

Order No. 93/22

**MUNICIPALITY OF SWAN VALLEY WEST
BENITO WATER AND WASTEWATER UTILITY
INTERIM *EX PARTE* RATES AND ACTUAL OPERATING DEFICITS**

August 11, 2022

**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 Public Utilities Board (Board) approves, on an interim *ex parte* basis, water and wastewater rates as applied for by the Municipality of Swan Valley West (Municipality), for the Benito Water and Wastewater Utility (Utility).

The revised rates are to be effective October 1, 2022 and are shown in the table as follows:

| | Current Rates | October 1, 2022 |
|--|---------------|-----------------|
| Quarterly Service Charge | \$21.81 | \$22.66 |
| Water (per 1,000 gallons) | \$5.74 | \$22.27 |
| Wastewater (per 1,000 gallons) | \$6.06 | \$7.45 |
| Minimum Quarterly Charge* | \$57.21 | \$111.82 |
| Minimum Quarterly Charge – Water Only* | \$39.03 | \$89.47 |
| Deficit Rate Rider (per 1,000 gallons) | - | \$5.25 |
| Minimum Quarterly Rate Rider Charge* | - | \$15.75 |
| Minimum Quarterly Charge With Rate Rider* | - | \$127.57 |
| Minimum Quarterly Charge With Rate Rider – Water Only* | - | \$105.22 |
| Bulk Water (per 1,000 gallons) | \$10.59 | \$24.50 |
| Reconnection Fee | \$50.00 | \$50.00 |
| Hydrant Rental (Annual) | \$150.00 | \$150.00 |

*Based on 3,000 gallons

The Board also approves a 2015 actual operating deficit of \$5,914, a 2016 actual operating deficit of \$27,604, a 2017 actual operating deficit of \$22,150, and 2018 actual operating deficit of \$15,206, a 2019 actual operating deficit of \$53,777, and a 2020 actual operating deficit of \$118,784 or a total six-year deficit of \$243,435 to be recovered through a combination of existing surplus account funding of \$49,369 and a rate rider of \$5.25 per customer per 1,000 gallons beginning October 1, 2022 for a period of seven years or until revenue from the rate rider has reached \$194,066, whichever comes first.

Details of other rates may be found in the attached Schedule A to this Order.

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

2.0 Background

The Utility last had rates approved on July 17, 2014 in Board Order No. 83/14, with the new rates effective January 1, 2015. The Utility last had deficits approved on October 30, 2015 in the amounts of \$17,714 for 2013 and \$25,967 for 2014 (or a total two-year deficit of \$43,681 in Board Order No. 109/15 to be recovered from the Utility's Accumulated Surplus Fund. The Utility also had deficits approved in Board Order No. 83/14 in the amounts of \$31,055 for 2009, \$29,852 for 2010, and \$36,468 for 2011 (or a total three-year deficit of \$97,375).

By law, Manitoba utilities are not allowed to incur deficits. In the event that a deficit does occur, a utility is required to obtain Board approval for recovery methodology that the utility proposes.

The Public Utilities Board (Board) issued Order No. 151/08 on November 7, 2008 requiring all water and/or wastewater utilities to report an actual year-end deficit to the Board if the utility:

1. had not received prior approval for the deficit from the Board and such deficit either exceeds \$10,000 or represents 5% of the utility's operating budget; or
2. had received prior approval for the deficit from the Board and the actual deficit:
 - a. exceeds the previously approved amount by either \$10,000 or 5% of the utility's operating budget; or
 - b. is caused as a result that differs from that upon which said approval was granted.

3.0 Application

On July 5, 2022, the Municipality applied to the Board for interim, *ex parte* water and wastewater rates, to be effective no later than January 1, 2023 and to recover deficits in the amounts of \$10,819 for 2015, \$27,604 for 2016, \$22,150 for 2017, \$15,206 for 2018, \$57,777 for 2019, and \$174,241 for 2020 (or a total six-year deficit of \$303,797) to be recovered by a rate rider of \$5.25 per customer per 1,000 gallons to be recovered by \$109,731 from existing surplus account funding and a rate rider of \$5.25 per customer per 1,000 gallons for a period of seven years. The Municipality submitted Council Resolution No. 2022-282 and By-Law No. 0097-22, having had first reading on May 10, 2022 supporting the Municipality's applications.

The Municipality's request for interim rates is to minimize additional Utility deficits. The Deficit Application states the deficits are due to increased salary expenses and decreased debenture payment revenue.

On August 10, 2022, the Municipality submitted a revised Deficit Application to adjust the 2015 and 2020 deficit amounts due to discrepancies between the prior Deficit Application and the 2015 and 2020 Audited Financial Statements. The revised Deficit Application requested recovery of a 2015 actual operating deficit of \$5,914, a 2016 actual operating deficit of \$27,604, a 2017 actual operating deficit of \$22,150, and 2018 actual operating deficit of \$15,206, a 2019 actual operating deficit of \$53,777, and a 2020 actual operating deficit of \$118,784 or a total six-year deficit of \$243,435 to be recovered through a combination of existing surplus account funding of \$49,369 and a rate rider of \$5.25 per customer per 1,000 gallons.

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. The paper review process considers all written materials submitted by the Utility and the public, as well as any information requests and responses between the Board and the Utility. This process may reduce regulatory costs to the Utility.

Whenever reasonable, the Board will review the application using a paper review process, which saves the cost of a public hearing process. The Board has chosen a paper review for this 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 as well as the Board's review using one of the processes outlined above, before being approved as final by Board Order.

Since this process allows a municipality to temporarily circumvent the Board's review process, it is reserved for instances where a municipality can show there is a compelling argument to allow it. This is usually done by demonstrating to the Board the utility is experiencing multi-year operating deficits and will continue to do so if revised rates are not approved in an expedited manner.

Working Capital Calculation

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

As per the 2020 Audited Financial Statements for the Utility, the most recent information available, the working capital deficit as at December 31, 2020 is as follows:

| | 2020 |
|---|--------------------|
| Utility Fund Surplus/Deficit | \$544,728 |
| Deduct: Tangible Capital Assets | (758,682) |
| Add: Long-Term Debt | 60,119 |
| Add: Utility Reserves | 18,244 |
| Equals Working Capital Surplus (Deficit) | \$(135,591) |
| | |
| Operating Expenses | 292,377 |
| 20% of Operating Expenses (Target) | \$58,475 |

The Utility's working capital does not meet the Board's minimum requirement of 20% of operating expenses.

4.0 Board Findings

Utility Rates

The Board approves, on an interim *ex parte* basis, the water and wastewater rates as applied for by the Municipality effective October 1, 2022. The Board makes this interim rate decision to mitigate the ongoing operating deficits Utility is experiencing.

A Notice of the Application to inform the ratepayers of the interim water and wastewater rate increases will be issued as soon as possible.

The Board notes, the Municipality has also requested three years of additional, revised rates to be effective January 1, 2024, January 1, 2025, and January 1, 2026. The Municipality's request will be reviewed by the Board to finalize the requested rates at a later date.

The Board notes, it has been eight years since the Utility has submitted a rate application to the Board. In the Board's view the period between rate reviews is too long. Regular rate reviews submitted every three years, as per the Board's Guidelines, protect the financial position of the Utility and may reduce the need for significant rate increases in one year. In some cases, the additional cost of a rate rider becomes necessary to recover utility deficits.

It is the Utility's responsibility to review the rates and ensure rates are adequate to recover the cost of service being provided to its ratepayers. Ratepayers are generally more tolerant of regular, smaller increases. The Municipality needs to be much more diligent in conducting regular reviews of its revenue requirements.

Deficits

The Board has reviewed the Municipality's deficit application and is concerned by the number of consecutive deficits incurred and their magnitude. The Board reminds the Municipality that 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 as soon as a deficit is known.

The Board notes that prior to this Order, rates were last approved in 2014 in Board Order No. 83/14, with the new rates effective January 1, 2015. In that Order, the Board directed the Municipality to review its water and wastewater rates for adequacy and file a report with the Board, as well as an application for revised rates if required, by no later than June 30, 2016. The Board did not receive an application from the Municipality until July 5, 2022.

The Board is also concerned in regards to the seven-year duration of the rate rider requested to recover the 2015 through 2020 deficits. In general, the Board recommends deficits be recovered as soon as feasible (usually in three years or less). The Board recognizes, however, that recovering the deficits incurred by the Utility over a period longer than three years will mitigate the impact of the rate rider.

The Board notes utility deficits should ideally be paid by the customer base that existed when the deficits were incurred, however, the Municipality has neglected the Utility for many years, which has led to multiple deficits. The Board therefore finds it must attempt to balance rate fairness and the mitigation of customer rate shock.

The Board finds that had the Municipality been more diligent in reviewing rates and financials for the Utility, deficits may have been mitigated or prevented. The Board notes it is the Municipality's responsibility to review utility rates and financials on a regular basis to ensure rates are adequate to recover the cost of service being provided to ratepayers and to mitigate deficits. It is also the Municipality's responsibility to plan accordingly in advance of Board directed deadlines to ensure they are met.

The Board approves the Municipality's actual operating deficits, when calculated for regulatory purposes of \$5,914 for 2015, \$27,604 for 2016, \$22,150 for 2017, \$15,206 for 2018, \$53,777 for 2019, and \$118,784 for 2020, or a total six-year deficit of \$243,435, to be recovered through a combination of existing surplus account funding of \$49,369 and a rate rider of \$5.25 per customer per 1,000 gallons beginning October 1, 2022 for a period of seven years or until revenue from the rate rider has reached \$194,066, whichever comes first.

The Board notes, the Municipality is also forecasting additional deficits for 2021 and 2022 that will likely be required to be recovered through an additional rate rider charge. The Board directs the Municipality to file Deficit Applications, including a proposed recovery methodology, for the 2021, 2022, and any other future year's deficits, if a deficit materializes, as soon as the deficit is known.

The Board has not received the Municipality's 2021 Audited Financial Statements and reminds the Municipality audited financial statements are to be reported to the Board no later than June 30 of the following year.

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.

5.0 IT IS THEREFORE ORDERED THAT:

1. The Municipality of Swan Valley West's application for revised water and wastewater rates for the Benito Water and Wastewater Utility BE AND ARE HEREBY APPROVED on an interim *ex parte* basis in accordance with the attached Schedule "A", effective October 1, 2022.
2. The actual operating deficits, when calculated for regulatory purposes, of \$5,914 for 2015, \$27,604 for 2016, \$22,150 for 2017, \$15,206 for 2018, \$53,777 for 2019, and \$118,784 for 2020, or a total six-year deficit of \$243,435, are HEREBY APPROVED to be recovered through a combination of existing surplus account funding of \$49,369 and a rate rider of \$5.25 per customer per 1,000 gallons beginning October 1, 2022 for a period of seven years or until revenue from the rate rider has reached \$194,066, whichever comes first.
3. The Municipality of Swan Valley West amend its water and wastewater By-Law to reflect the decisions in this Board Order and file a copy with the Public Utilities Board, as soon as it has received third and final reading.
4. The Municipality of Swan Valley West, Benito Water and Wastewater Utility provide notice of the interim rates to its customers as soon as possible.
5. The Municipality of Swan Valley West file a 2021 and a 2022 Deficit Application with the Public Utilities Board, if a deficit materializes, as soon as it is known.

6. The Municipality of Swan Valley West submit its 2021 Audited Financial Statements as soon as they are received.

Fees payable upon this Order - \$150.00

THE PUBLIC UTILITIES BOARD

"Marilyn Kapitany"

Panel Chair

"Frederick Mykytyshyn"

Assistant Associate Secretary

Certified a true copy of Order No. 93/22 issued
by The Public Utilities Board



Assistant Associate Secretary

SCHEDULE A

MUNICIPALITY OF SWAN VALLEY WEST BENITO WATER AND WASTEWATER UTILITY WATER & WASTEWATER UTILITY RATES BY-LAW NO. 0097-22 SCHEDULE OF QUARTERLY RATES

1. Schedule of Commodity Rates & Quarterly Service Charge October 1, 2022

| | |
|---|---|
| Quarterly Service Charge | \$22.66 |
| Deficit Rate Rider per 1,000 gallons (see Clause 4) | \$5.25 |
| | |
| Quarterly Rates | Water Wastewater Water & Wastewater |
| Per 1,000 gallons | \$22.27 \$7.45 \$29.72 |

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.

a. Water & Wastewater Customers

| Meter Size | Group Capacity Ratio | Water Included Gallons | Customer Service Charge | Water Commodity Charge | Wastewater Commodity Charge | Water & Wastewater Total Quarterly Minimum | Rate Rider | Water & Wastewater Total Quarterly Minimum with Rate Rider |
|------------|----------------------------|------------------------------|-------------------------------|------------------------------|-----------------------------------|---|---------------|--|
| 5/8 inch | 1 | 3,000 | \$22.66 | \$66.81 | \$22.35 | \$111.82 | \$15.75 | \$127.57 |
| 3/4 inch | 2 | 6,000 | \$22.66 | \$133.62 | \$44.70 | \$200.98 | \$31.50 | \$232.48 |
| 1 inch | 4 | 12,000 | \$22.66 | \$267.24 | \$89.40 | \$379.30 | \$63.00 | \$442.30 |
| 1 ½ inch | 10 | 30,000 | \$22.66 | \$668.10 | \$223.50 | \$914.26 | \$157.50 | \$1,071.76 |
| 2 inch | 25 | 75,000 | \$22.66 | \$1,670.25 | \$558.75 | \$2,251.66 | \$393.75 | \$2,645.41 |

b. Water Only for Residential Customers

The minimum charge will be the same for each meter size as shown above but the Wastewater Commodity Charge will be excluded.

3. Bulk Water Sales

All water sold in bulk by the Benito Utility will be charged at the rate of \$24.50 per 1,000 gallons.

The following clauses take effect October 1, 2022:**4. Deficit Rate Rider**

Deficit Rate Rider of \$5.25 per 1,000 gallons of water consumed per customer commencing October 1, 2022 for 7 years to recover \$194,066 of the \$243,435 total deficit incurred from 2015 to 2020.

5. Service To Customers Outside Utility's Limits

The Council of the Municipality of Swan Valley West may sign Agreements with customers for the provision of water and wastewater services to properties located outside the boundaries of Benito. 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 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 Benito boundaries. In addition, all costs of connecting 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 charge of 1.25% per month, compounded monthly, shall be charged on the dollar amount owing after the billing due date. The due date shall be at least 20 days after the mailing of the bills.

7. Disconnection

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.

8. Reconnection

Any service disconnected, whether due to non-payment of account or for any other reason(s) mutually agreed to by the customer and the Municipality (i.e. repairs necessitated by negligence of the customer, changes in tenant, vacancy for an extended period of time, etc.) shall not be reconnected until a reconnection fee of \$50.00 and all arrears and penalties, if any, have been paid.

9. Outstanding Bills

Pursuant to Section 252(2) of *The Municipal Act*, the amount of all outstanding charges for water and wastewater services 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 Charges

The Municipality of Swan Valley West will pay to the utility an annual rental of \$150.00 for each hydrant connected to the system which includes the cost of water for firefighting.

11. Wastewater Surcharges

a) There may be levied annually, in addition to the rates set forth above, a special surcharge on wastewater 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 wastewater or industrial waste.

12. Meter Testing

Any customer wishing to have a meter tested for accuracy will pay in advance a fee of \$50.00, 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 \$500.00 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 person shall make any connection or communication of an independent water supply with a pipe or main which is part of or connected to the waterworks system.

15. Change of Water or Water & Wastewater

That a charge for change of water or water and wastewater to recover the cost of completing the change of user or service, for a service that has changed users or service shall be:

- a. during normal working hours - \$35.00
- b. outside of normal working hours - \$80.00

16. 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 \$200.00. The Municipality will then remove the subject meter and send it to an independent lab for testing. If the meter is found to be faulty, all costs associated with the testing process will be borne by the Municipality and the deposit will be refunded to the customer. If the meter is found to be in proper working order, all costs associated with the testing process will be borne by the customer and the customer will be billed or refunded any balance owing.

17. 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.

18. Conditions of Disrepair

In the event that there are conditions of disrepair in the wastewater 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.

19. Authorization For Officer To Enter Upon Premises

The Public Works Manager, 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.