



EPCOR Water Services Inc.

Appeal of Water Utility Charges by Katelyn Garlough

June 14, 2018

Alberta Utilities Commission

Decision 22896-D01-2018

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Proceeding 22896

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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 August 23, 2017, the Commission received an appeal from Ms. Katelyn Garlough of a billing dispute with EPCOR Water Services Inc. (EPCOR) that pertained to an abnormally high water bill. Ms. Garlough submitted that her May 2017 water bill in the amount of \$2,015 was improperly imposed by EPCOR. 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 22896 to consider Ms. Garlough's appeal.

3. By letter dated September 12, 2017, the Commission requested submissions from EPCOR and Ms. Garlough on the jurisdiction of the Commission under Section 43 of the *Municipal Government Act* to make an order to vary, adjust or disallow the amount billed by EPCOR for water used by Ms. Garlough based on the disputed water meter readings.

4. The Commission received submissions on the scope of the Commission's jurisdiction from Ms. Garlough on September 25, 2017, and from EPCOR on September 26, 2017.

5. 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 Background

6. On April 30, 2017, EPCOR's contractor installed a hose hookup at Ms. Garlough's residence to provide temporary water service during construction on the main water line. The residence water meter was turned off for the duration of the construction activities.¹

7. On May 1, 2017, Ms. Garlough received a call from EPCOR stating that an abnormally high amount of water usage was recorded at her residence. Ms. Garlough's residence was flagged as a possible high consumption site by EPCOR's meter reading validation process.² Ms. Garlough explained to EPCOR that the possible reason for the high consumption could be the construction activity that EPCOR was undertaking at the time near her residence.³

8. The abnormal usage that EPCOR recorded was for over 400 cubic metres (m³) resulting in a water bill of \$2,015.⁴ A water meter reading taken at Ms. Garlough's residence on April 24, 2017, measured consumption of 370.5 m³ from March 22, 2017 to April 24, 2017, with the average monthly consumption from March 22, 2016 to March 22, 2017 being 5.075 m³.⁵ On May 10, 2017, Ms. Garlough received a bill from EPCOR showing 350 m³ of consumption between March 22, 2017 and April 24, 2017, and 70 m³ of consumption between April 24, 2017 and April 28, 2017.⁶

9. Ms. Garlough hired a plumber, who inspected her residence on May 2, 2017, and did not discover any leaks. Ms. Garlough stated that prior to April 2017 her average consumption was 5.10 m³ per month, and after the construction was completed, her consumption normalized to 4.55 m³ for June and July.⁷

10. On June 6, 2017, EPCOR removed Ms. Garlough's meter for testing, and reported back on July 25, 2017, stating that the meter was working correctly. EPCOR is of the view that Ms. Garlough is responsible for the consumption that was registered through the meter.

11. Ms. Garlough contacted her city councillor for assistance, but was referred back to EPCOR customer service. Because Ms. Garlough and EPCOR could not reach a resolution, she filed an appeal with the Commission.

4 Jurisdiction of the Commission to hear the appeal

12. 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. Both parties made submissions on the Commission's jurisdiction under Section 43 of the *Municipal Government Act*, which states:

¹ Exhibit 22896-X0001, page 2 and Exhibit 22896-X0007, paragraph 13.

² Exhibit 22896-X0007, paragraph 9.

³ Exhibit 22896-X0001, page 2.

⁴ Exhibit 22896-X0001, page 2.

⁵ Exhibit 22896-X0007, paragraph 8.

⁶ Exhibit 22896-X0001, page 3.

⁷ Exhibit 22896-X0001, pages 2-3.

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.

13. Ms. Garlough considered that the Commission has jurisdiction to determine the matter, stating "as a consumer of a municipal utility, I would have the right to a fair proceeding from an external unbiased body such as the Alberta Utilities Commission regarding an improperly imposed bill/charge."⁸

14. In its submission dated September 26, 2017, EPCOR stated the following:

... the Commission does not have authority under section 43 of the MGA [*Municipal Government Act*] to make an order to vary, adjust or disallow the amount billed by EWSI [EPCOR Water Services Inc.] for water based on the water meter readings at the Complainant's residence. The charges levied to the Complainant were applied in accordance with a duly enacted City of Edmonton Bylaw and were "properly imposed" and any Commission review of EWSI's metering program or Terms and Conditions of Service would represent a prohibited review of EWSI's rates.⁹

5 Commission findings

15. This appeal has been brought on the grounds that Ms. Garlough's water consumption has not been measured correctly. Ms. Garlough does not challenge the rate amount that EPCOR is charging, only the consumption. This appeal is focused on a billing dispute between Ms. Garlough and EPCOR with respect to a utility bill that Ms. Garlough submits was improperly imposed because the bill does not accurately reflect the water usage during the month in question.

16. 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 Ms. Garlough's appeal.

⁸ Exhibit 22896-X0006, Garlough response to jurisdictional question.

⁹ Exhibit 22896-X0007.

5.1 Commission's jurisdiction

17. Ms. Garlough has not alleged that EPCOR 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 Ms. Garlough are a “service charge, rate or toll” that “has been improperly imposed” by EPCOR 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.

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

19. 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 the City of Edmonton.

20. 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*.

21. 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.

22. 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.¹⁰

23. 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.

24. 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

- (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]

25. 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.¹¹

26. 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.¹²

¹⁰ *Rizzo & Rizzo Shoes Ltd.*, (1998) 1 S.C.R. 27, at paragraph 21.

¹¹ *United Taxi Fellowship of Southern Alberta v Calgary (City)*, 2004 SCC 19, at paragraph 7.

¹² *114957 Canada Ltée (Spraytech, Société d’arrosage) v. Hudson (Town)*, [2001] 2 SCR 241, at paragraphs 18-19.

27. 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.¹³

28. The Commission notes the 1993 decision of the Public Utilities Board, Alberta (board),¹⁴ 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.

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

30. 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.

31. 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*.

32. 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. EPCOR 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 City of

¹³ *St. Paul (County) No 19 v Belland*, 2006 ABCA 55, at paragraph 16.

¹⁴ 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.

Edmonton has enacted two bylaws (Bylaw 12294 and Bylaw 17698)¹⁵ pertaining to, among other things, disputes over these matters.

33. 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.

34. 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.

35. 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

¹⁵ Exhibit 22896-X0007, paragraph 5.

Appendix 1 – Proceeding participants

<p>Name of organization (abbreviation) Company name of counsel or representative</p>
<p>EPCOR Water Services Inc. (EPCOR)</p>
<p>Katelyn Garlough</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
