

ATTACHMENT 1 - LIMITED JURISDICTION TO GRANT INTERIM RATE INCREASES

The Public Utility Board is a creature of statute. It has no inherent jurisdiction to order interim relief.

The Supreme Court of Canada reviewed the purpose of interim orders in a Bell Canada case and held as follows¹:

By virtue of s. 60(2) of the *National Transportation Act*, the appellant also has the power to make interim orders:

60....

(2) The Commission may, instead of making an order final in the first instance, make an interim order and reserve further directions either for an adjourned hearing of the matter or for further application.

.....

Traditionally, such interim rate orders dealing in an interlocutory manner with issues which remain to be decided in a final decision are granted for the purpose of relieving the applicant from the deleterious effects caused by the length of the proceedings. Such decisions are made in an expeditious manner on the basis of evidence which would often be insufficient for the purposes of the final decision. **The fact that an order does not make any decision on the merits of an issue to be settled in a final decision and the fact that its purpose is to provide temporary relief against the deleterious effects of the duration of the proceedings are essential characteristics of an interim rate order** (emphasis added).

In Decision 84-28, the appellant granted the respondent an interim rate increase on the basis of the following criteria which, for convenience, I cite again (at p. 9):

The Commission considers that, as a rule, general rate increases should only be granted following the full public process contemplated by Part III of its Telecommunications Rules of Procedure. In the absence of such a process, general rate increases should not in the Commission's view be granted, even on an interim basis, except where special circumstances can be demonstrated. Such circumstances would include lengthy delays in dealing with an application that **could result in a serious deterioration in the financial**

¹ Bell Canada v. Canada (Canadian Radio-Television and Telecommunications Commission), [1989] 1 S.C.R. 1722 at pp 34-35.

1 hear and reconsider the matter and make such order as to the board
2 seems just ² (emphasis added).

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4 Like the legislation in the Bell case, *The Public Utilities Board Act* confers a fairly broad discretion to issue
5 interim orders. The orders of the Board can be non-financial in nature. For example, the Board can order
6 MH to produce documents and relevant information. However, if an interim order is with respect to an
7 increase in rates (i.e. an order involving an outlay to ratepayers), pursuant to s. 49, which applies to final
8 orders and to interim orders, there must be a case of urgency if it wishes to increase rates before the
9 parties have had a full opportunity to be heard.

10
11 If the Board determines a case of urgency has been proven, the Board has the jurisdiction to order
12 refunds under s. 28 of *The Crown Corporations Public Review and Accountability Act* C.C.S.M. c. C336:

13
14 **When** a new rate for services or **an increased rate is allowed**
15 **pursuant to an interim order** and a final order does not allow any
16 changes or allows changes other than those permitted in the interim
17 order, **the Public Utilities Board may make any order** to
18 compensate for or **to refund any excess amounts collected by the**
19 **corporation** that it considers necessary and appropriate in the
20 circumstances.

21
22 While this section gives the Board flexibility to reimburse consumers for all or a portion of an excessive
23 interim rate, some issues arise. The existence of these issues further supports MIPUG's submission that
24 the Board's discretion to order interim rate increases was only intended in cases of urgency, or in the
25 alternative special circumstances.

26
27 In the following paragraphs some of these issues are identified.

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29 One issue is the administrative cost to process and to deliver a refund payment to each of the
30 approximately 500,000 ratepayers. If its costs \$2.00 per ratepayer refund for administrative costs,
31 stationary costs and postage, the costs may be in the range of 1 million dollars. In addition, if a ratepayer
32 moves out of Manitoba, the ratepayer would not receive the refund.

33
34 Making a decision on an interim rate after only hearing most of Manitoba Hydro's case and in the absence
35 of any special need to do so puts the Board in a position of setting rates before being fully informed.

36
37 For example, the Board has not heard any evidence on the COSS ratios. MIPUG's pre-filed evidence
38 support a case that rates need to be adjusted between classes. In particular, the residential rates are
39 below cost. By ordering an across the classes interim increase without considering how the increase, if
40 any, is allocated between customer classes, the Board may aggravate the issue. Unless they are adjusted
41 in the final order, the inequity between customer classes will continue for two additional years.

² *The Public Utilities Board Act* C.C.S.M. c. P280.

1 Procedural rules enacted by a statutory tribunal cannot expand the jurisdiction. However, part of the
2 Board's rules on *ex-parte* interim orders has some features which are similar to the Bell case
3 requirements and the requirements in s. 48 of *The Public Utility Board Act*.

4
5 The Board's *Rules of Practice and Procedure* set out the following test at section 24(2) with regard to the
6 circumstances in which a party may apply for an interim *ex-parte* order:

7
8 24(2) An application for an interim *ex-parte* order shall only be made:

- 9
10 (a) if emergency circumstances exist; or
11 (b) if there is urgency where, in the Board's opinion, when balancing the interest of
12 providing notice of an application with the financial health of the Applicant, it is
13 deemed just and reasonable to proceed *ex parte*; or
14 (c) for purposes of efficiency; or
15 (d) for such other special circumstances as may be determined by the Board; and
16 (e) if the applicant provides full disclosure as to why the application should proceed *ex*
17 *parte*.

18
19 A similar test to that used by the Board in its *Rules of Practice and Procedure* has been applied by the
20 Alberta Utilities Commission (formerly the Alberta Energy and Utilities Board) in Decision 2005-099 with
21 regard to interim rate applications. The decision sets out that the following two groups of factors may be
22 employed to evaluate whether an interim rate application is justified³. These factors may be given
23 different weighting depending on the specific circumstances surrounding each application.

24 25 **Quantum and Need Factors**

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27 Quantum and need factors relate to the specifics of the requested rate increase and include the
28 following:

- 29
30 • The identified revenue deficiency should be probable and material.
31 • Is the increase required to preserve the financial integrity of the applicant or to avoid financial
32 hardship to the applicant?
33 • Can the applicant continue safe utility operations without the interim adjustment?
34 • Contentious items may be excluded from the amount collected.

³ EUB Decision 2005-099(August 29, 2005) at page 7-8.

1 **General Public Interest Factors**

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3 If all or a portion of the suggested rate increase appears appropriate after a consideration of the
4 quantum and need factors, the Board must assess certain general public interest factors to determine if
5 the interim rate increase is justified, including the following:

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7 • Interim rates should promote rate stability and ease rate shock.

8 • Interim rates should maintain intergenerational equity.

9 • Interim rate increases may be required to provide appropriate price signals to customers.

10 • The use of carrying costs may be considered to avoid interim rate increases.

11 • It may be appropriate to apply the interim rider on an across-the-board basis.