

**COMPLAINT OF T.E. HOLDINGS LTD.
AGAINST THE CITY OF THOMPSON
RE: COLLECTION PRACTICES FOR
WATER AND WASTE WATER UTILITY**

Order No. 115/16

September 2, 2016

**BEFORE: Régis Gosselin, B ès Arts, MBA, CPA, CGA, Chair
Marilyn Kapitany, BSc. Honours, MSC, Member**

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1.0 EXECUTIVE SUMMARY

By this Order, the Public Utilities Board (the "Board") makes certain findings with respect to the reasonableness of collection efforts made by the City of Thompson, in respect of water utility account arrears incurred by tenants of a rental property located at Thompson, Manitoba, which property is owned by the applicant, T.E. Holdings Ltd.

T.E. Holdings made an application for relief from the Board as a result of the amount of \$71,023.45 having been transferred by the City of Thompson to its property tax account, in respect of the water utility account arrears.

The Board finds that the City did not fulfill its requirement to take all reasonable steps to collect on the water utility accounts prior to transferring the amounts to the applicant's property taxes. The Board also finds that T.E. Holdings failed to adequately communicate with the City on a number of occasions, which limited the City's ability to collect on outstanding water utility accounts. The Board hereby makes an Order which provides that the parties will share in the responsibility for the outstanding accounts. The Board wishes to point out that in making this Order, it is exercising its discretion to make such an order given the unique circumstances of this application, and is not making a general comment regarding the City's ability to transfer outstanding water utility accounts to property taxes in future cases, where the City has made reasonable efforts to collect.

2.0 OVERVIEW

The applicant, T.E. Holdings Ltd. ("**T.E. Holdings**") made this application to the Board on May 15, 2015, pursuant to section 33 of *The Public Utilities Board Act*, C.C.S.M. c. P280 (the "**PUB Act**" or the "**Act**") against the City of Thompson (the "**City**").

T.E. Holdings made an application before the Board for:

1. A declaration that the City failed to take reasonable collection efforts with respect to outstanding accounts for water and waste water utility charges for tenants of a property owned by T.E. Holdings located in Thompson, Manitoba ("the **Accounts**");
2. A declaration that the City was not entitled to apply the Accounts to T.E. Holdings' property tax bill;
3. An Order directing that upon payment by T.E. Holdings to the City in the amount of \$12,621.56, the lien and charge filed against T.E. Holdings' property tax be removed and expunged, together with all penalties, charges and interests relating thereto.

The application was opposed by the City, which took the position that the Board ought to dismiss the application and confirm the City's right to pursue T.E. Holdings for the Accounts.

In this application, in accordance with its jurisdiction under section 24 the Act and its Rules of Practice and Procedure, the Board received evidence in written form from the parties. The application itself contained information from T.E. Holdings as to the events giving rise to the application, along with relevant documentation. The City filed its own affidavit evidence in response, and T.E. Holdings filed further affidavit evidence in reply to that filed by the City. In addition, the parties provided answers to two rounds of Information Requests made by the Board.

2.1 BACKGROUND

T.E. Holdings is a Manitoba company, which owns and operates a 120 unit residential townhouse complex ("the **Complex**") in Thompson, Manitoba, located on a residential street known as Grey Wolf Bay. The entirety of Grey Wolf Bay is occupied by the Complex, and all properties located on this street are tenanted properties owned by T.E. Holdings.

The relief requested by T.E. Holdings arises out of a first charge of \$51,795.35, applied to its property taxes by the City in June of 2014, relating to 80 water accounts opened by 80 individual tenants of T.E. Holdings at the Complex. Following the initial transfer of \$51,795.35, in June of 2015, the City transferred a second total amount of \$19,228.10. A total of \$71,023.45 has been transferred by the City to T.E. Holdings' property tax account. Although T.E. Holdings' initial application was only in respect of the first charge of \$51,795.35, the Board has also received evidence and submissions regarding

the additional amount of \$19,228.10 transferred in June of 2015. As a result, this Order addresses the total amount of the transfers, \$71,023.45.

T.E. Holdings takes the position that the Board ought to grant the relief requested by it on the basis that the City allowed some tenants of the Complex to accrue outstanding water accounts dating back to approximately 2011, when the City first started charging for water, and the City failed to discontinue water utility service to those tenants who had outstanding water accounts. T.E. Holdings also alleges that the City failed to notify it that its tenants were in arrears, and the City failed to take reasonable, or any, collection efforts on the amounts owing by tenants prior to applying the balance to property taxes. Finally, T.E. Holdings alleges that the City failed to follow its own Resolution, and Board Order No. 39/09, which both address conditions precedent for disconnection of water accounts for non-payment.

T.E. Holdings takes the position that it was denied the opportunity to take its own collection efforts, or any other action it might deem appropriate, prior to the Accounts being transferred to its property taxes.

In response, the City asserts that it had on multiple occasions, attempted to communicate the status of outstanding water accounts to T.E. Holdings, and to request information required by it in order that the collection of unpaid accounts be effected promptly and efficiently. The City asserts that T.E. Holdings was slow in responding to the requests, and often completely non-responsive. According to the City, it acted reasonably in its attempts to work with T.E. Holdings to obtain the necessary

information to enable it to collect on the arrears from the tenants of the property. The City further states that T.E. Holdings was provided with notice of outstanding accounts, and that when it transferred the Accounts to T.E. Holdings' property tax account, the City was acting within its authority under the *The Municipal Act*, C.C.S.M. c. M225 (the "**Municipal Act**").

2.2 PROCEDURAL CONTEXT

Board Order No. 39/09 was issued by the Board on April 17, 2009. Order No. 39/09 amended a previous Order of the Board, No. 127/08, the Board's General Order in respect of Service Disconnections by Water and/or Sewer Utilities. The conditions precedent set out in Order No. 39/09 state the purpose, scope, policy and procedures to be followed by utilities with respect to service disconnections, and include a right of customers to appeal a disconnection and involve the Board.

Contained within the policy and procedures set out in Order 39/09, is a statement that the utility shall take all reasonable steps to collect the arrears from its account holder/customer before adding any arrears to taxes.

Prior to 2011, the City had not charged its residents for water consumption. On April 4, 2011, the City passed Water and Waste Water Utility By-Law No. 1842/2010, authorizing the City to charge for water and waste water utility services.

On May 31, 2011, the City established Resolution No. 2011-106 (the "**Resolution**"), setting out policies and directives related to the collection of unpaid water bills incurred

by individual tenants of a building. The Resolution contained the following statement on the City's policy:

From time to time, the Utility Billing has difficulty collecting payment for water and wastewater services from account holders. Where the delinquent account holder is a tenant, and the Utility Billing is unable to collect amounts owing, the City of Thompson will, under the authority granted in Section 252 of The Municipal Act, transfer those amounts to the property taxes of the owner.

The Resolution sets out, in detail, the procedures that the City would take with respect to collection of outstanding water and waste water accounts incurred by individual tenants of a property.

3.0 BOARD FINDINGS

3.1 ISSUES

The issues to be decided in this application are as follows:

1. Does the Board have jurisdiction to grant the orders requested by T.E. Holdings, and in particular, does the Board have the jurisdiction to deny the City the ability to place liability for the Accounts to T.E. Holdings' property tax account?
2. Assuming that the Board has jurisdiction to answer question number 1 above, did the City take reasonable steps within the meaning of Order No. 39/09 and the Resolution, in attempting to administer its policies and collect accounts relating to outstanding water utility accounts for tenants of the Complex?

3. If the City did not take reasonable steps prior to applying the Accounts to T.E. Holdings' property tax account, what is the appropriate remedy?

3.1.0 Summary of Findings

With respect to the first question, the Board finds that it has the jurisdiction, pursuant to the provisions of the PUB Act, to deny the City the ability to place liability for the Accounts to T.E. Holdings' property tax account if the City failed to meet the conditions precedent to transferring those amounts to taxes.

With respect to the second question, the Board finds that the City failed to follow the Resolution and the requirements of Order 39/09, prior to applying the Accounts to T.E. Holdings' property tax account. In so doing, the City did not take all reasonable steps in its collection efforts. The Board - also recognizes that T.E. Holdings failed to provide the City with adequate information regarding the arrival and departure of tenants, and failed to respond in a timely way to the requests made by the City on occasion for information regarding the tenants. The Board is nonetheless not satisfied that the City has adduced evidence indicating it made any significant collection attempts as to the existence of certain arrears, before transferring the Accounts to T.E. Holdings' property taxes. The Board is particularly concerned with those of the Accounts that were transferred to taxes in respect of accounts which date back to the period from 2011 to 2013, given the City's own admission that it did not take an aggressive approach to collections in the early period after the City began to charge for water use.

With respect to the remedy flowing from these findings, the Board is of the view that, given the unique circumstances of this application, the parties ought to share in the responsibility for the water account arrears. The Board makes this Order in the exercise of its discretion, while recognizing the City's general authority to place the Accounts on T.E. Holdings' property tax bill, provided however that the City has met the conditions precedent for the transfer to taxes.

The Board's reasons for its findings and its Order are addressed in detail below.

3.2 JURISDICTION OF THE BOARD AND THE MUNICIPAL ACT

In accordance with the provisions of the PUB Act, the Board has general supervisory powers over utilities and owners of utilities, which includes the City:

General supervision over utilities

74(1) The board has a general supervision over all public utilities and the owners thereof subject to the legislative authority of the Legislature, and may make such orders regarding equipment, appliances, safety devices, extension of works or systems, reporting, and other matters, as are necessary for the safety or convenience of the public or for the proper carrying out of any contract, charter, or franchise involving the use of public property or rights.

Section 33 of the Act sets out the powers of the Board on complaints filed under that section:

Power of board on complaints generally

33 Where the Minister of Justice, a municipality, or a person interested makes a complaint to the board that the owner of a public utility, a municipality, a corporation, or any person, has unlawfully done or unlawfully failed to do, or is about unlawfully to do, or unlawfully not to do, something relating to a matter over which the board has jurisdiction as

aforesaid, and requests the board to make some order in the matter, the board shall, after hearing such evidence as it may think fit to require, make such order as it thinks proper under the circumstances.

The Board's jurisdiction includes the ability to receive complaints about public utilities, investigative powers, and the ability to make orders requiring utilities to do anything under the Act or any other act of the legislature (See: ss. 28(1), 74(2), 76(a)).

Pursuant to the provisions of the Municipal Act, the City has the power to acquire, establish, maintain and operate services, facilities and utilities (s. 250(2)). The City may also discontinue or disconnect a service and refuse to provide the service to users who fail to comply with any terms or conditions imposed by the City (s. 252(1)). According to section 252(2) of the Municipal Act, a charge made by the City for utilities may be collected by the City in the same manner as a tax may be collected or enforced.

The City argues that, because the Municipal Act is legislation of specific intent and application, and the PUB Act is one of general intention, where there is conflict between the two Acts, the Municipal Act will prevail. As a result, according to the City, the Board has the authority to require the City to follow reasonable processes and procedures in its collection of the Accounts, but it does not have the authority to deny to the City its ability to place the debt owing on the Accounts to T.E. Holdings' property tax bill. If the City had not followed reasonable procedures, then the only remedy available would be in outlining the reasonable steps the City would have to take prior to placing the accounts on T.E. Holdings' property tax account.

T.E. Holdings argues that it is not taking issue with the City's ability to transfer the Accounts to its property tax account, if the amounts are owing after the City has taken reasonable steps to collect on the Accounts. Therefore, according to T.E. Holdings, there is no conflict between the PUB Act and the Municipal Act.

The Board points out that section 106 of the PUB Act provides that, except as provided in certain exceptions (which do not apply in this application), the provisions of the Act have effect notwithstanding any provision to the contrary contained in any charter or general or special Act of the Legislature. If there is a conflict between the provisions of the Municipal Act and the Act, section 106 provides that the provisions of the PUB Act will have effect.

The parties do not appear to be at odds as to the Board's jurisdiction to impose preconditions on the City, prior to it transferring the Accounts to T.E. Holdings' property tax account. Where the parties diverge is with respect to the jurisdiction of the Board to grant the remedy sought by T.E. Holdings.

The City clearly has the authority generally to apply outstanding charges for utilities to property tax bills, and to collect them in the same manner as it would collect a tax. Nevertheless, in accordance with the Board's powers under the PUB Act, which includes a general power of supervision over public utilities and the owners thereof, the Board has the jurisdiction to make a determination as to whether the efforts made by the City to collect on the Accounts were made following reasonable processes and

procedures, and therefore, whether the City had met the necessary conditions precedent prior to applying the Accounts to T.E. Holdings' property tax account.

Therefore, the Board concludes that if it finds that the City failed to take all reasonable steps, for example, by failing to follow Order 39/09, By-Law No. 1842/2010, or the Resolution, prior to transferring the outstanding water utility accounts to T.E. Holdings' property tax bill, the Board may make any such order within its jurisdiction as it sees fit in order to remedy the City's failure to follow its own procedures. In the Board's view, in so doing, the Board is not denying the City's right under the provisions of the Municipal Act to transfer outstanding utility accounts to property taxes generally. Instead, the Board is exercising its function as necessarily incidental to its power under the Act of supervision over the City as an owner of the utility. Further, sections 33 and 106 of the PUB Act grant the Board the authority to make any such order as it sees fit, even where it might conflict with the provisions of the Municipal Act.

3.3 DID THE CITY TAKE REASONABLE STEPS TO COLLECT ON THE ACCOUNTS PRIOR TO APPLYING THE ACCOUNTS TO T.E. HOLDINGS' PROPERTY TAX ACCOUNT?

In order to answer this question, the Board must make an inquiry into the procedural framework and the factual circumstances giving rise to the transfer of the Accounts to T.E. Holdings' property taxes.

Board Order No. 39/09 sets out the conditions precedent for a collection and disconnection of water and/or sewer services as a result of non-payment of accounts,

and includes a statement that utilities shall take all reasonable steps to collect the arrears from an account holder/customer before adding any arrears to taxes.

The City's By-Law No. 1842/2010 contains, among other things, provisions in respect of the payment of utility accounts, and termination of accounts for non-payment. First, the By-Law set out the conditions of payment by customers of the water utility and the results of late payment:

PART 9

UTILITY ACCOUNTS

PAYMENT OF UTILITY ACCOUNTS

1. All rates and charges payable hereunder shall be paid to the City within the time prescribed in the Water and Wastewater Rates By-Law.
2. The entire utility account is due and payable when rendered and if not paid on or before the due date stated on the utility bill is deemed to be in arrears. Failure to receive a utility bill does not relieve the Customer of liability to pay the same.
3. A Customer who has not paid the full utility account rendered on or before the due date stated in the utility account may have the supply of all or any utility services discontinued without notice and such service will not be reinstated until all arrears, fees, and charges owed to the City are paid.

LATE PAYMENT PENALTY

4. When the Customer pays the utility account as rendered after the due date stated in the account, or such due date as may be approved by the Treasurer, such Customer shall pay a penalty, as prescribed in the Water and Wastewater Rates By-Law, on the outstanding overdue balance. Payments must be received by the City on or before the due date in order for Customer to avoid the penalty. Payments made at a financial institution must be received by the City on or before the due date in order for the Customer to avoid the penalty.

5. For greater certainty, a Customer is obliged to pay for utilities when the bill is rendered and it is a breach of the agreement to supply utilities for the Customer to pay late. The late payment penalty is not to be construed as permission for the Customer to pay late but is rather a penalty for breaching the terms of the utility service agreement.

In addition to the above, Part 10 of the By-Laws, Article 3(b) provides that the City may discontinue the supply of water utility services for non-payment of any utility accounts.

The Resolution provides that, where the delinquent account holder is a tenant, and the utility is unable to collect amounts owing the City will, under the authority granted in Section 252 of *The Municipal Act*, transfer those amounts to the property taxes of the owner. The procedure set out therein includes the following steps, among others:

- Tenants that are required to pay for water under their lease contracts can make application to the City for a water account.
- Property owners should advise the City water utility of the properties being rented.
- The owner is to receive notice of penalty upon the tenant's account being 30 days in arrears.
- Property owners may, when a tenant's utility bill is more than 30 days in arrears, request in writing disconnection of the service.
- If a bill is 90 days overdue at October 15th of any year, a letter is sent to the owner advising that, unless the account is paid by a prescribed date, the account

will be transferred to the owner's property taxes for the related property prior to the end of December.

- Landlords should advise of Utility Billing when a tenant is vacating the rented premises so the City can take a final meter reading on the property, and with a final read, the owner will know what to collect before the tenant departs.
- If no new tenant is moving into the property or Utility Billing is unaware of the tenant, the cost of utility service will be transferred to the owner in the owner's name.
- Landlords are requested to provide Utility Billing with the name and pertinent information of a new account holder even where a property is to remain vacant for a period of time. If the name of a new tenant is not provided, the account will be transferred into the owner's name.

3.3.0 Summary of the Evidence

A brief chronology of the events giving rise to this application follows.

It is not disputed that prior to January, 2011, the City did not charge for water consumption. According to evidence filed by T.E. Holdings, the City did not make any request of it prior to January, 2011, to provide any specific information in order to open water accounts of the tenants of the Complex. T.E. Holdings' evidence is that in November 2010, its office manager, Eileen Noseworthy, sent a fax to the City's Water and Waste Department which contained a notice that had been sent to all tenants of the

Complex, and a complete rent roll for the Complex which included the name of each tenant, the possession date for each unit, the deposit amount, and the lease expiry date. T.E. Holdings has also provided evidence that Ms. Noseworthy delivered a copy of the same information to the City. According to the City, it never received this documentation.

On March 18, 2011, the first invoices were issued by the City for residents of T.E. Holdings' property. There is no dispute that at that time, all of the accounts were made in the name of T.E. Holdings. While there is some dispute as to the details of the conversation or conversations, the evidence is clear that after receiving the initial invoice, Ms. Noseworthy advised Carol Taylor, the City employee responsible for the implementation of the water utility, that future invoices be made in the name of the tenants.

According to the City, it was not until May 10, 2012, that it obtained information from T.E. Holdings regarding all tenants at the Complex for individual accounts, when T.E. Holdings provided it with rent rolls for January 2011 to May 2012.

In August of 2012, the City issued invoices directly to all tenants of each unit and by August 30, 2012, all of the water accounts at the Complex were held in the names of the tenants. The evidence filed by both parties indicates that further correspondence ensued between T.E. Holdings and the City during the period from August 30, 2012 until December 2013, during which period the City made requests of T.E. Holdings for

certain tenant information from time to time, and advised as to outstanding tenant accounts.

On October 11, 2013, Ms. Taylor sent Ms. Noseworthy an email attaching a trial balance of outstanding water utility accounts. On December 11, 2013, Ms. Taylor sent a further email to Ms. Noseworthy with a trial balance of outstanding water utility accounts, and provided notice regarding the possibility that the outstanding amounts would be transferred to taxes if the tenants did not pay the arrears. Ms. Taylor followed up with a further email on January 10, 2014 to Ms. Noseworthy, reiterating the information contained within the December 11, 2013 email. It is of note that the trial balances sent by Ms. Taylor to Ms. Noseworthy on those three occasions were not aged. Because they were not aged, it is not possible to determine if the amounts are past due.

The City then sent "Utility Reminder" notices to 35 tenants at the Complex, dated March 6, 2014, of the past due accounts, which were copied to T.E. Holdings. The notices stated as follows:

As part of your lease agreement with your landlord you are responsible for payment of the utility invoice and our records indicate your account is PAST DUE. Please remit your payment by April 5, 2014, failure to do so will result in the City of Thompson transferring your utility invoice to your landlord's property tax account.

Transferring of your debt to your landlord does not mean you do not have to pay, it means your landlord will be dealing with you directly for payment. It is in your best interest to pay your account with the City of Thompson.

A copy of this letter is being sent to your landlord. Please call if you have any questions, I can be reached at 204-XXX-XXXX.

Respectfully,

Carol Taylor

Project Specialist - Finance

These letters were the first formal notification that T.E. Holdings received from the City as to the outstanding tenant accounts and of the City's intention to proceed with a transfer to taxes.

On April 29, 2014, City Council approved the transfer of account balances in a total amount of \$51,795.35 to the property tax account for T.E. Holdings. The transfer of that amount to T.E. Holdings' property taxes occurred on June 18, 2014, and included outstanding amounts for tenants of the Complex from 2011 to 2013.

The City sent a further trial balance to T.E. Holdings on August 11, 2014. On September 15, 2014, representatives of T.E. Holdings attended a City Council meeting to ask that the water supply be cut off to tenants at the Complex whose accounts were in arrears. Anthony Chang, the President of T.E. Holdings, made a request for relief from the penalties imposed on the outstanding amounts, and the removal of the Accounts from T.E. Holdings' property taxes. The City requested a written instruction with respect to the cutting off of water supply. On September 17, 2014, T.E. Holdings provided written authorization to the City to disconnect water to units that were in arrears exceeding two months. On September 29, 2014, the Finance and Administration Committee of the City met *in camera* to discuss Mr. Chang's requests. The Committee denied the request, and so advised Mr. Chang in writing, on October 2, 2014.

T.E. Holdings issued a further written request to the City to discontinue water service to tenants in arrears over two months on October 28, 2014. The City responded in April, 2015, that individual letters would be required, and then later advised on June 16, 2015, that it could not shut off the water to individual units.

The City provided further trial balances to T.E. Holdings during the period from December 2014 to August, 2015. During that time, in June 2015, the City transferred an additional sum of \$19,228.10 to T.E. Holdings' property tax bill, which represented 27 delinquent accounts of current and past tenants. The City had issued a further series of reminder letters to tenants of the Complex in April of 2015.

According to T.E. Holdings, beginning in November 2014, it referred several outstanding accounts to a collection agency and as at the date of this application had collected a total of \$12,621.56 after the collection agency's fee. T.E. Holdings is prepared to apply this amount to the amounts claimed by the City and transferred to T.E. Holdings' property tax account.

3.3.1 Conclusions

The Board received a significant amount of evidence from both parties as to the facts giving rise to this complaint, and the communications and correspondence between the parties. Many of the details of what transpired are disputed; however, on many of those facts which are, in the Board's view, central to the question of whether the City took all reasonable steps in its collection efforts, there is no dispute.

There is no dispute that, although the Accounts relate to arrears dating back to as early as 2011, the City only first sent out reminder letters regarding outstanding accounts to certain tenants of the Complex in March of 2014, and then again in April of 2015. The City acknowledges that it did not provide T.E. Holdings with copies of invoices sent to tenants, and also concedes that it did not notify T.E. Holdings that it would not be sending invoices to it as specified in the Resolution.

It is also not disputed that the City did not impose any penalties on the outstanding accounts until January 2014, as part of what the City described as its decision to not take an aggressive approach to collections in the first few years of the water utility operation, in order to allow residents to become accustomed to the procedure.

Order No. 39/09 contains policy and procedures for conditions precedent for collection and disconnection of water accounts for non-payment. In the Board's view, the steps set out therein are reasonable, and are the minimum steps that the City ought to have followed in making reasonable efforts at collection, prior to proceeding to transfer outstanding tenant accounts to the property tax account of T.E. Holdings. There is evidence in the correspondence between Ms. Taylor and Ms. Noseworthy, which indicates that T.E. Holdings was provided with notice of outstanding accounts. However, this appears to be the only evidence from the City as to the steps it took in its efforts to collect on the Accounts.

Further, the City did not follow its own Resolution prior to transferring the Accounts to T.E. Holdings' property tax account. The Board finds that the City failed to follow the

Resolution in significant respects, with respect to both the first transfer of \$51,795.35, and the second transfer of \$19,228.10:

1. T.E. Holdings did not receive a notice of penalty from the City upon the tenants' accounts being 30 days in arrears. The extent of the notice of the Accounts provided by the City, throughout the period from 2011 to the second transfer in 2015, was in the form of trial balances, sent by e-mail from Ms. Taylor to Ms. Noseworthy, and the copies of the Utility Reminder notices sent in March 2014 and April of 2015. The trial balances sent to Ms. Noseworthy in 2013 and early 2014 were not aged; therefore, T.E. Holdings had no guidance from the City as to the urgency with which those accounts were to be paid before the City might turn to T.E. Holdings for payment. Further, not all of the accounts in arrears which were transferred to taxes were contained in the Utility Reminder notices. In simply sending trial balances to T.E. Holdings, the City was not following its own procedure set out in the Resolution. The result of the City's decision not to take an aggressive approach to collection in the first few years of operating the water utility was that by the time that the City made the decision to transfer the Accounts to T.E. Holdings' taxes, certain of the Complex's tenants had incurred significant arrears over a lengthy period of time.
2. Tenants' water was not disconnected when those tenants' accounts were in arrears. According to the Resolution, property owners may, when a tenant's

utility bill is more than 30 days in arrears, request in writing disconnection of the service. T.E. Holdings had made a request of the City on October 28, 2014 that water be shut off to certain tenants of the Complex as a result of non-payment. The City responded in April 2015 that individual letters would be required for the disconnection. T.E. Holdings was later advised on June 16, 2015, that the City could not shut off individual water valves to each unit. The Board received significant amount of evidence as to whether or not the City, or T.E. Holdings, had the capability to shut off water to individual units. It is not disputed, however, that at no time was the water disconnected for any of the units at the Complex, for any tenant in arrears. The City's evidence is that where it is possible to shut off water to an individual unit inside the property, it is not feasible unless it has the cooperation of the landlord, as the City requires the landlord's authority to enter the property. It appears that the City's evidence is that, notwithstanding the By-Law and the Resolution, it could not carry out a request for disconnection of water at a tenant's unit in the Complex. From the Board's perspective, its concern with this issue is that the delay in the City's response to T.E. Holdings' disconnection requests would have resulted in a tenant significantly in arrears continuing to incur expenses for water which would ultimately find its way onto T.E. Holdings' property tax account as a result of the tenant's failure to pay. The Board observes that perhaps, if T.E. Holdings had had earlier notice from the City that individual disconnection was not feasible, T.E. Holdings might have had the opportunity to rectify that situation by, for example, installing locking

valves in tenant units sooner than it did. T.E. Holdings has indicated that it began the process of installing locking valves in the summer of 2015, a process which it completed by November of 2015.

3. The Resolution provides that if a bill is 90 days overdue at October 15th of any year, a letter is sent to the owner advising that, unless the account is paid by a prescribed date, the account will be transferred to the owner's property taxes for the related property prior to the end of December. There appears to be no dispute in the evidence that the City did not send out such notices in accordance with its own procedure, in respect of the 2014 or 2015 transfers.

The Board also finds that T.E. Holdings, in its correspondence with the City, failed to provide adequate information and often failed to respond to the City's requests for information in a timely fashion. There are many examples found in the City's evidence of instances where the City had communicated with T.E. Holdings regarding the status of tenant accounts, and the City did not receive a timely reply. For example, when the City sent trial balances to T.E. Holdings on December 11, 2013 and January 10, 2014, it made requests for information from T.E. Holdings. T.E. Holdings did not reply to the City's correspondence. T.E. Holdings provided rent rolls to the City until the City advised it in January of 2013 that it required specific "move in and move out" information. Since January 2013, T.E. Holdings has provided the City with such information, according to it, "to the best of its ability."

The City's request for move in and move out information was reasonable and would have facilitated its collection efforts. Had T.E. Holdings responded in a timely fashion to the City's initial requests to discuss dealing with tenant accounts, the City could have been provided with more accurate information earlier in the process. The City made a request of T.E. Holdings on December 5, 2012, that they "come up with a plan" regarding some of the Accounts. The City did not receive any reply from T.E. Holdings to this request, which caused it to follow up again on January 11, 2013, and explain at that time that it required move in and move out information. Further information regarding move in and move out information was not provided by T.E. Holdings until February 8, 2013.

Nevertheless, it is not clear what, if any, efforts the City undertook to track down any tenants which had outstanding balances, beyond making requests for information of T.E. Holdings. It is of note that T.E. Holdings was itself able to collect a significant amount of the arrears in its own efforts in contracting with the collection agency. The City has not explained why it did not employ the same method to attempt to collect on outstanding accounts prior to transferring them to property taxes. By its own admission, the City stated that its staff were consumed with setting up the utility and 4,000 accounts in the first couple of years of the utility and accordingly there was a significant amount of work to do to ensure the accounts were set up correctly. It appears that at the relevant time, the City did not yet have a system in place for the collection of outstanding water accounts.

The Board therefore finds that the City has not adduced satisfactory evidence establishing that it took "all reasonable steps" to collect on the Accounts prior to transferring them to T.E. Holdings' property tax account. While the Board accepts that taking all reasonable steps does not require a standard of perfection, something more than the steps the City took is required. The form and substance of the notices to tenant account holders contained within Order 39/09, at Section 5.0, Procedures, set out those reasonable steps are what the Board would consider to be minimum requirements for collection efforts from a water utility owner.

The failure by the City to take those reasonable steps is most concerning to the Board in respect of those of the Accounts that date prior to the quarter preceding the March 6, 2014 bill date, as some of those accounts date back to as early as 2011, without any significant collection efforts on the part of the City.

With respect to the quantum of the amount owing under the Accounts, it does not appear that T.E. Holdings is disputing that the Accounts were in arrears, or in the method of calculation of the total amount of the Accounts, of \$71,023.45, except to the extent that that amount contains interest charges. T.E. Holdings raised in its affidavit material that the City had imposed a penalty of 1.5% on outstanding accounts. However, it has not pointed to those accounts where an excessive rate of interest has been applied nor has it provided the Board with any information as to the quantum of the interest charges or what it alleges ought to be credited to it as a result of these charges. The City's evidence indicates that the interest penalty was assessed at the rate of 1.25%, which accords with the Board's Orders in respect of water and sewer

rates for the City. PUB Order No. 10/12 dated January 25, 2012, addresses the water and sewer rates for the City of Thompson for 2012, 2013 and 2014. Order No. 10/12 permits a late payment charge of 1 ¼% on the dollar amount owing after the billing due date. Board Order No. 146/14, dated December 24, 2014, permits a penalty imposed on outstanding accounts at that same rate. Therefore the Board finds that the City did, and does have the authority to charge a late payment penalty on the outstanding accounts, in accordance with approved rates.

3.4 WHAT IS THE APPROPRIATE REMEDY?

T.E. Holdings has requested: (1) a declaration that the City failed to take reasonable collection efforts with respect to the Accounts; (2) a declaration that the City was not entitled to apply the Accounts to its tax bill; and (3) and an order directing that upon payment by T.E. Holdings to the City in the amount of \$12,621.56, the lien and charge filed against T.E. Holdings' property tax account be removed and expunged, together with all penalties, charges and interests relating thereto.

Pursuant to section 33 of the Act, the Board may make such order as it deems fit under the circumstances. In addition, sections 24(4) and 44 of the Act permit the Board to make any order that may be appropriate in the circumstances, including an order for partial, further or relief other than that sought by T.E. Holdings. Taking into account the Board's findings that both parties bear responsibility for their current circumstances, the Board chooses not to grant the relief specifically requested by T.E. Holdings. The Board instead orders that the parties share in the responsibility for the Accounts.

The City has requested in response to this application that the amount collected by T.E. Holdings, \$12,651.56, be paid to it on account of the amounts owing under the Accounts. The Board agrees with the City: these are amounts which were collected on behalf of T.E. Holdings from tenants, for outstanding water utility accounts and as such they must be paid to the City.

The Board therefore orders that:

- (1) The City to take the necessary steps in order to remove any amounts from T.E. Holdings' property tax account in respect of those of the Accounts which were incurred by tenants of the Complex prior to the quarter preceding the March 6, 2014 bill date;
- (2) That T.E. Holdings provide to the City the amount of \$12,621.56, which T.E. Holdings has collected through the efforts of a collection agency;
- (3) That T.E. Holdings provide to the City detailed information as to which of the Accounts are included within the amount of \$12,621.56 collected, including the account holder's name, the amount collected, and the amount of commission paid to the collection agency; and
- (4) That upon receipt of the detailed information from T.E. Holdings, the City take the necessary steps to remove those amounts that were applied to the balances owing on any of the Accounts from T.E. Holdings' property tax account, if not done previously per item (1) above.

The result of this Order is that any of those amounts from the quarter immediately preceding the March 6, 2014 bill date, and thereafter, shall remain applied to T.E. Holdings' property tax account, save and except for those amounts that have been recovered through the efforts of the collection agency engaged by T.E. Holdings, or otherwise since paid by the account holders.

Lastly, the Board wishes to make an observation that the parties could have worked together in a more cooperative fashion prior to bringing this matter before the Board. Seeking redress from the Board should be a last resort in disputes of this nature. The Board urges the parties to work together in the future in order to facilitate collection of water utility accounts.

The Board notes that it has the jurisdiction to order that its own costs may be assigned to either or both parties, and orders that the Board's costs of these proceedings be shared by the parties.

With respect to the costs of T.E. Holdings and the City, the Board orders that the parties shall bear their own costs.

Board decisions may be appealed in accordance with the provisions of Section 58 of *The Public Utilities Board Act*, or reviewed in accordance with Section 36 of the Board's Rules of Practice and Procedure (Rules). The Rules may be viewed on the Board's website at www.pub.gov.mb.ca.

4.0 IT IS THEREFORE ORDERED THAT

- (1) The City of Thompson ("the **City**") take the necessary steps in order to remove any amounts from T.E. Holdings Ltd.'s ("**T.E. Holdings**") property tax account in respect of those of the outstanding accounts for water and waste water utility charges for tenants of Grey Wolf Bay in Thompson, Manitoba ("the **Accounts**"), which were incurred by tenants prior to the quarter preceding the March 6, 2014 bill date;
- (2) That T.E. Holdings provide to the City the amount of \$12,621.56, which T.E. Holdings has collected through the efforts of a collection agency;
- (3) That T.E. Holdings provide to the City detailed information as to which of the Accounts are included within the amount of \$12,621.56 collected, including the account holder's name, the amount collected, and the amount of commission paid to the collection agency; and
- (4) That upon receipt of the detailed information from T.E. Holdings, the City take the necessary steps to remove those amounts that were applied to the balances owing on any of the Accounts from T.E. Holdings' property tax account, if not done previously per item (1) above;

- (5) That the City and T.E. Holdings pay the Board's costs in respect of this complaint, totalling \$13,413.92 to be shared equally;
- (6) That the City and T.E. Holdings bear their own costs of this complaint.

THE PUBLIC UTILITIES BOARD

"RÉGIS GOSSELIN, B ès Arts, MBA, CPA, CGA"
Chair

"JENNIFER DUBOIS, CPA, CMA"
Acting Secretary

Certified a true copy of Order No. 115/16
issued by The Public Utilities Board

Acting Secretary