

MANITOBA

Order No.81/14

THE PUBLIC UTILITIES BOARD ACT

THE MANITOBA PUBLIC INSURANCE ACT

**THE CROWN CORPORATIONS PUBLIC
REVIEW AND ACCOUNTABILITY ACT**

July 16, 2014

Before:

Régis Gosselin, B ès Arts, MBA, CGA ., Chair
Karen Botting, B.A., B.Ed., M.Ed., Vice Chair, Acting Chair
Anita Neville, B.A. Hons., Member
Susan Proven, P.H.Ec. Member
Allan Morin, B.A., ICD.D., Member

MANITOBA PUBLIC INSURANCE CORPORATION:

**PROCEDURAL ORDER
TIMETABLE FOR A PUBLIC HEARING
(2015/16 RATES AND PREMIUMS FOR COMPULSORY DRIVER AND VEHICLE INSURANCE)
and APPROVAL OF INTERVENERS**

Summary

By this Order, the Public Utilities Board of Manitoba (Board) accepts interveners to the Board's public hearing of the application of Manitoba Public Insurance Corporation (MPI or Corporation) for approval of base rates and premiums for compulsory driver and vehicle insurance (the new rates are to take effect March 1, 2015). This Order also provides interveners with direction pertaining to the proceeding, and establishes a timetable for the hearing.

Introduction

The Board held a Pre-Hearing Conference (PHC) at its offices in Winnipeg on Wednesday, July 9, 2014, for the purposes of:

- (a) considering applications from prospective interveners and matters related thereto; and
- (b) establishing a timetable for the hearing.

This Order arises from the PHC.

The following exhibits were entered into the record of the proceeding by Board counsel:

1. Notice of Public Hearing and PHC, dated June 18, 2014;
2. the Board's Rules of Practice and Procedure (Rules); and
3. the hearing timetable.

Parties seeking Intervener status were asked to:

- i. indicate their constituency and interests;
- ii. outline the areas of MPI's application that they intended to test;
- iii. provide their reasons for requesting Intervener status;
- iv. specify their plans to call evidence/witnesses; and
- v. indicate their interest with respect to seeking an award of costs, and, if interest was expressed, to provide a draft budget.

The Board advised prospective interveners that it intends to apply the criteria set out in the Board's Rules in decisions with respect to the awarding of costs, such decisions being at the sole discretion of the Board.

The following parties applied for Intervener status:

1. Consumers' Association of Canada (Manitoba) Inc. (CAC), represented in person at the PHC by its counsel, Ms. Meghan Menzies;
2. Coalition of Manitoba Motorcycle Groups (CMMG), represented in person at the PHC by its counsel, Mr. Raymond Oakes;
3. Canadian Automobile Association Manitoba (CAA), represented in person at the PHC by Ms. Angele Young;
4. Automotive Recyclers of Manitoba (ARM) Ltd., represented in person at the PHC by its counsel, Mr. Irvin Frost;
5. Bike Winnipeg (BW), represented in person at the PHC by Mr. Jason Carter; and
6. Insurance Brokers Association of Manitoba (IBAM), represented in person at the PHC by Mr. David Schioler.

MPI was represented by Ms. Kathy Kalinowsky (Counsel), and Ms. Heather Reichert, Vice-President of Finance and Chief Financial Officer.

Applications for Intervener Status

CAC

CAC advised that it represents the broad consumer perspective and proposes to test all aspects of the General Rate Application (GRA) with a view to determining whether the proposed rates are just and reasonable, and in particular CAC will ask:

- Is a rate increase of 3.4% on overall Basic insurance just and reasonable? Is this increase supported by the evidence?
- Are the forecasting assumptions reasonable, justifiable and statistically supported? Can stakeholders have confidence in the Corporation's forecasts and forecasting procedures?
- Are the assumptions in the various operating, capital, revenue, claims, and investment income forecasts reasonable and statistically supported?
- Have the accounting policy changes impacted the 2015 GRA and will they impact future GRAs? If so, are the accounting policy changes prudent and consistent with the public interest?
- Is the Corporation adequately controlling its costs relating to operations and staffing? Are expenditures prudent and necessary? Has the Corporation heeded past advice of the Board with regard to controlling information technology and staffing expenditures?
- What is the cause of the significant increases in claims incurred? Are these increases a result of a systemic problem?
- What are the Corporation's most serious risks and how can they be mitigated in a manner which is consistent with the public interest?
- What is the basis of the proposed comprehensive loss prevention strategy? What changes are taking place with regard to MPI's road safety strategy and are these changes prudent and consistent with the public interest? Are consumers receiving optimal payback on their road safety investments?
- Is the proposed level of reserves associated with the Rate Stabilization Reserve (RSR) appropriate? Is the direction of 1% to the rebuilding of the RSR just reasonable? How is the 1% RSR rebuild going to be accounted for and when will it be returned to rate payers?
- Is the development of Dynamic Capital Adequacy Testing (DCAT) consistent with modern risk management practices and the Corporation's status as a monopoly insurer?

CAC advised that it intends to appear throughout the hearing, to participate in the production of evidence, to participate in the testing of evidence, and present final argument. In particular, CAC advised that it is considering calling an expert witness with respect to interest rate forecasting, and as well that it is considering calling an expert witness on DCAT.

CAC advised that it will seek a costs award, and provided an intervention budget ranging from \$165,081.50 to \$179,659.50, which includes fees if an expert in econometrics and microeconomics

relative to DCAT is utilized. In addition, should expert evidence be required with respect to interest rate forecasting, it is expected that an additional \$51,550.00 to \$55,750.00 would be incurred. Attached to this Order as **Schedule "A"** is the rate sheet by which Board counsel and counsel for the interveners shall have their rates set, according to years of seniority at the Bar.

CMMG

CMMG, the umbrella group for all organized motorcycle riding groups in Manitoba, advised that it intends to assist the Board in critically evaluating the GRA, testing the evidence and raising issues of concern and interest to the motorcycling public specifically and Manitoba rate payers generally.

CMMG states that although MPI is proposing a rate decrease for the motorcycle class in the rate application, motorcyclists have been overcharged for almost two decades, and asks that the Board consider those motorcyclists that were forced off the road due to high insurance rates.

CMMG advises that it will concentrate on critiquing the conservatism within MPI's rate making methodology and the "padding" of reserves, as well as the capping of rate reductions. CMMG questions why motorcyclists should contribute to an RSR rebuilding even though the reason for the decline in the RSR balance has been the many claims incurred over the course of the winter, which were not contributed to by motorcycle claims. CMMG will continue to address issues relative to Road Safety, and in particular wildlife claims, as well as operating expenses, benchmarking and reserves within the Extension and Special Risk Extension lines of business of the Corporation.

CMMG advised that it intends to appear throughout the hearing, to participate in the testing of evidence and to present final argument. CMMG will seek a costs award, and provided an intervention budget of \$26,123.00 before tax, inclusive of fees and disbursements.

CAA

CAA is the largest member based organization in Manitoba, representing over 200,000 Manitobans and one in four households. CAA is applying for intervener status to ensure that the rate setting process is fair and accountable for Manitobans. CAA is looking closely at three

aspects of the GRA, which are road safety initiatives, the full extent of the most recent winter season upon the proposed rate increase, and the effect of the GRA upon consumers.

CAA advised that it intends to participate in the GRA process on a watching brief, but that it does not intend on calling any witnesses, bringing evidence to the hearing, or seeking costs.

ARM

ARM has a history working with MPI in the re-use of automotive parts, with a view to reducing claims expenses. ARM stated that through the Recyclers' Central Office, established in 1996, over \$170 million dollars of used or recycled automotive parts were supplied over the last 11 years, resulting in a savings to MPI (and hence ratepayers) of \$113 million dollars. ARM stated that MPI took over the RCO in 2012, since which time ARM has noticed a significant reduction in the volume of used and recycled parts being sold, and which ARM stated should be of great concern to the Board.

ARM advised that it wishes to assist the Board in:

- critically evaluating MPI's new Physical Damage Re-engineering Program;
- reviewing its costs containment initiatives relative to recycled parts;
- reviewing its environmental controls in the resale of total loss vehicles; and
- suggesting improvements to reduce physical damage repair costs.

ARM advised that it intends to appear throughout the hearing, to participate in the production of evidence and the testing of evidence, and to present a final argument. ARM does not intend to call any witnesses though ARM will seek a costs award, and provided an intervention budget of \$22,868.00 before tax, inclusive of fees and disbursements.

BW

BW represents approximately 1,200 members, as well as the interests of 13,500 commuting cyclists in Manitoba and 200,000 occasional cyclists. BW advised that it intends to retain counsel to intervene in the GRA regarding the following issues:

- The optimum size of MPI's road safety budget and whether or not it is sufficient to enable a significant reduction in the cost of injuries to MPI in the short and long terms;

- The adequacy of MPI's road safety programs with respect to the fatal and severe injury of vulnerable road users;
- The interests of Manitoba's pedestrians as insured vulnerable road users, in the absence of another pedestrian organization or appointed counsel to represent their interests, and on the basis that both pedestrians and cyclists are similarly vulnerable to injury from motor vehicles;
- The extent of MPI's ability to carry out, introduce, establish, supervise, finance and promote programs relating to the reduction of risk, in light of s. 6(2)(h) of the MPIC Act, as amended by Bill 49; and
- The quality and clarity of MPI's data collection, analysis and accessibility, particularly in comparison to transportation safety programs from local, national and international entities and jurisdictions.

BW advised that it intends to appear throughout the hearing, to participate in the production of evidence and the testing of evidence, and to present a final argument. BW does not intend to call any witnesses though BW will seek a costs award, and provided an intervention budget of \$24,600.00 before tax, inclusive of fees and disbursements.

IBAM

IBAM represents approximately 2,000 insurance brokers in Manitoba, which is approximately 98% of all brokers in Manitoba. IBAM works closely with MPI on many operational and financial issues, and believes that it can assist the Board in its deliberations in the GRA process. IBAM is part of a greater network of 36,000 insurance brokers across Canada, with access to information regarding benchmarking in other jurisdictions. The brokers represented by IBAM have daily contact with MPI's ratepayers, and are the primary distribution vehicle for MPI insurance products.

IBAM advised that it would appear throughout the hearing, participate in the production of evidence and the testing of evidence, and would present final argument. IBAM may also bring as a witness one of its insurance brokers to testify before the Board, and its representative Mr. David Schioler may also give evidence. IBAM is not seeking an award of costs.

MPI Position

MPI accepted the granting of Intervener status to the applicants CAC, CMMG, CAA and IBAM. MPI took no position with respect to the intervener application of ARM. MPI opposed the intervener application of BW. The reasons cited by MPI for its opposition to BW's intervention were similar to those relied upon by MPI at last year's GRA:

- BW's request for intervener status is very broad and is difficult to relate to the Board's mandate of setting rates;
- BW's application for intervention does not relate to rates;
- MPI does not insure bicycles for physical damage, or cyclists for bodily injury, unless a cyclist is involved in a collision with a motor vehicle, in which case the cyclist would be eligible for PIPP benefits;
- A very small number of PIPP claims involve cyclists;
- MPI continues to collaborate with BW on various types of ventures; and
- BW's request for costs is significant in terms of amount, to address one small aspect of the GRA process, when compared with costs requests by other interveners who will address a broader scope of issues.

MPI also directed the Board's attention to MacAulay and Sprague, Practice and Procedure Before Administrative Tribunals, also relied upon by MPI at last year's Pre-Hearing Conference, wherein it is reflected, with respect to prospective interveners, that:

The degree of participation will be determined by the extent the agency (Board) feels the intervener's participation will assist it in its mandate. Sometimes two or more individuals or groups may bring before the agency (Board) essentially the same expertise or views. In that case the agency (Board) may require that they pool their resources and appear through a single spokesman.....If the person seeking intervener status is not bringing anything of potential use to the agency, or is simply repeating (that) which will already be brought or could be brought to the agency (Board) by the other parties, the agency (Board) should not grant intervener status out of concerns respecting the public (and the parties') interest in efficient and expeditious proceedings.

MPI reviewed the Procedural Order issued by the Board last year and noted those sections that related to cycling issues. MPI put forward a number of additional authorities reflecting the

applicable test for intervention for the Board's consideration, namely that interveners are to avoid duplication, a prospective intervener must have a substantial interest in the proceeding, and must intend to participate actively. In addition, MPI stated that interveners are generally groups that don't meet the criteria to be a party to a proceeding, but still have some sufficient interest or expertise from which the tribunal feels it will benefit. MPI also reviewed the six step test reflected in the Khadr decision of the Federal Court of Appeal.

MPI suggested that instead of BW being granted intervener status in the GRA proceeding, it should again collaborate with CAC (or another intervener) as was done last year. MPI stated that there is no certainty that a conflict of interest would arise from such a collaboration, but rather there is simply a risk of a conflict of interest arising. MPI also questioned who it is that BW represents and on whose behalf it would be participating, noting that in its submissions BW referenced not only cyclists, but also wheelchair-bound persons, pedestrians and other vulnerable road users.

Board Comments and Decisions

The Chair identified a number of issues that the Board will be considering within the GRA proceeding, including those related to:

- DCAT, the target RSR and total equity level;
- road safety and a review of related expenditures, including efforts regarding vulnerable road users;
- the cost of operations;
- benchmarking, including with respect to other provinces;
- interest rate forecasting methodology;
- the disposition of excess reserves in the Extension and SRE lines of business;
- the value proposition for drivers for the rate increase being requested;
- new or enhanced services being developed or examined by MPI;
- alternate rate indications based on accepted actuarial practice;
- unfavourable run-off of prior year claims during 2013/14;

- IT Projects including the Physical Damage Re-engineering Project;
- the performance of the investment portfolio and the content of the portfolio;
- the Investment Policy Statement; and
- a variety of other issues that may arise.

After considering all of the submissions with respect to intervener applications, the Board will grant intervener status to CAC, CMMG, CAA and IBAM.

The Board will also grant intervener status to ARM, with a limited scope, as follows:

To assist the Board in critically evaluating MPI's new Physical Damage (PD) Re-engineering Program, reviewing MPI's cost containment initiatives relative to recycled parts and suggesting improvements in reducing physical damage repair costs.

The Board accepts that ARM has a unique perspective to bring to the GRA process, which is expected to be of benefit, and that its efforts with respect to the foregoing scope of intervention will not be duplicative. In addition, the Board accepts that ARM is a party with an interest in the outcome of the GRA process, is ready to proceed and will not delay the proceedings.

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 will also grant intervener status to BW, with a limited scope, as follows:

To assist the Board in critically evaluating:

- the optimum size of MPI's road safety budget and whether it is sufficient to enable a significant reduction in the cost to MPI of injuries to cyclists in the short and long term;
- the adequacy of MPI's road safety programs with respect to the fatal and severe injury of cyclists; and

- the quality and clarity of MPI's data collection, analysis and accessibility, regarding collisions involving cyclists, particularly in comparison to transportation safety programs from local, national and international entities and jurisdictions.

The Board accepts that BW has a unique perspective to bring to the GRA process, which is expected to be of benefit, and that its efforts with respect to the foregoing scope of intervention will not be duplicative. In addition, the Board accepts that BW is a party with an interest in the outcome of the GRA process, is ready to proceed and will not delay the proceedings.

The Board asks that BW submit a revised budget based on this revised scope of intervention, including a detailed costs and disbursements proposal.

As always, the Board expects a high degree of co-operation amongst interveners and with Board Counsel to avoid duplication and restrain regulatory costs.

Timetable

It was apparent at the PHC that, in the main, a consensus was reached on a timetable which accommodates all parties. The final version of the timetable is attached hereto as **Schedule "B"**. The Board has set as hearing dates with respect to the GRA proceeding: October 7 to 10, October 14 - 17 and October 21 - 24, 2014 (a total of 12 hearing days).

Attached hereto as **Schedule "C"** are the procedures to be followed over the course of the GRA process.

IT IS THEREFORE ORDERED THAT:

1. Interveners to the hearing, subject to the filing of updated budgets, shall be:
 - (a) Consumers' Association of Canada (Manitoba) Inc.;
 - (b) Coalition of Manitoba Motorcycles Groups Inc.;
 - (c) Canadian Automobile Association (Manitoba);
 - (d) Automotive Recyclers of Manitoba (ARM) Ltd. (limited scope);
 - (e) Bike Winnipeg (limited scope); and
 - (f) Insurance Brokers Association of Manitoba.

2. Schedule "B", as attached, shall be the timetable for the orderly exchange of information by the participating parties.

3. Schedule "C", as attached, shall apply with respect to the hearing of the GRA.

THE PUBLIC UTILITIES BOARD

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

Member, Acting Chair

"Hollis Singh"
Secretary

SCHEDULE "A"

PUBLIC UTILITIES BOARD OF MANITOBA

RATE STRUCTURE

Counsel

- 20 or more years' experience - \$221.00/hour
- 10 to 20 years' experience - \$194.00/hour
- Associates – up to \$194/hour (subject to agreement)
- Understudies* - \$139.00/hour

* For the purpose of this schedule, understudies are professionals in training in anticipation of taking the lead role as the firm's advisor to the Board at some point in the relatively near future, subject to the Board's agreement.

SCHEDULE "B"

ITEM		2014 DATES	DAY OF WEEK
1.	Application filed and served	June 16	Monday
2.	Notice of Public hearing to be published	June 21	Saturday
3.	MPI to file DCAT Report	July 7	Monday
4. a)	Pre-Hearing Conference	July 9	Wednesday
b)	Interveners complete Registration	July 9	Wednesday
c)	Settle Hearing Procedure and exchange of information timetable	July 9	Wednesday
d)	Discuss possibility of joint intervention	July 9	Wednesday
e)	Last day to file as an Intervener	July 9	Wednesday
5.	Board to circulate list of Interveners, complete timetable to Interveners and applicant	July 11	Friday
6.	MPI to be in receipt of first round information requests from Board and existing interveners (CAA, CAC, CMMG)	July 11	Friday
7.	MPI to be in receipt of first round information request pertaining to the DCAT report	July 14	Monday
8.	MPI to be in receipt of first round information request from new interveners identified at the Pre-Hearing Conference (ARM, BW, IBAM)	July 17	Thursday

9.	MPI to provide response to first round information requests from Board and existing interveners (CAA, CAC, CMMG)	July 31	Thursday
10.	MPI to provide response to first round information request from new interveners identified at the Pre-Hearing Conference (ARM, BW, IBAM)	August 11	Monday
11.	MPI to be in receipt of second round information requests	August 14	Thursday
12.	MPI to publish reminder notice and any amendments to application	August 23	Saturday
13.	MPI to file responses to second round information requests	September 8	Monday
14.	MPI to file and serve any further amendments to application, if required	September 8	Monday
15.	Intervenors to file pre-filed testimony to all parties	September 10	Wednesday
16.	Parties to file any motions	September 10	Wednesday
17.	Intervenors to be in receipt of information requests from all parties	September 15	Monday
18.	Board to hear all motions	September 15	Monday
19.	Intervenors to provide responses to all information requests	September 19	Friday
20.	Board decision on motions, meeting among Counsel, if required	September 19	Friday

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|-----|-------------------------------|--------------|---------|
| 21. | MPI to file rebuttal evidence | September 23 | Tuesday |
| 22. | Hearing commences | October 7 | Tuesday |

SCHEDULE "C"
PROCEDURES TO BE FOLLOWED AT THE
MANITOBA PUBLIC INSURANCE CORPORATION
2015 RATE APPLICATION

1. Hearing and Rural Meetings:
 - (a) Winnipeg hearing will be held at the Board's office, 4th Floor, 330 Portage Avenue, Winnipeg, commencing on October 7, 2014 at 9:00 a.m. and continuing thereafter as necessary.
 - (b) Rural Meetings (if necessary) – time, location and place to be identified.
2. Hearing Times Each Day:

9:00 a.m. to 12:00 Noon
1:15 p.m. to 4:00 p.m.
(amendments may be made by the Board at the hearing)
3. Assigned Sittings:

Presenters will be heard commencing at 1:15 p.m. Tuesday, October 7, 2014 and at 7:00 p.m. that day if necessary.
4. Opening Statements by Board Counsel, by Counsel for MPI and Counsel or representatives of registered interveners.
5.
 - (a) MPI to file their application and supporting evidence.
 - (b) MPI to introduce witnesses. Board Counsel and interveners to cross-examine the Corporation's witnesses (order to be determined).
6.
 - (a) Leading of testimony by witnesses for interveners, if any, will be in alphabetical order by name of interveners and updated as necessary.
 - (b) Witnesses to be available for cross-examination by all parties following each presentation.

7. All interrogatories are to be filed and responded to using the prefixes as assigned by the Board when interveners are registered (set out in the body of the Order). The party requesting information is to use firstly their prefix followed by the prefix of the party being asked e.g. PUB/MPI, etc. Interrogatories are to be numbered sequentially through 1st and 2nd rounds, e.g. PUB/MPI 1-3, PUB/MPI 2-7.
8. All pre-filed evidentiary material to be filed at the commencement of the hearing by Board Counsel using assigned prefixes.
9. All witnesses to highlight their evidence.
10. All witnesses to be sworn or affirmed.
11. Daily transcripts will be available. Parties to make arrangements with the Reporter. Transcripts can be found at www.pub.gov.mb.ca at no charge.
12. It is the Board's request that all motions be dealt with pursuant to the Board's Timetable.
13. The Board's Rules of Practice and Procedure (available on the Board's website) dealing with the Awarding of Costs will apply to all matters before the Board.
14. The Board indicates its willingness to be available for any problems that may arise during the exchange of information at any time, such time to be arranged through Board Counsel.
15. Seven (7) paper copies of material are to be submitted to the Board's offices and three (3) copies are to be submitted to Board Counsel at the following address:

Attention:

Candace Grammond, Pitblado LLP, 2500 – 360 Main Street, Winnipeg, MB R3C 4H6.

16. Electronic copies of all material including the evidence of parties, are required to be submitted to the Board's e-mail address: publicutilities@gov.mb.ca Where schedules or other attachments accompany an electronic file, that filing must be discrete and include only the item and schedules to which each refers. The electronic files shall be named in accordance with their parties prefix as per #7. All electronic filings shall be in Adobe Acrobat format, with protection securities allowing printing, content copying, content copying for accessibility and page extraction.