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January 24, 2024

The Public Utilities Board of Manitoba  
400 – 330 Portage Avenue  
Winnipeg, MB R3C 0C4

**Attention: Dr. Darren Christle, Executive Director and Board Secretary**

**Re: Manitoba Public Insurance Application to Review and Vary Public Utilities Board Order 145/23**

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CAC Manitoba provides the following comments in response to MPI's application to review and vary Order 145/23 filed January 17, 2024.

CAC Manitoba acknowledges that some aspects of the relief sought by MPI may be appropriate in the circumstances. Others, however, seek to address minor issues with overbroad remedies which risk eroding the Board's Directives and undermining its effective oversight of the corporation, including between annual rate hearings. MPI also supports aspects of its application with a highly selective reading of the evidentiary record from the 2024 GRA and past PUB Orders, which is concerning to CAC Manitoba and not consistent with the corporation's apparent commitment to transparency.

CAC Manitoba thanks the Board for its consideration of these comments.



## **The legal test for a review and vary application**

Under s. 44(3) of the *Public Utilities Board Act*, the Board may review, rescind or vary its orders.<sup>1</sup>

Rule 36 (4) of the Public Utilities Board Rules of Practice and Procedure indicates that upon receipt of an application seeking a review of a Board Order, the Board:

...shall determine, with or without a hearing...the preliminary question of whether the matter should be reviewed and whether there is reason to believe the order or decision should be rescinded, changed, altered or varied.

Rule 36 (5) a) of the Rules of Practice and Procedure confirms that after its determination of the preliminary question above, the Board may:

- a) dismiss the application for review if,
  - i) in the case where the applicant has alleged an error of law or jurisdiction or an error in fact, the Board is of the opinion that the applicant has not raised a substantial doubt as to the correctness of the Board's order or decision; or
  - ii) in the case where the applicant has alleged new facts not available at the time of the Board's Hearing that resulted in the order or decision sought to be reviewed or a change of circumstances, the Board is of the opinion that the applicant has not raised a reasonable possibility that the new facts or the change in circumstances as the case may be, could lead the Board to materially vary or rescind the Board's order or decision; or
- b) grant the application; or
- c) order a hearing or proceeding be held.

## **Directive 10.10(b) – Revised Scope of Project Nova**

MPI requests that the Board remove all references to scope from the “detailed strategy and plan” for the completion of Project Nova to be filed in the 2025 GRA. CAC Manitoba strongly cautions the Board against granting the relief sought by MPI. MPI has not met the preliminary requirement of establishing that this directive should be varied.

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<sup>1</sup> *Public Utilities Board Act*, CCSM c P280, s 44(3).



MPI supports its request by continuing to assert that the scope of Project Nova has not changed since its inception as the Legacy Systems Modernization project. MPI characterizes the PUB as having “materially erred” in suggesting otherwise.

However, MPI has ignored the fact that this issue was canvassed in its last Review and Vary application, leading to an unequivocal finding in Order 35/23 that the scope of Project Nova has changed.<sup>2</sup> While Order 35/23 granted the relief sought by MPI, the Board did not accept, as MPI suggests, that the Project’s scope had not changed.

MPI maintains that the project can be completed without further changes to scope or budget and urges the PUB to accept this characterization of its evidence.<sup>3</sup> However, the PUB has already expressed that it “does not have confidence” in the current budget and worries that total costs “may far exceed” current estimates.<sup>4</sup> The Board has found that past changes in scope were correlated with cost increases,<sup>5</sup> and there is ample evidence before the Board of the imprudence of failing to reconsider the project scope in response to risks like increased budget and timelines.<sup>6</sup> MPI’s own witnesses were reluctant to express confidence in the 2022 Rebaselined budget,<sup>7</sup> which also raises questions about the possibility of further adjustments to scope.

MPI has not provided new evidence or information not previously available to the Board in support of its request. MPI bases its request for relief solely on its disagreement with Board findings that the scope of the Project has changed<sup>8</sup> and is at risk of changing further.<sup>9</sup> This does not satisfy the preliminary question set out in the *Rules*.

However, the PUB may accept that the Directive’s inconsistency with MPI’s position that a revised scope will not be necessary constitutes a minor error in fact. Should the Board be inclined to do so, CAC Manitoba strongly cautions the Board against removing all references to scope in the 2025 GRA reporting requirements.

A far preferable approach is that which was taken by the Board in Order 35/23 to require a description of the “current” scope. This would preserve the Board’s ability to conduct effective

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<sup>2</sup> PUB Order 35/23 at p 27-29.

<sup>3</sup> MPI Application to Review & Vary Order 145/23 (17 January 2024) at p 5.

<sup>4</sup> PUB Order 145/23 at 12.

<sup>5</sup> PUB Order 35/23 at p 29.

<sup>6</sup> See, for example, the evidence of Mr. Scott Greenlay supporting his recommendation to “pause, de-risk & re-scope”.

<sup>7</sup> October 10, 2023 Transcript at 197-198 (Gabor-Kacher). See also October 17, 2023 Transcript at 1350-1353 (Dilay-Dessler).

<sup>8</sup> PUB Order 35/23 at p 27-29.

<sup>9</sup> PUB Order 145/23 at p 120-121.



oversight of the Project's scope whether or not the scope is revised further by MPI. To do so, the Board could replace "revised" with "current" in Directive 10.10(b).

### **Directive 10.10(c) – Firm and Final Budget Estimate**

MPI requests that the Board alter its requirement of a "firm and final" budget estimate in the 2025 GRA due to persistent uncertainty in multiple ongoing components of Project Nova.

CAC Manitoba acknowledges and remains concerned about this and consequential impacts on budget. CAC Manitoba accepts that the Board's requirement of a "firm and final" budget by the filing of the 2025 GRA may not be feasible given the need to include final Release 1 and 2 costs as well as Release 3 Discovery as inputs to that budget. CAC Manitoba recognizes that in light of the evidence, the timeline implied by this directive may constitute an error in fact such that the directive should be varied.

CAC Manitoba shares the Board's interest in a "firm and final" budget but finds the relief sought by MPI regarding Directive 10.10(c) to be appropriate in the circumstances.

### **Directive 10.10(d) – Role of "Funding Envelopes"**

MPI takes issue with the Board's requirement of reporting on "funding envelopes", suggesting instead that the term "budget allocations" more closely reflects its practice.

CAC Manitoba acknowledges that similar relief was sought in the process leading to Order 35/23. At that time, the Board found it appropriate to amend its directive, as MPI has suggested here, to require "budget allocations for the project, including description and size of each."

CAC Manitoba does not view MPI's proposal as altering the contents of the reporting requirement and does not take issue with the relief sought. Preservation of this reporting requirement, regardless of its wording, is important considering the Board's "[concern] that MPI will overspend on IT initiatives until its funding envelope maturity increases."<sup>10</sup>

### **Directive 10.11(b) – Interim Governance Report**

MPI requests the removal of an "interim governance report" from the submissions required for the upcoming IT Summit on the basis that it did not contemplate such a report in its governance vendor's retainer and cannot guarantee that it will be available.

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<sup>10</sup> PUB Order 145/23 at p 120.



CAC Manitoba accepts that this reality constitutes new information as presented in the affidavit of Mr. Meira. However, varying this Directive as proposed by MPI would be premature at present recognizing that “MPI is currently in the process of consulting with MNP” on its ability to produce an interim governance report as required by the Board.

MPI’s ongoing discussions may confirm that an interim governance report can be provided, and CAC Manitoba recommends that the Board continue to require MPI to pursue this. Failing to include this deliverable in the vendor’s original scope of work should not preclude MPI from securing MNP’s agreement to produce such a report and formalizing the agreement through a scope of work amendment.

In the alternative, should only MNP’s monthly reports be made available, the Board could consider requiring MPI to produce a representative of MNP at the IT Summit. MNP’s participation and availability to answer questions would mitigate risks of the monthly reports not including the information sought by the Board in issuing this Directive.

CAC Manitoba also cautions the Board against including the qualifier of “consent” proposed by MPI. The need for third-party consent for disclosure has arisen multiple times in recent GRAs and risks impairing the regulatory process if relevant documents are not provided due to uncooperative vendors. Simply requiring the submission of the requested reports would send a strong message that notwithstanding potentially valid claims of commercial sensitivity (for which adequate protective processes already exist), MPI’s regulator will expect to see third parties’ publications that are relevant to its statutory mandate. Recognizing that third parties may or may not be bound by Board Orders, such a directive would place an onus on MPI to establish appropriate expectations in its relationships with external service providers.

### **Directive 10.12 – Funding Envelopes**

MPI raises the same issue here as with Directive 10.10(d) relating to the terminology used to describe the approval of budget allocation between project components. Here, however, the issue relates to the factors determining the timing of a meeting to be held between MPI and the PUB. However, and recognizing the relative reasonableness of MPI’s alternate requested relief, its primary proposal is to cancel the entire meeting with Board Advisors. MPI proposes instead that the IT Summit ordered in Directive 10.11 absorb the contents of the proposed meeting referenced in the current Directive 10.12.

With respect to the use of “funding envelopes”, CAC Manitoba recommends, as above, that replacing “funding envelopes” with “budget allocation” is an appropriate amendment to this Directive in these circumstances.



MPI also clarifies that in addition to reporting to its Board of Directors, it has related reporting obligations to the Government of Manitoba which it explains may affect the timing of a meeting with the PUB.

CAC Manitoba cannot speak to the Board's intentions in requiring MPI to attend a meeting separate from the IT summit and so cannot endorse MPI's proposal to depart from the Board's intent in Directive 10.12. CAC Manitoba acknowledges that the Board may accept MPI's recommendation if it views expanding the scope of the IT Summit as proposed an efficient use of MPI and PUB resources. However, the alternative relief proposed by MPI may be more appropriate in the circumstances.

Finally, for clarification, CAC Manitoba notes its assumption of a typographical error on page 11 of MPI's application, and that MPI intended to propose that Directive 10.12 be rescinded and Directive 10.11 be varied, rather than recommending to both rescind and vary Directive 10.12.

### **Directive 10.13 – Assignment of Contingency Percentages**

MPI has not satisfied the preliminary question that this Directive should be varied. Further, MPI has not provided new information or evidence or identified errors in fact that would support its request for relief.

While MPI may not prefer the Board's chosen wording, CAC Manitoba does not view a "process" for assigning contingency values in budgeting processes as materially different than a "strategy" for same. CAC Manitoba assumes that provision of documentation confirming this aspect of MPI's budgeting practice, whether involving a standard 15% or more complex calculation, would satisfy the Directive as originally ordered.

### **“Other Adjustments”**

CAC Manitoba takes no issue with the corrections requested in section RV.6 (page 13) of MPI's application and recognizes that all constitute errors which should be corrected.

We note, however, that these errors can be resolved independently by the Board under the process identified at Rule 36(9) and need not be addressed through a Review & Vary Application.

### **Conclusion**

CAC Manitoba thanks the Board for its consideration of these comments. CAC Manitoba's comments are made with a view to preserve the Board's effective oversight of MPI through



adequate reporting by the corporation, recognizing the significant risks these issues pose to the corporation, which are passed directly onto its ratepayers.

Any questions regarding the above comments may be directed to both Katrine Dilay and Chris Klassen.

Thank you,



Katrine Dilay  
Attorney  
Public Interest Law Centre



Chris Klassen\*  
Attorney  
Public Interest Law Centre  
\*Chris is an independent lawyer retained by the  
Public Interest Law Centre in this matter.

cc:  
Manitoba Public Insurance  
Public Utilities Board legal counsel  
2024 GRA Registered Interveners

