

Q.B. No. 64 of 2005

**IN THE COURT OF QUEEN'S BENCH
JUDICIAL CENTRE OF SWIFT CURRENT**

BETWEEN:

CITY OF SWIFT CURRENT

PLAINTIFF

AND:

**SASKATCHEWAN POWER CORPORATION,
CROWN INVESTMENTS CORPORATION, and
THE GOVERNMENT OF SASKATCHEWAN**

DEFENDANTS

NOTICE TO DEFENDANT

1. The Plaintiff may enter judgment in accordance with this Statement of Claim or such Judgment as may be granted pursuant to the Rules of Court unless:

within 20 days if you were served in Saskatchewan
within 30 days if you were served elsewhere in
Canada or in the United States of America
within 40 days if you were served outside Canada and the
United States of America
(excluding the date of service) you serve a Statement of Defence on the Plaintiff and file a copy thereof in the office of the Local Registrar or the Court for the Judicial Centre above named.
2. In many cases a Defendant may have the trial of the action held at a judicial centre other than the one at which the Statement of Claim is issued. Every Defendant should consult his lawyer as to his rights.
3. This Statement of Claim is to be served within six months from the date on which it is issued.
4. This Statement of Claim is issued at the above named Judicial Centre the 11th day of April, 2005.

(Seal)

RITA PETERSON
Local Registrar

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STATEMENT OF CLAIM

1. The Plaintiff, City of Swift Current, is a municipal corporation having its head office at Swift Current, Saskatchewan.
2. The Defendant Saskatchewan Power Corporation ("SaskPower") is a Crown corporation established by *The Power Corporation Act*, R.S.S. 1978, c. P-19, as amended, and is situated in Saskatchewan. As a Crown corporation, SaskPower is owned by the Defendant The Government of Saskatchewan ("the Government") through its holding corporation, the Defendant Crown Investments Corporation ("CIC"), in the interests of, and for the benefit of, the residents of Saskatchewan, including the residents of the City of Swift Current.
3. CIC is a Crown corporation established by *The Crown Corporations Act*, S.S. 1993, c.50.101, as amended, as a holding corporation for SaskPower and

other Crown corporations. CIC is owned by, and is the alter ego of the Government, as all of its members are Ministers of the Government. CIC's purpose is to supervise its subsidiary Crown corporations including SaskPower in the interests of all Saskatchewan residents.

4. SaskPower generates electrical power at its thermal, hydroelectric and other generating facilities within Saskatchewan. SaskPower transmits power throughout Saskatchewan, and has the exclusive right to transmit electrical power throughout Saskatchewan pursuant to *The Power Corporation Act*. SaskPower also distributes electrical power throughout most of Saskatchewan, excluding portions of Saskatoon and Swift Current.

5. SaskPower proposes its rates, charges, and prices for electrical power ("rates"), including increases to those rates. As part of its statutory supervisory mandate, CIC has required that the rates charged by SaskPower be submitted for review, and ultimately, the said rates are approved by the Government and/or CIC.

6. The Government has established the Saskatchewan Rate Review Panel pursuant to section 16 of *The Government Organization Act*, R.S.S. 1978, G-5.1 to advise the Government and/or CIC on SaskPower rate increases.

7. The cities of Saskatoon and Swift Current purchase electrical power in bulk from SaskPower and distribute that power to customers located within each city's 1958 boundaries ("franchise area").

8. The City of Swift Current has established its own electrical utility ("Swift Current Light and Power") and constructed its own facilities to distribute electrical power to the customers within its franchise area. This utility has been a valuable asset.

9. Prior to June 28, 2001, the City of Swift Current had no option but to purchase its power from SaskPower. Amendments to *The Power Corporation Act* made in 2001 allowed the City of Swift Current for the first time to purchase power from other suppliers.

10. However, while the City of Swift Current is legally able to purchase electrical power from other suppliers, SaskPower must transmit that power. SaskPower currently does not have sufficient transmission capacity to feasibly allow the City of Swift Current to purchase power from other suppliers. Therefore, the ability to purchase electrical power from other suppliers is illusory, and effectively results in SaskPower being the monopoly supplier.

11. The City of Swift Current says that as a monopoly supplier, SaskPower has the power to set rates and charges, and unilaterally change the terms of service to its customers' detriment, subject only to the limited review of CIC and/or the Government. The City of Swift Current says that it and other customers are at the mercy of SaskPower's actions, subject only to the limited review of CIC and/or the Government. Accordingly, The City of Swift Current says that SaskPower owes its customers the fiduciary duty to treat them fairly and not unlawfully discriminate against any of them, including the City of Swift Current.

12. Commencing in the mid 1990's, SaskPower began unlawfully engaging in systematic discriminatory and anti-competitive behaviour, including *inter alia*, setting discriminatory and predatory rates, with the intention of causing a reduction in the value of Swift Current Light and Power, and ultimately, for the purpose of forcing a sale of Swift Current Light and Power at a depressed price. These said unlawful actions continue to this date.

13. In furtherance of its purpose, in 1996 and 1997 SaskPower offered to purchase Swift Current Light and Power from the City of Swift Current for a small fraction of its then current value. When the City of Swift Current refused to sell, SaskPower advised the City of Swift Current that it will increase the rates charged to Swift Current Light and Power until the City of Swift Current will be forced to sell.

14. In addition SaskPower has improperly charged the City of Swift Current for services and supplies that should have been the responsibility of SaskPower.

15. SaskPower has also unilaterally and arbitrarily announced changes to the terms of its supply agreement with the City of Swift Current. The net effect of each of these changes has been to escalate the rates charged to the City of Swift Current while at the same time diminishing the reliability of service to the residents of Swift Current. Consequently, the City of Swift Current's ability to compete for businesses and industry is substantially reduced.

16. The City of Swift Current says that SaskPower through the aforesaid actions has:

- (a) breached the supply contract with the City of Swift Current;
- (b) unlawfully interfered with the economic interests of the City of Swift Current;
- (c) abused its public office;
- (d) participated in discriminatory pricing and abused its dominant position contrary to *The Competition Act*, R.S. 1985, c. C-34;
- (e) breached its fiduciary duties to the City of Swift Current; and
- (f) been unjustly enriched at the expense of the City of Swift Current.

17. The City of Swift Current says that with each of the aforesaid actions of SaskPower, it has suffered severe damages and will continue to suffer severe damages until these acts stop. Furthermore, SaskPower has unlawfully and unjustly profited from its activities to the detriment of the City of Swift Current.

18. Furthermore, by its refusal to disclose the cost of service study and supporting documentation and information it used to set rates, SaskPower has willfully concealed the injury and damages incurred by the City of Swift Current.

19. The City of Swift Current says the Government of Saskatchewan and CIC owe a duty to SaskPower's customers, including the City of Swift Current, to take reasonable care in reviewing and approving SaskPower's rates and rate increases to ensure that the rates are fair and reasonable, and to ensure that those rates are not discriminatory and/or predatory.

20. In addition, the Government of Saskatchewan and CIC, once they have exercised the statutory power to supervise SaskPower and review its rates, and in the absence of any other regulatory control, owe a statutory and fiduciary duty to the customers of SaskPower to ensure SaskPower treats all of its customers fairly and does not unlawfully discriminate against any of them. Furthermore, the Government of Saskatchewan and CIC, as shareholders and supervisors of SaskPower on behalf of the residents of Saskatchewan, owe a fiduciary duty to all the residents of Saskatchewan to ensure SaskPower acts in the interests of all of the residents of Saskatchewan, including the residents of Swift Current who are customers of Swift Current Light and Power, to treat all of its customers fairly and not unlawfully discriminate against any of them.

21. The City of Swift Current says that the Government of Saskatchewan and CIC have negligently breached this duty of care, and breached their statutory and fiduciary duties when reviewing and approving SaskPower's rate increases, thereby approving rates charged to the City of Swift Current which are discriminatory and predatory. Particulars of such breaches are as follows:

- (a) designing a rate review process which is so inadequate that the Saskatchewan Rate Review Panel is unable to provide necessary and reliable advice to the Government of Saskatchewan;
- (b) restricting the powers of the Saskatchewan Rate Review Panel so that it could not properly review SaskPower's rate applications. These restrictions have included the following:
 - (i) being denied the authority to require SaskPower to conduct a proper cost of service study and to publish that cost of service study to all stakeholders;
 - (ii) being required to accept certain assumptions which have a bearing on proper assessment of rates;
- (c) designing a rate review process which denies natural justice and due process to SaskPower's customers;
- (d) failing to take adequate steps and measures, independent from the Saskatchewan Rate Review Panel, to assess the appropriateness of SaskPower's rates and rate increases; and
- (e) preferring their interests as shareholders of SaskPower, to the interests of SaskPower's customers and the residents of Saskatchewan.

22. As a result of the negligence of and breach of statutory and fiduciary duty by the Government of Saskatchewan and CIC, the City of Swift Current has suffered and continues to suffer damages, and SaskPower has been

allowed to earn unlawful and unjust profits at the expense of the City of Swift Current.

23. The City of Swift Current claims the following relief from this Honourable Court:

- (a) damages;
- (b) an injunction directed at SaskPower prohibiting it from engaging in discriminatory behaviour, including charging the City of Swift Current rates that are discriminatory and predatory;
- (c) an order for mandamus directed at CIC and the Government ordering CIC and the Government to:
 - (i) ensure SaskPower does not unlawfully engage in discriminatory behaviour including charging the City of Swift Current rates that are discriminatory and predatory;
 - (ii) ensure SaskPower treats all of its customers including the City of Swift Current fairly;
- (d) alternatively, for a mandatory injunction directed at CIC and the Government ordering CIC and the Government to:
 - (i) ensure SaskPower does not unlawfully engage in discriminatory behaviour including charging the City of Swift Current rates that are discriminatory and predatory;
 - (ii) ensure SaskPower treats all of its customers including the City of Swift Current fairly;
- (e) an accounting of all unjust profits earned by SaskPower and a disgorgement of such profits;
- (f) punitive and exemplary damages;

- (g) pre-judgment interest;
- (h) costs on a solicitor and client basis; and
- (i) such other relief as Counsel may advise and this Honourable Court shall allow.

DATED at Swift Current, Saskatchewan this 11th day of April, 2005.

Murray Walter, QC

Solicitor for the Plaintiff

This document was delivered by:

MURRAY WALTER, QC

Barrister and Solicitor

262 - 2nd Avenue North East

Swift Current, Saskatchewan

S9H 3W8

and the address for service is: same as above

Lawyer in charge of file: Murray K. Walter

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