

**Order No. 117/20**

**RURAL MUNICIPALITY OF GIMLI  
GIMLI URBAN CENTRE, GIMLI BUSINESS PARK, ASPEN PARK  
AND PELICAN BEACH WATER UTILITIES  
SURCHARGE TO RECOVER DEBENTURE SERVICING COSTS  
WATER TREATMENT PLANT AND DISTRIBUTION SYSTEM UPGRADE**

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**September 28, 2020**

**BEFORE: Marilyn Kapitany, B.Sc. (Hon), M. Sc., Panel Chair  
Shawn McCutcheon, Member**

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## 1.0 Executive Summary

By this Order, the Manitoba Public Utilities Board (Board) denies the application for utility debenture surcharges to recover debenture servicing costs for the Rural Municipality of Gimli (RM), Gimli Urban Centre, Gimli Business Park, Aspen Park and Pelican Beach Water Utilities (Utility) water treatment plant and distribution system upgrades.

Reasons for the Board's decision are in Board Findings.

## 2.0 Background

### Municipal Borrowings

Municipalities generally borrow money for large capital projects and the Municipal Board has jurisdiction over Municipal borrowing by-laws. A municipality's proposed borrowing by-laws are required to be presented in a public hearing, which allows the public an opportunity to review the proposed project costs, funding and financial impact to ratepayers and are subject to review and approval by the Municipal Board prior to implementation.

The preparation of a borrowing by-law includes setting out reasonable cost estimates for the project as well as the structure of the recovery of the borrowing.

If Council wishes to change the terms of the borrowing as contained in the approved by-law, the borrowing process must begin again, regardless of the stage of the project.

Once the project is completed and final costs are known, the municipality prepares an amending bylaw to issue the borrowing amount. All amending by-laws are reviewed and approved by the Municipal Board. Once approved, the municipality may begin recovering the borrowing through debenture debt payments collected on property taxes. If collecting through a utility debenture surcharge, the additional step of Public Utilities Board final approval is also required.

## Debenture recovery methodology

Most debentures for utility projects are recovered through property taxes, rather than utility rates. A significant difference between the two methodologies is the economic principles driving the allocation of costs.

Property taxes are typically imposed using the ability-to-pay principle. This economic principle theorizes that allocation of costs should be based on what an individual is able to pay. In property taxes, this is typically determined based on the value of the real property held by the taxpayer.

Utility rates are typically imposed using the user-pay principle. This economic principle theorizes that the most efficient allocation of resources occurs when consumers pay the full cost of the goods consumed.

In Manitoba, public utility rates require the approval of the Public Utilities Board. If a municipality wishes to recover its debenture payment through a utility debenture surcharge, it must first apply to the Public Utilities Board for “approval in principle”. Once granted, this allows the Municipal Board to approve the borrowing when partially funded through a utility debenture surcharge. At this point, the municipality must return to the Public Utilities Board for final approval of the utility debenture surcharge. The approval in principle does not allow the municipality to collect the surcharge.

Using a utility debenture surcharge to recover debt allows a municipality to assign those costs guided by the user-pay principle, rather than the ability-to-pay principle used in taxation. The risk associated with this methodology is accurately forecasting the amount of revenue generated by the utility debenture surcharge. Because the surcharge is calculated using estimated consumption, any material changes to the customer base or volumes sold will influence the revenue generated. Recovery by property taxes allows the municipality to collect the exact amount of revenue required.

For this reason, recovery through utility debenture surcharge requires a municipality to exercise oversight in ensuring the revenues required to satisfy the surcharge are met, and any overages are used for the purpose of repayment of the debenture in question and must be considered independent of utility operations. The municipality has a responsibility to monitor and reconcile the revenues associated with utility debenture surcharges. The Board may request periodic reporting from the municipality to ensure this oversight is taking place.

### **Residential Equivalency Units – Public Utilities Board methodology**

One residential equivalency unit (REU) is the estimated volume of water used or wastewater produced by the average single-family residence. Using this methodology, the utility allocates units to non-residential customers based on estimated consumption, as compared with a residence. REUs are meant for use in communities with unmetered distribution and collection systems, where information regarding actual consumption is unavailable.

The Board does not recommend the use of REUs in systems that are metered.

## **3.0 Application**

### **Application for approval in principle of utility debenture surcharge - 2016**

On November 4, 2016, the RM applied to the Board for approval in principle of a utility surcharge. The debenture was to fund the water treatment plant and distribution system upgrades in Gimli Urban Centre, Gimli Business Park, Aspen Park and Pelican Beach Water Systems. The RM advised it expected the project to be completed in 2017. The RM proposed an assignment schedule for allocating the debenture recovery surcharge and in its applications referred to it as residential equivalency units.

The 2016 submission included borrowing By-law No. 16-0013, which authorized the RM to borrow up to \$5,000,000 to fund the project. The By-law had first reading October 26, 2016. The By-law proposed 40% of the principal amount and interest of the debenture was to be raised annually through a utility rate surcharge allocated using residential equivalency units (REUs).

The RM submitted it would be able to use actual consumption to calculate the REUs to be charged to business accounts.

The By-law proposed the remaining 60% of the debenture payment be raised annually through a special mill rate, 50% on all rateable properties in the RM of Gimli and 50% on all rateable properties in the Gimli Urban Centre, Gimli Business Park, Aspen Park and Pelican Beach.

The payment schedule included as Schedule A1 to By-law 16-0013 showed an estimated annual payment of \$160,485.17 for a \$2M borrowing, representing the 40% of the total approved possible debt of \$5,000,000. This was the maximum portion of debt to be recovered through the water utility system.

### **Application for final approval of utility debenture surcharge - 2020**

On May 11, 2020, the RM applied to the Board for final approval of the debenture surcharge. The RM's submission included By-law 16-0013, amending By-Law 20-005, Municipal Board Order E-20-049 and Schedules A1, A2 and B.

By-law 16-0013 had been revised in three significant ways without notice or application to the Board. The first was to allow for grant funding secured in the amount of \$5,250,000, and now authorized the RM to borrow up to \$3,370,000 to fund the project, rather than \$5,000,000.

The second revised the methodology applied to recovery through taxes. Originally, the By-law provided for half of the funds raised to come from all rateable property within the RM and half to come from rateable property within the areas of service (Gimli Urban

Centre, Gimli Business Park, Aspen Park and Pelican Beach). The revised By-law provided for the taxation portion of the debenture to be raised by a special mill rate on all rateable property within the RM of Gimli.

The third revision was to the amount designated to be recovered from utility rates and the amount to be recovered from taxes. The 2016 submission, and the Board's approval in principle granted in Board Order No. 147/16, was for 40% of the final borrowing to be recovered through a utility surcharge, with the remaining 60% being recovered through taxes. The revised By-law 16-0013 allowed for 60% of the final borrowing to be recovered through a utility debenture surcharge, with the remaining 40% being recovered through taxes.

By-law 16-0013 was given third and final reading on April 13, 2017. The RM did not apply to the Public Utilities Board for any change to the approval in principle granted in Board Order No. 147/16. When asked by the Board, the RM could not provide any rationale for the changes to By-law 16-0013.

By-law 20-0005 amends By-law 16-0013 to provide for the actual amounts for the borrowing on the project. The final amount borrowed was \$2,586,574.93, the annual debenture payment commencing on May 1, 2021 will be \$178,553.20.

By-law 20-0005 Schedule B states that 60% of the debenture payment, a total of \$107,131.94, shall be raised through a utility debenture surcharge while the remaining 40%, a total of \$71,421.30, will be raised through a special mill rate on property taxes for all rateable property within the RM.

For the sake of clarity, the Board will refer to the RM's proposed debenture recovery units as Debenture Surcharge Units (DSUs), as the methodology used is not that of residential equivalency units.

The RM's application requests the Board grant approval for quarterly debenture surcharge of \$15.34 per DSU to be collected over a period of 20 years.

The Board compared the debenture surcharge application and other Utility rate applications submitted by the RM and sent multiple information requests to the RM. Through the information requests, the Board learned that the RM is proposing to charge properties that are not connected to the Utility system (“unconnected properties”) for the portion of the debenture recovery allocated to Utility accounts.

When questioned about this, the RM submitted it had determined that every property, connected or not, benefited from the upgraded water system. The RM advised if the surcharge were granted final approval by the Board, it would “...send a letter to the non-users explaining why we will be charging them for a portion of the debenture surcharge as if they were connected to the system. We will set them up as customers in the utility system and invoice them accordingly.”

The answers to the information requests also revealed that the RM is not using the Board’s methodology in assigning residential equivalency units.

The RM advised it was using 217 cubic meters as the annual average water consumption for a family of four. The RM was basing its determination of DSUs using this average consumption, and advised “If the annual consumption for any customer whether it be a customer with a 5/8 inch meter or a 4 inch meter is greater than the 217cm, the REU allocation is higher.”

The RM did not provide any further detailed information about the annual consumption calculation, such as what specific period of the customer’s history was used to calculate a customer’s annual consumption or if it would be adjusted at any point in the future based on changes to the account holder or the customer’s annual consumption. The application asks for the DSUs to be approved for the entirety of the debenture, a period of 20 years.



## 4.0 Board Findings

The Board finds the final application of the RM of Gimli has substantially changed from the application approved in principle in 2016. The Board therefore denies the RM's request.

The RM's November 2016 submission stated "Each residential account will be assessed one REU and each business account will be assessed a REU on the basis of their consumption. We are able to capture the commercial consumption in our utility system to enable us to do the calculations."

The 2016 submission included no mention of unconnected properties, and the RM's intention to charge these individuals in the current application was only discovered upon questioning the discrepancy between the number of customers in the debenture surcharge application against the number of customers in application to revise the rates and amalgamate the four water utilities.

Based on the RM's submission, it has failed to provide the unconnected properties with any notice of the RM's intention to include them in the utility-based recovery. The Board accepts the RM's assertion that unconnected properties in the community may benefit from the upgraded infrastructure; however, these unconnected properties will contribute through the portion of debenture proposed for recovery through taxes. The RM has not provided any evidence to demonstrate why the unconnected properties should be contributing above that amount. The RM has not provided any evidence explaining why the RM reduced the portion recovered through taxes from 60% to 40%, and then proposed to increase the portion being recovered from unconnected properties by adding them to the Utility customer base.

The Municipal Board's process for approval of a borrowing includes a public hearing, which would have allowed the owner's of unconnected properties the opportunity to ask questions and provide feedback on the proposed charges. A reasonable person reading the borrowing By-law would expect those who are not physically connected users of the Utility system would only be responsible for the portion collected through property taxes.

The Board also finds the RM has failed to use the appropriate methodology to assign residential equivalency units. The methodology used by the RM is unfamiliar to the Board, and despite multiple rounds of information requests, the RM has not provided a thorough and complete explanation of the rationale and calculations used. Applicants are not required to use Board methodology, however, any proposed variation must be clearly substantiated in the application.

The RM's attempt at assigning a flat charge based on historical usage follows neither the ability-to-pay nor the user-pay principles. The RM did not provide evidence showing how it came to calculate the annual consumption used. The RM did not provide any evidence showing how it would resolve material changes to the volume used if, for example, a customer currently using an annual volume of 5,000 cubic meters changes and suddenly starts using less than 217 cubic meters per year. The RM's application is for a surcharge that is to be in effect for 20 years, and the methodology used must stand the test of time. The Board finds the proposed DSU methodology will not meet that test.

The RM's proposal indicates a preference towards using a customer's actual consumption to allocate its share of the utility debenture surcharge, which aligns with the user-pay principle. The Board finds that using a flat rate assignment is an ineffective approach to accomplishing this approach to allocating the costs, and directs the RM to submit a proposal based on actual metered consumption for all customers who have meters, and a quantifiable flat rate for the 61 unmetered customers.

The Board in Order No. 147/16 approved in principle the concept of a surcharge on ratepayer's utility bills to recover 40% of the debenture servicing costs. The RM's application for approval in principle this surcharge was to be applied using a system of REUs. Given the RM has actual consumption figures for all but 61 of the Utility customers, and in light of all the changes proposed by the RM, using a flat rate assignment such as REUs is not in the best interest of ratepayers, even if calculated using Board methodology. The RM's concern about under or over-collecting the surcharge is valid; however, this is

the compromise when collecting the debenture through utility rates, and the RM has mitigated it by partially collecting through property taxes.

The RM did not apply to the Board when it changed the borrowing By-law from what was granted approval in principle in Board Order No. 147/16. This oversight on the part of the RM is unacceptable, and the RM should take appropriate steps to ensure this does not happen in future.

The Board considered the possible financial impact of its decision to deny the surcharge. The first payment is due in May 2021 and the RM has not begun collecting the revenue to make that payment, which puts the Utility at risk of incurring a deficit. Despite the potential Utility deficit, the deficiencies outlined in this Order are too significant to grant approval. The Board instead will direct the RM to resubmit a revised proposal quickly, and will expedite the proposal once received.

The RM can mitigate the possibility of inadequate revenue collection by calculating the expected surcharge per cubic meter, then increasing it by a reasonable margin to ensure adequate collection. The revenues must be consistently tracked and the surcharge halted once the full debenture has been recovered; this is necessary under any utility-driven methodology. The Board intends to include a quarterly reporting requirement when final approval is granted for the utility debenture surcharge.

The Board will direct the RM to provide a revised application to the Board on or before October 31, 2020. This proposal should be compliant with Board methodologies or be supported and explained comprehensively, including all calculations.

## 5.0 IT IS THEREFORE ORDERED THAT:

1. The Rural Municipality of Gimli's proposed utility debenture recovery surcharge for the Gimli Urban Centre, Gimli Business Park, Aspen Park and Pelican Beach Water Utilities water treatment plant and distribution system upgrades BE AND IS HEREBY DENIED.
2. The Rural Municipality of Gimli submit a revised proposal for utility debenture recovery surcharge for the Gimli Urban Centre, Gimli Business Park, Aspen Park and Pelican Beach Water Utilities water treatment plant and distribution system upgrades on or before October 31, 2020.

Fees payable upon this Order - \$150.00

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. The Board's Rules may be viewed on the Board's website at [www.pubmanitoba.ca](http://www.pubmanitoba.ca).

THE PUBLIC UTILITIES BOARD

"Marilyn Kapitany, B.Sc. (Hon), M. Sc."  
Panel Chair

"Jennifer Dubois, CPA, CMA"  
Assistant Associate Secretary

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by The Public Utilities Board

  
Assistant Associate Secretary