

**MANITOBA** )  
 )  
*THE PUBLIC UTILITIES BOARD ACT* ) Order 139/14  
 )  
*THE MANITOBA PUBLIC INSURANCE ACT* )  
 ) December 9, 2014  
*THE CROWN CORPORATIONS PUBLIC* )  
*REVIEW AND ACCOUNTABILITY ACT* )

Before: Régis Gosselin, B ès Arts, C.G.A., M.B.A., Chair  
Karen Botting, B.A., B.Ed., M.Ed., Vice Chair, Acting Chair  
The Hon. Anita Neville, P.C., B.A.(Hons), Member  
Susan Proven, P.H.Ec., Member  
Allan Morin, B.A., ICD.D., Member

**MANITOBA PUBLIC INSURANCE CORPORATION (MPI):  
AWARD OF COSTS:  
CONSUMERS' ASSOCIATION OF CANADA (MANITOBA) INC. (CAC),  
COALITION OF MANITOBA MOTORCYCLE GROUPS INC. (CMMG),  
AUTOMOTIVE RECYCLERS OF MANITOBA LTD. (ARM)  
AND BIKE WINNIPEG**

**INTERVENTION IN MANITOBA PUBLIC INSURANCE CORPORATION'S  
GENERAL RATE APPLICATION FOR THE 2015/16 INSURANCE YEAR**

---

**TABLE OF CONTENTS**

1.0 INTRODUCTION ..... 3  
2.0 MOTIONS..... 3  
3.0 CAC'S COMMENTS ..... 4  
4.0 CMMG'S COMMENTS ..... 4  
5.0 ARM'S COMMENTS..... 4  
6.0 BIKE WINNIPEG'S COMMENTS..... 5  
7.0 MPI'S COMMENTS ..... 5  
8.0 BOARD FINDINGS..... 6  
9.0 **IT IS THEREFORE ORDERED THAT:** ..... 10

## **1.0 INTRODUCTION**

By this Order, the Public Utilities Board (Board) grants the applications of the Consumers' Association of Canada (Manitoba) Inc. (CAC), the Coalition of Manitoba Motorcycle Groups Inc. (CMMG), the Automotive Recyclers of Manitoba Ltd. (ARM) and Bike Winnipeg (BW) for costs awards with respect to the motions (Motions) to compel answers to first round Information Requests in Manitoba Public Insurance's (MPI) General Rate Application (GRA) for 2015/16 compulsory Basic driver and vehicle insurance premiums.

## **2.0 MOTIONS**

On August 22, 2014, the Board held a public hearing of Motions, filed by each of CAC, CMMG and ARM, wherein the Board was asked to compel MPI to provide answers to a series of first round Information Requests posed pursuant to the GRA process which it had refused to answer. On August 29, 2014, the Board issued Order 98/14 with respect to the substantive issues raised in the Motions, pursuant to which MPI was ordered to respond to many of the Information Requests that it had refused to answer.

As provided in the Notice of Public Hearing issued with respect to the GRA on or about June 18, 2014, interveners to the GRA may be entitled to financial assistance in respect of the GRA process, pursuant to the related guidelines reflected in the Board's Rules of Practice and Procedure.

With respect to the Motions, CAC applied for an award of legal and advisory costs in the amount of \$14,011.50, comprised of 25 hours of work at the hourly rate of \$217.00, 32.6 hours of work at the hourly rate of \$125.00, 20.15 hours of work at the hourly rate of \$210.00, and disbursements of \$280.00.

CMMG applied for an award of costs in the amount of \$5,034.40, comprised of 23.2 hours of work, at the hourly rate of \$217.00.

ARM applied for an award of costs in the amount of \$4,947.60, comprised of 22.8 hours of work, at the hourly rate of \$217.00.

BW applied for an award of costs in the amount of \$1,843.00, comprised of 9.7 hours of work, at the hourly rate of \$190.00.

### **3.0 CAC'S COMMENTS**

CAC submitted that it made a significant contribution in the context of the Motions that was relevant to the Board's decision making, and contributed to a better understanding by all parties of the issues before the Board. CAC also stated that it participated in the Motions in a responsible manner, that it has insufficient financial resources to have presented its Motion adequately without an award of costs, that it has a substantial interest in the outcome in the Motions and represents the interests of a substantial number of ratepayers.

### **4.0 CMMG'S COMMENTS**

CMMG submitted its requests for costs without substantive commentary, however the Board notes that CMMG has participated as an intervener in MPI rate applications for many years on a continuous basis, and had typically received an award of costs on an annual basis.

### **5.0 ARM'S COMMENTS**

ARM stated that its motion for disclosure was made necessary solely as a result of the failure of MPI to reply to any of its Information Requests, and if that the Information Requests were not answered it would have deprived ARM of the ability to participate in the GRA process in any meaningful way. ARM stated further that as a general principle, costs should follow the cause, meaning that the successful party is usually entitled to receive their costs of proceedings.

## **6.0 BW'S COMMENTS**

BW stated that at the time the Motions were heard, MPI had not yet responded to its round 1 or round 2 Information Requests, and as such its participation in the Motions was predicated upon BW seeking to avoid having to file an identical motion to compel at a later date. BW stated that such an approach would cause needless duplication. BW stated that its participation was necessary to the Motions, that it exemplified a reasonable manner of participation, and that its limited participation in the Motions was reflective of its cooperation with other parties.

## **7.0 MPI'S COMMENTS**

The Board requested the input of MPI on the costs applications filed with respect to the Motions. In MPI's response to the Board dated October 10, 2014, MPI offered no objection to CAC's costs application, and stated that it would pay the costs sought by CAC, if so ordered by the Board. MPI took the same position with respect to the costs sought by CMMG.

With respect to the costs sought by ARM, MPI stated that ARM is an association of businesses that receive revenue from the \$7.5 million that MPI spends annually, purchasing recycled automobile parts to repair damaged motor vehicles. MPI stated that the businesses that make up ARM have the financial resources to participate in the GRA, and therefore do not meet the requirement of Board Rule 43(c). MPI also stated that ARM does not represent ratepayers, but rather represents businesses, whose revenue is paid by ratepayers, and as such it does not meet the criteria established by Board Rule 43(d). MPI takes the position that all criteria listed in Rule 43 are required to be met for a successful award of costs, and that the failure of one criteria by an applicant precludes the awarding of costs.

With respect to the costs sought by BW, MPI stated that BW has not met the requirement of Board Rule 43(a) as it did not make a significant contribution to the hearing of the Motions.

MPI also stated that BW has not met the requirement of Board Rule 43(d), as it does not represent ratepayers. MPI stated that BW did not file its own motion, and was simply part of the "me too" brigade. MPI also noted that the bulk of the fees sought by BW were for attendance at the hearing of the Motions, at which counsel for BW agreed with the positions of other parties, and that the Motions did not address any of the Information Requests of BW.

## 8.0 BOARD FINDINGS

The Board has reviewed the four costs applications received, and the response of MPI to each of those applications.

The Board notes that pursuant to The Public Utilities Board Act, s. 56(1), the costs of and incidental to any proceeding before the Board are in the discretion of the Board, and may be fixed in any case at a sum certain. In addition, s. 56(2) provides that the Board may order by whom, and to whom, any costs are to be paid.

Pursuant to the Board's Rules of Practice and Procedure, and in particular Rules 3 and 43 thereof, the following is reflected:

3. (1) These Rules apply to all proceedings of the Board.
- (2) In any proceeding, the Board may dispense with, vary or supplement any of the provisions of these Rules.
- (3) The Board has all the powers of a Court of Queen's Bench or a Judge thereof in respect of the attendance and examination of witnesses, the amendment of proceedings, the production and inspection of documents, the enforcements of its Orders and all other matters necessary or proper for the due exercise of its powers, except as otherwise provided in *The Public Utilities Board Act* [Section 24(4), *The Public Utilities Board Act*].

(emphasis added)

43. In any proceeding the Board may award costs to be paid to any Intervener who has:

- a) made a significant contribution that is relevant to the proceeding and contributed to a better understanding, by all parties, of the issues before the Board;
- b) participated in the hearing in a responsible manner and cooperated with other Interveners who have common objectives in the outcome of the proceedings in order to avoid a duplication of intervention;
- c) insufficient financial resources to present the case adequately without an award of costs; and
- d) a substantial interest in the outcome of the proceeding and represents the interests of a substantial number of the ratepayers.

The Board finds that both CAC and CMMG meet all of the factors listed in Rule 43 relative to a costs award regarding the Motions. In particular, each of CAC and CMMG made a significant contribution to the GRA process by filing motions to obtain additional, relevant information within the GRA process, and pursuant to which additional evidence was filed by MPI on the public record. Further, it is the Board's view that each of CAC and CMMG participated reasonably in the hearing of the Motions, and cooperated with other interveners to avoid duplication. The Board understands that each of CAC and CMMG have insufficient financial resources to present their respective cases adequately without an award of costs, and that they represent a substantial number of ratepayers. The Board notes also that MPI does not oppose the awards of costs sought by CAC and CMMG.

With respect to ARM, the Board also accepts that a significant contribution was made to the Motions process, that was relevant to the decision making of the Board, and that contributed to a better understanding of all parties of the issues before the Board. ARM raised in its submissions on the Motions a perspective and legal authorities which were distinct from and in addition to those raised by CAC and CMMG. The Board also accepts that ARM participated in the Motions process in a responsible manner, that it has a substantial interest in the outcome of the Motions, and that it represents the interests of a substantial number of ratepayers. While the Board appreciates that ARM is comprised of automotive recyclers that do business with MPI, those recyclers are also ratepayers, and to the extent that the business done as between the ARM recyclers and MPI impacts rates paid by all motorists, ARM's contribution to the GRA, and the Motions is relevant.

The Board appreciates that ARM has sufficient financial resources to advance its interests within the GRA process, including with respect to the Motions, and the Board notes that in Order 81/14, it cautioned ARM with respect to an award of costs, given its financial position. In particular, the Board stated that:

The Board reminds ARM, however, that all decisions relative to costs awards are made at the conclusion of the GRA proceedings, and are in the sole discretion of the Board. The Board also brings to ARM's attention article 43 of the Board's Rules of Practice and Procedure, and in particular article 43(c) relative to sufficiency of financial resources in determining costs awards.

The Board notes that ARM filed its motion as a direct result of the unexpected position taken by MPI relative to first round Information Requests, and in particular its refusal to answer any of the first round Information Requests put forward by ARM. In Order 98/14, the Board concluded that 12 of the 29 Information Requests posed by ARM should be answered by MPI, and those Information Requests have now been answered. The Board notes that but for the filing of its motion, ARM would have had no evidence from MPI relative to its areas of interest within the GRA, rendering ARM's intervention almost completely without purpose.



On the basis of all of the foregoing, the Board has elected to exercise its discretion pursuant to the Act and award to ARM the costs of its motion as requested. The Board recognizes that due to ARM's financial position, this order is a very rare and exceptional one. The Board also reminds ARM of the caution with respect to costs as reflected in Order 81/14 in the context of the ongoing GRA process.

The Board notes that BW did not file a motion to compel answers to Information Requests because MPI did not refuse to answer its Information Requests (nor did it answer the Information Requests). MPI stated in its oral submissions on August 22, 2014 its position that the BW Information Requests should not be required to be answered. As such, the Board is left with the view that had the BW Information Requests been responded to, those responses would have constituted refusals to answer at least some of the BW questions, such that a BW motion would have been necessary. On that basis, together with the very reasonable quantum of the Bill of Costs put forward by BW counsel, the Board has elected to exercise its discretion and award costs in favour of BW.

**IT IS THEREFORE ORDERED THAT:**

1. Consumers' Association of Canada (Manitoba) Inc. (CAC) **BE AND IS HEREBY** awarded costs of \$14,011.50 with respect to its motion to compel Manitoba Public Insurance Corporation to respond to a series of First Round Information Requests in the 2015/16 General Rate Application process.
2. Coalition of Manitoba Motorcycle Groups Inc. (CMMG) **BE AND IS HEREBY** awarded costs of \$5,034.40 with respect to its motion to compel Manitoba Public Insurance Corporation to respond to a series of First Round Information Requests in the 2015/16 General Rate Application process.
3. Automotive Recyclers of Manitoba Ltd.(ARM) **BE AND IS HEREBY** awarded costs of \$4,947.60 with respect to its motion to compel Manitoba Public Insurance Corporation to respond to a series of First Round Information Requests in the 2015/16 General Rate Application process.
4. Bike Winnipeg **BE AND IS HEREBY** awarded costs of \$1,843.00 with respect to the three motions to compel Manitoba Public Insurance Corporation to respond to a series of First Round Information Requests in the 2015/16 General Rate Application process.
5. All of the foregoing costs shall be payable by the Manitoba Public Insurance Corporation to the named interveners within 30 days of the date of this Order.

Board decisions may be appealed in accordance with the provisions of Section 59 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](http://www.pub.gov.mb.ca).

THE PUBLIC UTILITIES BOARD

"Karen Botting, B.A., B.Ed., M.Ed."  
Acting Chair

"Jennifer Dubois, CMA"  
Acting Secretary

Certified a true copy of Order No. 139/14  
issued by The Public Utilities Board

\_\_\_\_\_  
Acting Secretary