

Councillor Hall attended the School Age Community Conversation last week, as well as the Early Childhood Community Conversation, and shared attendance numbers for attendees and volunteers at the busy Community Dinners.

Councillor Wilson attended the inaugural meeting of Alberta Municipal Climate Leadership Council this past Thursday.

Councillor Melnyk was at the Jasper Yellowhead Museum & Archives meeting last week. He and Mayor Ireland also attended the Jasper Park Chamber of Commerce meeting on January 11th.

Upcoming events Council received a list of upcoming events for information.

Adjournment #33/23 MOTION by Councillor Kelleher-Empey – BE IT RESOLVED that, there being no further business, the regular meeting of January 17, 2023 be adjourned at 3:17pm.

FOR	AGAINST	
6 Councillors	0 Councillors	CARRIED

Mayor

Chief Administrative Officer

REQUEST FOR DECISION

Subject: ATCO Electric Distribution System Franchise Extension
From: Bill Given, Chief Administrative Officer
Date: January 17, 2023



Recommendation:

Council authorise the Mayor and Chief Administrative Officer to extend the Electric Distribution System Franchise Agreement between ATCO Electric Ltd. and Municipality of Jasper for a 5-year term effective July 3, 2023.

Alternatives:

- That Council direct administration serve ATCO with notice of the municipality's desire to note renew the franchise agreement and begin the processes of;
 - Terminating the agreement and;
 - Purchasing the electric distribution system within the Municipality.

Background:

Under the Alberta Municipal Government Act (the "Act") municipalities have the ability to enter into exclusive agreements with utilities for the provision of services within the corporate boundaries or the municipality. These agreements are called "franchise agreements".

In 2012 Jasper Municipal Council approved the "ATCO Electric Franchise Authorization Bylaw" (Bylaw #158) that authorized the Mayor and Chief Administrative Officer to enter in to a franchise agreement with ATCO for the right to provide distribution services within the town of Jasper. The Municipality formally entered into the franchise agreement with ATCO Electric Ltd. In 2013.

Discussion:

Franchise agreements must be approved by the Alberta Utilities Commission (AUC).

The initial term of the Franchise Agreement was for a 10-year period and included the option to renew for a further 5-year period, subject to ATCO notifying the Municipality of the company's desire to renew. ATCO wishes to renew and has provided the required notice.

The agreement provides ATCO with the exclusive right to deliver the following within the Municipal Service Area:

- provide Electric Distribution Service;
- Construct, Operate, and Maintain the electric distribution system;
- use designated portions of roads, rights-of-way, and other lands owned, controlled or managed by the Municipality necessary to provide Electric Distribution Service

In return for these rights, ATCO agrees to pay the municipality a franchise fee (or local access fee) which the

municipality has the right to determine within certain limitations set by the Alberta Utilities Commission.

The franchise agreement is specific to ATCO's work delivering electricity to properties within the municipality (distribution) and this is distinct from the work to bring electricity to the townsite from the provincial grid (transmission). The transmission work of utilities is governed by both the AUC and the Alberta Electrical Systems Operator (AESO) and the municipality has no role or relationship to the utility with respect to transmission.

Under the MGA, a franchise agreement that is not renewed remains in effect until terminated by either party, which requires six months' notice and approval of the Commission. If notice of termination is provided, the municipality has the right to purchase the rights, systems and works of the public utility, with any disagreement as to the terms of the purchase being resolved by the AUC.

While the 2012 Bylaw explicitly provides authorization for the Mayor and CAO to enter into the agreement and approve any subsequent extension, good governance practice suggests that the authorization should be arise from a motion of Council.

Strategic Relevance:

- Welcome the expertise, innovation, creativity and commitment of community members, groups, associations and businesses.
- Ensure residents receive quality service that provides strong value for dollar.
- Pursue alternative revenue sources and equitable distribution of costs.

Inclusion Considerations:

- The Municipal Inclusion Assessment Tool is not applicable to this recommendation.

Relevant Legislation:

- Alberta Municipal Government Act
- ATCO Electric Franchise Authorization Bylaw (#158)

Financial:

The municipality does not have the capital required to consider purchasing the distribution system from ATCO. 2023 budget includes an expectation of \$375,000 in electricity franchise fee revenue.

Attachments:

- Electric Distribution System Franchise Agreement

Attach to January 17, 2023 meeting minutes

ELECTRIC DISTRIBUTION SYSTEM FRANCHISE AGREEMENT

BETWEEN

Municipality of Jasper

- AND -

ATCO Electric Ltd.

Municipality → A
ATCO Electric → B
AUC Decision 2013-182 (May 15, 2013)

Table of Contents

1) DEFINITIONS AND INTERPRETATION	4
2) TERM	6
3) EXPIRY AND RENEWAL OF AGREEMENT	6
4) GRANT OF FRANCHISE	7
5) FRANCHISE FEE	8
6) CORE SERVICES	10
7) PROVISION OF EXTRA SERVICES	10
8) MUNICIPAL TAXES	10
9) RIGHT TO TERMINATE ON DEFAULT.....	10
10) SALE OF DISTRIBUTION SYSTEM.....	10
11) STREET LIGHTING.....	11
12) INCREASE IN MUNICIPAL BOUNDARIES	15
13) RIGHT OF FIRST REFUSAL TO PURCHASE.....	16
14) CONSTRUCTION AND MAINTENANCE OF DISTRIBUTION SYSTEM.....	16
15) RESPONSIBILITIES FOR COST OF RELOCATIONS	19
16) DISTRIBUTION SYSTEM EXPANSION AND UPGRADE.....	20
17) JOINT USE OF DISTRIBUTION SYSTEM	20
18) MUNICIPALITY AS RETAILER	23
19) RECIPROCAL INDEMNIFICATION AND LIABILITY.....	23
20) ASSIGNMENT	24
21) NOTICES	25
22) DISPUTE SETTLEMENT	26
23) INTERRUPTIONS OR DISCONTINUANCE OF ELECTRIC SERVICE.....	27
24) APPLICATION OF WATER, GAS AND ELECTRIC COMPANIES ACT	27
25) FORCE MAJEURE.....	27
26) TERMS AND CONDITIONS.....	28
27) NOT EXCLUSIVE AGAINST HER MAJESTY	28
28) SEVERABILITY	28
29) AMENDMENTS.....	28
30) DISSOLUTION	28
31) WAIVER	29
32) CONFIDENTIALITY	29
SCHEDULE "A"	30
SCHEDULE "B"	33
SCHEDULE "C"	34



ELECTRIC DISTRIBUTION SYSTEM FRANCHISE AGREEMENT

THIS AGREEMENT made effective the ____ day of _____, 20__.

BETWEEN:

Municipality of Jasper,
a Municipal Corporation located in the Province of Alberta
(the "**Municipality**")

OF THE FIRST PART

- and -

ATCO Electric Ltd.,
a body corporate and public utility with its
head office in the Edmonton in the Province of Alberta
(the "**Company**")

OF THE SECOND PART

WHEREAS:

The Municipality desires to grant and the Company desires to obtain an exclusive franchise to provide Electric Distribution Service within the Municipal Service Area on the terms and conditions herein contained;

NOW THEREFORE:

In consideration of the mutual covenants and promises herein contained, the Parties hereby agree as follows:

1) DEFINITIONS AND INTERPRETATION

Unless otherwise expressly provided in this Agreement, the words, phrases and expressions in this Agreement shall have the meanings attributed to them as follows:

- a) **"Commission"** means the Alberta Utilities Commission, as established under the Alberta Utilities Commission Act (Alberta);
- b) **"Company"** means the Party of the second part to this Agreement and includes its successors and assigns;
- c) **"Construct"** means constructing, reconstructing, upgrading, extending, relocating or removing any part of the existing Distribution System or proposed Distribution System;
- d) **"Consumer"** means any individual, group of individuals, firm or body corporate, including the Municipality, with premises or facilities located within the Municipal Service Area from time to time that are provided with Electric Distribution Service by the Company pursuant to the Company's Distribution Tariff;
- e) **"Core Services"** means all those services set forth in Schedule "A";
- f) **"Detailed Street Light Patrol"** means a detailed street light patrol of Company-owned street lights conducted by the Company on a schedule reasonably determined by the Company from time to time, currently a seven to nine year cycle as at the date of this Agreement;
- g) **"Distribution System"** means any facilities owned by the Company which are used to provide Electric Distribution Service within the Municipal Service Area, and, without limiting the generality of the foregoing, shall include street lighting, where applicable, and poles, fixtures, luminaires, guys, hardware, insulators, wires, conductors, cables, ducts, meters, transformers, fences, vaults and connection pedestals, excluding any transmission facilities as defined in the EUA;
- h) **"Distribution Tariff"** means the Distribution Tariff prepared by the Company and approved by the Commission on an interim or final basis, as the case may be;
- i) **"Electric Distribution Service"** means electric distribution service as defined in the EUA;
- j) **"Electronic Format"** means any document or other means of communication that is created, recorded, transmitted or stored in digital form or in any other intangible form by electronic, magnetic or optical means or by any other computer-related means that have similar capabilities for creation, recording, transmission or storage;
- k) **"EUA"** means the *Electric Utilities Act* (Alberta);
- l) **"Extra Services"** means those services set forth in Schedule "B" that are requested by the Municipality for itself or on behalf of a Consumer and provided by the Company in accordance with Article 7;
- m) **"First Subsequent Term"** means the Term of this Agreement as set out in Article 3;
- n) **"HEEA"** means the *Hydro and Electric Energy Act* (Alberta);
- o) **"Initial Term"** means the Term of this Agreement as set out in Article 2;



- p) **"Maintain"** means to maintain, keep in good repair or overhaul any part of the Distribution System;
- q) **"Major Work"** means any work to Construct or Maintain the Distribution System that costs more than One Hundred Thousand (\$100,000.00) Dollars;
- r) **"MGA"** means the *Municipal Government Act* (Alberta);
- s) **"Municipal Property"** means all property, including lands and buildings, owned, controlled or managed by the Municipality within the Municipal Service Area;
- t) **"Municipal Service Area"** means the geographical area within the legal boundaries of the Municipality as altered from time to time;
- u) **"Municipality"** means the Party of the first part to this Agreement;
- v) **"Operate"** means to operate, interrupt or restore any part of the Distribution System in a safe and reliable manner;
- w) **"Party"** means any party to this Agreement and **"Parties"** means all of the parties to this Agreement;
- x) **"Plans and Specifications"** means the plans, drawings and specifications reasonably necessary to properly assess and review proposed Work prior to issuing any approval that may be required under this Agreement;
- y) **"Second Subsequent Term"** means the Term of this Agreement as set out in Article 3;
- z) **"Term"** means, as the context requires, the Initial Term, First Subsequent Term or the Second Subsequent Term, and **"Terms"** means all of them;
- aa) **"Terms and Conditions"** means the terms and conditions contained within the Distribution Tariff in effect from time to time for the Company as approved by the Commission; and
- bb) **"Work"** means any work to Construct or Maintain the Distribution System.

The words "hereof", "herein", "hereunder" and other words of similar import refer to this Agreement as a whole, including any attachments hereto, as the same may from time to time be amended or supplemented and not to any subdivision contained in this Agreement. Unless the context otherwise requires, words importing the singular include the plural and vice versa and words importing gender include all genders. References to provisions of statutes, rules or regulations shall be deemed to include references to such provisions as amended, modified or re-enacted from time to time. The word "including" when used herein is not intended to be exclusive and in all cases means "including without limitation". References herein to a section, paragraph, clause, Article or provision shall refer to the appropriate Article in this Agreement. The descriptive headings of this Agreement are inserted for convenience of reference only and do not constitute a part of and shall not be utilized in interpreting this Agreement.

2) TERM

This Agreement shall be for an initial term (the "Initial Term") of ten (10) years, commencing on the later of:

- a) First day of July, 2012 or
- b) the first day after both of the following have occurred:
 - i) Commission approval of this Agreement; and
 - ii) the Municipality having passed third reading of the applicable adopting bylaw
_____.

Notwithstanding the commencement of the Initial Term, Franchise Fee and tax provisions set forth in Article 5 and Article 8 shall not take effect before January 1, 2013. The Parties agree that the franchise fee and taxes payable prior to the commencement of the Initial Term shall continue to be paid by the Company up to December 31, 2012.

3) EXPIRY AND RENEWAL OF AGREEMENT

Following the expiration of the Initial Term, this Agreement shall be renewed for a further period of five (5) years (the "First Subsequent Term"), provided the Company gives written notice to the Municipality not less than twelve (12) months prior to the expiration of the Initial Term of its intention to renew this Agreement and the Municipality agrees in writing to the renewal not less than six (6) months prior to the expiration of the Initial Term.

- a) During the first (1st) year following the expiration of the Initial Term all the rights and obligations of the parties under this Agreement shall continue to be in effect.
Following the expiration of the First Subsequent Term, the Parties agree that this Agreement may be extended for an additional five (5) year term (the "Second Subsequent Term") commencing at the end of the First Subsequent Term, provided that one of the Parties shall provide notice to the other Party of its wish to extend this Agreement for the Second Subsequent Term and the other Party confirms, no later than one (1) year prior to the end of the First Subsequent Term, that it also wishes to extend the Term of this Agreement for the Second Subsequent Term.
- b) If the Municipality has not provided notice to the Company to exercise its right under Article 10 to require the Company to sell the Distribution System within the Municipal Service Area to the Municipality, either Party may submit any items in dispute pertaining to the entering into of a new agreement to binding arbitration before the Commission who shall determine the terms of the new agreement;
- c) Unless either Party has provided notice to the other Party of its intent to terminate or to extend this Agreement, following any expiration of any Term, the respective rights and obligations of the Parties under this Agreement shall continue to be in effect for a period of one (1) year following the expiration of the applicable Term in order to provide the Parties with a reasonable opportunity to negotiate a subsequent agreement;

