \$3360.00. It further committed to take over the line constructed by the REA for the amount previously billed to Cameron Farms.

TransAlta stated that it was not aware of its current cost per kWh for irrigation power but stated that it believed that any existing rate differences between itself and the REA would narrow in the future. It testified that it had already made application to the EUB to reduce its irrigation power rates. TransAlta concluded that there would be a zero impact on Cameron Farms were it to supply the service.

In response to questions, TransAlta stated that it had not as yet contacted Cameron Farms to confirm its power requirements and was basing its assessment on information received previously from the REA and gained at the hearing. TransAlta contended that the REA had only recently provided it with the customer's name. While TransAlta agreed that it could have determined the identity of the customer through use of the service point information, it had not done so out of respect for the customer's privacy.

TransAlta contended that, given the letter from the EUB advising the REA that it did not have approval to build the line in question, the REA was not provided protection under section 28 of the H&E Act. It further contended that the EUB must not be seen to sanction the actions of the REA by approving its boundary extension after the fact. It was TransAlta's belief that since the service was built only three days after receiving notification, TransAlta had not had sufficient opportunity to consider its options in this matter.

With regard to the REA's contention that integrated lines cause convenience and safety concerns, TransAlta stated that operational complexities already exist on this line. It contended that there are no safety concerns with integrated lines. It indicated that line integration was standard practice and that there were many such integrated lines in overlapping TransAlta/REA service areas.

TransAlta testified that it has a master agreement with the REA that is intended to govern the way the two utilities deal with each other and serve customers in the overlapping service areas. It was TransAlta's view that the terms of this agreement should apply only to situations within the overlapping service areas. TransAlta stated that it would not be appropriate for the Board to over-rule the agreement when such an agreement was in place. TransAlta stated its willingness to sit down with any party to resolve issues within the rules of the master agreement and without a hearing in the future.

With regard to the matter of compensation, TransAlta agreed, at the hearing, that it had no service or existing load in section 20 but intended to seek compensation on the grounds of potential future lost revenues. To arrive at a value for compensation, TransAlta said that it would look at similar load increases in the area and project these to the six quarter sections of land that would be irrigated from the new service. It indicated that it would also evaluate the possibility of future oilfield loads or the potential future loads that would arise if the six- quarter sections were subdivided. Under questioning, TransAlta admitted that it was not aware of any future loads nor did it know if Cameron Farms had any intention to subdivide its lands in the future. TransAlta indicated that the revenue impact would be less than \$1000.00/year based on its ability to allocate overhead costs to Cameron Farms.

In information submitted subsequent to the hearing, TransAlta stated that it no longer considered that it would be forgoing any additional load should the REA's application be granted and would only incur a cost of \$150.00 for changing the service area boundary on its maps.

With regard to the timing of service to Cameron Farms, TransAlta stated that it could meet the required in-service date of 1 April 1999. It stated that it would require three days advance notice to hook up the service.

TransAlta agreed with the REA's assessment that this matter is without precedent. It was TransAlta's contention that the applicant bears the full onus to prove the application is in the public interest and that no evidence had been provided to demonstrate how approval of this application would meet that test. In order to avoid this situation happening again, TransAlta contended that by denying the application, the EUB would be sending a clear message to other utilities to observe their boundaries.

3.3 Views of APL

It was APL's view that it did not believe it would be in the public interest to approve the application. It contended that the public interest is not met by the REA building a line beyond its service area boundary. It further contended that the onus is on the REA to prove that the public interest is met by a service area boundary extension. It suggested that, in this case, the REA had failed to do that and, therefore, the application should be denied.

3.4 Views of Cameron Farms

Cameron Farms stated that since TransAlta has removed local service offices, it was more difficult to get service problems resolved quickly. It stated that when electrical service problems do occur, it has to phone Calgary and wait for a response that can take several hours and sometimes does not even occur the same day. Cameron Farms stated that it prefers to deal with the REA because the REA has a service man in Taber and can have him out at the farm within the hour.

It further stated that some of the farm's lands are leased out to other growers. It contended that if an irrigation pivot is out of service for just an hour or two, it can affect crop quality and the grower could sue Cameron Farms for losses.

It was Cameron Farm's belief that it is caught in the middle of the problems between the REA and TransAlta. It said that when service problems arise it is not always sure which utility to contact. It stated that it would be more preferable to receive service from just one utility. However, it indicated that when a farm receives service from both utilities, the farmer should be made aware of exactly where the REA boundaries are and whose lines are whose so they know who to contact in case of problems or for additional service.

It was Cameron Farms' opinion that “a big fuss had been made over less than one-half mile of line.” It was Cameron Farms' belief that TransAlta would profit from this new service regardless of who provides the service since the REA must purchase its power from TransAlta.

Cameron Farms concluded that, although it would rather deal with just one utility and that the REA had better local service, regardless of the supplier, it needed electrical power by 1 April.1999.

3.5 Views of the Board

In considering this application, the Board has considered the potential impacts on both the REA and on TransAlta as well as the future impacts on other utilities. It has also been particularly mindful of the needs of Cameron Farms, which is currently served by both utilities.

While the Board believes that section 26 of the H&E Act clearly contemplated that there could be situations where the EUB would be required to consider whether a change in an REA boundary was appropriate, it does not believe that the Board should enter into such decisions lightly. Each application must be considered on its own merits and based on the set of circumstances provided by all parties. In this case, the Board believes that the significant circumstances related to this application are:

- C Cameron Farms' lands straddle the REA's service area boundary;
- C Cameron Farms is already a member of the REA;
- C Cameron Farms is currently a customer of both the REA and TransAlta; and
- C Cameron Farms has some real concerns related to the level of service provided by TransAlta.

The Board understands the concerns raised by both TransAlta and APL regarding the potential for a precedent being set by a decision in favour of the REA but does not accept that this would

be the case. Each application before the Board is considered on its own merits based on the evidence of all parties and in accordance with the spirit and intent of the legislation which the Board administers. A decision rendered in this context cannot and should not be considered to be precedent setting.

In considering this matter, the Board notes that neither party clearly acted only in the best interests of its customer. For example, the Board notes that the REA, on learning of its boundary error, had ample opportunity to inform TransAlta of the needs of Cameron Farms so that the timing of getting the service in place for fall testing would not have become critical. On the other hand, the Board believes that TransAlta had the ability to easily identify Cameron Farms as the potential customer in question and, had it done so, could have directly determined what service its customer required and thus could have entered into meaningful discussions with all parties to resolve the problem.

Although customer choice is not an option under current legislation, the Board notes that Cameron Farms appears to be more comfortable with the REA's handling of service problems. The Board also notes that Cameron Farms would appear to be more economically served by the REA. Due to the lack of any evidence to the contrary, the Board is prepared to accept the respective irrigation service rates as stated by the REA and that the REA's current rate is approximately 2.4 cents/kWh less than that of TransAlta. Finally, the Board is prepared to accept that, while the service boundary extension is too small to likely be of particular economic significance to either utility, on the whole the benefit to the REA, due to its relatively small size, is greater than the cost of the lost opportunity to TransAlta.

The Board does not accept the REA's argument that section 28 of the H&E act allows an operator of an electric distribution system to either knowingly or accidentally traverse its service area boundary. It is the Board's view that section 28 allows for the operator to expand its system only within its current service area boundary. The Board finds that in proceeding with the construction of the line without prior approval of the change in its boundary, the REA has acted in contravention of the H&E Act. The Board does not condone this action and will be prepared to take enforcement action should the REA take similar action in the future.

With regard to the safety and convenience concerns with integrated lines raised by the REA, the Board does not believe that significant safety or convenience problems would occur were TransAlta to own and operate the last one-half mile of line. The Board notes that the line is already integrated, that there are many such integrated lines in Alberta, and that this is quite a commonplace occurrence within REA service areas.

TransAlta argued that the Board's decision should not terminate or dilute the terms and conditions of the agreement. The Board's legislation and decision making power can and does override the terms and conditions of contracts and agreements entered into by two parties. However, the Board does wish to make it clear that it would prefer not to have to exercise its authority unless the parties have been unable to resolve the issue at hand. The Board expects parties to undertake meaningful discussions or negotiations so that the Board does not have to render a decision that overrides or is perceived to override the terms of an agreement that has previously been agreed to by the parties in question.

The Board notes that in this case although the master agreement between the REA and TransAlta provided for a mechanism to resolve disputes, no meaningful attempts were made by either party

to resolve this boundary dispute outside of or prior to the hearing. Since the Board expects parties to make a sincere attempt to resolve disputes prior to bringing the matter before the EUB for adjudication, this lack of discussion is a serious concern.

The Board finds that the \$150.00 in compensation requested by TransAlta to be reasonable and is prepared to order the REA to reimburse TransAlta in that amount.

The Board notes the different positions on public interest put forward by the parties involved in the hearing. The Board rejects the position taken by TransAlta and APL that public interest would not be met by approving the application. In this particular case, the Board does not believe that a decision in favour of the REA can be misconstrued as a precedent and furthermore, that the impact on TransAlta is minimal. On the other hand, the Board does believe that approval of the application is in the overall public interest.

4 DECISION

Having carefully considered all of the evidence, the Board is prepared to grant Application No. 980580 for the extension of the service area boundary of South Alta Rural Electrification Association Limited to include the east half of Section 20 and all of Section 21, Township 11, Range 15, West of the 4th Meridian and will issue the required approval forthwith. In addition, the Board orders the REA to compensate TransAlta, for costs incurred in producing new maps, in the amount of \$150.00.

Dated at Calgary, Alberta, on 26 March 1999.

ALBERTA ENERGY AND UTILITIES BOARD

[Original signed by]

A. J. Berg, P.Eng.
Presiding Member

[Original signed by]

B. F. Bietz, P.Biol.
Board Member

[Original signed by]

J. R. Nichol, P.Eng.
Acting Board Member