



**Enforcement Staff of the Alberta Utilities
Commission**

**Phase 2 Enforcement Proceeding with Salt Box Coulee Water
Supply Company Ltd. – Denial of Negotiated Settlement
Agreement Application**

January 16, 2024

Alberta Utilities Commission

Decision 28021-D02-2024

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Negotiated Settlement Agreement Application
Proceeding 28021

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Phase 2 Enforcement Proceeding with Salt Box Coulee
Water Supply Company Ltd. – Denial of
Negotiated Settlement Agreement Application**

**Decision 28021-D02-2024
Proceeding 28021**

1 Decision summary

1. In this decision, the Alberta Utilities Commission denies the Negotiated Settlement Agreement (NSA) application filed by AUC Enforcement staff, and establishes a process to compel the production of financial documents and scrutinize the financial situation of Salt Box Coulee Water Supply Company Ltd. pursuant to sections 85(1) and 87(1) of the *Public Utilities Act*.

2 Introduction and procedural background

2. In Decision 28201-D01-2023,¹ the Commission considered a Phase 1 enforcement application brought by AUC Enforcement staff. The Commission determined that Salt Box committed two contraventions of Decision 24295-D02-2020.² These contraventions are:

- (a) Contravention 1: Failing to file audited financial statements contrary to the Commission’s direction in Decision 24295-D02-2020.
- (b) Contravention 2: 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.

3. The Commission established Phase 2 of the enforcement proceeding to determine an appropriate penalty to impose on Salt Box.

4. On October 20, 2023, Enforcement staff filed an application requesting that the Commission approve an NSA reached between Enforcement staff and Salt Box. Subject to the approval of the Commission, the NSA would avoid a contested Phase 2.

5. The NSA contains the following terms:

- (a) Contravention 1: Salt Box must complete and submit audited financial statements as set out in Decision 24295-D02-2020. If Salt Box fails to complete and submit the audited financial statements by December 15, 2023, it must refund \$14,796.72 collected through the audit rate rider to those customers affected by the levy.

¹ Decision 28201-D01-2023: Enforcement Staff of the Alberta Utilities Commission, Phase 1 Enforcement Proceeding with Salt Box Coulee Water Supply Company Ltd., Proceeding 28201, August 15, 2023.

² Decision 24295-D02-2020: Salt Box Coulee Water Supply Company Ltd., 2020 Final Rates, Proceeding 24295, June 29, 2020.

- (b) Contravention 2: Salt Box must refund \$11,070.91 improperly collected from unconnected lot owners through monthly fixed charges, an ultraviolet rate rider and audit rate rider. The repayment of those amounts should occur through equal monthly amounts over a period of one year, commencing in January 2024.

6. Despite having agreed to the terms of the proposed settlement agreement, Salt Box subsequently filed further correspondence setting out the following:³

- Salt Box did not expect to provide audited financial statements by December 15, 2023, as previously agreed.⁴
- Salt Box does not believe it is able to fund any refunds at this time.⁵
- Salt Box’s approved rates are not sufficient to allow water utility operations to continue.⁶

7. On December 15, 2023, Salt Box filed an unaudited balance sheet and income statement for the years 2019 and 2020. Salt Box indicated that it intended to file audited financial statements, but also clarified that it had not yet retained a suitable auditor.

8. On January 2, 2024, Salt Box was struck from the register of Alberta Corporate Registries for a failure to file annual returns. In correspondence to Commission counsel,⁷ Jeffrey Colvin, the sole director of Salt Box, indicated to the Commission that he intended to revive the corporation and that the revival would be complete no later than January 12, 2024. However, as of 9 a.m. on January 16, 2024, Salt Box remained struck.

3 Denial of NSA application

9. A negotiated settlement can have significant benefits for all parties to an enforcement proceeding, and for the administration of justice. Negotiated settlements can resolve matters efficiently, thereby allowing scarce time, resources and expenses to be channeled into other matters. In part due to the benefits of promoting negotiated settlements, the Commission will generally not disturb a settlement agreement reached between parties, unless the proposal would bring the administration of justice into disrepute or otherwise be contrary to the public interest.

³ Exhibit 28201-X0061, Saltbox response September 8, 2023.

⁴ Exhibit 28201-X0061: “The auditor required new financial information from 2021, 2022 and 2023 to complete the audit. This was not known or expected at the time saltbox was discussing the expected completion time of dec 15, 2023 and is beyond the control of Saltbox.”

⁵ Exhibit 28021-X0061: “Any refund needs to be paid by the utility customers...Any refunds need to be paid upon the next approved rate application.”; “Due to this situation, Saltbox is in no possision [*sic*] and is not possible to fund any refunds at this time ...” Exhibit 28021-X0062: “Saltbox has no extra money to pay back what's been spent getting this accounting and audit work done up to this point, as Auc has suggested.”

⁶ Exhibit 28201-X0061: “The audit that is being completed identifies that the rates are not sufficient to keep operations proceeding and force the Utility to lose money monthly ...”; “And as shown in the audit, the rates provided have not be sufficient to enable the utility to survive and has just added more risk to the provision of water.” Exhibit 28021-X0062: “If auc [*sic*] wants to shut us down, we guess that’s it. We cannot afford anything.”

⁷ Exhibit 28021-X0067, Re 28021- AUC Letter.

This high threshold for departing from a negotiated settlement is consistent with principles developed by courts for joint submissions on sentencing in the criminal law context.⁸

10. In the current circumstances, however, the Commission finds that approval of the NSA would be contrary to public interest. This is because it is clear that Salt Box, based on its own statements, is unwilling or unable to adhere to the terms to which it has agreed.

11. With respect to Contravention 1, the deadline in the settlement agreement for Salt Box to provide audited financial statements has lapsed. Salt Box suggested that it was in the process of obtaining audited financial statements, but did not provide any evidence to substantiate that suggestion.⁹ Further, Salt Box raised substantial doubt about its intent and ability to fund the refund it agreed to pay should it fail to provide audited financial statements.

12. With respect to Contravention 2, Salt Box also raised substantial doubt about its ability to fund the refund it agreed to pay. Under the proposed settlement agreement, Salt Box would refund \$11,070.91 in equal payments over a period of one year, commencing in January 2024. The Commission notes that the calculation of this amount was based on representations made by Salt Box to Enforcement staff about the amount it had collected, and not verifiable accounting records. Regardless, Salt Box subsequently indicated that it “is not possible to fund any refunds at this time.” Salt Box instead suggested that any refund would need to wait until after its next rate application is approved. As Salt Box is aware, the Commission has previously been clear that it will not consider any new rate application by Salt Box until audited financial statements have been provided.

13. For a negotiated settlement to be in the public interest, it is imperative that the parties are able and willing to abide by the commitments made therein. There is no benefit to the public in approving a settlement agreement that cannot or will not realistically be fulfilled. For these reasons, the Commission finds that approval of the NSA would be contrary to the public interest.

14. Accordingly, the Commission denies the application to approve the NSA.

15. As described below, the Commission will proceed to a contested Phase 2 enforcement proceeding. As part of this proceeding, the Commission will engage its powers under the *Alberta Utilities Commission Act* and *Public Utilities Act* to compel the production of financial documents and scrutinize the financial situation of Salt Box.

4 Production of financial documents

16. As noted in several decisions involving Salt Box, the provision of audited financial statements has been a source of contention for a long time. The Commission has repeatedly emphasized the need for accurate financial statements in setting rates for Salt Box and its customers, and has confirmed that no further rates applications will be considered until audited financial statements are provided to the Commission.¹⁰

⁸ *R v Anthony-Cook*, 2016 SCC 43.

⁹ To the contrary, the only evidence provided by Salt Box was email correspondence from an auditor declining to perform the audit, and a letter confirming that no auditor has been successfully engaged to date.

¹⁰ Decision 24295-D02-2020, paragraphs 188-190.

17. Salt Box was first directed to provide audited financial statements for the years 2015, 2016 and 2017 in Decision 21908-D01-2017.¹¹ In its next rate application, filed in 2019, Salt Box provided unaudited financial statements for 2015 and 2016, and explained that it was unable to provide financial statements for 2017 because it could not afford to prepare audited financial statements.¹² In response, the Commission reiterated the importance of having audited financial statements to demonstrate historical expenses and revenues. The Commission dispensed with the requirement to provide audited 2015 financial statements, but reaffirmed its direction to provide audited financial statements for the fiscal years ending 2016 and 2017, indicating that it would not consider setting new rates for Salt Box until the information was received.¹³ The Commission further directed that Salt Box provide audited financial statements for 2018.

18. Salt Box then filed a letter seeking relief from the requirement to file audited financial statements for three years, and argued that an audit is unnecessary and unduly costly for a small utility. Customers of Salt Box opposed this request on the basis that Salt Box had demonstrated a tendency to maintain incomplete and inaccurate financial information.¹⁴ In response to Salt Box's request, the Commission revised its previous direction to remove the requirement for 2016 and 2017 audited financial statements. Salt Box was instead directed to proceed immediately with obtaining audited financial statements for 2018.¹⁵

19. By letter dated January 28, 2020, the Commission noted that a 2018 financial audit had not still been undertaken, despite its direction more than 17 months earlier for Salt Box to obtain an audit immediately.¹⁶ In order to move the rates application forward, the Commission proceeded to consider rates without audited financials. The Commission noted that its effort to use internal resources to undertake an accounting verification and reconciliation process for Salt Box in the absence of audited financial statements was hindered by a lack of complete information provided by Salt Box.¹⁷ In Decision 24295-D02-2020, the Commission approved a \$15,000 rate rider to pay for a single year audit for 2020 and directed Salt Box to provide audited financial statements by November 1, 2021.

20. In a letter dated November 10, 2021, the Commission granted Salt Box's request to extend that deadline to December 7, 2021, and stated:

Should Salt Box fail to provide the 2020 audited financial statements by December 7, 2021, the Commission will find that Salt Box has not complied with the direction from paragraph 192 of Decision 24295-D02-2020 and will refer the matter to the Commission's enforcement branch.¹⁸

21. In that letter, the Commission directed Salt Box to provide the Commission with the name of its auditor and a copy of the instructions provided to the auditor. Salt Box did not

¹¹ Decision 21908-D01-2017: Salt Box Coulee Water Supply Company Ltd., Interim Water Rates, Proceeding 21908, October 27, 2017.

¹² Proceeding 24295, Exhibit 24295-X0002, application.

¹³ Proceeding 24295, Exhibit 24295-X0090, AUC letter – Ruling on application processing, paras 6-7.

¹⁴ Proceeding 24295, Exhibit 24295-X0098, AUC letter – Ruling on further process, paras 11-13.

¹⁵ Proceeding 24295, Exhibit 24295-X0098, AUC letter – Ruling on further process, paras 16-17.

¹⁶ Proceeding 24295, Exhibit 24295-X0161, AUC letter – Further process on setting final rates.

¹⁷ Decision 24295-D02-2020, paragraphs 20-21, 187-188.

¹⁸ Proceeding 24295, Post-disposition documentation, AUC letter – Filing of audited financial statements, November 10, 2021.

comply with the direction to provide its auditor instructions. The December 7, 2021, deadline passed without Salt Box filing its 2020 audited financial statements.

22. Salt Box’s failure to provide its audited 2020 financial statements, despite having collected funds for this purpose, was referred to AUC Enforcement staff, and forms the substance of Contravention 1 of this enforcement proceeding. It has now been more than two years since the extended deadline lapsed, and more than six years since the Commission first directed Salt Box to provide audited financial statements, and no audited financial statements for any year have ever been received.

23. The consequences of Salt Box’s continued failure to provide audited financial statements are severe, and affect all parties. The Commission understands that Salt Box may have been operating with a revenue shortfall, but is unable to ascertain the existence and severity of this shortfall due to a lack of transparency into Salt Box’s operations. While Salt Box did provide unaudited financial statements for 2019 and 2020 on December 15, 2023, these financial statements have not been verified by an accountant. The Commission has previously specifically ruled that it requires audited financial statements from Salt Box.¹⁹ This ruling was informed, in part, by concern on the part of customers that Salt Box lacks appropriate systems and internal controls and does not maintain accurate operational and financial data.

24. The absence of audited financial statements also hinders the Commission’s ability to efficiently resolve this enforcement proceeding. The Commission is faced with having to determine an appropriate penalty for Salt Box, without any insight as to the effect of a potential penalty on the financial viability of the utility. As noted by Enforcement staff, during settlement negotiations it had no direct access to Salt Box’s accounting records, and was required to rely on information provided by Salt Box.²⁰

25. Successful negotiated settlements are premised on both parties participating in good faith, with a strong understanding of the circumstances of the offender and the relative strengths and weaknesses of their respective positions. These conditions do not currently exist. In these circumstances, the Commission is not satisfied that there is any benefit to accommodating new settlement negotiations at this time.

26. The Commission does not consider that it can fairly and efficiently resolve this enforcement proceeding and determine an appropriate penalty to impose on Salt Box in the absence of any transparency into Salt Box’s financial situation. Accordingly, in order to resolve this proceeding, the Commission has determined that it will compel the production of financial documents and scrutinize the financial situation of Salt Box.

27. The Commission has broad authority under the *Alberta Utilities Commission Act* and *Public Utilities Act* to require a public utility to make its financial records and other documents available to the Commission. Among other relevant provisions, Section 11 of the *Alberta Utilities Commission Act* provides that, in regard to the production and inspection of records or other documents, the Commission has all the powers, rights, privileges and immunities that are vested in a judge of the Court of King’s Bench. Section 85(1) of the *Public Utilities Act* provides the Commission with general supervisory powers over all public utilities and the owners of them.

¹⁹ Proceeding 24295, Exhibit 24295-X0098, AUC letter - Ruling on further process, August 6, 2019.

²⁰ Exhibit 28021-X0059, Information response to AUC IR Round 2 - ENFORCE-AUC-2023NOV15-001 to 005.

Section 87(1) of the *Public Utilities Act* provides that the Commission may, on its own initiative, investigate any matter concerning a public utility. When Section 87(1) is engaged, any person who controls the business of a public utility within Alberta must give the Commission access to any of the books, documents and records that relate to the business, as well as any other information required by the Commission.

28. J. Colvin is the sole director of Salt Box and the sole director of the corporation²¹ that is the general partner of Salt Box's only voting shareholder. J. Colvin represents Salt Box in proceedings before the Commission and has previously identified himself as the president of the corporation. In this capacity, J. Colvin controls the business of Salt Box and is required to give the Commission access to any of the books, documents and records that relate to the business, and furnish any information in respect of it required by the Commission.

29. Concurrently with this decision, the Commission is issuing an order directing Salt Box, and its sole director J. Colvin, to file with the Commission all documents in their possession relating to the financial position of the utility dating from January 1, 2018, to December 31, 2023.²² The documents must include, at a minimum, the items listed in Appendix 1 of the order. The documents must also include any documents prepared in relation to Salt Box's ongoing effort to obtain an audit. The information specified in the order must be filed with the Commission no later than February 5, 2024.

30. The Commission emphasizes that, should Salt Box and J. Colvin fail to provide all of the information stipulated in the order by the specified deadline, the Commission will make use of the powers available to it. These powers include but are not limited to seeking an order under Section 12 of the *Alberta Utilities Commission Act* finding that Salt Box and J. Colvin are in contempt of the Commission, and having the order enforced by a civil enforcement agency under Section 25 of the *Alberta Utilities Commission Act*. The Commission also has the authority to enforce its own orders under Section 119 of the *Public Utilities Act*, and to impose an additional administrative penalty in accordance with Section 63 of the *Alberta Utilities Commission Act*.

5 Further process

31. The Commission has established an updated process schedule to complete the proceeding. The process schedule includes a step for the Commission and Enforcement staff to ask information requests of Salt Box, followed by an oral hearing during which the Commission and Enforcement staff may question Salt Box. The Commission will conduct this process on the record of the existing Proceeding 28021. The Commission will then provide an opportunity for Salt Box, Enforcement staff and interested customers to file written submissions on an appropriate penalty. Alternatively, customers who prefer to provide their submissions on a penalty orally will also be provided an opportunity to do so at the oral hearing.

²¹ The Commission observes that this corporation, Regional GP Enterprises Inc., has also been struck from the register of Alberta Corporate Registries since August 25, 2020.

²² January 1, 2018 is the start of the first fiscal year after October 27, 2017, the date on which the Commission first declared that Salt Box is a public utility.

Date	Parties	Step
February 5, 2024	Salt Box and Jeffrey Colvin	Salt Box and Jeffrey Colvin to file financial information as specified in attached order
March 8, 2024	AUC staff and Enforcement staff	Information requests to Salt Box on financial information
March 22, 2024	Salt Box	Information request responses from Salt Box
TBD	All parties	Oral hearing
TBD	Interested customers	Oral submissions
TBD	Salt Box, Enforcement staff, interested customers	Written submissions
TBD	Salt Box, Enforcement staff, interested customers	Written reply submissions

Dated on January 16, 2024.

Alberta Utilities Commission

(original signed by)

Vera Slawinski
Panel Chair

(original signed by)

Matthew Oliver, CD
Commission Member

Appendix 1 – Proceeding participants

Name of organization (abbreviation) Company name of counsel or representative
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. (CHECAL) Simon Corti
The Ranch Community Association Tracy Banser
Travis and Brenda Gieck
Voytek Niemczewski

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