

June 15, 2009

The Honourable Steven Ashton
Minister of Intergovernmental Affairs
301 Legislative Building
Winnipeg, Manitoba R3C 0V8

Dear Minister Ashton:

Reference: Annual Report, the Public Utilities Board (Manitoba)

Pursuant to the provisions of Section 109(1) of *The Public Utilities Board Act*, and on behalf of my fellow Board members and myself, I am pleased to convey to you the Public Utilities Board's 2008/09 Annual Report, for the year that ended March 31, 2009.

The Board's mandate is to determine the public interest, with respect to utilities and other matters prescribed or otherwise assigned to be within the Board's oversight and set of responsibilities. With respect to utilities, the public interest has been defined as not only meeting the interests of consumers in the establishment of fair and reasonable rates and service terms, but also providing for the financial health of the regulated utilities. Upon application, either initiated by a utility applicant or directed to be filed by the Board, the Board sets rates and terms of service following a thorough review of the applicant's financial, general and environmental operations. Generally, the Board may approve, vary or deny applications brought before it.

The Board's current regulatory jurisdiction includes the Province's major Crown Corporations and municipal utilities, a major exception to the latter category being the City of Winnipeg's water and sewer utility, with respect to which discussions are ongoing. The Board also oversees the safety of the pipeline distribution of natural gas and propane and provides oversight through licensing of privately owned cemeteries and crematoriums, pre-arranged funeral plans, perpetual care trust accounts and natural gas brokers.

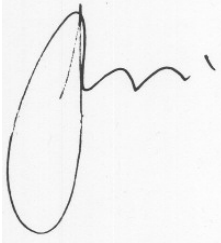
The Board also hears appeals of decisions by Manitoba Hydro with respect to natural gas service disconnection, 911 service license refusals and decisions by the Highway Traffic Board pertaining to highway accesses and adjacent signage. Further, the Board is required to approve non-City owned fixed-fare transportation operators and agreements between such operators and the City of Winnipeg (this by virtue of *The City of Winnipeg Charter Act*).

Recently, government took steps to amend the Board's initial role in setting the maximum rates permissible for payday loans. Pending legislation will amend the Board's responsibilities and appoint the Board as an advisor to government, requiring the Board to conduct tri-annual reviews of the rates and allowing the Board to make recommendations regarding payday loans to government.

During the period under review, the Board held public hearings with respect to Manitoba Hydro, Centra Gas, Manitoba Public Insurance, municipally and privately owned water and sewer utilities, and appeals of Highway Traffic Board highway access decisions. The Board also conducted both public and ex parte paper reviews of rate and other applications by Manitoba Hydro, Centra Gas and numerous water and sewer utilities. Arising out of these processes, the Board set rates and directed rate and terms of service charges; made amendments to rate schedules and related processes, and offered recommendations to government, Crown Corporations, municipal utilities and other operations.

As at March 31, 2009, there were seven very involved, productive and effective part-time members of the Board as well as myself, the full-time Chairman. Also, the Board has a full-time staff of seven, led by Executive Director, Gerry Gaudreau CMA, and, a roster of experienced professional Board Advisors (legal, accounting, actuarial and engineering). Board members, staff and advisors are all dedicated to providing Manitoba effective and efficient regulatory service with respect to matters within the jurisdiction of the Board.

Sincerely,

A handwritten signature in black ink, appearing to read 'Graham F.J. Lane, C.A.', with a large, stylized initial 'G'.

Graham F.J. Lane, C.A.
Chairman

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Chairman's Report

Review of Board Proceedings For the Fiscal Year Ended March 31, 2009

1. INTRODUCTION

The Public Utilities Board (Board) approves and sets rates, oversees pipeline safety and oversees such other matters as are prescribed by legislation or otherwise assigned. In its decisions, the Board is expected to determine the public interest, which with respect to utilities, has been defined to include fairly treated customers and consumers and financially viable utilities. In recent years, and with the enactment of *The Sustainable Development Act*, the public interest in energy efficiency, conservation and clean energy has also been established.

The Board is comprised of an appointed full-time Chairman and provision for up to eight part-time members, ably assisted by staff and Board Advisors. The Board is a quasi-judicial administrative tribunal that makes decisions independent of government direction in accordance with enabling legislation, regulation and stated public policy. The Board fulfils its mandate through public hearings, paper reviews and direct intervention, each involving enquiry, research, consultation and careful deliberation.

Major Board responsibilities, as at March 31, 2009, were:

1. Establishing fair and reasonable rates and terms for:
 - a. electricity;
 - b. natural gas and propane, as provided by pipeline;
 - c. basic compulsory automobile insurance rates; and
 - d. water and sewer utilities (excluding those operated by the City of Winnipeg and the Manitoba Water Services Board).
2. Overseeing natural gas and propane pipeline safety, capital expenditures and general operations.
3. Licensing and/or overseeing:
 - a. privately owned cemeteries and crematoriums; including the monitoring of funeral directors' trust accounts pursuant to *The Prearranged Funeral Services Act*, and perpetual care trust funds; and
 - b. natural gas brokers.
4. Hearing appeals of
 - a. Highway Traffic Board decisions, pursuant to *The Highways Protection Act*;
 - b. applicants denied 911 emergency response centre licenses, pursuant to *The Emergency 911 Public*

Safety Answering Point Act;

- c. consumers disconnected from natural gas service; and
 - d. customers in contract disputes with natural gas brokers.
5. Establishing and/or advising with respect to maximum rates for:
- a. Payday Loans; and
 - b. Cashing of government cheques.
6. Approving and licensing operators of fixed fare transportation services pursuant to agreements with the City of Winnipeg and *The City of Winnipeg Charter Act*.

The Board is a member of the Manitoba Council of Chairs of Administrative Tribunals (MCAT), Canadian Association of Members of Public Utility Tribunals (CAMPUT), and the Canadian Automobile (insurance) Rate Regulators (CARR). Canadian and Manitoba regulatory practices and related matters are discussed and professional development is provided through all three associations. The Board also participates within the Canadian Standards Association (where natural gas and propane safety standards are established), and the Organization of MISO States (OMS), the latter related to the generation and transmission of electricity.

The Board Chairman is a Board member of MCAT and a voting member of CAMPUT and OMS. OMS was formed in 2004 and exists to provide a co-ordinated view of electrical transmission issues among 14 American states and Manitoba. Manitoba participates in the Midwest Independent Transmission System Operators (MISO), in which Manitoba Hydro operates as both a seller and purchaser of wholesale electricity. CARR's second annual meeting was held in October of 2008, and the Board, through its Executive Director is actively participating in the development and establishment of the new association – Mr. Gaudreau was elected as a member of the executive and as the Chair of CARR's Governance Committee.

The year reported on was, once again, a very busy one for the Board. During the period April 1, 2008 to March 31, 2009, the Board issued 172 orders and 188 licences (2008-179 orders and 209 licences), and attended to a host of other matters.

During the fiscal year ended March 31, 2009, the Board expended \$1.326 million in direct costs (2007/08- \$1.716 million), including approximately \$270,000 expended on natural gas pipeline safety. As well, the Board directed regulated utilities to pay a further \$2.059 million (2007/08- \$2.215 million) to meet Board Advisor and intervener costs related to extensive Board proceedings held during the year. The Board meets its direct costs through levies on regulated utilities and other parties. Regulated utilities also bear their direct costs of participating in Board regulatory proceedings.

Taking into account all costs incurred or directed by the Board, overall regulatory costs for the fiscal year ended March 31, 2009 approximated \$3.4 million (2007/08- \$3.9 million), excluding sums directly expended by the regulated entities with respect to Board related matters. The decrease in Board incurred and directed expenditures is

primarily due to 2007/08 costs incurred for the payday loan and cheque cashing hearings, excepting for related court and Board proceedings, these reviews occur on a tri-annual basis.

The approximately two hundred and fifty utilities and industries regulated by the Board have estimated annual revenues of approximately \$4 billion; thus, regulatory costs account for less than 1/10th of 1% of revenue generated.

While most regulated utilities are monopolies, though some monopolies also operate in competitive markets, and some operators are privately or co-operatively owned and active in competitive markets, the Board's responsibilities affect every Manitoba resident, business and organization.

2. OVERVIEW OF BOARD PROCESSES

Regulated utilities make application to the Board when seeking amended rates or, in some cases, some other operational or structural change. When either very large utilities are involved, or a proposed rate increase is exceptionally large or controversial, the Board generally hears applications through public hearings. These hearings may either be conducted in a court-like atmosphere, with sworn witnesses and evidence received subject to cross-examination, or, in the case of smaller utilities held in a more informal setting. In the interests of restraining regulatory costs, the Board employs less formal processes as long as those processes do not compromise the integrity of the Board's proceedings.

For public hearings related to Manitoba Hydro, Centra Gas Manitoba, Manitoba Public Insurance and the setting of maximum fees and charges for the cashing of government cheques and payday loans, interveners representing various special or general interests participate. Intervenors pose questions, cross-examine witnesses and set out positions. In addition, at all public hearings of the Board, presenters from the general public are able to address the Board. For major hearings, Intervenors and the Board retain counsel and, often employ expert witnesses. Witnesses provide sworn testimony, and such testimony generally supports, opposes or provides options with respect to matters before the Board. Interventions are intended to assist the Board in reaching decisions, this by presenting information and views providing useful information for the public interest.

Prior to Board hearings, and with the exception of ex parte hearings taking place in-camera, public notices are issued advising of upcoming hearings and informing of the opportunity to participate and the availability of cost awards in support of interventions. Transcripts of major hearings are posted on the Board's website and made available on request to interested parties. Copies of Board decisions are issued to those involved in the hearing, and on request, the media and members of the public. As well, major Board decisions are accompanied by media release and also posted on the Board's website.

The Board's Rules of Practice and Procedure (Rules) guide public hearings; the Rules are available to all participating parties in advance of a hearing and are posted on the Board's website. Board decisions may be appealed to either the Board itself, by a motion to reconsider and vary, or in certain defined circumstances, to the Court. Historically, very few Board decisions are appealed.

In some cases, where special circumstances exist, the Board issues interim direction, these generally representing decisions on rates reached through reviews not attended or participated in by interveners and the general public. Such proceedings are denoted as *ex parte* hearings. Reasons supporting *ex parte* decisions are made public and circulated to affected or interested parties (interveners and on request, the media and the public). Interim *ex parte* decisions are subject to confirmation, repeal or variance through a subsequent public or other Board proceeding. At such proceedings, the utility, registered interveners and the public are or may be present. *Ex parte* decisions may also be appealed, either to the Board through a motion to vary, or to the Court.

In 2008/09, there was one request for leave to the Court of Appeal, which contested certain aspects of the Board's decision on payday loans. Leave was granted on three of six grounds raised by Cash Store Financial, the appellant having been an industry participant in the Board's payday loan hearing. That leave has been rendered moot by government's action in May 2009; government has tabled legislation to embed payday loan rates in regulation.

In March 2008, the Supreme Court of Canada (SCC) altered the approach for judicial review challenges of decisions by administrative tribunals. In the past, there were three standards of review for the court to consider with respect to an application to set aside a decision of an administrative tribunal, those being correctness, reasonableness simpliciter, and patent unreasonableness. Now, there are only two grounds, with reasonableness simpliciter and patent unreasonableness merged into one.

The stricter standard, of correctness, will apply to claims of errors of law and/or fact; the reasonableness standard will apply to the judgment calls of administrative tribunals. This decision was later commented on in March 2009 in another decision by SCC, which supported the notion that the courts are to defer to an administrative tribunal with respect to applying the standard of reasonableness. The Board expects these two decisions to work in favour of Board decisions, as the Board has a long history of providing full reasons for its decisions, and follows processes informed by legal advice as to jurisdiction and other matters requiring correctness.

As previously noted, and in an effort to restrain regulatory costs, the Board often reaches its decisions by way of a public paper review when relatively smaller utilities, such as Swan Valley Gas Corporation, Stittco Utilities Man Ltd., many municipal and private water and sewer utilities, and cemeteries and crematoriums, are involved.

Under this process, the Board requires the applicant to publish a notice of its application with an indication of matters to be addressed through the proceeding. The Board informs itself as to the particulars of each application through a written process involving the interrogation (by information requests) of the applicant and, in rare cases, registered interveners. An increasing number of water and sewer applications, particularly those involving large rate increases, have been heard by way of public hearings, which have taken place throughout Manitoba.

As part of its general process with respect to utility rate applications, the Board assesses the financial statements and revenue requirements of the utility, considering the particulars as well as broader issues to arrive at available options. Within those options, the Board determines the public interest. As previously indicated, the Board requires the applicant to advertise its application and share with the Board any objections and comments it may receive. In some cases, comments from the public result in the Board holding a public hearing rather than proceeding by way of

paper process.

As previously indicated, the Board operates pursuant to statute and formal Rules of Practice and Procedure, and for larger proceedings affecting a material number of ratepayers, in a court-like manner. Accordingly, Board process requires Board members to declare conflicts of interest prior to a hearing or decision process. Generally speaking, the Board sits in panels of three members, particularly for applications heard by way of public oral hearing. Board members are assigned to at least one major area of responsibility – electricity, natural gas, water and sewer, etc.

Board members also regularly meet as a committee of the whole and discuss matters pertaining to Board operations and establish general Board policies.

3. REGULATED ENTITIES

i. Manitoba Hydro –Electricity

Manitoba Hydro (MH) is Manitoba's largest Crown Corporation, with annual revenues in excess of \$2 billion and with a staff in excess of 6,000. MH is very important to the Province, contributing through the provision of required electricity and natural gas; furthering economic and sustainable development; First Nations relationships; and by annual contributions to the Province's Consolidated Fund (water rentals, capital tax, payroll tax, debt guarantee levies and income taxes on employee and agent income).

MH's debt represents approximately 50% of the provincial government's overall borrowings, and MH's planned future generation, transmission and other capital expenditures may exceed \$20 billion, requiring substantial new borrowings, which are undertaken and guaranteed by the Province for the Utility.

Following a decade of no rate increases, in 2004 the Board provided the Utility a 5% cross-the-board increase as of August 1, 2004 and two conditional rate increases of 2.25%. The first of the two conditional increases was implemented in 2005. While MH initially declined to pursue the second conditional increase, MH later applied and received the second 2.25% rate increase in January 2007. Subsequently, the Board heard an application for an across-the-board increase of 2.25% by way of a public paper process, and provided an interim rate increase of 2.25% effective March 1, 2007.

MH filed a new rate application in August 2007, and the hearing began in March 2008. The application proposed a 2.9% increase for April 1, 2008, with the Utility's ten-year financial forecasts projecting annual 2.9% increases in each subsequent year. The application also contained a proposal for a new energy intensive industry (EII) class, with the concept being that the class would be assessed rates based on MH's marginal costs for energy consumption above certain levels.

The Board decided to bifurcate the process and established a separate hearing to consider rates for energy intensive industries. The hearing took place in December 2008 and January 2009. Interveners included the Consumers' Association of Canada (Manitoba) Inc., the Manitoba Society of Seniors, Resource Conservation Manitoba, Time to

Respect Earth's Ecosystems, and the Manitoba Industrial Power Users Group. The essence of MH's application was to ensure that MH's higher priced export sales opportunities would not be displaced by growth in consumption by large industries at "heritage" rates, thus adversely impacting Manitoba's residential and commercial customers. The Board had not yet released its decision on this matter as of March 31, 2009.

With respect to MH's 2.9% rate increase application for fiscal 2008/09, the Board provided MH a 5% rate increase effective July 1, 2008. The Board decision was explained in significant detail in a 365-page order released on July 29, 2008. The primary reason for the increase, as cited by the Board, was with respect to the Board's assessment of MH's risks, which include not only the risk of drought but also other risks. The Board expressed a desire to attain and sustain a debt to equity ratio of 75:25 for MH, a target long-ago established and supported by most participants to MH proceedings, past and present, as being required to mitigate risk.

On February 2, 2009, MH filed material with the Board in support of a further 4% rate increase to be effective April 1, 2009. This filing was in response to direction previously provided by the Board, which had indicated that such an increase would be granted if MH provided adequate and further justification. In an order released March 30, 2009, which followed a paper review process in which all interveners to the 2008 rate application participated, the Board rolled back the rate increase to 2.9%, to take effect April 1, 2009.

While the Board remained concerned with MH's risk profile, this decision also reflected the Board's concern with the economic realities facing ratepayers following the major recession.

Diesel Rate Application

On October 5, 2006, MH applied to the Board for *ex parte* approval of proposed amendments to interim Diesel Zone rates. The application was to increase rates to meet increased operating costs since 2004, as well as to provide for gradual recovery through rates of a deficit that accrued while awaiting finalization of a Settlement Agreement with the Federal Department of Indian and Northern Affairs. The Board approved the application on an interim *ex parte* basis, effective January 1, 2007. Since then, interim rates have been further adjusted, awaiting finalization of the Settlement Agreement.

MH has been directed to file an application, to amend and finalize diesel community rates and all outstanding and interim Orders related to the Diesel Zone, following finalization of the tentative Settlement Agreement with the federal government.

The Settlement Agreement includes provisions requiring federal contributions to MH operating and capital costs related to electricity service to First Nations communities served by diesel-generated electricity. The agreement had not been finalized as at March 31, 2009.

Weekly Surplus Energy rate settings (ex parte process)

MH rates for Manitoba customers are currently primarily based on the cost of the service provided to various customer classes. Industrial customers benefit from much lower electricity rates than residential customers, as the

firms within the large industry rate class do not require the use of MH's distribution assets, being served directly off transmission lines. As well, MH's Surplus Energy Program (SEP) provides large industrial customers the opportunity to purchase "excess" electricity either generated or purchased by MH at similar rates to those made available to export customers in opportunity sales.

Through the ex parte process, the Board establishes interim rates for MH's SEP each week; the rates are determined based on sales prices for export sales to the United States, and provide rates for sales to Manitoba industry. Approximately 50% of MH's export sales are by contract; the rest are opportunity sales, which are based on current electricity market wholesale prices and the level of excess generation and transmission available to MH.

As part of the 2008 and 2009 rate applications, MH filed further information on the SEP program, requesting the Board approve an extension of the program to March 2013. While the Board has expressed concern over the low prices being obtained for electricity sold in the 11 p.m. to 7 a.m. off-peak period, the Board recognizes that the SEP price only mirrors opportunity sales export pricing, and subsequent to March 31, 2009, the Board extended authorization for SEP to 2013. The broader issue of rates for Manitoba industrial customers has been addressed in a separate proceeding, for which the Board expects to release a decision by July 2009.

MH and Planned Major Capital Expenditures

MH has extensive and significant capital expenditure plans to expand and improve generation, transmission, distribution and administrative assets. While for the beneficial purpose of enhancing service and profitability, the plans will affect MH's borrowings and related debt:equity ratio, increasing debt until such time a new plant is in service and additional sales develop and contribute to retained profits. With ever-present risks of future droughts and other potential problems, MH requires a strong balance sheet, hence the Board's ongoing focus on the Utility's debt:equity ratio and attention to rate adequacy.

Wind is an environmentally friendly, clean energy source, complementing MH hydroelectric resources, and MH has contracted to purchase electricity produced from a 99 MW wind farm operating near St. Leon. In 2008, MH let out contracts for an additional 300 MW of wind generation and plans for up to 1000 MW of wind generation over the next two decades. While wind generation has its advantages, the Board expects arrangements based on present day costs will place some limited pressure on MH's overall costs and rate prospects as new projects are committed to.

The Wuskwatim generation station, now under construction, will provide an additional 200 MW of generation when in service, at a capital investment of approximately \$1.6 billion, including related transmission capability. MH's partner in the project is Nisichawayasihk Cree Nation, which has an opportunity to acquire up to a 33% interest in the project.

Other major capital investments in new generation are now also expected, these being Keeyask and Conawapa. As well, enhancements of existing generating stations and new transmission capacity, including the planned Bipole III, are anticipated, bringing projected capital expenditures over the next ten years to \$20 billion or more, the largest capital investment by a Manitoba Crown corporation in history.

MH is also involved with and is developing plans for additional expenditures to improve energy efficiency and heat retention, in co-operation with its customers. Improvements in energy efficiency release generation capacity for export as well provide for reduced consumer bills and environmental gains, through reduced energy consumption and carbon emissions.

MH is nearing completion of the construction of a new head office at a projected cost of approximately \$280 million. The new building, plans for which are associated with MH's purchase of Winnipeg Hydro, is expected to allow for consolidation of administrative functions. MH began to transfer staff to the new building in December 2008, and will continue its migration into the 2009/10 fiscal period.

The Board lacks the mandate to pre-approve MH's capital expenditures, though capital expenditures are a major component of overall costs and represent the majority of rate causation. Involvement of the Board in capital expenditure approval would minimize the potential for disallowance of costs in setting rates and provide increased assurance to ratepayers that the utility's capital expenditures are sound. Under the previous private ownership of Centra Gas, the Board disallowed approximately \$20 million of future contract losses in the late 1990s, directly impacting the shareholder. With MH's sole shareholder being the Province, the utilitarian value of disallowance of costs for rate setting, from a consumer perspective is questionable as MH's customers are also the Province's taxpayers.

There is a regulatory argument for expanding the Board's authority with respect to MH to include pre-approval of major capital expenditures; an authority provided the Board with respect to Centra Gas operations. Such a mandate would provide an additional check and balance on capital expenditures (a primary contributor to revenue requirement and customer rates). The current situation leaves capital expenditure responsibility with MH and government, though it does result in reduced regulatory costs.

In its rate decision of July 2008, the Board called for MH to propose a plan for a public regulatory review of its capital program plans and the expected implications for consumer rates, if any. A proposal from MH has yet to be received, and dates for this review have, accordingly, yet to be established.

OMS activities

The Board's involvement with OMS has been limited, largely due to Board resource limitations. OMS is "consensus" orientated, in place to bring forward the views of 14 American state jurisdictions and Manitoba on issues related to electricity generation and transmission across state/province and national boundaries, for joint presentation to the U.S. federal regulator. Because Manitoba has only one electrical distributor, MH, and MH is a Crown Corporation assisted by government involvement, the issues addressed by OMS to-date have not required extensive Board involvement. This may change with the Board's new electrical reliability responsibilities (see Outlook section).

ii) Centra Gas Manitoba Inc. (Centra Gas)

Centra Gas provides natural gas to approximately 250,000 residential, commercial and institutional customers. Centra Gas was purchased by MH in 1999, and is integrated within MH's general operations. Centra Gas has no employees of its own and operational costs are allocated to Centra Gas, subject to the Board's review.

Centra Gas primarily serves Winnipeg and southern Manitoba, as the costs of pipeline development and maintenance are very high. Approximately half of MH's customers rely on natural gas for space heating, the other half depend on electricity, propane, fuel oil and wood. With respect to this other half, electricity dominates.

Natural gas is purchased for distribution in Manitoba from continental energy markets, where price is determined by supply and demand (often affected by speculation) and is unregulated. Natural gas purchased from Western Canadian and American producers is transported to Manitoba through pipelines owned by external parties, and distributed within Manitoba through Centra Gas's infrastructure. Centra Gas's natural gas storage facilities are in Michigan, though consideration has been given to developing additional storage in Saskatchewan.

Centra Gas' commodity costs are affected by hedging activities entered into by Centra Gas to reduce rate volatility. Hedging involves financial derivatives entered into with counter-parties and gains and losses on hedging form a component of Centra Gas' overall natural gas costs that are passed through without mark-up to its customers.

Centra Gas amends its primary gas rates for its commodity cost experience and forecasts on a quarterly basis, reflecting on-going market fluctuations. Centra Gas recovers its costs through levies on customers, and the levies recover not only commodity and related transportation to Manitoba costs, at no mark-up, but also Centra Gas' operating and financial costs. The Utility also is provided, through Board-approved rates, sufficient additional revenue to offset MH's costs of acquiring Centra Gas and to provide reasonable retained earnings to serve as a financial reserve.

Expansion has been limited to small extensions since MH's acquisition as result of natural gas price increases since 1999 through to the summer of 2008– though rates have since plunged with additional supply coming on line concurrent with the onset of a serious global recession. Net Income is limited to full recovery of costs incurred by MH, the amortization of MH's acquisition-related costs, and the development of adequate surplus. Considerable attention is placed on reducing customer gas consumption through improved customer awareness, insulation and furnaces.

Rate and Operational reviews

The Board holds a public hearing, usually annually, into the natural gas commodity and transportation (to Manitoba) costs of Centra Gas. The hearing also considers matters such as the allocation of unaccounted for gas costs, matters related to the purchase, transportation and storage of natural gas, and Centra Gas' hedging practices.

Quarterly, the Board establishes Centra Gas's primary gas rates pursuant to a Rate Setting Methodology (RSM)

accepted by Centra Gas and all Interveners. The RSM determines rates based on actual and projected commodity costs, as impacted by storage and hedging. Natural gas commodity prices rose to in excess of \$15/GJ in December of 2005 following hurricanes that curtailed production and transportation in the United States. Subsequently, upon recovery of production and transportation and a warm winter in 2005/06, market prices fell dramatically, to below \$4 at one point, only to gradually recover. Until early July 2008, natural gas commodity prices were increasing sharply, primarily driven by a virtual doubling of oil prices over the past year. However, since then both oil and natural gas prices have fallen sharply with a concurrent global economic slow-down driven in large part, at least initially, by a credit crisis originating in the United States, and the current spot rate for natural gas have once again fallen to the \$4 range.

Unfortunately, Centra Gas' hedging, which saved its customers tens of millions of dollars during natural gas' price climb in 2005, cost its customers the same as prices retreated. With a North American oil and natural gas market, where American experience looms larger than Canadian when it comes to pricing, and where speculation has come to play a large role, natural gas price fluctuation can be expected to continue and to be significant. In an effort to address this particular issue, the Board ordered Centra to amend its hedging program by widening the band on its hedges. While this produces moderately more volatility exposure, the change may be expected to mitigate the effects of wild swings in natural gas market prices.

MH's acquisition of Centra Gas coincided with the deregulation of natural gas commodity markets, increased interdependency with American situations due to pipeline and commercial arrangements, and upward price movements in the commodity price of natural gas that increased the annual bills of Centra Gas' customers dramatically – again, until the recent economic downturn. This led to rising delinquency, bad debts and service disconnection issues – the latter largely resolved through an arrangement between MH and the Board and involving electric load limiters. The market share held by natural gas with respect to Manitoba space heating is unlikely to increase with the expected ongoing volatility of natural gas prices.

There was no Board proceeding in 2008/09 with respect to rates, other than the quarterly rate setting as described above. However, following from a decision released in 2007, the Board updated the processes permitted in Manitoba with respect to natural gas marketing. This included the re-write of the Code of Conduct and other consumer protection documents, while allowing marketers to use additional marketing tools such as telemarketing and the internet.

Related to this, in December 2008, the Board approved a Centra Gas application to enter into the fixed-price, fixed-term (FPFT) market, in competition with what had been two private marketers. One of those marketers, Direct Energy Marketing Ltd., withdrew from residential sales in November of 2008. In arriving at its decision, the Board found that the competitive market, originally contemplated when FPFT competitive primary gas sales were established in the 1990's, did not come to fruition and that there was little competitive protection for consumers with limited options for FPFT gas supply. The two marketers offered essentially the same 3 or 5 year product at prices considerably in excess of the quarterly fluctuating price offered through Centra.

By allowing Centra into the market, the Board foresaw an opportunity for increased options and better prices for Manitoba consumers. Centra made its first such offering in February of 2009. In March of 2009, Energy Savings Manitoba LP, the only remaining residential marketer, lowered its price offering.

Franchise Agreements

The Public Utilities Board Act provides that a franchise granted to any owner of a public utility by a municipality is subject to the approval of the Board. The authority to grant or refuse a franchise to sell gas, or to directly purchase gas or revoke an existing franchise to sell gas, or to directly purchase gas within the Province are within the mandate of the Board. Accordingly, Centra Gas applies to the Board for approval, renewal or extension of franchise agreements.

During the period under review, the Board approved one such application, between Centra Gas and the Rural Municipality of Russell.

Service disconnection

The Board has broad responsibilities with respect to the provision of natural gas in the Province, and as one of its mandates, the Board oversees Centra Gas' handling of service disconnection.

Manitoba has a cold winter climate, and heat is critical to human health and welfare from October through May in Centra Gas' franchise area. The Board concerns itself to ensure that economic concerns, valid as they may be, do not trump concern over the safety of adults and children living in properties heated by natural gas.

In 2008, Board and Centra staff concluded a three-year effort to develop a process to ensure reconnection of all gas-heated customers before the start of the annual winter heating season. The Board approved a new disconnection policy in February 2008. During the heating season, defined as October 1 to May 14, customers will be reconnected, subject to the possibility that a load limiter will be placed on their electrical service to restrict their use of electricity. Outside the heating season, both services will be subject to disconnection, notwithstanding which energy billing is in arrears.

Disconnection or limitation of electrical services, as well as gas, to all customers heated by natural gas will now be subject to Board jurisdiction. The new approach is expected to balance MH's need to collect its accounts and restrict its losses with the need of customers for an assured heating source during Manitoba winters.

As is often said, the "proof is in the pudding", and in this case the proof is evident; the number of residential gas disconnection declined dramatically from approximately 5,000 in each of 2006 and 2007 to 177 in 2008.

A request to review and vary this order was filed in March 2008, with the appellant questioning the Board's authority to allow for electrical service interruptions based on natural gas arrears. In an order issued in July 2008, the Board declined the request and determined not to vary its order.

Gas Safety

As previously stated, the Board is charged with the responsibility for overseeing natural gas and propane pipeline safety in the Province under *The Gas Pipe Line Act*. Not having engineers on staff, the Board utilizes the services of an engineering advisor, Energy Consultants International (ECI), to assist in monitoring safety on the Board's behalf.

During 2007/08, a long-standing effort to place more direct safety responsibility with Centra Gas concluded. Upon satisfactory completion of a plan agreed to by Centra Gas and the Board, the Board will reduce direct oversight by its engineering advisors. Centra Gas is in the process of implementing a Quality Assurance program, including extensive auditing. ECI is currently reviewing Centra Gas' program to ensure it will meet Board requirements. The Board expects to rely on the program, quarterly reporting, annual audits and other measures to ensure that safety matters are managed properly by Centra Gas. The transition is expected take approximately one year to complete, with a final report expected from ECI in the 2009/10 fiscal year.

Board and Centra Gas staff continue to participate in quarterly meetings at which emerging issues and areas of concern are reviewed and discussed.

iii) Stittco Utilities Man Ltd. (Stittco)

Since the early 1960s, Stittco has provided pipeline propane gas to customers (now, approximately 1,000) in Thompson, Snow Lake and Flin Flon. Stittco filed a general rate application (GRA) with the Board in July 2008, requesting an increase of approximately 27% for consumers.

The Board determined to handle this application with a paper review process and posed a number of interrogatories to Stittco. The Consumers' Association of Canada (Manitoba) Inc. and Manitoba Society of Seniors, which had intervened at a Stittco hearing in 2006, also intervened.

On October 15, 2008, the Board, cognizant of the significantly high propane prices extant in the market at the time, granted Stittco an interim 10% rate increase, pending completion of its review of the submission, including the interrogatories and the responses. The Board also confirmed the use of a quarterly rate setting process, not unlike that in place for Centra Gas, to adjust rates regularly thereby mitigating against the unnecessary build-up of a propane purchase price variance account. Commodity costs are passed on to customers without mark-up with price variances accumulated to be billed or repaid to customers over time. The inaugural use of this process occurred for the February 1, 2009 rate adjustments.

The Board expects to conclude its deliberation on the GRA in time for the May 1, 2009 quarterly rate setting process, at which time it expects a large rate decrease will be warranted, given the decline in commodity prices that have accompanied the global recession.

During 2007/08, the Board became aware of structures, mainly garages, having been constructed over underground pipelines in Thompson, a practice in violation of CSA standards, one that created a potential for gas accumulation and explosion in the event of a leak. Stittco was directed to identify and notify all of their customers who had these

structures that structures over propane lines had to be moved or the propane service disconnected. Stittco has agreed to supply the material but the cost of relocation and site remediation is the customer's responsibility. Final dates for resolution of these underground lines were originally set for end of August 2008, and were subsequently revised to June 30, 2009. At that time, the situation is to either be resolved or the service removed to the nine properties that remain in violation of this CSA safety standard.

iv) Swan Valley Gas Corporation (SVGC)

SVGC is a wholly owned subsidiary of SaskEnergy Incorporated. SVGC acquired natural gas distribution franchise rights for the Swan Valley region of Manitoba on July 4, 2000.

At that time, the Board directed that SVGC be regulated under a "least cost regulation" approach, a regulatory model involving less direct Board oversight based on paper-based hearing processes rather than oral hearings, this to restrain regulatory costs that are passed on to customers through rates.

Similar to the approach taken with Centra Gas and Stittco, SVGC does not "mark-up" its natural gas commodity and transportation costs, which are passed on to customers through rates at cost upon Board approval. These costs include SVGC's actual natural gas commodity costs and, as well, costs related to the transport of gas to SVGC at the Many Islands Pipeline metering station located in Manitoba.

On September 23, 2008, SVGC filed a rate application seeking to increase existing commodity rates to reflect then-recent natural gas commodity costs. The application also sought to extend the purchase price variance rate rider. The Board approved the application on October 30, 2008, following a paper review process.

Recently, the Board was advised that Louisiana Pacific Ltd. (LP), SVGC's major customer, had ceased use of natural gas from SVGC and had made application to the government to allow the firm to burn by-products of its forestry operation in lieu of using natural gas for wood-drying. The loss of this customer, if sustained, would "cost" SVGC approximately \$0.5 million annually, and risk the viability of servicing SVGC's overall customer base.

LP's application is currently under review by the Clean Environment Commission.

v) Natural Gas Brokers

Licensed natural gas brokers offer consumers a fixed-price alternative to Centra Gas' quarterly cost-based commodity billings. While the Board licenses brokers, broker contracts are unregulated and prices are market-driven. The Board supervises the sales activities of brokers through a Code of Conduct, and has the authority to cancel a retail contract.

Two retail residential market orientated brokers operated in Manitoba since the mid 1990s, following natural gas deregulation. Up until 2008, retail brokers market through door-to-door consumer contact. They now provide primary natural gas supply to approximately 20% of Centra Gas' residential customers.

In addition to overseeing the terms under which Centra Gas distributes primary gas for brokers to their customers,

and establishing and monitoring the Code of Conduct that governs the brokers' marketing to consumers, the Board intervenes and investigates with respect to complaints from broker customers. Rarely has the Board had to hold a public hearing to resolve a customer complaint; generally the Board is able to facilitate a reasonable outcome through discussions between the broker and the customer.

As reported earlier, the Board reviewed the relationship of the brokers to the natural gas market in Manitoba at its fall 2007 Centra Gas hearing and, subsequently, revised the marketing rules to allow telephone and internet sales. Also as reported earlier, one of the two residential brokers has left the Manitoba marketplace, though its exit has been offset in part by Centra Gas' entry into the retail FPFT market.

vi) Manitoba Public Insurance (MPI)

Manitoba Public Insurance was established in 1971 as the monopoly provider of basic motor vehicle insurance. Currently, the annual revenue of MPI exceeds \$800 million and its asset base approaches \$2.5 billion. MPI insures approximately 700,000 drivers and 900,000 vehicles. With respect to the Personal Injury Protection Plan (PIPP), which provides accident benefit coverage, all Manitobans have coverage, whether drivers or not, and whether in Manitoba or anywhere else in Canada or the United States.

The objectives for the Crown Corporation were established in the enacting legislation, and have been pursued since. Over the years, substantial changes have occurred. The most significant change took place in 1994 when Basic plan benefits were changed to reflect a total no fault environment for accident benefits. Other major changes include:

- a) the introduction of a Bonus/Malus system in 1988 to reward good drivers and provide penalties for poor experience (this program is to be replaced by a Driver Safety Rating program, the subject of a recent Board hearing with an Order yet to be released);
- b) the sale of the general property insurance segment to the private sector in 1989;
- c) the introduction of a no fault retirement benefit in the late 1990s;
- d) the transfer of DVL (driver and vehicle registration and driver conduct regulation) responsibilities to MPI from the Province in 2004; and
- e) changes in 2006 to the allocation of the cost of claims to reflect the no fault nature of the program.

The investment portfolio increased substantially following the adoption of total no fault, and now, despite the market downturn that accompanied the global recession, exceeds \$2 billion, providing an important source of revenue to restrain premium levels as well providing a source of investment capital for Manitoba municipalities, schools, hospitals and the provincial government. MPI's premiums are among the lowest in Canada while benefits (excluding consideration of pain and suffering - no longer being compensable under the no fault design) and coverage are reported to be among the most generous.

Over the past decade, the Board has directed MPI to rebate in excess of \$240 million to MPI's Basic premium ratepayers. During the same period, rates have remained stable. In Canada, only the four public automobile insurers, MPI in Manitoba, ICBC in British Columbia, SGI in Saskatchewan and SAAQ in Quebec, have been able to maintain a degree of rate stability, with MPI in Manitoba leading the way with rebates.

In December 2008, the Board approved MPI's application for an average 1% premium reduction for 2009/10 basic compulsory vehicle insurance

On January 30, 2009, MPI applied for approval of compulsory driver insurance premiums and vehicle premium discounts under a proposed Driver Safety Rating (DSR) program, to replace the current bonus/malus system referenced above. If approved, the proposal would result in driver reward incentives, net of disincentives for poor driving performance, of some \$77 million over the ensuing four years. MPI suggests the revenue loss will be partially offset as a result of lower basic broker commissions, this resulting from a new broker commission agreement with the Insurance Brokers Association of Manitoba. The remainder would be funded from the RSR.

The hearing was scheduled for the month of April 2009, with MPI seeking direction by the end of May 2009.

Major continuing issues are expected to be revisited in the Board's fall hearing of MPI's 2010/11 rate proposal.

Unlike the situations of the Board's other regulated utilities, MPI's rates are in force only for a particular insurance year; this means an annual rate hearing is required. Given that new vehicles join the fleet each year and the experience on existing vehicles is constantly changing, annual hearings continue, though the Board continues to explore ways to reduce duplication and improve regulatory efficiency.

Items raised in the past which will continue to be the focus of this year's hearing include premium refund potential, the continuing impact of the DVL acquisition and related matters, the vehicle immobilizer program and MPI's investment practices. As well, the Board has recommended to MPI and the government that MPI's competitive lines of business, Extension and SRE, be made subject to broad general oversight by the Board. In past Orders, the Board has provided MPI with a number of recommendations related to matters ranging from the use of Extension and SRE profits, the investment of MPI's unpaid Claims Provision and retained earnings and the placement of the DVL functions within MPI's corporate structure. The Board will likely continue to pursue broadening its regulatory mandate in the interest of public disclosure and open and transparent processes in light of the fact that MPI has a virtual monopoly in their other lines of business with 95% of the market.

The Board remains committed to sustainable development and continue to explore the implications of environmental principles being applied in MPI premium setting. MPI tabled a report on a concept called pay-as-you-drive, whereby premiums are tied to the mileage incurred. While MPI indicated that it was still examining the concept, it is expected that a full report and position paper will be tabled and reviewed at the coming year's proceedings.

Following four annual fall Board proceedings where the Board questioned MPI's investment practices and policies, MPI announced with its 2009/10 rate application that it was adopting a different investment strategy. MPI engaged the services of Aon Consulting Services to study its investment practices. They proposed a number of alternatives

for MPI to consider, and MPI has adopted one of those models, albeit on a somewhat modified basis.

The size of MPI's investment portfolio for 2009/10 was, before the market downturn, projected to grow to \$2.3 billion, and to be comprised of roughly 76.1 % in long-term bonds, 20.6 % in equities, 3.1 % in cash and short-term investments, and 0.3 % in venture capital. The portfolio may reach \$3 billion by 2012/13. MPI indicated that while its Board of Directors have adopted the new investment policy with the amended investment mix, there has been no movement toward achieving the new portfolio mix as of March 31, 2009.

vii) Water and Sewer Utilities

The Board has regulatory rate and financial responsibilities for Manitoba's 203 municipal water and sewer utilities, as well as 34 identified water cooperatives. Further, the Board is aware of numerous small and generally private utilities which, in previous years had not been subject to economic regulation. The Board is attempting to develop approaches to each group, to maximize effective regulation on a least-cost regulatory basis, also taking into account the Board's limited human resources.

In respect of cost considerations, of the 46 rate reviews conducted by the Board in 2008/09 only 9 involved oral hearings, with the remainder handled through paper-based processes.

In 2007, the Board declared 34 water cooperatives to be public utilities, to be regulated by the Board. Information requests were sent to each utility, indicating the Board's determination to exercise its regulatory mandate. Recognizing that many of these utilities have very small customer bases and annual revenue requirements, the Board implemented a "complaints based process" to constrain regulatory costs.

Essentially, these utilities will be able to introduce rates changes by simply notifying their customers and providing the Board with financial information in support of the rate changes. To March 31, 2009, all of these newly regulated utilities have co-operated and provided the Board with the information sought. The Board is examining its options with respect to the sole incident of non-compliance.

Included in the list of 34 water utility cooperatives is the Pembina Valley Water Cooperative (PVWC), a large public utility operating a water distribution utility for 18 member municipalities, as well as one or more non-member customers, serving approximately 50,000 consumers. PVWC will be filing a rate study and proposal with the Board in June of 2009; it is expected that this initial application will require a public oral hearing.

The consideration of complex rate applications calling for large increases has led to increasingly well attended public hearings, many outside of Winnipeg. While rates have increased substantially, further rate pressure is evident. Nutrient removal from sewage is a major issue yet to be managed, along with the continuation of a trend to metering consumption and upgrading facilities to meet industrial and residential needs. As well, many utilities have inadequate reserves, which will place increased rate pressure on customers as infrastructure needs are addressed.

In dealing with rate and deficit issues for water and sewer utilities, the Board is increasingly mindful of the

implications of *The Sustainable Development Act*, not only for nutrient removal, but also with respect to conservation of water, and longstanding municipal water rate schedules that allow for decreased rates with higher volumes.

Efforts are also being made to co-operate with other agencies with respect to the approach to be taken to major infrastructure capital upgrade requirements. The Board participated in a Treasury Board led initiative to develop a coordinated government process to deal with this issue. A major objective is to better ensure that priority setting is fair, especially important given Manitoba's large infrastructure deficit. The outcome of the review is pending.

The Board is cognizant of emerging accounting standards requiring utilities to adopt generally accepted accounting practices in 2009-10, which will include a requirement for amortization accounting. Board staff have worked with Intergovernmental Affairs to provide guidance and assistance to municipal utilities for the transition to the new accounting standards. A manual has been developed for use by the municipalities, and the Board has drafted guidelines specifically for utilities, which it will review with municipal associations for understandability and completeness. Further, the Board expects to host workshops for interested and affected parties, including municipal auditors, to assist in the understanding of the transition issues.

The Board was disappointed that at the 2008 Association of Manitoba Municipalities' (AMM) annual meeting, a motion, recommending that the Board's regulatory oversight of water and sewer utilities be removed, was passed. Despite this, and in the spirit of cooperative consultation, the Board continues to collaborate with the AMM to update regulatory practices for water and sewer utilities.

During 2008, the Board released two major orders, one redefining financial reporting requirements and the other establishing standard practices for utility disconnection. Both releases were preceded by a consultation with both the AMM and the Manitoba Municipal Administrators' Association, who are now involved in reviewing the changing accounting requirements with Board staff.

viii) Cemeteries and Related Matters

The Board and Consumer and Corporate Affairs (CCA) (a Division of the Department of Finance) had been considering a joint review of all legislation pertaining to cemeteries, crematoriums, funeral homes, perpetual care accounts and other bereavement related matters. However, CCA no longer has interest in a joint exercise, as CCA, in conjunction with the Board of Administration of Funeral Directors and Embalmers (BA), have recommended revisions to legislation and concluded that, with the issues within their mandate addressed, a joint review with the Board was no longer necessary.

The Board had intended to propose a consolidation of funeral and cemetery related legislation in order to diffuse some of the confusion evident in the Board's dealing with the public. In the Board view, this was desirable public policy. Despite the changed perspectives of CCA and BA, the Board still intends to proceed with the development of legislative amendment proposals respecting the legislation it is mandated to administer.

Insofar as the legislative construct affecting the Board, much of the governing legislation was enacted many decades

ago, and circumstances have changed. The regulation of the field has not kept pace with developments, and is not comprehensive. There are significant areas of operation currently without regulatory oversight. In particular, the Board has noted problems with unregulated cemeteries (non-privately owned, municipal and faith-based facilities), with the level of balances in perpetual care trust accounts, and the magnitude of funds held in trust. Perpetual care and trust funds are inadequate for the purpose intended.

The trend in the funeral and cemetery industry now favours cremation over burial, with a reported 60% utilization of cremation. Ongoing inflation and reduced investment income expectations have over a lengthy period of time resulted in perpetual care accounts producing annual investment income inadequate to provide the contracted-for services. The Board has noted that private cemeteries are being generally maintained through subsidies provided by the owners' other lines of business as marketing devices. Aging infrastructure, declining populations in some locations, declining church membership for some denominations, and ongoing migration to larger population centres have resulted in challenges with respect to currently unregulated faith-based and municipal cemeteries.

While current legislation requires regulated cemeteries and crematoriums to seek approval from the Board for price changes, the Board lacks the jurisdiction and resources to assure itself of the merits of some changes. Price control is largely left to the marketplace; at "time of need", the degree of market research carried out by grieving families is questionable.

The Board introduced filing fees in 2007, primarily to recover its processing costs, but also to encourage more rigour in the fee determination process of private cemeteries and crematoriums. In addition, the Board has proposed revised licensing fees for the industry to more closely relate to its actual cost of regulation.

The Board has noted other problems as well. The proceeds from the sale of cemetery services sold on a pre-need basis are neither required to be nor are they placed into trust accounts. The services and goods purchased are provided upon the need arising (for example, the provision of a plot and marker after the death of the person). However, for-profit private cemeteries are expected to set aside a portion of the funds received for a lot or niche in a perpetual care trust fund. Transactions within the trust accounts are audited by the Board on a periodic basis.

Generally speaking, the Board attempts to meet its mandate with respect to the bereavement industry through paper reviews and consultation, though hearings involving complainants have occurred. The Board also hears appeals related to the actions of funeral homes, cemeteries and crematoriums. These appeals relate to the sale of pre-arranged funerals and the cost of a cemetery plot.

4. HIGHWAY TRAFFIC BOARD

As previously indicated, the Board hears appeals of decisions of the Highway Traffic Board pursuant to *The Highways Protection Act*. Appeals generally deal with access to provincial highways by way of driveways and the placement of signs, particularly electronic signage, adjacent to Manitoba highways. Appellants have included local landowners, businesses and the Department of Manitoba Infrastructure and Transportation (MIT).

Generally, in determining these matters, the Board visits the site and holds a public hearing in the area. Board decisions follow an assessment of the facts of the situation and the hearing of positions advanced by the parties to the matter. The Board's decision criteria include fairness and safety.

During the 2008/09 year, the Board received five appeals and a request to review and vary a previous board decision. A total of six decisions were handed down, including an appeal carried over from the previous year. One appeal is still pending resolution as of March 31, 2009.

5. THE EMERGENCY 911 PUBLIC SAFETY ANSWERING POINT ACT

During 2005/06, *The Emergency 911 Safety Answering Point Act* was enacted; it assigns the appeals process to the Board. Applicants for 911 service provision refused licensing are now able to appeal denial to the Board. To date, no appeals have been filed.

6. CITY OF WINNIPEG CHARTER ACT (Passenger transport)

The City of Winnipeg Charter Act provides that, where the City signs an agreement providing for an operator to transport customers for a fixed fee within the City of Winnipeg, the agreement must be approved by the Board. The Board must also approve the operator, who or which then becomes subject to ongoing Board oversight.

Historically, the Board has had to deal with relatively few of these agreements, which have been limited to transport services for children and the elderly.

In 2006, the City entered into an agreement with Avion Services Corporation (Avion), a wholly-owned subsidiary of the Winnipeg Airports Authority (WAA), to provide a shuttle service from the Winnipeg Airport. Avion filed its application with the Board in February 2007. In providing its approval, City Council strongly recommended that the Board hold a public hearing given significant public interest.

Avion originally filed an application in 2006, but in early 2007, withdrew it. It has now renewed that application, having re-filed in May 2008. Unicity Taxi and Duffy's Taxi have joined to intervene in the process. Their counsel filed a motion challenging the Board's jurisdiction on the basis that the agreement between the City and Avion did not constitute a proper agreement. In denying the motion by way of a February 2009 order, the Board found that an agreement did exist; a hearing is scheduled for May 2009.

7. THE CONSUMERS' PROTECTION ACT

The provincial government introduced legislation in the spring of 2006, assigning to the Board the authority to set the maximum rates chargeable for payday loans and for cashing government cheques. The legislation was passed in

June 2006 and the Board held hearings in 2007 and 2008, before setting the maximum fees which legislation required it to establish.

Subsequent to March 31, 2009, the government introduced legislation that would have the Board act as an advisor to government, with government to set the maximum fees for the industry.

Maximum Fees For Cashing Government Cheques

Hearings on cheque cashing were held in Thompson, Brandon and Winnipeg. The Consumers' Association of Canada (Manitoba) Inc. and the Manitoba Society of Seniors (CAC/ MSOS) intervened in the Winnipeg hearings, as did Money Mart and the Northwest Company, two major players in cheque cashing. The hearing concluded in April 2007 and the Board issued its decision in May 2007; the decision placed caps on fees and made a number of recommendations to government intended to provide increased consumer protection.

The rates are subject to review every three years. The next mandated review is therefore expected for April 2010.

Maximum Fees For Payday Loans

In April 2008, the Board released Order 39/08 setting the maximum rates for payday loans. The Order followed a public process of eight months, including 25 Board hearing days during which innumerable exhibits were filed, extensive cross-examination of witnesses took place and arguments presented. The payday loan industry was represented, with two major firms and others present and active throughout the proceeding.

The maximums set by the Board were lower than some extant in the industry. In its Order, the Board specifically noted that under the new maximums it was likely that only efficient payday firms could be operated economically. The maximums set by the Board are similar to those of the average American state, and higher than some. In Canada, Quebec, through a maximum annual interest provision of 35%, effectively bars payday lenders, as do a number of American states.

One of the industry participants, the Canadian Payday Loan Association (CPLA), filed a request for the Board to review and vary its order on three matters: The Board agreed in part with CPLA and varied its Order.

Another industry participant, Cash Store Financial, sought leave directly from the Court of Appeal to appeal the Board's order, and its application for leave to appeal was subsequently granted by the hearing judge.

That leave has been rendered moot by government action in May 2009, with the tabling of legislation to embed maximum payday loan rates in regulation, and employing the Board as an advisor.

8. BOARD ADMINISTRATION

Board's Rules of Practice and Procedure

The Board operates pursuant to legislation and its Rules of Practice and Procedure (Rules). The Rules provide assurance and guidance to regulated utilities, registered interveners, Members of the Legislative Assembly, government and other interested parties with respect to the manner by which the Board manages its public and ex parte processes. The Rules had been operative in draft form for over a decade. The Board formally adopted its revised Rules in June 2006, following a process that involved circulating the draft Rules to interested parties. Subsequent to adoption, the Board published the Rules in the Manitoba Gazette and posted them on the Board's website.

Among other things, the Rules set out the Board's criteria for awarding costs to interveners. The Board has full discretion with respect to the award of costs, and exercises that authority to restrain regulatory costs while enabling public participation in Board hearing processes.

Staffing and staff development

The Board was pleased to receive approval from Government to assign a full-time person to "shadow" its two associate secretaries for a period of two years. With all four senior Board staff eligible for retirement, succession planning is important. Ms. Kristine Schwanke was selected to understudy Mr. Gerry Barron and Mr. Hollis Singh until end of December 2009.

Ms. Schwanke's previous Office Manager position has been filled by Ms. Brenda Bresch; with Ms. Bresch's previous assignment now filled by Ms. Robyn Erlenmayer. The Board has made application for a similar arrangement to understudy the Executive Director in view of his approaching retirement.

Ms. Schwanke participated in and successfully completed the inaugural offering of the Certificate in Public Sector Management course. This certificate program was offered through the University of Manitoba in cooperation with the Civil Service Commission, and consisted of five courses covering a broad spectrum of public sector management matters.

The Chairman and two senior staff each attended one of the three seminars on carbon pricing and carbon trading offered by CAMPUT, one in Calgary, one in Ottawa and one in Toronto. This program offered regulators and industry participants an insight into the emerging issues surrounding carbon trading, primary in North America. This is germane to the Board's regulation of Hydro and MPI, because of the Board's commitment to *The Sustainable Development Act*.

Board staff also attended the annual meeting of the North American Cemetery Regulators Association. This year's program focused on trusting requirements for pre-arranged funeral and cemetery services.

Operational improvements

Beginning in 2004, the Board embarked on a process intended to increase the effectiveness of its regulatory effort, restrain regulatory costs and allow it to meet increased workloads without substantial increases in staff and advisor resources. Since then, the overall cost of regulation has been reduced while the timeliness of Order issuance improved. As well, the Board's directions to water and sewer utilities have been enhanced by the provision of background and detailed rationale for all decisions, and the Board now regularly holds public hearings of municipal water and sewer rate applications outside Winnipeg.

Regulatory reform requires flexibility, and based on legal advice, the Board sought and obtained agreement from government to remove the requirement that the appointment of its advisors be by means of Order-in-Council authority. The Board now makes its own advisor appointments, under its own authority as provided in *The Public Utilities Board Act*.

The Board continues to explore ways and means to improve regulatory cost effectiveness, public awareness and consumer involvement.

9. OUTLOOK FOR 2009-10 AND RECOMMENDATIONS

Electrical reliability

Following the 2003 eastern blackout, the American and Canadian governments acted to better assure electric reliability, particularly with respect to interconnected systems. These systems cross the Canada/United States border, and the American regulator, the Federal Energy Regulatory Commission (FERC), has been and is in the process of being provided authority to establish and manage protocols governing electric reliability.

To protect Canadian and Manitoba sovereignty, while allowing FERC's oversight to produce increased reliability, legislation is being introduced in the spring of 2009 to appoint the Board as Manitoba's electric reliability regulator. With the passage of the legislation, the Board would work co-operatively with Manitoba Hydro, OMS, MISO and FERC to best ensure safe and reliable electricity interchanges with American utilities.

Pending passage of that legislation, an order-in-council has been passed which appoints the Board as the adjudicator for any alleged violation of electrical reliability standards, such authority being granted under section 107 of the Board's Act.

Board Cost recovery and Fee structure

The Board will continue to explore different models to achieve cost recovery.

Regulatory Scope

The City of Winnipeg has been exploring the potential for the City's water and sewer utility being placed under the

Board's oversight. The Board had previously recommended this to Government, and will now await the results of deliberations by the City and the Province. In the interim, Board staff are meeting with representatives from the City to help define and clarify the regulatory environment that such a change would involve.

With the recent extension of the Board's oversight to include cooperative and privately owned water and sewer utilities, the Board looks forward to an increased involvement in water utility regulation for the benefit of ratepayers and society.

Recommendations to Government

The Board relies on public policy, as established through legislation, regulations and stated government policy. In cases where public policy has not been established by the legislature or the government of-the-day, the Board may set policy. In such cases, public policy set by the Board is subject to amendment, which may come as a result of legislation, regulation or stated government policy. The Board's jurisdiction is finite and defined, and there are areas where the Board cannot establish policy even in the absence of legislation, regulation or stated government policy. In some cases, while there may be neither extant legislation nor regulation nor stated government policy, and the matter at issue is within the Board's jurisdiction, the Board may choose not to set policy. In some such cases, the Board may choose to bring the matter to the attention of government by way of comment and/or suggestion within a Board Order.

The Board has brought the following significant matters to the attention of government since 2004:

- the aforementioned exemption of the City of Winnipeg from the Board's jurisdiction with respect to water and sewer utilities:

the Board has suggested, recently supported by the Mayor of the City of Winnipeg, that it may be in the public interest to extend the Board's jurisdiction to include the water and sewer utility of the City, the only municipal body exempt at this time;

- the current exemption of the Manitoba Water Services Board (MWSB) from the Board's rate-setting jurisdiction with respect to water and sewer utility rates; MWSB sets water and sewer rates for utility assets owned by the MWSB, and these rates affect municipalities otherwise subject to the water and sewer rate-setting jurisdiction of the Board:

the Board is of the view that all water and sewer utilities in the Province should be subject to its jurisdiction;

- MPI's Extension and Special Risk Extension (SRE) divisions are outside of the Board's jurisdiction, unlike MPI's Basic Autopac operations:

the Board has opined that the extension of the Board's oversight over MPI to include all of its operations would be in the public interest;

- MPI's long-distance trucking industry have been subsidized by basic ratepayers through the non-inclusion of accident benefit costs in the development of inter-provincial truck premiums, a decision made by the

government:

the Board has recommended that either MPI be compensated for the annual subsidy by government or MPI transfer funds from SRE annual profits to the Basic program to meet the costs;

- MH's capital expenditures are not subject to the approval of the Board, unlike the situation with respect to Centra Gas; the Board has opined that as MH's capital expenditures have and are expected to be valued in the billions of dollars and as the amortization and financing costs associated with capital expenditures are a large component of MH's annual revenue requirement:

the Board's jurisdiction would best extend to the approval of MH's capital expenditures ahead of actual construction or purchase;

- MH's debt:equity ratio and capital structure has been of significance to the Board in approving and establishing MH's customer class rates for electricity service:

the Board has suggested to the government that no further dividends be declared payable to the Province by MH until such time as MH's debt:equity ratio has reached the financial target accepted by all parties participating in the Board's MH proceedings.

None of these recommendations may be implemented by Board direction alone, being within the jurisdiction of government.

Along with providing regulated utilities and other operations with directions pursuant to the Board's jurisdiction, the Board also provides recommendations and suggestions. The Board often takes this approach to provide the utilities an opportunity to consider matters ahead of detailed examination at a public hearing proceeding. Recommendations provided to utilities are published within Board Orders, and may be read by accessing Board Orders on the Board's website.

10. CONCLUSION AND ACKNOWLEDGEMENTS

The Board's website may be found at www.pub.gov.mb.ca. Through the website, the public can monitor the Board's activities and obtain decisions of the Board and Notices of significant issues before the Board.

The Board's jurisdiction is not contained only within *The Public Utilities Board Act*; provisions of *The Crown Corporations and Public Review and Accountability Act* and *The Manitoba Hydro Act* also relate to the Board. As well, there are other statutes, such as the City of Winnipeg Charter that provide the Board with mandates. At some point, it may be worthwhile to consolidate the Board's mandate within one Act, to assist with the public's understanding of the Board's mandate.

With respect to that mandate, the utilities that the Board has oversight over are also governed or overseen, in whole or in part, by others. These include the Legislature, Ministers Responsible, the boards of directors for the agencies,

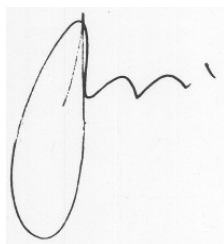
Crown Corporations Council, Clean Environment Commission, the Auditor General, the Manitoba Water Services Board, Conservation Manitoba, etc. While the Board is cognizant of the significant roles played by the other parties, this does not reduce the statutory mandates provided to the Public Utilities Board.

The Board's calendar for 2008/09 was diverse, challenging and rewarding. The appeal of its payday loan order, the restructuring of the natural gas market and the engagement with private water utilities and cooperatives have all been demanding, yet interesting and fulfilling.

I want to thank the other Members of the Board, Board Advisors, and Board Staff for their dedication to the work of The Public Utilities Board and its public interest mandate.

We are ever mindful of the public's reliance on the Board for thorough and careful thought related to the matters that come before us; a fair hearing remains critically important. The Board has a long history of fulfilling this objective, and it remains the goal of the Board into the future.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Graham F.J. Lane', is written over a light gray rectangular background.

Graham F.J. Lane, CA

June 15, 2009

STATUTORY RESPONSIBILITIES

The Public Utilities Board (the Board) is an independent quasi-judicial administrative tribunal operating pursuant to *The Public Utilities Board Act* (“the Act”). The Act was enacted in 1959, though the Board has regulated similar public services under other legislation since 1912.

During the fiscal year under review, the Board was responsible for the regulation of public utilities as defined under the Act; namely: Centra Gas Manitoba Inc. (a wholly owned subsidiary of Manitoba Hydro), Stittco Utilities Man Ltd., Swan Valley Gas Corporation, and municipal water and sewer utilities in the Province, with the exception of the City of Winnipeg’s utility and those operated by the Manitoba Water Services Board.

Pursuant to *The Crown Corporations and Public Review and Accountability Act*, the Board regulates the premiums charged by Manitoba Public Insurance for compulsory auto insurance, related premiums charged on drivers’ licences and other fees, as well as Manitoba Hydro’s electricity rates. While the Board reviews the financial performance and forecasts of Manitoba Hydro, it does not have authority over the utility’s capital expenditure decisions.

Other enactments assigning regulatory or adjudicative responsibilities to the Board are:

The Greater Winnipeg Gas Distribution Act

The Gas Allocation Act

The Prearranged Funeral Services Act

The Cemeteries Act

The City of Winnipeg Act (passenger carrier agreements)

The Manitoba Water Services Board Act (Appeals)

The Highways Protection Act (Appeals)

The Emergency 911 Public Safety Answering Point Act (Appeals)

The Consumers’ Protection Act

The Board is also responsible for the administration of *The Gas Pipe Line Act*, and, pursuant to that legislation, authorizes construction and operation of all gas pipelines in Manitoba. The Board’s primary concern in exercising these responsibilities is public safety.

The utilities regulated by the Board have annual revenues approximating \$4 billion, and serve and affect virtually every Manitoba resident and business.

BOARD MEMBERS AND STAFF

Members of the Board:

Graham Lane CA, Chairman
Robert Mayer, Q.C., Vice-Chair
Dr. Leonard Evans, LL.D.
Monica Girouard, C.G.A.
Eric Jorgensen
Dr. Kathi Avery Kinew
Susan Proven, P.H.Ec.
Alain Molgat, B. Comm., C.M.A. (resigned, April 2009)

Staff Members: Officers:

Gerald A. Gaudreau, C.M.A., Executive Director and Secretary
Hollis Singh, BA (Econ), Associate Secretary
Gerald O. Barron, F.C.G.A, Associate Secretary
Kristine Schwanke, Assistant Associate Secretary

Administrative Staff:

Debra Feuer, Secretary to the Chairman
Brenda Bresch, Office Manager
Robyn Erlenmayer, Administrative Secretary

The Chairman is a full-time appointment of the Lieutenant Governor in Council; the other Board members are part-time appointments. Public hearings of the Board are advertised, and applications made by sewer and water utilities where public hearings are not heard are made known to those affected, and Board decisions are communicated to the public. Decisions arising out of ex parte hearings are shared with the affected utilities and interveners, and posted on the Board's website. All Board decisions are available to the public, and are posted on the Board's website. Board members comprise the membership of panels that hear and subsequently decide upon the rate applications and other matters brought before the Board. Board members, staff and advisors are governed by conflict of interest guidelines, to ensure those appearing before the Board receive unbiased and independent judgements. Board decisions may be appealed to the courts, and applications may be made to the Board requesting that the Board reconsider a decision. The Board has adopted Rules of Practice and Procedure, which are made known and are available to consumers, utilities and other interested parties.

The Board relies upon expert advisors from the fields of accounting, actuarial science, engineering and law; the roster of advisors includes:

| | |
|-------------------|--|
| Accounting | Cathcart Advisors Inc. |
| Actuarial Science | Eckler Partners LLP |
| Engineering | Energy Consultants International Ltd. and L.A.B. Consulting Ltd. |
| Law | Fillmore Riley LLP and Pitblado LLP |

SUMMARY OF BOARD ACTIVITIES

ORDERS ISSUED

| | <u>2008/09</u> | | <u>2007/08</u> | |
|---|----------------|------------|----------------|------------|
| Regulated Industry Orders: | | | | |
| Water and Sewer Utilities | | | | |
| Applications for amended rates | 46 | | 37 | |
| Applications to address deficits | 13 | | 43 | |
| General matters, late payment fees | <u>9</u> | 68 | <u>1</u> | 81 |
| Manitoba Hydro | | | | |
| Electricity operations | 63 | | 56 | |
| Centra Gas Manitoba | <u>15</u> | 78 | <u>16</u> | 72 |
| Natural Gas and Propane Utilities and Pipelines | | | | |
| Swan Valley Gas (consumer rates) | | 1 | | 2 |
| Stittco Utilities Man Ltd. | | 2 | | 6 |
| TransCanada Calibrations (safety audit) | | | | - |
| Other Natural Gas | | | | |
| Service Disconnection | | - | | - |
| General matters, Code of Conduct (brokers) | | - | | 1 |
| Manitoba Public Insurance Corporation | | | | |
| Highways Protection Act | | 7 | | 5 |
| Fees for cashing Government Cheques | | 6 | | 6 |
| Maximum Charges for Payday Loans | | | | 2 |
| The Cemeteries Act | | 8 | | 1 |
| Avion | | <u>1</u> | | <u>3</u> |
| Total number of Orders issued | | <u>172</u> | | <u>179</u> |

Note: Copies of the decisions of The Public Utilities Board of Manitoba are available from the Board's office upon request, and are posted on the Board's website (www.pub.gov.mb.ca). The Orders indicated above include Orders related to applications for costs by interveners to the Board's process.

SUMMARY OF BOARD ACTIVITIES

LICENCES ISSUED

| | 2008/09 | 2007/08 | | |
|---|----------------|----------------|-------------------|-------------------|
| Direct Purchase of Natural Gas | | | | |
| Brokers | 11 | | | 12 |
| The Cemeteries Act | | | | |
| Cemeteries, renewal | 11 | 11 | | |
| Initial licensing | | - | | |
| Columbariums | 19 | 18 | | |
| Mausoleums | 5 | 5 | | |
| Crematories | 18 | 17 | | |
| Sales- Owners | 11 | 11 | | |
| Agents | 86 | 109 | | |
| Agent Transfer | <u>2</u> | <u>1</u> | 152 | 172 |
| The Prearranged Funeral Services Act | | | | |
| Renewal | 25 | 25 | | |
| Initial licensing | | - | <u>25</u> | <u>25</u> |
| Total licenses issued | | | <u>188</u> | <u>209</u> |

In addition, the Board receives notice of price changes from cemeteries, crematoriums and with respect to pre-arranged funerals.

FINANCIAL INFORMATION
Fiscal Year Ended March 31, 2009

| | (\$000'S) | | | |
|---|----------------|----------------|----------------|----------------|
| | <u>2008/09</u> | | <u>2007/08</u> | |
| Levies, Direct and Indirect (\$000) | | | | |
| General Board Levies on Manitoba Hydro with respect to: | | | | |
| a) electricity; | 326 | | \$315 | |
| b) gas operations | <u>641</u> | 967 | <u>671</u> | 986 |
| Costs of Board Advisors, paid by Manitoba Hydro: | | | | |
| a) electricity; | 963 | | 749 | |
| b) gas operations | <u>284</u> | 1,247 | <u>693</u> | 1,452 |
| Costs of Interveners, paid by Manitoba Hydro: | | | | |
| a) electricity; | 325 | | 0 | |
| b) gas operations | <u>25</u> | <u>350</u> | <u>461</u> | <u>461</u> |
| Aggregate Board levies on Manitoba Hydro consolidated | | 2564 | | 2,899 |
| Levies on Manitoba Public Insurance Corporation (MPI), with respect to: | | | | |
| General Board Levies on MPI | 312 | | 312 | |
| Costs of Board Advisors, paid by MPI | 362 | | 232 | |
| Costs of Interveners, paid by MPI | <u>100</u> | | <u>49</u> | |
| Aggregate Board levies on MPI | | 684 | | 593 |
| Levies on: | | | | |
| Avion | 12 | | | |
| Stittco Utilities Man Ltd. | 5 | | 39 | |
| Swan Valley Gas Corporation | 4 | | 3 | |
| Water & Sewer Utilities | 44 | | 28 | |
| Fees related to cemetery and funeral related activities | 30 | | 24 | |
| Natural Gas Brokers | 7 | | 8 | |
| Government (cheque cashing and payday loans)* | <u>120</u> | <u>222</u> | <u>489</u> | <u>591</u> |
| | | \$3,470 | | <u>\$4,083</u> |
| Board Expenditures, Direct and Indirect (\$000) | | | | |
| Direct costs of the Board | | | | |
| Salaries & per diems | \$740 | | 685 | |
| Rate regulation and safety related costs | 270 | | 305 | |
| Cheque cashing & payday loan hearings* | 83 | | 453 | |
| General overheads (rent, technology, utilities, etc) | <u>233</u> | \$1,326 | <u>273</u> | \$1,716 |
| Board Advisor costs billed to regulated entities | | 1,609 | | 1,696 |
| Intervener costs billed to regulated entities | | <u>450</u> | | <u>519</u> |
| Aggregate costs related to Board operations | | <u>\$3,385</u> | | <u>\$3,931</u> |

* Expenses include professional advisory services and intervener cost awards.

FINANCIAL INFORMATION (cont'd)
Fiscal Year Ended March 31, 2009

Revenue and expenses related to Board operations and Board decisions are recorded in the accounts of the Consolidated Fund of the Province of Manitoba and the utilities regulated by the Board. The Board incurs costs to its own account, and recovers these costs through statutory levies against Manitoba Hydro, Centra Gas, Manitoba Public Insurance and Stittco Utilities Man Ltd. and fees charged to other regulated utilities. The Board directs the utilities to pay the costs of Board advisors and, upon a Board Order awarding costs, all or a portion of the costs incurred by interveners to its hearings.

Costs and revenues reported do not include costs incurred by the regulated utilities for their own direct costs associated with Board regulatory processes. Such costs include salaries and benefits, notice expenditures, consultants and overheads.

The decrease in costs, year over year, is primarily attributable to the fact that Payday loan hearings, and the related costs, are held only every three years, with none being held in 2008/09.