



IN THE MATTER OF "The Municipal
Government Act":

AND IN THE MATTER OF a certain by-law
passed by the County of Leduc No. 25
to establish water and sewer rates for
the Hamlet of Beaumont, water rates
for the Hamlet of Nisku and farm and
other water rates:

AND IN THE MATTER OF an application to
the Public Utilities Board appealing
the water rates levied by the County
of Leduc No. 25:

BETWEEN:

TOM OLIVER ET AL

Applicants

- and -

COUNTY OF LEDUC NO. 25

Respondent

APPEARANCES:

T. Oliver, Esq.	:	for the Applicants
	:	
W. A. Bradbury, Esq.	:	for the County of Leduc No. 25

D E C I S I O N

This hearing arises out of an appeal to the Public Utilities Board under Section 280 of The Municipal Government Act, chap. 246, R.S.A. 1970, by the Applicants in respect of water rates imposed by the County of Leduc No. 25 (hereinafter referred to as "the County") under a by-law passed by the County. The appeal received by the Board consisted of a letter signed by thirteen water consumers and these persons were all served with a notice of this hearing. Only nine of the Applicants appeared and Mr. T. Oliver, one of the Applicants, informed the Board that he would act as spokesman for all.

The by-law in question is By-law No. 883-68 passed by

the County on March 19, 1968, the relevant part of which provides for the levying and collecting of the various water and sewer rates is as follows:

1. That the water rate for the Hamlet of Beaumont, other than where water meters are installed, be a flat charge of \$8.00 per month.
2. That the water rate for the Hamlet of Beaumont, where water meters are installed be constituted of a service charge of \$3.00 per month, with the water rates as herein set out to apply, but with a minimum charge of \$5.00 per month for water excepting -
 - (a) The Beaumont Curling Club will pay the rates as provided for in Section 2 for only the months of November 1st to December 31st and January 1st to April 30th, inclusive, in each year.
3. That water meters must be installed for any hook-ups along the line between the Hamlet of Nisku and the Hamlet of Beaumont and any water line extension from Beaumont and that in such cases a service charge of \$7.00 per month be made in addition to the water rates as herein set out, but with a minimum charge of \$5.00 per month for water.
4. That the water rate for the Hamlet of Nisku, other than where water meters are installed, be a flat charge of \$5.00 per month for water.
5. That the water rate for the Hamlet of Nisku, where water meters are installed, be constituted of a service charge of \$7.00 per month, with the water rates as herein set out to apply, but with a minimum charge of \$5.00 per month for water.
6. That in cases of where a flat rate for water is charged and if, in the opinion of the Council, the water user is using more than 5,000 gallons per month, then the Council reserves the right to install a meter and charge in accordance with the service charges and rates as set out in this By-law.
7. That the sewer rate for the Hamlet of Beaumont shall be \$5.00 per month, excepting -
 - (a) The sewer rate for schools shall be \$5.00 per month per classroom.
8. The following water rates are to apply:

	<u>Gallons</u>	<u>Per 1000 Imperial Gallons</u>
Between	1,001 to 5,000	cost to consumer will be - \$1.90
	5,001 to 11,000	cost to consumer will be - 1.80
	11,001 to 25,000	cost to consumer will be - 1.70
	25,001 to 45,000	cost to consumer will be - 1.60
	45,001 to 85,000	cost to consumer will be - 1.50
	85,001 to 130,000	cost to consumer will be - 1.41
	130,001 to 175,000	cost to consumer will be - 1.33
	175,001 to 225,000	cost to consumer will be - 1.26
	225,001 to 625,000	cost to consumer will be - 1.20
	625,001 to 1,820,000	cost to consumer will be - 1.15
	1,820,001 to 9,335,000	cost to consumer will be - 1.10 "

All the Applicants, except one who resides in the Hamlet of Nisku, live on small acreages or farms along the water line between the Hamlet of Nisku and the Hamlet of Beaumont, all within the County, and are charged water rates in accordance with clause 3 of By-law 883-68. The Applicant residing in the Hamlet of Nisku has a water meter installed and his rates are in accordance with clause 5 of By-law 883-68 and are exactly the same rates that are imposed on the other Applicants.

Section 280 of The Municipal Government Act states:

"280. Any user of a public utility being aggrieved respecting service charges, rates and tolls made to such user may by application appeal to the Public Utilities Board and the Board, if satisfied that such service charge

- (a) does not conform to the public utility rate structure established by the municipality, or
- (b) has been improperly imposed, or
- (c) is discriminatory,

may make an order varying, adjusting or disallowing the whole or in part of such charge."

Since enactment of The Municipal Government Act in 1968 several applications under Section 280 have been dealt with by the Board and, as in the previous applications of this kind, the Board takes the position that all the powers under Part I of The Public Utilities Board Act are applicable to the Board in exercising its jurisdiction under Section 280 of The Municipal Government Act.

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In 1962 the County constructed approximately six miles of water line from Nisku to Beaumont primarily to serve the residents of Beaumont who did not have an adequate source of water. The water for the line is obtained from the Leduc-Strathcona Water Board, who owns a water line running from the City of Edmonton to the Town of Leduc. Metering facilities are located at or near Nisku to measure the volume of water delivered to the County's line.

In the month of June, 1971 the records of the County indicate that there were 118 consumer accounts, comprising 90 installations without a meter and 28 installations metered. The geographical location of the services may be summarized as follows:

	<u>Metered</u>	<u>Unmetered</u>	<u>Total</u>
Hamlet of Beaumont	5	72	77
Hamlet of Nisku	2	13	15
Farm and small holdings	<u>21</u>	<u>5</u>	<u>26</u>
	28	90	118
	<u>==</u>	<u>==</u>	<u>==</u>

No evidence was adduced at the hearing relative to the various size water services which the County has installed but from supplementary information filed at the Board's request the Board has been able to determine the size of 22 of the 28 metered installations as follows:

	<u>Beaumont</u>	<u>Nisku</u>	<u>Other</u>	<u>Total</u>
5/8" service	1	-	4	5
3/4" service	1	2	7	10
1" service	-	-	5	5
1 1/4" service	<u>2</u>	<u>-</u>	<u>-</u>	<u>2</u>
	4	2	16	22
	<u>==</u>	<u>==</u>	<u>==</u>	<u>==</u>

The largest size metered services on the County's water system are the two 1 1/4" diameter connections which supply water to schools. There are five other metered services with a 1" diameter connection and the balance of service connections appear to be of an average domestic service of either a 5/8" or

3/4" diameter pipe. There are no large commercial or industrial enterprises located in the vicinity of the County's water line and indeed the Board's personal knowledge of the area confirms that the majority of customers in the area could be classified as "domestic service".

* * * * *

Water rates were originally authorized by the County under By-law 646-63 on April 10, 1963 with the rates under that by-law exactly the same as under the present water By-law 883-68 except for clauses 1 and 2 pertaining to the Hamlet of Beaumont. Clauses 1 and 2 of By-law 646-63 were as follows:

"1. That the water rate for the Hamlet of Beaumont, other than where water meters are installed, be a flat charge of \$12.00 per month.

2. That the water rate for the Hamlet of Beaumont, where water meters are installed, be constituted of a service charge of \$7.00 per month, with the water rates as herein set out to apply, but with a minimum charge of \$5.00 per month for water, excepting -

(a) The Beaumont Curling Club will pay the rates as provided for in Section 2 for only the months of November 1st to December 31st and January 1st to April 30th, inclusive, in each year."

Mr. Bradbury, the County's Secretary-Treasurer, commented on the rate changes between By-law 646-63 and By-law 883-68 as follows:

"MR. WILLIAMS: Maybe while he is examining that, Mr. Bradbury, maybe you could summarize just what happened between By-law 646 and By-law 83, what was the effect?

A. By-law, I think it's 663, 68, I can't read it --

MR. WILLIAMS: The last by-law which is in effect now is 883 --

A. 883-68, that by-law was passed in an effort to try and promote some building in the Hamlet of Beaumont. Because of the water charge and the sewer charge the council felt that in some manner perhaps, I mean we

" have a loss every year on the water line and we might take a few more losses and be able to get some more houses in Beaumont and maybe eventually get the line on a paying basis. I don't think there was any, no thought of discrimination, at the time anyway.

THE CHAIRMAN: You are saying the idea was to reduce the water and sewer rate in the Hamlet of Beaumont?

A. Just the water rate.

THE CHAIRMAN: Just the water rate in the Hamlet of Beaumont.

A. Yes.

THE CHAIRMAN: As they were under By-law 646-63?

A. I think that's the only difference, reduced from the minimum charge of \$12 to a minimum charge of 8 with a proviso that if anyone was using more or if the council felt they were using more than 5,000 gallons of water we would install a meter. The flat charge of \$8 would effectively cover 5,000 gallons on the schedule."

* * * * *

It appears to the Board from an examination of By-law 63-68, and from the testimony of Mr. Bradbury, that the County considers that the water line is serving three distinct areas as follows:

The Hamlet of Beaumont,
The Hamlet of Nisku,
Farms and small holdings along
the water transmission line.

In the Hamlet of Nisku there are presently 13 unmetered services that are charged a flat rate of \$5.00 per month. Mr. Oliver questioned Mr. Bradbury about the reduced water rate for Nisku. At page 29 of the transcript, in response to Mr. Oliver's question, he said:

"Q. MR. OLIVER: In the By-law 646-63, it's stated the rate was \$12 in the Hamlet of Nisku and the Hamlet of Beaumont if no meter was installed, that's what the by-law states, and did the Hamlet of Nisku refuse to pay the initial rate and get a reduced rate before they hooked up the water?

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"A. Perhaps they refused to as it were to the office, they might have come in, I think there was only two people living there at the time, the store keeper and the garage and they had a house, and the elevator man, and maybe one more house; they had water, they had wells, apparently not too much difficulty getting water, they had pressure systems. They come in and ask, what's the rate for Nisku, no way would we pay that, we got water, we don't need it but we might consider \$5. Now, that could have been the start of why they got a \$5 minimum rate. In other words, we give them water for \$5, it was \$2 that helped pay for the water line otherwise they wouldn't hook up. I don't think it's proper that that attitude should have been taken but we were looking for any little few dollars you might say we could get, we call it gravy to the extent they hooked on and it didn't cost us anything, particularly, and if they didn't, well ...

MR. WILLIAMS: But you didn't know how much water they were using.

A. No, just --

MR. WILLIAMS: You don't know whether the \$5 covered it or not.

A. The same thing would apply, just for a small house, I think later on there was a trailer, this store, garage, we told them they would have to have a meter but in any case at any time when we thought they were taking more than 5,000 gallons a month we would put a meter or we would put in a meter and they would be faced with a service charge, and the Nisku service charge I think was \$3."

In addition to the water rates set out in By-law 883-68 only the residents of Beaumont are assessed an annual frontage tax of \$0.24 per front foot to pay for a portion of the cost of the water system. The testimony of Mr. Bradbury in this regard appears at page 28 of the transcript as follows:

"MR. WILLIAMS: Have you got any figures of comparison, what they would pay in Beaumont including what they are paying for frontage tax for this water system plus their rates, what the overall would be; have you got anything like that you could submit to the Board.

A. No, I have no actual figure but I could give a hypothetical figure, perhaps if they had a hundred foot lot the frontage tax would be at 24¢ would be \$24, if they had a hundred foot -- now, this is for water, not sewer. A hundred foot lot at 24¢ would

" be \$24 frontage tax, and then in addition they would pay the minimum of \$8 for water, say up to 5,000 gallons. If we thought they were using more than 5,000 gallons we would put in a meter, and if we put in a meter we charge a service charge.

THE CHAIRMAN: This applied to Nisku as well as --

A. Yes, it applies, if the meter goes in the service charge goes with the meter.

THE CHAIRMAN: There is no frontage charge in Nisku?

A. No frontage charge in Nisku.

THE CHAIRMAN: The only place with a frontage charge is Beaumont?

A. Is in Beaumont. They are the originators of the line, they are the ones who in a sense have the responsibility for paying for the line.

MR. WILLIAMS: When you say they have the responsibility for paying for the line was it to be fully recovered from them?

A. Not really, to the extent they are a hamlet, they are part of the county and all the rate payers in the county are responsible for the underpayments or if the line don't pay its way all the rate payers make up the deficiency."

* * * * *

In summary, the annual minimum charges relative to water service in the three areas appear to be as follows:

	<u>With Meter</u>	<u>Without Meter</u>
Hamlet of Nisku:		
Service charge	\$84.00	-
Commodity	<u>\$60.00</u>	<u>\$60.00</u>
	<u>\$144.00</u>	<u>\$60.00</u>
Hamlet of Beaumont: *		
Service charge	\$36.00	-
Commodity	<u>\$60.00</u>	<u>\$96.00</u>
	<u>\$96.00</u>	<u>\$96.00</u>

"This does not include frontage tax of \$0.24 per front foot for the cost of the water system.

	<u>With Meter</u>	<u>Without Meter</u>
Farms and small holdings:		
Service charge	\$84.00	No flat
Commodity	<u>\$60.00</u>	rate
	<u>\$144.00</u>	

Mr. Oliver said the Applicants contend the present water rates are discriminatory and urges the Board to determine a just rate between the rates established for Nisku and Beaumont but not to exceed \$8.00 per month. In addition he contends that all consumers should have meters or none should have meters.

* * * * *

The majority of consumers on the County water system enjoy flat rate service whereby they pay only \$8.00 per month in the Hamlet of Beaumont for unmetered consumption of water and only \$5.00 per month in the Hamlet of Nisku.

If, instead of being charged on a flat rate basis, such customers were charged metered water rates, the volume of water which they would receive for the amount they are now paying per month on the flat rate basis would be:

Beaumont

Monthly service charge	\$3.00
Commodity metered	
2600 gals. at \$1.90 per	
1000 gals. - \$4.94 (min.)	<u>5.00</u>
	<u>8.00</u>

Nisku

Monthly service charge	\$7.00
Commodity metered	
2600 gals. at \$1.90 per	
1000 gals. - \$4.94 (min.)	<u>5.00</u>
	<u>\$12.00</u>

It will be observed that on a metered basis a customer in Nisku would be required to pay a \$12.00 per month minimum

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arge rather than the \$5.00 per month flat rate basis which presently enjoys.

For the month of June, 1971 the County summarized the purchase and disposition of water for the system as shown below:

	<u>Gallons</u>
Water purchased from the Strathcona-Leduc Water Board	1,018,980
Less line loss - 6%	<u>68,160</u>
Net gallons	950,820
Metered sales (including bulk meter station sales of 30,125 gallons)	<u>391,295</u>
Unmetered sales	<u>559,525</u>
Number of unmetered services	95
Average unmetered sale	5,850 gallons

Similarly the average monthly consumption of unmetered consumers for each month from January to May in 1971 was determined by the County to be 5,390, 4,530, 5,390, 4,540 and 780 gallons respectively. The Board is not convinced, on the evidence adduced, that the County should assume that it has a water loss of 6%, or that there is in fact any loss on this rather short system. Assuming no line loss for the month of June, 1971, the total consumption by the unmetered accounts would amount to 627,685 gallons which represents an average consumption of 6,600 gallons for each service.

From an examination of the County's list of meter readings for the month of June, 1971, the following analysis has been made:

	<u>Total Consumption (Gallons)</u>	<u>Average (Gallons)</u>
5 services with monthly consumption over 20,000 gallons	185,260	37,052
8 services with consumption between 10,000 and 20,000 gallons	106,880	13,360
13 services with consumption under 10,000 gallons	<u>69,510</u>	5,347
	<u>361,650</u>	

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This analysis reveals that these thirteen services, who are not permitted by the County to purchase water on a flat rate basis, have an average consumption of 5,347 gallons, which is about 8 $\frac{1}{2}$ % less than the average non-metered consumption per customer of 5,850 gallons. This in the Board's view is clearly discriminatory.

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Section 280 of The Municipal Government Act provides that the Board "may make an order varying, adjusting or disallowing the whole or in part of such charge" if it is satisfied that the service charge, rates and tolls are discriminatory. Thus, under this section, the Board functions as a tribunal to correct discriminatory rates imposed by a municipality rather than as a rate regulating agency under the provisions of The Public Utilities Board Act.

Under Section 102 of The Public Utilities Board Act a municipality owning or operating any public utility may by by-law provide that its operations will be subject to the jurisdiction of the Public Utilities Board. The County has not passed such a by-law and the present water rates were established by the County under By-law 883-68 on March 19, 1968 when The Municipal District Act was still in force before being repealed and replaced by The Municipal Government Act on June 1, 1968. Section 277 of The Municipal Government Act permits a County to set its own utility rates subject only to the provisions of Section 280.

Considering Section 280 in the light of these provisions the Board is of the view that in conferring the powers on the Board, the Legislature did not intend the Board to carry out its duties in a manner that would detract from the clear rights of municipalities to fix their own rates. In the Board's view, the Legislature intended that the Board's prime function in an application such as is now before the Board is to correct inequalities in municipal utility rates and charges but not to substitute its opinion of what the rates and charges should be

for the opinion of a municipal council. Had the Legislature intended otherwise, Section 280 would have contained appropriate language.

As a rate setting agency, the practice of the Board is to hold a rate hearing in which evidence of relevant financial and economic matters are presented by expert witnesses in various fields and all facets are argued before the Board by counsel. In such a hearing all aspects of the effect of fixing utility rates and charges on consumers are discussed and considered at length. It is only after this procedure has been followed that the Board sets utility rates. This is the practice the Board would follow if the County passed the appropriate by-law to bring its water and sewer utilities under the jurisdiction of the Board. Acting as it must, as a tribunal under Section 280 and not as a regulatory authority, the Board has concluded that it should not interfere with municipal utility rates complained of under the section beyond the point of correcting injustices that have been established by the evidence adduced at the hearing.

To this principle should be added the proviso that in a hearing where it is readily apparent that the interests of the municipality and the complainants could best be served by varying a rate or charge and there is sufficient evidence for a new rate or charge to be set and the circumstances are such that the Board would not consider itself to be usurping a municipality's power to fix its own rates, the Board may in the proper case exercise its power to that extent.

It is apparent from the evidence submitted that the County has not set water rates at a level that will ensure that all the annual operational and capital costs of the water system are recovered as substantial deficits in each of the years 1963 to 1970 inclusive have been incurred and charged against the general revenue of the County. Greater losses were anticipated when the County gave a rate reduction in 1968 to the consumers in the Hamlet of Beaumont by reducing the water charge by \$4.00 per month with the hope that the reduced water rates would encourage building and that eventually the system might be on a paying basis.

The Board is only concerned in this application with the equability of rates being charged the metered consumers and must rely on the evidence submitted at the hearing in forming its judgment as to the fairness of the rates being charged. Based on the recorded consumption of the following ten consumers for the month of June 1971 the Board finds that the average consumption of 5,716 gallons is not in excess of the average unmetered sale and that in all fairness the following ten consumers should have been charged water rates in accordance with clause 1 of By-law 883-68, which provides for water service at a flat rate of \$8.00 per month:

	Consumption in June 1971 (Gallons)
T. Oliver	5,480
M. N. Garneau	6,330
J. Woods	4,610
P. Guzak	5,780
T. Hartman	4,670
R. Hogg	8,730
G. Kinsella	3,830
L. H. Schneider	2,170
Helen Rivard	9,610
J. Johnson	<u>5,950</u>
Total -	<u><u>57,160</u></u>
Average -	<u><u>5,716</u></u>

In addition the Board considers all the other metered consumers should be charged metered water rates as now applied to the Hamlet of Beaumont under clause 2 of By-law 883-68.

Concurrently with this decision the Board will issue its order to the following effect:

The water accounts of the ten consumers hereinbefore referred to shall be immediately credited for all amounts paid by them in excess of the flat \$8.00 per month charge since April 1, 1968.

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The water accounts of all the other metered services will be credited with any monthly service charge in excess of \$3.00 per month imposed since April 1, 1968.

In conclusion the Board would like to make the observation that the entire water system should be metered. Each month the County has to pay for all water that is metered into its system from the Leduc-Strathcona Water Line and it seems only prudent management that the disposition thereof should be as closely controlled as possible by metering each customer's consumption.

DATED AT EDMONTON, in the Province of Alberta, this nineteenth day of October, A. D. 1971.

PUBLIC UTILITIES BOARD

(SIGNED) W. D. ABERCROMBIE

MEMBER

(SIGNED) H. A. WILLIAMS

ACTING MEMBER

Certified a true copy.

Secretary