



EMCOR Utility (2035570 Alberta Ltd.)

Interim Rates for Supply and Distribution of Potable Water

June 7, 2023

Alberta Utilities Commission

Decision 28055-D01-2023

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Proceeding 28055

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1 Decision summary

1. In this decision, the Alberta Utilities Commission finds that it has jurisdiction over EMCOR Utility (2035570 Alberta Ltd.) as the owner of a public utility and the potable water service that it is providing to customers of Carmek Business Park. The Commission also denies an application by EMCOR Utility for an increase in its existing rates for the supply and distribution of potable water as interim rates, effective March 1, 2023. Instead, the Commission approves the existing rates as interim rates, effective June 7, 2023. These interim rates will remain in effect until the Commission approves rates on a final basis.

2 Background

2. On March 1, 2023, EMCOR Utility filed an application pursuant to Rule 011: *Rate Application Process for Water Utilities*, requesting approval of the following items related to potable water service: terms and conditions (T&Cs) of service, including rate schedules; depreciation rates; interim refundable rates for supply and distribution of water, effective March 1, 2023; and final rates for the supply and distribution of water, effective March 1, 2023, to February 29, 2028, being the 2023-2027 test period.

3. EMCOR Utility indicated that it is a private, investor-owned water, sanitary and storm system utility that treats and distributes potable water; treats and distributes recycled water; stores and provides fire suppression water; collects and treats sanitary water; and collects and manages storm water, in the Carmek Business Park located in Rocky View County, Alberta. EMCOR Utility stated that this is the first water rates application it has filed with the Commission. It has not previously received Commission approval of the water rates charged to its customers.

4. This decision addresses EMCOR Utility's request for approval of interim refundable rates for supply and distribution of potable water, effective March 1, 2023. The request for final rates for potable water for the 2023-2027 test period will be addressed in a separate decision.

5. EMCOR Utility was clear that it was only seeking Commission approval of its potable water rates, and that it was not seeking Commission approval of its rates for recycled water, fire protection, irrigation water, or stormwater collection systems. The Commission is currently considering EMCOR Utility's submissions regarding this matter,¹ and is not addressing this matter in this decision.

¹ Exhibit 28055-X0012.

3 Owner of a public utility

6. The *Public Utilities Act* applies to public utilities that the Commission regulates, including water utilities. Owners of public utilities are subject to the *Public Utilities Act* and the authority of the Commission. As this is EMCOR Utility's first rate application, the Commission must consider whether EMCOR Utility is an owner of a public utility for purposes of the *Public Utilities Act* before it sets rates for EMCOR Utility.

7. Section 1 of the *Public Utilities Act* sets out the definitions of an "owner of a public utility" and of "public utility" as follows:

Definitions

1 In this Act,

...

(h) "owner of a public utility" means

- (i) a person owning, operating, managing or controlling a public utility and whose business and operations are subject to the legislative authority of Alberta, and the lessees, trustees, liquidators of the public utility or any receivers of the public utility appointed by any court, ...

(i) "public utility" means

...

- (iv) a system, works, plant, equipment or service for the production, transmission, delivery or furnishing of water, heat, light or power supplied by means other than electricity, either directly or indirectly to or for the public, ...

8. For purposes of the interim rates application for potable water services, the Commission considers there to be sufficient evidence that EMCOR Utility operates, manages or controls "a system, works, plant, equipment or service" for the delivery or furnishing of potable water directly to customers. EMCOR Utility processes potable water through a water treatment facility and delivers water directly to commercial customers in the Carmek Business Park. The Commission finds that the potable water facilities described are a "public utility." The Commission is therefore satisfied that EMCOR Utility is an "owner of a public utility" for purposes of the *Public Utilities Act*, and is therefore subject to regulation to ensure that customers receive safe and reliable potable water service at just and reasonable rates.

9. In terms of public utilities, the Commission has broad authority with respect to a public utility's rates, tolls and charges, T&Cs of service, and the nature and quality of service.² Accordingly, the Commission will exercise its jurisdiction to review the rates proposed by EMCOR Utility, and any other issues concerning the public utility, as necessary.

² See, for example, sections 78, 78.1 and 89 of the *Public Utilities Act*.

4 Interim potable water rates and effective date

10. EMCOR Utility stated that it has operated the water distribution system since 2018 and has had the same rates for that service since 2020. It noted that the current rates include a fixed charge and a variable charge based on water usage. The current rates are as follows:

- \$43.27 per month per service unit (one service unit is equal to one acre of land)
- \$4.25 per cubic metre of water used

11. EMCOR Utility requested that a five per cent increase to both of these rates be applied, effective March 1, 2023, on an interim refundable basis. The resulting rates would be as follows:

- \$45.43 per month per service unit
- \$4.463 per cubic metre of water used

12. EMCOR Utility proposed the five per cent increase to account for higher inflation. It stated that even though it has had the same rates in place since 2020, its cost of operations have increased since 2020.

4.1 Interim rate setting

13. Interim rate orders are generally used by the Commission to mitigate against rate shock and to ensure the financial integrity of a utility while an application to establish final rates is before the Commission for consideration.

14. When the Commission approves interim rates, those rates function as placeholders and remain in place until the Commission approves final rates. The period that interim rates are in place is referred to as the interim period. Interim rates are put in place for the protection of the utility and customers until final rates are approved, but the level at which interim rates are set is not determinative of the level at which the Commission will set final rates. When reviewing an application for final rates, the Commission conducts a more in-depth review of the costs that underpin a utility's rates. Approved final rates may end up being higher, lower or the same as the interim rates. Once final rates are approved by the Commission, these final rates are substituted for the placeholder interim rates, generally starting from the date on which interim rates were set.

15. Once final rates are approved, the Commission calculates the difference between: (i) what the utility's revenue would have been during the interim period if final rates had been in place; and (ii) what the utility's revenue was during the interim period when interim rates were charged. If the final rates are higher than the interim rates, customers will be required to pay the difference to EMCOR Utility, through a mechanism and over a time period approved by the Commission. If, on the other hand, the final rates are lower than the interim rates, EMCOR Utility will be required to reimburse customers for the difference through a mechanism and over a time period approved by the Commission.

16. An interim rates order essentially allows all parties to preserve rates at an approved level while the Commission hears from the applicant and all parties about what the final rates should be and allows for appropriate adjustments once the final rates are determined. In this way, an interim rate order protects both the utility and its customers.

4.2 Interim water rates

Commission findings

17. The Commission finds that an increase in the current water rates charged by EMCOR Utility, to serve as the interim refundable rates effective March 1, 2023, is not justified at this time, and is denied.

18. This is the first rate application that EMCOR Utility has submitted to the Commission. The Commission has not previously found that the current rates charged are just and reasonable. None of the costs that underpin the current rates have been examined by the Commission, including the allocation percentages used to allocate a number of the shared costs.

19. While EMCOR Utility indicated that its costs of operations have increased since 2020, it did not indicate what these costs increases have been, and it did not submit that the interim rates increase was required to preserve the financial integrity of the water utility system or to avoid undue financial hardship. EMCOR Utility also did not suggest that its ability to continue providing safe and reliable service would be compromised without the interim rates increase.

20. Based on the above, the Commission is not prepared to approve an increase to the current rates to serve as interim rates.

21. Instead, the Commission finds it just and reasonable that the current rates be approved as the interim rates on a refundable basis.

4.3 Effective date of interim rates

22. One of the central principles of utility ratemaking is the rule against retroactive ratemaking. That is, utility regulators cannot retroactively change or substitute rates previously charged. This rule exists to address a number of concerns, among them the need for certainty for both the utility and its customers about the rates paid for utility services.

23. The Commission finds the effective date of interim rates for potable water services is June 7, 2023, rather than the March 1, 2023, date proposed by EMCOR Utility. The Commission considers it reasonable to make June 7, 2023, the effective date for interim rates given: (i) the earliest date that EMCOR Utility's customers reasonably had knowledge that EMCOR Utility's rates may change is April 20, 2023, the date that the Commission issued notice for the proceeding;³ and (ii) the Commission's confirmation in this decision that EMCOR Utility is an owner of a public utility providing potable water services and is subject to the jurisdiction of the Commission.

5 Other matters

24. The Commission will issue a process schedule in this proceeding in relation to setting EMCOR Utility's final rates and T&Cs for potable water services in due course.

³ Exhibit 28055-X0008.

6 Order

25. It is hereby ordered that:

- (1) Effective June 7, 2023, the following rates for the supply and distribution of potable water charged by EMCOR Utility (2035570 Alberta Ltd.) will be charged on an interim refundable basis.
 - \$43.27 per month per service unit
 - \$4.25 per cubic metre of water used

Dated on June 7, 2023.

Alberta Utilities Commission

(original signed by)

Matthew Oliver, CD
Commission Member

Appendix 1 – Proceeding participants

Name of organization (abbreviation) Company name of counsel or representative
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Alberta Utilities Commission
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