

Order No. 37/16

**RURAL MUNICIPALITY OF CARTIER
WATER UTILITY
WATER SERVICE CONNECTION FEE**

March 16, 2016

BEFORE: Susan Proven, P.H.Ec., Acting Chair
Régis Gosselin, B ès Arts, MBA, CPA, CGA, Chair
The Hon. Anita Neville, P.C., B.A. (Hons.), Member

Summary

Pursuant to subsection 64(1) of *the Public Utilities Board Act* (the PUB Act), the Public Utilities Board (the PUB or the Board) investigated a complaint from a resident of the Rural Municipality of Cartier (the RM) regarding the RM's current water connection fee and the fee proposed to take effect as of April 1, 2016.

The PUB has investigated and:

- Determined that neither the current nor the proposed water connection fee have been submitted for approval by the Board as is required by paragraph 82(1)(b) of the PUB Act;
- Concluded that both the \$9,000 fee being assessed pursuant to By-law No. 1615-11 or the \$12,000 fee to be assessed pursuant to By-law No. 1641-15 are just and reasonable and immediately approves the RM's current \$9,000 fee and the proposed \$12,000 fee which will be applied as of April 1 2016.

The PUB has decided that the complaint is dismissed.

Complaint

On October 29, 2015 the PUB received a telephone complaint from EJ, a resident of the RM of Cartier, about the RM's fee increase for water service connection. The complainant had received a notice dated October 2015 advising that the RM's connection fee was increasing from \$9,000 to \$12,000 as of April 1, 2016. The complainant was concerned about the amount of the increase, which appeared to be arbitrary because satisfactory information was not being provided by the RM.

Authority of the Municipality

The municipality's powers are set out in the Municipal Act:

[250\(2\)](#) Without limiting the generality of subsection (1), a municipality may for municipal purposes do the following:

- (b) construct, operate, repair, improve and maintain works and improvements;
- (c) acquire, establish, maintain and operate services, facilities and utilities;

[252\(1\)](#) A municipality exercising powers in the nature of those referred to in clauses 250(2)(b), (c) and (e) may set terms and conditions in respect of users, including

- (a) setting the rates or amounts of deposits, fees and other charges, and charging and collecting them;
- (c) discontinuing or disconnecting a service and refusing to provide the service to users who fail to comply with the terms and conditions.

Authority of the PUB

The Public Utilities Board Act (the Act) defines a public utility; the definition encompasses any system or service for the delivery or furnishing of water. Paragraph 2(1)(a) stipulates that the Act applies to public utilities owned or operated by any municipality.

According to paragraph 82(1)(b) of the Act, no owner of a public utility can make or impose any charge without the written authorization of the Board.

The Board has the authority, pursuant to subsection 64(1) of the Act, upon receipt of a complaint that it is made to appear that a charge exceeds what is just and reasonable to investigate the charge being demanded.

On completion of the investigation, the Board has the authority, pursuant to subsection 64(2) of the Act, to issue an Order that addresses the charges being demanded by the utility.

Paragraph 77(a) of the Act grants the authority to the PUB to fix just and reasonable charges wherever it determines that any existing charge is unjust or unreasonable.

Investigation

On June 8, 1998, the RM's resolution 239-98 established a water connection fee to the lateral water mains of \$6,000 for 32mm service to a maximum of 260 metres from the property line. The fee was applicable to serviceable designated areas of the RM.

Resolution 24-00 adopted on January 24, 2000 increased the fee to \$7,000 for the area outside LID #1 (Elie) and #2 (St Eustache). There was no reference to maximum distance from the property line. The cost of installation of the service line from the curb valve at the property line to the building/house was the responsibility of the owner. The remote read out meter was included in the fee for the rural LID.

Resolution 122-00 passed on April 10, 2000, maintained the same water connection fees for rural customers at the same level as Resolution 24-00. The fee applicable to LID #1 (Elie) and #2 (St. Eustache) was set at \$500. The remote read out meter was included in the fee for the rural LID but not for LID #1 (Elie) and #2 (St. Eustache); in those cases, the cost of the meter was the responsibility of the owner. The cost of installation of the service line from the curb valve at the property line to the building/house was the responsibility of the owner. The LID #1 (Elie) and #2 (St. Eustache) connection fee was set at \$500.

Resolution 249-06 dated June 26, 2000 set the fee for 32mm service at \$8,000 as of December 1, 2006 for potential rural water service customers. No other changes were made to the fee and its modalities.

By-law No. 1615-11 enacted on November 28, 2011 raised the fee to \$9,000 for LID #3 Rural (Springstein). The fee applicable to LIDs #1 and #2 was set at \$3,000. The water meter package was included in the fee. The by-law also provided that the Council could vary the by-law by resolution of Council.

By-law No. 1641-15 passed on October 13, 2015 set the fee at \$12,000 for LIDs #3, 4, 5 and 6. LIDs #1 (Elie) had its fees set at \$5,000 other than connection to unserviced lots which were set at \$7,500. LID #2 had its fee set at \$7,500. The fee for all LIDs included the water meter package, the curb stop and its installation. The by-law repealed the previous bylaw. The by-law also provided that the Council could vary the by-law by resolution of Council.

By Order 115/07 issued on September 4, 2007, the PUB had approved water and rates for the RM to take effect on January 1, 2008. The Order did not address the water connection fee because the RM did not request that it be approved.

PUB Order 115/07 dated September 4, 2007 did not approve a connection fee because the application from the RM did not seek the PUB's approval for connections.

On July 7, 2015, the RM submitted a rate study and application for increased water and sewer rates. The application did not include a water connection fee.

On November 3, 2015, the PUB advised the RM it could continue to connect customers, subject to the proviso that the Board had not yet approved the related charges. On November 6, 2015, the Board notified the RM by letter that, until the Board approved the connection fees, the RM did not have authority to charge or collect any service connection fees. The letter asked the RM to acknowledge that it did not having the authority to charge or collect any unapproved service connection fees.

On January 12, 2016 the RM was asked to provide an update regarding the information on the fee which had been expected December 1, 2015. The RM then requested an

extension to submit the information by February 15, 2016 rather than the December 1, 2015 date set by the Board. The complainant EJ asked that the RM's extension request be denied by the Board. The complainant reported that that the RM had confirmed it was connecting customers for a fee of \$9,000, While the RM continued to approve new connections to the system even after it had been advised that the fee being charged was not approved by the PUB, the RM advised the PUB that, if the fee was not approved by the PUB, it would issue a refund for the new connections.

In a letter dated January 19, 2016, the RM of Cartier advised that, since the Regional Cartier Water Cooperative was created in 1998, project management services have been contracted to the Manitoba Water Services Board (MWSB) for all its water and wastewater capital works.

The MWSB has calculated capital costs including connection costs for all pipeline projects completed in Cartier since the Cooperative was created. Under the MWSB's Water Development Program, municipalities interested in providing safe drinking and sustainable water supply to its residents can request technical and financial assistance to develop rural piped water systems. Participation is voluntary and only ratepayers connected to the system are charged a onetime capital levy.

Capital levies are established using budget cost estimates prepared by MWSB, minus eligible federal and provincial funding, with the remainder being the municipal share recovered from the number of connections.

The estimated connection cost is then shared with ratepayers interested in piped water. If acceptable, potential users are requested to confirm their intentions in writing. The MSWB will enter into a cost sharing agreement with the municipality for the scope of work, tender and construct the project in accordance with MWSB policy. Actual project costs will determine the connection cost charged by the municipality.

The Board has completed 4 capital pipeline projects in the RM between 2000 and 2015 with actual project costs as follows:

Year	Board contract	Services	Total cost	Cost/service	Cost sharing		
					Municipal	Provincial	Federal
2015	MWSB 1253	11	\$298,300.00	\$27,118.18	\$18,078.79	\$9,039.39	\$ -
2007	MWSB 922	27	\$721,072.39	\$26,706.38	\$ 8,902.13	\$8,902.13	\$8,902.13
2001	MWSB 702A & B	30	\$550,658.55	\$18,355.29	\$ 6,118.43	\$6,118.43	\$6,118.43
2000	MWSB 683	8	\$157,273.84	\$19,659.23	\$ 6,553.08	\$6,553.08	\$6,553.08

The term “Services” in the preceding costs table refers to the total number of homes located along the water line project and potential connections, not the number of homes that ultimately connect to the water line project. The connection fee has historically been based on the total cost of the expansion project less available funding, divided by the number of actual and potential connections. If all the potential connections do not happen, the remaining costs of the expansion project are absorbed either by the RM or its Water Line Reserve Fund.

The RM also provided the following detailed information breaking down the pipeline costs on a per meter basis, to demonstrate the increase in costs since 2000.

Year	Pipeline costs per meter			
	100mm	75mm	50mm	38mm
2015		\$ 24.50	\$ 22.00	\$ 42.00
2007	\$ 25.50	\$ 23.50	\$ 21.50	\$ 23.50
2001	\$ 12.00	\$ 9.50	\$ 9.00	\$ 10.00
2000	\$ 12.45		\$ 7.95	\$ 20.00

The cost borne by the RM for its water capital projects varies with the available government funding and their construction costs.

In 2000, Cartier established a connection fee of \$6,000 based on costs less available funding. In 2007, with increased construction costs, the connection fee was increased to \$8,000 and in 2010 to \$9,000. Finally in 2015, the capital cost per connection increased

to \$18,079 because federal funding ended and the municipality became responsible for 2/3 of the project costs.

Between these four main capital projects, property owners in the rural area could connect to the rural system at the same fee as those participating in the latest capital project. To ensure fairness, the RM decided that based on the current costs for the latest construction project, the fee would be the same for everyone connecting to the rural lines. The RM also decided that the balance of the funding short of the \$18,079 cost would be sourced from its Gas Tax Reserve funds.

Cartier advised property owners of the proposed increase in pipeline connection costs via its notice of October 15, 2015 to give them the option to connect before the fees increased by \$3,000. This notice triggered the complaint by EJ.

The RM attended a community information meeting of the Lido Plage Homeowner's Association on January 26, 2016 where the fee was discussed.

The RM has advised that connecting to the system has always been voluntary and no home owners have been forced to connect.

The RM advised the PUB on February 18, 2016 that the installation costs of water lines for LID #1 (Elie) and LID #2 (St. Eustache) within those utilities' catchment area were paid by all properties including vacant lots through 20 year debentures. All lots contributed to the utility construction costs irrespective of whether the service to the property was being used or not. The current fees charged for water connections in those LIDs are set based on the costs of supplying and installing curbstops and meter packages and doing the ditch/road repair

Board findings

The PUB concludes that the Municipality believed it was authorized to establish capital connection costs for rural pipelines under Section 252 of *The Municipal Act* which stipulates in paragraph 252 (1)(a):

“A municipality exercising powers in the nature of those referred to in clauses 250(2)(b), (c) and (e) may set terms and conditions in respect of users, including setting the rates or amounts of deposits, fees and other charges, and charging and collecting them;”

While this provision grants the municipality with the authority to charge a connection fee, subsection 84(1) of *The Public Utilities Board Act* requires that those same charges be approved by the Board. A connection fee cannot be charged unless it is approved by the PUB.

The Board has concluded that it has not approved the RM's water connection fee of \$9,000 nor the fee of \$12,000 planned to be collected as of April 1, 2016.

The RM should have applied to the PUB for approval of its connection fee as required by the PUB Act. Pursuant to the same Act, offences can result in a fine on summary conviction of between \$50 and \$500, including costs of prosecution.

The Board has decided not to seek a fine in this case because ratepayers were not harmed. Furthermore, the PUB has concluded that other municipalities are unaware that they must seek PUB approval of connection fees and has chosen not to single out the RM for its lack of knowledge. The Board intends to take steps to inform municipalities about the requirements of *the Public Utilities Board Act*.

In assessing any service charge or rate being assessed or applied for by the utility operator, the Board finds it important to:

- Assess the underlying costs related to the rate or charge;
- Assess the underlying logic or rationale for the charge or rate; and
- Understand the context or framework for the rates or charges.

In this case, the RM's costs are determined based on the capital costs less available funding divided by the current and potential customers. The costs are calculated by the MWSB and are consistent with the MWSB's approach for the projects it assists in developing.

The PUB finds that based on the costs provided, the rates were calculated in a reasonable manner. The capital cost information submitted by the RM show that the pipeline costs per meter have increased between 105%-177%. This supports rate increases beyond those sought by the RM. The PUB acknowledges the RM's decision to use Gas Tax Reserve funds to offset the connection costs, due to the loss of federal funding.

While the RM has contended that individuals are under no obligation to connect to the water system if they believe the cost is too high, the service is being offered by a public utility and the PUB must ensure that public utility charges, including connection fees, are just, reasonable, not discriminatory or unduly preferential.

The RM has indicated that the rate is applied to all new rural connections on the grounds that this is fair to anyone who decides to connect anywhere on the rural system at a given time.

From the PUB's perspective, it is fair in the sense that rural charges are the same throughout the municipality, irrespective of where someone decides to connect. In a context where Manitoba municipalities are increasingly taking a municipality wide approach to services, the RM's rate decision is consistent with that approach.

The PUB believes that this fee policy approach incents customers to connect to a system before fees increase. An increased number of connections reduces the system's operating costs per ratepayer (up to a certain threshold). Increased connections usually increase a system's viability and sustainability.

While a new customer deciding to connect after a new higher connection fee has been set may want to pay the same earlier lower fee as a neighbour, the newer higher fee is a more accurate reflection of current capital costs and serves notionally as a proxy for the system's embedded value.

Over time, the RM has varied what is provided for the connection fee (e.g. water meter, curb stop). The RM can make such decisions as long as the fees reflect the costs incurred. In the case of new connections stemming from the newest capital project, the RM is charging considerably less than cost. The PUB always recommends that utilities charge the true cost of providing services to ensure ratepayers understand the value of the services being provided and are thereby encouraged to become careful users of those services. However, the PUB will not set aside the RM's decision to charge less than cost using funds from other sources on the basis that payees will have access to safe, reliable and sustainable water.

The PUB will approve the water service connection fee as \$9,000 up to March 31, 2016 and \$12,000 effective April 1, 2016. The PUB accepts that the RM was acting in good faith when setting up service connection fees without first seeking Board approval. The PUB acknowledges that other utilities share the same belief. Given its modest resources, the PUB relies on complaints to address fee issues. The PUB will be taking steps to increase municipal awareness regarding the PUB's role in the approval of service connection fees.

In its the letter dated November 6, 2015, the PUB very clearly stated that the RM should not be charging connection fees, and the RM continued to do so.

The RM's response when asked about continuing the charge the fees was to state that, "...we did not have a timeline to give them as to when a ruling might be received. People connect to municipal water for various reasons, some of which are concerns that they have a continual supply of safe, potable water..."

However, the RM did indicate that the customers would be refunded if the PUB ruled that it must do so.

Moreover, the RM was slow to respond to the PUB's requests for information and did not act with any sense of urgency in responding to the Board's information requests. Furthermore, the RM's response was delayed by seven weeks without a suitable explanation.

The Board was very encouraged to see that the RM attended a community information meeting with the Lido Plage Homeowner's Association on January 26, 2016. Increased communication and community engagement will only improve the relationship between the RM and residents. The PUB should always be the absolute last resort for resolving disputes between municipalities and their residents.

The RM decided that it would increase the rural connection fee to \$12,000 from \$9,000 for connections as of April 1, 2016. However, By-law 1641-15 took immediate effect as of third reading of the new bylaw as per the following clause:

5. That By-law No. 1615-11 of the Rural Municipality of Cartier be and the same is repealed.

The RM did not submit a resolution from Council that the fee set out in By-law No. 1641-15 passed on October 13, 2015 would only take effect on April 1 2016; this means that the \$12,000 fee from By-law No. 1641-15 is in force. The RM should specify via resolution that the new connection fee will take effect on April 1, 2016 unless the RM decides to issue an amended By-law.

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 at www.pub.gov.mb.ca

IT IS THEREFORE ORDERED THAT:

1. The Rural Municipality of Cartier water system connection fee of \$9,000, effective November 28, 2011 as per By-law No. 1615-11, is HEREBY APPROVED.
2. The Rural Municipality of Cartier water system connection fee of \$12,000 as per By-law No. 1641-15, effective April 1, 2016, is HEREBY APPROVED.
3. The Rural Municipality of Cartier is to provide resolution of its Council which varies the effective date of the connection fee to April 1, 2016 rather than October 13, 2015 as set out in By-law No. 1641-15
4. EJ's complaint is dismissed.

Fees payable by the RM of Cartier upon this Order - \$350.00

THE PUBLIC UTILITIES BOARD

"SUSAN PROVEN, P.H.Ec."

Acting Chair

"JENNIFER DUBOIS, CPA, CMA"

Acting Secretary

Certified a true copy of Order No. 37/16
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Acting Secretary