

Order No. 136/19

**RURAL MUNICIPALITY OF WEST ST. PAUL
WEST ST. PAUL WASTEWATER UTILITY
REQUEST FOR INTERIM *EX PARTE* AND PASS THROUGH
WASTEWATER RATES**

September 9, 2019

**BEFORE: Robert Gabor, Q.C., Chair
Shawn McCutcheon, Panel Member**

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1.0 Executive Summary

By this Order, the Public Utilities Board (Board) grants approval, on an interim *ex parte* basis, of wastewater rates applied for by Rural Municipality of West St. Paul (RM) for the West St Paul Wastewater Utility (Utility). Current and revised rates are shown below:

	Current	October 1, 2019	October 1, 2020
	By-Law No. 2016-18		
Wastewater rates \$/cubic meter	\$ 2.94	\$ 3.23	\$ 3.52
Quarterly Service Charge	\$ 95.63	\$ 26.48	\$ 20.57
Winnipeg participation fee*	\$ 63.25	\$ 63.25	\$ 63.25
Winnipeg participation fee**		\$ 63.25	\$ 63.25
Minimum quarterly charge***	\$ 200.04	\$ 134.95	\$ 133.10

*residential

**commercial, industrial and other non residential properties, per \$500,000 of developed assessed market value

***based on 14 cubic meters

The Board denies the RM's request for approval to pass through wastewater rates increases from the City of Winnipeg (City) to its customers.

Rationale for the Board's decisions may be found under the heading Board Findings.

2.0 Application

The Board received an application for revised wastewater rates from the Utility on July 15, 2019. The application included a rate study prepared by the RM's consultant, By-law No. 06-2019, having had first reading June 13, 2019 and Council Resolution No. 2019-281, which had two requests of the Board.

The first request was to have the Board's approval of revised rates on an interim *ex parte* basis. The second request was to have the Board's approval to pass through rate increases from the City of Winnipeg to the Utility's customers. The Utility is connected to the City's wastewater utility and the RM has a Service Agreement with the City of Winnipeg.

Initial interim rates were granted in Board Order No. 24/16 effective January 1, 2015. The City advised the RM of rate increases effective May 1, 2016 on May 5, 2016. The RM filed for a review and vary of its rates on July 13, 2016, which was granted August 22, 2016 in Board Order No. 111/16. Rates were effective April 1, 2016 to align with the RM's billing cycle.

When reviewing an application the Board can either: hold a public hearing at which the applicant can present its case and customers can present their concerns; or where it is deemed to be in the best interests of a utility and its customers, the Board can review the application using a paper review process without holding a public hearing.

If a public hearing is not held when making its decision, the Board proceeds with a detailed paper review process which includes consideration of all comments and concerns received and may include additional information requests to the utility's application.

Where there is an urgent need for a rate increase and the Board determines it to be in the best interest of all parties, the Board may also establish interim *ex parte* rates. Interim rates are typically approved as applied for, and are then subject to a Public Notice of Application and the Board's review using one of the processes outlined above, before being confirmed as final by Board Order.

The use of interim rates is reserved for instances where an RM can show there is a compelling argument to allow it. Council Resolution No. 2019-281 did not provide any supporting rationale for the request of interim rates. On August 2, 2019 the Board contacted the RM to request it provide rationale for the Board's consideration. The RM responded by letter on August 12, 2019, stating the current Utility rates "...were not calculated in accordance with Board rate setting methodologies... the RM would like to bring utility rates into conformance as soon as possible." The RM went on to explain it would be beneficial to its customers "...to have rates set in accordance with PUB rate setting requirements that customers know will not significantly change...".

The letter went on to explain the rationale for requesting the pass through rates and the RM's need to be responsive to City of Winnipeg rate increases to avoid running deficits.

After discussion with the Board, the RM submitted a letter on August 20, 2019 providing clarification of the August 12, 2019 letter. The RM further explained, "...the reason the Municipality is requesting interim rates as the Municipality's current rates are now below the costs the Municipality is required to pay the City of Winnipeg and therefore cannot be recovered from the users of the sewer utility."

3.0 Board Findings

The Board grants approval, on an interim *ex parte* basis, the wastewater rates as applied for by the RM effective October 1, 2019 and 2020. The Board makes this interim rate decision to mitigate the operating deficits the Utility is anticipating with the cost of purchasing wastewater services from the City. The current rates are the same as the rates charged by the City to the Utility, which does not allow for any of the RM's utility operating costs, such as amortization, lift station costs and other sewage and disposal costs. The Board supports the RM's intention to implement rates calculated using the Board's methodology, and agrees the RM's previous methodology does not recover its costs adequately.

The Board denies the RM's request to allow pass through rate increases based on rate increases from the City of Winnipeg. The City of Winnipeg Water and Wastewater Utility is not regulated by the Public Utilities Board; there is no regulatory oversight over its rates. The City of Winnipeg Charter Act s. 210(5) allows the City to establish utility rates without approval from the Board.

The Board has long held the view that the City of Winnipeg Utility should have oversight by a regulator with regards to its rates. In December 2011, the Board held a two day informational Hearing with respect to the City's water and wastewater utilities. In Board Order No. 56/12 the Board put forward six recommendations, the first of which being the City's exemption from the Board's regulation of utility rates should be eliminated. The Board maintains this view, and is a proponent of the City's utility rates being subject to regulation.

The RM's agreement with the City is not binding upon the Board. The RM has advised the Board one of the reasons it requires approval to pass through rate increases is that its agreement with the City does not include adequate notice to allow the RM to apply to the Board for its required increases. The Board find that the provision of pass through rate increases in this instance would not provide ratepayers with the protections afforded by Board oversight and notice requirements.

The Board does allow for pass through rate increases, as first established in Board Order No. 129/09, allowing that increased rates from a utility selling to another utility "...represent a cost increase beyond the control..." of the purchasing utility. However, this pass through process was approved for members of the Pembina Valley Water Cooperative (PVWC), which is regulated by the Board. Order No. 129/09 also states, "PVWC will be required to make application to the Board... such applications will be published in all areas served by PVWC, allowing the public to provide comments to PUB and providing PUB the opportunity to understand ratepayer concerns."

The Public Utilities Board Act delegates the authority to establish the rates for Municipal water and wastewater utilities, other than the City of Winnipeg, to the Public Utilities Board. The relevant principle in administrative law is *delegata potestas non potest delagari* which means "no delegated powers can be further delegated". The Public Utilities Board cannot delegate the authority granted to it under statute to another entity. As such, the proposal to allow the RM to pass through increases from the City without examination by the Board would be an unlawful delegation of authority from the Board to the City.

The Board will allow the RM to apply to review and vary its rates when it receives notice from the City of Winnipeg of upcoming rate increases, and will review these applications on an expedited basis to mitigate the possibility of a resulting operating deficit.

A Notice of the Application to inform the ratepayers of the interim wastewater rate increases will be issued.

4.0 IT IS HEREBY ORDERED THAT:

1. The Rural Municipality of West St. Paul's application for revised wastewater rates for the West St Paul Wastewater Utility on an interim *ex parte* basis, BE AND IS HEREBY APPROVED.
2. The Rural Municipality of West St. Paul, West St Paul Wastewater Utility provide notice of the interim rates to its customers.
3. The Rural Municipality of West St. Paul's request for authority to implement pass through increases for wastewater rate increases from the City of Winnipeg, BE AND IS HEREBY DENIED.

Board decisions may be appealed in accordance with the provisions of Section 58 of *The Public Utilities Board Act*, or reviewed in accordance with Section 36 of the Board's Rules of Practice and Procedure (Rules). The Board's Rules may be viewed on the Board's website at www.pubmanitoba.ca.

Fees payable upon this Order - \$150.00

THE PUBLIC UTILITIES BOARD

"Robert Gabor, Q.C."
Chair

"Jennifer Dubois, CPA, CMA"
Assistant Associate Secretary

Certified a true copy of Order No. 136/19
issued by The Public Utilities Board



Assistant Associate Secretary

**RURAL MUNICIPALITY OF WEST ST. PAUL
BY-LAW NO. 2019-06**

SCHEDULE "A"

Schedule of Quarterly Rates - October 1, 2019

1. Sewer Rates per Cubic Meter \$3.23
 Winnipeg Quarterly Participation Fee-Residential \$63.25
 Winnipeg Quarterly Participation Fee for Commercial,
 Industrial and other non-residential properties; for each
 \$500,000 of Developed Assessed Market value \$63.25
 West St. Paul Quarterly Service Charge \$26.48

2. Minimum Charges per Quarter
 Notwithstanding the rates set forth in paragraph 1, all customers will pay the applicable minimum charges per quarter set out below, which includes the sewer allowance as listed.

a) Sewer Customers

Pipe Diameter Meter Size	Sewer Included Cubic Meter	Wpg Participation Fee Residential	WSP Customer Service Charge	Wpg Sewer Commodity	WSP Sewer Commodity	Quarterly Total Minimum
5/8 inch	14	\$63.25	\$26.48	\$39.20	\$6.02	\$134.95
3/4 inch	28	\$63.25	\$26.48	\$78.40	\$12.04	\$180.17
1 inch	56	\$63.25	\$26.48	\$156.80	\$24.08	\$270.61
1 ½ inch	140	\$63.25	\$26.48	\$392.00	\$60.20	\$541.93

2 inch	350	\$63.25	\$26.48	\$980.00	\$150.50	\$1,220.23
3 inch	630	\$63.25	\$26.48	\$1,764.00	\$270.90	\$2,124.63
4 inch	1260	\$63.25	\$26.48	\$3,528.00	\$541.80	\$4,159.53
6 inch	2380	\$63.25	\$26.48	\$6,664.00	\$1,023.40	\$7,777.13

- b) Quarterly minimum charge will be different for each meter size as shown in the table above. The water from the customers private service shall be metered at the customer's cost. The charge will be based upon consumption as shown above with the water charge excluded.

**RURAL MUNICIPALITY OF WEST ST. PAUL
BY-LAW NO. 2019-06
SCHEDULE "A"**

Schedule of Quarterly Rates - October 1, 2020

- | | |
|---|---------|
| 1. Sewer Rates per Cubic Meter | \$3.52 |
| Winnipeg Quarterly Participation Fee-Residential | \$63.25 |
| Winnipeg Quarterly Participation Fee for Commercial,
Industrial and other non-residential properties; for each
\$500,000 of Developed Assessed Market value | \$63.25 |
| West St. Paul Quarterly Service Charge | \$20.57 |

2. Minimum Charges per Quarter
Notwithstanding the rates set forth in paragraph 1, all customers will pay the applicable minimum charges per quarter set out below, which includes the sewer allowance as listed.

a) Sewer Customers

Pipe Diameter Meter Size	Sewer Included Cubic Meter	Wpg Participation Fee Residential	WSP Customer Service Charge	Wpg Sewer Commodity	WSP Sewer Commodity	Quarterly Total Minimum
5/8 inch	14	\$63.25	\$20.57	\$39.20	\$10.08	\$133.10
3/4 inch	28	\$63.25	\$20.57	\$78.40	\$20.16	\$182.38
1 inch	56	\$63.25	\$20.57	\$156.80	\$40.32	\$280.94
1 ½ inch	140	\$63.25	\$20.57	\$392.00	\$100.80	\$576.62

2 inch	350	\$63.25	\$20.57	\$980.00	\$252.00	\$1,315.82
3 inch	630	\$63.25	\$20.57	\$1,764.00	\$453.60	\$2,301.42
4 inch	1260	\$63.25	\$20.57	\$3,528.00	\$907.20	\$4,519.02
6 inch	2380	\$63.25	\$20.57	\$6,664.00	\$1,713.60	\$8,461.42

- b) Quarterly minimum charge will be different for each meter size as shown in the table above. The water from the customers private service shall be metered at the customer's cost. The charge will be based upon consumption as shown above with the water charge excluded.

Clauses 3 to 12 take effect October 1, 2019:**3. Billings and Penalties**

Accounts shall be billed quarterly based on water used. A late payment penalty charge of 1.25% compounded monthly shall be charged on the dollar amount owing after the billing due date. The due date will be at least fourteen (14) days after the mailing of the bills.

4. Liability for Charges

Pursuant to Section 252(2) of the Municipal Act, the amount of all outstanding charges for water and sewer services, including fines and penalties, are a lien and charge upon the land serviced, and may be collected in the same manner in which ordinary taxes upon the land are collectible, and with like remedies. Where charges and penalties pursuant to this by-law are not paid within thirty days (30) from the date when they were incurred, the Chief Administrative Officer may add said charges and penalties to the taxes on the property and collect them in the same manner as taxes.

5. New Connections

The Rural Municipality of West St. Paul shall charge the amount of fifty dollars (\$50) to connect a new service.

6. Disconnection and Reconnection

The Public Utilities Board has approved the Conditions Precedent to be followed by the Municipality with respect to disconnection of service for non-payment including such matters as notice and the right to appeal such action to The Public Utilities Board. A copy of the conditions precedent is available for inspection at the Municipality's office.

Any service disconnected due to non-payment of account shall not be reconnected until all arrears, penalties and a reconnection fee of \$50.00 have been paid.

Any customer wishing to have billing disconnected due to vacancy of premises shall be required to have service disconnected and to pay \$50.00 reconnection fee when service resumes.

7. Meter Testing

That in any case where a utility customer requests that a meter be tested for accuracy, the customer will provide the Municipality with a deposit of \$100 for 5/8" or 3/4" meters and \$225 for meters 1" and larger. The Municipality will then remove the subject meter and send it to an independent lab for testing. If the meter is found to be recording water flows more than 3% in excess of actual flows, all costs associated with the testing process will be borne by the Municipality and the deposit will be refunded to the customer and the customer's account will be adjusted for the preceding six (6) months.

8. Meter Tampering

Where there is evidence of meter tampering, a minimum charge of five hundred dollars (\$500) will be applied to the customer's account in addition to an amount calculated to adjust for the tampering based on historical usage.

9. Sewer Surcharges

a) There may be levied annually, in addition to the rates set forth above, a special surcharge on sewage having a Biochemical Oxygen Demand in excess of 300 parts per million, to be set by Resolution of Council.

b) A special surcharge for substances requiring special treatment shall be charged based on the actual costs of treatment required for the particular sewage or industrial waste.

10. Authorization For Officer To Enter Upon Premises

The Public Works Manager, or his/her designate, or other employee authorized by the Municipality in the absence of the Public Works Manager, shall be authorized to enter upon any premise for the purpose of:

Affixing to any pipe, wire or apparatus connected with any such utility, a meter or any other measuring or testing device; or taking readings from, repairing, inspecting or removing any meter or apparatus belonging to the Municipality.

11. Service To Customers Outside Utility's Limits

The Rural Municipality of West St. Paul may sign Agreements with customers for the provision of sewer services to properties located outside the boundaries of West St. Paul Sewer Utility. Such Agreements shall provide for payment of the appropriate rates set out in this Schedule, as well as a surcharge, set by Resolution of Council, which shall be equivalent to the frontage levy, general taxes, and special taxes for the Utility purposes in effect at the time or may be in effect from time to time, and which would be levied on the property concerned if it were within West St. Paul Sewer Utility boundaries. In addition, all costs of connecting to the Utility's mains, and installing and maintaining service connections, will be paid by the customer.

12. Water Meters

Water meters are owned by the Municipality but are the responsibility of the utility customer to maintain. If the water meter is broken, frozen, etc., the utility customer will be billed for a new meter at the current cost of replacement.

13. Conditions of Disrepair

In the event that there are conditions of disrepair in the sewer and water works on a property that detrimentally affects the system as a whole and, upon the failure of the owner of the property to correct the condition within a reasonable time, the Municipality, or its agents, may enter the property, effect repairs and charge the cost thereof against the subject property as ordinary taxes.