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## ALBERTA UTILITIES COMMISSION

### ***EMCOR Utility (2035570 Alberta Ltd.) 2023-2027 General Rate Application, AUC Decision 28055-D02-2024***

*Water – Review and Variance*

#### Application

EMCOR Utility (2035570 Alberta Ltd.) (“EMCOR”) applied for approval of its general rate application (“GRA”) regarding its potable water system for the 2023-2027 test years.

#### Decision

The AUC approved the GRA, as follows:

- the final revenue requirements for the periods June 7, 2023, to February 29, 2024; March 1, 2024, to February 28, 2025; March 1, 2025, to February 28, 2026; and March 1, 2026, to February 28, 2027;
- final rates effective June 7, 2023, March 1, 2024, March 1, 2025, and March 1, 2026;
- the recovery of depreciation and return on rate base as part of its revenue requirements, as a proxy for CME Holdings Ltd.; and
- terms and conditions of service, contingent upon certain matters EMCOR is required to undertake.

The AUC also directed EMCOR to file an application to true up its interim rates to final rates for the period June 7, 2023, to March 31, 2024.

#### Pertinent Issues

The AUC considered EMCOR’s application in two parts. In part one, in Decision 28055-D01-2023, the AUC found that EMCOR’s potable water system met the definition of a public utility, and that EMCOR was the owner, approving interim rates for the supply and distribution of potable water, effective June 7, 2023, until the final rates were determined.

In this decision, the AUC determined the final rates and approved the terms and conditions (“T&Cs”) of EMCOR’s potable water service. EMCOR did not seek approval of its rates for recycled water, fire protection, irrigation water, or stormwater collection systems, arguing that these systems are not public utilities.

Under the *Public Utilities Act* (“PUA”), the AUC fixes just and reasonable rates of the owner of a public utility by applying cost-of-service regulation for investor-owned water utilities. Under this methodology, a regulated utility is allowed to charge rates sufficient to cover its operations and maintenance (“O&M”) costs and provide a fair rate of return on and return of capital. The first step of this methodology is establishing the forecast revenue requirement to serve utility customers, which includes consideration of O&M costs, depreciation, taxes and an allowed rate of return on rate base. The second step allocates the revenue requirement



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to customer classes and establishes rates that are necessary to recover the forecast revenue requirement. This decision addressed both steps concurrently.

The AUC is required to approve forecast costs for the safe and reliable operation of EMCOR's potable water system, while ensuring just and reasonable rates for the service received by its customers.

### Rates

#### 1. Test Period and Associated Rates

The AUC approved the final revenue requirements for the following periods: June 7, 2023, to February 29, 2024; March 1, 2024, to February 28, 2025; March 1, 2025, to February 28, 2026; and March 1, 2026, to February 28, 2027. The AUC approved the final rates effective June 7, 2023, March 1, 2024, March 1, 2025, and March 1, 2026.

#### 2. Eligibility for Return on Rate Base and Depreciation

A regulated utility is permitted to earn a return on and a return of the money invested in rate base. The return on the money invested makes up the return on debt and return on equity components of the revenue requirement. The return of the money invested makes up the depreciation component of the revenue requirement.

EMCOR indicated that CME Holdings Ltd. ("CME"), the parent company of EMCOR that owns 100 percent of EMCOR, built and paid for all of the utility system infrastructure subsequently transferring it to EMCOR, for a consideration of one dollar and Class A common shares. While EMCOR, by itself, did not invest anything in its rate base, CME did. Accordingly, the AUC permitted EMCOR to recover depreciation and return on rate base as a proxy for CME's investment. While the AUC considered this fair, it noted that, if EMCOR issues any shares to a party other than CME or if CME sells, transfers or disposes of any or all of its shares in EMCOR, the proxy recovery of depreciation and return on rate base will no longer be permitted.

#### 3. Rate Base and Return on Rate Base

Since this was the first potable water rates application filed by EMCOR, the AUC must approve the rate base figures on February 29, 2024, February 28, 2025, February 28, 2026, and February

28, 2027. The AUC calculated opening and closing rate base on a fiscal year basis because the information submitted by EMCOR was on a fiscal year basis. Since the first bill issued for potable water service was for the consumption period from February 15, 2018, to May 31, 2020, depreciation of the potable water system begins with the first date of commercial operation. As a result, in its calculations of the opening rate base for March 1, 2023, the AUC included accumulated depreciation for the period February 15, 2018, to February 28, 2023.

The AUC concluded that no amounts for contributions should be included based on EMCOR's submission that no contributions were collected from customers to help finance the capital cost of the potable water system, and that there are no requirements in its franchise agreement with the Rocky View County with respect to a contribution factor, no-cost capital, and rate base.

The AUC excluded any costs for working capital from the approved rate base. The AUC was of the view that to add working capital to rate base it must consider both the revenue side and the expense side of the utility's operations. EMCOR's assessment of the reasonableness of the 45-day lead lag only discussed the revenue side and not the expense side, even though the AUC asked EMCOR to explain the reasonableness based on the billing cycle, payment deadlines, payment received from customers and when payments are made to suppliers.

The AUC approved the deemed capital ratio of 60 percent debt and 40 percent equity as being consistent with AUC-approved deemed capital structure for two other water utilities identified by EMCOR. The AUC determined that the 40 per cent deemed equity reflects the fact that EMCOR has more business and investor risk than the utilities that are included in the generic cost of capital proceedings, which have lower deemed equity ratio.

The AUC approved the forecast return on equity of 9.28 per cent requested by EMCOR for the fiscal years ending February 29, 2024, February 28, 2025, February 28, 2026, and February 28, 2027, which is the same as the latest return on equity percentage approved by the AUC in Decision 28585-D01-2023.

The AUC approved the forecast return on debt of 6.45 per cent requested by EMCOR, accepting EMCOR's explanation that CME finances capital



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expansion and operations with a line of credit, which has a current interest rate of 6.45 per cent.

#### 4. Reduction to Return on Rate Base and Depreciation for Unused Capacity

One principle of utility rate setting is that customers should only pay for the portion of the utility that is used to provide utility service to the public.

The developed acres forecast, which is part of the fixed charge, and the water usage forecast, which is a charge for water usage, when compared to the design capacity of the potable water system, indicate that the system is not fully utilized to provide utility service to the public. The design capacity of the potable water system was sized to accommodate the entire development, which is incomplete. The AUC was of the view that it was fair for EMCOR to recover depreciation and return on rate base as part of its revenue requirement and that it was also fair for current customers to not be required to pay for the full share of the depreciation and return on rate base because the system is not fully utilized.

Therefore, it was necessary for the AUC to include depreciation and return on rate base in the revenue requirement that reflects only the portion of the total system used to provide utility service to the public. The AUC held that depreciation and return on rate base attributable to the unused portion of the total system will be borne by the shareholder of EMCOR.

#### 5. Water Waste Haulage Forecast

The AUC did not accept the water waste haulage expense forecast initially submitted by EMCOR. The wastewater haulage expense was the largest of EMCOR's forecast O&M expenses. The AUC had concerns with the wastewater haulage forecasting model. When comparing the actual expense for wastewater haulage with EMCOR's forecast for those same periods, the forecast appeared low. The forecast also did not include an assumption for inflation in haulage costs, suggesting under-forecasting. Finally, the volume per truckload assumption did not correspond to the data provided in the invoices.

Following clarifications and further information from EMCOR, the AUC set the revenue requirement for the wastewater haulage expense, which represented a cumulative addition of \$13,878 for the period from June 7, 2023, to February 28, 2027.

#### 6. Final Revenue Requirement and Rates and Projected Revenues Compared to AUC-Approved Revenue Requirements

Because of the reductions made by the AUC to the depreciation expense and return on rate base amounts to reflect the unused capacity of the water system, the AUC approved lower than applied-for revenue requirements, as follows:

- \$127,613 for the period June 7, 2023, to February 29, 2024;
- \$192,131 for the fiscal year March 1, 2024, to February 28, 2025;
- \$202,163 for the fiscal year March 1, 2025, to February 28, 2026; and
- \$205,668 for the fiscal year March 1, 2026, to February 28, 2027.

#### 7. Compliance with previous AUC Direction

The AUC found that EMCOR complied with the direction from paragraph 25 of Decision 23256-D01-2018, which required EMCOR to ensure that the water licence was issued or transferred in its name as soon as feasible, including filing a copy with the AUC once it was obtained.

#### 8. Terms and Conditions of Service

EMCOR also sought approval of the T&Cs, which regulate its potable water services and outline the rules, obligations and terms that govern the provision of utility services between EMCOR and its customers.

The AUC was satisfied that the T&Cs contributed to ensuring that the rates approved in this decision were just and reasonable and that they reflected the AUC's consideration of all relevant factors in this proceeding by balancing the interests of both the utility and customers. The AUC directed EMCOR to correct certain inconsistencies in the T&Cs and approved administrative charges in the amount of \$50 for returned payment, call back or late payment, as applicable.

#### 9. True-up of Interim and Final Rates

The AUC approved interim rates in Decision 28055-D01-2023, effective June 7, 2023, approving the



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final rates in this decision. Consequently, the AUC directed EMCOR to file an application with a true-up proposal. The application must include details for the calculated revenue differences and the proposal for collection, including the period over which the collection would take place.

### 10. Recycled Water, Fire Protection, Irrigation Water and Stormwater Collection Systems

EMCOR only sought approval of its potable water rates, and not the rates for recycled water, fire protection, irrigation water, or stormwater collection systems ("Systems"). The AUC decided not to make a finding in this decision regarding whether the Systems are a "public utility" under the *Public Utilities Act* ("PUA"). The AUC emphasized that if it receives an application or complaint, or otherwise becomes aware of any potential mischief or other compelling concern in relation to the Systems, it will make a determination on whether the Systems are public utilities, as defined in the *PUA*.

The AUC provided the following commentary to assist EMCOR and its customers in determining whether they may file an application or complaint in relation to the Systems.

The AUC disagreed with EMCOR's submissions regarding why the Systems should not be considered public utilities. The AUC found that non-potable water is not excluded from the meaning of "water" in the definition of "public utility" in the *PUA*. There is no legislative definition of "water" in the *PUA* and the ordinary meaning of water is general, broad and includes potable and non-potable water. The AUC gave significant weight to the ordinary meaning of "water" when interpreting these provisions.

The AUC also noted that this interpretation was consistent with its precedent. It further stated that wastewater, if treated, may no longer carry attributes that would ordinarily classify it as wastewater and that it may be used to provide non-wastewater services even if it remains non-potable.

Contrary to EMCOR's arguments, the AUC noted that customers do not need to have unrestricted access to the water on demand, and that they do not need to possess the water to the exclusion of others, to allow the assumption of a public utility.