



## **New Sarepta**

### **Water and Sewer Complaint**

**February 24, 2016**

**Alberta Utilities Commission**

Decision 20744-D01-2016

New Sarepta Water and Sewer Complaint

Proceeding 20744

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## **1 Introduction**

1. On August 18, 2015, the Alberta Utilities Commission received a letter of complaint and a background document from Mr. Peter Stammers concerning Leduc County water and sewer rates charged to residents in New Sarepta. The complaint stated that the water and sewer rates charged to New Sarepta residents were unfair, inequitable and discriminatory. Mr. Stammers further submitted that the user-pay system within Leduc does not provide fair and equitable service to all residents as set out in the April 2010 Village of New Sarepta Dissolution Study Report (Dissolution Report).<sup>1</sup> The Commission has designated this complaint as Proceeding 20744 in its eFiling System. By letter dated September 22, 2015, the Commission provided Leduc with an opportunity to respond to the complaint by October 16, 2015. This date was subsequently extended to November 13, 2015.

2. On December 4, 2015, the Commission indicated that prior to making any determinations on this proceeding, it would allow Mr. Stammers to reply to Leduc's response by no later than December 21, 2015. Mr. Stammers provided a response to Leduc's submission on December 21, 2015.

3. The Commission considers that the record for this proceeding closed on December 21, 2015.

4. In reaching the determinations contained within this decision, the Commission has considered all relevant materials comprising the record of this proceeding. 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 all relevant portions of the record with respect to that matter.

## **2 Details of the complaint**

5. Mr. Stammers stated that New Sarepta water system customers experienced a 59 per cent increase in water rates from 2014 to 2015 as compared to a 9.4 per cent increase to Nisku water rates in the same period. As a result, Mr. Stammers considered that the water rates were unfair, inequitable and discriminatory to the New Sarepta water system customers.

6. Further, Mr. Stammers maintained that Leduc's user-pay system does not provide fair and equitable service to the residents of New Sarepta, as set out in the Dissolution Report. Mr. Stammers said that the Dissolution Report stated that Leduc would "... ensure [*sic*] fair and equitable way to distribute costs of providing the services amongst the users of the systems.'

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<sup>1</sup> Exhibit 20744-X0010, Appendix 5, Village of New Sarepta Dissolution Study.

7. Mr. Stammers noted that water utilities in Leduc are currently operated under a user-pay system. He referenced a December 9, 2014 motion brought forward to Leduc council to operate the water utilities as a single system that would consolidate rates and allow tax supported funding for all users. Mr. Stammers stated that if the motion had passed, it would have resulted in a single water system with a balanced budget and one rate schedule for all customers. However, the motion was defeated.

8. Mr. Stammers stated that despite being on a lagoon system, New Sarepta sewer customers are charged different sewer rates than are all other sewer users in Leduc who are on a lagoon system. Mr. Stammers stated that residents of New Sarepta are charged for sewer usage based on water usage despite the fact that not all water goes through the sewer system.

9. Mr. Stammers' position was that a financial burden had been placed on the residents of New Sarepta because they were not afforded the opportunity to have tax subsidized water and lagoon systems.

10. Mr. Stammers considered that residents of New Sarepta are being treated unfairly due to Leduc not having consolidated water and sewer rates. Mr. Stammers maintained that the water and sewer rates charged in New Sarepta are discriminatory in comparison to water and sewer rates charged to other water and sewer customers in Leduc and, further, that New Sarepta should be consolidated with the rest of Leduc for water and sewer rates.

### **3 Leduc County response**

11. Leduc argued that the Nisku and New Sarepta water distribution systems are two separate and distinct systems that are not connected in any manner. Leduc asserted that the costs associated with the operation and maintenance of each of these water distribution systems are different, justifying different treatment between their respective customers. However, the methodology used for calculating the respective costs of operation and maintenance for each of these water distribution systems is the same. Leduc has implemented a user-pay model on the basis of annual consumption percentage for both the Nisku and New Sarepta water distribution systems.

12. Leduc stated that part of the reason for higher water and sewer rates being charged to New Sarepta customers results from an outstanding 2014 debenture. In 2014, Leduc provided an interest-free loan to New Sarepta, repayable over three years, to cover the operating loss of \$76,182 that occurred as a result of the Village of New Sarepta water rates not being high enough to cover the actual cost of operating the New Sarepta water distribution system.

13. Leduc also noted that there is a reasonable distinction between the Nisku and the New Sarepta water distribution systems. The Nisku water distribution system consists of two reservoirs connected to a common distribution system, and both reservoirs are supplied with water from the transmission main owned by Capital Region Southwest Water Services Commission (CRSWSC). The Nisku water distribution system is not hydraulically connected in any way to the New Sarepta water distribution system. Further, New Sarepta and Nisku each has a separate licence from Alberta Environment and Sustainable Resource Development.

14. Leduc further stated that the costs and expenses associated with the New Sarepta water distribution system are different from those of the Nisku system. As a condition of connecting its water distribution system to the CRSWSC transmission line prior to dissolution, the Village of New Sarepta assumed responsibility for a portion of the costs incurred to finance the construction of the Township Road 500 Transmission Main. Therefore, the charges imposed on New Sarepta water customers reflects the liability to repay these financing costs.

15. Leduc noted that the New Sarepta water distribution system is the only water distribution system within Leduc that is using the Township Road 500 Transmission Main. Leduc's share of the annual costs associated with the repayment of the debenture for construction of the Township Road 500 Transmission Main (in the amount of \$9,348) is recovered through taxation at large; Leduc maintained that the Nisku water distribution system users derived no benefits from these payments as the system is not connected to that main.

16. Leduc stated that reserve funds are intended to address issues such as capital projects, emergency repairs and rate stabilization with the water systems. Leduc noted that the New Sarepta water distribution system had a 2015 year-end reserve budget of \$171, whereas the Nisku distribution system had a 2015 year-end reserve budget of \$605,044.17. Leduc stated that if the two systems were consolidated for the purposes of utility rates, then the New Sarepta water distribution system would enjoy the benefits of Nisku's existing reserve fund, even though this reserve had been funded solely through past contribution of Nisku water system customers.

17. Leduc observed that in determining how it would allocate costs and determine rates, Leduc council considered numerous user-pay models, and determined that the most fair and equitable user-pay model for the New Sarepta and Nisku water distribution systems was based on annual consumption percentage for users of both Nisku and New Sarepta water distribution systems.

18. Leduc submitted a copy of Leduc's Bylaw 35-14, explaining that the 2015 water rates imposed under it on New Sarepta customers have the following components:

- a. Water rate charged by CRSWSC, including payments to the CRSWSC for New Sarepta's proportionate share of the debenture costs associated with financing construction of the Township Road 500 Transmission Main;
- b. A portion of Leduc's total operating budget for providing water utility. This amount was calculated based on the "budgeted annual consumption %" associated with the New Sarepta water distribution system (i.e., the budgeted annual amount of water consumed by New Sarepta residents as a percentage of the budgeted total water consumed by all Leduc residents, excluding bulk water in all cases);
- c. Applicable grant funding;
- d. Budgeted bulk water revenues; and
- e. Repayment of a portion of the existing deficit accrued by the New Sarepta water distribution system in 2014. This was calculated on the basis of repayment of the total deficit over three years (with no interest)

19. Leduc observed that the 2015 water rates for New Sarepta water system users do not include any significant amounts for building up the reserve account. Leduc further noted that the bulk water rates were kept the same for both Nisku and New Sarepta, notwithstanding that operating costs associated with the provision of bulk water in New Sarepta are higher than in Nisku.

20. Leduc maintained that the overall tax burden for New Sarepta is not significantly higher than it was prior to the dissolution of the village. Leduc claimed that as anticipated, the higher water rates necessitated by the transition of the New Sarepta water distribution system to a “user pay” model are offset by the lower property taxes imposed on New Sarepta residents.

21. Leduc noted that with respect to sewer rates, there are six hamlets within the county that have their own sewer lagoons: Sunnybrook, Buford, Kavanagh, Rolly View, Looma, and New Sarepta. With the exception of the New Sarepta lagoon, each of these lagoons is serviced by private wells or cisterns. Leduc stated that it currently charges a flat fee of \$39 per month to these users, as they are not connected to a public water system. Because the New Sarepta lagoon is connected to the public water system, New Sarepta instead is billed on the basis of total water usage associated with its wastewater system.

22. Leduc stated that with respect to the New Sarepta claim of “tax support” provided to the Nisku water distribution system, this consists of the repayment of the debenture issued by Leduc to fund the construction of the Nisku reservoir. Leduc stated Leduc council determined that it would collect the funds to service that debt through municipal taxes, rather than water rates, and further that a significant portion of Leduc’s tax base is located in Nisku, and is represented by users of the Nisku water distribution system. Further, the Nisku reservoir is part of the utility infrastructure owned by the county. Leduc stated that no similar “tax support” is provided to the New Sarepta water distribution system for the simple reason that there is no outstanding debt associated with the Leduc-owned infrastructure that comprises the New Sarepta water distribution system.

#### 4 Commission findings

23. The Commission’s authority in respect of this matter is set out in Section 43 of the *Municipal Government Act*, RSA 2000, c. M-26:

##### **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. [emphasis added]

24. The Commission considers that this appeal engages Section 43(2)(c) but has also considered it under sections 43(2)(a) and (b).

##### **Do rates conform to the public utility rate structure?**

25. The Commission finds that Leduc has established a user-pay-based water rate system, with different rates for each identifiable customer class or group. No sufficient factual basis or

specific argument was raised that suggested customers were not being charged according to their rate class. Therefore, the Commission finds that appeal of the water and sewer rates charged by Leduc has not been established on this ground for appeal.

### **Have the rates been improperly imposed?**

26. The evidence provided by Leduc satisfies the Commission that Leduc council passed Bylaw 35-14 on December 23, 2015, which established new water and sewer rates within Leduc. The Commission finds that appeal of the water and sewer rates charged by Leduc has not been established on this ground for appeal.

### **Are the rates discriminatory?**

27. “Discrimination” has been defined in *Principles of Public Utility Rates* as “... the practice of charging different rates to different customers for substantially the same product.”<sup>2</sup>

28. Black’s Law Dictionary definition of “discrimination” includes:<sup>3</sup>

1. The effect of a law or established practice that confers privileges on a certain class or that denies privileges to a certain class because of race, age, sex, nationality, relation, or handicap.
2. Differential Treatment; esp., a failure to treat all persons equally where no reasonable distinction can be found between those favoured and those not favoured. [emphasis added]

29. In Decision E94014,<sup>4</sup> the Public Utilities Board (PUB) articulated that “discrimination” was “... a failure to treat all persons equally where no reasonable distinction can be found between those favoured and those not favoured.”<sup>5</sup>

30. The Commission also considers applicable the findings of Mr. Justice Cote in respect of “discrimination” in his oral reasons dated June 19, 1990, for denying leave to appeal in the *Town of Bashaw v. The Public Utilities Board, et al.* rate appeal then under Section 291 of the *Municipal Government Act*:

In my view the reasons expressed by the Public Utilities Board do not say that difference is itself discrimination. In my view, they go further and consider the reasons and the fairness, [for and of the difference.]

It was suggested in argument that if the practical workings and effect of different procedures for computing the charges to different people in fact produce the same charge, there is no discrimination. In my view that is not correct. In my view a municipality could not arbitrarily pick on consumer or class of consumers and for no rational reason

<sup>2</sup> *Principles of Public Utility Rates*, James C. Bonbright, Albert L. Danielsen, David R. Kamerschen, Second Edition, March 1988, page 520.

<sup>3</sup> Black’s Law Dictionary, Eighth Edition, page 500.

<sup>4</sup> 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.

<sup>5</sup> PUB Decision E94014, dated March 28, 1994, at page 16, where the PUB noted that the definition should be revised to fit the context of Section 291 so as to read: “... rates are discriminatory when they fail to treat all users of a public utility equally where no reasonable distinction can be found between those favoured and those not favoured.”

establish a method of computation or no method of computation, but escape scrutiny by the Public Utilities Board simply on the Grounds that as luck would have it the final number works out to be similar to that for consumers as a whole. In my view discrimination and how rates are charged between different groups of consumers, plainly fall within s. 291 of the [Municipal Government Act], no matter how narrowly one reads that section.<sup>6</sup> [emphasis added]

31. The Commission has authority pursuant to Section 43 of the *Municipal Government Act* to determine whether rates, tolls or charges themselves are discriminatory but expressly provides that a person may not challenge the public utility rate structure itself.

32. In assessing whether any service charge, rate or toll is sufficiently discriminatory so as to cause the Commission to act pursuant to Section 43 of the *Municipal Government Act*, the Commission must assess the presence or absence of any rationale or logic underlying the charges applied by a municipality to a customer, and finds it important to understand the whole context under which rates, tolls and charges are being imposed.

33. Effectively, the Commission must determine whether a reasonable distinction exists between customers using the New Sarepta water system and other customers in Leduc to support their different treatment.

34. The Commission finds that the rates established for users of the New Sarepta water system are based on the following reasonable distinctions.

35. The Commission is satisfied by the evidence that at the time that residents of New Sarepta voted to join Leduc, New Sarepta was responsible for its share of past indebtedness incurred to finance construction costs for the Township Road 500 Transmission Main, which was built for the express purpose of connecting the New Sarepta and other distribution water systems. Accordingly, the Commission finds that the existence of this prior liability is a reasonable reason for Leduc to have included these costs only as part of the New Sarepta water system rates.

36. The Commission is also satisfied by the evidence that at that time, New Sarepta also had an accumulated operating deficit of \$76,182, which had accrued because New Sarepta's historic water rates had not been sufficient to cover the costs of operating and maintaining the New Sarepta water system. Leduc also noted in its response to the New Sarepta complaint that the April 2010 Dissolution Report had suggested that New Sarepta's utility rates were likely to rise for this same reason.<sup>7</sup>

37. The Commission is further satisfied by the evidence that the Nisku and New Sarepta water systems are separate and distinct, not connected in any fashion, and have different costs related to operation and maintenance.

38. Leduc determined that its approach was to utilize some form of user-pay approach to water system cost recovery wherein the full amount of costs attributed to each segment of users is collected from those same users. Accordingly, Leduc determined that New Sarepta customers should be responsible for a proportionately larger share of total water system costs and, thus,

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<sup>6</sup> *Bashaw (Town) v Alberta (Public Utilities Board)*, 1990 ABCA 195.

<sup>7</sup> Exhibit 20744-X0009, Leduc County submissions, paragraph 8.

should pay water rates in alignment with the costs attributable to operating and maintaining the water system they used.

39. The Commission finds that there is sufficient fact-based evidence to support a reasonable distinction for the different rates charged to New Sarepta water systems users and those rates charged to other water system users in Leduc. These facts include the fact that the New Sarepta water system is separate and physically distinct from the water systems used elsewhere in Leduc, the fact that the historical costs directly attributable to the New Sarepta water system are materially different from the costs attributable to those other water systems, and the fact that the difference in water rates charged to users of the New Sarepta water system and the water rates charged to users of water systems elsewhere in Leduc can be explained by these differences in costs.

40. For these reasons, the Commission has determined that the higher rates being charged to the New Sarepta water system users are not discriminatory and, therefore, dismisses Mr. Stammers' appeal.

41. It is hereby ordered that Mr. Stammers' appeal is dismissed.

Dated on February 24, 2016.

**Alberta Utilities Commission**

*(original signed by)*

Henry van Egteren  
Panel Chair

*(original signed by)*

Patrick Brennan  
Acting Commission Member

*(original signed by)*

Cliff Goerz  
Acting Commission Member



**Appendix 1 – Proceeding participants**

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| <b>Name of organization (abbreviation)</b><br><b>Company name of counsel or representative</b> |
| P. Stammers  |
| County of Leduc<br>Brownlee LLP  |

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|--------------------------------------|
| Alberta Utilities Commission         |
| Commission panel                     |
| H. van Egteren, Panel Chair          |
| P. Brennan, Acting Commission Member |
| C. Goerz, Acting Commission Member   |
| Commission staff                     |
| J. Petch (Commission counsel)        |
| C. Geddes                            |
| C. Burt                              |
| N. Nagy                              |