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<i>THE PUBLIC UTILITIES BOARD ACT</i>)	Order 7/15
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<i>THE MANITOBA PUBLIC INSURANCE ACT</i>)	
)	January 21, 2015
<i>THE CROWN CORPORATIONS PUBLIC</i>)	
<i>REVIEW AND ACCOUNTABILITY ACT</i>)	

Before: Régis Gosselin, B ès Arts, C.G.A., M.B.A., Chair
Karen Botting, B.A., B.Ed., M.Ed., Vice Chair, Acting Chair
The Hon. Anita Neville, P.C., B.A. (Hons.), Member
Susan Proven, P.H.Ec., Member
Allan Morin, B.A., ICD.D., Member

**MANITOBA PUBLIC INSURANCE CORPORATION (MPI): AWARD OF COSTS
AUTOMOTIVE RECYCLERS OF MANITOBA LTD. (ARM) AND BIKE WINNIPEG (BW)
INTERVENTION IN MANITOBA PUBLIC INSURANCE CORPORATION'S
GENERAL RATE APPLICATION FOR THE 2015/16 INSURANCE YEAR**

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1.0 Introduction

By this Order, the Public Utilities Board (Board) denies the application of the Automotive Recyclers of Manitoba Ltd. (ARM) for a costs award with respect to the 2015/16 General Rate Application (GRA) of Manitoba Public Insurance (MPI or Corporation), with respect to compulsory driver and vehicle insurance premiums. There is a dissent, by one panel member, with respect to this aspect of the Order.

By this Order, the Board grants the application of Bike Winnipeg (BW) for a costs award with respect to the GRA of MPI, with respect to compulsory driver and vehicle insurance premiums.

2.0 Costs Applications

As provided in the Notice of Public Hearing issued with respect to the GRA on or about June 18, 2014, interveners to the GRA may be entitled to financial assistance in respect of the GRA process, pursuant to the related guidelines reflected in the Board's Rules of Practice and Procedure.

With respect to the GRA, ARM applied for an award of costs in the total amount of \$29,438.37, comprised of 119.00 hours of work, at the hourly rate of \$217.00, plus \$229.54 in disbursements and applicable taxes. This amount is exclusive of the costs submitted by ARM previously, and approved by the Board in Order 139/14, in the amount of \$4,947.60.

With respect to the GRA, BW applied for an award of costs in the total amount of \$21,420.46, comprised of 97.5 hours of work, at the hourly rate of \$190.00, plus \$464.75 in disbursements and applicable taxes. This amount is inclusive of the costs submitted by BW previously, and awarded by the Board in Order 139/14, in the amount of \$1,843.00.

3.0 ARM's Comments

ARM stated that its intervention contributed to wider public issues and was not limited to seeking to improve its business relationship with MPI, as submitted by MPI.

In particular, ARM stated that its intervention dealt with many issues central to the public interest, including:

1. The design and use of MPI's new Physical Damage Re-Engineering initiative;
2. The safety of Manitobans in the sale of total loss vehicles at MPI auctions;
3. Environmental concerns with respect to the unregulated demolition and repair of total loss vehicles;
4. The need for competition to ensure that Original Equipment Manufacturers stay competitive; and
5. Savings for the public in other areas such as recycled glass and related parts.

ARM stated that it is a non-profit corporation, administered by volunteers. ARM requested, as an alternative outcome, and if the Board does not order payment of all ARM's costs, that a proportional amount be awarded.

4.0 BW's Comments

BW stated that it is a voluntary organization and that its intervention provided a significant contribution to the GRA process. BW stated that its intervention in the GRA caused no undue delay or unnecessary regulatory costs, and that it participated only on the narrow points that were relevant to its intervention, as granted by the Board previously. BW stated that it acted in a responsible and cooperative manner, to ensure that the GRA hearing proceeded as efficiently as possible.

BW stated that it brought a unique perspective to the GRA hearing, namely the perspective of cyclists, as vulnerable road users, and well that of Manitobans. BW characterized its perspective as that of the human aspect of road safety matters. BW also stated that an analysis of the number of times it used the word "cyclists" at the GRA hearing as presented by MPI is an overly simplistic manner in which to analyze the value of its intervention.

BW stated that any deficiencies within MPI's GRA application relative to road safety should not be relied upon by MPI in support of an argument that BW, or any intervenor, did not participate in the process in a manner that was in the public interest, or that it did not contribute to the Board gaining a better understanding of the issues.

BW stated that as reflected in MPI's strategic plan, MPI has always had an unwavering commitment to reducing roadway risk in a manner that is supported and expected by Manitobans. BW stated that its participation in the GRA hearing, in addition to contributing to an improved understanding by the Board of the issue of road safety, was in the public interest of cyclists, vulnerable road users and Manitobans. BW states that an assessment of whether or not it represents the interests of ratepayers should be considered in this context.

In support of its position, BW pointed to several findings of the Board within Order 135/14, with respect to MPI's road safety budget and road safety portfolio, wherein requests made by BW were accepted by the Board. In addition, BW stated that the Board accepted its submissions with respect to instances wherein MPI has not completed items ordered in past Board Orders.

BW stated that pursuant to the Act, the Board has the jurisdiction to award costs of and incidental to any proceeding, which provision is further detailed the Board Rules. BW submitted that it has met all of the criteria set out in the Rules, and as such is seeking an award of costs in its favour.

5.0 MPI's Comments

ARM

MPI stated that while ARM is an important business partner of MPI, ARM's intervention was limited to advocating the necessity of improving its business relationship with MPI, and that although that business relationship may ultimately have an impact upon rates, the GRA hearing is not the appropriate forum in which to discuss it.

MPI stated that pursuant to ARM's business relationship with the Corporation, ARM members receive revenue of approximately \$7.5 million dollars per year, which demonstrates that ARM has sufficient financial resources to make its intervention without an award of costs by the Board. MPI also noted that the amount of the costs award requested by ARM is \$29,439.37, in excess of its proposed budget of \$22,868.00 plus taxes.

MPI stated that if costs were awarded to ARM, ratepayers would bear the cost of ARM's intervention, and that the only substantial interest that ARM had in the outcome of the GRA proceeding related to its request that MPI do more business with ARM members. The Corporation stated that it is not appropriate for ratepayers to pay the costs of a business association's lobby to seek more business for that association's members. MPI stated that ARM has failed to meet the criteria set out in Rule 43 of the Board's Rules with respect to payment of costs.

BW

MPI stated that BW is a MPI partner with respect to road safety issues, and that MPI values its relationship with BW for operational matters related to road safety and cyclists.

MPI stated that BW did not make a significant contribution to the GRA hearing, nor did it provide the unique perspective of cyclists. MPI stated that counsel for BW used the word "cyclist" three times, in both his opening and closing remarks, but other than that his only reference to the word "cyclist" in the entire hearing was found at one particular question posed on cross-examination.

MPI stated that when BW sought intervention in the GRA, it knew both the Corporation's position on road safety and what the Board was seeking in the context of a limited intervention. MPI stated that any perceived deficiencies in the GRA relative to road safety should not be relied upon by BW to support BW's failure to provide the unique perspective that the Board wanted to hear, and on which basis it granted a limited intervention.

MPI stated that the hearing process took longer than necessary because counsel for BW made opening and closing remarks, and undertook a cross-examination that did not satisfy the Board's stated requirements for the intervention.

MPI stated that BW does not represent the interest of ratepayers, and that ratepayers should not have to bear the cost of BW's intervention because it did not provide the unique perspective that the Board was seeking.

MPI stated that BW failed to meet the test in Board Rule 43(a) (make a significant relevant contribution to the hearing), and Board Rule 43(d) (represent the interests of a substantial number of ratepayers). MPI stated that BW should bear its own costs with respect to the GRA.

6.0 Board Findings

The Board has reviewed the costs applications received, and the response of MPI to each of those applications, as well as the further replies filed by each of ARM of BW.

The Board notes that pursuant to *The Public Utilities Board Act*, s. 56(1), the costs of and incidental to any proceeding before the Board are in the discretion of the Board, and may be fixed in any case at a sum certain. In addition, s. 56(2) provides that the Board may order by whom, and to whom, any costs are to be paid.

Pursuant to the Board's Rules of Practice and Procedure, and in particular Rules 3 and 43 thereof, the following is reflected:

3. (1) These Rules apply to all proceedings of the Board.
- (2) In any proceeding, the Board may dispense with, vary or supplement any of the provisions of these Rules.
- (3) The Board has all the powers of a Court of Queen's Bench or a Judge thereof in respect of the attendance and examination of witnesses, the amendment of proceedings, the production and inspection of documents, the enforcements of its Orders and all other matters necessary or proper for the due exercise of its powers, except as otherwise provided in *The Public Utilities Board Act* [Section 24(4), *The Public Utilities Board Act*].

43. In any proceeding the Board may award costs to be paid to any Intervener who has:
- a) made a significant contribution that is relevant to the proceeding and contributed to a better understanding, by all parties, of the issues before the Board;
 - b) participated in the hearing in a responsible manner and cooperated with other Interveners who have common objectives in the outcome of the proceedings in order to avoid a duplication of intervention;
 - c) insufficient financial resources to present the case adequately without an award of costs; and
 - d) a substantial interest in the outcome of the proceeding and represents the interests of a substantial number of the ratepayers.

ARM

The Board accepts that ARM made a significant contribution to the GRA process, which contribution was relevant to the decision making of the Board, and contributed to a better understanding of all parties of the issues before the Board. ARM raised in its submissions a perspective that was distinct from and in addition to those raised by the other interveners. The Board also accepts that ARM participated in the GRA process in a responsible manner, that it has a substantial interest in the outcome of the GRA, and that it represents the interests of a substantial number of ratepayers. While the Board appreciates that ARM is comprised of automotive recyclers that do business with MPI, those recyclers are also ratepayers, and to the extent that the business done as between the ARM recyclers and MPI impacts rates paid by all motorists, ARM's contribution to the GRA is relevant.

The Board does not accept that ARM has insufficient financial resources to present its case adequately without an award of costs. The Board notes that in each of Order Nos. 81/14 and 139/14, it cautioned ARM with respect to an award of costs. In particular, the Board stated that:

The Board reminds ARM, however, that all decisions relative to costs awards are made at the conclusion of the GRA proceedings, and are in the sole discretion of the Board. The Board also brings to ARM's attention article 43 of the Board's Rules of Practice and Procedure, and in particular article 43(c) relative to sufficiency of financial resources in determining costs awards.

The Board awarded costs to ARM in Order 139/14, relative to a series of motions filed by the parties to the GRA, to compel MPI to provide certain information to the Board. The Board stated that but for the filing of its motion, ARM would have had no evidence from MPI relative to its areas of interest within the GRA, rendering ARM's intervention almost completely without purpose. On that basis, the Board elected to exercise its discretion pursuant to the Act and award to ARM the costs of its motion, which the Board stated was a very rare and exceptional outcome given ARM's financial position.

With respect to the GRA, the Board is not prepared (subject to the dissenting decision referenced below) to exercise its discretion and award costs to ARM. While the Board recognizes that ARM is a non-profit organization, its constituent members are for profit entities, and in fact conduct a significant amount of business with MPI (\$7.5 million per year). The information presented by ARM at the hearing reflected that recycled parts sales have decreased over the last number of years, which sales ARM is seeking to increase. While the Board appreciates that there may be a correspondent savings to MPI if the use of recycled parts increases, the Board cannot ignore that one of ARM's primary objectives as an industry association is to increase sales, revenue and profitability within its industry. On that basis, the Board will not make an award of costs to be borne by ratepayers in furtherance of ARM's objectives.

The Board also notes that when ARM applied for intervention in the GRA, it was stated expressly that an award of costs was not the fundamental basis on which ARM sought intervention. Rather, ARM stated that it sought intervention in a bona fide manner, to attempt to bring value to the process in the area of recycled parts, with a view to the overall costs incurred by MPI being reduced. ARM recognized expressly that at the conclusion of the GRA process, costs may or may not be awarded in its favour.

The Board also notes that ARM does not represent all recyclers that do business with MPI, and as such an award of costs to ARM would constitute an award in favour of some but not all businesses within the recycling industry. The Board would welcome the ongoing interest of ARM in the GRA process, whether by way of application for intervention or presentation, and encourages ARM to continue its work with a view to reducing costs incurred by MPI for replacement parts, and to increasing sustainability in the context of the automotive repair process.

As referenced above, there is a dissenting decision within the Board Panel with respect to the aspect of this Order relating to an award of costs to ARM. In particular, Board Member Neville would exercise her discretion to award costs to ARM, on the basis that ARM provided a substantial and unique contribution to the discussion, relative to the nature of costs incurred by MPI, which would impact rates directly. Board Member Neville found the contributions of ARM helpful to the decision-making process and holds the view that ARM, as a new participant in the GRA process, should be encouraged to take part and advance matters in the public interest without having to bear directly the out-of-pocket costs of doing so.

BW

The Board also accepts that a significant contribution was made to the GRA process, that was relevant to the decision making of the Board, and that contributed to a better understanding of all parties of the issues before the Board. This is particularly so relative to matters of road safety, an issue that the Board has sought to address in a number of past orders, to which MPI allocates considerable resources and which in the view of the Board will require additional attention at future hearings.

Pursuant to Board Order 135/14, MPI will be making additional filings at the next GRA, with respect to, amount other things, an update regarding the road safety and loss prevention framework that it proposed at this GRA, in the context of which the optimal size of the applicable budget is to be examined. MPI will also be providing an independent review of the optimal size of the road safety budget for the Corporation, with a view to minimizing the economic and social costs of collisions, together with an independent review of the current road safety portfolio, with a view to optimizing it, relative to cost effectiveness and setting goals for outcomes, and minimizing the economic and social costs of collisions.

As stated by the Board in Order 98/14, road safety and loss prevention costs incurred by MPI have a dual impact upon Basic rates; as both expenditures borne by Basic and a potential cost savings mechanism. The Board must assess the necessity and prudence of these costs and the potential savings, and the importance of this analysis cannot be overstated.

The Board accepts that BW participated in the GRA process in a responsible manner, that it has a substantial interest in the outcome of the GRA process, and that it represents the interests of a substantial number of rate payers. The Board accepts the submission of BW that in presenting the perspective of cyclists, BW also provided the broader perspective of vulnerable road users, and Manitobans generally.

The Board did not find that these broader perspectives detracted from the unique contribution to be made by BW in the context of its specific intervention. Rather, the Board found value in the contributions of BW, including the extent to which those contributions related to all vulnerable road users and Manitobans generally, in the area of road safety.

The Board recognizes that BW is a non-profit organization that does not have the ability to be funded by its members, and that its case could not be presented adequately without an award of costs.

On the basis of all of the foregoing, the Board is prepared to award costs to BW in respect of the GRA process as requested by BW.

7.0 IT IS THEREFORE ORDERED THAT:

1. Automotive Recyclers of Manitoba Ltd. **BE AND IS HEREBY** awarded no costs with respect to the GRA process.
2. Bike Winnipeg **BE AND IS HEREBY** awarded costs of \$19,577.46 with respect to the GRA process.
3. All of the foregoing costs shall be payable by the Manitoba Public Insurance Corporation to the named interveners within 30 days of the date of this Order.

Board decisions may be appealed in accordance with the provisions of section 58 of *The Public Utilities Board Act*. The procedural rules applicable to the Board's review of its decisions are reflected in the Board's Rules of Practice and Procedure, which may be viewed on the Board's website, www.pub.gov.mb.ca.

THE PUBLIC UTILITIES BOARD

"Karen Botting, B.A., B.Ed., M.Ed., Vice-Chair"
Acting Chair

"Jennifer Dubois, CMA"
Acting Secretary

Certified a true copy of Order No. 7/15
issued by The Public Utilities Board

Acting Secretary