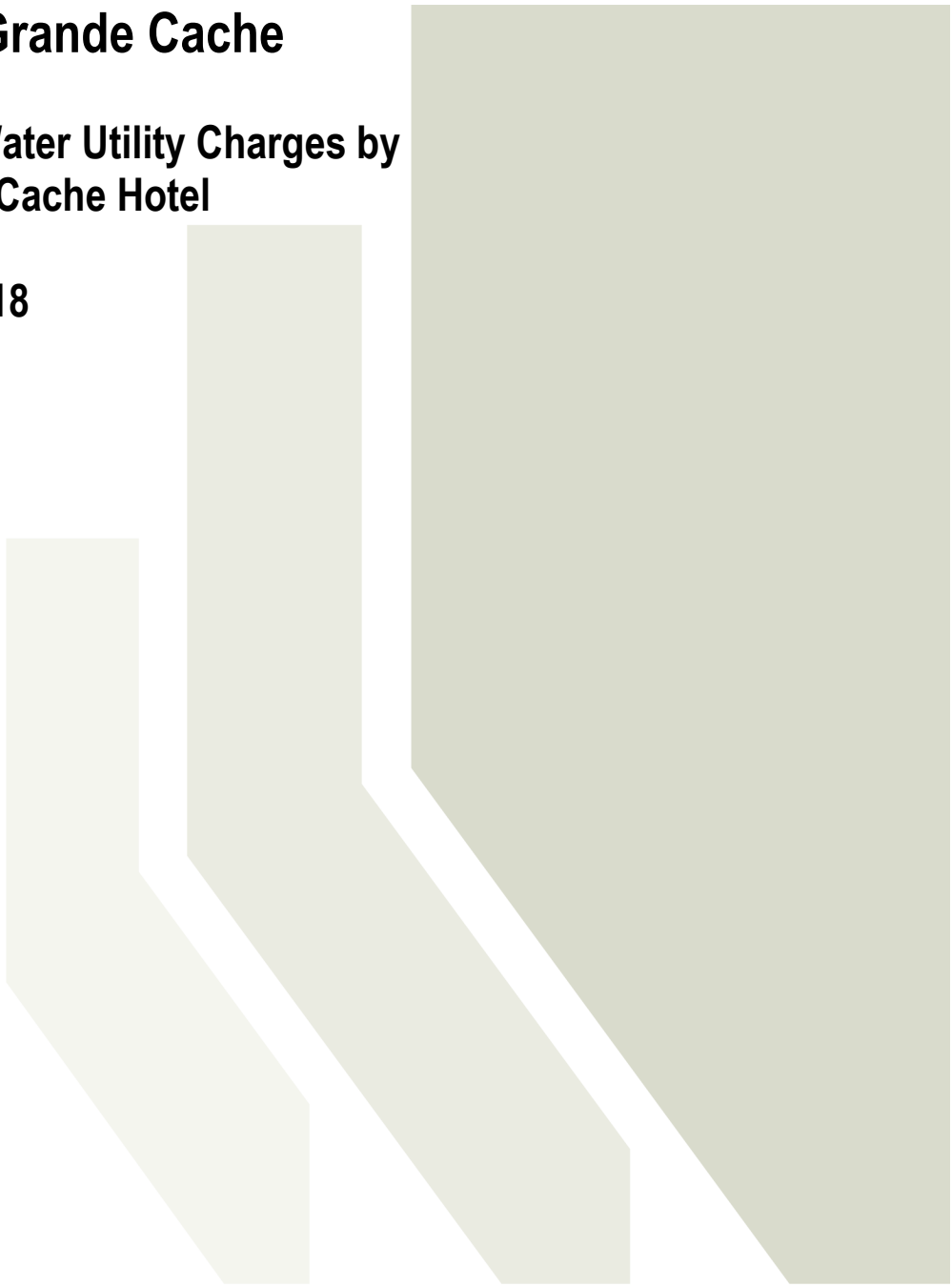




Town of Grande Cache

Appeal of Water Utility Charges by the Grande Cache Hotel

June 14, 2018



Alberta Utilities Commission

Decision 22465-D01-2018

Town of Grande Cache

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Proceeding 22465

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1 Decision summary

1. In this decision, the Alberta Utilities Commission must decide whether it has jurisdiction to deal with meter-related complaints under Section 43 of the *Municipal Government Act*. For the reasons that follow, the Commission finds that it does not have jurisdiction to consider appeals where the substance of the appeal relates to the accuracy of the measurement of a customer's water consumption. Accordingly, the Commission will not consider the merits of the appeal. The appeal is hereby dismissed.

2 Introduction

2. On February 23, 2017, the Commission received documentation from the Grande Cache Hotel (Hotel) regarding a water billing dispute it was having with the Town of Grande Cache (Grande Cache). The Hotel submitted that since April 2016, it had been receiving incorrect water utility bills due to inaccurate metering of its water consumption and that it had been unable to resolve the matter with Grande Cache. On February 28, 2017, the Hotel sent an email to the Commission requesting help¹ in dealing with this matter. Under Section 43 of the *Municipal Government Act*, 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 Commission. The Commission established Proceeding 22465 to consider the Hotel's appeal.

3. By letter dated March 13, 2017, the Commission invited Grande Cache to provide its view on the billing dispute with the Hotel, including any details it considered relevant. In addition, the Commission requested certain information that could assist in determining if it should proceed with the appeal. It requested a copy of the bylaws that set out the rates and terms and conditions of service for the period starting from October 2015 to the then current date. The Commission also invited Grande Cache to describe the steps taken to deal with this matter such as the historic consumption of the Hotel, how Grande Cache reads meters, and the meter-reading process, and asked for information on how Grande Cache tests the accuracy of meters and any meter testing reports received with respect to the Hotel.

4. The Commission received information from Grande Cache on April 1, 2017, June 19, 2017, and September 12, 2017. The Commission received additional information from the Hotel between March 2017 and September 2017.

5. By letter dated September 12, 2017, the Commission requested submissions from parties on the jurisdiction of the Commission under Section 43 of the *Municipal Government Act* to

¹ Exhibit 22465-X0003, Grande Cache Hotel email to AUC 2017-03-01.

make an order to vary, adjust or disallow the amount billed by Grande Cache for water used by the Hotel based on the water meter readings.

6. The Commission received submissions on the scope of the Commission's jurisdiction from the Hotel on September 20, 2017, and from Reynolds Mirth Richards & Farmer LLP on behalf of Grande Cache, on September 26, 2017.

7. In reaching the determinations in this decision, the Commission has considered the record of this proceeding, including the evidence filed 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.

3 History of the billing dispute

8. On October 29, 2015, Grande Cache replaced the existing four-inch water meter at the Hotel with a new two-inch meter (first new meter), as part of Grande Cache's changeover from imperial to metric meters. At that time, Grande Cache was billing customers on a quarterly basis. Commencing January 2017, Grande Cache began billing customers on a monthly basis.

9. The Commission has summarized the relevant consumption history of the Hotel, and has also converted gallons to cubic metres (m³) in the table below:

Table 1. Grande Cache Hotel water consumption history

Period ending	Meter reading			Usage		Days	m ³ /day
	Date	Gallons	m ³	Gallons	m ³		
September 30, 2014	24-Sep-14	28,878,200					
December 31, 2014	23-Dec-14	28,948,000		69,800	317.3	90	3.53
March 31, 2015	18-Mar-15	28,997,600		49,600	225.5	85	2.65
June 30, 2015	7-Jul-15	29,054,400		56,800	258.2	111	2.33
September 30, 2015	22-Sep-15	29,114,600		60,200	273.7	77	3.55
October 29, 2015	29-Oct-15	29,141,700		27,100	123.2	37	3.33
	29-Oct-15		0.000	(New meter installed)			
December 31, 2015	12-Jan-16		249.000		249.0	75	3.32
March 31, 2016	31-Mar-16		561.900		312.9	79	3.96
June 30, 2016	24-Jun-16		8219.000		7,657.1	85	90.08
September 30, 2016	26-Sep-16		11612.000		3,393.0	94	36.10
November 22, 2016	22-Nov-16		13029.000		1,417.0	57	24.86
	22-Nov-16		0.000	(New meter installed)			
December 31, 2016	29-Dec-16		765.000		765.0	37	20.68
January 31, 2017	1-Feb-17		1558.000		793.0	34	23.32
February 28, 2017	28-Feb-17		2090.000		532.0	27	19.70
March 31, 2017	31-Mar-17		2687.000		1129.0	58	19.47
April 30, 2017	27-Apr-17		3256.000		1166.0	58	20.10
May 31, 2017	1-Jun-17		4001.000		1314.0	62	21.19

10. The Hotel indicated that following the installation of the first new meter on October 29, 2015, the Hotel's water consumption for the quarters ending December 31, 2015,

and March 31, 2016, appeared “normal compared to previous consumption.”² However, for the quarters ending June 30, 2016, and September 30, 2016, water consumption was “not even near normal consumption.”³

11. Following receipt of the September 30, 2016 billing statement, the Hotel requested that Grande Cache Council change the first new meter as “something is clearly wrong,” despite assurances from Grande Cache that the meter was working correctly.⁴

12. The Hotel commissioned Fehr’s Plumbing and Heating to check all fixtures that used water and to inspect or repair items where any unusual water usage was found. This work was completed between September 28 and October 13, 2016. Fehr’s Plumbing and Heating prepared a report dated March 16, 2017, indicating it examined every fixture and found some minor issues that were corrected. Mr. Fehr advised that “in my findings and best knowledge as a certified Red Seal Plumber that, in no way to the best of my knowledge was or is [there] any unusual water usage.”⁵

13. The billing issue was discussed at the November 9, 2016 council meeting, in which Mr. Jean Bourdua, owner of the Hotel, provided information to council. At the meeting, council directed Grande Cache administration to remove and replace the current water meter at the Hotel and send the first new meter to be tested for accuracy, in accordance with policy, and not assess any penalties to the Hotel until the accuracy of the water meter was resolved.⁶

14. On November 22, 2016, the first new meter was removed and sent to Accu-Flow Meter Service Ltd. (Accu-Flow) for testing, and another meter was installed (second new meter). On November 29, 2016, Accu-Flow provided its Water Meter Calibration Report to Grande Cache administration, commenting that the first new meter passed all American Water Works Association standard tests, was within a normal operating range, and that no calibration of the meter was needed.⁷

15. Accu-Flow also stated that:

It appears there may have been an issue with the first two bills (December 2015 and March 2016) from the new meter. The most plausible explanation is that it appears the decimal may have been inserted incorrectly by the Muniware billing software in the volume consumed. The customer would have been under billed by a factor of 10. However, it seems that it was corrected for the June 2016 bill. Water consumption since that time has been billed correctly.⁸

16. At a meeting held on December 7, 2016, council directed the Grande Cache administration to investigate the utility billing software to determine whether it was operating properly.⁹ On December 8, 2016, Grande Cache received information from Muniware, the

² Exhibit 22465-X0001, Water Bill Discrepancies and Meter Change Request, November 9, 2016, PDF page 1.

³ Exhibit 22465-X0001, Water Bill Discrepancies and Meter Change Request, November 9, 2016, PDF page 1.

⁴ Exhibit 22465-X0001, Water Bill Discrepancies and Meter Change Request, November 9, 2016, PDF page 2.

⁵ Exhibit 22465-X0013, Fehr’s plumbing inspection report.

⁶ Exhibit 22465-X0016, Information from Grande Cache, Attachment 7(c), PDF pages 40-41.

⁷ Exhibit 22465-X0016, Information from Grande Cache, Attachment 10(a), PDF page 50.

⁸ Exhibit 22465-X0016, Information from Grande Cache, Attachment 12, PDF page 81.

⁹ Exhibit 22465-X0016, Information from Grande Cache, Attachment 10(b), PDF page 51.

software company that provided financial and billing applications to Grande Cache, stating that the billing software was working correctly.¹⁰

17. At the January 11, 2017 council meeting, council directed the Grande Cache administration to absorb the cost of testing for the first new meter and write off the Hotel's penalties for late payment of the utility bill, and directed the Hotel to pay the outstanding water bill.¹¹ At a subsequent council meeting on February 22, 2017, council defeated a resolution to reduce the Hotel's water bill by \$7,559.38.¹²

4 Jurisdiction of the Commission to hear the appeal

18. The scope of the Commission's jurisdiction to deal with meter-related complaints under Section 43 of the *Municipal Government Act* is at issue in this proceeding. Parties were specifically asked to make submissions on whether Section 43 applies to billing disputes with municipal water utilities arising from metering issues and whether the Commission has the authority to vary, adjust or disallow the amount billed under Section 43. In addition to the evidence submitted on the metering dispute, both parties also made submissions on the Commission's jurisdiction under Section 43 of the *Municipal Government Act*, which states:

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.

(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.

19. The Hotel stated that the Commission has the right to adjust previous water charges, particularly in light of the fact that there may have been a measurement error due to a decimal point being out of place. The Hotel further submitted that there is no way to be sure that the previous meter was working correctly, as assured by Grande Cache, because the readings between the first new meter and the second new meter were different.¹³

¹⁰ Exhibit 22465-X0016, Information from Grande Cache, Attachment 12, PDF pages 78-79.

¹¹ Exhibit 22465-X0016, Information from Grande Cache, Attachment 12, PDF page 86.

¹² Exhibit 22465-X0016, Information from Grande Cache, Attachment 17(b), PDF page 120.

¹³ Exhibit 22465-X0027.

20. Grande Cache retained Reynolds Mirth Richards & Farmer LLP to provide a response to the jurisdictional question.¹⁴ It opined as follows:

The wording of s. 43 of the MGA [*Municipal Government Act*] does not explicitly address disputes regarding the metering of water usage. A reasonable interpretation of s. 43 is that where the resolution of metering disputes does not form part of the public utility rate structure, s. 43 is broad enough to apply to complaints related to water metering and the billing of water, such that the AUC has the authority to vary, adjust or disallow amounts billed by a municipality for water.¹⁵

5 Commission findings

21. This appeal has been brought on the grounds that the Hotel's water consumption has not been measured correctly because of hardware or software issues with the water meters that were installed by Grande Cache at the Hotel. The Hotel does not challenge the rate amount that Grande Cache is charging, only the consumption. This appeal is focused on a billing dispute between Grande Cache and the Hotel relating to utility bills that the Hotel submits were improperly imposed as a result of deficient meter readings.

22. The Commission considers the issue of whether it has jurisdiction under Section 43 of the *Municipal Government Act* to consider billing disputes with municipal water utilities arising from metering issues, giving the Commission authority to vary, adjust or disallow the amount billed, to be a threshold question requiring determination prior to any consideration of the merits of the Hotel's appeal.

5.1 Commission's jurisdiction

23. The Hotel has not alleged that Grande Cache applied water charges contrary to the public utility rate structure in contravention of Section 43(1)(a) of the *Municipal Government Act* nor that the charges were discriminatory, in contravention of Section 43(1)(c). The Commission therefore considers that its jurisdiction to determine this matter turns on the interpretation of Section 43(1)(b). Specifically, it must determine whether the amounts billed to the Hotel are a "service charge, rate or toll" that "has been improperly imposed" by Grande Cache so that it may order that the amounts be "wholly or partly varied, adjusted or disallowed." In determining its jurisdiction, the Commission must also consider any other related provisions of the *Municipal Government Act*, the context of the statute in its entirety, and any authority granted to it under its governing legislation.

24. In addition to the specific powers granted to the Commission with respect to municipal utilities under Section 43 of the *Municipal Government Act*, certain general powers are granted to it in Section 8 of the *Alberta Utilities Commission Act*. It states:

Powers of the Commission

8(1) The Commission has all the powers, rights, protections and privileges that are given to it or provided for under this Act and under any other enactment and by law.

(2) The Commission, in the exercise of its powers and the performance of its duties and functions under this Act or any other enactment, may act on its own initiative or motion

¹⁴ Exhibit 22465-X0028.

¹⁵ Exhibit 22465-X0028, page 2.

and do all things that are necessary for or incidental to the exercise of its powers and the performance of its duties and functions.

25. Additional, specific authority with respect to municipal utilities is given to the Commission in the *Public Utilities Act*. However, this authority is contingent upon a municipality first passing a bylaw bringing the utility under the Commission's jurisdiction. No such bylaw has been passed by Grande Cache.

26. Section 43 of the *Municipal Government Act* is the only section of this statute applicable to a determination of the Commission's jurisdiction in respect of the present appeal. It follows therefore that Section 43 of the *Municipal Government Act* determines the jurisdiction of the Commission with regard to complaints or appeals from service charges by persons receiving municipal utility service when viewed in the context of the *Municipal Government Act* as a whole, and in light of the powers granted to the Commission in Section 8 of the *Alberta Utilities Commission Act*.

27. In deciding the jurisdictional issue and interpreting the *Municipal Government Act*, the Commission has also considered Section 10 of the *Interpretation Act*, which states:

10 An enactment shall be construed as being remedial, and shall be given the fair, large and liberal construction and interpretation that best ensures the attainment of its objects.

28. Driedger's modern principle of statutory interpretation, as enunciated by the Supreme Court of Canada, is consistent with Alberta's *Interpretation Act*:

Today there is only one principle or approach; namely, the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament.¹⁶

29. In applying these principles of statutory interpretation, the Commission has therefore read the provisions of Section 43 in their entire context harmoniously with the scheme of the *Municipal Government Act*, giving it a liberal construction and interpretation that best ensures the attainment of its objects.

30. The Commission is of the view that in enacting the *Municipal Government Act*, the legislature intended to confer to municipal councils broad authority and as much latitude as possible in dealing with local matters. Section 7 gives a municipal council broad general jurisdiction to pass bylaws, including bylaws with respect to municipal public utilities. Section 8 enhances the broad powers conferred by Section 7, which authorizes a municipality "without restricting Section 7" to exercise the broad powers described in Section 7 in certain, specific ways. The Commission's interpretation is further reinforced by the language in Section 9, which confirms that jurisdiction over municipal-related matters rests with the municipality in the broadest terms.

Guides to interpreting power to pass bylaws

9 The power to pass bylaws under this Division is stated in general terms to

¹⁶ *Rizzo & Rizzo Shoes Ltd.*, (1998) 1 S.C.R. 27, at paragraph 21.

- (a) give broad authority to councils and to respect their right to govern municipalities in whatever way the councils consider appropriate, within the jurisdiction given to them under this or any other enactment, and
- (b) enhance the ability of councils to respond to present and future issues in their municipalities. [emphasis added]

31. The Supreme Court of Canada held the following with regard to Alberta's *Municipal Government Act*, in general, and Section 9, in particular:

Alberta's *Municipal Government Act* follows the modern method of drafting municipal legislation. The legislature's intention to enhance the powers of its municipalities by drafting the bylaw passing provisions of the Act in broad and general terms is expressly stated in s. 9. Accordingly, to determine whether a municipality is authorized to exercise a certain power, such as limiting the issuance of taxi plate licences, the provisions of the Act must be construed in a broad and purposive manner.¹⁷

32. The Supreme Court of Canada has also indicated that provincial legislatures cannot possibly foresee all the powers that are necessary to the statutory equipment of its municipalities.¹⁸

33. The Alberta Court of Appeal reiterated this approach stating that "the old assumptions that municipal powers must be 'strictly construed' no longer apply in Alberta" and that the *Municipal Government Act* must be construed in a broad and purposive manner.¹⁹

34. The Commission notes the 1993 decision of the Public Utilities Board, Alberta (board),²⁰ predecessor to the Commission, which dealt with a customer complaint against the Waterworks System of the City of Edmonton. In that proceeding, the customer alleged that the billing of his account was based on volumes he did not receive resulting in improperly imposed charges. The complaint was filed under Section 291 of the previous *Municipal Government Act*, R.S.A. 1980, c. M-26 (previous MGA). The provisions of Section 291 of the previous MGA are very similar to the provisions of Section 43 of the current *Municipal Government Act*. In that decision, the City of Edmonton challenged the jurisdiction of the board to consider the complaint under Section 291, arguing that a customer may not appeal to the board a dispute relating to the volume of water consumed and that Section 291 only allows the board to examine a service charge in the context of the narrow criteria specified in that section.

35. The majority found that the board had jurisdiction to consider the complaint pursuant to Section 291(b) of the previous MGA. The dissenting member reached the opposite conclusion, finding that a service charge constitutes "the rate per unit volume of utility charged to the user in accordance with the authorized by-law" and that the approved service charge was properly applied to the customer's consumption. The Commission agrees with the dissenting member's conclusion that the board did not have jurisdiction and that the authority to review the complaint rested with the City of Edmonton. It also agrees with the dissenting member's interpretation of

¹⁷ *United Taxi Fellowship of Southern Alberta v Calgary (City)*, 2004 SCC 19, at paragraph 7.

¹⁸ *114957 Canada Ltée (Spraytech, Société d'arrosage) v. Hudson (Town)*, [2001] 2 SCR 241, at paragraphs 18-19.

¹⁹ *St. Paul (County) No 19 v Belland*, 2006 ABCA 55, at paragraph 16.

²⁰ Decision E93021: Complaint by Mr. Dean Inman alleging improperly imposed charges by the City of Edmonton with respect to the billing of his water account, File 920005 4200 951 2, March 9, 1993,

the relevant legislation which clearly distinguished between public utilities and municipally owned utilities, and narrowly prescribed the board's authority regarding municipally owned utilities.

36. The Commission considers that the purposeful language of the *Municipal Government Act* and the guidance of the courts require the Commission to narrowly interpret the authority assigned to it in Section 43 of the *Municipal Government Act* so as not to infringe upon the broad powers bestowed on municipalities to govern their affairs.

37. Given this overall direction, the Commission also considers that the general powers set out in Section 8 of the *Alberta Utilities Commission Act* should not be construed so as to provide the Commission with authority not otherwise apparent on a plain reading of the limited jurisdiction granted in Section 43 of the *Municipal Government Act*.

38. The parties submitted that the amounts under dispute amount to a "service charge, rate or toll" and that the Commission has the authority under Section 43(b) of the *Municipal Government Act* to wholly or partly vary, adjust or disallow the service charge, rate or toll if it "has been improperly imposed." The Commission disagrees.

39. The Commission considers that the issue raised in this appeal is not an improper imposition of a service charge, rate or toll, but can rather be properly characterized as a measurement issue. Grande Cache applied the correct service charge, rate or toll to a measured consumption amount. The accuracy of the measured amount, the type and functioning of the measurement equipment, the recording of measurement results, the billing mechanics and the dispute procedures are all matters that fall within the purview of the municipality. The municipality may enact bylaws pertaining to disputes over these matters.

40. Further, the municipality is best able to provide redress to affected customers where a measurement billing error has occurred. The Commission has no ability to verify the consumption of individual customers, inspect and test equipment, nor test billing systems. It can, however, use its authority under Section 43 of the *Municipal Government Act* to direct municipalities that charge a service charge, rate or toll on a unit of consumption that is inconsistent with a properly approved rate schedule to correct the billed amount.

41. Based on its interpretation of the relevant statutory provisions and case law discussed above, the Commission considers that the "improperly imposed" ground for appeal in Section 43(b)(2) is not broad enough to include billing disputes related to consumption or metering measurements. Consequently, the Commission finds that it does not have jurisdiction under Section 43 of the *Municipal Government Act* to consider appeals of service charges by municipal utilities where the substance of the appeal relates to the accuracy of the measurement of the customer's consumption.

42. In light of its finding on jurisdiction, the Commission will not consider the merits of the appeal. The appeal is accordingly dismissed.

Dated on June 14, 2018.

Alberta Utilities Commission

(original signed by)

Mark Kolesar
Vice-Chair

(original signed by)

Neil Jamieson
Commission Member

(original signed by)

Anne Michaud
Commission Member

Appendix 1 – Proceeding participants

<p>Name of organization (abbreviation) Company name of counsel or representative</p>
<p>Grande Cache Hotel (Hotel)</p>
<p>Town of Grande Cache (Grande Cache)</p>

<p>Alberta Utilities Commission</p> <p>Commission panel</p> <ul style="list-style-type: none"> M. Kolesar, Vice-Chair N. Jamieson, Commission Member A. Michaud, Commission Member <p>Commission staff</p> <ul style="list-style-type: none"> S. Albert (Commission counsel) K. Dumanovski (Commission counsel) C. Burt
