



August 28, 2013

Via E-Mail

Mr. Hollis Singh
Board Secretary & Executive Director
The Public Utilities Board
400 – 330 Portage Avenue
Winnipeg MB R3C 0C4

Dear Mr. Singh:

Re: 2014 MPI General Rate Application

The Consumers Association of Canada, Manitoba Branch and Bike Winnipeg submitted a joint intervener application to the Public Utilities Board on August 15, 2013. Manitoba Public Insurance objects to this application.

The August 15, 2013 application states:

- “CAC MB and Bike Winnipeg present the following proposal for the involvement of Bike Winnipeg in this proceeding”
- “Rather a joint intervention which allows for a separate closing argument by Bike Winnipeg is recommended.”
- “Bike Winnipeg will develop its own closing submissions....”
- “Mr. Benson [Bike Winnipeg legal counsel] will be responsible for the development of cross examination....”
- “Mr. Benson will deliver the closing argument for Bike Winnipeg.”
- “However, he [Mr. Benson] will bill an amount estimated to be equivalent to the incremental time that Mr. Williams would have incurred on this file if he would have been assisting Bike Winnipeg without the participation of Mr. Benson....”
- “For this reason [insufficient time to prepare expert witness], Bike Winnipeg will not seek to present additional expert evidence in this proceeding.”
- “In the attachments which follow, CAC MB and Bike Winnipeg present the information requests....”

Pursuant to the Board's Rules of Practice and Procedure an intervener is a party to the proceeding. Only parties to the proceeding are permitted to submit information requests. Only parties to the proceeding will be afforded an opportunity to present their evidence and to examine and cross-examine witnesses of the applicant. Only parties to the proceeding are able to deliver written or oral argument at the conclusion of the examination of the evidence at the hearing. Only parties to the proceeding are entitled to make applications for costs.

By the August 15, 2013 letter, Bike Winnipeg is once again applying to be a party (intervener) to this GRA proceeding.

The prior Bike Winnipeg application for intervener status was denied. No application to vary Order 77/13 was made. The Board has already determined that Bike Winnipeg is not a party to these proceedings.

Specifically, Board Order 77/13 stated:

"The Board will not grant intervener status to BW given that BW seeks to address a very narrow aspect of the overall GRA process, namely cycling safety in the context of the psychology of drivers of motor vehicles. The Board believes that cycling safety is an issue of significant import¹ and does relate to rates, but as presented by BW is too narrow in scope to support an intervention application and the associated costs. Further, it is the Board's view that the issues identified as being of interest to BW could be brought forward and pursued together with one of the other interveners, be it CAC, CMMG or CAA. Moreover, the GRA hearing process is, as always, a public forum and BW is welcome to attend throughout to observe the proceedings and is encouraged to make a presentation to the Board as was done last year."

The August 15, 2013 proposal essentially seeks to provide Bike Winnipeg with the intervention status already denied by the Board.

In their application for joint intervener status, CAC MB and Bike Winnipeg state that they are submitting only 26 information requests. However, the 26 information requests contain 81 separate questions. CMMG who represent motorcyclists who pay the rates that are the subject matter of this hearing have submitted only 32 information requests consisting of 42 questions. CAC MB and Bike Winnipeg are asking nearly twice as many questions as the CMMG.

¹ The joint application misquotes and misrepresents the Board order by stating – 'the PUB made a determination that "cycling safety is an issue of significant **impact**' and does relate to rates." [emphasis added]

As the Board noted, the cycling safety issues as presented by Bike Winnipeg are "too narrow in scope to support an intervention application and associated costs." It is almost trite to pause and remind all that the GRA is a hearing for rates charged for universal compulsory automobile insurance. Cyclists do not pay any insurance rates to MPI. The PUB found that cycling safety is too narrow in scope to support an intervention in this GRA.

The joint intervention application seeks to have Bike Winnipeg represented by its own legal counsel, participate in cross examining witnesses, deliver closing argument and bill for its time. This is clearly an application for intervenor status. As noted in Board Order 77/13 the substance of the application has been rejected by the Board.

Macaulay & Sprague Practice and Procedure Before Administrative Tribunals states at 12-66.4(1):

"If the person seeking intervenor status is not bringing anything of potential use to the agency, or is simply repeating which will already be brought or could be brought to the agency by the other parties, the agency should not grant intervenor status out of concerns respecting the public (and the parties') interest in efficient and expeditious proceedings."

This text references in its footnotes the Federal Court of Canada decision in *Canada (Prime Minister) v. Khadr* 2009 FCA 191 for six factors to be considered whether intervenor status should be granted:

1. *Is the proposed intervenor directly affected by the outcome?*

The purpose of this hearing is to set rates for universal compulsory automobile insurance. Bike Winnipeg, as an organization or its membership, is not directly affected by the outcome.

2. *Does there exist a justiciable issue and a veritable public interest?*

Yes, there is.

3. *Is there an apparent lack of any other reasonable or efficient means to submit the question to the Court?*

The Board may have a legitimate concern about statistics related to motor vehicle accidents involving cyclists and the nature of road safety programs addressed to cyclists for the purpose of determining what, if

any, impact on rates. The Board is capable of asking those questions itself.

4. *Is the position of the proposed intervenor adequately defended by one of the parties to the case?*

Road safety, as a general issue, has a marginal impact on the rates set by the Board and can be addressed by other interveners. Road safety as it impacts cyclists is a significantly narrower issue and considering the overriding principle of "interest in efficient and expeditious proceedings" can be addressed by other interveners.

5. *Are the interests of justice better served by the intervention of the proposed third party?*

The purpose of the hearing is to set fair rates for motorists. It is difficult to advance a legitimate argument that fairer rates will be set because of the intervention of Bike Winnipeg.

6. *Can the Court hear and decide the case on its merits without the proposed intervenor?*

The Board has made decisions on rates for the past 23 years without the intervention of Bike Winnipeg, no legitimate reason has been put forward to justify concluding the Board could not do so again this year.

By way of this letter, the Corporation is providing to the Board, interveners, and Bike Winnipeg, the five year claims experience for cyclists, in particular, the number of motor vehicle accidents involving cyclists, and the costs of those accidents by stepped loss. The Corporation will also include data on the number of cycling fatalities. The Corporation will also provide information on road safety programs, and their costs, directed towards cyclist issues. These are attached.

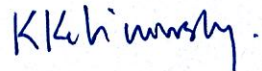
Furthermore, the Board's Rules of Practice and Procedure set out a clear process for determining the granting of intervenor status. In particular Rule 27(1) requires that applications for intervenor status must be made on or before the date prescribed in the notice of public hearing. In this case it was June 28, 2013. This application for joint intervenor status is too late.

Accordingly, the Corporation respectfully requests that the Board deny the applicants' request for joint intervenor status.

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In the interim, awaiting the direction of the PUB and in compliance with Order 77/13 denying intervention status to Bike Winnipeg, the Corporation will not respond to the Bike Winnipeg information requests.

Sincerely,

Handwritten signature of Kathy Kalinowsky in blue ink.

Kathy Kalinowsky
General Counsel & Corporate Secretary

KK/sk
Attach.

cc: C. Grammond
Registered Interveners (as attached)
Bike Winnipeg c/o James Benson, Booth Dennehy LLP

**MANITOBA PUBLIC INSURANCE
2014 INSURANCE RATES
Commencing September 24, 2013**

**LIST OF REGISTERED INTERVENERS
as of August 28, 2013**

CAA Manitoba
c/o Ms. Liz Peters
870 Empress Street
Winnipeg, MB R3C 2Z3
Email: lizp@caamanitoba.com

Digi-Tran Inc.
c/o Wendy Warnock
101 Royal Birch View N.W.
Calgary, AB T3G 5J9
Email: warnockw@tscript.com

Coalition of Manitoba
Motorcycle Groups
c/o Mr. Raymond P. Oakes
387 Broadway
Winnipeg, MB R3C 0V5
Email: roakes@boothdennehy.com

Consumers' Association of
Canada, Manitoba Branch
c/o Mr. Byron Williams
Public Interest Law Centre
3rd floor - 287 Broadway
Winnipeg, MB R3C 0R9
Email: bywil@pilc.mb.ca
sukno@legalaid.mb.ca