



County of Thorhild

Appeal of Water Rates at Long Lake

August 3, 2016

Alberta Utilities Commission

Decision 21497-D01-2016

County of Thorhild

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Proceeding 21497

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1 Introduction

1. For the reasons that follow, the Alberta Utilities Commission, pursuant to Section 43 of the *Municipal Government Act*, finds that the County of Thorhild (Thorhild) improperly imposed the service charge at issue in this complaint and will disallow the charge.

2. On March 15, 2016, the Commission received a letter of complaint and background documents from Mr. W. Robinson of Long Lake, Alberta, respecting a \$20 per month service charge levied from May 2015 to December 2015 (2015 utility charge) by Thorhild. Mr. Robinson submitted that the 2015 utility charge was improperly imposed and discriminatory.

3. The Commission requested additional information from Thorhild by letter on April 8, 2016, May 12, 2016, and June 16, 2016, respectively. Thorhild provided its response on May 2, 2016, May 26, 2016, and June 28, 2016, respectively. Parties were asked to provide submissions on the need for process by July 6, 2016. No comments were received.

4. For purposes of this decision, the Commission considers the record of the application to have closed on July 6, 2016.

5. In reaching the determinations contained in this decision, the Commission has considered the record of this proceeding, including the evidence provided by each party. Accordingly, references in this decision to specific parts of the record are intended to assist the reader in understanding the Commission's reasoning relating to a particular matter and should not be taken as an indication that the Commission did not consider other relevant portions of the record with respect to that matter.

2 Service charge

6. In Long Lake, there are 95 lots with a direct service connection to community block wells, and 104 lots that are not directly connected to the community wells.¹ Mr. Robinson's lot was not directly connected to the community wells.

7. Thorhild had historically charged the 95 direct service connection lots with a \$20 per month service connection charge. Commencing in May 2015, all lot owners without a direct connection were also charged a \$20 per month service connection charge.² In January 2016,

¹ Exhibit 21497-X0002, Wayne Robinson complaint letter, County of Thorhild February 19, 2016 letter, PDF page 5.

² Exhibit 21497-X0002, Wayne Robinson complaint letter, County of Thorhild February 19, 2016 letter, PDF page 5.

Thorhild informed property owners by letter that the \$20 monthly service charge was cancelled for all Long Lake properties.³

8. Mr. Robinson did not pay the 2015 utility charge and consequently has an outstanding account receivable from Thorhild in the amount of \$277.52, as of June 20, 2016.⁴ This amount is composed of a monthly service charge of \$160, a penalty of \$37.52, and arrears of \$80.⁵

9. Mr. Robinson submitted an appeal to the Commission on the basis that the 2015 utility charge was improperly imposed or discriminatory. Regarding improper imposition, Mr. Robinson claimed that Thorhild acted arbitrarily, unilaterally, and not in good faith. Regarding a discriminatory nature, Mr. Robinson argued that Thorhild charged every property the same amount “regardless of use, availability or entitlement” to the community wells.⁶

10. Thorhild explained that it enacted and adopted a schedule of water rates in Bylaw 1142-2011, which passed its third reading on January 25, 2011.⁷ Thorhild submitted that the 2015 utility charge was passed by amending Schedule A of Bylaw 1142-2011 by resolutions 811-2014, 221-2015 and 260-2015:

The 2015 utility charge was indeed passed by amending Schedule “A” of bylaw 1142-2011 as indicated by resolution 811-2014 during the November 24, 2014 council meeting which states:

“Moved by Councillor Larry Sisson that Council approves the \$2.00/customer per month water/sewer rate rider for all hamlets except for Long Lake Hamlet which would be charged a fee of \$20.000 to all residents by approving the attached amended Schedule “A” of Bylaw 1142-2012.” The motion carried.

Resolution 221-2015 carried during the April 8, 2015 adds clarification of the corrected bylaw number 1142-2011. This resolution states:

“Moved by Reeve Wayne Crosswell that Council approve the amendments to the water rates Schedule “A” of Bylaw 1142-2011 as presented, effective May 1st, 2015” The motion carried.

Resolution 260-2015 adds further clarification to the matter. It states:

“Moved by Councillor Larry Sisson that Council authorizes Administration to proceed with charging all 195 properties (vacant or other) in the Hamlet of Long Lake a \$20 per month service charge for the maintenance of the Long Lake block wells commencing May 1st, 2015.” The motion carried.⁸

³ Exhibit 21497-X0002, Wayne Robinson complaint letter, County of Thorhild February 19, 2016 letter, PDF page 6.

⁴ Exhibit 21497-X0014, letter of response for additional information dated June 16, 2016, PDF page 1.

⁵ Exhibit 21497-X0014, letter of response for additional information dated June 16, 2016, PDF page 1.

⁶ Exhibit 21497-X0002, Wayne Robinson complaint letter, County of Thorhild February 19, 2016 letter, PDF page 2.

⁷ Exhibit 21497-X0014, letter of response for additional information dated June 16, 2016, PDF pages 4-9.

⁸ Exhibit 21497-X0009, Thorhild County response to AUC request for additional information, PDF pages 1-2.

11. The 2015 utility charge appeared in Schedule A of Bylaw 1142-2011 as follows:⁹

Long Lake Water	Billing Item	Charge	Application
	Service Charge	\$20.00	per billing month per utility account

Amended as per Resolution 221-2015 on April 8, 2015.
Effective date for rates summary May 1, 2015.

12. Thorhild submitted that it considered the community wells to be a public utility under the *Municipal Government Act*.¹⁰ Thorhild stated that it relied on Section 7(g) of the *Municipal Government Act* to impose the 2015 utility charge.¹¹

13. In January 2016, Thorhild informed property owners by letter that the “\$20 monthly service charge has been cancelled for all Long Lake properties.”¹² Thorhild explained that the 2015 utility charge was removed when Bylaw 1213-2016,¹³ which passed its third reading on January 26, 2016, rescinded Bylaw 1142-2011.¹⁴ (The Commission observes that the wording of Bylaw 1213-2016 does not refer to Bylaw 1142-2011 but states “Bylaw 1193-2011, as amended, being the previous Water and Wastewater Bylaw of Thorhild County, is hereby repealed”).¹⁵

14. Also in January 2016, Thorhild enacted Bylaw 1214-2016 Special Levy for the Maintenance of the Long Lake Community Block Wells, which passed its third reading on January 26, 2016,¹⁶ and which imposed a special tax for property owners with and without a direct connection to the community wells.

3 Commission findings

15. The Commission’s authority in respect of this matter is set out in Section 43 of the *Municipal Government Act*:

Appeal

43(1) A person who uses, receives or pays for a municipal utility service may appeal a service charge, rate or toll made in respect of it to the Alberta Utilities Commission, but may not challenge the public utility rate structure itself.

⁹ Exhibit 21497-X0014, letter of response for additional information dated June 16, 2016, PDF page 9.

¹⁰ Exhibit 21497-X0009, Thorhild County response to AUC request for additional information, PDF page 1.

¹¹ Exhibit 21497-X0009, Thorhild County response to AUC request for additional information, PDF page 2.

¹² Exhibit 21497-X0002, Wayne Robinson complaint letter, County of Thorhild February 19, 2016 letter, PDF page 6.

¹³ Exhibit 21497-X0014, letter of response for additional information dated June 16, 2016, PDF pages 16-23.

¹⁴ Exhibit 21497-X0014, letter of response for additional information dated June 16, 2016, PDF page 2.

¹⁵ Exhibit 21497-X0014, letter of response for additional information dated June 16, 2016, PDF page 17.

¹⁶ Exhibit 21497-X0014, letter of response for additional information dated June 16, 2016, PDF page 13 and Exhibit 21497-X0002, Wayne Robinson complaint letter, County of Thorhild February 19, 2016 letter, PDF page 6.

(2) If the Alberta Utilities Commission is satisfied that the person's service charge, rate or toll

- (a) does not conform to the public utility rate structure established by the municipality,
- (b) has been improperly imposed, or
- (c) is discriminatory,

the Commission may order the charge, rate or toll to be wholly or partly varied, adjusted or disallowed.

16. Mr. Robinson alleged that the 2015 utility charge was both improperly imposed and discriminatory, while Thorhild contested these allegations. The Commission will first consider the improperly imposed allegation.

3.1 Improper imposition

3.1.1 Law

17. The Commission considers that the powers and functions of Thorhild, a municipality, is set out under Section 5 of the *Municipal Government Act*:

Powers, duties and functions

5 A municipality

- (a) has the powers given to it by this and other enactments,
- (b) has the duties that are imposed on it by this and other enactments and those that the municipality imposes on itself as a matter of policy, and
- (c) has the functions that are described in this and other enactments.

18. The *Municipal Government Act* defines "enactment" as an act or regulation but excludes a bylaw.

19. Section 7 of the *Municipal Government Act* sets out that a council or a municipality may pass bylaws respecting the matters itemized in the section. Under Section 7(g), a council may pass a bylaw respecting public utilities:

General jurisdiction to pass bylaws

7 A council may pass bylaws for municipal purposes respecting the following matters:

...

- (g) public utilities;

20. Public utilities is also defined in the *Municipal Government Act*:

Interpretation

1(1)(y) “public utility” means a system or works used to provide one or more of the following for public consumption, benefit, convenience or use:

- (i) water or steam; ...

21. The Commission considers that Section 180 of the *Municipal Government Act* is pertinent. Section 180 states:

Methods in which council may act

180(1) A council may act only by resolution or bylaw.

(2) Where a council or municipality is required or authorized under this or any other enactment or bylaw to do something by bylaw, it may only be done by bylaw.

(3) Where a council is required or authorized under this or any other enactment or bylaw to do something by resolution or to do something without specifying that it be done by bylaw or resolution, it may be done by bylaw or resolution.

22. Section 191 of the *Municipal Government Act* concerns the power to amend bylaws:

Amendment and repeal

191(1) The power to pass a bylaw under this or any other enactment includes a power to amend or repeal the bylaw.

(2) The amendment or repeal must be made in the same way as the original bylaw and is subject to the same consents or conditions or advertising requirements that apply to the passing of the original bylaw, unless this or any other enactment provides otherwise.

3.1.2 Analysis

23. According to the *Municipal Government Act*, Thorhild may pass bylaws for municipal purposes respecting public utilities. This may only be done by bylaw. An amendment to a bylaw must be made in the same way as the original bylaw, unless the *Municipal Government Act* or any other enactment provides otherwise. In paragraph 18, an enactment does not include a bylaw.

24. Thorhild attempted to amend rates in Schedule A of Bylaw 1142-2011 by resolution to include the 2015 utility charge. While Thorhild submitted that it relied on Section 7(g) of the *Municipal Government Act* to impose the 2015 utility charge, the Commission observes that Section 8 of Bylaw 1142-2011 purported to enable the council to amend the bylaw by resolution:

8. The Council may, by Resolution, revise rates, charges or fees from time to time if Council deems it necessary.¹⁷

¹⁷ Exhibit 21497-X0014, letter of response for additional information dated June 16, 2016, PDF page 5.

25. The Commission finds that Thorhild's actions were inconsistent with the legislative framework. As stated above, accepting Thorhild's position that the community wells are a public utility, the legislation requires the municipality to use bylaws. Further, the legislation addresses circumstances in which a bylaw may be amended. If the option of amendment by resolution is not either specifically provided or provided as an alternative, the municipality must amend by bylaw. In that circumstance, the provision in Section 191(2) that "The amendment ... must be made in the same way as the original bylaw and is subject to the same consents or conditions or advertising requirements that apply to the passing of the original bylaw ..." applies. If a municipality were permitted to simply include a provision within a bylaw giving it the authority to amend the bylaw by resolution where the legislation has precluded this action, the municipality would be indirectly doing what the legislation has stated that it cannot do. On this basis, the Commission finds that Thorhild improperly imposed the 2015 utility charge.

26. If the Commission finds that a person's service charge, rate or toll is improperly imposed, it may order the charge, rate or toll to be wholly or partly varied, adjusted or disallowed. In this case, the Commission will disallow the 2015 utility charge. As such, the Commission finds that Mr. Robinson does not owe Thorhild, and Thorhild may not pursue collection of, the 2015 utility charge levied from May 2015 to December 2015, and any associated penalties or arrears.

3.2 Discrimination

27. Because the Commission has found that Mr. Robinson's 2015 utility charge was improperly imposed, the Commission has made no finding regarding whether the 2015 utility charge was discriminatory.

4 Order

28. It is hereby ordered that:

- (1) The County of Thorhild shall not collect from Mr. Robinson the \$20 per month service charge imposed between May 2015 to December 2015, or any associated penalties or arrears, and the County of Thorhild shall not pursue recovery of the service charge and any associated penalties or arrears.

Dated on August 3, 2016.

Alberta Utilities Commission

(original signed by)

Neil Jamieson
Commission Member

Appendix 1 – Proceeding participants

Name of organization (abbreviation) Company name of counsel or representative
Mr. W. Robison
County of Thorhild (Thorhild)

Alberta Utilities Commission
Commission panel N. Jamieson, Commission Member
Commission staff C. Wall (Commission counsel) J. Graham (Commission counsel) C. Burt