

M A N I T O B A

THE PUBLIC UTILITIES BOARD ACT

THE MANITOBA PUBLIC INSURANCE ACT

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

Order No. 86/11

June 23, 2011

Before: Graham Lane, CA, Chairman
Len Evans , LLD, Member

**MANITOBA PUBLIC INSURANCE:
AN APPLICATION TO REVIEW AND VARY ORDER 43/11**

Background

On December 8, 2010 the Public Utilities Board (Board) issued Order No. 122/10. The Order was with respect to Manitoba Public Insurance Corporation's (Corporation or MPI) General Rate Application (GRA) for rates and premiums for compulsory vehicle insurance, driver insurance premiums and vehicle premium discounts effective March 1, 2011. The Order arose from the GRA hearing which took place in October, 2010.

Pursuant to the Order, the Board stated that:

"The Board hereby orders that a rebate of 10% of 2009/10 vehicle premiums shall be issued by MPI through the issuance of cheques to ratepayers."

and that:

"The rebate shall be issued, however, only after production to the Board of the following on or before April 15, 2011:

- *MPI's external actuary's reviews as at October 31, 2010 and February 28, 2011;*
- *MPI's unaudited 2010/11 Basic and Corporate financial results, reviewed by MPI's auditor and to be filed with the Board in confidence; and*
- *an assurance from MPI, in writing, that no material changes to the Basic program are anticipated in 2011, which assurance will be based on MPI's discussions with Government (to be filed with the Board in confidence).*

Following the receipt of this information, the Board will review the data and provide its final decision with respect to the rebate. MPI is not to pay the rebate until it has the Board's final approval, which will not be unduly withheld."

In the section within the Order reflecting the Board directives, the Board ordered that:

"MPI shall issue a 10% rebate of 2009/10 vehicle premiums in 2011, and by no later than May 31, upon production to the Board of further financial information, as detailed herein, and receipt of the Board's further approval."

On December 13, 2010, MPI filed with the Board some additional information relating to a variety of aspects of the GRA, including advice that there were three changes to the revised pro forma financial statements as a result of the Order, compared to the statements previously filed with the Board. MPI's three changes related to the Rate Stabilization Reserve (RSR) balance, investment income and the proposed Cost Allocation Methodology.

On January 26, 2011, the Board received from the Corporation further advice that if, following on the filing of further documents by April 15, 2011, the Board could confirm the rebate by April 20, 2011, the Corporation anticipated no difficulty issuing rebate cheques by May 31, 2011 (in accordance with the Order). Given that the Board considered the proposed schedule to be very "tight", on January 27, 2011 the Board requested that the Corporation file the required and/or related information ahead of April 15, 2011, as the same was available.

Six weeks later, and on March 18, 2011, MPI advised the Board that it was prepared to file three pieces of information in advance of April 15, 2011, namely the Basic AutoPac-Appointed Actuary's Report as at October 31, 2010 (Actuary's Report), as prepared by Mr. Jim Christie of Ernst & Young, preliminary draft Fourth Quarter Financial Statements (Financial Statements), and a recent government press release announcing retroactive enhancements to PIPP coverage. MPI asked that all three documents be filed in confidence. As the government's press release was made public later in the day on March 18, 2011, the Corporation's request for a confidential filing then related only to the Actuary's Report and the draft Financial Statements.

The government press release indicated that MPI was expecting that the value of its outstanding claims liability would be reduced by approximately \$250 million, or 20%, and, as well, that PIPP benefits for the catastrophically injured would be enhanced (at an expected actuarial cost of about \$40 million).

Approximately a week later, on March 24, 2011, the Board advised the Corporation that it would accept the draft Financial Statements in confidence, but required that the Actuary's Report be filed on the public record. Subsequently, and also on March 24, 2011, MPI provided the Actuary's Report (and its comments on that report) on the record, together with the draft Financial Statements, the latter filed in confidence.

The Board was advised that MPI's 2010/11 Financial Statements had yet to be tabled in the Legislature, and that the specific content of the draft Financial Statements while subject to further transactions yet to be processed, significant changes to the "numbers" were not anticipated.

Following consideration of the information received, the Board notified the Corporation and registered Interveners that it intended to hold a special hearing, and, on March 30, 2011, the

Board held a one-day special hearing to receive submissions from the Corporation and from Interveners with respect to the rebate provided for in Order 122/10.

Over the course of the one-day hearing, MPI did not raise with the Board any issue with respect to its interpretation of the Board's direction with respect to payment of rebates, or any potential implications of rebate payments, either with respect to rebates that would be issued based on more or less than twelve months of premium.

The Board felt obliged to act quickly, as MPI had advised the Board that it intended to table its audited 2010/11 financial statements in the Legislature in early April, 2011. Those statements, once finalized on the basis of a 10% rebate, would have been practically "impossible" to retrieve, and increasing the amount of the rebate after the close of both MPI's financial year and the Province's financial year would or could cause significant confusion. In addition, further injustice to policyholders would have occurred had the potential increase of the rebate, from Order 122/10's 10%, been addressed in the 2012 GRA process, as in that scenario the rebates would be further removed from the development of the excess Unpaid Claims liability and two years of both MPI's accounts and those of the Province (and its 2011/12 budget) would have been, in the Board's view, negatively affected.

Accordingly, by way of Order 43/11, the Board amended its rebate direction of Order 122/10, and directed MPI to increase the quantum of the rebate from 10% to 45%.

At no time between March 31st, 2011 and the date on which MPI issued the rebate cheques, which occurred approximately six weeks later in May 2011, did MPI bring to the attention of the Board the likely policyholder perception of "unfair" rebate amounts. The Board learned of the issue only when complaints began to be received, which shortly followed receipt of rebate cheques by policyholders.

Immediately upon the Board becoming aware of these issues through policyholder complaints, Board counsel, the Board Secretary and its accounting advisor, on the Board's direction, engaged in discussion with MPI with respect to the taking of remedial steps. Those discussions took place between May 12, 2011 and May 30, 2011, and were followed by a press conference call by CAC and CAA on May 31, 2011, wherein those interveners called for the Board to initiate an inquiry into the issues surrounding the rebate.

Thereafter, MPI applied for a review and vary of Order 43/11 (Order), the Order which increased the rebate from 10% to 45%. MPI included in its application written answers to a series of questions posed to MPI by the Board over the course of the May, 2011 meetings between MPI and the Board's representatives.

As all parties to these proceedings will be aware, the Board relies upon MPI, MPI's external auditor and the Corporation's external actuary for the financial information provided to the Board. In particular, each MPI financial statement provided to the Board, and on which the Board relies, is audited, and in the context of the audit there is reliance by the external auditor and MPI upon the work of MPI's external actuary.

So, while MPI's latest actuarial report reflected a significant excess of unpaid claims liability, an excess that dated back over several years, it would not have been possible for the Board to act differently in previous years, given the "clear" audit opinions and external actuarial reviews and opinions on which it relied.

It is noteworthy that at the hearing of the 2011 GRA, the Board called as a witness and cross-examined MPI's external auditor, who supported the level of unpaid claims liability being reported by MPI (as at MPI's last audited accounts).

MPI's Position

MPI's position is set out in the Application. MPI requests that the Board Review and Vary Order 43/11, by providing as a rebate:

1. 45% of the amount of Basic Autopac vehicle premium earned in the period March 1, 2009 to February 28, 2010, less
2. Rebates paid pursuant to the Order.

This subsequent rebate would not apply to any MPI policyholders who received an initial rebate based on at least twelve months of premium under the Order.

MPI has advised that this requested and subsequent rebate would be paid to approximately 158,000 customers, for a total of approximately \$16 million. The approach is to have the effect of everyone receiving the greater of the new calculation and the initial rebate. Rebates already paid will not be subject to repayment or claw back.

The Corporation identified approximately 136,000 customers who have already received some rebate amount, and who, under the Application, would receive additional rebates totaling approximately \$11.5 million. In addition, MPI identified approximately 22,000 other customers who had earned premiums during the 2009/10 fiscal year, but who did not receive any initial rebate. The total rebate for those customers would approximate \$4.5 million.

MPI stated that it received approximately 143 complaints with respect to the initial rebate issued, of which 115 individuals would receive an increased or new rebate pursuant to the Application. MPI further stated that, for future years, the impact on earnings of this additional rebate would be minimal, and come in the way of a slight decrease in investment income due to a lower investment base. MPI stated that the impact of this would be less than \$1 million dollars per year.

MPI requested that a non-evidentiary technical conference be convened to allow for those present to gain an understanding or a clarification of any matter pursuant to the Corporation's Application. The technical conference took place, at the direction of the Board, on June 14, 2011, and was attended by the Interveners, MPI, Board counsel and the Board secretary. The Board did not attend, but has reviewed closely the transcript.

In response to the submissions of CMMG, MPI has asked that the Board rule on the Application without delay. MPI submits that CMMG did not raise the concerns it has since raised in the special hearing called by the Board on March 30, 2011, and did not file an Application to Review and Vary the Order prior to the issuance of rebate cheques.

Interveners' Positions

CAC

CAC advised that it had examined MPI's Application with regard to three central concepts: fairness between ratepayers, fiscal integrity and transparency. CAC supports the Application. CAC has advised that, in its view, the revised rebate recalculation presented by MPI will better achieve fairness between ratepayers. CAC is satisfied that implementation of the proposal should not unduly impair the financial integrity of Basic or the Corporation, as the net impact on investment income is estimated to be less than \$1 million dollars per year.

CAC also observes that MPI is projecting a positive net income for its current fiscal year, and, as well, that the Corporation projects that the Basic RSR will remain within the upper range of the Public Utilities Board's target range for the current fiscal year.

CAC does not support the recommendation of CMMG to either delay or deny the Application, but rather states that it would be prudent to address the present sense of inequity and confusion among certain ratepayers relative to the Order.

With respect to the cheque issue threshold, CAC supports maintaining the same, at \$2.00. CAC also provided recommendations with respect to the communication strategy to be utilized by the Corporation at the time that further rebate cheques are issued.

CMMG

CMMG expressed the concern that MPI is acting in undue haste by advancing the Application. It also argued that motorcyclists were treated unfairly pursuant to the rebate, this based on CMMG's position that motorcyclists should receive a higher relative rebate given that the average percentage of the motorcycle class's premium going to PIPP benefits is higher than the average percentage of other classes' premium allocated to PIPP benefits.

CMMG submits that the Board should not rush to vary the Order, in view of what CMMG believes is a demonstrable inequity that would arise for motorcyclists.

CMMG notes MPI's filing of its 2012/13 GRA, that having occurred on June 14, 2011, wherein MPI requests a premium reduction. CMMG holds that the new GRA provides support for its argument in that the Corporation is seeking a higher reduction in premiums for motorcyclists than for private passenger cars (this based on methodology changes).

CMMG also stated that it has argued in past years that MPI's forecasts of incurred claims, particularly with respect to motorcycles, were "beyond conservative", and have led to an overstatement of required premiums.

In the alternative, CMMG asked that the Board make an Order that reserves the issue of a possible further rebate to motorcyclists, with such evidence to be tested in connection with a later hearing on this point, after receipt of either an actuarial review or pursuant to the 2012 GRA.

CAA

CAA supports the Application, and supports maintaining the cheque issue threshold at \$2.00.

Board Findings

The rebate ordered to be paid in the Order, and the additional rebate amounts proposed in MPI's Review and Vary Application, hereby approved by this Board, arise out of the recognition by MPI of excess Unpaid Claims provisions.

As that excess relates to several fiscal years, there is an element of injustice that remains despite the original rebate and the now to be increased rebate amount. Some motorists will not have paid premiums in 2009/10, but did pay premiums in at least some of the earlier years in which excess Unpaid Claims provisions were accumulated. Others will have first insured a vehicle in 2009/10, and had no policy in previous years, while still others will have reduced or increased the number of their vehicles, or have changed vehicles, all or some of which will affect their rebate relative to premiums paid levels. The examples of relative injustice are likely endless.

As stated by the Board in the Order, there are four difficulties associated with the payment of rebates, those relating to intergenerational inequity and the concept of fair and reasonable rates:

1. Revisions between forecasted and actual incurred claims are often material;
2. Rebates are expensive to pay (administrative, postage, and may have a material impact on future investment revenue);
3. Rebates can affect RSR balances and trends; and
4. As the re-evaluation of prior years' incurred claims involves more than one fiscal insurance year, rebates do not always go to, particularly with respect to the amounts paid, policyholders who paid what has later been judged to have been too much.

It is the view of this Board that assessing what the appropriate claims incurred result will be for each year is very important for ensuring just and reasonable rates.

In the Order, the Board admonished MPI for:

- a) not informing the Board much earlier of its knowledge of the indications of an impending material change to its Unpaid Claims liability (as the result of the Actuary's Report and/or of earlier indications);
- b) failing to advise the Board of further retroactive benefit enhancements, when MPI became aware of same;
- c) failing to file the Actuary's Report that the Corporation received on or about February 3, 2011 with the Board until March 24, 2011; and
- d) failing to provide to the Board the Corporation's expectations of a materially different net income result for fiscal 2010/11 than was projected by the Corporation in December 2010, until March 24, 2011.

The timing of the Order was driven by the aforementioned withholding by MPI of critical information from the Board, information of which MPI was aware, perhaps in 2010, and information that, if made available to the Board when received or discovered by MPI, would have allowed more time for the Board to ensure that MPI's application of the rebate direction was fair and reasonable.

The Board notes that while MPI was clearly aware of the potential problems with the application of the Order, and Order 122/10 for that matter, as problems of a similar nature had been experienced in the past, with smaller rebates, those problems were not shared with the Board at the 2011 GRA, nor after the issuance of Order 122/10, nor at the special hearing of March 30, 2011, nor subsequent to the issuance of the Order.

Well over 22,000 MPI ratepayers who paid premiums between March 2009 and February 2010, received no rebate pursuant to the Order, as reflected in MPI's Application (at pages 4 and 5). And, close to 136,000 other ratepayers, who paid premiums between March 2009 and February 2010, received a smaller rebate than might have been expected. It appears that in many cases, these smaller than expected rebates were issued due to circumstances such as the purchase of

a new car coupled with the corresponding cancellation of an existing 2009/10 policy and the issue of a new policy base on 2010/11 rates (this is also reflected at pages 4 and 5 of the Application). In addition, there are approximately 131,000 ratepayers who received a rebate based on less than 12 months of premium, because they paid less than 12 months of premium during the time in question.

On the basis of the foregoing, the Board concludes that a correction to the Order is required, and that new rebate cheques should be issued (as proposed by MPI in its Application).

Unfortunately, there were many motorists who received a rebate based on more than 12 months of premium; the Board understands that these "over-payments" totaled in the order of \$8 million. MPI should have brought such over-payments to the Board's attention prior to the payment of the rebates. Nonetheless, the Board agrees with MPI's submission that those individuals should not be pursued for repayment. MPI has advised that, in the context of any future rebate, it would seek that a 12-month cap be applied to rebate calculations.

The Board asks that MPI strive to be more open and transparent in future matters, and that it bring to the Board's attention, in a timely way, any expected issues that may arise upon the implementation of a Board directive, that, in any way may appear inappropriate. The Board does not have direct access to MPI's database, and relies upon MPI to bring forward any pertinent information to the Board.

With more transparency, openness and a more cooperative approach to regulation, both the overpayments and the underpayments flowing from the Order would likely have been avoided.

MPI filed with the Board on June 15, 2011 a letter with respect to the possibility of changing the threshold for the mailing of rebate cheques. MPI advised that currently customers are mailed cheques if the amount due to them exceeds \$2.00. If the amount is less than \$2.00, then the amount is applied as a credit on the motorist's account.

MPI advised that while the threshold for issuing cheques could be changed, as it would require a change to the core functionality of the MPI system, it would add time and cost to the process, and, in MPI's view, would not be understood or expected by motorists. MPI suggested that if the threshold for cheque issuance was to be changed it would be required to circulate letters to

motorists explaining why cheques are not received, or alternatively receive tens of thousands of phone calls, neither of which option MPI views as practical.

Accordingly, MPI suggested that the threshold for additional rebates should be maintained as with earlier rebates, this to ensure optimal understanding, transparency and closure. The Board adopts that submission, and will not direct any change be made in the Corporation's practice regarding the cheque issuing threshold.

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:

The Board hereby approves an additional premium rebate amount of:

1. 45% of the amount of Basic Autopac vehicle premium earned in the period March 1, 2009 to February 28, 2010, less
2. the rebate paid pursuant to Order 43/11.

This rebate does not apply to any MPI policyholder who received a rebate based on at least twelve months of premiums under Order 43/11.

THE PUBLIC UTILITIES BOARD

"GRAHAM LANE, C.A."

Chairman

"HOLLIS SINGH"

Secretary

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The Public Utilities Board

Secretary