



City of Chestermere

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

October 19, 2016

Alberta Utilities Commission

Decision 21428-D01-2016

City of Chestermere

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

Proceeding 21428

Applications 21428-A001 and 21428-A002

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Contents

1	Summary	1
2	Introduction	1
3	Background	2
	3.1 Appellants	2
	3.2 CUI and Chestermere	3
4	Scope of the proceeding	5
	4.1 Commission’s jurisdiction	5
	4.2 Applicability of Rule 011	5
5	Analysis of grounds for appeal	6
	5.1 Municipal Government Act provisions dealing with municipal power to pass bylaws. 6	
	5.2 Improper notice of special council meeting	7
	5.3 Improper advertising of notice of bylaws, meetings and public hearings.....	8
6	Order	10
	Appendix 1 – Proceeding participants	11

1 Summary

1. For the reasons that follow, the Alberta Utilities Commission finds that the water, wastewater, storm drainage and waste management utility rates imposed by the City of Chestermere (Chestermere) at issue in this appeal were not improperly imposed pursuant to Section 43 of the *Municipal Government Act*. Accordingly, the Commission dismisses the appeals of Mr. Tyler Bishop and Mr. Grant Flaig.

2 Introduction

2. On March 18, 2016, the Commission received a notice of appeal from Mr. Bishop pursuant to Section 43(2)(b) of the *Municipal Government Act*, alleging that Chestermere and its water utility, Chestermere Utilities Incorporated (CUI), had improperly and unjustly imposed rate increases for water, wastewater, storm drainage and waste management utility services. On March 23, 2016, Mr. Flaig filed a notice of appeal on the same grounds. Collectively, Mr. Bishop and Mr. Flaig are referred to as the appellants in this decision.

3. By letter dated April 8, 2016, the Commission invited CUI to provide a response to the issues raised in the appeals, by May 6, 2016. As part of its response, the Commission asked CUI to indicate its position regarding whether the implementation of new water utility rates was made in accordance with the requirements of the *Municipal Government Act*, and to provide copies of any bylaws, correspondence or other documentation that would be of assistance to the Commission.

4. On April 29, 2016, the Commission received a letter from Brownlee LLP, advising that its client, Chestermere, had become aware of the appeals, and advised that the water utility rates that are the subject matter of the appeals were imposed by the council of Chestermere pursuant to Bylaws #011-16, #012-16, #013-16 and #014-16. The letter indicated that CUI had no statutory authority to impose utility rates and accordingly, Chestermere is the proper party to the appeals before the Commission. Chestermere requested that it be added as a party to this proceeding, and allowed to provide a response to the appeals. CUI subsequently filed a letter concurring with Chestermere.

5. CUI filed its response on April 29, 2016 to the Commission's request for information.

6. On May 3, 2016, the Commission granted Chestermere's request to be added as a party to this proceeding. On May 17, 2016, Chestermere filed its response to the Commission's request for information.

7. By letter dated May 26, 2016, the Commission provided an opportunity for Mr. Bishop and Mr. Flaig to respond to the submissions of CUI and Chestermere. On June 9, 2016, Mr. Bishop submitted a response.

8. In reaching the determinations contained in this decision, the Commission has considered the record of this proceeding, including the evidence and argument 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 Background

9. CUI was established in 2012 as a municipal corporation wholly owned by Chestermere. CUI provides municipal utility services on behalf of Chestermere, including water, wastewater collection, storm water management, and solid waste collection, disposal and recycling.

10. CUI is responsible for forecasting revenues and expenses, associated with the provision of municipal utility services, and for proposing the rates to be charged to ratepayers to cover the costs of such services. Any rates proposed by CUI are subject to the review and approval of Chestermere's elected council, acting in its role as utility regulator. Chestermere has legislative authority for establishing municipal utility rates.

11. On February 18, 2016, at a special council meeting, Chestermere passed the following four bylaws authorizing 2016 municipal utility rate increases, effective March 1, 2016 (collectively, the 2016 bylaws):

- Bylaw #005-16 (Wastewater Bylaw)
- Bylaw #006-16 (Waste Management Bylaw)
- Bylaw #007-16 (Storm Drainage Bylaw)
- Bylaw #008-16 (Water Bylaw)

12. On March 7, 2016, at a regular council meeting, Chestermere passed bylaws amending each of the 2016 bylaws (collectively, the 2016 amending bylaws). The 2016 amending bylaws are as follows:

- Bylaw #011-16 (Wastewater Bylaw Amendment)
- Bylaw #012-16 (Waste Management Bylaw Amendment)
- Bylaw #013-16 (Storm Drainage Bylaw Amendment)
- Bylaw #014-16 (Water Bylaw Amendment)

3.1 Appellants

13. The appellants submitted that the 2016 bylaws and the 2016 amending bylaws were improperly imposed pursuant to Section 43 of the *Municipal Government Act* on two grounds: (i) failure to provide notification of a special council meeting pursuant to Section 194(3) of the *Municipal Government Act*; and (ii) failure to advertise notice of the bylaws, meetings or public hearings pursuant to sections 606(1) and 606(2) of the *Municipal Government Act*. The

appellants also submitted various concerns in the nature of complaints regarding the rate increase approval process and associated consultation and communication with ratepayers.

14. With respect to the first ground, lack of proper notice, the appellants submitted that the 2016 bylaws were improperly imposed because there was less than the 24 hours' notice provided prior to the commencement of the February 18, 2016 special council meeting, contrary to the provisions of Section 194(3) of the *Municipal Government Act*. The appellants submitted that notice of the special council meeting was posted to Chestermere's Facebook page on February 17, 2016 at 9:07 p.m., and that the special council meeting was held on February 18, 2016 at 6 p.m. The appellants added that there was no other sufficient notice provided through other public channels, including Chestermere's "News and Announcements" webpage.¹

15. With respect to the second ground, the appellants argued that the 2016 bylaws and 2016 amending bylaws were improperly imposed because they were passed without proper advertising of the proposed bylaws pursuant to Section 606 of the *Municipal Government Act*. The appellants acknowledged that there is no explicit advertising requirement for utility bylaws in the *Municipal Government Act*. However, the appellants argued that the 2016 bylaws and the 2016 amending bylaws had the same level of public impact as bylaws specifically identified within the *Municipal Government Act* as having an advertising requirement, such as Section 22(2) – road closure, Section 256(3) – operating expenditures, and Section 386(1) – use of revenue. Accordingly, in the appellants' view, notification should have been provided in accordance with sections 606(1) and 606(2).²

16. Mr. Bishop added that the Commission had to determine if the rate increases were warranted:

In closing, although there is no prescriptive component of the Municipal Government Act that specifically addresses this situation, the Alberta Utilities Commission needs to determine if the rate increases were warranted and imposed with the appropriate level of governance.

If this application was put forward to the Alberta Utilities Commission as the Regulator, would it satisfy your requirements to grant approval based on the information brought forth by CUI?³

17. Further, the appellants submitted that Chestermere should be expected to adopt a rate approval process aligned with the requirements of the Commission's Rule 011: *Rate Application Process for Water Utilities*. The appellants noted that Section 5 of Rule 011 pertains to public involvement in rate application processes.⁴

3.2 CUI and Chestermere

18. CUI and Chestermere agreed that Chestermere has the statutory authority to impose rates and is the proper party to respond to the appeal before the Commission.⁵ Chestermere submitted that it complied with all applicable statutory requirements in the *Municipal Government Act* in enacting the 2016 bylaws and the 2016 amending bylaws.

¹ Exhibit 21428-X0003, page 8.

² Exhibit 21428-X0003, page 8.

³ Exhibit 21428-X0016.

⁴ Exhibit 21428-X0003, page 8.

⁵ Exhibits 21428-X0009 and 21428-X0014.

19. Chestermere submitted that its authority to establish a municipal public utility, by bylaw, is found in sections 3, 7, and 8 of the *Municipal Government Act*. Chestermere indicated that there are no provisions in the *Municipal Government Act* that set out procedural requirements specifically applicable to a municipality's authority to enact public utility bylaws and, accordingly, municipalities must comply with the general provisions set out in sections 181 and 187 to 191 of the *Municipal Government Act*.⁶ Chestermere pointed out that procedural requirements for special meetings are found in Section 194 and sections 196 to 198 of the *Municipal Government Act*.

20. With respect to proper notice, Chestermere submitted that notice of the special council meeting was posted on Chestermere's website on February 17, 2016 at 4:28 p.m. by adding an event to the "calendar" page. Chestermere indicated that the agenda of the special council meeting was posted on Chestermere's website at 9:06 p.m. on February 17, 2016, and a notification was posted on Chestermere's Facebook page at 9:07 p.m. also on February 17, 2016. In Chestermere's view, the requirements of Section 194(3) had been satisfied.

21. Chestermere added that there is no express provision in the *Municipal Government Act* that contemplates any specific effect of a failure to comply with Section 194(3). Further, there is no evidence of prejudice to the appellants resulting from the manner in which the notice of the special council meeting of February 18, 2016 was provided. Chestermere relied on an Alberta Court of Appeal decision⁷ for the proposition that where there is a breach of a procedural requirement which does not result in an adverse effect, the subject proceedings are not vitiated.

22. According to Chestermere, while public questions were not taken at the special council meeting on February 18, 2016, the public had the opportunity to ask questions at two prior regular council meetings and there was a large amount of materials and information available to the public.

23. With respect to advertising, Chestermere submitted that there are no *Municipal Government Act* provisions that require that public utility bylaws be advertised or subject to a public hearing. In Chestermere's view, the appellants suggest that the Commission should impose advertisement requirements which are not authorized or contemplated in the legislation. Chestermere argued that, in determining whether public utility rates were "improperly imposed," the Commission must consider the prescribed requirements in the *Municipal Government Act*, and that nothing in Section 43 confers jurisdiction upon the Commission to expand the procedural requirements applicable to public utility bylaws.

24. In response to the appellants' submissions regarding Rule 011, Chestermere submitted that the *Municipal Government Act* confers a broad authority on municipalities with respect to enactment of public utility bylaws. Chestermere added that a municipality that operates a public utility service through a municipally owned corporation, is not in the same position as the Commission.

25. Chestermere submitted that a considerable amount of public engagement regarding the rate increases at issue in this appeal was conducted and that the appellants were active in that process.

⁶ Exhibit 21428-X0014.

⁷ *Bridgeland Riverside Community Association v City of Calgary*, 1982 ABCA 138.

26. Chestermere also included responses to the various concerns raised by the appellants in the appeals regarding the bylaw approval process and consultation and communication with ratepayers.

4 Scope of the proceeding

4.1 Commission's jurisdiction

27. The appeals have been brought pursuant to Section 43(2)(b) of the *Municipal Government Act*. Section 43 is reproduced below:

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.

28. The Commission's authority under Section 43 is limited to considering appeals of the service charges, rates and tolls of persons. The appellants argued that the bylaws at issue were improperly imposed due to contraventions of Section 194(3) and sections 606(1) and 606(2) of the *Municipal Government Act*. These arguments fall within the scope of a Section 43 appeal and will be considered below.

29. The appellants also made additional allegations regarding the rate increase approval process and associated consultation and communication with ratepayers. The appellants included a timeline of events which contained sections titled "concerns of note" providing further detail. The appellants also requested the Commission to consider if the rate increases were warranted. Issues that go beyond the proper imposition of the rate increases are outside of the jurisdiction of the Commission under Section 43(2)(b) of the *Municipal Government Act*. Accordingly, the Commission will not consider these additional matters.

4.2 Applicability of Rule 011

30. Rule 011 is a Commission rule created under the *Alberta Utilities Commission Act*. As stated in the application section of Rule 011:

This rule applies to the rate application process for investor-owned water utilities. Municipal water utilities are not eligible for the AUC Rule 011 process.

31. Rule 011 applies to investor-owned water utilities that are developing rate applications for Commission approval. It does not apply to municipal water utilities, such as CUI. Accordingly, the Commission will not examine whether Chestermere should be expected to adopt a rate approval process aligned with the requirements of the Rule 011.

5 Analysis of grounds for appeal

5.1 Municipal Government Act provisions dealing with municipal power to pass bylaws

32. Public utility is defined in the *Municipal Government Act* in Section 1(1)(y) as follows:

Interpretation

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

- (i) water or steam;
- (ii) sewage disposal;
- ...
- (v) drainage;
- ...
- (ix) waste management;

33. The powers and functions of a municipality like Chestermere, are set out under Section 5 of the *Municipal Government Act*:

Powers, duties and functions

5 A municipality

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

34. Section 7(g) of the *Municipal Government Act* gives municipalities the general jurisdiction to pass bylaws for municipal purposes regarding public utilities:

General jurisdiction to pass bylaws

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

- ...
- (g) public utilities;

35. A municipality's power to pass bylaws are broad pursuant to Section 9 of the *Municipal Government Act*. Section 9 provides as follows:

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.

5.2 Improper notice of special council meeting

36. Section 194 of the *Municipal Government Act* states, in part:

Special council meetings

194(1) The chief elected official

- (a) may call a special council meeting whenever the official considers it appropriate to do so ...

...

(3) The chief elected official calls a special council meeting by giving at least 24 hours' notice in writing to each councillor and the public stating the purpose of the meeting and the date, time and place at which it is to be held.

37. Chestermere submitted that notice of the special council meeting to consider the 2016 bylaws was provided on Chestermere's webpage on February 17, 2016 at 4:28 p.m. by adding an event to the "calendar" page.⁸ The event titled "Special Meeting of Council – CUI Utility Rate Increase Request" identified the location as "Chestermere Municipal Office, 105 Marina Road, Chestermere, AB, T1X 1V7." Chestermere provided a copy of the agenda, which references the 2016 bylaws, and indicated that it was posted to Chestermere's webpage on February 17, 2016 at 9:06 p.m. Chestermere also submitted that a notification was posted on Chestermere's Facebook page at 9:07 p.m. the same day. The special council meeting was held February 18, 2016 at 6 p.m.

38. The Commission's accepts Chestermere's evidence that it posted a notice of the special council meeting to its public calendar 24 hours in advance, and that the meeting agenda and a Facebook notice were publically posted approximately 21 hours in advance, of the special council meeting. While the *Municipal Government Act* does not provide an expressed statutory statement on the form of notice, after considering the applicable legislation and the evidence in this proceeding, the Commission finds in the circumstances of the present proceeding, that sufficient notice of the Chestermere special council meeting of February 18, 2016, including the purpose of the meeting, and the date, time and place of the meeting, was provided to the appellants. Accordingly, the Commission dismisses the appeals insofar as they request the Commission to determine that the 2016 bylaws were improperly imposed because of a failure to provide proper notice under Section 194 of the *Municipal Government Act*.

⁸ Exhibit 21428-X0014, Appendix 19.

39. Even had the Commission found that Chestermere did not comply with the 24 hour advance notice requirements of Section 194 of the *Municipal Government Act*, the Commission finds, for the reasons that follow, that Mr. Bishop and Mr. Flaig were not prejudiced in the circumstances and lack sufficient grounds to challenge the validity of the 2016 bylaws.

40. The *Municipal Government Act* does not provide an express statement on the effect of a failure to give proper notice to the public of a special council meeting. Therefore, the Commission has considered the applicable case law on the consequence of a failure to give proper notice of municipal council meetings. *Bridgeland-Riverside Community Assn. v Calgary*⁹ (*Bridgeland*) is the leading authority in Alberta for the proposition that a municipal government's failure to comply with statutory notice requirements may be no more than an irregularity which does not render the proceedings flowing from them null and void. Rather, the matter must be reviewed on its merits. In *Bridgeland*, the Alberta Court of Appeal stated:

... In my view, absent an express statutory statement of effect, no defect should vitiate a proceeding unless, as a result of it, some real possibility of prejudice to the attacking party is shown, or unless the procedure was so dramatically devoid of the appearance of fairness that the administration of justice is brought into disrepute.

41. In the present proceeding, the appellants did not allege that they suffered any prejudice as a result of the timing or form of the notice, and there does not appear to have been any real prejudice to the appellants as a result of the form of notice provided and the timing in which it was provided. The appellants appeared to be fully conversant with the activities of the municipal council and its plans to increase public utility service rates. As noted by Chestermere, the appellants were active participants in the public engagement process respecting the 2016 public utility rate increases.¹⁰ The Commission also notes that the appellants indicated that there was “a large Chestermere resident base in attendance” at the Special Council meeting on February 18, 2016.¹¹ Accordingly, the Commission finds no evidence of prejudice or unfairness to the appellants in the circumstances and finds no basis to set aside the 2016 bylaws.

5.3 Improper advertising of notice of bylaws, meetings and public hearings

42. Section 606 of the *Municipal Government Act* states, in part:

Requirements for advertising

606(1) The requirements of this section apply when this or another enactment requires a bylaw, resolution, meeting, public hearing or something else to be advertised by a municipality, unless this or another enactment specifies otherwise.

(2) Notice of the bylaw, resolution, meeting, public hearing or other thing must be

- (a) published at least once a week for 2 consecutive weeks in at least one newspaper or other publication circulating in the area to which the proposed bylaw, resolution or other thing relates, or in which the meeting or hearing is to be held, or

⁹ 1982 ABCA 138.

¹⁰ Exhibit 21428-X0014, page 11.

¹¹ Exhibit 21428-003, page 7 and Exhibit 21428-005, page 7

- (b) mailed or delivered to every residence in the area to which the proposed bylaw, resolution or other thing relates, or in which the meeting or hearing is to be held.

43. As stated by the Court of Appeal of Alberta at paragraph 32 of its reasons for judgment in *Milner Power Inc. v Alberta (Energy and Utilities Board)*,¹² the modern principle of statutory interpretation requires “the words of an Act 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.” When interpreting the plain wording the Commission must pay sufficient attention to the scheme of the act, its object and the intention of the legislature.

44. Section 606 states that “the requirements of this section apply when this or another enactment requires a bylaw ... to be advertised by a municipality.” In the *Municipal Government Act*, there are several examples of the Alberta legislature using express statutory language to include an advertising requirement. These include:

Road closure

22(2) A bylaw closing a road must be advertised. [emphasis added]

Granting rights to provide utility service

45(1) A council may, by agreement, grant a right, exclusive or otherwise, to a person to provide a utility service in all or part of the municipality, for not more than 20 years.

(2) The agreement may grant a right, exclusive or otherwise, to use the municipality’s property, including property under the direction, control and management of the municipality, for the construction, operation and extension of a public utility in the municipality for not more than 20 years.

(3) Before the agreement is made, amended or renewed, the agreement, amendment or renewal must

(a) be advertised, and

(b) be approved by the Alberta Utilities Commission. [emphasis added]

Disposal of land

70(1) If a municipality proposes to transfer or grant an estate or interest in

(a) land for less than its market value, or

(b) a public park or recreation or exhibition grounds,

the proposal must be advertised. [emphasis added]

¹² 2010 ABCA 236.

Use of revenue

386(2) If there is any excess revenue, the municipality must advertise the use to which it proposes to put the excess revenue. [emphasis added]

45. Aside from Section 45 of the *Municipal Government Act*, which applies to a franchise agreement, there is no express advertising requirement for a municipality to advertise a public utility bylaw, resolution, meeting or public hearing.

46. In the Commission's view, both the wording of Section 606, and the use of express statutory language in the *Municipal Government Act* that requires municipalities to advertise in some instances but not others, indicates an express legislative intent that Section 606 not apply to a municipality enacting or amending a public utility bylaw. This is irrespective of its impact. Accordingly, the Commission finds that the 2016 bylaws and the 2016 amending bylaws are not invalid as a result of a failure to advertise notice of the bylaws and related meetings and public hearings in accordance with Section 606 of the *Municipal Government Act*.

47. Based on the above reasons, the Commission does not find that the 2016 bylaws or the 2016 amending bylaws were improperly imposed and the appeals are dismissed.

6 Order

48. The appeal of Mr. Bishop and the appeal of Mr. Flaig are dismissed.

Dated on October 19, 2016.

Alberta Utilities Commission

(original signed by)

Neil Jamieson
Commission Member

Appendix 1 – Proceeding participants

Name of organization (abbreviation) Company name of counsel or representative
Mr. T. Bishop
Mr. G. Flaig
City of Chestermere (Chestermere) Brownlee LLP
Chestermere Utilities Incorporated (CUI)

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