



**Enforcement Staff of the Alberta Utilities  
Commission**

**Phase 1 Enforcement Proceeding with Salt Box Coulee Water  
Supply Company Ltd.**

**August 15, 2023**

**Alberta Utilities Commission**

Decision 28021-D01-2023

Enforcement Staff of the Alberta Utilities Commission

Phase 1 Enforcement Proceeding with Salt Box Coulee Water Supply Company Ltd.

Proceeding 28021

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## **1 Decision summary**

1. The Alberta Utilities Commission finds that Salt Box Coulee Water Supply Company Ltd. (Salt Box) committed two contraventions of Decision 24295-D02-2020.<sup>1</sup> These contraventions are:

- (a) Failing to file audited financial statements contrary to the Commission’s direction in Decision 24295-D02-2020.
- (b) Charging monthly fees and rate riders to unconnected lot owners contrary to the rates and terms and conditions (T&Cs) of service approved in Decision 24295-D02-2020.

2. On receipt of an application from Enforcement staff, the Commission will conduct a second phase of this proceeding to consider sanctions for these contraventions.

## **2 Introduction and procedural background**

3. Salt Box owns and operates a water utility that serves customers in four subdivisions west of Calgary. The water utility is a “public utility” as that term is defined in the *Public Utilities Act*. Salt Box is the “owner of a public utility” as that term is defined in the *Public Utilities Act*.<sup>2</sup>

4. Under the *Public Utilities Act*, the Commission has the authority to fix just and reasonable rates and T&Cs of service for a public utility.<sup>3</sup> In addition to its authority to fix rates, the Commission has broad authority to deal with public utilities and owners of public utilities.<sup>4</sup> The Commission has exercised its authority with respect to Salt Box, and has issued a series of decisions establishing water rates that Salt Box is permitted to charge, and approving the T&Cs of its service. The T&Cs include fees approved by the Commission, which may be charged to customers in certain circumstances, such as upon initial connection to the distribution system. This decision determines whether Salt Box contravened directions or orders of the Commission.

5. Enforcement staff, an independent division of the Commission, filed an application alleging two contraventions by Salt Box:

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<sup>1</sup> Decision 24295-D02-2020: Salt Box Coulee Water Supply Company Ltd., 2020 Final Rates, Proceeding 24295, June 29, 2020.

<sup>2</sup> *Public Utilities Act*, RSA 2000, c P-45, sections 1(h) and (i).

<sup>3</sup> *Public Utilities Act*, Section 89.

<sup>4</sup> *Public Utilities Act*, Section 78.1.

- (a) Failing to file audited financial statements contrary to the Commission's direction in Decision 24295-D02-2020, despite having collected funds from its customers for this purpose. **(Contravention 1)**
- (b) Charging monthly fees and rate riders to unconnected lot owners contrary to the rates and T&Cs of service approved in Decision 24295-D02-2020. **(Contravention 2)**

6. The application followed an investigation carried out by Enforcement staff. The Commission's enforcement policy and supporting principles followed in this proceeding are set out in Bulletin 2014-05<sup>5</sup> and Bulletin 2016-10.<sup>6</sup> Among others, those practices provide that Enforcement staff will carry out investigations and enforcement actions, and will not have contact regarding the investigation or enforcement with staff assigned to assist the adjudication panel or the adjudication panel members other than through correspondence copied to all interested parties or through the public proceeding process. The names of Enforcement staff were disclosed on the public record and that separation was maintained in this proceeding.

7. The investigation by Enforcement staff was prompted by two separate events. First, Enforcement staff received a complaint from Gary Lebsack, a lot owner and subsequent customer of Salt Box. In his complaint, G. Lebsack questioned whether monthly fees and a \$10,000 tie-in fee invoiced to him by Salt Box had been properly charged for his vacant lot. In the course of investigating G. Lebsack's complaint, Enforcement staff received nine additional complaints from residents in communities served by Salt Box. Among other concerns, these additional complaints alleged that Salt Box's service charges, including its monthly fees, rate riders and tie-in charges, were not compliant with the Commission-approved rate schedules and T&Cs.

8. Second, while Enforcement staff was investigating the complaints described above, Enforcement staff received a referral from the Commission advising that Salt Box had failed to file audited financial statements for the year 2020 as it was directed by the Commission to do in Decision 24295-D02-2020.

9. Based on the information obtained in the investigation, Enforcement staff filed its application with the Commission. Enforcement staff requested that the Commission commence a Phase 1 enforcement proceeding and, if the alleged contraventions were demonstrated, accept further submissions as part of a Phase 2 proceeding to consider the appropriate relief.

10. On February 21, 2023, the Commission issued notice that it would commence a Phase 1 proceeding to consider the allegations against Salt Box. The Commission directed Salt Box to register in the proceeding and to provide submissions on further process steps. In addition to Salt Box, the Commission received statements of intent to participate (SIPs) from several customers of Salt Box, or organizations representing customers of Salt Box. These are the Windmill Water Coop Ltd., the Ranch Community Association, Calling Horse Estates Co-operative Association Ltd., and David McColl.

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<sup>5</sup> Bulletin 2014-05, Alberta Utilities Commission enforcement policy, February 27, 2014.

<sup>6</sup> Bulletin 2016-10, Practices regarding enforcement proceedings and amendments to AUC Rule 001, March 29, 2016.

11. The Commission issued directions on process and scope, setting out a written process schedule for the Phase 1 proceeding. At the request of Salt Box, the Commission established a process schedule that involved steps for information requests (IRs) to Enforcement staff, and written evidence from Salt Box. The Commission confirmed that it would consider the records of proceedings 24295 and 21908 to form part of the record of the Phase 1 proceeding, and that parties would be permitted to refer to documents from the records of those proceedings in their submissions without being required to refile them.

12. The Commission also explained that the scope of the Phase 1 proceeding is to determine whether the alleged contraventions had occurred, and that the Commission considered that Enforcement staff and Salt Box were well positioned to provide sufficient information to allow the Commission to make that determination.<sup>7</sup> The Commission concluded that submissions from other parties who had filed SIPs were not necessary to resolve the issues in Phase 1, but that submissions of Salt Box customers may be of assistance if the proceeding were to advance to a Phase 2.

13. The process schedule established by the Commission concluded on May 18, 2023, the date on which Enforcement staff filed its final submission. Subsequently, Salt Box filed a document in which it raised a number of broad-ranging concerns, many of which were out of scope of the Phase 1 proceeding.

14. The Commission issued a letter addressing the concerns.<sup>8</sup> In relation to the Phase 1 proceeding, the Commission reiterated that it had established a process that responded directly to Salt Box's requested process steps,<sup>9</sup> explained the scope and purpose of the proceeding,<sup>10</sup> referred Salt Box towards Rule 001: *Rules of Practice*,<sup>11</sup> explained that Salt Box cannot rely on Commission staff to provide assistance in making its case,<sup>12</sup> emphasized the serious nature of an enforcement proceeding and its potential consequences, and encouraged Salt Box to retain independent legal advice.<sup>13</sup> Accordingly, the Commission confirmed that it would take no further action in regard to the concerns raised in the document, and that it considered the record of the Phase 1 proceeding to have closed on May 18, 2023.

## 2.1 Summary of Salt Box rates decisions

15. Salt Box provides service in four subdivisions: the Ranch, Deer Springs, Windmill Way, and Calling Horse. Individual, end-use customers in Calling Horse and Windmill Way are billed through water co-operatives, which purchase water from Salt Box and deliver the water purchased from Salt Box to end-use customers using the co-operative's distribution lines. Individual, end-use customers in the Ranch and Deer Springs purchase water from and are billed directly by Salt Box.

16. Salt Box applied to the Commission for approval of interim water rates in 2017 pursuant to Rule 011: *Rate Application Process for Water Utilities*. The Commission issued Decision

<sup>7</sup> Exhibit 28021-X0031, AUC letter – Directions on process and schedule, paragraphs 14-15.

<sup>8</sup> Exhibit 28021-X0042, AUC letter - Response to Salt Box correspondence and close of record.

<sup>9</sup> Exhibit 28021-X0031, AUC letter - Directions on process and schedule.

<sup>10</sup> Exhibit 28021-X0021, Notice of enforcement proceeding, PDF page 3; Exhibit 28021-X0035, Matters for clarification concerning Salt Box's information requests, paragraph 5.

<sup>11</sup> Exhibit 28021-X0035, Matters for clarification concerning Salt Box's information requests, paragraph 4.

<sup>12</sup> Exhibit 28021-X0035, Matters for clarification concerning Salt Box's information requests, paragraphs 6-7.

<sup>13</sup> Exhibit 28021-X0035, Matters for clarification concerning Salt Box's information requests, paragraph 9.

21908-D01-2017<sup>14</sup> setting interim rates. Decision 21908-D01-2017 directed that Salt Box apply to the Commission for final rates with proposed T&Cs of service by July 31, 2018.

17. Salt Box applied to the Commission on February 19, 2019, requesting approval of its final rates, and its T&Cs of service. In that application, Salt Box included a request for approval of a rate rider to fund an ultraviolet light system upgrade (UV rate rider) for the water treatment facilities. The Commission issued Decision 24295-D01-2019<sup>15</sup> approving a UV rate rider for a period of 10 years. After further deliberation on the application, the Commission issued Decision 24295-D02-2020, which finalized the interim rates, approved final rates, and introduced a rate rider for one year to collect the costs of performing an audit of Salt Box's 2020 financial statements (the Audit rate rider). Decision 24295-D02-2020 also approved T&Cs for each co-operative and end-use customers of the Ranch and Deer Springs (Ranch and Deer Springs T&Cs). Finally, the Commission issued Disposition 24295-D03-2020<sup>16</sup> approving updates to the Ranch and Deer Springs T&Cs.

### 3 Assessment of the alleged contraventions

18. In this section, the Commission provides its findings on each of the contraventions alleged by Enforcement staff.

#### 3.1 Contravention 1: Did Salt Box fail to file audited financial statements contrary to the Commission's direction in Decision 24295-D02-2020?

19. Contravention 1 alleges that Salt Box failed to file audited financial statements for the year 2020, contrary to the Commission's direction in Decision 24295-D02-2020 and despite having collected funds from customers for this purpose. The Commission finds that Enforcement staff has proven this contravention on a balance of probabilities.

20. In Decision 24295-D02-2020, the Commission commented on the importance of receiving audited financial statements:

The provision of audited financial statements has been a source of contention between Salt Box and customers. The Commission has been mindful of the need for accurate financial statements in setting rates for Salt Box and its customers and that audited financial statements would increase the transparency of the utility operations to Salt Box's customers and the Commission. The Commission maintains that an audit covering Salt Box's most recent financial year should be completed, and the cost of the audit should be borne by customers. Further, completing an audit will establish a financial baseline for future rate applications.<sup>17</sup>

21. Accordingly, the Commission issued the following direction:

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<sup>14</sup> Decision 21908-D01-2017: Salt Box Coulee Water Supply Company Ltd., Interim Water Rates, Proceeding 21908, October 27, 2017.

<sup>15</sup> Decision 24295-D01-2019: Salt Box Coulee Water Supply Company Ltd., Ultraviolet Light System Upgrade Rate Rider, Proceeding 24295, December 16, 2019.

<sup>16</sup> Disposition 24295-D03-2020: Salt Box Coulee Water Supply Company Ltd., 2020 Final Rate Application, Updated Terms and Conditions of Service, Proceeding 24295, October 30, 2020.

<sup>17</sup> Decision 24295-D02-2020, paragraph 188.

**On this basis, the Commission directs Salt Box to provide the Commission and interveners with audited financial statements for its most recent fiscal year, which will be 2020, by November 1, 2021, as a post-disposition document.**<sup>18</sup> [emphasis added]

22. The Commission also approved the establishment of the Audit rate rider, to collect the costs of performing the audit from customers. The total amount of the approved rider was \$15,000, which was selected to reflect estimates provided by Salt Box from BDO Canada Chartered Accountants and KMSS Chartered Accountants.<sup>19</sup>

23. On October 31, 2021, Salt Box indicated by letter in Proceeding 24295 that its auditor required more time to complete the audit.<sup>20</sup> In response, the Commission requested that Salt Box explain the reasons for the delay and propose a new deadline.<sup>21</sup> Salt Box cited auditor workload, and requested that the deadline be extended to December 7, 2021.<sup>22</sup> The Commission granted Salt Box's request but stated that it would not consider any additional extensions to this deadline. The Commission also directed Salt Box to provide the Commission with the name of the auditor it had retained, and the instructions provided to the auditor.<sup>23</sup>

24. Salt Box subsequently sent emails to Commission staff, which were uploaded to the record of Proceeding 24295. In these emails, Salt Box identified the auditor as Steve Sefcik of Sefcik and Associates, but failed to include a copy of the instructions provided to the auditor.<sup>24</sup>

25. On November 24, 2021, Salt Box uploaded a letter from a different auditor, Stanford & Company, expressing uncertainty about the scope of the audit and indicating that it would be difficult to audit the balance sheet given that financial statements from previous years had not been audited.<sup>25</sup>

26. The Commission issued a letter prior to the expiry of the December 7, 2021, deadline addressing the audit. The Commission noted that Salt Box had failed to provide a copy of the instructions Salt Box sent to its auditor. The Commission reaffirmed its direction in Decision 24295-D02-2020 that Salt Box provide audited financial statements for 2020. The Commission did not accept that it is unreasonable to provide the 2020 audited financial statements in the form directed by the Commission. The Commission also reiterated that Salt Box had been provided with sufficient time to find a suitable and qualified auditor. Lastly, the Commission confirmed that if Salt Box failed to meet the December 7, 2021, deadline, the Commission would refer the matter to Enforcement staff.<sup>26</sup>

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<sup>18</sup> Decision 24295-D02-2020, paragraph 188.

<sup>19</sup> Proceeding 24295, Exhibit 24295-X0091, Audit Quote Findings.

<sup>20</sup> Proceeding 24295, 24295-D02-2020-0002, Direction response, October 31, 2021.

<sup>21</sup> Proceeding 24295, AUC letter – Filing of audited financial statements, Direction correspondence, November 2, 2021.

<sup>22</sup> Proceeding 24295, Response, Post-disposition documentation, November 5, 2021.

<sup>23</sup> Proceeding 24295, AUC letter – Filing of audited financial statements, Direction correspondence, November 10, 2021.

<sup>24</sup> Proceeding 24295, Email from Salt Box to AUC, Post-disposition documentation, November 15, 2021.

<sup>25</sup> Proceeding 24295, Auditor letter, Direction response, November 24, 2021.

<sup>26</sup> Proceeding 24295, AUC letter – Filing of audited financial statements, Direction correspondence, December 1, 2021.



27. Salt Box failed to comply with the December 7, 2021, deadline and has since failed to file any audited financial statements with the Commission. In submissions filed in this Phase 1 proceeding, Salt Box did not deny that it had failed to file audited financial statements. Instead, Salt Box described the challenges it encountered retaining a firm to perform the audit, particularly in light of the complexity of the task due to the fact that previous years had not been audited. Salt Box also asserted that the Commission, in directing Salt Box to complete the audit, had misunderstood the amounts quoted for audited financial statements, and had not made sufficient funds available for Salt Box to complete the audit.<sup>27</sup>

28. The Commission finds that Salt Box failed to file audited financial statements contrary to the Commission's direction in Decision 24295-D02-2020. To the extent that Salt Box is asserting that it made all reasonable efforts to comply with the Commission's direction, the Commission disagrees. Salt Box has been aware of the requirement to provide audited 2020 financial statements since mid-2020. On Salt Box's request, the Commission provided clarification on the scope of the audit, and granted Salt Box additional time to satisfy the direction. The amount of funding selected for the Audit rate rider was chosen based on quotes provided by Salt Box. While Salt Box has since asserted that the amount is insufficient, it has not provided revised quotes or correspondence from auditors to substantiate this assertion, and it has not formally requested that the Commission review and vary the direction. In light of the foregoing, the Commission does not consider that Salt Box has made reasonable efforts to comply with the direction.

29. The Commission finds that Contravention 1 is proven on a balance of probabilities.

**3.2 Contravention 2: Did Salt Box charge monthly fees and rate riders to unconnected lot owners contrary to the rates and terms and conditions of service approved in Decision 24295-D02-2020?**

30. Contravention 2 alleges that Salt Box charged monthly fees and rate riders to unconnected lot owners contrary to the rates and T&Cs of service approved in Decision 24295-D02-2020. The Commission finds that Enforcement staff has proven this contravention on a balance of probabilities.

31. The Commission considers that Contravention 2 contains two related components, which the Commission assesses below. First, the Commission assesses whether Salt Box charged monthly fees and rate riders to unconnected lot owners. The Commission concludes that it did. Next, the Commission assesses whether charging monthly fees and rate riders to unconnected lot owners is contrary to Salt Box's T&Cs of service approved in Decision 24295-D02-2020. The Commission concludes that it is.

32. Throughout the submissions made in this proceeding and in past proceedings involving Salt Box, parties have referred to lots that are "unconnected" or "unhooked" or "unhooked but serviced." For the purposes of this decision, the Commission uses the term "unconnected lot" to refer to a parcel of land without an established service connection to Salt Box's water distribution system. Because of the absence of an established service connection, an unconnected lot is unable to take delivery of water on demand.

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<sup>27</sup> Exhibit 28021-X0027, Saltbox response, PDF page 1.

### 3.2.1 Did Salt Box charge monthly fees and rate riders to unconnected lot owners?

33. The facts underlying Contravention 2 involve individuals who own lots in the Ranch and Deer Springs subdivisions. A brief summary of the key facts, as set out in the Enforcement application, is as follows:<sup>28</sup>

- (a) Garry Lebsack purchased an unconnected lot and later connected to Salt Box's water system. He was charged the UV rate rider, Audit rate rider and a fixed monthly fee for the period of time prior to connecting to Salt Box's water system.
- (b) Mark Astley owns two lots. He resides on one and never developed the second. Mark Astley has been charged the UV rate rider, Audit rate rider and a fixed monthly fee for his unconnected lot.
- (c) Jane Wang owns a single lot. She has been charged the UV rate rider, Audit rate rider and fixed monthly fee for her unconnected lot.

34. In support of the application, Enforcement staff provided invoices issued by Salt Box to each of these individuals.

35. With respect to G. Lebsack, Enforcement staff provided a timeline explaining that G. Lebsack purchased an undeveloped and unconnected lot in the Ranch community in October 2019.<sup>29</sup> The lot owned by G. Lebsack was connected to the Salt Box water system in October 2020. The invoices provided by Enforcement staff indicate that G. Lebsack was invoiced a "monthly fixed charge" for the period between October 2019 and September 2020 inclusive, despite not being connected to the Salt Box water system during that period. On the invoices for the period between October 4, 2019, and October 31, 2019, the "monthly fixed charge" is calculated at a daily rate of \$1.61 per day for a period of 28 days, totalling \$45.08. Between November 2019 and July 2020, the "monthly fixed charge" is billed at a rate of \$50.00 per month, and in August and September 2020, it is billed at a rate of \$120.00 per month. The invoices also indicated that G. Lebsack was invoiced for the UV rate rider beginning on January 1, 2020, at a rate of \$58.00 per month, and for the Audit rate rider beginning on August 1, 2020, at a rate of \$16.89 per month.<sup>30</sup> Enforcement staff indicated that G. Lebsack paid all of these charges on July 19, 2021. An invoice dated January 31, 2021, included a "tie-in fee" of \$10,000.00, which G. Lebsack disputed and declined to pay as he was already paying monthly amounts to Salt Box.

36. Salt Box did not dispute that the invoices provided by Enforcement staff were, in fact, issued to G. Lebsack. Nor did it dispute that the lot owned by G. Lebsack was unconnected to the Salt Box water system during that period between October 2019 and September 2020, inclusive.

37. With respect to M. Astley, Enforcement staff provided a timeline explaining that M. Astley purchased an undeveloped lot that was not connected to Salt Box's water system in July 2009.<sup>31</sup> From July 2009 and October 31, 2017, M. Astley was invoiced monthly fees by Salt Box prior to Salt Box's rates being regulated by the Commission. From November 2017 to December 2020, M. Astley was invoiced a "monthly fixed charge" of \$50.00 for the

<sup>28</sup> Exhibit 28021-X0002, Phase 1 Application of AUC Enforcement Staff re Salt Box, PDF page 15.

<sup>29</sup> Exhibit 28021-X0002, Phase 1 Application of AUC Enforcement Staff re Salt Box, PDF page 15.

<sup>30</sup> Exhibit 28021-X0010, Appendix H - Salt Box invoices to Lebsack\_Redacted.

<sup>31</sup> Exhibit 28021-X0002, Phase 1 Application of AUC Enforcement Staff re Salt Box, PDF page 18.

unconnected lot. From January 1, 2020, to July 31, 2020, M. Astley was invoiced a “monthly fixed charge” of \$50.00, plus \$58.00 per month for the UV rate rider. Beginning August 1, 2020, the “monthly fixed charge” increased to \$120.00 and M. Astley was also invoiced monthly for the UV rate rider (\$58.00 per month) and the Audit rate rider (\$16.89 per month, for a 12-month period ending July 31, 2021).<sup>32</sup> Enforcement staff stated that M. Astley’s lot has never been connected to the Salt Box system.

38. Salt Box did not dispute that the invoices provided by Enforcement staff were, in fact, issued to M. Astley. Nor did it dispute that the lot owned by M. Astley is not, and has never been, connected to the Salt Box water system.

39. Lastly, with respect to J. Wang, Enforcement staff indicated that Salt Box had identified J. Wang in its correspondence to Enforcement staff during the course of its investigation.<sup>33</sup> J. Wang provided Enforcement staff with an invoice for a “monthly fixed charge” of \$120.00 and UV rate rider of \$58.00.<sup>34</sup> Enforcement staff also provided an email sent from Salt Box to J. Wang which stated: “We confirm that there are monthly fees that must be paid even though this is an empty lot...”<sup>35</sup>

40. Salt Box did not dispute that the invoice provided by Enforcement staff was, in fact, issued to J. Wang. Nor did it dispute that the lot owned by J. Wang is not, and has never been, connected to the Salt Box water system.

41. Based on the foregoing, the Commission finds that Enforcement staff has demonstrated that Salt Box charged monthly fees and rate riders to the three unconnected lot owners specified above.

### **3.2.2 Is charging monthly fees and rate riders to unconnected lot owners contrary to Decision 24295-D02-2020?**

42. Enforcement staff contended that it is unlawful for Salt Box to charge any fees or riders to an owner of an unconnected lot because an owner of an unconnected lot does not receive “water service” and is therefore not “a customer” as defined in Decision 24295-D02-2020.

43. Salt Box has not argued that the owner of an unconnected lot meets the definition of “customer.” However, Salt Box has asserted that it is nevertheless reasonable for unconnected lot owners to pay fees because these fees secure prospective “water availability” access for lot owners. To that end, Salt Box has been invoicing unconnected lot owners a fee equivalent to the approved fixed monthly charge for customers, but has variously characterized these fees as a “monthly fixed charge” or an “availability charge.” Salt Box did not directly address the basis for charging the UV rider or Audit rate rider to unconnected lots. However, at several points in its submissions, Salt Box appears to suggest that the practice of charging fees and riders to unconnected lots was approved by the panel in Proceeding 24295.

44. The Commission addresses these arguments in the sections that follow. First, the Commission reviews Salt Box’s approved T&Cs for the Ranch and Deer Springs, and assesses

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<sup>32</sup> Exhibit 28021-X0016, Appendix N - Salt Box invoices to Astley\_Redacted.

<sup>33</sup> Exhibit 28021-X0002, Phase 1 Application of AUC Enforcement Staff re Salt Box, PDF pages 18-19.

<sup>34</sup> Exhibit 28021-X0018, Appendix P - Salt Box invoice to Wang\_Redacted.

<sup>35</sup> Exhibit 28021-X0017, Appendix O - Salt Box emails to Wang\_Redacted.

whether the owner of an unconnected lot constitutes a “customer” within the meaning of Decision 24295-D02-2020 and the T&Cs. Next, the Commission assesses whether there are other reasons why Salt Box would be entitled to charge fees and riders to owners of unconnected lots within its service area.

### 3.2.2.1 Are unconnected lots “customers” within the meaning of Decision 24295-D02-2020 and the approved T&Cs?

45. Enforcement staff submits that Salt Box does not have the authority to charge unconnected lot owners because these persons are not “customers” within the meaning of Decision 24295-D02-2020.<sup>36</sup> In Enforcement staff’s view, a person does not become a customer simply by purchasing an unconnected lot within Salt Box’s service area.

46. In support of this position, Enforcement staff points to the definitions of “customer” and “water services” as set out in the approved T&Cs of service for the Ranch and Deer Springs. The T&Cs indicate that a fixed monthly charge, and other charges as per Commission-approved rates, are applicable to all customers. “Customer” is defined in the T&Cs to mean the “person or persons identified in the Application for Service and supplied with residential water service by the Company at the Service Address.”<sup>37</sup>

47. “Water Services” is defined in the T&Cs to mean “all services provided by the Company under these Terms and Conditions, **including but not limited to provision of potable water** to a Customer through a Service Connection.” (emphasis added)

48. In the Commission’s view, the text of these definitions on their own is not fully determinative of the question of whether an unconnected lot owner could be a “customer.” This is because the definition of “water services” is non-exhaustive; it is not limited to the provision of potable water as it potentially includes other unspecified services under the T&Cs. Accordingly, it is possible that “water services” could be construed broadly to include the securing of a right to access water in the future, and someone receiving such service would therefore be a “customer.”

49. However, having considered the T&Cs in their entirety, and in light of the larger regulatory context, the Commission is satisfied that owners of unconnected lots are not “customers” of Salt Box, and Salt Box is not authorized to charge any rates or fees to these persons.

50. “Water services” is defined to include all services provided by Salt Box under the T&Cs, including but not limited to the provision of potable water. The other services, besides provision of potable water, that are discussed in the T&Cs include installation of meters, meter testing, service disconnection and reconnection, and the provision of unmetered water during construction.<sup>38</sup> These all relate to connected lots. There is no explicit or implicit reference in the T&Cs to a “service” whereby customers pay for the right to obtain water in the future. A review of the T&Cs as a whole does not reveal any indication that a “water availability” charge (or other

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<sup>36</sup> The T&Cs for the Ranch and Deer Springs subdivisions were updated in Disposition 24295-D03-2020. The updates are not material to the findings in this decision.

<sup>37</sup> Decision 24295-D02-2020, Appendix 4, Terms and conditions of service.

<sup>38</sup> Decision 24295-D02-2020, Appendix 4, Terms and conditions of service, Schedule B.

charge to unconnected customers for the right to access the system in the future) was contemplated by the panel in Proceeding 24295.

51. Further, in order to meet the definition of “customer,” a person must also be “identified in the Application for Service.” The T&Cs define the “Application for Service” as, “the Company’s standard form of contract in the form of Schedule ‘A’ attached hereto and as filed with the Commission and in use by the Company from time to time.” Both the existence of this form and its contents indicate that a person is required to formally file an application to request service as a pre-condition to becoming a customer. Similarly, the T&Cs define a “Service Address” to mean an address at which “the Customer **agrees to** take water service.” (emphasis added) This language contemplates a person taking positive steps to enter into an arrangement with Salt Box in order to become a customer, and not simply becoming a customer by virtue of acquiring an unconnected lot.

52. After making an application for service, the T&Cs authorize a “tie-in fee” which is described as a “one-time charge per new Service Address” of \$10,000.00 “for the benefit to the Customer of accessing Water Services.” The T&Cs specifically note this fee “does not apply to existing customers already paying monthly amounts.” In the Commission’s view, becoming “tied-in” marks the transition of an unconnected lot to a new service address able to access water services and thereby become a customer.

53. This understanding – that the owner of an unconnected lot is not a customer – is also reflected in the findings in decisions 24295-D01-2019 and 24295-D02-2020. When setting rates in those decisions, the Commission took steps to ascertain the number of customers receiving water services from Salt Box. The Commission appears to have based the approved rates on its understanding that 74 customers received a supply of water from Salt Box. For example, in Decision 24295-D01-2019, the Commission approved the UV rate rider on the basis of Salt Box having 74 customers. This number excludes two lots that are “unhooked.”

In its application, Salt Box indicated that it provides service to 76 lots, two of which are unhooked but serviced. In Decision 21908-D01-2017, the Commission based the interim rates on 74 customers. The Commission will continue to take a conservative approach and base the monthly amount on 74 customers that, to date, are serviced by Salt Box.<sup>39</sup>

54. Approximately six months later, the same panel established final rates for Salt Box and approved the Audit rate rider in Decision 24295-D02-2020. Salt Box proposed that its final rates be collected from 76 customers. The panel noted that one of the challenges associated with setting rates is that Salt Box did not have a clear accounting of its customers, but reaffirmed the use of 74 customers.<sup>40</sup>

55. In the Commission’s view, Decision 24295-D02-2020 strongly suggests an intent to calculate and apply rates to reflect the number of individuals actually receiving a supply of potable water, which is consistent with an interpretation of the T&Cs that excludes unconnected lots from the definition of “customer.”

56. While the definition of “water services” is non-exhaustive in the T&Cs, on review of the T&Cs as a whole, in light of both their text and context, the Commission concludes that an

<sup>39</sup> Decision 24295-D01-2019, paragraph 68.

<sup>40</sup> Decision 24295-D02-2020, paragraphs 247, 252.

unconnected lot owner is not a customer and does not receive water services. For an unconnected lot to receive water services requires agreement by the lot owner for the lot to become connected through tie-in to the water distribution system. Only after an application for service and completion of the tie-in connection to receive water services would the owner of an unconnected lot transition to be a “customer” of the water utility.

57. Overall, having considered the text of the T&Cs of service, as well as the context in which the T&Cs were approved, the Commission finds that unconnected lot owners are not “customers” of Salt Box. Pursuant to the T&Cs, Salt Box is not authorized to charge any monthly fees or riders to these persons.

58. In this proceeding, Salt Box identified that the 74 of customers relied on by the panel in setting rates may have included at least some unconnected lot owners. Based on the records of proceedings 24295 and 21908, it does not appear that a clear accounting of the number of connected and unconnected lots was ever disclosed by Salt Box to the panels in those proceedings. The Commission considers that the inclusion of unconnected lot owners in the calculation of rates was likely inadvertent. Regardless, the Commission discusses the potential consequences of this inclusion below.

### **3.2.2.2 Is Salt Box otherwise permitted to charge monthly fees or riders to an unconnected lot?**

59. Salt Box provided several arguments for why owners of unconnected lots should be required to pay rates and riders, regardless of whether these individuals are “customers” within the meaning of the T&Cs. Salt Box expressed that access to water creates value for the lots, and that it is unfair for Salt Box to wait indefinitely on a lot owner’s decision whether to connect a lot before realizing any revenue. Salt Box also characterized its water licence as a commodity, and questioned why the Commission can prevent Salt Box from selling that commodity “for market value.”<sup>41</sup>

60. As a preliminary matter, the Commission observes that many of these arguments fail to recognize Salt Box’s rights and obligations under the *Public Utilities Act*. Salt Box is the owner of a public utility, and operates in a regulated environment. Public utilities are subject to regulation because they are monopoly providers of an essential public service. Some of the purposes of regulation are to ensure that a public utility cannot refuse to serve customers, and cannot charge unjust or unreasonable rates for the service it does provide. As the owner of a regulated public utility, Salt Box cannot conduct its operations as though it sells water in a purely competitive environment.

61. In any event, the Commission considers that these arguments are not relevant to its determinations in this proceeding. As outlined, the purpose of this proceeding is not to revisit Salt Box’s approved rates or T&Cs. Salt Box is not entitled to charge unconnected lot owners rates and fees that have not been approved by the Commission simply because it disagrees with the approved rates, or thinks that additional rates and fees are justified.

62. Accordingly, the Commission affirms that charging monthly fees or rate riders to unconnected lot owners is contrary to Decision 24295-D02-2020 and the T&Cs.

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<sup>41</sup> Exhibit 28021-X0027, Saltbox response, PDF pages 3-4.

### 3.3 Conclusion

63. With respect to Contravention 1, the Commission finds that Salt Box failed to file audited financial statements contrary to the Commission's direction in Decision 24295-D02-2020.

64. With respect to Contravention 2, the Commission finds that Salt Box charged monthly fees and rate riders to unconnected lot owners, and that doing so was contrary to the rates and T&Cs of service approved in Decision 24295-D02-2020.

## 4 Remedy for the contraventions found in this decision

65. Based on the findings above, the Commission may conduct the second phase of this proceeding to consider the specific sanctions the Commission will impose against Salt Box as a result of its contraventions of Decision 24295-D02-2020. Enforcement staff stated that, if the contraventions are proven, it would file a Phase 2 application and seek an order requesting specific relief. The Commission requests that Enforcement staff file its Phase 2 application on the record of this proceeding within 60 days of the release of this decision.

66. As set out in this decision, Salt Box is prohibited from charging monthly fees or rate riders to owners of unconnected lots. In this proceeding, Salt Box indicated that the design of its existing, approved rates may have incorporated information about customer numbers that included some unconnected lot owners. Consequently, the Commission understands that Salt Box's rates may need to be reviewed, to ensure that Salt Box retains a reasonable opportunity to recover its full revenue requirement without charging monthly fees or riders to owners of unconnected lots.

67. As the Commission has previously explained, a revisitation or reconsideration of Salt Box's rates is outside the scope of this Phase 1 enforcement proceeding. Further, based on the significant challenges faced to date with obtaining clear and accurate information about Salt Box's operations and costs, the Commission does not consider that it is tenable to approve new rates in the absence of audited financial statements. Accordingly, the Commission will consider whether Salt Box's rates require adjustment in a future proceeding, subject to Salt Box first providing audited financial statements for the year 2020.

Dated on August 15, 2023.

**Alberta Utilities Commission**

*(original signed by)*

Matthew Oliver, CD  
Commission Member

### Appendix 1 – Proceeding participants

<b>Name of organization (abbreviation) Company name of counsel or representative</b>
Enforcement Staff of the Alberta Utilities Commission
Salt Box Coulee Water Supply Company Ltd. (Salt Box)
David McColl
Windmill Water Coop Ltd. Bernard Chung
Calling Horse Estates Co-operative Association Ltd. Simon Corti
The Ranch Community Association Tracy Banser

Alberta Utilities Commission
Commission panel M. Oliver, CD, Commission Member
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