

M A N I T O B A) Order No. 157/09
)
THE PUBLIC UTILITIES BOARD ACT) November 26, 2009

BEFORE: Graham Lane, CA, Chairman
Susan Proven, P.H.Ec., Member
Monica Girouard, CGA, Member

PROCEDURAL ORDER - CITY OF PORTAGE LA
PRAIRIE: TIMETABLE FOR A PUBLIC HEARING
(APPLICATION FOR REVISED WATER AND SEWER
RATES) AND APPROVAL OF INTERVENERS

SUMMARY

By this Order, the Public Utilities Board (Board) accepts an application for intervener status for the Board's public hearing (to be held on December 1, 2009) of the City of Portage la Prairie's (City) application for approval of revised water and sewer rates (to take effect as of January 1, 2010).

This order also provides the intervener with direction pertaining to the process to be followed for the hearing while denying the intervener's motion to adjourn the scheduled hearing for four to six months.

INTRODUCTION

The Board received an application (dated October 14, 2009) from the City for approval of revised water and sewer rates, to be effective January 1, 2010, 2011 and 2012. Subsequently, the Board scheduled a public hearing for December 1, 2009 and approved a notice of hearing to be published, posted and mailed by the City.

By a letter dated November 16, 2009, Taylor McCaffrey LLP (Barristers and Solicitors), representing McCain Foods (Canada), a division of McCain Foods Limited (McCain), submitted a motion for:

- Intervener status (in order to examine, cross-examine, present evidence and argument) with respect to the City's proposed revised water and sewer rates; and
- An adjournment of the hearing scheduled for December 1, 2009.

In the Notice of Motion, the following grounds were set out:

1. McCain is one of the largest industrial users of the City's water and sewer utility and would be amongst the most adversely affected if the proposed increases were approved by the Board (projecting that McCain would face an annual increase in water and sewer costs in the range of \$200,000 to \$300,000);
2. It was submitted that the proposed increases may affect the contractual rights between McCain and the City (with respect to the cost sharing and use of the waste treatment infrastructure);
3. McCain is in the midst of discussions with the City with respect to proposed changes to the waste treatment infrastructure, and such changes may have significant implications for the proposal before the Board;
4. McCain is actively considering a multi-million dollar capital expenditure to build additional waste treatment facilities, which may affect McCain's use of the City's water and sewer service and may lead to the possible discontinuance of certain existing waste treatment facilities (freeing up the City's existing system capacity);
5. McCain asserts that the "freeing up" of capacity may materially affect the overall cost of the City's proposed capital project and have direct relevance to the proposed rate increases sought by the City;
6. McCain expects to provide highly relevant and important information and evidence regarding the proposed rate increases, and asserts that it is in the public interest that the Board have this information and evidence to assist the Board in its decision; and

7. McCain asserts that it has inadequate information to fully assess the impact on the proposed rate increases on the firm, and is thus unable to properly respond to the application at this time (anticipating that considerable work will be required to properly prepare a response).

Given these circumstances, McCain requested both intervener status and an adjournment of at least four to six months, to allow the firm to conclude its discussions with the City, finalize its waste management capital investment plans and prepare for the hearing.

CITY'S POSITION

In a letter dated November 12, 2009, the City advised that it had met with representatives of McCain on October 8, 2009, at which meeting the City advised that it presented to McCain the proposed rates for the next three years, as well as the rationale for the proposed increases (which include estimated construction and operating costs associated with an expected requirement for nutrient removal), and discussed the cost implications for McCain if the proposed rates were approved and implemented.

While the City did not oppose McCain being granted Intervener status, it did not agree with McCain's request to postpone the hearing, stating in an email to the Board of November 19, 2009:

"The City's rate study is mainly to raise the rates for the nutrient removal project that MB Conservation has advised us to do. They have not put an order in writing but ... a meeting is taking place tomorrow ... to discuss the timelines.

...Since 2008 the reserve for Nutrient Removal is growing to fund \$14.2 Million of the City's share of \$17 Million of the estimated \$51 project... We are hopeful on getting 2/3 of the project cost shared through infrastructure but this is highly optimistic.

To build up our share of the construction costs we need to raise rates as proposed and further yet after 2012, while also issuing \$2.8 Million debt...

There is also an annual \$2 Million operating cost to operate the nutrient removal system. All these costs are estimates and with construction costs lately, we can only see the costs increase from our estimates.

Saying all that, it's imperative to commence these rate increases January 1, 2010. Delays in these increases or a reduced percentage of increase at this time would require future rate increases to be higher than currently proposed."

The City further indicated that:

"... nutrient loading by Industry is most significant which certainly justifies Industry to take a larger share of the rate increase for nutrient removal. There is also a desire by the PUB to narrow the gap between the consumption level rates (as stated in previous orders). You'll note the City's proposal reflects its sensitivity to the domestic customers and to the Industry's economic environment. In addition to the Industry's contribution share to utility revenues, the large industries also contribute about 10% of the Utility's operating costs (2009 budget numbers -not including capital or transfers to reserves or debt payments recovered by taxes) through the industrial treatment processing cost share agreement.

As stated in the executive summary, 'Large industry contributes approximately 50% of the revenues for the Utility and economic challenges in the world markets means for more caution and discretion in the City's deliberations.' The City took a balanced approach to narrow the gap between the step rates while mitigating the impact on Industry."

BOARD FINDINGS AND COMMENTS

The Board will grant Intervener status to McCain but will not postpone the hearing, which is to proceed as advertised. The Board has reviewed the City's application and concludes that the City's basis for its application and plan for revised rates to be in place as of January 1, 2010 is, on its face, deserving of the scheduled public hearing proceeding.

The Board has been made aware that the City provided McCain details of its application, meeting with representatives of the firm to discuss the implications for McCain, in early October 2009, yet McCain's motion, seeking a postponement of the hearing, was not filed with the Board until after the public notice of the hearing had been published, posted and mailed, and the hearing date was close "at hand". The Board also notes that no other party other than McCain responded to the Board's invitation in the notice to provide pre-hearing comments to the Board.

That said, the Board is sensitive to and concerned with the implications for large industrial customers, including McCain, that would arise with the approval and implementation of the proposed rates, as is.

Accordingly, the Board will, by this Order, establish a process that will involve the hearing proceeding as planned, while, also providing McCain reasonable time to prepare a submission, other than such submission that McCain may make at the public hearing, to

the Board. Such a later submission is to be provided for the City, also to allow the City to provide its views to the Board.

At the December 1, 2009 public hearing, the Board will hear the City's application and receive representations from any party in attendance.

The Board also anticipates that, on December 1 at the public hearing, it may learn from McCain, at that time, as to its suggested deadline for providing the Board with a submission with respect to the City's application.

Following the December 1, 2009 public hearing, the Board will deliberate and may issue an interim rate order. The rate directions of such an order would be based on the application of the City, the comments in support of a postponement provided by McCain, and all other information and/or evidence that may be provided at the hearing by the City and other parties present.

The Order may also provide a deadline for McCain's anticipated submission, as well as a deadline for the City to respond to any submission by McCain.

Following receipt and review of McCain's post-hearing submission and the City's comments, if any, with respect to that submission, the Board will deliberate further and may either finalize any interim rates that may be set following the public hearing on December 1, 2009, vary any interim rates and then finalize the varied rates, or set out such other decision or process as the Board may determine to be in the public interest.

While the above indication of the Board's present intent represents fairly the Board's current understanding of the situation and its likely response, the Board is not bound by its stated intentions. The Board's primary concern is to reflect and act in the public interest, and, accordingly, the Board reserves its right to establish such process or process as it deems necessary and/or appropriate.

Electronic copies of all material including the evidence of parties, are required to be submitted to the Board's e-mail address: publicutilities@gov.mb.ca. Where schedules or other attachments accompany an electronic file, that filing must be discrete and include only the item and schedules to which each refers. All electronic filings shall be in Adobe Acrobat format, with protection securities allowing printing, content copying, content copying for accessibility and page extraction.

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.pub.gov.mb.ca.

IT IS THEREFORE ORDERED THAT:

1. McCain Foods (Canada), a division of McCain Foods Limited, BE AND IS HEREBY granted Intervener status with respect to the application by the City of Portage la Prairie for revised water and sewer rates (such rates proposed to be effective January 1, 2010); and
2. McCain Foods' (Canada) motion to adjourn the hearing scheduled for December 1, 2009 (for four to six months) is hereby denied.

THE PUBLIC UTILITIES BOARD

"GRAHAM LANE, C.A."
Chairman

"K. SHIELDS"
Acting Secretary

Certified a true copy of Order
No. 157/09 issued by The Public
Utilities Board

Acting Secretary