Regional Water Services Ltd.

2007-2008 Interim Rate Application

December 11, 2007

Alberta Energy and Utilities Board

ALBERTA ENERGY AND UTILITIES BOARD
Decision 2007-099: Regional Water Services Ltd.
2007-2008 Interim Rate Application
Application No. 1510939

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ALBERTA ENERGY AND UTILITIES BOARD

Calgary Alberta

REGIONAL WATER SERVICES LTD. **Decision 2007-099**
2007-2008 INTERIM RATE APPLICATION **Application No. 1510939**

1 INTRODUCTION

On May 1, 2007, Cochrane Lake Water Company Ltd. (CLW or the Applicant) filed an application (Original Application) for approval of an interim refundable water service rate consisting of a flat fee of $150 per month plus $1.00 per cubic metre of water consumption commencing on June 1, 2007.

The Applicant proposed to establish a deferral account so that differences between the final monthly water service rate ultimately approved by the Board and revenues collected under the approved interim water service rate would either be refunded to or collected from customers. The Applicant also proposed that the reconciliation of the deferral account should occur approximately 5 years from the start of the interim rate.

A Notice of Application (Notice) was issued for the Original Application on May 9, 2007, and was published in the *Cochrane Eagle* and the *Cochrane Times* during the week of May 13, 2007.

Pursuant to the Notice, the Board received interventions from several residents in the MonTerra of Cochrane Lakes (MCL) development project, who would be subject to the water service rate and terms and conditions proposed by the Applicant.

Among the interventions received by the Board was a submission from Marcia L. Johnston, Q.C., on May 29, 2007, on behalf of a group of MCL residents (MonTerra Interveners). In addition to an objection to the Original Application (Objection), this submission contained a complaint against the Applicant pursuant to section 59 of the *Public Utilities Board Act* (Complaint). As further described below, the substance of the Complaint related to the determination of water system asset ownership as between the Applicant and a condominium association of the MCL development (Condominium Association) contemplated in Bylaw C-4499-95 passed by the Municipal District of Rockyview No. 44 (MD) on September 15, 1995 (Bylaw).[1] The MonTerra Interveners requested that the Board adjourn consideration of the Application pending an investigation into the ownership questions raised in the Complaint since in their view, the Board lacked jurisdiction to consider the Application if RWSL did not lawfully own the water system providing service to the MCL development.

In a letter dated June 22, 2007, the Board established a written process to deal with the Board's jurisdiction in respect of the matters raised in the Complaint. An extension to the deadline for the Applicant's response to the Complaint was granted by the Board in correspondence dated July 6, 2007.

[1] This Bylaw rescinded Direct Control Bylaw C-1769-64 and amended the MD's Land Use Bylaw C-1725-84 Bylaw (Land Use Bylaw).

Meanwhile, in a letter dated June 22, 2007, the Applicant requested that the Board suspend its consideration of the Original Application pending the completion of an amended interim rate application (Amended Application) and a final 2007-2008 rate application (Final Application) by regulatory consultants retained by the Applicant. In subsequent correspondence dated July 3, 2007, counsel for the Applicant advised the Board that the Amended Application would be filed on or before July 23, 2007. In the same letter, counsel for the Applicant also advised that, while it would respond to the Complaint in accordance with the Board's schedule, the Applicant did not intend to respond to the objections to the Original Application until after the Amended Application was filed.

The Applicant responded to the Complaint in correspondence dated July 6, 2007. In the same correspondence, the Board was advised that the name of the Applicant had changed to Regional Water Services Ltd. (RWSL) and that, as a result, the Applicant's new name would be used in all subsequent correspondence.[2] A response to RWSL's submission in respect of the Complaint was filed on behalf of the MonTerra Interveners on July 30, 2007.

On July 23, 2007, RWSL filed its Amended Application, superseding the Original Application, pursuant to sections 60, 61, 89, 90 and 91 of the *Public Utilities Board Act* (PUBA) on July 23, 2007. The Amended Application sought Board orders:

1. approving an applied for 2007 Test Period, comprising the period commencing July 1, 2007 and ending December 31, 2007, and an applied for 2008 Test Period, comprising the period commencing January 1, 2008 and ending December 31, 2008;

2. fixing just and reasonable rates to be charged by RWSL with respect to the provision of water services for the 2007 Test Period and 2008 Test Period;

3. approving the opening and year-end rate bases for the 2007 Test Period of $0 and $19,623,429, respectively;

4. approving the opening and year-end rate bases for the 2008 Test Period of $19,623,429 and $20,236,482, respectively;

5. approving a mid-year average rate base for the 2007 Test Period of $9,863,730;

6. approving a mid-year average rate base for the 2008 Test Period of $20,749,217, including the amount of $1,540,970 in a revenue deferral account;

7. approving a rate of return for the 2007 Test Period reflecting:
   - 8.51% return on common equity in accordance with the Board's 2007 generic cost of capital determinations;
   - a deemed common equity ratio of 25%;
   - a cost of debt of 11.20%; and
   - a deemed debt ratio of 75%;

[2] All subsequent references to the Applicant are to RWSL

8. approving a rate of return for the 2008 Test Period reflecting the rate of return on common equity of the of the Board's 2008 generic cost of capital determinations as applied to the 2008 Test Period;

9. approving a 2007 Test Period net revenue requirement of $1,570,250, including regulatory costs of $50,000;

10. approving a 2008 Test Period net revenue requirement of $3,120,148, including regulatory costs of $5,000;

11. approving the rates and methods of depreciation and amortization utilized by RWSL in preparing the Amended Application for the 2007 and 2008 Test Periods;

12. approving deferral accounts for regulatory costs, utilities and insurance for the 2007 and 2008 Test Periods;

13. approving a deferral account for the shortfall between the revenue requirement forecast and the revenue forecast; and

14. granting any further or other relief on an interim basis that the Board deems just and proper.

Concurrent with the filing of the Amended Application on July 23, 2007, RWSL filed its Final Application in respect of the 2007 and 2008 Test Periods. The Final Application (Application 1519777) will be dealt with in a separate process.

In a letter dated August 14, 2007, the Board established a schedule for consideration of the Amended Application. The Board revised the schedule in a letter dated September 10, 2007, to accommodate a request for a late submission by the MonTerra Interveners. RWSL filed a submission in support of the Amended Application on August 28, 2007, and the MonTerra Interveners filed a submission on September 12, 2007. RWSL filed Reply on September 19, 2007.

For administrative purposes of this Decision, the record for Application 1510939 closed on September 19, 2007.

2 JURISDICTION & OTHER PRELIMINARY MATTERS

In addition to concerns about the interim rates proposed by RWSL, the MonTerra Interveners identified what they considered to be a preliminary bar to the Board's consideration of the Application.[3] The MonTerra Interveners raised this preliminary issue both as an Objection to the Application itself and as the substance of the Complaint, which it asked the Board to investigate prior to considering the Application. As stated by the MonTerra Interveners, the issue arises as follows:

[3] Unless it has been necessary to distinguish between the Original Application and the Amended Application, the Board has simply referred to the Application in the balance of the Decision.

> ... [RWSL] illegally asserts ownership of the water system and equipment, and the right to provide water services to Monterra, which under Municipal Bylaw C4499-95 (the "Municipal Bylaw"), as well as written and verbal promotional material by the Developer, should be the property of the Condominium Association and the charge for water and sewage services should be included in the condominium fee charged by the Condominium Association. Accordingly, the Intervenors believe that ***the Application can and should be dealt with on the basis that [RWSL] is not the legal owner of the water system***, without the necessity of going into detail on the merits of the Application.
>
> The Intervenors believe that the Developer has failed to create the Condominium Association, or if it has been created the Developer has failed to notify the land owners and residents who should be members of the Condominium Association. If the Condominium Association does not exist, the Developer and/or Medallion are holding the water system for Monterra in trust for the Condominium Corporation, and the transfer of the system to CLW is not only a violation of the Municipal Bylaw but is also a breach of fiduciary duty by the Developer and/or Medallion. On the other hand, if the Condominium Association has been created, the Board of the Condominium Association, who are unknown to the Intervenors, have failed to notify the members of the existence of the Condominium Association , the make-up of the Board and the membership of the members [*sic*], or give the members any notice of the approval of by-laws for the Condominium Association or the proposed transfer of the water system to [RWSL].
>
> The Intervenors believe that the Developer and/or Medallion are attempting to remove the water system from its proper ownership for the profit and benefit of the principle(s) of Medallion and the Developer in a manner that is illegal, improper and a breach of fiduciary duty; in order to claim capital contribution actually made by the land owners; to break written promises that charges for water would be included in the fees of the Condominium Association; to charge an unfair rate to the residents of Monterra, and to be able to sell the water rights acquired for Monterra to other area developers.[4] *(emphasis added)*

In its response to the MonTerra Interveners, dated July 6, 2007, RWSL characterized the Interveners' position as essentially twofold, namely that RWSL is either not, in fact, the owner of the water system serving the MCL development, or has illegally assumed an ownership interest in the water system.[5] The thrust of RWSL's response to the MonTerra Interveners is that, as the owner of a public utility, RWSL is entitled to have its rates determined by the Board, any questions related to breach of contractual or fiduciary duties are not proper matters for the Board to consider and, in any event, none of the allegations of breach of duty involve the Applicant.

In this case, the Board's jurisdiction to approve the rates and terms and conditions of service[6] depends on whether RWSL is the "owner of a public utility", which in turn depends on the phrase "public utility", as these terms are defined in the PUBA.[7] Included in the definition of "public utility" is:

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4 MonTerra Objection & Complaint, page 2 [emphasis added]
5 RWSL Response, page 2
6 The rates and terms and conditions of service are commonly referred to collectively as a "tariff"
7 PUBA, section 1(h) and 1(i), respectively

> a ***system, works, plant, equipment or service for the production, transmission, delivery or furnishing of water***, heat, light or power supplied by means other than electricity, either directly or indirectly to or for the public.[8] *(emphasis added)*

There is no doubt on the present record that MCL residents are being furnished with water by a system, works, plant, equipment and service provided by RWSL. The MonTerra Interveners do not dispute this fact. While there may be a case in which fine distinctions about who constitutes the "public" in relation to a small water utility must be discerned, the Board finds as a fact that the RWSL water system, including the water treatment facility, is a system, works, plant, equipment and service for the production, transmission, delivery or furnishing of water to the public and, therefore, is a "public utility" within the meaning of the PUBA.

The question is whether RWSL is the "owner" of this public utility, a question that the MonTerra Interveners have cast in terms of alleged illegalities or unfair actions on the part of RWSL, Medallion Development Corporation (Medallion), and Medallion Cochrane Lakes Land Development Corp.[9] (Developer), and the MD (in various combinations). The Board understands the MonTerra Interveners, by their submissions, to be of the view that a legal defect, whatever its cause, in RWSL's acquisition of an interest in the physical assets constituting the system undermines any claim that RWSL may have to be an "owner" within the meaning of the PUBA.

That meaning is expressed as follows in the Act:

> "owner of a public utility" means
>
> (i) a person owning, operating, managing or controlling a public utility and whose business and operations are subject to the legislative authority of Alberta, and the lessees, trustees, liquidators of the public utility or any receivers of the public utility appointed by any court, but
>
> (ii) does not include
>
> (A) a municipality that has not voluntarily come under this Act in the manner provided in this Act, or
>
> (B) a regional services commission.

For purposes of Board regulation of a public utility, therefore, ownership is not limited to legal ownership, but includes an operator, manager or other controller of the public utility. Beyond these types of "ownership", the PUBA also recognizes lessees, trustees, liquidators or receivers of the public utility.

Whatever may turn out to be the legal and beneficial ownership of the public utility serving the MCL development, as determined by a body with competent jurisdiction to make that determination, the Board is of the view, and so finds, that RWSL has, on balance of probabilities and for purposes of the Amended Application, established that it is the owner of the public utility

[8] PUBA, section 1(i)(iv)

[9] Medallion appears to have been the originally intended party to the Development Agreement ultimately executed between the MD and the Developer on August 3, 2004 (Attachment B to July 6, 2007, Submission by RWSL). The relationships among Medallion, the Developer and RWSL are not clear on the present record.

serving MCL within the meaning of the PUBA. Regardless of its legal title to the physical assets, RWSL is clearly operating, managing and controlling the public utility to provide water utility service to MonTerra. Again, there does not seem to be any dispute about this fact. Even if the Board, assuming it has jurisdiction,[10] or a court were to determine that RWSL must be deemed to hold the assets in trust for the MCL residents, directly or through the Condominium Association contemplated in the MD Bylaw, the Board would still consider RWSL to be the "owner" for present regulatory purposes.[11]

In the Board's view, customers such as the MCL residents benefit from this approach. If the Board were to conclude that RWSL were not an owner of a public utility within the meaning of the PUBA, RWSL could not legitimately collect revenue from the MCL residents, but could legitimately cease operations, leaving the Board and customers in a situation that would be, at best, awkward and, at worst, harmful to customers' interests, property and quality of life. With the view taken by the Board above, it is able to exercise some control over the service and charges for the service being received by MCL residents even in the presence of concerns about the appropriateness of the utility providing the service.

So, the Board having concluded that RWSL is, for present purposes, the owner of a public utility, a number of jurisdictional consequences flow. In the case of the Amended Application, the most salient of these is the Board's authority to fix just and reasonable rates and terms and conditions of service pursuant to section 89 of the PUBA and to determine a rate base and fix a fair return on rate base pursuant to section 90 of the PUBA. The Board is expressly authorized to make interim orders pursuant to section 62 of the PUBA. These are sufficient ingredients for the Board to consider and determine the Amended Application and the Board does so later in this Decision.

Notwithstanding the views just expressed and the Board's conclusion that it has jurisdiction to consider the Amended Application, the Board acknowledges and takes very seriously the concerns raised by interested parties, particularly the MonTerra Interveners, with respect to the history of the MCL development, what residents understood at the time they purchased their lots with respect to utility service and the charges for that service, and what contributions they may have made in respect of the owner of the utility's capital. In the Board's view, these matters appear to be relevant to the considerations the Board must take into account in assessing the reasonableness of RWSL's proposed tariff. Board staff and the Board itself will explore these questions in the context of RWSL's Final Application. The Board expects that customers will also explore these questions, particularly as they relate to contributions and individual metering.

[10] The Board leaves open the question whether it may determine the types of issues raised by the MonTerra Interveners pursuant to section 38 of the PUBA, which provides that "The Board may, as to matters within its jurisdiction, hear and determine all questions of law or of fact." It may be that the Board does have that jurisdiction when determining whether an alleged owner of a public utility is, in law and fact, an "owner of a public utility" under the PUBA. However, the Board does have reservations about determining issues such as breach of contract or fiduciary duty, particularly as they relate to parties who are not subject to the Board's jurisdiction or involved in the proceeding.

[11] In the case of court-appointed fiduciaries, this jurisdiction is made explicit in section 86 of the PUBA. Whether the proposed amendments to the MD's Land Use Bylaw to remove the requirement of a Condominium Association in the MCL development are relevant to any matter over which the Board has jurisdiction can be dealt with in the Final Application, if necessary.

Since many of these questions have been raised not only in Objection to the Amended Application but in support of the MonTerra Interveners' Complaint, the Board considers it helpful to express its views in relation to the Complaint itself.

The Complaint has been made nominally pursuant to section 59 of the PUBA, which provides as follows:

> **59** When the Minister of Justice and Attorney General, a municipality or a party interested, makes an application to the Board ***alleging*** that a person has unlawfully done or unlawfully failed to do, or is about unlawfully to do, or unlawfully not to do, ***something relating to*** a matter over which the Board has jurisdiction under this ***or any other Act***, and prays that the Board make some order in the premises, the Board shall, after hearing the evidence it thinks fit to require, make any order it thinks proper under the circumstances. *(emphasis added)*

Without more in depth consideration, the Board accepts that the Complaint does allege circumstances or acts that may be considered to be "unlawful." And all that section 59 requires is that the allegedly unlawful act "relate to" a matter over which the Board has jurisdiction. Certainly in this case, the allegations in the Complaint, to an as yet undetermined degree, do relate to the Board's consideration of RWSL's tariff under the PUBA. According to the terms of the *Municipal Government Act* (MGA), discussed more fully below, the allegations in the Complaint may also raise matters relevant to RWSL's claim to validity of its right to provide service within the MD.[12]

Though nominally made under section 59, however, the Complaint requests that the Board suspend consideration of the Application in order for the Board to "investigate" the following questions:[13]

1. the ownership of the system and equipment for water and sewer services for Monterra and the rights to provide such services, and the validity and legality of such ownership;

2. the rights of the land owners and residents of Monterra as members of a condominium association or corporation, in general and to ownership and control over the water system and whether those rights have been violated;

3. the actions of CWL [*sic*], the Developer and Medallion with respect to the provision of water services to Monterra, including the failure to complete the facilities and the frequent failures of the temporary system; and

4. the sufficiency and delivery by CWL [*sic*] of notice respecting the Application to the residents and land owners of Monterra.

Based on the submissions of both RWSL and the MonTerra Interveners, the Board understands that questions 3 and 4 have, to some extent, either been overtaken by events since the Original Application was filed (e.g. the completion of the water treatment facility) or have been accepted by the MonTerra Interveners as matters that are more properly dealt with in the context of the Board's tariff jurisdiction. Other issues not expressly set out in the Complaint but referred to in

[12] As distinguished from whether RWSL legally or beneficially owns the system assets
[13] Complaint, page 3

the submissions of parties, have also been raised (e.g. individual vs. bulk metering) as proper subjects for Board investigation.

As the owner of a public utility, RWSL is subject not only to the Board's tariff jurisdiction, but to all applicable provisions of Part 2 of the PUBA.[14] Since RWSL is a water utility, the Board's jurisdiction is subject to the terms of the *Water Act* and any orders and regulations made under that Act, though none of these matters are of immediate concern for the Amended Application.[15]

Section 80 of the PUBA empowers the Board to investigate the rates, tolls or charges of a public utility:

> **80** When it is made to appear to the Board, on the application of an owner of a public utility or of a municipality or person having an interest, present or contingent, in the matter in respect of which the application is made, that there is reason to believe that the tolls demanded by an owner of a public utility exceed what is just and reasonable, having regard to the nature and quality of the service rendered or of the commodity supplied, the Board
>
> (a) may proceed to hold any investigation that it thinks fit into all matters relating to the nature and quality of the service or the commodity in question, or to the performance of the service and the tolls or charges demanded for it,
>
> (b) may make any order respecting the improvement of the service or commodity and as to the tolls or charges demanded, that seems to it to be just and reasonable, and
>
> (c) may disallow or change, as it thinks reasonable, any such tolls or charges that, in its opinion, are excessive, unjust or unreasonable or unjustly discriminate between different persons or different municipalities, but subject however to any provisions of any contract existing between the owner of the public utility and a municipality at the time the application is made that the Board considers fair and reasonable.

Section 85 confers general jurisdiction on the Board as follows:

> **85(1)** The Board ***shall exercise a general supervision over all public utilities, and the owners of them,*** and may make any orders regarding extension of works or systems, reporting and other matters, that are ***necessary for the convenience of the public*** or for the proper carrying out of any contract, charter ***or franchise involving the use of public property or rights***.
>
> **(2)** The Board ***shall conduct all inquiries necessary for the obtaining of complete information*** as to the manner in which owners of public utilities comply with the law, or as to any other matter or thing within the jurisdiction of the Board. *(emphasis added)*

Section 87 broadly authorizes the Board to "investigate any matter concerning a public utility."

[14] PUBA, section 78(1)(a) and (b)

[15] PUBA, section 78(3). They may ultimately be of concern in relation to the allegations by the MonTerra Interveners about RWSL's treatment of capacity under the water licence issued to it under the *Water Act*. These issues can, if necessary, be addressed in the context of the Final Application.

Based on the powers conferred on it by the PUBA (and those under the MGA referred to below), the Board considers that it does have full jurisdiction to investigate the matters raised by the MonTerra Interveners in the Complaint and, at least to some extent, has jurisdiction to make orders in relation to the matters investigated, both within and outside the tariff context.[16] Therefore, the Board will not dismiss the Complaint for want of jurisdiction. Indeed, the Board considers that the Complaint should be held in abeyance at least until the completion of the Board staff review process that will be conducted in relation to the Final Application sometime in 2008.[17] At that time, the Board will know whether a formal hearing is required into RWSL's Final Application or whether parties have accepted a Board staff recommendation. The Board will then be in a better position to determine whether and how to proceed with the Complaint.

In addition to facilitating the determination of a just and reasonable interim tariff for RWSL, holding the Complaint in abeyance will give parties the opportunity to address a question that the Board identified in reviewing the materials on the record of the Amended Application. This question was not specifically identified by any party, but is akin to the questions related to the course of dealings among RWSL, Medallion, the Developer and the MD.

Attachment A to the July 6, 2007, submission by RWSL in response to the MonTerra Interveners is an agreement between the MD and RWSL's predecessor (CLW), dated March 9, 2004, authorizing CLW to construct certain works for the provision of water utility service in parts of the MD (Construction Agreement). The first recital of the Construction Agreement provides that:

> The Utility Supplier is the owner and is entitled to become owner of certain utility services situated in the Municipality and being partnered with the Municipality, through a memorandum of understanding, dated February 24, 2004, identified as schedule "B" herein.[18]

Schedule "B" to the Construction Agreement is entitled "Memorandum of Understanding" and, though referred to in the recital to the Agreement as dated February 24, 2004, is undated itself, at least in the copy provided to the Board (MOU). The MOU carefully indicates that it is not a binding agreement, but nevertheless records the agreement of CLW and the MD on a number of issues relating to the provision of water and wastewater services by CLW in the Hamlet of Cochrane Lakes. The MOU acknowledges the commitment of CLW to provide a system capable of serving approximately 1200 homes or equivalents. In outline, at least, the MOU appears to refer to the kind of right to provide utility service within a municipality contemplated by section 45 of the MGA.

In particular, Articles 4, 5, 8, 9 and 11 of the MOU deal explicitly with franchise rights:

> 4. The two parties will work towards a satisfactory franchise agreement for water and wastewater services, or other services as deemed necessary, within a period of 12 months from the date of this Memorandum of Understanding.

---

16 Again, the Board leaves open the question whether it has jurisdiction to make findings of breach of contract or fiduciary duty.

17 See Board correspondence dated August 14, 2007, confirming that Directive 53 will be applied to the Final Application.

18 Although not determinative, this representation does provide some evidence of RWSL's ownership of the water utility system.

5. The franchise agreement will be for a period of not more than twenty (20) years, with a review for purchase at years ten (10) and years fifteen (15) as well as years twenty (20).

8. The MD will, to the best of its commercial abilities, provide the customer base within the franchise area subject to transparent and proper channels of land use planning and subdivision.

9. These franchised services will be to a high level of standard to be determined and never less than the standards required by the Province as changed from time to time.

11. The MD will be entitled to receive a reasonable but separate franchise fee to be determined by the Alberta Energy and Utilities Board as it may determine from time to time.

Section 45 of the MGA authorizes a municipality such as the MD to grant a right, exclusive or otherwise, to a public utility to provide service within all or part of the municipality for a term of up to 20 years.[19] This so-called "franchise agreement" may grant rights to the utility to use the municipality's property, or property under its direction and control, for the construction, operation and extension of the public utility in the municipality.[20] With two exceptions that are not applicable in the present case,[21] a franchise agreement must be approved by the Board before it is made, amended or renewed.[22]

So far as the Board has been able to determine, no franchise agreement has been executed and the Board has no record of one being brought forward for approval under section 45 of the MGA, despite the commitment to enter such an agreement within 12 months from the date of the MOU.[23] There is, in fact, nothing in the materials touching on the status of the franchise agreement contemplated by the MOU or any explanation why one has not been presented to the Board.

Although nothing in the MGA or the PUBA expressly requires a franchise agreement to be in place prior to Board consideration of a tariff proposed by a public utility providing service within a municipality, the fact that the MOU contemplated a franchise agreement is significant to the Board. Indeed, since the right of the utility to provide service within all or part of a municipality is expressly at issue under section 45 of the MGA, it is at least arguable that questions of the sort now raised by the MonTerra Interveners might be addressed in a timely way in that context. Should it proceed to consider the Complaint, the Board is of the view that this question of a franchise agreement is an appropriate one for further investigation. In any event, the Board expects this question to be explored in the Final Application. If a franchise agreement *has* been executed between the MD and RWSL, RWSL should apply for Board approval of the agreement as soon as possible in 2008.

[19] MGA, section 45(1)
[20] MGA, section 45(2)
[21] MGA, sections 45(4) & 45(5)
[22] MGA, section 45(3)
[23] If the Construction Agreement accurately records the date of the MOU as February 24, 2004, presumably the franchise agreement was anticipated by February 23, 2005.

In summary, these are the Board's conclusions with respect to jurisdiction and other matters raised in the Complaint:

- subject to any future findings by the Board or a court of competent jurisdiction, RWSL is the owner of a public utility and subject to the Board's rate-making jurisdiction under the PUBA for purposes of the Amended Application;
- the questions relating to RWSL's ownership of the system, particularly as they relate to customer contributions, may be relevant to the Board's rate-making discretion and can be addressed in the context of the Final Application; and
- the Board has jurisdiction to consider the Complaint, and to investigate the matters raised in it, as well as the question of whether a franchise agreement may be required between RWSL and the MD, but will hold the Complaint in abeyance, at least pending completion of the Directive 53 process in the Final Application.[24]

3 ASSESSMENT OF AMENDED APPLICATION

3.1 Scope of Relief Granted in Respect of Amended Application

The relief requested by RWSL in the Amended Application comprises an extensive list of items for which RWSL is seeking Board approval. Most of these items relate to the determination on an interim basis of RWSL's revenue requirements for the periods July 1, 2007 to December 31, 2007, and January 1, 2008 to December 31, 2008.

Most of the detail used by RWSL to develop its 2007 and 2008 revenue requirement forecasts was provided within RWSL's Final Application, but not in the Amended Application. The Board considers that the information provided within the Amended Application is not sufficient to allow the Board and parties to adequately test the reasonableness of the forecasts and assumptions used to derive the 2007 and 2008 revenue requirements proposed by RWSL. In any event, however, the Board also notes that the 2007 and 2008 rates set forth in the Amended Application would collect only a fraction of the 2007 and 2008 revenue requirement forecasts set out in that Application. In light of these factors, the Board considers it to be both unnecessary and inappropriate to approve RWSL's 2007 and 2008 revenue requirement forecasts and their elements in the context of this Decision in respect of the Amended Application and interim rates for 2007-2008. Instead, the Board considers that RWSL's revenue requirement and its elements should be determined in RWSL's Final Application.

Nevertheless, it is appropriate and important for the Board to approve an interim water service rate for RWSL as soon as possible. In particular, as set out in its August 14, 2007, correspondence, the Board considers it to be important that *some* interim rate be established as quickly as possible so that both current RWSL customers and prospective property purchasers who may receive water service from RWSL in the future will have some idea of the rates they may be required to pay.

The Board agrees with RWSL that the 2007 test period should be from July 1, 2007 to December 31, 2007 (2007 Test Period) and that the 2008 test period should be from January 1,

[24] As set out in Board correspondence dated August 14, 2007, the Board determined that EUB Directive 053 respecting the Rate Application Process for Small Water Utilities would be followed for the consideration of the Final Application.

2008 to December 31, 2008 (2008 Test Period). However, the Board considers that the interim rate approved in this Decision should only apply prospectively, as far as possible. Accordingly, the Board directs that charges to RWSL customers under the interim rate approved in Section 3.2.2 of this Decision shall commence on December 1, 2007. Subject to any future Board orders, the revenues collected under the approved interim rate commencing on December 1, 2007, shall be reconciled to the final rate revenues approved for the 2007 and 2008 Test Periods in the Board's Decision in respect of RWSL's Final Application.

Typically, any revenue shortfall arising from the difference between revenues collected at interim rates and the revenues to which the utility would be entitled according to final rates would be collected from customers through a rate rider at the time final rates are approved. However, RWSL has proposed that the differences between actual interim revenues and approved final revenues be accumulated in a deferral account and reconciled within 5 years of the Board's approval of final 2007-2008 rates. Given the Board's views in this section of the Decision, the Board is not in a position to finally determine this deferral account/reconciliation proposal. The Board will address this issue on a final basis in RWSL's Final Application. However, to accommodate the possibility that the Board may approve this "deferred" reconciliation of interim to final rate revenues, the Board approves the establishment of a deferral account to be used to reconcile revenues collected under the interim rate approved in this Decision and the 2007 and 2008 Test Period revenue requirements to be approved following the Board's consideration of the Final Application.[25]

3.2 Overview of Issues Raised by Parties

In Argument, RWSL submitted that in light of the Board's intention to deal with the matters raised in the Complaint separately, it was not evident to RWSL what intervener objections remained in light of the replacement of the Original Application with the Amended Application. Since the Amended Application provided substantial additional evidence supporting the requested relief, RWSL indicated that it would rely on previously filed evidence and submissions, subject to its right to reply to intervener submissions, if any.

Since the Amended Application only related to the determination of an interim rate for RWSL, the MonTerra Interveners' submission had not addressed all of their concerns with respect to the permanent rate requested by RWSL. Furthermore, given the MonTerra Interveners' understanding that issues not raised with respect to RWSL's interim rate could be addressed in conjunction with RWSL's Final Application, the submission of the MonTerra Interveners had not addressed issues such as the Applicant's proposed return on and of capital, profit, expansion plans and other matters.

In respect of the Amended Application, the argument of the MonTerra Interveners raised concerns in respect of:

- the water consumption forecast used by RWSL to develop its proposed interim rate;
- the reasonableness of the proposed water service rates of RWSL when assessed against water service rates charged in land developments similar to the MCL development; and

[25] This approach should not be taken as an indication of the Board's view on the merits of any of the deferral account proposals set out in the Amended or Final Applications.

- a set of other matters provided under the heading "The proposed rate is not what the Intervenors were promised."

The Board addresses each of these areas separately in the following subsections.

3.2.1 Average Household Water Consumption Forecast

The MonTerra Interveners submitted that RWSL's assumed average household water consumption rate of 20m^3 per month was too low. Although not specifically stated, the Board understands the MonTerra Interveners' concern with the consumption forecast to be related to RWSL's proposal to charge a much higher amount per m^3 for consumption above the assumed average. Thus, if the average consumption of MCL residents were to be significantly higher than the 20m^3 per month level assumed by RWSL, MCL residents would be required to pay considerably more per month than assumed by RWSL.

The MonTerra Interveners noted that whereas the assumed consumption rate was supported only on the basis of an opinion provided by RWSL's contract operator, additional information supported a higher assumed average consumption. An excerpt from a City of Calgary website was cited in support of the MonTerra Interveners' claim that the forecast average consumption rate was too low.

The MonTerra Interveners submitted that whereas RWSL's household water consumption forecast appeared to reflect the expected consumption of households of 2 to 2½ persons, the average water consumption forecast should reflect the fact that the average household size among MCL residents is four persons. The MonTerra Interveners also noted that the size of lots in the MCL development is much larger than the size of lots in the City of Calgary. In addition, given that the new homes will require immediate landscaping, the MonTerra Interveners submitted that the average water consumption for irrigation purposes would significantly exceed the requirements of an average Calgary household.

In reply, RWSL submitted that it had endeavored to estimate water consumption as accurately as possible over the proposed test period and had set out the basis for the estimate in the Amended Application and in the Final Application. However, given the small size of RWSL's customer base and the fact that the applied-for test periods are RWSL's first, it is to be anticipated that RWSL's forecast could vary from actual usage levels.

RWSL submitted that while the MonTerra Interveners discounted RWSL's reliance on the opinion of its contract operator as the basis of its forecast, the MonTerra Interveners did not contest either the experience of the contractor or the veracity of his opinion. Instead, it appeared to RWSL that the MonTerra Interveners wanted the Board rely on documentation provided by the MonTerra Interveners related to water usage levels in the City of Calgary. However, RWSL submitted that the system and forecast usage levels of the MCL development and the City of Calgary are not comparable because water losses are likely to be significant in a system as large as Calgary's and because the City of Calgary still serves a number of customers on a flat-rate, rather than a metered, basis.

Most importantly, however, RWSL submitted that the accuracy of the water consumption forecast is largely irrelevant in the context of the Amended Application, since RWSL has applied for a deferral account for its revenue deficiency. Accordingly, if consumption turns out to be

higher than forecast, the revenue deficiency in the deferral account would be marginally smaller. Even if its monthly forecast usage level were to change from $20m^3$ to $30m^3$, RWSL's forecast revenue recovery would only increase by about $10,000 in 2007 and $36,000 in 2008, representing deferral account balance variances of 0.7% and 1.2%, respectively.

While parties debated the accuracy of the average household water consumption forecast, the Board notes that this forecast was not discussed in the Amended Application itself. Instead, documentation for the assumed average household consumption of $20m^3$ was provided as a footnote to Schedule 6.0 of RWSL's Final Application.[26]

In spite of the focus on the average forecast amount by the MonTerra Interveners, the Board considers that the accuracy of this forecast is of only limited relevance to the Board's findings in respect of the Amended Application. As discussed in Section 3.1 above, the Board has determined that it is not appropriate to approve RWSL's 2007 or 2008 revenue requirement forecasts on either an interim or final basis for the purposes of this Decision. In addition, it is evident from the Amended Application that the interim rate proposed by RWSL is not based on the proposed recovery of the approved revenue requirement using billing determinants derived from the forecast number of customers and the assumed average consumption per customer.[27] Instead, the only use that RWSL appears to have made of the assumed average household consumption of $20m^3$ is to establish the consumption level at which customers should be charged for water consumption at a higher rate per m^3. In the Board's view, the levels of rate blocks for consumption charges in RWSL's rate design need not necessarily be linked to RWSL's average household consumption forecast for purposes of an interim rate.

The average household consumption forecast may have some relevance, however, in facilitating reasonable comparisons between rates charged for water service for households in developments thought to be reasonably comparable to the MCL development. However, neither RWSL nor the MonTerra Interveners provided clearly persuasive evidence, in the Board's view, about what the average household consumption forecast should be. For example, the MonTerra Interveners criticized RWSL's proposed $20m^3$ average monthly consumption forecast as too low, and supported this view in an appendix of their Argument, but did not provide direct evidence as to what the appropriate level of average water consumption should be.

Similarly, RWSL addressed in Reply the possible differences between the RWSL system and the City of Calgary system with regard to losses and un-metered customers. While these considerations may be conceptually valid, RWSL provided no evidence that would allow the Board to assess the extent to which these factors should cause the Board to discount the City of Calgary information as provided by the MonTerra Interveners.

In short, the Board concludes that the information filed to date by both the Applicant and Interveners is not sufficient to make a final determination on an average per household water consumption forecast for the MCL development. Any determination made in this Decision with respect to forecast average consumption must be regarded as purely preliminary and subject to change when better information regarding average household water consumption is made available in the course of the Final Application.

[26] Application 1519777, Schedule 6.0, footnote "b", p. 20 of 25
[27] See Amended Application, Appendix C, p. 3 of 3

Nonetheless, the Board is persuaded at this time that RWSL may not have adequately accounted for the effects of either the actual number of residents per household or the comparatively larger lot sizes in the MCL development. Thus, for the purpose of facilitating comparisons between the anticipated cost of monthly water service charges proposed by RWSL and rates in effect in other comparable land developments, the Board has assumed average per household consumption of $30m^3$ in the following section of this Decision.

3.2.2 Assessment of Interim Rate against Comparable Water Service Rates

As set out in Attachment C of its Amended Application, RWSL proposed to establish an interim refundable rate to commence on July 1, 2007, consisting of a flat charge of $90.00 per month, plus $1.50/m^3$ for consumption up to $20m^3$/month and a further charge of $4.10/m^3$ for consumption above $20m^3$/month.

The MonTerra Interveners submitted that it was apparent that the rate proposed by RWSL was substantially higher than rates offered in other large lot/acreage developments. In support of this observation, the MonTerra Interveners provided a comparison of water rates offered in other similar land developments to the proposed RWSL rate using information filed in initial objections to RWSL's proposed rate. The MonTerra Interveners submitted that the interim rate should be set at a flat $90.00/month and should be included within a Condominium Association fee to be set at $170.00/month.

RWSL submitted that it was not aware of the specific circumstances of the utilities cited as rate comparators by the MonTerra Interveners. However, RWSL noted that the rates shown by the MonTerra Interveners for both Morgan's Rise and Swift Creek reflected rates for Westridge Utilities Inc. (Westridge) for which applications for rate increases were currently pending before the Board.

RWSL further submitted that a utility has a duty to provide service to its customers. In return, customers have an obligation to pay for the services they receive. Utilities must be provided a reasonable opportunity to recover a return on and of capital. Given the small size of RWSL's current customer base, RWSL acknowledged that the recovery of RWSL's revenue requirement from fewer customers would result in rates noticeably higher than in other areas. While RWSL was unaware of the specifics of the other water utilities cited by the MonTerra Interveners, RWSL suggested that the present customer base of fewer than 100 customers is small even as compared to other small water utilities.

RWSL submitted that the $90.00/month flat rate requested by the MonTerra Interveners would result in the deferral of virtually all test period costs. RWSL noted that its proposed rate would recover only about 2% of its forecast 2007 revenue requirement and 3% of its forecast 2008 revenue requirement. RWSL submitted that its rate was designed to provide an indication of costs once the area served is fully developed. In the interim, RWSL proposed to capitalize the shortfall in the proposed deferral account and to offset the shortfall through developer contributions. RWSL did not support the flat rate design suggested by the MonTerra Interveners because a flat rate would send the wrong conservation signal.

A summary of monthly charges arising from the comparator rates compiled by the MonTerra Interveners and by RWSL in the Original Application has been prepared by the Board in Table 1 below. As indicated, Table 1 estimates the amount of monthly water charges in the other areas

cited and the monthly charges expected under RWSL's proposed rates for customers located in the MCL development, for average monthly consumption of 20m^3 and 30m^3.

Table 1. Monthly Water Service Rates in Other Areas

Development Name	Basis of Charge	Charge for consumption at: 20 m^3 / month	30 m^3 / month
Bearspaw Village (Interveners)	$125.00 flat fee	$125.00	$125.00
Elbow Valley (Interveners)	$1.00/m^3	$ 20.00	$ 30.00
Hawk's Landing (Interveners)	$3.89/m^3	$ 77.80	$116.70
Hawk's Landing (RWSL)	$6.00/m^3	$120.00	$180.00
Priddis Green (Interveners)	$3.89/m^3	$ 77.80	$116.70
Priddis Green (RWSL)	$6.00/m^3	$120.00	$180.00
Millarville Crossing (RWSL)	$80.00 plus $0.90/m^3	$ 98.00	$107.00
Morgan's Rise (Interveners)	$60.00 plus $2.00/m^3	$100.00	$120.00
Prairie Royale (RWSL)	$66.00 plus $1.18/m^3	$ 89.60	$101.40
Ranchers Hill (RWSL)	$135.00 including 50 m^3 plus: - $2.50/m^3 over 50 m^3	$135.00	$135.00
Sharp's Hill (RWSL)	$82.00 plus: - $1.18/m^3 - $0.80/m^3 for irrigation water	$105.60	$117.40
Swift Creek (Interveners)	$45.00 including 15 m^3 plus: - $0.52/m^3 between 16 m^3 to 30 m^3 - $1.21/m^3 between 31 m^3 to 50 m^3 - $1.98/m^3 over 50 m^3	$ 47.60	$ 52.80
RWSL Proposed Rate	$90.00/m^3 plus: - $1.50/m^3 for first 20 m^3 - $4.10/m^3 over 20 m^3	$120.00	$161.00

Sources: Argument of MonTerra Interveners, p. 2; Original Application, p. 2

From this Table, the Board questions whether the rates provided by either RWSL or the MonTerra Interveners are consistent. For example, the Board notes that rates provided by RWSL and the MonTerra Interveners for the Hawk's Landing and Priddis Green developments are very different. In addition, RWSL has questioned the appropriateness of the reported water rates for Swift Creek and Morgan's Rise areas on the basis of possible inconsistencies with rates applied for by Westridge. The Board is also aware that water service for the Elbow Valley development is provided by Westridge.[28] In light of these inconsistencies and questions, the Board has not considered the rates for Elbow Valley, Hawk's Landing, Priddis Green, Swift Creek and Morgan's Rise as reasonable comparators to assess the interim rates for the residents of MCL.

As indicated in Section 3.1 above, the Board is not prepared to make a determination with respect to the reasonableness of RWSL's revenue requirement forecasts in this Decision, even on an interim basis. However, in setting an interim refundable rate, at least some consideration must be given to the fact that the allocation of an equal share of RWSL's forecasted revenue requirement among all forecasted RWSL customers would result in monthly charges well above any of the rates reported in Table 1 above. As a result, the Board considers it appropriate that the interim rate selected for RWSL should correspond to the average of the comparator rates described in Table 1 for Bearspaw Village, Millarville Crossing, Prairie Royale, Rancher's Hill and Sharp's Hill, as summarized in Table 2 below. As the $90.00/month flat charge proposed by the MonTerra Interveners is below most of the rates in Table 1 when measured at the assumed

[28] See Decision 2005-028, Westridge Utilities Inc. General Rate Application (April 19, 2005)

average household consumption level of 30m^3 per month, the Board considers that the flat $90.00/month rate proposed by the MonTerra Interveners is not just and reasonable on an interim basis and should not be adopted for that reason.[29]

Table 2. Average Rate Calculation Summary

Development Name	Charge for consumption at: 20 m^3 / month	30 m^3 / month
Bearspaw Village (Interveners)	$125.00	$125.00
Millarville Crossing (RWSL)	$ 98.00	$107.00
Prairie Royale (RWSL)	$ 89.60	$101.40
Ranchers Hill (RWSL)	$135.00	$135.00
Sharp's Hill (RWSL)	$105.60	$117.40
Average	$110.64	$117.16

Source: Table 1

As shown in Table 2, the average of water service rates measured at the 30m^3 per month level for Bearspaw Village, Millarville Crossing, Prairie Royale, Rancher's Hill and Sharp's Hill is $117.16. Given this comparable average, the Board has determined that the total interim charge approved by the Board for RWSL should be no more than $117.00/month. However, in light of the possibility that some residences in the MCL development may have water meters installed at the time the approved interim rate takes effect, the Board considers that customers with meters should have the benefit of a reduced charge when they consume less water than the assumed average household consumption for the development as determined by the Board for purposes of this Decision — i.e. 30m^3.

As discussed in section 3.2.1 above, the Board does not have sufficient information to rule on the appropriateness of RWSL's proposed average household consumption forecast of 20 m^3 per month. Notwithstanding that the 20 m^3 per month forecast appears to be the basis for the consumption level breakpoints of RWSL's proposed rate design, the Board considers that the approval of consumption charge breakpoints as proposed by RWSL ($1.50/m^3 for first 20m^3/month and $4.10/m^3 for household consumption above 20m^3/month) is acceptable in the context of an interim refundable rate. However, in order to ensure that charges do not exceed $117.00 per month, the Board considers that revenues generated from the consumption component of RWSL's water service charge must be subtracted from the $117.00/month maximum to derive the fixed component of the RWSL monthly water service charge. This calculation is provided in Table 3 below.

Table 3. Determination of Fixed Component of RWSL Charge

Maximum allowable revenue	$117.00	$117.00
less: revenue at $4.10/m^3	$4.10 x (30 – 20) =	$ 41.00
less: revenue at $1.50/m^3	$1.50 x 20 =	$ 30.00
Equals Fixed component of RWSL Charge		$ 46.00

Source: Derived by Board

[29] The Board acknowledges that the $90.00/month flat charge was proposed by the MonTerra Interveners in the context of promises made to the residents of MCL by the Developer. The Board will deal with these issues in Section 3.2.3 of the Decision.

Following from the above, the Board approves an interim refundable water service rate for RWSL consisting of:

> $46.00 per month
> - plus: $1.50m^3 for metered consumption up to 20m^3/month
> - plus: $4.10m^3 for metered consumption above 20m^3/month
>
> up to a maximum of $117.00/month, which maximum shall, in any event be charged to customers without meters.

The maximum monthly water service charge of $117.00 approved by the Board will not generate revenues identical to the rate proposed by RWSL. Assuming that the number of households served by RWSL during the 2007 and 2008 Test Periods is consistent with RWSL's forecasts, the amount of the revenue shortfall or surplus as compared to revenues anticipated under RWSL's proposed interim rate will depend on the *actual* average consumption of MCL households.

In the event that the actual average consumption of MCL households is at or near the 20m^3 level currently anticipated by RWSL, revenues generated under the Board-approved interim rate would be approximately $44.00/per customer per month below the revenue level requested by RWSL. Thus, on assumption that the forecasted number of MCL households in the 2008 Test Period is correct,[30] the revenue generated under the interim rate approved by the Board could be approximately $39,072 below the interim revenues forecasted by RWSL in 2008.[31] If the actual average consumption of MCL households is at 30m^3, revenues per customer under the approved rate would be $3.00/per customer per month below the level requested by RWSL. In that case, revenues under the Board-approved interim rate would be about $2,664 below the interim revenues forecasted by RWSL for 2008.[32]

Since the rate approved in this Decision is an interim refundable rate, revenues generated under this rate will be reconciled with the final approved revenue requirements for the 2007 and 2008 Test Periods to be determined by the Board in RWSL's Final Application. The amount by which 2008 revenues under the approved interim refundable rate could be below the revenue under RWSL's proposed interim rate represents only 1.3% of RWSL requested 2008 revenue requirement of $3,120,148.[33] The Board considers this potential difference to be minimal and does not detract from the Board's view of the reasonableness of the interim refundable rate approved in this Decision.

3.2.3 Other Issues Raised by the MonTerra Interveners

The MonTerra Interveners raised a number of issues under the heading "The proposed rate is not what the Interveners were promised." Within this section of their Argument, the MonTerra Interveners commented on the following issues:

[30] Average - 74 households (Amended Application Attachment 3, p. 3 of 3)
[31] 74 customers x $44.00/month x 12 months
[32] 74 customers x $3.00/month x 12 months
[33] Amended Application, Attachment C, p. 3 of 3. $39,072 is approximately 1.2522% of $3,120,148

- possible differences between the intended customers included within RWSL's water license and possible plans of a parent company of RWSL to expand its water utility operations;
- whether the water system serving the MCL development should be under the control of RWSL or a Condominium Association of the MCL development;
- whether the cost of water service is included within an estimate of the Condominium Association fee provided to MCL residents;
- efforts made by the parent of RWSL to have the MD change by-laws and agreements in order to reflect a revised business plan to establish a regional water system;
- the interpretation of the decision of RWSL to install water meters in all MCL residences;
- the pace at which the MCL development is proceeding as compared to original estimates; and
- the use of treated water drawn from the RWSL system by the Developer of MCL.

In light of these concerns, the MonTerra Interveners submitted that until the Developer turns over the Condominium Association to the MCL lot owners, the interim rate should be set at a flat monthly fee of $90.00 per month, to be included in a Condominium Association fee to be set at $170.00 per month.

In spite of the MonTerra Interveners' claims that RWSL's proposed water service rate is contrary to promises made to them, RWSL submitted that, even if there had been a broken promise, no party has claimed that RWSL has broken a promise. In the event that members of the MonTerra Interveners may feel that they have a legally enforceable claim against a promisor, they have the option to seek enforcement of the promise. However, RWSL submitted that whether a promise may or may not have been made and broken is irrelevant to the Board's determination of just and reasonable rates.

In RWSL's view, the fact that water meters were not installed at any homes within the MCL development until the spring of 2007 should not be regarded as evidence that MCL residents were to receive water for free. RWSL explained that its water treatment plant was not operational until June 2007 and that, before that time, potable water was provided to MCL residents by truck. While there had been no need to install meters while the truck deliveries were taking place, RWSL submitted that meter installation commenced beginning in the spring of 2007 in anticipation of the startup of the treatment plant and the provision of service by RWSL.

RWSL dismissed as invalid the concerns of the MonTerra Interveners regarding the use of treated water for irrigation of common areas by a contractor for the Developer. RWSL submitted that it would not be safe to use untreated water for irrigation purposes in common areas. RWSL also noted that the Developer has provided assurance that a contractor's reported use of RWSL water from a fire hydrant located on the MCL development would not be repeated.

As discussed in Section 2 of this Decision, the Board considers that most, if not all, of the issues raised by the MonTerra Interveners in the final section of its Argument are either not relevant for the establishment of just and reasonable rates for RWSL or are matters for which the rate design implications should more properly be considered in the context of the Final Application.

The Board agrees with RWSL that promises that may have been made to MCL residents by the Developer are of limited or no relevance to the determination of RWSL's water service rates. In

particular, the Board agrees that any alleged breach of promise by the Developer could be not be appropriately remedied by the Board in the context of its assessment of RWSL's interim rates. Promises made to residents by the Developer may be of some relevance to the determination of the appropriate level of contributions to RWSL costs; however, this matter should be evaluated in the context of RWSL's Final Application.

The Board agrees with RWSL that the fact that meter installation at MCL residences did not begin until the spring of 2007 may not reasonably be interpreted as a sign that the provision of water service to MCL residents would be free of charge. The Board does not understand the MonTerra Interveners to be suggesting that their water utility service would be free. The MonTerra Interveners remark on the history of meter installation only as evidence of an intention that water utility service would not be metered, but would be charged at a flat rate as part of the Condominium Association fee. In any event, an assessment of the extent to which water service rates may have been represented as being included in Condominium Association fee estimates is a matter for consideration in the Final Application in assessing what contributions may have been made to RWSL.[34]

Finally, the Board is hopeful that concerns expressed by the MonTerra Inteveners respecting the use of RWSL supplied water by a contractor of the Developer have been resolved. The Board notes that as the interim rate was not derived by allocating an approved interim revenue requirement over the forecast amount of aggregate RWSL water consumption, RWSL customers have not been harmed to date by the alleged use of water by the Developer. However, in the event that the alleged water use by the Developer or one of its contractors occurred subsequent to July 1, 2007, the Board expects RWSL to ensure that an appropriate estimate of this water use is undertaken before performing any final reconciliation of the interim rates to the final water service rates ultimately approved by the Board for the 2007 and 2008 Test Periods.

[34] The Board doubts that it has the authority to prescribe a Condominium Association fee or to order that any water utility service charges be included in such a fee.

4 ORDER

For and subject to the reasons set out in this Decision, IT IS HEREBY ORDERED THAT:

1) Effective December 1, 2007, on an interim refundable basis, RWSL's rate for water utility service shall be as follows:

   $46.00 per month
   - plus: $1.50m^3 for metered consumption up to 20m^3/month
   - plus: $4.10m^3 for metered consumption above 20m^3/month

   up to a maximum of $117.00/month, which maximum shall, in any event be charged to customers without meters.

2) RWSL shall account for the revenues collected according to the interim rate approved in this Order in a deferral account for future reconciliation with RWSL's final approved revenue requirements for the 2007 and 2008 Test Periods.

Dated in Calgary, Alberta on December 11, 2007.

ALBERTA ENERGY AND UTILITIES BOARD

(original signed by)

T. McGee
Presiding Member

(original signed by)

C. Dahl Rees, LL.B.
Member

(original signed by)

M. W. Edwards
Acting Member

APPENDIX 1 – SUMMARY OF BOARD DIRECTIONS

This section is provided for the convenience of readers. In the event of any difference between the Directions in this section and those in the main body of the Decision, the wording in the main body of the Decision shall prevail.

1. The Board agrees with RWSL that the 2007 test period should be from July 1, 2007 to December 31, 2007 (2007 Test Period) and that the 2008 test period should be from January 1, 2008 to December 31, 2008 (2008 Test Period). However, the Board considers that the interim rate approved in this Decision should only apply prospectively, as far as possible. Accordingly, the Board directs that charges to RWSL customers under the interim rate approved in Section 3.2.2 of this Decision shall commence on December 1, 2007. Subject to any future Board orders, the revenues collected under the approved interim rate commencing on December 1, 2007, shall be reconciled to the final rate revenues approved for the 2007 and 2008 Test Periods in the Board's Decision in respect of RWSL's Final Application. 11