



Town of Coaldale

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

August 24, 2018

Alberta Utilities Commission

Decision 23159-D01-2018

Town of Coaldale

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

Proceeding 23159

August 24, 2018

Published by the:

Alberta Utilities Commission

Eau Claire Tower, 1400, 600 Third Avenue S.W.

Calgary, Alberta

T2P 0G5

Telephone: 403-592-8845

Fax: 403-592-4406

Website: www.auc.ab.ca

Contents

1	Decision summary	1
2	Introduction	1
3	Views of the parties	2
3.1	Complainants	2
3.2	Coaldale	3
4	Commission findings	9
4.1	Standing	9
4.2	Jurisdiction	10
4.2.1	Issues beyond service charges, rates and tolls	10
4.2.2	Amounts added to tax roll	11
4.3	Time period	13
4.4	Law	14
4.4.1	Do rates conform to the public utility rate structure?	14
4.4.2	Have the rates been improperly imposed?	14
4.4.3	Are the rates discriminatory?	14
4.5	Analysis	15
4.5.1	Water, drainage and sewer	15
4.5.2	Waste management	22
5	Order	24
	Appendix 1 – Proceeding participants	25
	Appendix 2 – Summary of Commission directions	26

List of Tables

Table 1.	Bylaw summary	13
Table 2.	Summary of grounds for appeal	15

1 Decision summary

1. For the reasons that follow, the Alberta Utilities Commission finds pursuant to Section 43 of the *Municipal Government Act* that certain of the water, drainage and sewer service charges at issue in this appeal, from November 12, 2015 to present, do not conform to the public utility rate structure established by the Town of Coaldale (Coaldale) and are improperly imposed. However, the Commission finds that the grounds of appeal in relation to waste management service charges, from November 12, 2015 to present, have not been established and dismisses this part of the appeal.

2 Introduction

2. On November 12, 2017, the Commission received an appeal pursuant to sections 43(2)(a), (b), and (c) of the *Municipal Government Act* from Ms. Eleanor Britz, Ms. Nadine Britz and Mr. Doug Shields (collectively, the complainants) in which they allege that Coaldale overcharged them in relation to water, drainage, sewer and waste management service charges from June 2010 to present. 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.

3. On December 5, 2017, the Commission invited Coaldale to respond to the issues raised by the complainants, and received Coaldale's response on January 12, 2018. The main process steps, as amended throughout the course of this proceeding, occurred as set out in the table below:

Process step	Date
Commission information requests (IRs) to parties	February 6, 2018
IR responses from parties	March 12, 2018
Commission IRs to Coaldale	March 26, 2018
IR responses from Coaldale	April 13, 2018
Commission IRs to Coaldale	April 25, 2018
IR responses from Coaldale and submissions from Coaldale regarding further process	May 8, 2018
Submissions from complainants regarding further process	May 10, 2018
Argument	May 29, 2018

4. For purposes of this decision, the Commission considers the record of this appeal to have closed on May 29, 2018.

5. 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 the parties

3.1 Complainants

6. The complainants advised that they purchased a property (the property) in Coaldale in June 2010.¹ While the property is zoned as a single-residential building,² the complainants explained that they operate the property as a "3-person partnership business,"³ and rent out four suites in the building on the property to tenants.

7. The complainants disputed water, drainage, sewage and waste management service charges applied to the property, since June 2010, in their appeal, as summarized below.

8. The complainants submitted that the water service charges are improperly imposed, and argued that because there is one water line and one water meter for the property, they should only be charged one monthly flat fee, as opposed to four monthly flat fees. The complainants requested that the Commission order Coaldale to return \$5,662.03 plus associated interest and administrative fees.

¹ Exhibit 23159-X0001, Britz appeal of water, sewer, drainage and garbage utility services, PDF page 1.

² Exhibit 23159-X0012, Letter to AUC - March 12, 2018, response to question 7.

³ Exhibit 23159-X0011, Questions answered from AUC, response to question 1.

9. The complainants submitted that drainage service charges also do not conform to the public utility rate structure established by the municipality and are improperly imposed. The complainants submitted that they should only be charged one monthly flat fee, as opposed to four monthly flat fees, because the property is contained on one parcel of land, and requested that the Commission order Coaldale to return \$1,736.35 plus interest and administrative fees.

10. The complainants submitted that the sewage service charges do not conform to the public utility rate structure established by the municipality and are improperly imposed. As there is only one sewer line entering and exiting the property, they argued that they should only be charged one monthly flat fee, as opposed to four monthly flat fees, and requested that the Commission order Coaldale to return \$3,820.74 plus interest and administrative fees.

11. In addition, the complainants argued that the waste management service charges do not conform to the public utility rate structure established by the municipality, are improperly imposed, and are discriminatory. The complainants indicated that Coaldale charges the property for four garbage bins on a monthly basis. However, in the complainants' view, they only asked for and received two garbage bins from Coaldale when they took ownership of the property in 2010 and, accordingly, they should only be charged for two garbage bins on a monthly basis. Regarding the discrimination ground, the complainants argued "are we the only ones in the Town being charged that? If so, that's defiantly [*sic*] discriminatory."⁴ The complainants requested that the Commission order Coaldale to return \$4,071.17 plus associated interest and administrative fees.

12. The complainants submitted that the overcharged amounts identified in their submissions are current up to the end of February 2018, and requested that the overcharged amounts include any additional amounts up to the day the Commission issues its decision.⁵

3.2 Coaldale

13. Coaldale made three preliminary arguments regarding standing, jurisdiction and the time period in which the Commission should consider the appeal.

14. First, Coaldale submitted that the complainants do not have standing to bring an appeal under Section 43 of the *Municipal Government Act*. In Coaldale's view, none of the complainants qualify as "a person who uses, receives or pays for a municipal utility service," as Ms. Eleanor Britz has never resided on the property, and neither Ms. Nadine Britz nor Mr. Shields have resided on the property since 2015. Coaldale argued that the complainants have not provided any documents, such as bank statements, to show who has made payments on the utility services account for the property.⁶

15. Second, Coaldale submitted that the Commission's jurisdiction to grant a remedy under Section 43 of the *Municipal Government Act* does not extend to any unpaid public utility amounts that have been transferred to the tax roll under Section 553(1)(b) of the *Municipal Government Act*. Coaldale explained that it transfers unpaid public utility amounts to Ms. Eleanor Britz's property tax roll every three months pursuant to Section 9.6 of Bylaw 353-R-01-97 and sections 42(1) and 553(1)(b) of the *Municipal Government Act*.

⁴ Exhibit 23159-X0011, Questions answered from AUC, response to question 3.

⁵ Exhibit 23159-X0011, Questions answered from AUC.

⁶ Exhibit 23159-X0033, Letter to AUC, dated May 8, 2018, PDF page 7.

Coaldale argued that, once transferred, these amounts are deemed to be taxes under Section 553(2) of the *Municipal Government Act*. In Coaldale’s view, the Commission does not have authority under Section 43 of the *Municipal Government Act* to review a tax. Coaldale submitted that, pursuant to Section 460.1(2) of the *Municipal Government Act*, Ms. Eleanor Britz may be able to file a complaint with respect to her tax assessment to a composite assessment review board.

16. Third, Coaldale argued that if the Commission were to find that one or all of the complainants had standing, and if the Commission were to find that it had jurisdiction to hear the appeal, then the Commission should exercise its discretion and decline to vary or disallow the service charges or limit any adjustment to no more than two years prior to the date the appeal was filed. This is because the complainants have failed to exercise due diligence in understanding their utility invoices and have, therefore, acquiesced to the utility service charges.

17. Irrespective of these preliminary matters, Coaldale argued that there was no basis for the Commission to find that the public utility service charges at issue in this appeal do not conform to the public utility rate structure established by Coaldale, are improperly imposed, or are discriminatory.

18. Coaldale submitted that the property has four residential units, and each unit is charged for its individual water, drainage and sewer service, on the basis of the definition of “premises” in Bylaw 724-C-02-17:

The flat fees set out in the Utility Rates Bylaws [currently Bylaw 724-C-02-17] are charged per Residential or Church “premises”. The Utility Rates Bylaw, only distinguishes charges between Residences/Churches and Commercial premises. “Premises” is not defined in the Utility Rates Bylaw or the Utility Bylaw [Bylaw 353-R-01-97]. However, the Utility Bylaw states at section 4.6 that: (e)ach family residence, duplex, and townhouse unit shall be serviced with individual water and sewer services serving no more than one residential unit”. The Town has understood and applied Utility Rates Bylaws, in the context of the companion Utility Bylaw, and has charged Town properties with multiple residential units, per residential unit, for that unit’s individual municipal utility service use. As this Property is a four-plex, with four residential units, each unit is being charged for its individual service.⁷

...

Read in light of the context and purpose of the Utility Bylaw, and in order to give effect to the Utility Bylaw, the Utility Rates Bylaws’ use of the word “premises” must refer to individual residential units. If the word “premises” were interpreted to mean a single property or building, then the Town would not be able to individually charge renters of apartments (i.e. residential units) for their use of Town utility services, but instead, would charge the whole apartment building one flat rate as though it was one residence; this of course, would be contrary to the object and intention of the Bylaws and would be contrary to how the Town has always charged multi-residential properties.⁸

...

⁷ Exhibit 23159-X0006, Town of Coaldale submissions to AUC - January 12, 2018, PDF page 5.

⁸ Exhibit 23159-X0006, Town of Coaldale submissions to AUC - January 12, 2018, PDF page 6.

The current zoning of the property as R-1A and the Town's policy to treat the property as non-conforming does not affect the Town's interpretation of the word "premises."⁹

19. Regarding water service charges, Coaldale confirmed the property has one water meter,¹⁰ and that the property's single water meter is consistent with its zoning as a single-residential building.¹¹ However, Coaldale advised that, even though each dwelling unit at the property does not have an individual water meter, it is charging each dwelling unit of the property as if it were individually metered.¹² In other words, while the property has only one water meter, it is being charged as if it has four individually metered units, resulting in four monthly basic water charges.¹³

20. Coaldale submitted that the "discrepancy," i.e., that a non-individually metered multi-residential building is being charged pursuant to Section 9.2 of Bylaw 353-R-01-97 as if each dwelling unit was individually metered, arises because the property is a non-conforming building being charged, pursuant to policy, as if it was a conforming multi-residential building:

Section 5.13 uses the imperative word "shall", as such, Section 5.13 requires the Property to have separate water meters for each dwelling unit. However, this Property is a non-conforming fourplex. The Property's single water meter is consistent with its zoning as a single-residential building. The Town has allowed the Property to operate as a non-conforming building, and as such does not require it to have separate meters. It is the Town's policy to allow multi-residential unit dwellings to have one water meter for multiple units. The Town has adopted this policy to save the property owner from the expense of installing separate water meters for each unit as required under the Utility Bylaw (353-R-01-97)...¹⁴

...

Section 9.2 of the Utility Bylaw (353-R-01-97) indicates that owners of units that are individually metered pay a monthly basic charge and the value of the water is recorded by the meter... Multi-residential unit properties may be charged pursuant to section 9.2 for each individually metered unit, but, it is the case, as it is here, for a non-individually metered multi-residential property to be charged pursuant to section 9.2. In this case, the discrepancy arises because the Property is a non-conforming building that is charged as though it were a conforming multi-residential building. There are also buildings in the Town where a single meter is shared between units in a multi-residential building, but, pursuant to the Town's policy, each unit is charged the monthly basic charge for its individual use.¹⁵

21. Coaldale explained that, since 2002, the property has been zoned as Residential-R-1A, which allows for single-detached dwellings or semi-detached dwellings, but not multi-residential dwellings. Coaldale argued that the property became non-conforming pursuant to Section 643 of the *Municipal Government Act* when it was rezoned through a land-use amendment bylaw

⁹ Exhibit 23159-X0021, Letter to AUC - April 12, 2018, response to question 9.

¹⁰ Exhibit 23159-X0012, Letter to AUC - March 12, 2018, response to question 6.

¹¹ Exhibit 23159-X0012, Letter to AUC - March 12, 2018, response to question 7.

¹² Exhibit 23159-X0012, Letter to AUC - March 12, 2018, response to question 7.

¹³ Exhibit 23159-X0012, Letter to AUC - March 12, 2018, response to question 9.

¹⁴ Exhibit 23159-X0012, Letter to AUC - March 12, 2018, response to question 7.

¹⁵ Exhibit 23159-X0012, Letter to AUC - March 12, 2018, response to question 9.

from Institutional-Recreational - I/R to Residential-R-1A in August 2002. Coaldale explained that it has treated the property as a non-conforming multi-residential building since 2005:

... Assuming that the property was a fourplex at the time the prior owner sought to change the zoning from Industrial/Recreational to Residential, the property would not have conformed to the Residential zoning by virtue of the land use bylaw amendment which changed the property's zoning. It is likely that the property was a non-conforming property at the time of the land use bylaw amendment, given the history of the property as a residence for the neighbouring church...

...

... In this case, the prior owner made a request to have the property's land use designation changed to Residential – R - 1A. It appears that the prior owner converted the property to a fourplex without obtaining the necessary permits or proper land use designation change. The municipality learned of the non-conforming use of the building in 2005 with the census taker providing information to the Town. The Town has allowed the non-conforming use to continue....¹⁶

22. Coaldale explained that its policy is to allow multi-residential unit dwellings to have one water meter for multiple units in order to save the property owner from the expense of installing separate water meters for each unit “as required under the Utility Bylaw (353-R-01-97).”¹⁷ Coaldale argued that this policy is fair as it both saves property owners money and compensates Coaldale for the non-conforming use:

To bring the Property into compliance with the proper zoning as a multi-residential property and the Utility Bylaw (353-R-01-97), the owner would not only have to install four separate water meters for each unit but also four separate water and sewer connections. This would cost tens of thousands of dollars for the Property owner.

In this case, as with other non-conforming properties of this nature, instead of compelling the owner to bear the expense of properly re-zoning the Property and bringing it into compliance with the Utility Bylaw (353-R-01-97), the Town has adopted the policy of allowing the Property to operate as a non-conforming building, but charging it as though it was a conforming four-plex. This policy is the fairest way to compensate the Town for this non-conforming use while relieving the Property owner from the burden of expending the funds to bring the Property into compliance with the Land Use Bylaw and Utility Bylaw.¹⁸

23. In an IR response, Coaldale confirmed that Bylaw 353-R-01-97 has not incorporated the policy of allowing units in multi-residential buildings to have one meter. However, in Coaldale's view, sections 5 and 9 of the *Municipal Government Act* grant a municipality wide discretion in interpreting its own bylaws and allows a municipality to impose duties on itself through policy.¹⁹

24. Coaldale also submitted that it relied on policy in respect of charging the property per dwelling unit with respect to individual water and sewer connections:

¹⁶ Exhibit 23159-X0021, Letter to AUC - April 12, 2018, response to question 5

¹⁷ Exhibit 23159-X0012, Letter to AUC - March 12, 2018, response to question 7.

¹⁸ Exhibit 23159-X0012, Letter to AUC - March 12, 2018, response to question 11.

¹⁹ Exhibit 23159-X0021, Letter to AUC - April 12, 2018, response to question 6.

... In order to comply with the Utility Bylaw, each residential unit must have its own water meter and its own service connection to the Town's water and sewer lines. The Town's water and sewer lines extend only to the property line of each property. By adopting this policy, the Town saves the property owner from expending tens of thousands of dollars to not only install separate water meters per unit, but also install separate water and sanitary sewer service connections from each unit to the Town's main water and sewer lines. The Town will charge these properties the monthly basic charge per residential unit for water and sanitary sewer rates as this strikes a balance between saving the owner the significant costs of installing the water and service connections per unit as required in the Utility Bylaw, while ensuring that the Town is compensated for the use of resources and has appropriate revenue generation....²⁰

25. Regarding sewage service charges specifically, Coaldale indicated that, while Section 4.6 of Bylaw 353-R-01-97 does not specifically state that multi-residential properties, including fourplexes, must have individual sewer service connections for each dwelling unit, it does state that two kinds of multi-residential properties, i.e., townhouses and duplexes, must have individual service connections for water and sewer:²¹

4.6 Number Of Services

Each single-family residence, duplex, and townhouse unit shall be serviced with individual water and sewer services serving no more than one residential unit.²²

26. In Coaldale's view, in order to give effect to Bylaw 353-R-01-97, the bylaw must be interpreted in a way that would reflect the intention that each dwelling unit in a multi-residential property have an individual sewer service connection. Therefore, Coaldale submitted that it has interpreted Section 4.6 to apply to multi-residential properties, and to require individual dwelling units in a multi-unit building to have individual sewage service connections.²³ Accordingly, even though there is only one sewer line to the property, Coaldale charges the property as if it has four individual sewer lines.²⁴

27. Coaldale confirmed that there is no bylaw requirement that each individual dwelling unit in a multi-residential building have an individual drainage connection.²⁵ However, Coaldale submitted that its approach to the property in relation to drainage service charges is the same as for water and sewer service charges, and that any discrepancy between specific bylaw provisions and the charges imposed on the property is due to its policy.²⁶ Coaldale argued:

The storm drainage fees charged for the property, do not have to do with storm drainage connections from each residential unit to the Town's infrastructure, instead...the storm drainage fees were added to the Utility Rates Bylaws in order to compensate the Town for its costs in maintaining drainage ponds and to compensate for the increased charges that the Town incurs for obtaining its water from the City of Lethbridge....²⁷

²⁰ Exhibit 23159-X0012, Letter to AUC - March 12, 2018, response to question 8.

²¹ Exhibit 23159-X0021, Letter to AUC - April 12, 2018, response to question 7.

²² Exhibit 23159-X0006, Town of Coaldale submissions to AUC - January 12, 2018, PDF page 13.

²³ Exhibit 23159-X0021, Letter to AUC - April 12, 2018, response to question 7.

²⁴ Exhibit 23159-X0021, Letter to AUC - April 12, 2018, response to question 7.

²⁵ Exhibit 23159-X0021, Letter to AUC - April 12, 2018, response to question 7.

²⁶ Exhibit 23159-X0021, Letter to AUC - April 12, 2018, response to question 8.

²⁷ Exhibit 23159-X0021, Letter to AUC - April 12, 2018, response to question 8.

28. Accordingly, Coaldale advised that the property is charged "... four times the drainage fees, for each residential unit, because this is the fairest way to apportion the Town's costs and resources, and is consistent with how the Town charges other, similar properties."²⁸

29. In relation to waste management service charges, Coaldale advised that Bylaw 672-R-10-12 applies to garbage bins or "automated collection containers." Coaldale submitted that the property had four garbage bins, and was charged for four garbage bins, prior to Ms. Eleanor Britz becoming the property owner.²⁹ Coaldale submitted that under Section 10(c) of Bylaw 672-R-10-12, garbage bins assigned to a property remain with a property, and that the property owner is responsible for all fees related to the garbage bins issued for the property.³⁰

30. Coaldale advised that once the initial request/assignment is completed, it does not revisit the number of assigned garbage bins unless a request in writing pursuant to Section 4.1 of Bylaw 353-R-01-97 is made by the property owner.³¹ Section 4.1 states:

4.1 Supply Of Service

The Town having constructed, operated and maintained water, sanitary sewer, and solid waste systems as a Public Utility shall continue, insofar as there is sufficient plant capacity available, and upon such terms as Council considers advisable, to supply water and collect sewage and solid waste to or from any resident or industry or other consumer within the municipality situated along any water and sewer main, or Municipal right of way, upon being so requested in writing by the owner...³²

31. Coaldale advised that it has communicated to the complainants that they need to make their request to change the number of garbage bins assigned to the property in writing, pursuant to Section 4.1 of Bylaw 353-R-01-97, but that no such written request from the property owner has been received to date.³³

32. In addition, Coaldale explained that under Section 10(b) of Bylaw 672-R-10-12, the director of operations has discretion regarding the number of garbage bins assigned to a residential dwelling. Coaldale submitted that while the director of operations maintains discretion, its policy is to assign one garbage bin to a single-family home, and to provide the number of garbage bins a property owner requests for a multi-residential property. Coaldale advised "The number of [garbage] Bins requested, and the reasonableness of the request, is rooted in the number of dwelling units there are at a property, which in turn, is related to the number of individuals that reside at a residential dwelling."³⁴ Coaldale submitted that if it received a written request to reduce the number of garbage bins assigned to the property, Coaldale would then assess whether the property will be sufficiently serviced by two garbage bins for four residential units, and may exercise its discretion to either grant or deny the request on the basis that two garbage bins would not meet the needs of the property.³⁵

²⁸ Exhibit 23159-X0021, Letter to AUC - April 12, 2018, response to question 8.

²⁹ Exhibit 23159-X0021, Letter to AUC - April 12, 2018, question 3(b).

³⁰ Exhibit 23159-X0012, Letter to AUC - March 12, 2018, question 5(a).

³¹ Exhibit 23159-X0012, Letter to AUC - March 12, 2018, question 3.

³² Exhibit 23159-X0006, Town of Coaldale submissions to AUC - January 12, 2018, PDF page 12.

³³ Exhibit 23159-X0021, Letter to AUC - April 12, 2018, response to question 3(a).

³⁴ Exhibit 23159-X0012, Letter to AUC - March 12, 2018, response to question 5(d).

³⁵ Exhibit 23159-X0021, Letter to AUC - April 12, 2018, response to question 3(c).

4 Commission findings

4.1 Standing

33. The Commission will begin by considering Coaldale’s submission that none of the complainants have standing to bring an appeal under Section 43 of the *Municipal Government Act*.

34. The terms “uses” “receives” and “pays” contained in Section 43(1) of the *Municipal Government Act* are not defined in the legislation. If the meaning of a word is not defined in legislation, then it is given its ordinary dictionary meaning, unless the purpose of the statute demands some other meaning.³⁶

35. The Paperback Oxford Canadian Dictionary, second edition, provides the following broad definitions, in part:

pay: what is due for services done, goods received... etc.

receive: acquire or accept (something offered or given)

use: employ (something) for a particular purpose

36. The Pocket Dictionary of Canadian Law, fifth edition, provides the following broad definitions, in part:

pay: remuneration in any form

receive: actual physical receipt; to be put in possession of a thing

use: the employment of a thing to achieve a purpose

37. The Commission notes that the Public Utilities Board, Alberta, a predecessor of the Commission, found that the term “user of a public utility,” as contained in Section 291 of the *Municipal Government Act*, RSA 1980, c M-26 (previous MGA), to refer to a customer to whom service charges, rates and tolls are made by the public utility for a commodity consumed or service rendered to the premises.³⁷ The Commission observes that the provisions of Section 291 of the previous MGA are very similar to the provisions of Section 43 of the current *Municipal Government Act*.

38. While Coaldale argued that the complainants do not reside at the property, the Commission notes that residency is not expressly mentioned in the wording of Section 43(1) of the *Municipal Government Act*, nor is it mentioned as a requirement in the dictionary definitions referenced above.

39. In light of the above considerations, the Commission finds that Ms. Eleanor Britz, who is the owner of the property and the person to whom the utility invoices are addressed, is a person who uses, receives or pays for Coaldale’s water, sewer, drainage and waste management services and has standing to bring this appeal. Further, the Commission accepts the complainants’

³⁶ *R v Rolland*, 1975 CarswellOnt 34, 27 CCC (2d) 285 (ONCA).

³⁷ Decision E94013: Decision re: the Town of Bassano, Complaint by Mrs. Elizabeth J. Zibell alleging discriminatory water and sewer billings by the Town of Bassano, File 8226-3, March 28, 1994.

submission that they operate the property together as a partnership business, that the utility bills for the property are sent to Ms. Nadine Britz and Mr. Doug Shields's residential address, and that Ms. Nadine Britz and Mr. Doug Shields pay all of the utility bills for the property.³⁸ Accordingly, the Commission finds that Ms. Nadine Britz and Mr. Doug Shields are also persons who use, receive or pay for Coaldale's water, sewer, drainage and waste management services and also have standing to bring this appeal.

4.2 Jurisdiction

40. In this section of the decision, the Commission will consider its jurisdiction under Section 43 of the *Municipal Government Act* with respect to two matters: first; to consider issues that do not pertain to public utility service charges, rates or tolls; and second, to consider outstanding utility service charge amounts for the property that Coaldale has added to Ms. Eleanor Britz's tax roll.

4.2.1 Issues beyond service charges, rates and tolls

41. In the appeal, the complainants asked the following non-exhaustive list of questions:

4. Is there a camera on the Town's dump truck? If so, produce evidence of how many bins are dumped weekly at said property? What is the date, with camera evidence, that the FIRST automatic garbage pick up was at this property?

...

12. Our MXU meter is still in our basement, why is it not on the outside of the house?

...

21. Do you think the Town of Coaldale should be treating its citizens or the citizens property, if they question the billing and the billing practises of the town? Why have we received verbal and written threats towards us, our tenants and our property, in regard with bills that are not itemized?...³⁹

42. The Commission finds that issues that go beyond public utility service charges, rates and tolls are not within the limited authority of the Commission's jurisdiction under Section 43 of the *Municipal Government Act*. Accordingly, the Commission will not consider these additional matters further.

43. In addition, the complainants requested that the Commission order, in part, "compensation for financial hardship, stress and whatever the AUC finds appropriate." The Commission's authority in this proceeding is limited to varying, adjusting, or disallowing, in whole or in part, the complainants' service charges, rates or tolls. Consequently, there will be no further discussion of these requested remedies and such relief is not granted.

³⁸ Exhibit 23159-X0011, Questions answered from AUC, response to question 1.

³⁹ Exhibit 23159-X0001, Britz appeal of water, sewer, drainage and garbage utility services.

4.2.2 Amounts added to tax roll

44. In assessing its jurisdiction to consider amounts at issue in this appeal that Coaldale has added to Ms. Eleanor Britz's tax roll, the Commission has considered Section 10 of the *Interpretation Act*, which states:

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

45. The Commission has also applied the “modern principle of statutory interpretation,” which requires that:

... the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament.⁴⁰

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

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

48. The *Municipal Government Act* creates a comprehensive scheme that enables municipalities to provide public utility service and to recover their costs of providing that service. The Commission observes that a municipality's rights and responsibilities in providing public utility services are primarily identified in Part 3 (“Special Municipal Powers and Limits on Municipal Powers”) of the *Municipal Government Act*, sections 33 to 44, under the heading “Municipal Public Utilities.” A municipality's rights with respect to non-payment of public utility service charges are included, in part, in sections 42 and 553 of the *Municipal Government Act*. Section 42 sets out liability for public utility service charges,⁴¹ and Section 553, which is located in Part 13 (“Liability of Municipalities, Enforcement of Municipal Law and Other Legal Matters”), Division 4 (“Enforcement of Municipal Law”), provides an enforcement mechanism for municipalities to recover unpaid utility service charges in certain situations. These provisions are set out in part, below:

Liability for public utilities charges

⁴⁰ *Rizzo & Rizzo Shoes Ltd. (re)*, [1998] 1 SCR 27 at paragraph 21.

⁴¹ Exhibit 23159-X0012, Letter to AUC - March 12, 2018, PDF page 9. Coaldale confirmed that it did not have any contracts in place with the occupants of the property. Accordingly, only Section 42(1) of the *Municipal Government Act* is relevant to this appeal.

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.

...

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;

...

(2) Subject to section 659, when an amount is added to the tax roll of a parcel of land under subsection (1), the amount

(a) is deemed for all purposes to be a tax imposed under Division 2 [“Property Tax”] of Part 10 [“Taxation”] from the date it was added to the tax roll, and

(b) forms a special lien against the parcel of land in favour of the municipality from the date it was added to the tax roll.

49. Once a public utility service charge is deemed to be a tax under Section 553, a municipality can rely on the provisions regarding recovery of tax arrears set out in Part 10 of the *Municipal Government Act*.

50. The Commission observes that the wording of Subsection 553(1)(b) limits the amounts a municipality can add to a tax roll of a parcel of land to “unpaid charges referred to in section 42 ... that are owing by the owner of the parcel.” If the Commission, in exercising its authority under Subsection 43 of the *Municipal Government Act*, determines that a service charge, rate or toll does not conform to the public utility rate structure established by the municipality, is improperly imposed, or is discriminatory, then the Commission may order the charge to be varied, adjusted or disallowed. The Commission finds that, in these circumstances, the varied, adjusted or disallowed charge would not constitute “unpaid charges referred to in section 42 ... owing by the owner of the parcel,” as required in sections 553(1)(b) and 553(2)(a), and therefore could not be properly transferred to the tax roll or deemed to be a tax.

51. Section 43, which contains appeal rights, is found in Part 3 of the *Municipal Government Act*, under the heading “Municipal Public Utilities,” with the provisions that primarily identify a municipality’s rights and responsibilities in providing public utility services. In the Commission’s view, an interpretation that allows public utility service charges to be transferred to the tax roll under Section 553, but then insulates those same charges from appeal under Section 43, where such charges would have been varied, adjusted or disallowed by the Commission under Section 43(2) had they been appealed prior to being transferred to the tax roll, defeats the intention of the legislature in allowing a person to appeal the charge.

52. Based on the above, the Commission is of the view that Coaldale’s proposed interpretation of Section 43 is not supported by the words or scheme of the *Municipal Government Act*, or the intention of the legislature. The Commission finds that it has jurisdiction

under Section 43 of the *Municipal Government Act* to consider the amounts at issue in this appeal that Coaldale has added to Ms. Eleanor Britz’s tax roll.

4.3 Time period

53. Section 43 of the *Municipal Government Act* is a discretionary provision, as indicated by the wording in Section 43(2) that “... the Commission may order the charge, rate or toll to be wholly or partly varied, adjusted or disallowed [emphasis added].” The Commission finds it is in the public interest for it to limit its considerations of Section 43 appeals to those brought on a timely basis. Such an approach promotes the following principles:

- places accountability on the person(s) appealing a utility service charge, rate or toll;
- provides certainty and finality to municipalities and its customers in respect of their utility service charges, rates or tolls; and
- allows municipalities to continue to operate public utilities on a cost effective basis.

54. This appeal, filed in November 2017, concerns disputed utility service charges from 2010 to present. The Commission observes that the appeal implicates a number of bylaws, some of which are no longer in effect. The Commission has summarized the bylaws at issue in this appeal in the following table:

Table 1. Bylaw summary

Bylaw	Effective date
724-C-02-17 – A bylaw authorizing water, sewer, solid waste, recycling and storm water rates for 2017, 2018 and 2019	June 1, 2017 for 2017 rates, January 1, 2018 for 2018 rates, and January 1, 2019 for 2019 rates
697-C-12-14 – A bylaw authorizing water, sewer, solid waste, recycling and storm drainage rates for 2014	February 1, 2015
672-R-10-12 – A bylaw to regulate and manage waste and recycling	November 13, 2012
663-C-04-12– A bylaw authorizing water, sewer, solid waste, recycling and storm drainage rates for 2012	June 1, 2012
639-C-05-10– A bylaw authorizing water, sewer, solid waste, and recycling rates for 2009	June 1, 2010
617-C-04-09 – A bylaw authorizing water, sewer, solid waste, and recycling rates for 2009	June 1, 2009
353-R-01-97 – A bylaw respecting utilities	Third reading occurred on October 27, 1997 (provisions came into effect at different times)

55. While the complainants submitted that they asked Coaldale questions about their utility invoices on many occasions over the past seven years, and received no answers,⁴² the complainants could have brought a Section 43 appeal to the Commission in 2010 or in the intervening years. They did not do so. In the Commission’s view, the potential disallowance of approximately eight years of water, drainage, sewer and waste management service charge revenue for the property would not be fair to Coaldale in the circumstances, particularly given

⁴² Exhibit 23159-X0001, Britz appeal of water, sewer, drainage and garbage utility services, PDF page 1.

that services were provided to the property during this time and given that the complainants' fully controlled when the appeal was filed. Accordingly, the Commission finds that limiting its consideration of the appeal from November 12, 2015, which is two years prior to the date that the complainants filed the appeal, to present, is a reasonable balance of the Commission's authority to supervise municipalities under Section 43 of the *Municipal Government Act*, while recognizing the importance of the principles enunciated above, in the circumstances.

4.4 Law

56. This appeal has been brought pursuant to sections 43(2)(a), (b), and (c) of the *Municipal Government Act*. An overview of the tests the Commission applies in relation to each of these enumerated grounds is described below.

4.4.1 Do rates conform to the public utility rate structure?

57. 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 Coaldale recovers its required revenue from customers.⁴³ 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 the complainants are being charged according to their rate class. In its assessment, the Commission reviews Coaldale's bylaws and determines whether Coaldale has applied each bylaw properly. The terms of the bylaws guide the Commission in its decision as to whether the terms of the bylaws were properly applied.

4.4.2 Have the rates been improperly imposed?

58. In assessing an appeal under Section 43(2)(b), the Commission considers the powers and functions of Coaldale, 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.

4.4.3 Are the rates discriminatory?

59. 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.⁴⁴
- Second, when a utility treats all its users equally where differences between users would justify different treatment.⁴⁵

60. The Commission must assess the presence or absence of any rationale or logic underlying the utility service charges applied by Coaldale to the complainants, considering the whole

⁴³ 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.

⁴⁴ 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.

⁴⁵ 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.

context under which the utility charges and rates are being imposed.⁴⁶ Effectively, the Commission must determine whether the complainants have 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.⁴⁷

4.5 Analysis

61. Bylaw 353-R-01-97 applies to water, drainage and sewer services, and the Commission will consider the appeal, as it pertains to these services, in Section 4.5.1 of this decision. Bylaw 672-R-10-12 applies to waste management services, and the Commission will consider the appeal as it pertains to these services in Section 4.5.2 of this decision.⁴⁸ Bylaws 724-C-02-17 and 697-C-12-14 contain the rates for all of these public utility services and will be considered in both sections 4.5.1 and 4.5.2.

62. To assist the reader, the Commission has summarized the enumerated grounds raised in the appeal, with respect to each of these public utility services, in the following table:

Table 2. Summary of grounds for appeal

Public utility service	Section 42(2)(a): does not conform to the rate structure established by the municipality	Section 42(2)(b): has been improperly imposed	Section 42(2)(c): is discriminatory
Water		•	
Drainage	•	•	
Sewer	•	•	
Waste management	•	•	•

4.5.1 Water, drainage and sewer

63. In this section of the decision, the Commission will consider the grounds of appeal set out in sections 42(2)(a) and (b) of the *Municipal Government Act*; that is, whether the water, drainage and sewer service charges at issue in this appeal conform to the rate structure established by Coaldale or have been improperly imposed. This requires interpretation of bylaws 353-R-01-97, 724-C-02-17 and 697-C-12-14.

64. Bylaw 353-R-01-97 contains the terms and conditions of public utility service, including water metering and connection requirements. Relevant to the appeal, Section 5.13 requires each building and individual dwelling unit to have a separate water meter attached to it, Section 5.23 requires multi-unit buildings with a single water service connection to have each dwelling unit individually metered, and Section 4.6 requires each single-family residence, duplex and

⁴⁶ Decision 20744-D01-2016: New Sarepta Water and Sewer Complaint, Proceeding 20744, February 24, 2016, paragraph 32.

⁴⁷ 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.

⁴⁸ Section 52 of Bylaw 672-R-10-12 states “Sections Seven (7) and Eight (8) of Bylaw 353-R-01-97 are hereby repealed.”

townhouse unit to have individual water and sewer services serving no more than one residential unit. These provisions are set out below:

4.0 GENERAL

...

4.6 Number of Services

Each single family residence, duplex, and townhouse unit shall be serviced with individual water and sewer services serving no more than one residential unit.

...

5.0 WATER SYSTEM

...

5.13 Individual Meters & Remote Readout

Each building and individual dwelling unit shall have a separate water meter and remote readout device attached to it as a component of the meter.

...

5.23 Multiple Meters

In a multi-unit building having a single water service connection, each unit shall be individually metered and all water meters shall be installed adjacent to each other, as close as possible to the place where the water service connection enters the building. Each meter shall be equipped with a remote read out.⁴⁹

65. Sections 9.1 and 9.2 of Bylaw 353-R-01-97 pertain to rates and state, in part:

9.0 RATES

9.1 The water, sewer and solid waste rates to be charged by the Town and that shall be payable to the Town under terms of this By-Law for the supply of water, sewer and solid waste to or made available for use by a consumer, shall be those set forth in the Water, Sewer, Solid Waste Rate By-Law then in force.

9.2 Where water is supplied by the Town through a meter for residential ... use to an owner of a unit that is individually metered the owner shall pay to the Town a monthly charge of the aggregate of:

- i) The monthly basic charge, and
- ii) The value of the volume of water recorded by the meter as having being consumed during the applicable monthly period at the rate specified in

⁴⁹ Exhibit 23159-X0006, Town of Coaldale submissions to AUC - January 12, 2018, PDF pages 12-18.

the Water, Sewer, Solid Waste Rate By-Law as it exceeds the minimum usage included in 9.2(i).⁵⁰

66. Bylaw 724-C-02-17, which is the current “Water, Sewer, Solid Waste Rate By-Law” referenced in Section 9 of Bylaw 353-R-01-97, sets out the public utility service rates and charges for 2017, 2018 and 2019. The provisions of this bylaw establish, per residential premise, both a mandatory flat monthly fee and a mandatory monthly consumption fee for water and sewage services, and a mandatory flat monthly fee for drainage services. The provisions, in part, are as follows:

2. WATER RATES

- a. **RESIDENTIAL:** Residential and church premises shall be billed:
 \$21.75 per calendar month June 1, 2017
 \$22.40 per calendar month January 1, 2018

plus

- ...
 \$1.030 for each cubic meter of water used per calendar month June 1, 2017
 \$1.061 for each cubic meter of water used per calendar month January 1, 2018
 ...

3. SANITARY SEWER RATES

- a. **RESIDENTIAL:** Residential and church premises shall be billed:
 \$14.80 per calendar month June 1, 2017
 \$15.25 per calendar month January 1, 2018

plus

- ...
 \$1.002 for sewage discharge volume as determined by the average winter water consumption June 1, 2017
 \$1.032 for sewage discharge volume as determined by the average winter water consumption January 1, 2018
 ...

5. STORM WATER RATES

- a. **RESIDENTIAL:** Residential and church premises shall be billed:
 \$7.45 per calendar month June 1, 2017
 \$7.70 per calendar month January 1, 2018⁵¹

67. Bylaw 697-C-12-14, effective February 1, 2015, contains the following relevant provisions:

2. WATER RATES

RESIDENTIAL: Residential and church premises shall be billed \$21.10 per calendar month and \$1.00 for each cubic meter of water used per calendar month.

⁵⁰ Exhibit 23159-X0006, Town of Coaldale submissions to AUC - January 12, 2018, PDF page 30.

⁵¹ Exhibit 23159-X0006, Town of Coaldale submissions to AUC - January 12, 2018, PDF pages 63-66.

...

3. SANITARY SEWER RATES

- a. **RESIDENTIAL:** Residential and church premises shall be billed \$14.33 per calendar month and \$0.973 for sewage discharge volume as determined by the average winter water consumption.

...

8. STORM DRAINAGE RATES

- a. **RESIDENTIAL:** Residential and church premises shall be billed \$6.44 per calendar month.⁵²

...

68. For clarity, the Commission is applying the same principles of statutory interpretation in its analysis in this part of the decision as previously discussed in Section 4.2.2 of the decision. In the interests of brevity, the Commission is not reproducing those principles here.

69. “Residential ... premises,” which is cited in Bylaw 724-C-02-17, is not specifically defined in any of the bylaws provided by Coaldale. However, Coaldale submitted that the word “premises” must be read in the context and purpose of Bylaw 353-R-01-97 in order to give effect to that bylaw.⁵³ The Commission agrees, noting that Section 9 of Bylaw 353-R-01-07 states that rates for the applicable public utility services are set out in what is currently Bylaw 724-C-02-17. Also, the Commission considers that the definition of “premises” should be the same for each of water, drainage and sewer services, as the same word should have the same meaning, if possible, in a bylaw.

70. Even if the Commission were to find that the property is a non-conforming multi-residential building, as Coaldale has suggested, Coaldale has acknowledged that its charges to the property would not be in conformance with Coaldale’s public utility rate structure. Rather, Coaldale relies on policy^{54 55 56} as authority to treat the alleged non-conforming multi-residential building (which has one water meter and one water and sewer connection) as if it were a conforming multi-residential building (i.e., as if each of the four individual dwelling units on the property had its own water meter and had its own water and sewer connection). In Coaldale’s view, assuming that the property is a conforming multi-residential building, then it is charging the property in conformance with its public utility rate structure.

71. As a municipality, Coaldale has the powers, duties and functions identified in sections 5 and 6 of the *Municipal Government Act*. Section 5 is relevant to this appeal:

Powers, duties and functions

⁵² Exhibit 23159-X0006, Town of Coaldale submissions to AUC - January 12, 2018, PDF pages 70-72.

⁵³ Exhibit 23159-X0021, Letter to AUC - April 12, 2018, response to question 9.

⁵⁴ Exhibit 23159-X0012, Letter to AUC - March 12, 2018, response to question 8.

⁵⁵ Exhibit 23159-X0012, Letter to AUC - March 12, 2018, response to question 11.

⁵⁶ Exhibit 23159-X0021, Letter to AUC - April 12, 2018, response to question 8.

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.

72. The *Municipal Government Act* defines “enactment” as an act or regulation but excludes a bylaw.

73. Section 7 of the *Municipal Government Act* identifies those matters in respect of which a municipality may pass bylaws. Public utilities are among those matters:

General jurisdiction to pass bylaws

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

...

- (g) public utilities;

74. Public utilities is also defined in the *Municipal Government Act*:

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;

75. Section 180 of the *Municipal Government Act* describes the methods by which a municipal council may act:

Methods in which council may act

180(1) A council may act only by resolution or bylaw.

(2) Where a council or municipality is required or authorized under this or any other enactment or bylaw to do something by bylaw, it may only be done by bylaw.

(3) Where a council is required or authorized under this or any other enactment or bylaw to do something by resolution or to do something without specifying that it be done by bylaw or resolution, it may be done by bylaw or resolution.

76. Section 191 of the *Municipal Government Act* concerns the power to amend bylaws, and the method by which bylaws may be amended:

Amendment and repeal

191(1) The power to pass a bylaw under this or any other enactment includes a power to amend or repeal the bylaw.

(2) The amendment or repeal must be made in the same way as the original bylaw and is subject to the same consents or conditions or advertising requirements that apply to the passing of the original bylaw, unless this or any other enactment provides otherwise.

77. The Commission has previously considered the statutory framework described above, and rejected arguments that municipal public utility rates do not need to be established by bylaw.

78. For example, in Decision 21497-D01-2016,⁵⁷ the Commission considered whether a public utility bylaw could be amended by resolution, and held:

23. According to the *Municipal Government Act*, Thorhild may pass bylaws for municipal purposes respecting public utilities. This may only be done by bylaw. An amendment to a bylaw must be made in the same way as the original bylaw, unless the *Municipal Government Act* or any other enactment provides otherwise.... an enactment does not include a bylaw.

24. Thorhild attempted to amend rates in Schedule A of Bylaw 1142-2011 by resolution ... the Commission observes that Section 8 of Bylaw 1142-2011 purported to enable the council to amend the bylaw by resolution:...

25. The Commission finds that Thorhild's actions were inconsistent with the legislative framework... If a municipality were permitted to simply include a provision within a bylaw giving it the authority to amend the bylaw by resolution where the legislation has precluded this action, the municipality would be indirectly doing what the legislation has stated that it cannot do....

79. In Decision 22785-D01-2018,⁵⁸ the Commission considered whether rates passed by resolution, and not bylaw, were improperly imposed, and held in part:

36. Section 7(g) refers generally to matters relating to municipal public utilities. The Commission cannot accept that the absence of express reference to utility rates in Section 7(g) reasonably leads to the conclusion that the legislature intended that rates for a public utility service could be established by a method of a municipal council's choice. Stated another way, Devon has offered no persuasive reason or basis upon which to conclude that the term "public utility" in Section 7(g) should be interpreted to relate to the establishment of a public utility service and the right to collect utility charges for the

⁵⁷ Decision 21497-D01-2016: County of Thorhild, Appeal of Water Rates at Long Lake, Proceeding 21497, August 3, 2016.

⁵⁸ Decision 22785-D01-2018: Town of Devon, Appeal of Water Rates by Imperial Enterprises Inc., Proceeding 22785, April 12, 2018.

public utility service, but not to the establishment of the actual rates themselves. Such an interpretation does not accord with the plain and very broad language of Section 7(g) of the *Municipal Government Act*, particularly when considered in the context of the whole of the statutory framework identified above.

...

39. By its express language, Section 180(3) of the *Municipal Government Act* can have application only where a council is authorized to do something by resolution or without specifying that it be done by bylaw or by resolution. Such is not the case here. Section 7(g) of the *Municipal Government Act* authorizes Devon to provide water service and charge rates for it by bylaw. It is, therefore, Section 180(2) of the *Municipal Government Act* that applies to matters dealing with public utilities:

(2) Where a council or municipality is required or authorized under this or any other enactment or bylaw to do something by bylaw, it may only be done by bylaw. [emphasis in original]

40. As noted above, Section 191 of the *Municipal Government Act* states that an amendment to a bylaw must be made in the same way as the original bylaw, unless the *Municipal Government Act* or any other enactment provides otherwise. Section 1(j) of the *Municipal Government Act* defines “enactment” as an act or regulation but excludes a bylaw. As a bylaw is not an enactment, it cannot authorize or allow action that the legislation does not. For this reason, Devon’s argument based on Section 13 of the Bylaw must fail. By Section 13 of the Bylaw, Devon has attempted to give itself the authority to amend the Bylaw (and more specifically, establish utility rates) by resolution where the legislation has expressly precluded this action.

41. When read together, the effect of sections 7(g), 180(2) and 191 of the *Municipal Government Act* is to require that any amendment to rates charged for public utility service, including water rates, be made by bylaw.

42. As the increased rates were established by resolution and not by bylaw as required, the Commission finds that the increased rates charged to Imperial effective March 13, 2017, were improperly imposed....

80. The Commission continues to agree with the legislative interpretation expressed above. Coaldale may pass bylaws for municipal purposes respecting public utilities; however, this may only be done by bylaw, and an amendment to a bylaw must be made in the same way as the original bylaw. Accordingly, even if the Commission were to find that the property is a non-conforming multi-residential building, as Coaldale has suggested, the Commission finds that Coaldale’s actions of charging rates to the property pursuant to policy as if the property were a conforming multi-residential building is inconsistent with the legislative framework and, therefore, improperly imposed.

81. Based on the above, the Commission is of the view that Coaldale properly applied bylaws 353-R-01-97, 724-C-02-2017 and 697-C-12-14 when it charged the property a flat monthly fee and a monthly consumption charge for one water meter, one water and sewer connection, and one drainage service, from November 12, 2015 to present. However, the Commission finds that the three additional flat monthly charges to the property for individual dwelling units that do not have individual water meters or individual water and sewer connections, for each of water, drainage, and sewer services, from November 12, 2015 to

present, do not conform to the public utility rate structure established by Coaldale and that those charges are improperly imposed.

82. Accordingly, the Commission directs Coaldale to refund to the complainants the flat monthly fees for water, drainage, and sewer charges billed for the additional three individual dwelling units that do not have an individual water meter, or an individual water and sewer connection, in addition to any interest or penalties Coaldale may have charged on these amounts, from November 12, 2015, to the date of issuance of this decision.

4.5.2 Waste management

83. In this section, the Commission will consider the grounds of appeal set out in sections 42(2)(a)-(c) of the *Municipal Government Act*; that is, whether the waste management service charges at issue in this appeal conform to the rate structure established by the municipality, have been improperly imposed or are discriminatory.

84. The Commission accepts Coaldale's submission that the property had four garbage bins, and was charged for four garbage bins, prior to Ms. Eleanor Britz becoming the property owner.⁵⁹ While Coaldale did not provide evidence of the initial assignment to the previous property owner, Coaldale's position is consistent with its practice of billing the property for four garbage bins prior to and since the complainants purchased the property in 2010,⁶⁰ and with Section 10(c) of Bylaw 672-R-10-12, which states: "Automated collection containers assigned to a residential dwelling shall remain with that dwelling."

85. The Commission notes that the waste management service rates found in Bylaw 724-C-02-17 are divided into two categories: residential and commercial. The property is charged according to the residential rates, which are as follows:

4. SOLID WASTE SERVICES RATES

a. RESIDENTIAL: Residential and church premises shall be billed:

\$28.07 per calendar month for one (1) solid waste and recycle pick-up per week June 1, 2017

\$28.90 per calendar month for one (1) solid waste and recycle pick-up per week January 1, 2018⁶¹

...

86. Bylaw 697-C-12-14, effective February 1, 2015, contains the following relevant provision:

4. SOLID WASTE PICK-UP RATES

⁵⁹ Exhibit 23159-X0012, Letter to AUC - March 12, 2018, question 5.

⁶⁰ Exhibit 23159-X0006, Town of Coaldale submissions to AUC - January 12, 2018, PDF page 5.

⁶¹ Exhibit 23159-X0006, Town of Coaldale submissions to AUC - January 12, 2018, PDF page 65.

- a. **RESIDENTIAL:** Residential and church premises shall be billed \$23.69 per calendar month for one (1) solid waste pick-up per week per cart.⁶²

87. In an IR response, Coaldale clarified that the rate is per garbage bin.⁶³

88. The Commission accepts Coaldale's statement that it has previously communicated to the complainants that their request to change the number of garbage bins assigned to the property must be made in writing, pursuant to Section 4.1 of Bylaw 353-R-01-97, but that such a request has not been received.

89. Based on the above, the Commission finds that the property has four garbage bins assigned to it and is being charged for four garbage bins, in conformance with the public utility rate structure established by Coaldale.

90. The Commission notes that the waste management service rates have been imposed by bylaw, and the complainants did not contest the legality of the bylaw. Accordingly, the Commission finds that the complainants have not demonstrated that the waste management service charges are improperly imposed.

91. Regarding the final enumerated ground, discrimination, the Commission is satisfied by Coaldale's evidence that its waste management service rates are based solely on the number of garbage bins.⁶⁴ It is the Commission's understanding that all residential customers are charged the same rate (i.e., \$23.69 per month from February 1, 2015 to May 31, 2016; \$28.07 per month from June 1, 2017 to December 31, 2017; and \$28.90 per month from January 1, 2018 to present) and on the same basis, which is the monthly charge multiplied by the number of garbage bins supplied to each premises. Coaldale explained that under Section 10(b) of Bylaw 672-R-10-12, the director of operations has discretion regarding the number of garbage bins assigned to a residential dwelling.⁶⁵ The Commission accepts Coaldale's submission that if it received a written request to reduce the number of garbage bins assigned to the property, Coaldale would then assess whether the property will be sufficiently serviced by two bins for four residential units, and may exercise its discretion to either grant or deny the request on whether two garbage bins would meet the needs of the property.⁶⁶

92. In view of the above, the Commission finds that the waste management service rates are based on usage and the rationale advanced by Coaldale for its rate structure is reasonable. The Commission also finds that the rate structure does not result in undue discrimination because all customers in the residential class pay the same amount per garbage bin. Therefore, the Commission finds that the waste management service charges, from November 12, 2015 to present, were not discriminatory and dismisses this part of the appeal.

⁶² Exhibit 23159-X0006, Town of Coaldale submissions to AUC - January 12, 2018, PDF page 70.

⁶³ Exhibit 23159-X0021, Letter to AUC - April 12, 2018, response to question 2(b).

⁶⁴ Exhibit 23159-X0021, Letter to AUC - April 12, 2018, response to question 2(b).

⁶⁵ Exhibit 23159-X0012, Letter to AUC - March 12, 2018, response to question 5(b).

⁶⁶ Exhibit 23159-X0021, Letter to AUC - April 12, 2018, response to question 3(c).

5 Order

It is hereby ordered that:

- (1) The Town of Coaldale shall repay Ms. Eleanor Britz, the utility account holder, any amounts paid from November 12, 2015, to the date of issuance of this decision, for three flat monthly charges for each of water, drainage and sewer service, in addition to any interest or penalties the Town of Coaldale may have charged on these amounts. In cases where Ms. Eleanor Britz, Ms. Nadine Britz or Mr. Doug Shields have not paid these charges, the Town of Coaldale shall not pursue the recovery of these charges.

Dated on August 24, 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>Nadine Britz</p>
<p>Town of Coaldale Davidson and Williams LLP</p>

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

Appendix 2 – Summary of Commission directions

This section is provided for the convenience of readers. In the event of any difference between the directions in this section and those in the main body of the decision, the wording in the main body of the decision shall prevail.

1. Accordingly, the Commission directs Coaldale to refund to the complainants the flat monthly fees for water, drainage, and sewer charges billed for the additional three individual dwelling units that do not have an individual water meter, or an individual water and sewer connection, in addition to any interest or penalties Coaldale may have charged on these amounts, from November 12, 2015, to the date of issuance of this decision. Paragraph 82