

M A N I T O B A) Order No. 114/08
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THE PUBLIC UTILITIES BOARD ACT) July 25, 2008

BEFORE: Graham Lane, CA, Chairman
 Susan Proven, P.H.Ec., Member
 Monica Girouard, C.G.A., Member

RURAL MUNICIPALITY OF VICTORIA
LOCAL URBAN DISTRICT OF CYPRESS RIVER

Background

By Order No. 63/08 dated May 26, 2008, the Public Utilities Board (Board) directed the following:

"A surcharge of \$7.15 per thousand Imperial Gallons of water consumed is to be assessed against the residents served utility services beyond the boundaries of the Local Urban District of Cypress River for water consumed from the next billing date to and including December 31, 2011, IS HEREBY APPROVED."

Order 63/08 was issued following Order 172/07, whereby the Board had approved revised utility rates for the Local Urban District of Cypress River (LUD) in the Rural Municipality of Victoria (RM). Order 63/08 established revised commodity rates and other charges for 2008, 2009 and 2010 (commodity rate increases were 32.8%, 2008; 2.2%, 2009; and 1.4%, 2010).

In considering the RM's rate proposals, the Board noted that the RM had not assessed a surcharge on customers located outside the LUD utility boundaries, despite the provision which existed since 1993 as noted in Clause 4 in By-law 1137/93 which states:

"The Council of the Rural Municipality of Victoria may sign agreements with customers for the provision of water and sewer services to properties located outside the legal boundaries of the Unincorporated Village District of Cypress River. Such agreements shall provide for payment of the appropriate rates set out in the schedule, as well as a surcharge, set by resolution of Council which shall be equivalent to the frontage levy, general taxes and special taxes for utility purposes in effect at the time, or may be in effect from time to time, and which would be levied on the property concerned if it were within

these boundaries. In addition, all costs of connecting to the utility's mains and installing and maintaining service connections will be paid by the customer."

This provision was subsequently continued as Clause 10 of By-law 1293/2007, as approved by the Board by Order 172/07.

Such surcharges, while to be established at the discretion of Council, were clearly intended to recover a fair portion of the capital cost of the Utility, that capital cost being paid for by residents in the LUD through property taxes.

The RM advised the Board that 16 non-resident customers were consuming approximately 960,000 gallons of water (updated in July, 2008 to 1.6 Million gallons), or approximately 38% of the total water sales in the utility.

Accordingly, Order 172/07 requested that the RM bring forward an application for a surcharge to be applied to customers outside the LUD boundaries, which the RM subsequently did by Resolution on April 9, 2008. The RM proposed a \$7.15 per thousand gallon surcharge, thought it would be levied on the customers outside the LUD boundaries only in 2008, on the basis that the debenture debt of the Utility will be retired in 2008.

On July 22, 2008, the RM advised the Board that based on the prior four billing cycles, it anticipated that approximately \$11,450 would be generated by the surcharge, and that the funds would be transferred to the Utility Reserve Fund. The expected total amount of the bills to the customers to be affected by the surcharge, excluding the surcharge, was \$16,716.

As the matter of the surcharge arose out of the Board's consideration of the RM's application for revised rates, for which Notice was provided and which resulted in Order 172/07, the Board concluded no further notice was required in its considering the RM's proposal for the surcharge.

And, by Order 63/08, the Board approved the annual amount of the surcharge, but extended the period of collection to include the year 2011, for reasons noted below:

"The Board estimates that customers beyond the LUD's boundaries have saved as much as \$40,000 over this period from what they would have paid if the surcharge had been made from the date service began to be provided. This is a considerable sum, and represents a degree of unfairness with respect to customers within the LUD's boundaries whom have paid the equivalent of the surcharge through reflection of the debenture servicing costs in property taxes since the debenture was issued."
And,

"However, as the RM expressed the view that it was not the responsibility of the customers outside of the LUD that the surcharge was not put in place earlier, the Board establishes a compromise position. The surcharge is to be in place for approximately half the time it should have been, and the additional revenue that will be raised from the surcharge should assist all ratepayers."

Request to Vary

Since the Board issued Order 63/08, the Board received several letters from customers located outside the LUD that have been assessed the surcharge, raising concern about the affordability of the surcharge, the retroactive nature of the charge, the hardship caused on a struggling farm economy in the area, and having being given no notice of the matter being re-considered by the Board, and,

finally, about the unreliability and poor quality of the service.

On July 10, 2008, the Board forwarded copies of these responses to the RM and sought the RM's comments. The RM responded by email on July 18, 2008 noting:

"The position of the RM is not to have a surcharge at this time because of the following:

- 1) The debenture will be paid off in November of this year. Any future capital improvements will include these users.
- 2) No one can really explain why this surcharge was not applied at the time of the extension to rural lines. We only have one Councillor and no staff left who were with the RM at the time of the extension and the Councillor does not recall a surcharge ever being discussed.
- 3) A rate study also occurred for Cypress River in 2004 and no surcharge was pointed out or added at that time by the PUB. I have checked previous files and PUB Order #20/05 dated February 7, 2005 Schedule A 4. indicated that a surcharge would only be applied to service outside the legal boundaries of the RM of Victoria. These rural lines are with RM of Victoria boundary limits.
- 4) We also agree with the comment in the letters you received from the rural line users that notice should have been given so that they were aware of the cost and could decide accordingly if that was affordable."

Board Findings

The Board has carefully considered the letters received and the comments of the RM.

While the Board accepts that this matter could have been managed better, and that the concerns expressed by both the responding

customers and the RM are valid in part, the Board remains of the view that the surcharge is fair and reasonable and should remain in place, and apply for the equivalent of a three year period.

The Board notes that the decision represented by Order 63/08 is a compromise; as, based on the information provided to the Board there were grounds to extend the surcharge a further three years, i.e. to 2014. It is fair and reasonable that all customers benefiting from the service should meet not only a share of operating costs but also a share of the capital cost of the system. The Board's determination that the share to be borne by customers outside the boundaries of the LUD be held to only 3 years out of a possible 6 or more, is reasonable and takes into account the problems identified in the responses of the customers and the RM.

However, having been advised of the specific dollar impact of the surcharge, which in 6 instances out of 13 exceeds \$1,000.00 annually (in one case \$2,105), while the others are below \$500.00 (with one as low as \$90.09), the Board will allow the RM to develop a plan to finance the collection of any annual surcharges that exceed \$1,000 over a reasonable period of time, with any deferred balance to carry a low interest rate not to exceed 5%.

The Board expects the servicing of any new debenture debt to be administered pursuant to Clause 10 of By-law No. 1293/2007, i.e. that all customers should bear a share of the costs.

IT IS THEREFORE ORDERED THAT:

1. Order No. 63/08 dated May 26, 2008 is upheld.
2. The Rural Municipality of Victoria may implement a finance plan for surcharges arising from Order 63/08 that exceed \$1,000.00 annually. The plan shall allow for the deferral of a portion of the surcharge, to be repaid over a reasonable period of time at an interest rate not to exceed 5%, and the plan shall be determined by Council by Resolution.
3. The Rural Municipality of Victoria shall provide each customer assessed the surcharge a copy of this Order.

THE PUBLIC UTILITIES BOARD

"GRAHAM LANE, CA"

Chairman

"G. BARRON, FCGA"

Acting Secretary

Certified a true copy of Order No.
114/08 issued by The Public Utilities
Board

Acting Secretary