

Order No. 37/21

**MUNICIPALITY OF TWO BORDERS
LYLETON WATER UTILITY
WATER RATES
2014-2019 OPERATING DEFICITS**

March 18, 2021

**BEFORE: Shawn McCutcheon, Panel Chair
Carol Hainsworth, C.B.A., Panel Member**

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1.0 Executive Summary

By this Order, the Manitoba Public Utilities Board (Board) approves the Municipality of Two Borders (Municipality), Lyleton Utility's (Utility) application for revised water rates. The Board varies the bulk water rate.

The Board grants approval for the recovery of a cumulative operating deficit of \$70,989 for the years 2014-2019. The Board grants approval of recovery of \$10,456 from the accumulated surplus, a rate rider of \$5.46 per 1,000 gallons for a period of seven years and a transfer of \$40,000 from the General.

The revised rates are below:

	Apr 1, 2021	Jan 1, 2022	Jan 1, 2023
Quarterly Service Charge	\$ 9.50	\$ 9.74	\$ 9.98
Water (per 1,000 gallons)	\$ 47.41	\$ 49.23	\$ 51.04
Minimum Quarterly Charge*	\$ 151.73	\$ 157.43	\$ 163.10
Rate Rider (per 1,000 gallons)**	\$ 5.46	\$ 5.46	\$ 5.46
Minimum Quarterly Charge with Rate Rider*	\$ 168.11	\$ 173.81	\$ 179.48
Bulk Water (per 1,000 gallons)	\$ 51.00	\$ 53.00	\$ 55.00
Minimum Bulk Water (500 gallons or less)	\$ 25.50	\$ 26.50	\$ 27.50

*based on 3,000 gallons

**deficit rate rider approved for 7 years

Details of other rates are in Schedule A.

The reasons for the Board's decisions are in Board Findings.

2.0 Background

The Utility has operated year round since 1978. Rates were last set in Board Order No. 74/16, with current rates coming into effect July 1, 2016.

The Utility provides water service to 24 customers. When rates were last approved in 2016, there were 30 customers, a 20% reduction in the number of connected customers for the Utility.

Water Supply/Distribution

The water treatment plant is in need of extensive repair or replacement. The Municipality has been exploring alternative options, and has reportedly secured grant funding to run a waterline from Melita to purchase water from the Southwest Regional Water Cooperative (SRWC). The local improvement bylaw is currently before the Municipal Board for review, and the project is ready to be tendered upon approval.

3.0 Board Methodology

Review Process

When reviewing an application, the Board has at its disposal two approaches, a paper review process or a public hearing. After the publication of the Notice of Application, the Board considers the application and responses, if any, and determines which method of review is most appropriate. Whenever reasonable, the Board can review the application using a paper review process, which saves the cost of a public hearing.

Where there is an urgent need for initial or revised rates and the Board determines it to be in the best interest of all parties, the Board may establish interim *ex parte* rates.

Interim *ex parte* Approval

Interim *ex parte* rates are typically approved as applied for and are then subject to a standard Board review process, including a Public Notice of Application, before being confirmed as final by Board Order.

Since this process allows a municipality to charge ratepayers revised rates in advance of the Board's comprehensive review, it is reserved for instances where a municipality can show a compelling argument to allow it.

Contingency Allowance and Utility Reserves

The Board's Water and Wastewater Rate Application Guidelines recommend an annual contingency allowance equal to 10% of the variable operating costs.

Working Capital

Board Order No. 93/09 established utilities should maintain a minimum working capital surplus, in an amount equal to 20% of annual expenses. The working capital surplus is the Utility fund balance, excluding any capital-related items plus Utility reserves.

Operating Deficits

By law, Manitoba utilities are not allowed to incur deficits. In the event that a deficit does occur, the Utility is required by *The Municipal Act* to obtain Board approval for both the deficit and recovery methodology. The Board is therefore duty bound to approve reasonable rates based on reasonable expense projections.

Cost Allocation Methodology

The Board requires all municipalities to review the costs shared between the general operations of the municipality and the Utility, and to allocate appropriate and reasonable costs to the Utility, based on a policy known as a Cost Allocation Methodology. This policy must be submitted to the Board for approval and cannot be changed without approval by the Board. The Board's requirements regarding cost allocation methodologies can be found in Board Order No. 93/09.

Unaccounted for Water

Water losses may be caused by such events as distribution line losses, service leaks, water used for fire fighting or line flushing, and under-registration of water meters. The Board Guidelines require utilities to compare the volume of water produced or purchased against the volume of water sold, to determine the percentage of unaccounted for water. Unaccounted for water volumes of approximately 10% are considered industry standard.

The Board expects any utility experiencing a greater volume of unaccounted for water to provide an explanation and plan to address the water losses.

4.0 Application

On February 24, 2020 the Board received the Municipality's application to revise the Utility's water rates and approve a utility rate rider of \$2.00 per 1,000 gallons to recover operating deficits for 2014 to 2017, in the amount of \$45,699. This request was not made by separate deficit application or Council resolution addressing the deficits, as required.

The Board issued a Public Notice of Application on March 9, 2020 affording customers the opportunity to comment to both the Board and the Municipality with respect to the proposed rate changes. The Board received five responses to the Notice.

The Board reviewed the application, and in July 2020 sent a list of questions to the Municipality. The Municipality responded in August 2020, including a request for an extension to address the method of recovery for the deficits, given the \$2.00 per 1,000 gallon surcharge would result in an estimated \$5,230 in revenue over a five year period.

The Municipality has applied for a bulk water rate lower than the bulk water rate calculated using Board Guidelines. In response to the Board's request for rationale, the Municipality submitted it had originally believed the coin operated equipment unable to accommodate the higher rate, but this was not the case. The Municipality also expressed consider such a large increase in bulk water rate would eliminate all revenue from the bulk fill.

In September 2020, the Municipality submitted a deficit application for approval of deficits for the years 2014 to 2019, in the cumulative amount of \$72,192. The Municipality asked to recover the deficit by way of a \$40,000 transfer from the General Operating Fund (General), a \$10,456 transfer from the Lyleton Utility accumulated cash surplus and a rate rider of \$5.46 per 1,000 gallons for a period of seven years. Council Resolutions No. 2020-270 and 2020-294 were submitted in support of the application. Resolution No. 2020-294 explained the Municipality's 2020 Supplementary Added Taxes were \$583,323 with the "vast majority" of that revenue being from taxation of oil wells. The Municipality submitted the \$40,000 from the General would be contributed from that revenue, rather than property tax revenue.

On November 25, 2020 the Board was contacted by a resident of the Municipality who is not a customer of the Utility, expressing concern with the Municipality's proposal to transfer \$40,000 from the General.

The Board issued a second Public Notice of Application on January 7, 2021, with the second Notice being to inform stakeholders of the Municipality's requested method of recovery, and to invite stakeholders in the community to comment to both the Board and the Municipality with respect to the proposal. The Board received nine responses to the Notice, in addition to the original comment received in November.

The rates were calculated using the following revenue requirement projections:

	2021	2022	2023
Administration	838	855	872
Working Capital (1%)	196	200	204
Total expenses general	838	855	872
Penalties	150	150	150
Investment income	0	0	0
Total revenue general	150	150	150
Net revenue requirement - general	688	705	722
Purification and Treatment	18,753	19,128	19,511
Amortization	4,158	4,158	4,158
Contingency	1,863	1,863	1,863
Total expenses water	24,774	25,149	25,532
Bulk Water Fees	800	840	880
Total revenue water	800	840	880
Net revenue requirement - water	23,974	24,309	24,652

The Municipality's consultant calculated the indicated rates for the final rate year requested (2022) and requested rates be implemented in a stable and predictable rate change year over year.

Contingency Allowance and Utility Reserves

The Municipality has included in the 2022 projections a contingency allowance of 10% of net rate requirements, less amortization expenses. This equates to \$1,863.

There is no provision for transfer to Utility Reserve proposed.

Working Capital

As per the 2019 audited financial statements, the Working Capital Surplus at December 31, 2019 was:

	2019
Accumulated Fund Surplus/Deficit	\$7,434
Deduct tangible capital assets	\$63,528
Add long term debt	\$0
Add utility reserves	\$0
Equals Working Capital Surplus/Deficit	(\$56,094)
Operating costs	\$22,197
20% of operating costs (target)	\$4,439

Operating Deficits

The Municipality has applied for approval of the operating deficits from 2014 to 2019, as outlined above in the Application section.

Cost Allocation Methodology

In Board Order No. 74/16 the Board granted approval of a Cost Allocation Methodology (CAM) of \$600 per year, increasing by 2% per year thereafter.

The Municipality has requested to revise the CAM to 0.1% of Financial Plan General "At Large" Government Services less Assessment and Grants expenses. The rate study also stated that the CAM approved in Board Order No. 74/16 has never been charged to the Utility.

Unaccounted for Water

The rate study indicated the 2018 unaccounted for water was 50% of water produced. In response to the Board's queries, the Municipality advised it had made some repair and programming changes to the coin operating system at the bulk water station. The Municipality has also established an agreement with one of the system's users that would allow for billing volumes to come from the well to the cistern, rather than the meter in the basement of the residence. The Municipality believes these two changes will address the majority of the water losses.

5.0 Board Findings

The Board considered the Municipality's filing and reviewed the responses to both Notices of Application, and has chosen a paper review process.

The Board has reviewed the application and revenue projections presented by the Municipality and finds the projections to be reasonable. The increases required can be considered to be rate shock, something that is common where rate requirements are not addressed for significant periods of time. In the case of the Lyleton Utility, it has been five years since the rates have been reviewed and the Utility has not experienced an operating surplus since 2009, even after the last rate increase was implemented.

The Municipality has not applied for approval or recovery of the deficits, as required by legislation and as directed in Board Order Nos. 14/16 and 74/16. The Municipality needs to be more diligent in conducting regular reviews of its revenue requirements and the financial health of its utilities, as well as being compliant with Board directives and legislative requirements.

The Board will grant approval of the rates proposed for Year 2, effective April 1, 2021, the rates proposed for Year 3, effective January 1, 2022 and the rates proposed for Year 4, effective January 1, 2023, as shown in Schedule A.

The Board has considered the Municipality's concerns over increasing the bulk water rate to the rate calculated using Board Guidelines and does not find the rationale for a lower bulk water rate persuasive. Approving a bulk water rate less than half the rate being charged to connected customers would suggest the connected customers are subsidizing the bulk water customers. The Board will vary the bulk water rate to the calculated bulk water rate using Board Guidelines, as shown in Schedule A.

The Board will approve the revised cost allocation methodology. The Municipality's failure to allocate any shared costs to the Utility, despite having had a CAM approved in Board Order No. 74/16, is unacceptable. This allocation is not within the Municipality's discretion, and must be made regardless of the operating results of the Utility. The Municipality must ensure the utility rates are adequate, not adjust the Board approved cost allocation in an attempt to mitigate the deficit.

The Municipality has received approval for grant funding to connect to the SRWC and has indicated to the Board it plans to do so as soon as possible. The Board expects the Municipality to submit a rate study once it has gone through the tendering process for the waterline and costs are known. The Municipality has advised the grant funding needs to be spent by March 22, 2022 and the expectation is the line will be installed before the end of 2021. The Board will therefore direct the Municipality to file a rate application on or before July 31, 2021. Extensions will be considered if the circumstances are appropriate, but must be requested in writing.

The Board will grant approval of the 2014 to 2019 operating deficits, and the recovery methodology proposed by the Municipality. The total of \$70,989 will be recovered by \$10,456 from the accumulated surplus, a rate rider of \$5.46 per 1,000 gallons for a period of seven years and a transfer of \$40,000 from the General.

The Board has carefully considered the possible consequences of approving or denying the Municipality's request to use \$40,000 of the 2020 Added Tax Revenues to recover a portion of the 2014 to 2019 operating deficits. The Board has long been a proponent of the user-pay principle, and typically will not allow any transfers from general revenues to

subsidize the Utility, except in rare circumstances. The Board also heard from several residents of the Municipality who are not customers of the Utility, asking the Board to deny the request.

The Board makes the decision to allow the Municipality to make the transfer for several reasons. The Utility has experienced a reduction of 20% of its customer base since the last rate application, and the Board is concerned the rate increases, coupled with deficit rate riders approved to be recovered from the 24 connections may result in the remaining ratepayers abandoning the Utility. The Board expects this would result in the Municipality absorbing the deficits as well as any future costs of dissolving the Utility.

The Board also finds the Municipality was negligent in its management of the Utility and failed to meet its responsibility to the ratepayers of the Utility by implementing rates that would be adequate to meet the revenue requirements of the Utility or by applying for Board approval of deficits in a timely fashion. The Board finds this transfer is necessary to mitigate the impact of the long-term mismanagement of the Utility on ratepayers.

Please note all items found under the heading, "IT IS THEREFORE ORDERED THAT:" are directives, not recommendations, and must be complied with or appealed as outlined below. Pursuant to *The Public Utilities Board Act*, the Board can apply penalties for non-compliance.

The Board urges the Municipality to review general Board Orders No. 151/08 and 93/09 (available on the Board's website at www.pubmanitoba.ca) to better understand its reporting responsibilities to the Board.

The Board reminds the Municipality regular reviews are important for a financially sound utility and encourages the Municipality to review Board Order No. 86/17 for future rate applications. The Order outlines the Simplified Rate Application Process for municipally owned public utilities. If, after its rate review, the Municipality finds it meets the designated

criteria for a simplified rate application, it should apply for future rates using the Simplified Rate Application Process.

6.0 IT IS THEREFORE ORDERED THAT:

1. The water rates for the Municipality of Two Borders - Lyleton Water Utility, BE AND ARE HEREBY APPROVED in accordance with the attached Schedule A, effective April 1, 2021, January 1, 2022 and January 1, 2023.
2. The bulk water rates for the Municipality of Two Borders - Lyleton Water Utility, BE AND ARE HEREBY VARIED in accordance with the attached Schedule A, effective April 1, 2021, January 1, 2022 and January 1, 2023.
3. The Cost Allocation Methodology for shared services as submitted by the Municipality of Two Borders - Lyleton Water Utility BE AND IS HEREBY APPROVED.
4. The operating deficits for 2014 to 2019 totalling \$70,989, when calculated for regulatory purposes, incurred in the Two Borders - Lyleton Water Utility, BE AND ARE HEREBY APPROVED to be recovered by \$10,456 from the accumulated surplus, a rate rider of \$5.46 per 1,000 gallons for a period of seven years and a transfer of \$40,000 from the General Fund, Added Tax Revenue.
5. The Municipality of Two Borders amend its Utility rate By-law to reflect the decisions in this Order, and submit a copy to the Board once it has received third and final reading.
6. The Municipality of Two Borders review the Lyleton Water Utility water rates once the costs of connecting to the Southwest Regional Water Cooperative are known, on or before July 31, 2021.

Fees payable upon this Order - \$500.00

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.

THE PUBLIC UTILITIES BOARD

"Shawn McCutcheon"

Panel Chair

"Jennifer Dubois, CPA, CMA"

Assistant Associate Secretary

Certified a true copy of Order No. 37/21
issued by The Public Utilities Board



Assistant Associate Secretary

MUNICIPALITY OF TWO BORDERS
 LYLETON UTILITY
 WATER RATES BY-LAW NO.
 SCHEDULE "A"

SCHEDULE OF QUARTERLY RATES

1. Schedule of Rates April 1, 2021

Rates per 1,000 Gallons	
Water	\$47.41
Quarterly Service Charge	\$9.50

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 water allowance as listed.

Water Customers

Meter Size	Group Capacity Ratio	Water Included Gallons	Customer Service Charge	Water Commodity Charge	Deficit Rate Rider (see Clause 4)	Water Total Quarterly Minimum
5/8 inch	1	3,000	9.50	142.23	16.38	\$168.11
3/4 inch	2	6,000	9.50	284.46	32.76	\$326.72
1 inch	4	12,000	9.50	568.92	65.52	\$643.94

1. Bulk Water

All water sold in bulk shall be charged for at a rate of \$51.00 per 1,000 gallons, with a minimum charge of \$25.50 for 500 gallons or less.

1. Schedule of Rates January 1, 2022

Rates per 1,000 Gallons	
Water	\$49.23
Quarterly Service Charge	\$9.74

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 water allowance as listed.

Water Customers

Meter Size	Group Capacity Ratio	Water Included Gallons	Customer Service Charge	Water Commodity Charge	Deficit Rate Rider (see Clause 4)	Water Total Quarterly Minimum
5/8 inch	1	3,000	9.74	147.69	16.38	\$173.81

3/4 inch	2	6,000	9.74	295.38	32.76	\$337.88
1 inch	4	12,000	9.74	590.76	65.52	\$666.02

3. Bulk Water

All water sold in bulk shall be charged for at a rate of \$53.00 per 1,000 gallons, with a minimum charge of \$26.50 for 500 gallons or less.

1. Schedule of Rates

January 1, 2023

Rates per 1,000 Gallons

Water \$51.04

Quarterly Service Charge \$9.98

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 water allowance as listed.

Water Customers

Meter Size	Group Capacity Ratio	Water Included Gallons	Customer Service Charge	Water Commodity Charge	Deficit Rate Rider (see Clause 4)	Water Total Quarterly Minimum
5/8 inch	1	3,000	9.98	153.12	16.38	\$179.48
3/4 inch	2	6,000	9.98	306.24	32.76	\$348.98
1 inch	4	12,000	9.98	612.48	65.52	\$687.98

3. Bulk Water

All water sold in bulk shall be charged for at a rate of \$55.00 per 1,000 gallons, with a minimum charge of \$27.50 for 500 gallons or less.

The Following Clauses are Effective April 1, 2021

4. Deficit Rate Rider

A rate rider of \$5.46 per 1,000 gallons is included in the schedule of rates to recover \$20,533 of the net operating deficits occurred from 2014 to 2019.

5. Service to Customers outside Lyleton limits

The Council of the Municipality of Two Borders may sign agreements with customers for the provision of water and sewer services to properties located outside the legal boundaries of Lyleton. Such agreements shall provide for payment of the appropriate rates set out in the 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 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 these boundaries. In addition, all costs of connection to the Utility's mains and installing and maintaining service connections will be paid by the customer.

6. Billings and Penalties

Accounts shall be billed quarterly based on water used. A late payment penalty charge of 1 ¼% compounded monthly shall be charged on the dollar amount owing after the billing due date. The due date will be at least twenty (20) days after the mailing of the bills.

7. Disconnections

The Public Utilities Board has approved the Conditions Precedent to be followed by the Municipality with respect to the 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 are available for inspection at the Municipal office.

8. Reconnection

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. Seasonal residents requiring a reconnection for the period of time they are using the water system will be levied a \$50.00 reconnection fee.

9. Outstanding Bills

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 shall 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 sixty (60) days from the date when they were incurred, said charges and penalties shall be added to the taxes on the property and collected in the same manner as other taxes.

10. Hydrant Rentals

An annual charge of seventy five hundred dollars (\$75.00) per hydrant shall be made by the said utility to Lyleton for fire protection services, which annual charge shall include water used.

11. Municipality to be Notified of Failure of Meter

In the case of breakage, stoppage or irregularity in a water meter, the customer shall notify the Designated Officer immediately upon such condition being discovered. All installation, repair and disconnection of any water meter shall be performed only by those authorized to do such work by the municipality.

12. Meter Testing

Any customer wishing to have a meter tested for accuracy will pay in advance a fee of \$100, plus any applicable meter testing costs. In the event the meter tests prove that the meter is recording water flows in excess of actual flows, the meter testing fee and associated costs will be refunded to the customer and the customer's account will be reviewed and adjusted accordingly.

13. Meter Tampering

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

14. Cross Connections

No customer or person shall connect, cause to be connected or allow to remain connected any piping, fixture, fitting, container or appliance in a manner which under any circumstances may allow water, wastewater or any harmful liquid or substance to enter the Municipality's water system.

If a condition is found to exist which, in the opinion of the Municipality, is contrary to the aforesaid, the Municipality may either:

- Shut off the service or services; or
- Give notice to the customer to correct the fault at his or her own expense within a specified time period. If the customer fails to comply with such notice the Municipality shall proceed in accordance with clause 8 of this by-law.

15. Authorization for Officer to Enter Upon Premises

The Public Works Foreman, or other employee authorized by the Municipality in the absence of the Public Works Foreman, 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.

16. New Connections

Any person wishing to connect to eh water distribution system must make arrangements with the municipal office. A connection fee of \$500.00 will be levied for any new connection with the connection fee including the cost of the meter, curb stop, and flow