

M A N I T O B A) Order No. 68/05
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THE PUBLIC UTILITIES BOARD ACT) May 16, 2005

BEFORE: Graham F. J. Lane, C.A., Chairman
 S. Proven, P.H.Ec., Member

NEEPAWA & DISTRICT CHAMBER OF COMMERCE
APPLICATION TO VARY ORDER NO. 144/04
(WATER AND SEWER RATES FOR THE TOWN OF NEEPAWA)

Introduction

On July 30, 2004, the Town of Neepawa ("the Town"), following successive years of water and sewer utility deficits, applied to The Public Utilities Board ("the Board") for approval of proposed increases in water and sewer rates. The last increase was in 1997. The Town's proposal was set out in its By-law No. 3003, and represented increases totaling 50% for water and 75% for sewer. The proposed increases were staged over three years, 2004 through to and including 2006.

As required and in the form approved by the Board, the Town published a Notice of Hearing ("notice"), for a public meeting wherein the Board would review the Town's application and hear comments from ratepayers. The notice set out the Town's proposal and other salient facts.

The notice was published in the Neepawa Banner and posted in six prominent locations. As advertised, the Board held a public hearing in the boardroom of the Beautiful Plains School Division Office, commencing at 7:00 p.m. on October 28, 2004.

Board members Mr. Graham Lane, Board Chairman, and Ms. Susan Proven presided, assisted by the Executive Director of the Board, Mr. Gerry Barron.

The Town was represented by:

Mayor Bob Durston;
Councillor Mr. Bill Stilwell;

Chief Administrative Officer, Ms. Sheila Mowat;
Operations and Wastewater Director, Mr. Gerry Irving;
Water/Wastewater Superintendent, Mr. Don Wagner; and
BDO Dunwoody LLP (auditor), Mr. Todd Birkham

Despite the notice, only one member of the public, a self-identified news reporter from the Neepawa Banner, attended.

On November 22, 2004, and following the Board's consideration of the Town's application, the Board issued Board Order No. 144/04. The Order, which is available on request of the Board or accessible through the Board's website (www.pub.gov.mb.ca) established increased rates and effective dates for both water and sewer:

- a) effective January 1, 2005, a rate increase of 20%;
- b) a subsequent rate increase of 15% for July 1, 2005; and
- c) a further 15% rate increase on January 1, 2006.

In addition to approving rate increases, the Board directed the Town to file an application for revised tipping rates and, no later than March 31, 2006, provide the Board with:

- a) the water and sewer utility's financial statements for the year ended December 31, 2005;
- b) a report on the adequacy of utility;
- c) an update on the water and sewer infrastructure renewal program; and
- d) a report on other matters relevant to the financial and operating health of the Town's water and sewer operations.

Background information related to the hearing, including a summary of the Town's application and the Board's rationale for approving revised rates are contained within Order 144/04.

In supporting its application, the Town reported to the Board that its water and sewer utility was experiencing significant operating deficits and was heavily subsidized by the Town's General Fund. The Town forecast that, in the absence of the sought-after large rate increases, further material annual water and sewer deficits would occur requiring additional subsidization from the Town's tax roll.

Pursuant to Section 164 of The Municipal and Various Acts Amendment Act, c. 58, water and sewer utilities are required to break-even, and revenues are to be based on a user-pay approach. And, other than the generally accepted practice of funding major capital projects by tax levies, the annual costs of municipal water and sewer utilities are met through adequate water and sewer rates.

The Town advised the Board that it prefers the self-sustaining and user pay system for its water and sewer utility, and seeks the gradual elimination of subsidies from the Town's General Fund.

While the Board varied some aspects of the Town's application, it approved the sewer and water increases sought by the Town, to provide for a sharp and sudden increase in utility revenues.

- In approving the increases, the Board observed that the magnitude of increases represented rate shock and could be expected to cause financial burdens for some ratepayers, particularly those with high water and sewer volumes and/or limited income. However, the Board noted that the rate increases would reduce the pressure on the Town's General Fund. The Board congratulated the Town for confronting its utility problems, noting the importance of the water and sewer utility to the economic sustainability of the Town;
- concern as to the high utilization rate of the Town's lagoon, and the indicated need to upgrade the WWTP facility of a major customer;
- uncertainty with respect to the level of future government grants required to assist with the funding of planned critical water and sewer projects;
- a relatively high level of unaccounted for water, which requires reducing through various programs of maintenance and enhanced metering; and
- the risk of future annual water and sewer deficits and concurrent transfers from the General Fund, despite the Board's approval of higher rates.

Pursuant to Order 144/04, and with respect to volumes consumed for the quarter ending December 31, 2004, this reflective of the longstanding practice of the Town and most other Manitoba water and sewer utilities, both the minimum quarterly bill and the levy for volumes in excess of the minimum bill increased as of the first 2005 utility billing.

Motion to Vary

Upon receiving the first billing of 2005, a ratepayer wrote the Board criticizing the effective date of the rate increases. Additional letters of criticism were subsequently received from a limited number of other ratepayers. And, on February 10, 2005, the Neepawa & District Chamber of Commerce ("the Chamber") filed a motion with the Board asking the Board to vary Order No. 144/04.

The Chamber opined that applying significant increases to volumes recorded from prior periods was inappropriate, stating that the rate increase of January 1, 2005 should have been delayed to avoid retroactive application with respect to 2004 volumes. The Chamber's position was supported by letters from its members.

The Chamber stated that the expectation was that utility rate increases would take effect after the first quarter of 2005, i.e. be applied to volumes consumed in 2005.

The Chamber indicated that the effective date of the initial rate increase provided no opportunity for their members to adjust their selling and service prices to reflect the higher cost of Town water and sewer bills. The Chamber reported "... few (ratepayers) anticipated that within just one calendar year the actual compounded water and sewer increase would amount to 58.7%." (The Board approved increases aggregating 50% over 366 days.) The Chamber cited a climate of "cautious economic

uncertainty in most of rural Manitoba . . . with all businesses (being) forced to operate with the highest budgetary diligence" in support of an amended rate increase schedule.

Nonetheless, the Chamber, indicated that ratepayers supported a utility rate increase, and that "the Town's logic for increasing water and sewer rates is understandable and justified." The Chamber, while noting that increased sewer and water rates were expected to reduce the operating subsidy from the Town's General Fund, was concerned that tax reductions would, in actuality, not occur sufficient to compensate for higher water and sewer rates.

Chamber's Proposal

The Chamber proposed an alternative rate increase approach, with the rate increases scheduled for July 1, 2005 and January 1, 2006 to be deferred to January 1, 2006 and January 1, 2007, respectively.

Recognizing the Town's need for additional water and sewer revenue, the Chamber indicated a willingness to accept higher increases than approved by the Board for the last two increases. The Chamber proposed that the latter two increases be of 20% each, rather than the 15% increases approved by the Board.

Under the Chamber's proposal, the aggregate of the three rate increases would amount to 60% as compared to the 50% approved by the Board. Under the Chamber's proposal, the additional revenue for the utility would be lower than under the Board's approved approach in 2005 and 2006, but higher in 2007.

Again, notwithstanding the Chamber's criticism of the timing of January 1, 2005 rate increase; the Chamber indicated it would accept that reality having taken it into account in developing its proposal.

The Chamber felt its members would be better able to make the required adjustments in their business practices if their proposal was accepted, and the directions of Order 144/04 were varied to meet the Chamber's proposal.

Response of the Town

In accordance with Board practice, the Board forwarded the Chamber's motion to the Town and requested the view of the Town. On March 30, 2005, the Town responded, advising the Board to reject the Chamber's proposal.

The Town advised that improvements to the water and sewer system were required and would be funded by the increases granted in Order 144/04. The Town supported the decision of the Board in Order 144/04, considering the Order to have met the urgent financial needs of the utility.

The Town commented that "ratepayers had many opportunities to find out (about the proposed increases) and lodge concerns". The Town reiterated that "... rate increases have been talked about at Council meetings and the media have reported on the water increases". The Town reported that "without the increases ...

nothing is in place in our reserve fund or utility fund to cover emergency repairs".

Finally, the Town opined that "we (the Town) feel that all the proper steps have been taken to give the residents of the Town of Neepawa ample opportunity to find out how the new rates would affect them . . . only one person took advantage of this opportunity..."

The Town urged the Board to reject the Chamber's motion. A copy of the Town's response was forwarded to the Chamber.

Consistent with the Board's procedures, the Chamber was provided an opportunity to provide a final submission with respect to its Application for the Board to vary its Order. The Chamber's submission dated May 4, 2005 was reviewed by the Board on May 9, 2005.

In its final submission the Chamber commented:

1. Based on the Chamber's review of the rate study prepared by the Town's consultant, it is reasonable to assume that the proposed rate increases of 20% in 2004, 15% in 2005 and 15% in 2006 were adequate to allow for self sufficiency.
2. No where in the rate study is there reference to the rate increase taking effect on January 2005, July 2005 and January 2006.

3. The Chamber observed that notwithstanding the Board's view that the transfer from the General Fund ought to continue for the funding of lagoon costs related to Springhill Farms, the Town's budget for 2005 indicates no transfer. The Chamber agrees with the Board's position and, accordingly, if such transfers were to occur, the rate implementation plan proposed by the Chamber would be reasonable.

In summary, the Chamber observed that the Town has relied on transfers from the General Fund for sometime and that under the current circumstances it is reasonable to continue to rely on such transfers while transitioning slowly to a self-sustaining utility; this to avoid rate shock.

The Chamber asked the Board to find favour with their rate implementation plan, on the basis that it met the Town's needs in a manner acceptable to the Chamber's members.

Board Findings

The Board appreciates the difficulties associated with large rate increases, and acknowledges that such rate increases represent rate shock, which is best avoided. In particular, the Board recognizes the economic impact on large volume users, and appreciates the difficulties of incorporating such cost increases within operating budgets in difficult economic times.

As indicated previously, the Board is aware that increased revenue for the water and sewer utility should reduce the

pressure on the Town's General Fund, which has been subsidizing the utility. The ratepayers of the utility are basically the same as the tax base. While the Board notes that the Town plans no transfers from the General Fund to the utility other than for debenture debt payments in 2005, the Board recognizes that pressing repair and maintenance needs may require subsidies from the General Fund in the longer term, without further rate increases.

Upon the Board's further enquiry, the Town confirmed that it agrees with the principle espoused by the Board and agreed to by the Chamber, that being that if a subsidy is required to support industry such subsidies would best be provided by a transfer from the General Fund.

The Board appreciates the Chamber's understanding of the need for the large increases, and its effort to arrive at a staging of the increases that would, in its view, better meet the needs of both the Town and the Chamber's members.

Safe water and an effective sewer system are critical to all communities, and without safe water and effluent the retention of current population levels and commercial enterprises are jeopardized, and further growth made very difficult.

The Board is also mindful of the problems associated with billings related to past periods, and understands that without adequate notice of intent less than optimal economic decisions can occur amongst ratepayers. However, the Town's billing practices are longstanding, and billing changes with respect to

prior volumes and periods are common with Manitoba water and sewer utilities, and generally restricted to the three prior months as in this case.

And, proper notice of the hearing was given, with the publishing of the Notice in the newspaper and its further posting in the area. The Notice clearly indicated that revised rates would take effect in 2004 if its proposal was accepted by the Board.

The Board further notes that the first publication of the notice in the Neepawa Banner, which took place on October 2, 2005, followed by two months the July 27, 2004 Council meeting when the By-law containing revised rates was first debated and given first reading. This meeting of the Council was open to the public and came sixty days prior to the commencement of the last quarter of 2004, that being the quarter to which the first billing of 2005 pertains.

Unfortunately, clearly due to misunderstandings as to the possible course of and outcomes arising out of the hearing, other than the newspaper reporter no one appeared at the public hearing to oppose the application of the Town.

While the Board varied the application of the Town, the Notice clearly indicated that the application could be varied by the Board, stating:

"It is possible that the rates applied for will not produce sufficient revenue to cover the utility's operating and maintenance expenses. Furthermore certain of the rates proposed by the Town may be deemed by the Board to be inequitable. Accordingly

in considering this application the Board may find it necessary to determine rates which, in some cases may be higher or otherwise different than those applied for by the Town of Neepawa."

The responsibility of the Town was to place before the Board, and in clear terms, their rate proposal. Having done so, and a public hearing having been held at which the particulars of the Town's proposal was reviewed and examined, the Board was in a position to reach the conclusion it reached

With respect to the authority of the Board, the following sections of The Public Utilities Board Act are reported:

"When orders effective

50(1) Every order of the board comes into effect at the time prescribed by the order, and its operation is not suspended by an appeal to The Court of Appeal for which provision is hereinafter made, unless otherwise ordered by the judge granting leave to appeal or by the court on hearing of the appeal; but the board itself may suspend the operation of the order from which appeal is made until the decision of The Court of Appeal is rendered."

"Effective date of order against utilities

96(2) Every other order made under this Part is effective upon the date specified therein, which shall be at least 20 days after the date of the order, unless the board, for good reason, specially provides for an earlier date."

Therefore, the Board finds that the legal responsibilities for Notice were fully and adequately discharged, and the public had an opportunity to participate in the hearing and make any contrary views known. As well, the Board had the authority to act as it did in issuing Board Order 144/04.

Public hearings are advertised to ensure the public has an opportunity to understand applications, participate in the decision making process and, if desired, oppose proposed actions. Failure to do so generally should not negate lengthy and costly processes, particularly when the financial needs of the applicant are acute, unless the grounds for so doing are substantial. The Board does not find that the Chamber's motion and proposal meets this test.

In short, there was sufficient opportunity for the members of the public and the Chamber to understand, participate and oppose the application of the Town.

While the Chamber's proposal would, if it had been adopted, have provided higher annual utility revenues by January 1, 2007 than this Order will provide, the Town in its rejection of the Chamber's proposal was more concerned with the immediate realities of facing known repair and other operating requirements in 2005 and 2006, periods in which revenues would be lower under the Chamber's proposal.

The Town advised the Board in response to the Board's request that the Town revisit its view of the Chamber's proposal that its utility budget for 2005 had been prepared and was being implemented based on the Board's direction in Board Order 144/04.

Therefore, in the absence of support from the Town for the Chamber's alternate proposal, the Board is not prepared to vary its Order as requested by the Chamber. That being said, the

Board encourages the Town to engage the Chamber in dialogue, towards ensuring the Chamber is aware and, where possible, supportive of future plans having financial and other implications for their members.

As well, the Board encourages the Town to review the water and sewer utility's rate adequacy on an annual basis, and to avoid a return to a reliance on subsidies from the General Fund.

All parties acknowledge that the financial needs of the utility are significant, and require urgent redress. The Town indicated that on the basis of Order 144/04, it was working to bring the utility system up-to-date. It cited two first steps as being a plan to undertake a long overdue de-sludge of one cell of the Town's lagoon system and acquire necessary safety equipment for the water plant.

The Board trusts that the Chamber will take solace from the Town's determination to, in the Town's words, "address the problems and work towards having a utility system in place for the betterment of all the residents of the Town of Neepawa including the Chamber members".

The Board notes many uncertainties face the Town with respect to its water and sewer utility, and these uncertainties could result in further future difficult financial circumstances, despite the evident magnitude of the rate increases provided by Board Order 144/04. The Board encourages the Town to continue its dialogue with the Province and its agencies towards securing

assistance with respect to the capital project requirements of the water and sewer utility.

The Board will deny the Chamber's Motion to Vary.

IT IS THEREFORE ORDERED THAT:

1. The Application of the Neepawa & District Chamber of Commerce for The Public Utilities Board to vary its Order No. 144/04 is denied.

THE PUBLIC UTILITIES BOARD

"GRAHAM F. J. LANE, C.A."
Chairman

"G. O. BARRON"
Secretary

Certified a true copy of
Order of the Board No.68/05

Secretary