



**Harmony Advanced Water Systems Corporation
EPCOR Alberta Utilities Holdings Inc.**

Share Transfer Application

August 13, 2024

Alberta Utilities Commission

Decision 29083-D01-2024

Harmony Advanced Water Systems Corporation

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The Commission may, no later than 60 days from the date of this decision and without notice, correct typographical, spelling and calculation errors and other similar types of errors and post the corrected decision on its website.

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1 Decision summary

1. In this decision, the Alberta Utilities Commission:
 - (i) Authorizes the transfer on Harmony Advanced Water Systems Corporation's (HAWSCO) books of 100 per cent of the issued and outstanding common shares of HAWSCO from Harmony Developments Inc. (HDI) to EPCOR Alberta Utilities Holdings Inc. (EPCOR Holdings).
 - (ii) Deems EPCOR Holdings and EPCOR Harmony (the presumptive new name of HAWSCO) to be subject to sections 101 and 102 of the *Public Utilities Act*.
 - (iii) Confirms that it will, following the closing of EPCOR Holdings' acquisition, request the Lieutenant Governor in Council to add EPCOR Holdings and EPCOR Harmony to the *Public Utilities Designation Regulation* as designated owners of a public utility to which sections 101, 102 and 109 of the *Public Utilities Act* apply.

2 Description of the application and process

2. HAWSCO owns and operates a water utility located in Rocky View County, Alberta. HAWSCO is a wholly owned subsidiary of HDI.
3. EPCOR Holdings is a directly and wholly owned subsidiary of EPCOR Utilities Inc. (EUI).
4. On June 4, 2024, EPCOR Holdings and HDI entered into a Share Purchase Agreement, under which EPCOR Holdings will acquire 100 per cent of HAWSCO's water, stormwater and wastewater business for an estimated cash purchase price of \$20 million. This includes acquisition of all of HAWSCO's common shares (Acquisition). The parties anticipate that HAWSCO's name will be changed following completion of the Acquisition to EPCOR Harmony.¹
5. HAWSCO and EPCOR Holdings each filed an application relating to the Acquisition, requesting the following relief.
6. HAWSCO requested that the Commission, by order under Section 102(1) of the *Public Utilities Act*, authorize the transfer on HAWSCO's books of all of the common shares of HAWSCO from HDI to EPCOR Holdings.

¹ Exhibit 29083-X0001, EPCOR application, paragraph 2.

7. EPCOR Holdings requested that the Commission:
- (i) confirm that it will, following the closing of the Acquisition, request that the Lieutenant Governor in Council add EPCOR Holdings and EPCOR Harmony to the *Public Utilities Designation Regulation* as designated owners of a public utility; and
 - (ii) effective from the time of completion of the Acquisition until the time EPCOR Holdings and EPCOR Harmony are included in the *Public Utilities Designation Regulation*, require EPCOR Holdings and EPCOR Harmony to conduct themselves as if they had been so designated.

8. The Commission issued a notice of application on June 12, 2024. On June 24, 2024, the Commission received a letter of support for the transaction from Rocky View County.² Rocky View County has a franchise agreement with HAWSCO and understood that the agreement would be assigned to EPCOR Holdings with the share transfer.

9. On June 26, 2024, the Commission issued an information request (IR) to HAWSCO. The Commission considers that the close of record for this proceeding was July 3, 2024, the date that HAWSCO filed its responses to the Commission's IR.³

3 No-harm test

10. Under the *Public Utilities Designation Regulation*, HAWSCO is designated as an owner of a public utility, to which sections 101 and 102 of the *Public Utilities Act* apply. The Commission previously noted that HDI is not designated in the regulation, although it was not clear to the Commission why, as HDI is the parent company and sole shareholder of HAWSCO.⁴ The Commission and its predecessors have previously confirmed that the traditional practice is to designate both the utility itself (as the utility operator or owner of utility assets) and the direct owner, or parent, of the utility.

11. Regardless, under the *Public Utilities Act*, the proposed share transaction and transfer of shares on HAWSCO's books cannot be completed until the Commission's approval is obtained and the Commission has made an order to that effect.

12. The Commission has previously found HAWSCO's water utility to be a "public utility" under the *Public Utilities Act*,⁵ but has not made a finding as to whether HAWSCO's stormwater utility is a "public utility" under the *Public Utilities Act*.⁶ HAWSCO's wastewater utility is outside of the Commission's authority.⁷

² Exhibit 29083-X0010, 2024-06-19 Letter of Support for HAWSCO EPCOR transfer.

³ Exhibit 29083-X0013, HAWSCO IR response.

⁴ Decision 28445-D01-2024: Harmony Advanced Water Systems Corporation, 2024-2025 Water General Rate Application, Proceeding 28445, April 12, 2024, paragraph 27.

⁵ Decision 28445-D01-2024, paragraph 22.

⁶ Decision 28445-D01-2024, paragraph 29.

⁷ The Commission has previously held that it has no jurisdiction over wastewater services, except in very limited circumstances. See Decision 21340-D01-2017: Horse Creek Water Services Inc., 2016 General Rate Application, Proceeding 21340, October 20, 2017, paragraph 23, referencing *Macdonald Communities Limited v Alberta Utilities Commission*, 2019 ABCA 353.

13. The central question for the Commission is whether the water utility customers are harmed by the Acquisition. This is also referred to as “the no-harm test.” Under this test, the Commission weighs the potential positive and negative impacts of the Acquisition to determine whether the balance favours customers or at least leaves them no worse off, having regard to all the circumstances of the case.⁸ The no-harm test considers the proposed Acquisition in the context of both financial impacts and service level impacts to customers.⁹ If harm is identified, the Commission considers whether the harm may be effectively mitigated through approval conditions.

14. The Commission finds no evidence of a harmful impact from the Acquisition to the rates and charges passed on to water utility customers. EPCOR Holdings explained that the Acquisition will not result in an increase in the water utility’s rate base or operating costs. EPCOR Holdings advised that EPCOR Harmony will provide water service to customers at the water utility rates approved by the Commission in the compliance filing to HAWSCO’s 2024-2025 water general rate application (Decision 28445-D01-2024), which is currently before the Commission.¹⁰

15. The Commission finds sufficient evidence to demonstrate no added operational risk will occur if the Acquisition proceeds. EUI is a consolidated subsidiary of the City of Edmonton, with its head office in Edmonton. EUI is a holding company that owns subsidiaries principally engaged in utility businesses in Alberta and in other parts of Canada and the United States. In view of this, the Commission finds that EUI has adequately demonstrated it has the necessary experience, financial strength and commitment to utility service.

16. EPCOR Holdings noted that, under the Acquisition, there will be no change to the Commission’s regulatory authority over the water utility and the entities carrying out the business. In its view, the Acquisition will not hinder the Commission’s oversight on the water utility’s affiliate relationships and transactions as EPCOR Holdings and EPCOR Harmony will comply with EUI’s Commission-approved Inter-affiliate Code of Conduct. EPCOR Holdings advised that it will revise the Commission-approved compliance plan to the extent necessary to reflect the new names and affiliates resulting from the Acquisition. The Commission accepts EPCOR Holdings’ evidence and commitments on these points.

17. EPCOR Holdings also explained that the Acquisition will not result in any degradation of management or operational expertise for the water utility. HAWSCO currently contracts out the operation of the water, stormwater and wastewater utilities to Aquatech Canadian Water Services Inc. The current contract expires on May 1, 2025, but allows for early termination without cause with 60 days’ notice. According to EPCOR Holdings, EPCOR Harmony will continue to use Aquatech until EPCOR Harmony has hired its own operating staff and then EPCOR Harmony will terminate the agreement with Aquatech and begin operating with a combination of its own staff and shared services provided by EUI and its affiliates. Based on the above, the Commission

⁸ Decision 2000-41: TransAlta Utilities Corporation, Sale of Distribution Business, Application 2000051-1, File 6404-3, July 5, 2000, page 8. Decision 27802-D01-2023: Corix Utilities Inc., Approvals Relating to Restructuring Transactions, Proceeding 27802, February 23, 2023, paragraph 10.

⁹ For a list of factors considered by the Commission to assess whether customers would be harmed, as applicable in the circumstances of an application, please see Decision 27802-D01-2023, paragraph 12.

¹⁰ Proceeding 29203, HAWSCO’s 2024-2025 water general rate application compliance filing, filed on July 31, 2024.

is satisfied that the Acquisition will not have a harmful effect on the day-to-day operation of the water utility.

18. The Commission asked HAWSCO whether any assets are pledged as security for any indebtedness of HDI, the beneficial owners,¹¹ or any of their affiliates or associates. In response, HAWSCO explained that Article 4 (paragraphs 4.1(1)(k) and 4.1(1)(l)) of the Share Purchase Agreement lists the conditions of closing, and addresses what is required to happen to the pledges as a condition of closing the share transfer transaction. Paragraph 4.1(1)(l) explains that the purchaser shall receive a release from the Royal Bank of Canada (RBC) for all liabilities in the form of a discharge or cancellation of all related security documentation outstanding related to a credit agreement dated January 8, 2021, that was entered into between HDI, Qualico Developments Canada Ltd. and HAWSCO, with RBC acting as an administrative agent.¹²

19. The Commission considers that protection of HAWSCO's assets from the creditors of EUI, EPCOR Holdings or any of its affiliates is important and includes conditions for EPCOR Holdings to ensure this protection. The Commission directs EPCOR Holdings to include in any future credit agreements, or amendments to current credit agreements, wording that exempts the assets of HAWSCO/EPCOR Harmony from being pledged as security unless EPCOR Holdings receives permission from the Commission to waive this exemption. With respect to the release from RBC, the Commission directs EPCOR Holdings to file a copy of the release as post-disposition documentation on the record of this proceeding no later than 45 days after the closing of EPCOR Holdings' acquisition of all of the common shares of HAWSCO.

20. Considering the above, the Commission concludes that water utility customers will not be harmed by the proposed transactions, based on the no-harm test.

21. The Commission therefore approves the transfer on HAWSCO's books of all of the outstanding common shares of HAWSCO from HDI to EPCOR Holdings.

22. Currently, HAWSCO is designated under the *Public Utilities Designation Regulation* as an owner of a public utility to which sections 101 and 102 of the *Public Utilities Act* apply. The Commission and its predecessors have previously confirmed that the traditional practice is to designate both the utility itself (as the utility operator or owner of utility assets) and the direct owner, or parent, of the utility. As a result, both EPCOR Holdings and EPCOR Harmony should be designated. The Commission directs EPCOR Holdings to notify the Commission through a post-disposition filing on the record of this proceeding no later than 15 calendar days after the closing of EPCOR Holdings' acquisition and the subsequent renaming of HAWSCO, to inform the Commission of the new name of the corporation. Once the new corporate name is filed, the Commission will request that EPCOR Holdings and the newly named corporation be added to the *Public Utilities Designation Regulation*.

23. A delay between the request to add EPCOR Holdings and EPCOR Harmony to the regulation, and the amendment of the regulation is likely. Therefore, following the closing of EPCOR Holdings' acquisition of all of the common shares of HAWSCO, EPCOR Holdings and

¹¹ HDI is the legal owner of the shares of HAWSCO. The beneficial owners own all the beneficial rights, title and interest in and to all of the issued and outstanding shares of HAWSCO.

¹² Exhibit 29083-X0013, HAWSCO-AUC-2024JUN26-001 and Exhibit 29083-X0005, Share Purchase Agreement, PDF page 23. Administrative agent acting on behalf of RBC, ATB Financial, Canadian Western Bank, Connect First Credit Union Ltd. and Cambrian Credit Union Limited.

EPCOR Harmony are deemed to be subject to sections 101 and 102 of the *Public Utilities Act* and must conduct themselves as if they were so designated, until such time as they are designated as the owners of a public utility by the Lieutenant Governor in Council.

4 Order

24. It is hereby ordered that:

- (1) The Alberta Utilities Commission authorizes Harmony Advanced Water Systems Corporation, under Section 102 of the *Public Utilities Act*, to record on its books a transfer all of its common shares from Harmony Developments Inc. to EPCOR Alberta Utilities Holdings Inc.

Dated on August 13, 2024.

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
Harmony Advanced Water Systems Corporation (HAWSCO) EPCOR Utilities Inc. (EUI)
Rocky View County

Alberta Utilities Commission
Commission panel M. Oliver, CD, Commission Member
Commission staff J. Graham (Commission counsel) A. Spurrell D. Mitchell

Appendix 2 – Summary of Commission directions

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

1. The Commission considers that protection of HAWSCO’s assets from the creditors of EUI, EPCOR Holdings or any of its affiliates is important and includes conditions for EPCOR Holdings to ensure this protection. The Commission directs EPCOR Holdings to include in any future credit agreements, or amendments to current credit agreements, wording that exempts the assets of HAWSCO/EPCOR Harmony from being pledged as security unless EPCOR Holdings receives permission from the Commission to waive this exemption. With respect to the release from RBC, the Commission directs EPCOR Holdings to file a copy of the release as post-disposition documentation on the record of this proceeding no later than 45 days after the closing of EPCOR Holdings’ acquisition of all of the common shares of HAWSCO..... paragraph 19
2. Currently, HAWSCO is designated under the *Public Utilities Designation Regulation* as an owner of a public utility to which sections 101 and 102 of the *Public Utilities Act* apply. The Commission and its predecessors have previously confirmed that the traditional practice is to designate both the utility itself (as the utility operator or owner of utility assets) and the direct owner, or parent, of the utility. As a result, both EPCOR Holdings and EPCOR Harmony should be designated. The Commission directs EPCOR Holdings to notify the Commission through a post-disposition filing on the record of this proceeding no later than 15 calendar days after the closing of EPCOR Holdings’ acquisition and the subsequent renaming of HAWSCO, to inform the Commission of the new name of the corporation. Once the new corporate name is filed, the Commission will request that EPCOR Holdings and the newly named corporation be added to the *Public Utilities Designation Regulation*..... paragraph 22