

M A N I T O B A

THE PUBLIC UTILITIES BOARD ACT

THE MANITOBA PUBLIC INSURANCE ACT

**THE CROWN CORPORATIONS PUBLIC
REVIEW AND ACCOUNTABILITY ACT**

Order No. 79/12

July 5, 2012

Before: Régis Gosselin, CGA, MBA, Chair
Susan Proven, P.H.Ec., Member

MANITOBA PUBLIC INSURANCE CORPORATION:

**PROCEDURAL ORDER
TIMETABLE FOR A PUBLIC HEARING
(2013/14 RATES AND PREMIUMS FOR COMPULSORY DRIVER AND VEHICLE INSURANCE)
AND APPROVAL OF INTERVENERS**

Summary

By this Order, the Public Utilities Board of Manitoba (Board) accepts interveners to the Board's public hearing of the application of Manitoba Public Insurance Corporation (MPI) for approval of base rates and premiums for compulsory driver and vehicle insurance (the new rates are to take effect March 1, 2013). This Order also provides interveners with direction pertaining to the proceeding, and establishes a timetable for the hearing.

Introduction

The Board held a Pre-Hearing Conference (PHC) at its offices in Winnipeg on Friday, June 29, 2012, for the purposes of:

- (a) considering applications from prospective interveners and matters related thereto; and
- (b) establishing a timetable for the hearing.

This Order arises from the PHC.

The following exhibits were entered into the record of the proceeding by Board counsel:

1. Notice of Public Hearing and PHC, dated June 15, 2012;
2. the Board's Rules of Practice and Procedure (Rules); and
3. the hearing timetable.

Parties seeking Intervener status were asked to:

- i. indicate their constituency and interests;
- ii. outline the areas of MPI's application that they intend to test;
- iii. provide their reasons for requesting Intervener status;
- iv. specify their plans to call evidence/witnesses; and

- v. indicate their interest with respect to seeking an award of costs, and, if interest was expressed, to provide a draft budget.

The Board advised prospective interveners that it intends to apply the criteria set out in the Board's Rules in decisions with respect to the awarding of costs, such decisions being at the sole discretion of the Board.

The following parties applied for Intervener status:

1. Consumers' Association of Canada (Manitoba) Inc. (CAC), represented in person at the PHC by its counsel, Mr. Byron Williams and Ms. Meghan Menzies;
2. Coalition of Manitoba Motorcycle Groups (CMMG), represented in person at the PHC by its counsel, Mr. Raymond Oakes;
3. Canadian Automobile Association (CAA) Manitoba, represented in person at the PHC by Ms. Liz Peters; and
4. Insurance Brokers' Association of Manitoba, not represented in person at the PHC; and
5. Robyn Gray/Motorcycling in Manitoba (Gray), in attendance in person at the PHC.

MPI was represented by Ms. Kathy Kalinowsky (Counsel), Ms. Marilyn McLaren (President & Chief Executive Officer) and Ms. Heather Reichert (Vice-President, Corporate Finance or Chief Financial Officer).

Applications for Intervener Status

1. CAC

CAC represents the broad interests of consumers and proposes to test all aspects of the rate application with a view to determining whether the proposed rates are just and reasonable, and in particular CAC will ask:

- I. Has the Dynamic Capital Adequacy Test (DCAT) been updated to be consistent with modern risk management practices or does it remain vulnerable to arbitrary adjustment?;
- II. Has MPI reined in aggressive spending growth including spending related to staff and information technology?;
- III. Does the proposed cost allocation formula adequately protect Basic ratepayers?;
- IV. Are MPI's investments in road safety prudent and consistent with the public interest?; and
- V. Is the proposed level of reserves associated with the Rate Stabilization Reserve (RSR) appropriate?.

CAC advised that it intends to appear throughout the hearing, participate in the testing of evidence, and present final argument. CAC also advised that it has yet to determine whether it will call a witness at the hearing. In particular, CAC advised that it may call as an expert witness Professor Wayne Simpson, an economist, to address modern risk management practices as they relate to the setting of reserves for the RSR. CAC will advise the Board with respect to this witness in due course. CAC has already provided to the Board a budget including Professor Simpson's fees, should he testify.

CAC advised that it will seek a costs award, and provided an intervention budget from \$121,900.00 to \$144,600.00, inclusive of disbursements. One of the disbursements requested by CAC is \$1,500 to \$2,000 for a Focus Group addressing issues such as Road Safety and Rate Stability (if necessary). CAC advised that it has typically borne this type of expense in the past. .

CAC also requested an increase in the hourly rate payable to its counsel in this matter. The Board will circulate to all parties the rate sheet by which Board counsel and counsel for the interveners shall have their rates set, according to years of seniority at the Bar.

2. CMMG

CMMG reported that its focus would be:

- I. an examination of the loss experience for motorcyclists in Manitoba;
- II. a review of annual claims data with a particular focus on the accuracy of MPI's forecasts;
- III. an examination of MPI's wealth and financial status with a view to promoting, where appropriate, a larger general decrease than what has been applied for;
- IV. road safety, including the prevention of wildlife collisions and an increase in initiatives and expenditures in that area; and
- V. an examination of the practice and policies of MPI with respect to products for motorcycles.

CMMG advised that it does not intend to call a witness at this year's hearing.

CMMG advised of its intention to seek an award of costs, and submitted a budget of \$20,850.00 plus taxes.

3. CAA Manitoba

CAA reported its intention to maintain a watching brief throughout the hearing and to present final argument. CAA identified as areas of particular interest Road Safety and distracted driving. CAA is not applying for a costs award.

4. IBAM

IBAM advised through its Intervener Request Form that its broker members are the primary distributor of MPI products. IBAM has reserved the right to call a witness, but it is not seeking a costs award.

5. Gray

Gray advised the Board that he represents everybody that rides a bike and he provided the following reasons for proposed intervention:

- I. To study the feasibility and to introduce an annual, unbiased review by a separate entity of how well MPI is serving and treating Manitoba motorists;

- II. To determine why the motorcycle division is the only division to not include fire and theft coverage within road insurance;
- III. To study the motorcycle division's expense allocation to ensure it is proportional and cost effective;
- IV. To study the method by which MPI determines motorcycle and body shop rates;
- V. To study the method used by MPI to evaluate the fair market value of a motorcycle or other vehicle where the insured has purchased Extension coverage relative to permanently attached equipment;
- IV. To study and compare motorcycle rates offered by MPI to those in other provinces; and
- V. To explore the method by which MPI calculates motorcycle insurance rates.

Gray further advised of his intention to appear throughout the hearing, to participate in the production and testing of evidence, and to present final argument.

Gray advised that he is seeking a costs award in this matter of \$7,700.00 inclusive of disbursements.

Gray is a member of CMMG, and CMMG advised that it took no position with respect to the intervention of Gray and that regardless of the outcome the intervention application CMMG would cooperate with Gray. CMMG further advised that if Gray was not granted intervener status it would include at least some of his identified issues into its intervention and that Gray was invited to design questions with CMMG's executive with a view to having questions form part of the Information Requests posed by CMMG in this proceeding.

MPI Position

MPI accepted the granting of Intervener status to the applicants save and except for Gray, which intervention MPI opposed. The reasons cited by MPI for its opposition to Gray's intervention were:

- Gray's request that there be an annual, unbiased review by a separate entity of how well MPI is serving and treating Manitoba motorists is already accomplished through the GRA process before the Board;
- The motorcycle division is the only division not to include fire and theft coverage within road insurance which is a matter of legislation, and hence beyond the jurisdiction of the Board;
- Gray does not formally represent the dealers to which shop rates are relevant, while CMMG does so;
- Total losses can be adjudicated through umpires and independent arbitration; both processes that are independent of the GRA process;
- Gray is a member of CMMG and attends its meetings;
- Gray did not provide evidence regarding whether "Motorcycling in Manitoba" is an organization, an incorporated group or other, nor was there evidence presented as to its membership or constituency;
- CMMG has provided appropriate intervention in the past and is capable of doing so at this GRA proceeding; and
- CMMG advised that it would be willing to move forward some of Gray's issues in this proceeding and perhaps use him as a special consultant with respect to its intervention.

MPI also directed the Board's attention to MacAulay and Sprague, Practice and Procedure Before Administrative Tribunals wherein it is reflected, with respect to prospective interveners, that:

The degree of participation will be determined by the extent the agency (Board) feels the intervener's participation will assist it in its mandate. Sometimes two or more individuals or groups may bring before the agency (Board) essentially the same expertise or views. In that case the agency (Board) may require that they pool their resources and appear through a single spokesman.....If the person seeking intervener status is not bringing anything of potential use to the agency, or is simply repeating (that) which will already be brought or could be brought to the agency (Board) by the other parties, the agency (Board) should not grant intervener status out of concerns

respecting the public (and the parties') interest in efficient and expeditious proceedings
(emphasis added).

MPI also referenced the six factors outlined in the Khadr decision, cited in MacAulay and Sprague in support of its opposition to Gray's intervention. With respect to the first and second factors, MPI agreed that Gray will be affected by the outcome of the GRA process as will all Manitoba motorists, and agreed that the GRA is a matter of public interest. With respect to the third and fourth factors MPI argued that there is another reasonable and effective means of submitting Gray's questions to the Board and that Gray's position will be adequately defended within the GRA due to the intervention of CMMG and other interveners in the GRA proceeding. With respect to the fifth and sixth factors, MPI argued that the interests of justice are not better served by Gray's intervention and that the Board can hear and decide the GRA on its merits without Gray as an intervener.

MPI also commented to the Board and presented evidence with respect to regulatory costs and the number of Information Requests posted in the GRA proceeding over the last number of years. In particular, MPI presented to the Board MPI Exhibit 1 which reflects the total costs for the GRA proceeding over the last five years as follows:

<u>GRA</u>	<u>Total Costs</u>
2012 GRA	\$502,500
2011 GRA	\$540,000
2010 GRA	\$634,600
2009 GRA	\$403,000
2008 GRA	\$297,300

MPI also presented to the Board MPI Exhibit 2 which reflects that in the 2010 GRA, the 2011 GRA and the 2012 GRA the number of Information Requests posed to MPI have been at all-time highs over previous years. At the 2010 GRA over 800 Information Requests were posed of MPI and at the 2011 GRA and 2012 GRA over 1200 Information Requests were posed of MPI. MPI questions whether all of the Information Requests posed are of assistance to the Board in deciding the issues within the GRA process.

MPI asked that the Board and all parties review the increased costs and consider the same throughout the Information Request process and GRA proceeding. With respect to Information Requests, MPI asked that the Board direct its advisors not to seek information that the Board does

not require, and to issue a directive to interveners to limit the number and scope of Information Requests to be posed to MPI

Response to MPI Position

In response to MPI's comments, CAC suggested that to the extent that Information Requests are posed to MPI that it considers irrelevant to the GRA process, it can decline to provide an answer; an approach that MPI has often utilized in the past.

CMMG advised the Board that the Information Request process would be assisted if MPI was more responsive in its answers to the questions posed.

Board Comments and Decisions

With respect to the upcoming GRA proceeding, the Chair identified a number of issues that the Board will be considering that flow from earlier requests and recommendations issued by the Board including those related to Road Safety and Loss Prevention, Investments, Capital Expenditures, Operating Expenses, Basic's Retained Earnings, the method by which the RSR Target Range should be established, Cost Allocation, Stochastic Modeling in claims, as well as a variety of other issues.

The Chair also expressed the Board's concern that the GRA as filed is incomplete with respect to the following issues:

- Demerits for the use of handheld communication devices while driving;
- Demerits for convictions related to red light cameras and photo radar;
- The relationship between red light camera and photo radar infractions and accidents;
- Information from other jurisdictions regarding red light camera and photo radar infractions;
- The make-up of MPI's investment portfolio;
- Benchmarking with auto insurance benefits in other provinces;
- Family Transfers;

- Claim Buy Backs;
- Pay As You Drive or PAYD; and
- Graduated Licensing for Motorcyclists.

After considering all submissions with respect to intervener applications, the Board will grant intervener status to CAC, CMMG, CAA and IBAM. The Board will not grant intervener status to Gray because Gray is a member of CMMG which is already an intervener in this proceeding, and in addition Gray does not represent an organized group of Manitoba motorcyclists. It is the Board's view that the issues identified by Gray as being of interest in this proceeding could be brought forward and pursued by CMMG. The GRA hearing process is, as always, a public forum and Gray is welcome to attend throughout to observe the proceedings. As has been offered by CMMG, he can collaborate with Mr. Oakes regarding its intervention in the GRA, and as well he certainly can make a presentation to the Board at the GRA as he has done in the past.

The Board has considered CAC's request regarding the disbursement for a Focus Group on Road Safety and Rate Stability (if necessary) and the Board is generally supportive of the conducting of focus groups to learn of the views of the public on various issues. The Board considers CAC's intention to conduct a modest focus group testing of consumers to be an appropriate undertaking in this proceeding and hereby approves that disbursement.

Regulatory efficiency is a continuing objective for the Board, and all reasonable efforts should be made by all parties to the proceeding to restrain costs. This is very much in the interests of motorists as costs awards form a component of rates. The Board will not impose a limit on the number of Information Requests that can be posed of MPI in this proceeding, but does ask all parties to be conservative in their approach and sensitive to the costs and time incurred for MPI to respond to Information Requests. In other words, all parties should exercise good judgment when posing Information Requests to MPI.

As in the past, the Board will expect a high degree of co-operation amongst interveners and with Board Counsel, again to avoid duplication and restrain regulatory costs.

Timetable

It was apparent at the PHC that a consensus was reached on a timetable which accommodates all parties.

The final version of the timetable is attached hereto as Schedule "A". Attached hereto as Schedule "B" are the procedures to be followed.

IT IS THEREFORE ORDERED THAT:

1. Schedule "A", as attached, shall be the timetable for the orderly exchange of information by the participating parties.
2. Schedule "B", as attached, shall apply with respect to the hearing of the MPI Application.
3. Interveners to the hearing, subject to the filing of updated budgets, shall be:
 - (a) Canadian Automobile Association Manitoba;
 - (b) Coalition of Manitoba Motorcycles Groups Inc.;
 - (c) Consumers' Association of Canada (Manitoba) Inc.; and
 - (d) Insurance Brokers' Association of Manitoba.

THE PUBLIC UTILITIES BOARD

"RÉGIS GOSSELIN, CGA, MBA"

Chair

"H. SINGH"

Secretary

Certified a true copy of Order No. 79/12 issued by
The Public Utilities Board

Secretary

SCHEDULE "A"
TIMETABLE
2013 - 2014 RATE APPLICATION

ITEM	2012 DATES	DAY OF WEEK
1. Application filed and served	June 15	Friday
2. Notice of Public hearing to be published	June 23	Saturday
3. a) Pre-hearing Conference	June 29	Friday
b) interveners complete Registration	June 29	Friday
c) Settle Hearing Procedure and exchange of information timetable	June 29	Friday
d) Discuss possibility of joint intervention	June 29	Friday
4. a) Board to circulate list of interveners, complete timetable to interveners and applicant	July 4	Wednesday
b) Last day to file as an intervener	July 4	Wednesday
5. MPI to be in receipt of first round information requests	July 10	Tuesday
6. MPI to provide response to first round information requests	August 3	Friday
7. MPI to be in receipt of second round information requests	August 17	Friday
8. MPI to publish reminder notice and any amendments to application	August 25	Saturday
9. a) MPI to file responses to second round information requests	September 10	Monday
b) MPI to file and serve any further amendments to application, if required	September 12	Wednesday
10. a) interveners to file pre-filed testimony to all parties	September 14	Friday
b) Parties to file any motions	September 14	Friday
11. interveners to be in receipt of information requests from all parties	September 18	Tuesday
12. Board to hear all motions	September 19	Wednesday
13. interveners to provide responses to all information requests	September 24	Monday
14. Board decision on motions, meeting among Counsel, if required	September 24	Monday
15. MPI to file rebuttal evidence	September 24	Monday
16. Hearing commences	September 25	Tuesday
Hearing dates	Sep 25, 26, 27 Oct 1, 2, 3 Oct 16, 17, 18 Oct 23, 24, 25	Tues, Wed, Thur Mon, Tues, Wed Tues, Wed, Thur Tues, Wed, Thur

SCHEDULE "B"

PROCEDURES TO BE FOLLOWED AT THE MANITOBA PUBLIC INSURANCE CORPORATION 2013 RATE APPLICATION

1. Hearing and Rural Meetings:
 - (a) Winnipeg hearing will be held at the Board's office, 4th Floor, 330 Portage Avenue, Winnipeg, commencing on September 25, 2012 at 9:30 a.m. and continuing thereafter as necessary.
 - (b) Rural Meetings (if necessary) – time, location and place to be identified.
2. Hearing Times Each Day: 9:30 a.m. to 12:00 Noon
1:15 p.m. to 4:00 p.m.
(amendments may be made by the Board at the hearing)
3. Assigned Sittings: Presenters will be heard commencing at 1:15 p.m. Tuesday, September 25, 2012 and at 7:00 p.m. that day if necessary.
4. Opening Statements by Board Counsel, by Counsel for MPI and other Counsel or representatives of registered interveners.
5.
 - (a) MPI to file their application and supporting evidence.
 - (b) MPI to introduce witnesses. Board Counsel and interveners to cross-examine the Corporation's witnesses (order to be determined).
6.
 - (a) Leading of testimony by witnesses for interveners, if any, will be in alphabetical order by name of interveners and updated as necessary.
 - (b) Witnesses to be available for cross-examination by all parties following each presentation.
7. All interrogatories are to be filed and responded to using the prefixes as assigned by the Board when interveners are registered (set out in the body of the Order). The party requesting information is to use firstly their prefix followed by the prefix of the party being asked e.g. PUB/MPI, etc. Interrogatories are to be numbered sequentially through 1st and 2nd rounds, e.g. PUB/MPI 1-3, PUB/MPI 2-7.
8. All pre-filed evidentiary material to be filed at the commencement of the hearing by Board Counsel using assigned prefixes.
9. All witnesses to highlight their evidence.

10. All witnesses to be sworn or affirmed.
11. Daily transcripts will be available. Parties to make arrangements with the Reporter. Transcripts can be found at www.pub.gov.mb.ca at no charge.
12. It is the Board's request that all motions be dealt with pursuant to the Board's Timetable.
13. The Board's Rules of Practice and Procedure (available on the Board's website) dealing with the Awarding of Costs will apply to all matters before the Board.
14. The Board indicates its willingness to be available for any problems that may arise during the exchange of information at any time, such time to be arranged through Board Counsel.
15. Seven (7) paper copies of material are to be submitted to the Board's offices and four (4) copies are to be submitted to Board Counsel at the following address:

Attention: Candace Grammond, Pitblado, 2500 – 360 Main Street, Winnipeg, MB
R3C 4H6.
16. 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. The electronic files shall be named in accordance with their parties prefix as per #7. All electronic filings shall be in Adobe Acrobat format, with protection securities allowing printing, content copying, content copying for accessibility and page extraction.