

M A N I T O B A) Order No. 150/09
)
THE PUBLIC UTILITIES BOARD ACT) October 30, 2009

BEFORE: Graham Lane, CA, Chairman
 Monica Girouard, CGA, Member

PEMBINA VALLEY WATER COOPERATIVE INC.
NOTICE OF DISCONNECTION OF WATER SERVICES TO
ROSEAU RIVER FIRST NATION

Summary

In response to a request from Pembina Valley Water Cooperative Inc. (PVWC), the Public Utilities Board (Board) authorizes PVWC to serve advance notice of an intention to disconnect water services to Roseau River First Nation (Roseau River or First Nation) as of December 31, 2010 unless PVWC's billings to Roseau River are fully paid as of that date and PVWC has sufficient assurance that payments will be made for future billings within one month of bill issuance.

Disconnection, which may not occur any earlier than December 31, 2010, will require final Board approval before occurring, and may not occur if Indian and Northern Affairs Canada (INAC) either:

- a) makes, or causes payments to be made, sufficient to meet all outstanding balances; and
- b) either agrees to pay PVWC directly for all future water bills issued by PVWC to Roseau River, or guarantees that future PVWC billings to Roseau River will be paid within the normal terms of PVWC's billings.

While the Board is concerned for the health and safety of residents of Roseau River, nonetheless the Board accepts PVWC's requirement that its billings be met with full payment within the normal payment terms. It would be unreasonable to require non-Roseau River customers of PVWC to absorb the financial responsibilities of Roseau River and/ or INAC with respect to PVWC water billings.

A year's notice of an intention to disconnect in the absence of assured future bill payment is sufficient time to allow INAC to either meet the terms set out above with respect to continued service to Roseau River by PVWC or make alternative arrangements for Roseau River to receive potable water. A supply of potable water to the community is required for health and safety reasons.

Other arrangements may include the options of constructing a water treatment plant at Roseau River, to be connected to the Roseau River distribution pipeline, or the option of making arrangements with a supplier of potable water to truck water into Roseau River (following disconnection of PVWC pipeline service).

The Board will check the status of the situation with PVWC, Roseau River and INAC no later than October 31, 2010, and at the time, seek the views of the three parties prior to either confirming that disconnection may take place as of December 31, 2010 or varying the current direction.

Background

PVWC is a water cooperative, whose membership is comprised of 18 urban and rural municipalities, which it serves. In addition to the municipalities, PVWC provides water services to Roseau River as well as a few smaller water cooperatives in the surrounding area.

While PVWC does not provide water distribution services directly to the residents of the various municipalities and other customers it serves, it does so indirectly. Therefore, PVWC is a public utility as defined in *The Public Utilities Board Act*. The Board's regulatory jurisdiction over PVWC is established by and described in that legislation.

On Tuesday, June 17, 2008, PVWC disconnected water services to Roseau River, which had not paid its water bill for four months. On June 18, 2008, the Board issued Order 82/08, directing the reconnection of the service. In arriving at that decision, the Board expressed its understanding of the action by PVWC but, due to concerns over the health and safety of the residents, ordered the "water be turned back on".

Subsequently, Roseau River paid its arrears to PVWC and water service resumed.

Application

PVWC applied to the Board on August 19, 2009, seeking authority to serve notice of disconnection to Roseau River. PVWC then-noted that Roseau River had once again (previous similar experiences were reported) fallen into arrears, that it had been placed under third party management by INAC, and that PVWC had no assurance that the third party manager would pay the arrears.

PVWC sought assurance from INAC that it would arrange to directly pay PVWC's billings for service to Roseau River, including the payment of arrears. With no indication from INAC that it would make or assure payment, PVWC sought to serve a disconnection notice, to take effect December 31, 2010.

In previous correspondence, PVWC indicated its belief that this time frame would be sufficient to allow Roseau River to implement one of two alternate sources of water supply:

- a) arrange for trucked-in water supply, or
- b) build, with INAC financial support, its own water treatment plant.

Board Findings

Clearly, a water utility cannot operate effectively without collecting amounts due. Non-payment by a major customer such as Roseau River transfers responsibility to the other customers of PVWC, which is neither fair nor reasonable.

The Board remains dismayed that a) the administrators of Roseau River risk the health and safety of Roseau River residents

through non-payment for critical water supply, and b) despite being aware of the situation, INAC has not made arrangements with PVWC to either pay PVWC directly for water consumed by Roseau River or guarantee payment.

While the Board determined in its June 2008 order that the health and safety concerns of the residents of Roseau River overrode the immediate financial concern of PVWC, Roseau River and INAC have since had sufficient time to work out a satisfactory payment arrangement with PVWC but have failed to do so.

Based on its understanding of the situation, it makes more sense to the Board that INAC either directly pay or guarantee payment of PVWC's billings to Roseau River than the options identified to provide adequate potable water to the community (trucked-in water or a new water treatment plant). Both of the options identified likely involve increased cost over the present arrangement and, with respect to the building of a treatment plant, considerable time to plan and build.

While both options appear technically "doable", neither approach appears to be better than simply paying the bills. A reliable, proven-safe and affordable water supply is currently available and being provided the community by PVWC, which has proven expertise and the means to deliver potable water.

The Board therefore will provide PVWC with authority to issue its notice as requested. However, the Board will also require PVWC to keep the Board apprised of any progress, and to return

to the Board for final approval before actually executing the disconnection at the end of the notice period.

The Board will provide a copy of this Order to Roseau River, the third-party manager of Roseau River, INAC and the community itself.

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 Board's Rules may be viewed on the Board's website, www.pub.gov.mb.ca.

IT IS THEREFORE ORDERED THAT:

1. Pembina Valley Water Cooperative Inc. BE AND IS HEREBY authorized to serve advance notice of its intention to disconnect water service effective December 31, 2010 to Roseau River First Nation.
2. Pembina Valley Water Cooperative Inc. is required to file with the Board a progress report on or before October 31, 2010 on the status of the water connection arrangement with Roseau River First Nation and the potential for INAC involvement.
3. Pembina Valley Water Cooperative Inc. must obtain final approval from the Public Utilities Board prior to disconnection.

THE PUBLIC UTILITIES BOARD

"GRAHAM LANE, CA"

Chairman

"GERRY GAUDREAU, CMA"

Secretary

Certified a true copy of Order
No. 150/09 issued by The Public
Utilities Board

Secretary