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ALBERTA UTILITIES COMMISSION

***Salt Box Coulee Water Supply Company Ltd.
Decision on Preliminary Question Application for
Review of Decision 28021-D02-2024 and Order
28021-D03-2024, AUC Decision 28021-D04-2024
Water – Review and Variance***

Application

Salt Box Coulee Water Supply Company Ltd. (“Salt Box”) applied to the AUC for a review of Decision 28021-D02-2024 (the “Decision”) and Order 28021-D03-2024 (the “Order”).

The Decision denied a negotiated settlement agreement (“NSA”) application filed by the AUC enforcement staff (“Enforcement Staff”) regarding penalties for contraventions established in Decision 28021-D01-2024, following Salt Box’s non-compliance with the NSA’s agreed-upon terms.

The Order directed Salt Box to file certain documents with the AUC relating to the utility’s financial position.

Decision

The AUC denied the review application because the Decision and Order were interlocutory decisions and Salt Box failed to persuade the AUC that special circumstances existed that would warrant granting the review.

Pertinent Issues

Background

Proceeding 28021 was convened to consider an application from Enforcement Staff alleging that Salt Box committed two contraventions of a prior AUC decision. In Decision 28021-D01-2023, the AUC found that Salt Box committed the following contraventions:

- (a) Failing to file audited financial statements contrary to the AUC’s direction in Decision 24295-D02-2020 (“Contravention 1”); and
- (b) Charging 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 (“Contravention 2”).

On October 20, 2023, Salt Box and Enforcement Staff proposed the NSA to address the contraventions established in phase one of the enforcement proceeding.

In considering the NSA, the AUC issued information requests (“IR”) to Salt Box. In the IR responses, Salt Box stated that it could not meet the terms of the NSA despite agreeing to them.

In January 2024, after becoming aware that Salt Box had been struck from the Alberta Corporate Registry



AUC re Salt Box Application for Review

for failure to file annual returns, the AUC issued the Decision and Order. The Decision denied the NSA application. The AUC found that approval of the NSA would not be in the public interest, because it was clear that Salt Box was unwilling or unable to adhere to the terms to which it had agreed.

Salt Box Submissions

In the review application, Salt Box raised concerns about the stress it encountered, including in relation to obtaining a financial audit. Salt Box stated that quotes for a financial audit were significantly higher than the rider that was previously approved by the AUC for this purpose. Salt Box suggested that the AUC's initial direction to require an audit in 2020 was based on incorrect information.

Salt Box asserted that the direction in the Order to provide six years of detailed information on all aspects of its operations, financial and otherwise, in a matter of two weeks was not reasonable or possible. The review application also set out concerns about financial approvals of the AUC, including in relation to utility system upgrades that were mandated by Alberta Environment and Protected Areas, as well as depreciation funding and return on capital.

AUC Findings

The AUC stated that a threshold issue was whether the Decision and Order were eligible for review. Central to this determination was whether the Decision and Order constituted a final determination of Salt Box's substantive rights or whether the Decision and Order were interlocutory in nature.

The AUC determined that the Decision and Order did not determine, in whole or in part, any substantive rights of Salt Box or any other parties' rights. Rather, the Decision and Order functioned as procedural interlocutory directions to support the AUC in resolving this enforcement proceeding. As a result, the AUC found them to be interlocutory, rather than final.

Consistent with decisions by the Federal Court of Appeal and the Alberta Court of Appeal, the AUC previously held that it will not consider a review application of an interlocutory ruling except in exceptional circumstances. While there is no established exhaustive list of exceptional circumstances, these include scenarios where the impugned decision is dispositive of a substantive right of a party, raises a constitutional issue or goes to the legality of the tribunal itself.

Salt Box did not set out what might reasonably be considered exceptional circumstances in the context of this proceeding. The AUC concluded that Salt Box had effective remedies following the issuance of a final decision in this enforcement proceeding.