



Mr. Teik Tan

Appeal on Village of Wabamun Water Rates for 2014-2019

June 23, 2020

Alberta Utilities Commission

Decision 24994-D01-2020

Mr. Teik Tan

Appeal on Village of Wabamun Rates for 2014-2019

Proceeding 24994

June 23, 2020

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1 Introduction

1. On June 25, 2019, the Alberta Utilities Commission received a complaint from Mr. Teik Tan regarding water rates charged by the Village of Wabamun. On October 16, 2019, the Commission determined that this matter would proceed as a formal appeal.
2. In this decision, the Commission must decide pursuant to Section 43 of the *Municipal Government Act* whether Wabamun's water rates are discriminatory because Mr. Tan's apartment was placed in a rate class with a higher rate as opposed to other rate classes that have similar characteristics and offer a lower rate. Mr. Tan requested that Wabamun treat him fairly and retroactively adjust his rates from 2014 to 2019 such that he is charged similarly to other customers. Wabamun disagreed with Mr. Tan and asked the Commission to deny his appeal.
3. The Commission issued notice on October 17, 2019, to Mr. Tan and Wabamun, with a due date of October 31, 2019, for written submissions. The Commission received a summary and statement of relief, as well as additional supporting information from Mr. Tan.
4. On November 20, 2019, the Commission indicated to parties that it was gathering information with respect to this appeal, and directed both Mr. Tan and Wabamun to respond to certain information outlined by the Commission. The Commission received the requested information on February 7, 2020.
5. To further assist its determination of this appeal, the Commission requested additional information from Mr. Tan and Wabamun on March 5, 2020. Following receipt of the additional information, the Commission allowed for closing submissions from both parties. The Commission received Wabamun's closing submission on April 1, 2020, and Mr. Tan's closing submission on April 6, 2020. For the purposes of this decision, the Commission considers that the record closed on April 6, 2020.
6. In reaching the determinations set out within this decision, the Commission has considered all relevant materials comprising the record on this proceeding. Accordingly, references in this decision to specific parts of the record are intended to assist the reader in understanding the Commission's reasoning relating to a particular matter and should not be taken as an indication that the Commission did not consider all relevant portions of the record with respect to that matter.

2 Background

7. Pursuant to the *Municipal Government Act*, Wabamun has the power to pass bylaws for the purpose of regulating and controlling water and wastewater services and usage within the village. Wabamun provides these services to approximately 680 residents and categorizes its customers into the following rate classes for billing purposes: residential; churches and seniors

drop-in centre; commercial and industrial; multi-tenant commercial; hotel, motel, laundromat/car wash; and institutional. From 2014 to 2019, Wabamun refined its water and wastewater bylaws to include new rate class definitions in addition to splitting the residential rate class into several subcategories.

8. Bylaw No. 11-2014,¹ effective June 17, 2014, established a single rate class for residential customers where single family or multi-residential customers paid a rate of \$40 (per residential unit) in addition to the water consumption fee of \$2.30 per cubic metre. The bylaw defined a residential unit as:

... separate dwelling units which are designed and used exclusively for living accommodations and have separate outside entrances. Without restricting the generality of the foregoing, this includes but is not limited to apartments, condominiums, each half of a duplex, basement suites. For reference a four-plex has four residential units, a duplex has two residential units and a building with 12 apartments has 12 residential units.²

9. Bylaw No. 15-2014,³ effective August 19, 2014, split the residential rate class into single family and multi-residential categories. In addition to the water consumption fee, single family residential customers were charged a rate of \$58, while the multi-residential customers were charged a rate of \$40 per residential unit.

10. In Bylaw No. 03-2017,⁴ effective July 18, 2017, the multi-residential rate class was further divided into small multi-residential (1 to 4 units), medium multi-residential (5 to 10 units) and large multi-residential (11 to 30 units), with rates of \$40 per unit, \$30 per unit and \$25 per unit, respectively. In addition to the water consumption fee of \$4.30 per cubic metre, Bylaw No. 03-2017 also included definitions for apartment building, hotel and motel as follows:

Apartment building: a group of rooms in one building, designed for use as a dwelling, furnished or unfurnished, for stays longer than one night, ie monthly or annually. For purposes of billing these are considered multi-residential units.

...

Hotel and motel: a temporary sleeping place for people traveling, usually furnished and has daily rates for unit rates.⁵

11. Bylaw No. 06-2019,⁶ passed on March 19, 2019, increased all rates by \$25 effective April 1, 2019, with the water consumption fee remaining unchanged at \$4.30 per cubic metre, resulting in the following rates:

¹ Exhibit 24994-X0023, Village of Wabamun response to AUC, PDF page 11.

² Exhibit 24994-X0023, Village of Wabamun response to AUC, PDF page 8.

³ Exhibit 24994-X0023, Village of Wabamun response to AUC, PDF page 12.

⁴ Exhibit 24994-X0023, Village of Wabamun response to AUC, PDF page 17.

⁵ Exhibit 24994-X0023, Village of Wabamun response to AUC, PDF pages 17-18.

⁶ Exhibit 24994-X0023, Village of Wabamun response to AUC, PDF page 28.

Table 1. Rates by rate class before and after Bylaw No. 06-2019⁷

Rate class	March 2019 rate	April 2019 rate
	\$ per month	
Residential – single family	58.00	83.00
Multi-residential		
1 to 4 units	40.00	65.00
5 to 10 units	30.00	55.00
11 to 30 units	25.00	50.00
Churches and seniors drop-in centre	65.00	90.00
Commercial & industrial	90.00	115.00
Multi-tenant commercial	145.00	170.00
Hotel, motel, laundromat/car wash	175.00	200.00
Institutional	187.00	212.00

12. Under the current rate structure, Wabamun considers Mr. Tan's 17-suite apartment as a residential customer and classifies it as part of the multi-residential (11 to 30 units) rate class.

13. Mr. Tan argued that the rate for his apartment was higher than the rate charged to customers in other rate classes, such as hotels and motels after Bylaw 06-2019 was passed.⁸ Based on the rates that were effective April 1, 2019, his 17-suite apartment building was charged \$1,217.20 per month while a 20-suite hotel and 30-suite motel were charged \$357.50 per month.⁹ Mr. Tan submitted that this resulted in his apartment being charged 3.4 times more in rates compared to hotels and motels.

14. Mr. Tan submitted his apartment, the hotel and the motel are similar in that they all have one installed meter. With one meter, he argued there is no difference in the way these three facilities receive water and, therefore, they should all be charged the same rate.¹⁰

15. Mr. Tan contacted Wabamun for an explanation regarding the differences in rates between his apartment in the multi-residential rate class and the hotel and motel rate class. According to Mr. Tan, Wabamun indicated that seasonality was the difference: the hotel and motel are seasonal business whereas the apartment building is not.¹¹

16. In December 2019, Mr. Rob Coon became the interim chief administrative officer (CAO) for Wabamun. Mr. Coon submitted that Wabamun had historically offset the cost of water through its property tax base.¹² When TransAlta Utilities closed its Wabamun Power Plant, Wabamun lost a significant component of its property tax base, and to offset this loss in revenue, transitioned toward full cost recovery of its water utility system starting in 2014.

17. Mr. Coon indicated that in July 2017, Mr. Tan appeared before the council to discuss the inequity in rates between his apartment and other facilities. Mr. Coon suggested that the new set

⁷ Exhibit 24994-X0023, Village of Wabamun response to AUC, PDF page 5.

⁸ Exhibit 24994-X0001, Tan email to AUC 2019-06-25, PDF page 1.

⁹ The Commission notes that the \$1,217.20 basic charge comprises both water and wastewater flat fees for Mr. Tan's April 2019 water bill, as filed in Exhibit 24994-X0003. Pursuant to the *Municipal Government Act*, the Commission has jurisdiction to make rules governing the procedures and processes for establishing terms and conditions of service and to set rates of water utilities. The Commission does not have jurisdiction over wastewater.

¹⁰ Exhibit 24994-X0001, Tan email to AUC 2019-06-25, PDF page 1.

¹¹ Exhibit 24994-X0001, Tan email to AUC 2019-06-25, PDF page 1.

¹² Exhibit 24994-X0023, Village of Wabamun response to AUC, PDF pages 1-2.

of rate categories added to Bylaw No. 03-2017 was indicative that Mr. Tan's concerns were taken into account.

18. Additionally, in 2017, Mr. Tan successfully appealed to Wabamun for a reduction to his rate that took effect in January 2018.¹³ Mr. Tan described that "the rate is all over[,] ranging from [a] low of \$731 to \$1,462 over the last 5 years"¹⁴ and "relief that I seek is fair treatment. That is my fixed water rate should be between \$176.50 [and] \$357.50 / month."¹⁵

19. In its closing comments, Wabamun submitted that council had approved the 2020 Operating and Capital Budgets, resulting in a 28 per cent uniform reduction in the water rates across all rate classes effective April 1, 2020.

3 The Commission's jurisdiction under Section 43 of the Municipal Government Act

3.1 The scope of the Commission's jurisdiction

20. The Commission's jurisdiction over Wabamun's water rates arises from Section 43 of the *Municipal Government Act*, which states:

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.

3.2 Section 43(2)(c) – Were rates discriminatory?

21. "Discrimination" has been defined in *Principles of Public Utility Rates* by James C. Bonbright as "the practice of charging different rates to different customers for substantially the same product."¹⁶

22. *Black's Law Dictionary* definition of "discrimination" included:¹⁷

1. The effect of a law or established practice that confers privileges on a certain class or that denies privileges to a certain class because of race, age, sex, nationality, relation, or handicap.

¹³ Exhibit 24994-X0012, Tan-Additional Supporting Material, page 1.

¹⁴ Exhibit 24994-X0012, Tan-Additional Supporting Material, page 1.

¹⁵ Exhibit 24994-X0011, Summary and Statement of Relief, page 1.

¹⁶ James C. Bonbright, *Principles of Public Utility Rates*, 1988, page 520.

¹⁷ *Black's Law Dictionary*, Eighth edition, page 500.

2. Differential Treatment; esp., **a failure to treat all persons equally where no reasonable distinction can be found between those favoured and those not favoured.**
[emphasis added]

23. In Decision 2010-462, the Commission notes that its predecessor articulated discrimination as being "... a failure to treat all persons equally where no reasonable distinction can be found between those favored and those not favored."¹⁸

24. The Commission also notes the comments of Mr. Justice Cote in his oral reasons dated June 19, 1990, for denying leave to appeal in the *Town of Bashaw v The Public Utilities Board*, et al. in respect of "discrimination" as it appeared in the then Section 291 of the *Municipal Government Act*:¹⁹

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

It was suggested in argument that if the practical workings and effect of different procedures for computing the charges to different people in fact produce the same charge, there is no discrimination. In my view that is not correct. In my view a municipality could not arbitrarily pick on consumer or class of consumers and for no rational reason establish a method of computation or no method of computation, but escape scrutiny by the Public Utilities Board simply on the Grounds that as luck would have it the final number works out to be similar to that for consumers as a whole. In my view discrimination and how rates are charged between different groups of consumers, plainly fall within s. 291 of the [*Municipal Government Act*], no matter how narrowly one reads that section. [emphasis in original]

25. The Commission has authority pursuant to Section 43 to determine whether rates, tolls or charges themselves are discriminatory, as opposed to assessing a rate structure.

26. The Commission finds that discrimination may exist where there is "... a failure to treat all persons equally where no reasonable distinction can be found between those favored and those not favored."²⁰

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

28. Effectively, the Commission must determine whether the appellant has been placed in the correct rate class, and further determine whether reasonable distinctions may exist between customers in different rate classes so as to support any inconsistent treatment.

¹⁸ 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, September 30, 2010, paragraph 74.

¹⁹ Decision 2010-462, paragraph 75.

²⁰ Decision 2010-462, paragraph 77.

4 Views of the parties

29. In its notice, the Commission indicated that it would be considering whether Bylaw No. 06-2019 results in utility charges that are discriminatory, and specifically if the rate charged to Mr. Tan under the multi-residential rate class is discriminatory.

4.1 Mr. Tan

30. Mr. Tan stated that he was specifically targeted by Wabamun because his apartment is the sole apartment in the village.²¹ He submitted that the rate for his apartment should be comparable to the rate for the hotel and motel rate class because they each have multiple suites, and each facility has one installed water meter.²²

31. Further, Mr. Tan submitted that his apartment, the hotel and the motel have no differences from a water supply point of view because each facility has one water meter, and that the “water pressure, quality and quantity must be kept at all time.”²³

32. Mr. Tan views that the water utility should be operated on a revenue neutral model given it is municipally operated. He introduced evidence from Mr. Fred Lindsay, the former mayor of Wabamun, who wrote an opinion piece in the local newspaper about the village no longer being a viable entity.²⁴ Mr. Tan submitted he discussed with Mr. Lindsay and arrived at the conclusion that the water utility was not operated on a revenue neutral model:

I understood that The Village under Mr. Shawn Patience as CAO had a surplus of 100K [thousand] from “water revenue” in 2018 and again another 100K or so in 2019. The exact numbers appear to differ from the new CAO’s 61-page submission. Nonetheless, they were showing surpluses. I believe surpluses were used to balance the deficits in other areas and/or rebuilding reserve after its reserve 6.8M [million] was completely de[c]imated.²⁵

33. Mr. Tan estimated Wabamun has overcharged him by \$10,000 per year in fixed water fees.²⁶ Based on his own analysis, he indicated that this amount coincides to the amount Wabamun fell short on for property tax collection when comparing the apartment’s property tax with his other rental properties in Alberta.

34. Mr. Tan suggested that because he paid lower tax mill rates, Wabamun increased the cost of fees to his apartment:

I think, one reason that the 17-suite apartment was singled out and targeted was possibly because of the significant difference between residential (apartment included in residential) and commercial property tax mill rates which The Village is trying to recoup. To arrive at the same result, The Village introduced a higher fixed water and sewer rates to a new category (11-30 suites) that is based upon the number of suites in the apartment

²¹ Exhibit 24994-X0001, Tan email to AUC 2019-06-25, page 1.

²² Exhibit 24994-X0001, Tan email to AUC 2019-06-25, page 1.

²³ Exhibit 24994-X0011, Summary and Statement of Relief, page 1.

²⁴ Exhibit 24994-X0030, Fred Lindsay’s letter to local newspaper, page 1.

²⁵ Exhibit 24994-X0029, Concluding file, page 3.

²⁶ Exhibit 24994-X0029, Concluding file, page 2.

although it is more appropriate and logical to be classified in the same category as motel, hotel and car wash by annual water consumption.²⁷

4.2 Wabamun

35. Wabamun argued that facilities intended for residential usage are not comparable to facilities intended for commercial usage. Wabamun reasoned, “a residence is a residence” and the apartment contains 17 residences.²⁸

36. Wabamun submitted that the village’s economy is heavily dependent on tourism and the water rate structure is designed to consider the seasonal nature of tourism.²⁹ Wabamun views that the apartment is not seasonal in nature, but rather an aggregate of residences that are given a 40 per cent reduction in flat rates over detached residences.³⁰

37. Wabamun suggested that pipe size was at least one parameter considered for rate structure in 2010.³¹ In response to a further inquiry by the Commission, Wabamun provided details of all its rate classes, including meter size and average annual consumption per service connection.

Table 2. Rate class consumption per service connection and meter characteristics³²

Rate class	Meter size (inches)	2015 (cubic metre per year)	2016 (cubic metre per year)	2017 (cubic metre per year)	2018 (cubic metre per year)	2019 (cubic metre per year)
Residential – single family	5/8	152.45	146.38	129.27	126.81	115.43
Commercial	5/8, 3/4, 1 or 1.5	155.71	179.46	158.93	233.05	130.02
Churches and seniors drop-in centre	5/8	39.20	50.50	48.75	65.00	145.40
Hotel, motel, laundromat /car wash	3/4, 1 or 2	1408.43	1327.38	1312.88	1368.63	1838.71
Multi-tenant commercial	1	10.40	26.20	52.50	68.80	61.10
Institutional	1.5	626.70	519.80	444.70	404.20	369.50
Multi-residential (11 to 30 units)	1.25	1538.40	1022.60	666.00	506.80	757.60
Multi-residential (1 to 4 units)	1	180.90	386.20	248.90	808.50	600.40
Multi-residential (5 to 10 units)	No customers yet					

38. Wabamun argued that had Mr. Tan been able to rent out all of his apartment units, the water rate structure would not have been an issue.³³ Wabamun added that the average water

²⁷ Exhibit 24994-X0029, Concluding file, page 3.

²⁸ Exhibit 24994-X0026, Response to AUC letter of March 5, 2020, page 1.

²⁹ Exhibit 24994-X0026, Response to AUC letter of March 5, 2020, page 2.

³⁰ Exhibit 24994-X0026, Response to AUC letter of March 5, 2020, page 2.

³¹ Exhibit 24994-X0007, Village of Wabamun letter to AUC 2019-09-30, page 2.

³² Exhibit 24994-X0023, Village of Wabamun response to AUC, PDF page 3. Table 2 combines details from all three tables in Wabamun’s response.

³³ Exhibit 24994-X0026, Response to AUC letter of March 5, 2020, page 1.

consumption level of the apartment units when considering occupancy is slightly higher than some detached residences.³⁴

39. Wabamun indicated that it had been directed by the Minister of Municipal Affairs to undergo a viability review. Wabamun describes the viability review as a process, led by Alberta Municipal Affairs, which would look at all aspects of municipal responsibilities, including governance, legislative, financial and operational functions.³⁵ Wabamun offered that if the AUC determined that the water rate structure requires further review and adjustment, it would gather AUC's directions and inputs as insights to the viability review.³⁶

5 Commission findings

40. In the application, Mr. Tan refers to his 17-suite facility as an apartment where his units are available for rent. The Commission considers Mr. Tan's 17-suite facility to be an apartment.

41. Since passing Bylaw No. 11-2014, Wabamun has considered residential units to include apartments. When the concept of residential units was further refined in Bylaw No. 15-2014 and then defined in Bylaw No. 03-2017, apartments continued to remain under the residential category.

42. The Commission notes that Bylaw No. 03-2017 defined an apartment to be a group of rooms in one building for stays longer than one night (i.e., monthly or annually). In contrast, a hotel or motel is a temporary sleeping place where daily unit rates are charged. On this basis, the Commission finds that Wabamun's bylaws clearly define the composition of a residential unit, as well as what the bylaws constitute as a hotel or motel. An apartment is distinguished from a hotel or motel from characteristics including the duration of stay and the structure in which accommodation fees are charged. As such, the Commission finds that Wabamun took sufficient consideration in creating distinct and easily understandable rate classes.

43. Given that the rate classes are clearly defined and distinguishable, and pursuant to Mr. Tan's description of his apartment building, the Commission finds that the apartment properly falls under the rate class for large multi-residential (11 to 30 units).

44. Further, the Commission finds that there is a reasonable distinction between hotels and motels and the multi-residential rate class, such that differences in rates are justified. On this basis, the Commission finds that the rates charged by Wabamun to Mr. Tan are not discriminatory.

45. The Commission notes that determinations as to whether Wabamun should operate on a revenue neutral model, or any other model, are beyond the scope of the Commission's jurisdiction under Section 43 of the *Municipal Government Act*, and therefore the Commission need not address these issues.

³⁴ Exhibit 24994-X0026, Response to AUC letter of March 5, 2020, page 1.

³⁵ Exhibit 24994-X0026, Response to AUC letter of March 5, 2020, page 2.

³⁶ Exhibit 24994-X0026, Response to AUC letter of March 5, 2020, page 2.

46. Based on these findings, the Commission dismisses Mr. Tan's appeal, and finds that no financial remedies are required.

6 Order

47. It is hereby ordered that:

- (1) The rate charged to Mr. Teik Tan's apartment is not discriminatory and Mr. Tan's appeal is dismissed.

Dated on June 23, 2020.

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>Village of Wabamun (Wabamun)</p>
<p>Mr. Teik Tan</p>

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