



Village of Alliance

**Appeal Pursuant to Section 43 of the
*Municipal Government Act***

August 29, 2018

Alberta Utilities Commission

Decision 23398-D01-2018

Village of Alliance

Appeal Pursuant to Section 43 of the *Municipal Government Act*
Proceeding 23398

August 29, 2018

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1 Decision summary

1. For the reasons that follow, the Alberta Utilities Commission, pursuant to Section 43 of the *Municipal Government Act*:
 - (a) finds that the Village of Alliance improperly imposed Mr. James Brozny's (the tenant) utility service charges, arrears, and associated penalties against Mr. Jeremy Huet (the property owner), and that these charges are disallowed;
 - (b) finds that the Village of Alliance has the authority to impose, by utility Bylaw 2015-01, a mandatory charge for utility services that Mr. Huet does not want in the circumstances; and
 - (c) does not find that the resident infrastructure fee charged to Mr. Huet by the Village of Alliance is discriminatory.

2 Introduction

2. On March 9, 2018, the Commission received an appeal from Mr. Huet, pursuant to Section 43(2) of the *Municipal Government Act*, requesting that the Commission disallow and reverse certain utility charges and associated penalties that the Village of Alliance has applied to his tax and utility accounts. He also sought an order to cancel any further utility services and charges.
3. On March 19, 2018, the Commission requested additional information from the Village of Alliance, with a filing deadline of April 9, 2018. The Village of Alliance filed its response on April 18, 2018.
4. On April 30, 2018, the Commission requested additional information from Mr. Huet and from the Village of Alliance, with a filing deadline of May 16, 2018. The Commission received the additional information from Mr. Huet on May 8, 2018, and from the Village of Alliance on June 6, 2018.
5. On June 22, 2018, the Commission requested additional information from the Village of Alliance, with a filing deadline of July 5, 2018. The Village of Alliance provided its response on July 10, 2018.
6. On July 4, 2018, Mr. Huet amended the appeal to allege that certain utility service charges at issue in the appeal were also discriminatory.
7. On August 7, 2018, the Commission indicated that the record of the proceeding was closed and that it would issue its decision in due course.

8. 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.

3 Views of Mr. Huet

9. Mr. Huet is a property owner in the Village of Alliance, but has resided in the Town of Okotoks for the past decade.¹ He explained that he cancelled his utility account for the property in May 2009.

10. In June 2015, Mr. Huet advised that he noticed a higher than normal tax bill for the property, and submitted an inquiry to the Village of Alliance regarding the amount. In October 2015, Mr. Huet indicated that the Village of Alliance told him that the tenant, an occupant of a mobile home on the property, had not paid his utility bills and that the outstanding amounts had been transferred to Mr. Huet's tax account.

11. Mr. Huet explained that, for the next several years, he continued to object to the Village of Alliance's practice of providing utility services to the tenant and then transferring the tenant's unpaid utility service charges to Mr. Huet's tax account:

The next several years resulted in much dispute over who was responsible for these bills and with me objecting to these charges and trying to limit any additional charges from being transferred to my tax account. Despite my objections and concerns the Village continued to provide services to the occupant of the mobile home and transfer unpaid bills to my tax account. I continually repeated my position, and decided to begin to rely primarily on written communication. My position is was [sic] outlined in many emails and discussions; in November of 2016, I wrote, "I would like to be clear - I am unwilling to accept further financial liability for non-Payment of Mr. Brozny's Village utilities. If the Village chooses to accept this risk - fine." In February of 2017, I again wrote, "I am confused why the utilities were not disconnected after my last email. I felt that I was very clear in my past email that I was unwilling to be responsible for any further utility charges. I have zero confidence in Mr. Brozny willingness to pay these utilities and do not wish to be levied any additional charges." My objections were ignored and the Village continued to transfer unpaid bills to the tax account without further notification.² [emphasis in original]

12. Mr. Huet argued that, according to Section 42(2) of the *Municipal Government Act*, if an occupant who is not the owner of a property requests utility services, then the occupant is responsible for paying the utility service charges, not the owner. To the extent that the Village of Alliance may rely on Section 6.a) of utility Bylaw 2015-01 as authority to transfer the tenant's unpaid utility service charges to Mr. Huet's tax account, Mr. Huet advised that, under Section 13 of the *Municipal Government Act*, to the extent there is a conflict or inconsistency between the *Municipal Government Act* and a bylaw, the bylaw is of no effect to the extent of the conflict or inconsistency. Mr. Huet submitted that Section 6.a) of utility Bylaw 2015-01 is in clear conflict

¹ Exhibit 23398-X0002, AUC Appeal application, PDF pages 1 and 4.

² Exhibit 23398-X0002, AUC Appeal application, PDF pages 1-2.

with Section 42(2) of the *Municipal Government Act*, and therefore this provision of the bylaw has no effect. As such, Mr. Huet argued, these charges were improperly imposed under Section 43(2)(b) of the *Municipal Government Act*.³

13. Mr. Huet advised that the Village of Alliance disconnected water service to the property in March 2017.⁴ Mr. Huet confirmed that the property was vacated by the tenant sometime prior to July 1, 2017, and has remained vacant since then.⁵

14. After the tenant vacated, Mr. Huet submitted that the Village of Alliance transferred the utility account to Mr. Huet's name. Mr. Huet explained that he received his first utility bill in February 2018, and that the Village of Alliance has subsequently continued to charge him for utility services that he does not want or use.⁶ Mr. Huet is currently being charged a "resident infrastructure fee" of \$70 per month, and a "garbage" fee of \$25 per month, for a total of \$95 per month.

15. Mr. Huet submitted that the Village of Alliance cannot charge him for mandatory utility services he does not want because he is not a resident and, accordingly, Section 2 of utility Bylaw 2015-01, which applies to "absentee residents," does not apply to him. Therefore, Mr. Huet argued, these charges were improperly imposed under Section 43(2)(b) of the *Municipal Government Act*.⁷

16. Further, Mr. Huet alleged that the Village of Alliance has applied the resident infrastructure fee at issue in this appeal in a discriminatory manner under Section 43(2)(c) of the *Municipal Government Act*.⁸ While Schedule A of utility Bylaw 2015-01 prescribes that the "resident infrastructure fee" is \$70 per month, Mr. Huet referred to the minutes of the Village of Alliance's February 15, 2018 council meeting as evidence of council approving a person's request to pay half the resident infrastructure fee on the basis of usage. The minutes state, in part:

Presentations

6:05PM - Infrastructure Charge- resident at Block 4, Lot 15, Plan 304BZ, spoke about infrastructure fees and made the argument that they only use half of the services so would like to bring it to council to pay for half of the fee.

...

002-016-18

Infrastructure Charge on Block4, Lot15 and Plan 304BZ

Councilor Wickstrom made a motion to have residents at Block 4, Lot 15, and Plan 304BZ to pay half the infrastructure fee \$70.00 making their payments \$35.00 per month.

2 -fore

1 -opposed MAJORITY VOTE⁹

17. Mr. Huet submitted that he attended the February 15, 2018 council meeting, and that the person referenced in the minutes argued they only used half of the utility services, as they

³ Exhibit 23398-X0002, AUC Appeal application, PDF pages 3-4.

⁴ Exhibit 23398-X0002, AUC Appeal application, PDF page 2.

⁵ Exhibit 23398-X0015, AUC Appeal - Response 1, PDF page 1.

⁶ Exhibit 23398-X0002, AUC Appeal application, PDF page 2.

⁷ Exhibit 23398-X0002, AUC Appeal application, PDF pages 3-4.

⁸ Exhibit 23398-X0020, July 4th AUC Letter - With Attachments, PDF pages 1-2.

⁹ Exhibit 23398-X0020, July 4th AUC Letter - With Attachments, PDF page 4.

received sewer services from the Village of Alliance but received their water from a well.¹⁰ Mr. Huet submitted that the decision by council demonstrates support for a distinction between users and non-users of the water system. Similarly, Mr. Huet argued, if there is no utility service usage at his property, he should pay less than 50 per cent of the resident infrastructure charge stipulated in Schedule A of utility Bylaw 2015-01. Mr. Huet advised that council told him that even if he asked for utility services to be disconnected from his property, he would be ineligible for a reduced rate.¹¹

18. Mr. Huet explained that he has attempted to resolve the matters in the appeal with the Village of Alliance by negotiation. However, after those negotiations failed, he filed the appeal.¹²

4 Views of Village of Alliance

19. With respect to the tenant's unpaid utility service charges, the Village of Alliance relied on Section 6.a) of utility Bylaw 2015-01 as authority to add those charges to Mr. Huet's tax roll. As stated in email correspondence to Mr. Huet:

In reference to your [Mr. Huet's] comment regarding the unlawful roll of utilities, I would like to remind you that the Village has a Utility Bylaw that was in place at the times in question giving us complete right to roll unpaid renter utilities to the property owner.¹³

20. Section 6.a) of utility Bylaw 2015-01 states, in part:

6. In the event an account becomes delinquent for a period of 60 days, then either

a) the amount outstanding may be transferred to the tax roll, and collected in like manner as taxes are recoverable, in accordance with Section 553(1) and amendments thereto. A letter shall be sent to the owner advising that the outstanding account is being transferred to the tax roll, ...

21. Regarding the utility service charges currently accruing to Mr. Huet's account, the Village of Alliance relied on sections 1 and 2 of utility Bylaw 2015-01 as authority to impose these charges on Mr. Huet. These sections state:

1. A charge shall be made against the owners of all land which is served by the said systems and services in the Village of Alliance, for the use of water supply and distribution system, sewage services and use of sewage system, and garbage disposal services according to rates hereinafter set from time to time by resolution of Council, and set out in Schedule A.

2. Absentee Residents - Residents who are absent from their residence for an extended period of time for any reason shall be charged the regular rates as set out in Schedule A. This applies even if the curbsstop has been turned off.¹⁴

¹⁰ Exhibit 23398-X0020, July 4th AUC Letter - With Attachments, PDF page 1.

¹¹ Exhibit 23398-X0020, July 4th AUC Letter - With Attachments, PDF pages 1-2.

¹² Exhibits 23398-X0002 and 23398-X0011.

¹³ Exhibit 23398-X0011, Village of Alliance letter, PDF page 5.

¹⁴ Exhibit 23398-X0003, 2015-01 Utility Bylaw.

22. The rates in Schedule A, as referenced in sections 1 and 2 of the utility Bylaw 2015-01, are set out in part as follows:

4. Monthly Service charges for water, sewer and garbage shall be according to the following set rates:

Resident Infrastructure Fee	\$ 70.00/month
Non-Resident Infrastructure Fee	\$ 100.00/month
Water Usage	\$ 2.55/ M ³ [square metre]
Sewer Usage (based on amt of water used)	\$ 1.35/M ³
Garbage	\$ 25.00/Month ¹⁵

...

23. The Village of Alliance submitted Mr. Huet is a “resident” because Mr. Huet owns property in the Village of Alliance, and therefore sections 1 and 2 require him to pay the rates set out in Schedule A of that bylaw, regardless of whether he wants those utility services provided to his property:

A charge shall be made against owners of all land including those who are absent from their residence for an extended period of time for any reason shall be charged the regular rates. This applies even if the curb stop has been turned off.¹⁶

24. In terms of how it determines its rates, the Village of Alliance submitted that the infrastructure fee covers the cost of maintaining and replacing the water and sewer lines, the water plant, and the lagoon.¹⁷ It provided the following explanations in response to Commission questions:

(d) The Commission notes that there is a non-resident infrastructure fee and a resident infrastructure fee. Please explain how the Village of Alliance developed its rate structure with respect to establishing two rate classes for the infrastructure fee.

A - Non-residents live in Flagstaff County and pay taxes to the county. Residents have property within the Village limits and pay taxes to the village. Since about 2009, the Village has been working toward a “user pay” utility rate, meaning that water, sewer and garbage fees cover the expense of operating those systems and maintaining the water and sewer infrastructure. If utility fees fail to cover those expenses, then the Village taxpayers must make up the difference. The non-resident customers pay an extra \$30/month to help cover that difference.¹⁸

(e) Is there a reasonable distinction between a resident, an absentee resident, and a non-resident, with respect to consumption of infrastructure? Please explain if the Village of Alliance grouped customers according to comparable load and usage profiles in the response.

¹⁵ Exhibit 23398-X0003, 2015-01 Utility Bylaw.

¹⁶ Exhibit 23398-X0017, Response to question 1(e).

¹⁷ Exhibit 23398-X0021, Response to question 7(a).

¹⁸ Exhibit 23398-X0021, Response to question 6(d).

A- No matter whether a resident, absentee resident, or non-resident, the water plant, water lines, lagoon, and sewer lines all extend to all of these residences, and if there is a failure in any of these parts of the infrastructure, it will affect the services provided to all. The water and sewage runs through all lines, even if the absentee resident is not home to use the utility service. If an absentee resident has their residence rented to someone, then their renter is affected by such failure, and as the owner of the property, the absentee resident has a responsibility to ensure the renter has utility services.

Further to this, water usage is metered and the majority of water used later enters the sewage system, so fees for water and sewer usage are based on the metered water usage.¹⁹

5 Commission's jurisdiction

25. Section 43 of the *Municipal Government Act* 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.

26. This appeal has been brought pursuant to sections 43(2)(b) and (c) of the *Municipal Government Act*. In addition, the Commission considers that Mr. Huet's argument that he is not an "absentee resident," and therefore does not have to pay certain charges in Schedule A of utility Bylaw 2015-01, is substantively a Section 43(2)(a) claim. An overview of the tests the Commission applies in relation to each of these enumerated grounds is described below.

5.1 Do the rates conform to the public utility rate structure?

27. The Commission understands the phrase "rate structure" in Section 43 of the *Municipal Government Act* to generally mean the overall method or framework by which the Village of Alliance recovers its required revenue from customers.²⁰ In assessing an appeal under Section 43(2)(a), the role of the Commission is not to comment on the rate structure itself. Rather, the Commission considers whether Mr. Huet is being charged according to the rate structure established by the Village of Alliance, a municipality. In its assessment, the

¹⁹ Exhibit 23398-X0021, Response to question 6(e).

²⁰ Decision 2013-295: K. David Campbell, Appeal on EPCOR Water Services Inc. Water Rates for 2012-2017, Proceeding 2175, Application 1608897-1, August 9, 2013, paragraph 33.

Commission will review the Village of Alliance's bylaws and determine whether the Village of Alliance applied the bylaw properly. The terms of the bylaw guide the Commission in its decision as to whether the terms of the bylaw were properly applied.

5.2 Have the rates been improperly imposed?

28. In assessing an appeal under Section 43(2)(b), the Commission considers the powers and functions of the Village of Alliance, a municipality, as set out in the *Municipal Government Act*. The issue before the Commission in Section 43(2)(b) appeals is often the legality of the utility service charge, rate or toll.

5.3 Are the rates discriminatory?

29. In assessing an appeal under Section 43(2)(c), the Commission has held that discrimination can arise in two circumstances:

- First, when a utility fails to treat all its users equally where no reasonable distinction can be found between those favoured and those not favoured.²¹
- Second, when a utility treats all its users equally where differences between users would justify different treatment.²²

30. The Commission must assess the presence or absence of any rationale or logic underlying the utility service charges applied by the Village of Alliance to Mr. Huet, considering the whole context under which the utility charges and rates are being imposed.²³ Effectively, the Commission must determine whether Mr. Huet has been placed in the correct rate class, and determine whether reasonable distinctions may exist between customers within a rate class so as to support any inconsistent treatment.²⁴

6 Analysis

31. The Commission considers that this appeal concerns two distinct issues:

- (1) whether the Village of Alliance improperly imposed the outstanding utility service charges and associated penalties incurred by the tenant on Mr. Huet; and
- (2) whether the resident infrastructure fee and garbage fee that the Village of Alliance has imposed on Mr. Huet after the property became vacant conforms with the rate structure or is improperly imposed, and whether the resident infrastructure fee that the Village of Alliance has imposed on Mr. Huet is discriminatory.

²¹ Decision E94014: The Town of Bruderheim, Complaint by Mr. J. H. Lambert Alleging Discriminatory Water and Sewer Billings by the Town of Bruderheim, File 8228-1, March 28, 1994.

²² Decision 2012-363: East Prairie Métis Settlement and Prairie River Gas Co-op Natural Gas Billing Dispute, Proceeding 1389, Application 1607572-1, December 27, 2012, paragraph 35.

²³ Decision 20744-D01-2016: New Sarepta Water and Sewer Complaint, Proceeding 20744, February 24, 2016, paragraph 32.

²⁴ Decision 2010-462: New Vintage Homes and Town of Drumheller Bylaw 07.10, Appeal Pursuant to Section 43 of the Municipal Government Act, Proceeding 618, Application 1606018-1, September 30, 2010, paragraph 79.

32. The first issue will be considered in Section 6.1 of this decision, and the second issue will be considered in Section 6.2 of this decision.

6.1 Liability for tenant's utility service charge arrears

33. The first issue is whether the Village of Alliance improperly imposed the outstanding utility service charges and associated penalties incurred by the tenant on Mr. Huet. The Commission will begin by reviewing Section 42 of the *Municipal Government Act*, and will then consider sections 13 and 553 of the *Municipal Government Act*.

6.1.1 Section 42

34. Section 42 of the *Municipal Government Act* states:

Liability for public utilities charges

42(1) The charges for a municipal utility service provided to a parcel of land are an amount owing to the municipality by the owner of the parcel.

(2) If the municipality agrees to provide a municipal utility service to a parcel of land on the request of an occupant of the parcel who is not the owner, the charges for the municipal utility service provided to the parcel are an amount owing to the municipality by the occupant and not the owner. [emphasis added]

35. The Commission notes that a 1987 decision²⁵ of the Commission's predecessor, the Public Utilities Board (board), also dealt with a similar issue as raised in this appeal, albeit under Section 309(2) of the *Municipal Government Act*, RSA 1980, c M-26 (previous MGA). The Commission observes that the wording of Section 309(2)²⁶ of the previous MGA is very similar to the wording of Section 42(2) of the current *Municipal Government Act*. In the 1987 decision, the board found that the provision at issue "... clearly states that when the occupant to whom the utility has been supplied is not the owner of the property, that any resulting debt is due to him [the occupant]...."²⁷

36. A 2002 decision²⁸ of the Commission's predecessor, the Alberta Energy and Utilities Board (EUB), also dealt with a similar issue as raised in this appeal. The EUB considered Section 42(2) of *Municipal Government Act* and came to the same interpretation of the provision as the board did in the 1987 decision.

37. The Commission continues to agree with the reasoning of its predecessors, as described above, regarding the interpretation of this provision. Section 42 clearly states that if the Village of Alliance agreed to provide a municipal utility service to the property on the request of the tenant, who is not the owner in this case, then the charges for the municipal utility service provided to the property are an amount owing by the tenant and not the owner.

²⁵ Decision E87049: Roger Holton and the Village of Legal, June 30, 1987.

²⁶ Section 309(2) of the previous MGA states: "(2) When the occupant to whom the public utility has been supplied is a person other than the owner or purchaser of the building or lot or part of a lot, the sum payable by the occupant is a debt due by him and is a preferential lien and charge on his personal property and may be levied and collected with costs by distress in accordance with the Seizures Act."

²⁷ Decision E87049, page 17.

²⁸ Decision 2002-062: Mr. and Mrs. Lung Tak Lo, Service Charges of Town of Claresholm, Proceeding 5968, Application 1243378-1, July 17, 2002.

38. Mr. Huet submitted the utility services provided to the property were not at his request, as evident by the fact that the Village of Alliance has previously denied him access to review those utility bills as he was not the named utility account holder.²⁹ Mr. Huet also provided a utility invoice with the tenant's name on it.³⁰

39. The Village of Alliance was unable to confirm if it agreed to provide utility service to Mr. Huet's tenant at the tenant's request, or when the utility account was opened for the tenant:

(a) Please confirm that the Village of Alliance agreed to provide utility service to Mr. Huet's tenant at the tenant's request, and not Mr. Huet's request. If not confirmed, please explain.

A - Cannot answer this question as the staff person is no longer available to answer this.

(b) Please confirm when the Village of Alliance opened a utility account for Mr. Huet's tenant.

A - Unfortunately at this time we can not comment on this matter. The Village of Alliance recently has done some upgrading to computers and software and while transferring data from the older computer it has crashed. Therefore, the computer with all the information that you are requesting is being sent into the shop to be worked on.³¹

40. In view of the above, and noting that the Village of Alliance did not dispute the allegation that it provided utility service to the tenant at the tenant's request, the Commission considers it reasonable to find that the Village of Alliance agreed to provide utility service to the tenant at the tenant's request.

41. Accordingly, pursuant to Section 42(2) of the *Municipal Government Act*, the Commission finds that Mr. Huet is not liable for the outstanding utility service charges and associated penalties incurred by the tenant.

6.1.2 Sections 13 and 553

42. The Village of Alliance argued that Section 6.a) of utility Bylaw 2015-01, which refers to Section 553(1) of the *Municipal Government Act*, provides it with the complete right to add the tenant's outstanding utility service charges to Mr. Huet's tax roll.³² Section 6.a) of utility Bylaw 2015-01 states, in part:

6. In the event an account becomes delinquent for a period of 60 days, then either

a) the amount outstanding may be transferred to the tax roll, and collected in like manner as taxes are recoverable, in accordance with Section 553(1) and amendments thereto. A letter shall be sent to the owner advising that the outstanding account is being transferred to the tax roll, ...

²⁹ Exhibit 23398-X0020, July 4th AUC Letter - With Attachments, PDF page 2.

³⁰ Exhibit 23398-X0020, July 4th AUC Letter - With Attachments, PDF page 6.

³¹ Exhibit 23398-X0021, Response to question 9.

³² Exhibit 23398-X0001, Emails re Concerns with James Brozny's Utility Bills, PDF page 8.

43. Section 553(1) of the *Municipal Government Act* states, in part:

Adding amounts owing to tax roll

553(1) A council may add the following amounts to the tax roll of a parcel of land:

...

(b) unpaid charges referred to in section 42 for a municipal utility service provided to the parcel by a municipal public utility that are owing by the owner of the parcel;

...

44. The Commission rejects the Village of Alliance's argument for two reasons.

45. First, Section 553(1) permits municipalities to add amounts to the tax toll of a parcel of land in certain situations. Under Section 553(1)(b), this includes "unpaid charges referred to in Section 42 ... owing by the owner of the parcel". As explained above, under Section 42(2) of the *Municipal Government Act*, payment for the outstanding utility service charges and any associated penalties incurred by the tenant are the responsibility of the tenant and not Mr. Huet. Therefore, they are not "unpaid charges referred to in Section 42 ... owing by the owner of the parcel." Accordingly, the Commission finds the Village of Alliance cannot rely on Section 553(1) of the *Municipal Government Act* as authority to add outstanding utility service charges, arrears and any associated penalties incurred by the tenant to Mr. Huet's tax roll.

46. Second, according to Section 13 of the *Municipal Government Act*, if there is a conflict between legislation and a bylaw, then the bylaw is of no effect to the extent of the conflict or inconsistency:

Relationship to Provincial law

13 If there is a conflict or inconsistency between a bylaw and this [the *Municipal Government Act*] or another enactment, the bylaw is of no effect to the extent of the conflict or inconsistency.

47. Accordingly, the Commission rejects the argument that utility Bylaw 2015-01 grants the Village of Alliance authority to make Mr. Huet liable for the outstanding utility service charges and associated penalties incurred by the tenant, as such a finding conflicts with or is inconsistent with Section 42(2) of the *Municipal Government Act*.

6.1.3 Conclusion

48. 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 has found that the Village of Alliance improperly imposed the tenant's utility service charges, arrears and associated penalties upon Mr. Huet. Therefore, the Commission finds that Mr. Huet does not owe, and the Village of Alliance may not pursue collection of, the tenant's utility service charges, arrears and any associated penalties from Mr. Huet.

6.2 Utility service charges imposed after the property was vacated by the tenant

49. The second issue the Commission will consider is whether the resident infrastructure fee and the garbage fee that the Village of Alliance has imposed on Mr. Huet after the property became vacant conforms to the rate structure established by the Village of Alliance or is improperly imposed, and whether the resident infrastructure fee that the Village of Alliance has imposed on Mr. Huet is discriminatory.

6.2.1 Jurisdiction regarding the resident infrastructure fee

50. First, the Commission will consider whether it has jurisdiction to consider the resident infrastructure fee in an appeal under Section 43 of the *Municipal Government Act*.

51. Utility Bylaw 2015-01, in its preamble and in Section 1, clearly states that it applies to the provision of water, sewer and garbage utility services.³³

52. However, the Village of Alliance, in its June 6, 2018 response, appeared to describe the resident infrastructure fee as encompassing charges that are not limited to water, sewer or garbage utility services:

(f) Does Mr. Huet have the right to request disconnection or discontinuance of all municipal utility services, including residential infrastructure and garbage disposal services? Please explain.

Infrastructure charge is not solely based on water or sewer. Infrastructure is the fundamental facilities and systems serving the Village such as roads, bridges, tunnels, water supply, sewers, electrical grids and so forth, and can be defined as the physical commodities of the interrelated systems providing commodities and services essential to enable, sustain, or enhance societal living conditions....³⁴

53. The Commission asked additional questions regarding the components of the resident infrastructure fee, and the Village of Alliance, in its July 10, 2018 response, clarified that the resident infrastructure fee only applies to infrastructure providing water and sewer services:

Question 4 - Please explain why infrastructure services and the infrastructure fee are not identified in the preamble. Please explain what effect this has, if any, on the Village of Alliance's ability to impose an infrastructure fee under Utility Bylaw 2015-01.

...

A - Infrastructure fees apply only to infrastructure which provides water and sewer services. We do not believe this has any effect on the Village's ability to impose an infrastructure fee.³⁵

...

(a) Please explain why monthly service charges for water, sewer and garbage, as stated in Schedule A, Section 4 of utility Bylaw 2015-01, also include charges for roads, bridges, tunnels, etc.

³³ Exhibit 23398-X0003, 2015-01 Utility Bylaw.

³⁴ Exhibit 23398-X0017, Response to question 1(f).

³⁵ Exhibit 23398-X0021, Response to question 4.

A- We do not understand why you state that it appears the infrastructure fee encompasses charges that are not limited to water, sewer and garbage charges. The preamble clearly states that this is “A Bylaw of the Village of Alliance, in the Province of Alberta, to regulate and control the provision of water, sewer, and garbage services to residents, business, industry, and institutions within and surrounding the Village of Alliance,”. This bylaw does not have anything to do with roads, bridges, tunnels, etc.³⁶

(b) Please explain what jurisdiction allows the Village of Alliance to charge the residents for roads, bridges, tunnels etc., under utility Bylaw 2015-01, rather than property taxes or offsite levies.

A- We have no jurisdiction to charge for roads, bridges, tunnels, etc under utility Bylaw 2015-01. This Bylaw is clearly a Utility Bylaw - roads, bridges, tunnels, etc are not utilities.³⁷

54. The Commission considers the Village of Alliance’s responses regarding the components of the resident infrastructure fee, as provided on June 6, 2018, and later on July 10, 2018, to be inconsistent. However, the Commission will accept the Village of Alliance’s most recent submissions that the resident infrastructure fee is limited to water and sewer utility charges, given that this response is consistent with the content of utility Bylaw 2015-01, and given that the Village of Alliance confirmed that 50 per cent of the resident infrastructure fee applies to water services, and 50 per cent of the resident infrastructure fee applies to sewer services.³⁸

55. In view of the above, and given that water and sewage are public utilities under the *Municipal Government Act* (Section 1(1)(y)(i) and (ii)), the Commission finds that it has jurisdiction to consider the resident infrastructure fee at issue in this appeal.

6.2.2 Have the rates been improperly imposed?

56. In this section of the decision, the Commission will consider the authority of the Village of Alliance to impose a mandatory charge for utility services that Mr. Huet does not want.

57. The *Municipal Government Act* is a broadly worded enabling statute that empowers municipalities in the province to legislate in respect of generally described powers and purposes. Section 3 of the *Municipal Government Act* provides that the purposes of a municipality include (i) “to provide good government”;³⁹ (ii) “to provide services, facilities or other things that, in the opinion of council, are necessary or desirable for all or a part of the municipality”;⁴⁰ and (iii) “to develop and maintain safe and viable communities.”⁴¹ Section 7 of the *Municipal Government Act* sets out municipalities’ general jurisdiction to pass bylaws. Section 7 provides that a municipal council may pass bylaws “for municipal purposes” respecting a variety of matters. These matters include “services provided by or on behalf of the municipality”⁴² and “public utilities.”⁴³ Section 8(a) provides that such bylaws may “regulate or prohibit.” Section 9 of the

³⁶ Exhibit 23398-X0021, Response to question 5.

³⁷ Exhibit 23398-X0020, Response to question 6.

³⁸ Exhibit 23398-X0020, Response to question 7.

³⁹ *Municipal Government Act*, Section 3(a).

⁴⁰ *Municipal Government Act*, Section 3(b).

⁴¹ *Municipal Government Act*, Section 3(c).

⁴² *Municipal Government Act*, Section 7(f).

⁴³ *Municipal Government Act*, Section 7(g).

Municipal Government Act provides a guide to interpreting municipalities' power to pass bylaws as described in the preceding sections, and states:

- 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.

58. The broad nature of the authority conferred on municipalities and the intention of the legislature in doing so was recently reviewed by the Alberta Court of Appeal in *Kozak v Lacombe (County)*:⁴⁴

[23] Since 1994, the *MGA* has used broad language to confer authority to make bylaws over generally defined subject matters, for general municipal purposes: see ss 3, 7 and 8. Section 9 of the *MGA* explicitly recognizes that expressing the power to pass bylaws in general terms was not an accident; it was done consciously to give municipalities broad powers to govern "in whatever way the councils consider appropriate, within the jurisdiction given to them".

[24] Adopting this approach to municipal governance, Alberta has subscribed to the modern method of drafting municipal legislation whereby municipalities have broad authority to legislate in respect of generally described powers, as recognized by the Supreme Court of Canada in *United Taxi* at paras 6-7:

6. The evolution of the modern municipality has produced a shift in the proper approach to the interpretation of statutes empowering municipalities. This notable shift in the nature of municipalities was acknowledged by McLachlin J. (as she then was) in *Shell Canada Products Ltd. v. Vancouver (City)*, 1994 CanLII 115 (SCC), [1994] 1 S.C.R. 231, at pp. 244-45. The "benevolent" and "strict" construction dichotomy has been set aside, and a broad and purposive approach to the interpretation of municipal powers has been embraced: *Nanaimo*, supra, at para. 18. This interpretive approach has evolved concomitantly with the modern method of drafting municipal legislation. Several provinces have moved away from the practice of granting municipalities specific powers in particular subject areas, choosing instead to confer them broad authority over generally defined matters: *The Municipal Act*, S.M. 1996, c. 58, C.C.S.M. c. M225; *Municipal Government Act*, S.N.S. 1998, c. 18; *Municipal Act*, R.S.Y. 2002, c. 154; *Municipal Act*, 2001, S.O. 2001, c. 25; *The Cities Act*, S.S. 2002, c. C-11.1. This shift in legislative drafting reflects the true nature of modern municipalities which require greater flexibility in fulfilling their statutory purposes: *Shell Canada*, at pp. 238 and 245.

7. 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

⁴⁴ 2017 ABCA 351.

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.

59. In that same decision, the Court of Appeal went on to discuss the broad public policy goals of the *Municipal Government Act* and the implication of those goals for the proper interpretation of the *Municipal Government Act*:

[71] The public policy goals of the *MGA* support a broad and purposive interpretation of the *MGA*. The *MGA* contains a complex web of rules for orderly governance by democratically elected municipal councils in the interest of their citizens. The purposes of a municipality are as set out in s 3 of the *MGA*: to provide good government; to provide services, facilities and other things that, in the opinion of council, are necessary or desirable for the municipality; and ultimately, to develop and maintain safe and viable communities. As noted by McLachlin CJ in *Catalyst Paper Corp v North Cowichan (District)*, 2012 SCC 2 (CanLII) at para 19, 2012 1 SCR 5, municipal bylaws “involve an array of social, economic, political and other non-legal considerations.”

[72] It would be inimical to viable community infrastructure such as sewage systems if individual homeowners could opt out and follow what they view as their own best interests. Public policy considerations support the broad interpretation of powers granted to the municipalities under ss 8 and 9 of the *MGA*.

60. In *Kozak*, the Alberta Court of Appeal considered whether a municipality has the authority to “compel owners to connect to a public utility ...”⁴⁵ The Alberta Court of Appeal concluded that the municipality had such authority under sections 7, 8(a) and 9 of the *Municipal Government Act*.⁴⁶

61. In this appeal, the Commission finds that utility Bylaw 2015-01 has a permissible purpose under Section 3 of the *Municipal Government Act*. It is also clear to the Commission that utility Bylaw 2015-01 regulates public utilities (water, sewage and waste management services), as permitted under Section 7(g) of the *Municipal Government Act*.

62. Section 8 of the *Municipal Government Act* addresses the extent of a municipal council’s power to achieve its objectives by passing a bylaw in relation to a subject matter set out in Section 7.⁴⁷ Without restricting Section 7, a council may, in a bylaw passed under Division 2 of the *Municipal Government Act*, “regulate or prohibit.”⁴⁸ The Commission finds that utility Bylaw 2015-01 regulates and prohibits conduct in relation to a public utility and is, to this extent, authorized by Section 8(a) of the *Municipal Government Act*.

63. In its analysis, the Commission has considered that a “municipal utility service,” which is a term used in Section 43 of the *Municipal Government Act*, “means a utility service provided by a municipal public utility.”⁴⁹ In the Commission’s view, the Village of Alliance is providing the

⁴⁵ *Kozak v Lacombe (County)*, paragraph 41.

⁴⁶ *Kozak v Lacombe (County)*, paragraph 32.

⁴⁷ *Kozak v Lacombe (County)*, paragraph 31.

⁴⁸ *Municipal Government Act*, Section 8(a).

⁴⁹ *Municipal Government Act*, Section 28(c).

utility services at issue in this appeal to Mr. Huet, and Mr. Huet is using and receiving these utility services because, as explained in more detail below, the Village of Alliance is both:

- providing a person at the property (whether that person is Mr. Huet, a new tenant, a new owner, etc.) timely access to provision of certain utility services; and
- operating and maintaining the water and sewer lines to the property which are connected by way of infrastructure to other properties in the Village of Alliance.

64. While water and sewage utility services are not currently being consumed at the property, these utility services were recently consumed by the tenant, and there is no evidence that these utility services will not be required for consumption in the future. Rather, Mr. Huet advised that “until this matter with the AUC is resolved, I am reluctant to invest additional time, money and energy into this property,”⁵⁰ which seems to indicate that activity on the property may occur after this decision is issued.

65. In addition, the Commission accepts the Village of Alliance’s submissions that the fixed resident infrastructure fee covers the cost of maintaining and/or replacing the water and sewer lines to the property, and a failure in this infrastructure will affect the water and sewer utility services provided to all other properties in the Village of Alliance. Customer costs can exist even where a customer consumes no utility service whatsoever. In this case, the water and sewer lines are remaining in place for future use at the property, and there is an ongoing cost to the Village of Alliance to owning, operating and maintaining these assets, which is being passed on to Mr. Huet.

66. Additionally, the Commission notes that the Village of Alliance has a contract for waste management utility services with Flagstaff Waste Management, which requires that the Village of Alliance pay a fixed amount, regardless of whether any particular property generates garbage. A person at the property is able to use this utility service at any time.

67. In view of the above, the Commission finds that the broad authority conferred on the Village of Alliance by sections 7, 8(a) and 9 of *Municipal Government Act* authorize it to pass mandatory utility service charge provisions in utility Bylaw 2015-01, and that the utility services at issue in this appeal are being provided by the Village of Alliance to the property.

68. The next issue the Commission will consider is whether the Village of Alliance’s general authority to regulate public utilities by bylaw is derogated from by a specific section of the *Municipal Government Act*. Specifically, Mr. Huet argued that Section 34 of the *Municipal Government Act* requires that a request for utility services be made by an owner in order for a municipality to charge the owner for those services, and that no such request was made. Section 34 states:

Duty to supply utility service

34(1) If the system or works of a municipal public utility that provide a municipal utility service are adjacent to a parcel of land, the municipality must, when it is able to do so and subject to any terms, costs or charges established by council, provide the municipal utility service to the parcel on the request of the owner of the parcel.

⁵⁰ Exhibit 23398-X0020, PDF pages 1-2.

(2) If the system or works of a municipal public utility that provide a municipal utility service are adjacent to a parcel of land, the municipality may, when it is able to do so and subject to any terms, costs or charges established by council, provide the municipal utility service to the parcel on the request of the occupant of the parcel who is not the owner.

69. The Commission finds that Section 34 of the *Municipal Government Act* is not applicable to this appeal. This is because “Section 34 provides for a landowner’s entitlement to connect to a municipal public utility when a municipal public utility runs adjacent to the owner’s parcel of land and the owner requests to be connected, subject to availability and other conditions.”⁵¹

70. In summary, the Commission finds that the Village of Alliance has the authority to impose, by utility Bylaw 2015-01, a mandatory charge for utility services that Mr. Huet does not want in the circumstances.

6.2.3 Do the rates conform to the public utility rate structure?

71. In this section of the decision, the Commission will consider whether Mr. Huet is being charged according to his rate class.

72. Sections 1 and 2 of utility Bylaw 2015-01, respectively, establish mandatory charges for “owners of all land” and “residents who are absent from their residence from an extended period of time for any reason,” according to the rates set out in Schedule A. Relevant to this appeal, Schedule A contains a “resident infrastructure fee,” “non-resident infrastructure fee” and a “garbage” fee.

73. In response to Commission questions, the Village of Alliance submitted that the distinguishing characteristics between a “resident,” “non-resident” and “absentee resident,” which are not defined in utility Bylaw 2015-01, are property ownership and the location of the property:⁵²

Table 1. Terms

Term	Village of Alliance’s definition (not contained in utility Bylaw 2015-01)
Resident	“Residents have property within the Village limits and pay taxes to the village.” ⁵³
Non-resident	“Non-residents live in Flagstaff County and pay taxes to the county” ⁵⁴ “Alliance has 4 properties that are situated on Flagstaff County land therefore paying County (rural) taxes. Alliance supplies these “non-residents” water and sewer needs, hence the non-resident charge of \$100.00 to pay for the upkeep of extra lines and to bringing these features to their property.” ⁵⁵
“Absentee residents - residents who are absent from their residence for an extended period of time....”	“Absentee residents would then be determined on where the property is located. Mr. Huet’s residence in question is in the Village of Alliance so he would then be considered a resident.” ⁵⁶ “An extended period of time would be defined as long as the property is listed on land titles in the person’s name.” ⁵⁷

⁵¹ *Kozak v Lacombe (County)*, 2017 ABCA 351.

⁵² Exhibit 23398-X0023, Response to questions 2(a) and (d).

⁵³ Exhibit 23398-X0021, Response to question 6(d).

⁵⁴ Exhibit 23398-X0021, Response to question 6(d).

⁵⁵ Exhibit 23398-X0019, Response to question 1(b)

⁵⁶ Exhibit 23398-X0021, Response to question 2.

⁵⁷ Exhibit 23398-X0023, PDF page 1.

74. However, it remains unclear to the Commission, based on the Village of Alliance's responses, what period of time is required for a "resident" to be away from their property before this person becomes an "absentee resident."

75. The difficulty for the Commission in determining whether the terms of utility Bylaw 2015-01 were properly applied by the Village of Alliance is (i) the absence of defined terms in utility Bylaw 2015-01; (ii) the inconsistent use of terms throughout utility Bylaw 2015-01; and (iii) the Village of Alliance's submissions that the terms at issue in utility Bylaw 2015-01 have meanings which are not the same as their plain and ordinary meaning.

76. For example, utility Bylaw 2015-01 uses a variety of terms. Section 1 applies to "owners of all land." Section 2 applies to "absentee residents" who are "residents who are absent from their residence for an extended period." Section 3 applies to "renters." Section 4 applies to "property owners" and also refers to "customers." Section 6 refers to an "owner." Section 7 refers to an "occupant" and an "owner." Sections 14 and 18 refers to "user(s)." Section 19 refers to the "owner of the property." In Schedule A, Section 2 applies to a "new customer." Section 6 applies to "utility customers." The infrastructure fee in Section 4 applies to "residents" and "non-residents." Sewer service (no water) applies to "properties." Section 5 applies to "unmetered households." Additionally, Schedule B contains a renter's utility agreement that must be signed by both a "renter" and a "property owner."

77. The Commission considers it reasonable, based on a plain and ordinary reading, to find that the terms "owners of all land," "property owners," "owner" and "owner of the property," all have the same meaning. However, the issue becomes whether council intended to use words that are more dissimilar in utility Bylaw 2015-01 to indicate different meanings. For example, in the Commission's view, it may be possible for a "resident" to be interpreted, based on its dictionary definition, to include a renter. This is because the plain and ordinary meanings of "resident" and "non-resident" do not rely on property ownership or taxation status as a defining characteristics:

Black's Law Dictionary, 10th ed., 2014:

resident n. (15c) 1. Someone who lives in a particular place. 2. Someone who has a home in a particular place. • In sense 2, a resident is not necessarily either a citizen or a domiciliary. Cf. CITIZEN (1); DOMICILIARY, n.

nonresident n. (16c) 1. Someone who does not live within a particular jurisdiction. 2. Someone who is not staying in a particular hotel, living in a particular apartment building, etc. — Abbr. n.r. — nonresident, adj.

Paperback Oxford Canadian Dictionary, Second Edition, 2006:

resident ... 1a a permanent inhabitant (of a city, neighbourhood, building, etc.) ...
non-resident ... not residing in a particular place

78. However, if the Commission were to find that Mr. Huet is a "non-resident," based on its plain and ordinary meaning, then utility-Bylaw 2015-01 would obligate him to pay a higher fee (\$100 per month as opposed to \$70 per month).

79. Referencing the principles of statutory interpretation of the *Municipal Government Act* described in Section 6.2.2 of this decision, and considering the plain and ordinary meaning of “resident” as summarized above, the Commission considers it reasonable to find that Mr. Huet was a “resident” of the Village of Alliance at one point in time, as evident by the fact that he received utility service at the property up to May 2009. Mr. Huet has not lived at the property subsequently, and the Commission considers that this may reasonably qualify him as a resident “who [is] absent from their residence for an extended period of time.” Accordingly, the Commission finds that it is plausible that Mr. Huet is an “absentee resident,” as the phrase is used in utility Bylaw 2015-01, and therefore required to pay the resident infrastructure fee and garbage fee set out in Schedule A.

80. In view of the above, the Commission finds that Mr. Huet is being charged in accordance with the rate structure established by utility Bylaw 2015-01 with respect to the resident infrastructure fee and garbage fee.

81. In the Commission’s view, a bylaw should be clear and precise enough so that persons subject to the bylaw understand what they must do or not do in order to comply with the bylaw. While declaratory, the Commission expresses significant concern with the drafting quality of utility Bylaw 2015-01, and encourages the Village of Alliance to pursue opportunities to clarify its terms.

6.2.4 Are the rates discriminatory?

82. In this section of the decision, the Commission will consider whether the resident infrastructure fee charged to Mr. Huet by the Village of Alliance is discriminatory.

83. In its discrimination analysis, the Commission must determine (i) whether Mr. Huet has been placed in the correct rate class; and (ii) whether reasonable distinctions may exist between customers within his rate class so as to support any inconsistent treatment.

84. With respect to the first component of the test, in Section 6.2.3 of this decision, the Commission determined that it is plausible that Mr. Huet is an “absentee resident” under utility Bylaw 2015-01 and, therefore, was being charged in accordance with the rate structure established by utility Bylaw 2015-01 with respect to the resident infrastructure fee.

85. With respect to the second element of the test, in Section 6.2.2 of this decision, the Commission determined that Mr. Huet was a user of water and sewer services provided by the Village of Alliance. Accordingly, the Commission does not accept Mr. Huet’s argument that he is a non-user of water and sewer utility services.

86. The Village of Alliance indicated that it is in the process of adopting a “user pay” utility rate, meaning that the water, sewer and garbage fees collected from users cover the expense of operating those systems and maintaining the water and sewer infrastructure. This includes a fixed-cost component, to cover costs that exist whether consumption occurs or not, and a variable usage component. In the Commission’s view, the variable usage charge would capture some differences between customers required to pay the resident infrastructure fee.

87. The Commission finds that, notwithstanding Mr. Huet’s submissions, insufficient evidence has been provided to suggest that he makes use of water and sewer services in a

sufficiently different way to substantiate differential rate treatment for him as compared to other “absentee resident” users.

88. In view of the above, the Commission does not find that the resident infrastructure fee charged to Mr. Huet by the Village of Alliance is discriminatory.

7 Order

89. It is hereby ordered that:

- (1) The Village of Alliance improperly imposed Mr. James Brozny’s utility service charges, arrears and associated penalties against Mr. Jeremy Huet, and these utility service charges, arrears and associated penalties are therefore disallowed.
- (2) The Village of Alliance will repay to Mr. Huet any amounts that Mr. Huet paid to the Village of Alliance for Mr. Brozny’s utility service charges arrears and associated penalties. In cases where Mr. Huet has not paid these charges, the Village of Alliance shall not pursue the recovery of those charges.

Dated on August 29, 2018.

Alberta Utilities Commission

(original signed by)

Neil Jamieson
Commission Member

Appendix 1 – Proceeding participants

<p>Name of organization (abbreviation) Company name of counsel or representative</p>
<p>Jeremy Huet</p>
<p>Village of Alliance</p>

<p>Alberta Utilities Commission</p> <p>Commission panel N. Jamieson, Commission Member</p> <p>Commission staff J. Graham (Commission counsel) E. Deryabina C. Burt</p>
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