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1. ATCO Gas and Pipelines Ltd. v. Alberta (Energy and Utilities Board), [2006] 1 S.C.R. 140

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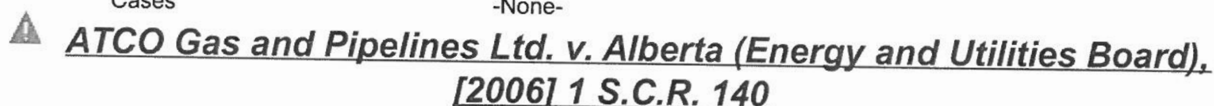

ATCO Gas and Pipelines Ltd. v. Alberta (Energy and Utilities Board), [2006] 1 S.C.R. 140

Supreme Court Reports

Supreme Court of Canada

Present: McLachlin C.J. and Bastarache, Binnie, LeBel, Deschamps, Fish and Charron JJ.

Heard: May 11, 2005;

Judgment: February 9, 2006.

File No.: 30247.

[2006] 1 S.C.R. 140 | [2006] 1 R.C.S. 140 | [2006] S.C.J. No. 4 | [2006] A.C.S. no 4 | 2006 SCC 4

City of Calgary, appellant/respondent on cross-appeal; v. ATCO Gas and Pipelines Ltd., respondent/appellant on cross-appeal, and Alberta Energy and Utilities Board, Ontario Energy Board, Enbridge Gas Distribution Inc. and Union Gas Limited, interveners.

(149 paras.)

Appeal From:

ON APPEAL FROM THE COURT OF APPEAL FOR ALBERTA

Case Summary

Catchwords:

Administrative law — Boards and tribunals — Regulatory boards — Jurisdiction — Doctrine of jurisdiction by necessary implication — Natural gas public utility applying to Alberta Energy and Utilities Board to approve sale of buildings and land no longer required in supplying natural gas — Board

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approving sale subject to condition that portion of sale proceeds be allocated to ratepaying customers of utility — Whether Board had explicit or implicit jurisdiction to allocate proceeds of sale — If so, whether Board's decision to exercise discretion to protect public interest by allocating proceeds of utility asset sale to customers reasonable — Alberta Energy and Utilities Board Act, R.S.A. 2000, c. A-17, s. 15(3) — Public Utilities Board Act, *R.S.A. 2000, c. P-45, s. 37* — Gas Utilities Act, *R.S.A. 2000, c. G-5, s. 26*(2).

Catchwords:

Administrative law — Judicial review — Standard of review — Alberta Energy and Utilities Board — Standard [page141] of review applicable to Board's jurisdiction to allocate proceeds from sale of public utility assets to ratepayers — Standard of review applicable to Board's decision to exercise discretion to allocate proceeds of sale — Alberta Energy and Utilities Board Act, R.S.A. 2000, c. A-17, s. 15(3) — Public Utilities Board Act, *R.S.A. 2000, c. P-45, s. 37* — Gas Utilities Act, *R.S.A. 2000, c. G-5, s. 26*(2).

Summary:

ATCO is a public utility in Alberta which delivers natural gas. A division of ATCO filed an application with the Alberta Energy and Utilities Board for approval of the sale of buildings and land located in Calgary, as required by the *Gas Utilities Act* ("GUA"). According to ATCO, the property was no longer used or useful for the provision of utility services, and the sale would not cause any harm to ratepaying customers. ATCO requested that the Board approve the sale transaction, as well as the proposed disposition of the sale proceeds: to retire the remaining book value of the sold assets, to recover the disposition costs, and to recognize that the balance of the profits resulting from the sale should be paid to ATCO's shareholders. The customers' interests were represented by the City of Calgary, who opposed ATCO's position with respect to the disposition of the sale proceeds to shareholders.

Persuaded that customers would not be harmed by the sale, the Board approved the sale transaction on the basis that customers would not "be exposed to the risk of financial harm as a result of the Sale that could not be examined in a future proceeding". In a second decision, the Board determined the allocation of net sale proceeds. The Board held that it had the jurisdiction to approve a proposed disposition of sale proceeds subject to appropriate conditions to protect the public interest, pursuant to the powers granted to it under s. 15(3) of the *Alberta Energy and Utilities Board Act* ("AEUBA"). The Board applied a formula which recognizes profits realized when proceeds of sale exceed the original cost can be shared between customers and shareholders, and allocated a portion of the net gain on the sale to the ratepaying customers. The Alberta Court of Appeal set aside the Board's decision, referring the matter back to the Board to allocate the entire remainder of the proceeds to ATCO.

Held (McLachlin C.J. and Binnie and Fish JJ. dissenting): The appeal is dismissed and the cross-appeal is allowed.

Per Bastarache, LeBel, Deschamps and Charron JJ.: When the relevant factors of the pragmatic and functional approach are properly considered, the standard of [page142] review applicable to the Board's decision on the issue of jurisdiction is correctness. Here, the Board did not have the jurisdiction to allocate the proceeds of the sale of the utility's asset. The Court of Appeal made no error of fact or law when it concluded that the Board acted beyond its jurisdiction by misapprehending its statutory and common law authority. However, the Court of Appeal erred when it did not go on to conclude that the Board has no jurisdiction to allocate any portion of the proceeds of sale of the property to ratepayers. [paras. 21-34]

The interpretation of the AEUBA, the *Public Utilities Board Act* ("PUBA") and the GUA can lead to only one conclusion: the Board does not have the prerogative to decide on the distribution of the net gain from the sale of assets of a utility. On their grammatical and ordinary meaning, s. 26(2) GUA, s. 15(3) AEUBA and s. 37 PUBA are silent as to the Board's power to deal with sale proceeds. Section 26(2) GUA conferred on the Board the power to approve a transaction without more. The intended meaning of the Board's power pursuant to s. 15(3) AEUBA to impose conditions on an order that the Board considers necessary in the public interest, as well as the general power in s. 37 PUBA, is lost when the provisions are read in isolation.

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They are, on their own, vague and open-ended. It would be absurd to allow the Board an unfettered discretion to attach any condition it wishes to any order it makes. While the concept of "public interest" is very wide and elastic, the Board cannot be given total discretion over its limitations. These seemingly broad powers must be interpreted within the entire context of the statutes which are meant to balance the need to protect consumers as well as the property rights retained by owners, as recognized in a free market economy. The context indicates that the limits of the Board's powers are grounded in its main function of fixing just and reasonable rates and in protecting the integrity and dependability of the supply system. [para. 7] [para. 41] [para. 43] [para. 46]

An examination of the historical background of public utilities regulation in Alberta generally, and the legislation in respect of the powers of the Alberta Energy and Utilities Board in particular, reveals that nowhere is there a mention of the authority for the Board to allocate proceeds from a sale or the discretion of the Board to interfere with ownership rights. Moreover, although the Board may seem to possess a variety of powers and functions, it is manifest from a reading of the AEUBA, [page143] the PUBA and the GUA that the principal function of the Board in respect of public utilities, is the determination of rates. Its power to supervise the finances of these companies and their operations, although wide, is in practice incidental to fixing rates. The goals of sustainability, equity and efficiency, which underlie the reasoning as to how rates are fixed, have resulted in an economic and social arrangement which ensures that all customers have access to the utility at a fair price -- nothing more. The rates paid by customers do not incorporate acquiring ownership or control of the utility's assets. The object of the statutes is to protect both the customer and the investor, and the Board's responsibility is to maintain a tariff that enhances the economic benefits to consumers and investors of the utility. This well-balanced regulatory arrangement does not, however, cancel the private nature of the utility. The fact that the utility is given the opportunity to make a profit on its services and a fair return on its investment in its assets should not and cannot stop the utility from benefiting from the profits which follow the sale of assets. Neither is the utility protected from losses incurred from the sale of assets. The Board misdirected itself by confusing the interests of the customers in obtaining safe and efficient utility service with an interest in the underlying assets owned only by the utility. [paras. 54-69]

Not only is the power to allocate the proceeds of the sale absent from the explicit language of the legislation, but it cannot be implied from the statutory regime as necessarily incidental to the explicit powers. For the doctrine of jurisdiction by necessary implication to apply, there must be evidence that the exercise of that power is a practical necessity for the Board to accomplish the objects prescribed by the legislature, something which is absent in this case. Not only is the authority to attach a condition to allocate the proceeds of a sale to a particular party unnecessary for the Board to accomplish its role, but deciding otherwise would lead to the conclusion that broadly drawn powers, such as those found in the AEUBA, the GUA and the PUBA, can be interpreted so as to encroach on the economic freedom of the utility, depriving it of its rights. If the Alberta legislature wishes to confer on ratepayers the economic benefits resulting from the sale of utility assets, it can expressly provide for this in the legislation. [para. 39] [paras. 77-80]

Notwithstanding the conclusion that the Board lacked jurisdiction, its decision to exercise its discretion to protect the public interest by allocating the sale proceeds as it did to ratepaying customers did not meet a reasonable standard. When it explicitly concluded [page144] that no harm would ensue to customers from the sale of the asset, the Board did not identify any public interest which required protection and there was, therefore, nothing to trigger the exercise of the discretion to allocate the proceeds of sale. Finally, it cannot be concluded that the Board's allocation was reasonable when it wrongly assumed that ratepayers had acquired a proprietary interest in the utility's assets because assets were a factor in the rate-setting process. [paras. 82-85]

Per McLachlin C.J. and Binnie and Fish JJ. (dissenting) : The Board's decision should be restored. Section 15(3) AEUBA authorized the Board, in dealing with ATCO's application to approve the sale of the subject land and buildings, to "impose any additional conditions that the Board considers necessary in the public interest". In the exercise of that authority, and having regard to the Board's "general supervision over all gas utilities, and the owners of them" pursuant to s. 22(1) GUA, the Board made an allocation of the net gain for public policy reasons. The Board's discretion is not unlimited and must be exercised in good faith for its

intended purpose. Here, in allocating one third of the net gain to ATCO and two thirds to the rate base, the Board explained that it was proper to balance the interests of both shareholders and ratepayers. In the Board's view to award the entire gain to the ratepayers would deny the utility an incentive to increase its efficiency and reduce its costs, but on the other hand to award the entire gain to the utility might encourage speculation in non-depreciable property or motivate the utility to identify and dispose of properties which have appreciated for reasons other than the best interest of the regulated business. Although it was open to the Board to allow ATCO's application for the entire profit, the solution it adopted in this case is well within the range of reasonable options. The "public interest" is largely and inherently a matter of opinion and discretion. While the statutory framework of utilities regulation varies from jurisdiction to jurisdiction, Alberta's grant of authority to its Board is more generous than most. The Court should not substitute its own view of what is "necessary in the public interest". The Board's decision made in the exercise of its jurisdiction was within the range of established regulatory opinion, whether the proper standard of review in that regard is patent unreasonableness or simple reasonableness. [paras. 91-92] [paras. 98-99] [para. 110] [para. 113] [para. 122] [para. 148]

[page145]

ATCO's submission that an allocation of profit to the customers would amount to a confiscation of the corporation's property overlooks the obvious difference between investment in an unregulated business and investment in a regulated utility where the ratepayers carry the costs and the regulator sets the return on investment, not the marketplace. The Board's response cannot be considered "confiscatory" in any proper use of the term, and is well within the range of what is regarded in comparable jurisdictions as an appropriate regulatory allocation of the gain on sale of land whose original investment has been included by the utility itself in its rate base. Similarly, ATCO's argument that the Board engaged in impermissible retroactive rate making should not be accepted. The Board proposed to apply a portion of the expected profit to future rate making. The effect of the order is prospective not retroactive. Fixing the going-forward rate of return, as well as general supervision of "all gas utilities, and the owners of them", were matters squarely within the Board's statutory mandate. ATCO also submits in its cross-appeal that the Court of Appeal erred in drawing a distinction between gains on sale of land whose original cost is not depreciated and depreciated property, such as buildings. A review of regulatory practice shows that many, but not all, regulators reject the relevance of this distinction. The point is not that the regulator must reject any such distinction but, rather, that the distinction does not have the controlling weight as contended by ATCO. In Alberta, it is up to the Board to determine what allocations are necessary in the public interest as conditions of the approval of sale. Finally, ATCO's contention that it alone is burdened with the risk on land that declines in value overlooks the fact that in a falling market the utility continues to be entitled to a rate of return on its original investment, even if the market value at the time is substantially less than its original investment. Further, it seems such losses are taken into account in the ongoing rate-setting process. [para. 93] [paras. 123-147]

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By Bastarache J.

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S.C.R. 822; *Barrie Public Utilities v. Canadian Cable Television Assn.*, [2003] 1 S.C.R. 476, 2003 SCC 28; *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 27; *Bell ExpressVu Limited Partnership v. Rex*, [2002] 2 S.C.R. 559, 2002 SCC 42; *H.L. v. Canada (Attorney General)*, [2005] 1 S.C.R. 401, 2005 SCC 25; *Marche v. Halifax Insurance Co.*, [2005] 1 S.C.R. 47, 2005 SCC 6; *Contino v. Leonelli-Contino*, [2005] 3 S.C.R. 217, 2005 SCC 63; *Re Alberta Government Telephones*, Alta. P.U.B., Decision No. E84081, June 29, 1984; *Re TransAlta Utilities Corp.*, Alta. P.U.B., Decision No. E84116, October 12, 1984; *TransAlta Utilities Corp. (Re)*, [2002] A.E.U.B.D. No. 30 (QL); *ATCO Electric Ltd. (Re)*, [2003] A.E.U.B.D. No. 92 (QL); *Canadian Pacific Air Lines Ltd. v. Canadian Air Line Pilots Assn.*, [1993] 3 S.C.R. 724; *Bristol-Myers Squibb Co. v. Canada (Attorney General)*, [2005] 1 S.C.R. 533, 2005 SCC 26; *Chieu v. Canada (Minister of Citizenship and Immigration)*, [2002] 1 S.C.R. 84, 2002 SCC 3; *Bell Canada v. Canada (Canadian Radio-Television and Telecommunications Commission)*, [1989] 1 S.C.R. 1722; *R. v. McIntosh*, [1995] 1 S.C.R. 686; *Re Dow Chemical Canada Inc. and Union Gas Ltd.* (1982), 141 D.L.R. (3d) 641, aff'd (1983), 42 O.R. (2d) 731; *Interprovincial Pipe Line Ltd. v. National Energy Board*, [1978] 1 F.C. 601; *Canadian Broadcasting League v. Canadian Radio-television and Telecommunications Commission*, [1983] 1 F.C. 182, aff'd [1985] 1 S.C.R. 174; *Northwestern Utilities Ltd. v. City of Edmonton*, [1929] S.C.R. 186; *Northwestern Utilities Ltd. v. City of Edmonton*, [1979] 1 S.C.R. 684; *Re Canadian Western Natural Gas Co.*, Alta. P.U.B., Decision No. E84113, October 12, 1984; *Re Union Gas Ltd. and Ontario Energy Board* (1983), 1 D.L.R. (4th) 698 ; *Duquesne Light Co. v. Barasch*, 488 U.S. 299 (1989); *Market St. Ry. Co. v. Railroad Commission of State of California*, 324 U.S. 548 (1945); *Re Coseka Resources Ltd. and Saratoga Processing Co.* (1981), 126 D.L.R. (3d) 705, leave to appeal refused, [1981] 2 S.C.R. vii; *Re Consumers' Gas Co.*, E.B.R.O. 410-II, 411-II, 412-II, March 23, 1987; *National Energy Board Act (Can.) (Re)*, [1986] 3 F.C. 275; *Pacific National Investments Ltd. v. Victoria (City)*, [2000] 2 S.C.R. 919, 2000 SCC 64; *Leiriao v. Val-Bélair (Town), [1991] 3 S.C.R. 349* [page147]; *Hongkong Bank of Canada v. Wheeler Holdings Ltd.*, [1993] 1 S.C.R. 167.

By Binnie J. (dissenting)

Atco Ltd. v. Calgary Power Ltd., [1982] 2 S.C.R. 557; *C.U.P.E. v. Ontario (Minister of Labour)*, [2003] 1 S.C.R. 539, 2003 SCC 29; *TransAlta Utilities Corp. v. Public Utilities Board (Alta.)* (1986), 68 A.R. 171; *Dr. Q v. College of Physicians and Surgeons of British Columbia*, [2003] 1 S.C.R. 226, 2003 SCC 19; *Calgary Power Ltd. v. Copithorne*, [1959] S.C.R. 24; *United Brotherhood of Carpenters and Joiners of America, Local 579 v. Bradco Construction Ltd.*, [1993] 2 S.C.R. 316; *Pezim v. British Columbia (Superintendent of Brokers)*, [1994] 2 S.C.R. 557; *Memorial Gardens Association (Canada) Ltd. v. Colwood Cemetery Co.*, [1958] S.C.R. 353; *Union Gas Co. of Canada Ltd. v. Sydenham Gas and Petroleum Co.*, [1957] S.C.R. 185; *Re C.T.C. Dealer Holdings Ltd. and Ontario Securities Commission* (1987), 59 O.R. (2d) 79; *Committee for the Equal Treatment of Asbestos Minority Shareholders v. Ontario (Securities Commission)*, [2001] 2 S.C.R. 132, 2001 SCC 37; *Re Consumers' Gas Co.*, E.B.R.O. 341-I, June 30, 1976; *Re Boston Gas Co.*, 49 P.U.R. 4th 1 (1982); *Re Consumers' Gas Co.*, E.B.R.O. 465, March 1, 1991; *Re Natural Resource Gas Ltd.*, O.E.B., RP-2002-0147, EB-2002-0446, June 27, 2003; *Yukon Energy Corp. v. Utilities Board* (1996), 74 B.C.A.C. 58; *Re Arizona Public Service Co.*, 91 P.U.R. 4th 337 (1988); *Re Southern California Water Co.*, 43 C.P.U.C. 2d 596 (1992); *Re Southern California Gas Co.*, 118 P.U.R. 4th 81 (1990); *Democratic Central Committee of the District of Columbia v. Washington Metropolitan Area Transit Commission*, 485 F.2d 786 (1973); *Board of Public Utility Commissioners v. New York Telephone Co.*, 271 U.S. 23 (1976); *Northwestern Utilities Ltd. v. City of Edmonton*, [1979] 1 S.C.R. 684; *New York Water Service Corp. v. Public Service Commission*, 208 N.Y.S.2d 857 (1960); *Re Compliance with the Energy Policy Act of 1992*, 62 C.P.U.C. 2d 517 (1995); *Re California Water Service Co.*, 66 C.P.U.C. 2d 100 (1996); *Re TransAlta Utilities Corp.*, Alta. P.U.B., Decision No. E84116, October 12, 1984; *Re Alberta Government Telephones*, Alta. P.U.B., Decision No. E84081, June 29, 1984; *Re TransAlta Utilities Corp.*, Alta. P.U.B., Decision No. E84115, October 12, 1984; *Re Canadian Western Natural Gas Co.*, Alta. P.U.B., Decision No. E84113, October 12, 1984.

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Interpretation Act, R.S.A. 2000, c. I-8, s. 10.

Public Utilities Act, S.A. 1915, c. 6, ss. 21, 23, 24, 29(g).

Public Utilities Board Act, R.S.A. 2000, c. P-45, ss. 36, 37, 80, 85(1), 87, 89 to 95, 101(1), (2), 102(1).

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History and Disposition:

APPEAL and CROSS-APPEAL from a judgment of the Alberta Court of Appeal (Wittmann J.A. and LoVecchio J. (*ad hoc*)) (2004), 24 Alta. L.R. (4th) 205, 339 A.R. 250, 312 W.A.C. 250, [2004] 4 W.W.R. 239, [2004] A.J. No. 45 (QL), 2004 ABCA 3, reversing a decision of the Alberta Energy and Utilities Board, [2002] A.E.U.B.D. No. 52 (QL). Appeal dismissed and cross-appeal allowed, McLachlin C.J. and Binnie and Fish JJ. dissenting.

Counsel

Brian K. O'Ferrall and Daron K. Naffin, for the appellant/respondent on cross-appeal.

Clifton D. O'Brien, Q.C., Lawrence E. Smith, Q.C., H. Martin Kay, Q.C., and Laurie A. Goldbach, for the respondent/appellant on cross-appeal.

J. Richard McKee and Renée Marx, for the intervener the Alberta Energy and Utilities Board.

Written submissions only by George Vegh and Michael W. Lyle, for the intervener the Ontario Energy Board.

Written submissions only by J. L. McDougall, Q.C., and Michael D. Schafler, for the intervener Enbridge Gas Distribution Inc.

Written submissions only by Michael A. Penny and Susan Kushneryk, for the intervener Union Gas Limited.

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The judgment of Bastarache, LeBel, Deschamps and Charron JJ. was delivered by

BASTARACHE J.

1. Introduction

1 At the heart of this appeal is the issue of the jurisdiction of an administrative board. More specifically, the Court must consider whether, on the appropriate standard of review, this utility board appropriately set out the limits of its powers and discretion.

2 Few areas of our lives are now untouched by regulation. Telephone, rail, airline, trucking, foreign investment, insurance, capital markets, broadcasting licences and content, banking, food, drug and safety standards, are just a few of the objects of public regulations in Canada: M. J. Trebilcock, "The Consumer Interest and Regulatory Reform", in G. B. Doern, ed., *The Regulatory Process in Canada* (1978), 94. Discretion is central to the regulatory agency policy process, but this discretion will vary from one administrative body to another (see C. L. Brown-John, *Canadian Regulatory Agencies: Quis custodiet ipsos custodes?* (1981), at p. 29). More importantly, in exercising this discretion, statutory bodies must respect the confines of their jurisdiction: they cannot trespass in areas where the legislature has not assigned them authority (see D. J. Mullan, *Administrative Law* (2001), at pp. 9-10).

3 The business of energy and utilities is no exception to this regulatory framework. The respondent in this case is a public utility in Alberta which delivers natural gas. This public utility is nothing more than a private corporation subject to certain regulatory constraints. Fundamentally, it is like any other privately held company: it obtains the necessary funding from investors through public issues of shares in stock and bond markets; it is the [page151] sole owner of the resources, land and other assets; it constructs plants, purchases equipment, and contracts with employees to provide the services; it realizes profits resulting from the application of the rates approved by the Alberta Energy and Utilities Board ("Board") (see P. W. MacAvoy and J. G. Sidak, "The Efficient Allocation of Proceeds from a Utility's Sale of Assets" (2001), 22 Energy L.J. 233, at p. 234). That said, one cannot ignore the important feature which makes a public utility so distinct: it must answer to a regulator. Public utilities are typically natural monopolies: technology and demand are such that fixed costs are lower for a single firm to supply the market than would be the case where there is duplication of services by different companies in a competitive environment (see A. E. Kahn, *The Economics of Regulation: Principles and Institutions* (1988), vol. 1, at p. 11; B. W. F. Depoorter, "Regulation of Natural Monopoly", in B. Bouckaert and G. De Geest, eds., *Encyclopedia of Law and Economics* (2000), vol. III, 498; J. S. Netz, "Price Regulation: A (Non-Technical) Overview", in B. Bouckaert and G. De Geest, eds., *Encyclopedia of Law and Economics* (2000), vol. III, 396, at p. 398; A. J. Black, "Responsible Regulation: Incentive Rates for Natural Gas Pipelines" (1992), 28 *Tulsa L.J.* 349, at p. 351). Efficiency of production is promoted under this model. However, governments have purported to move away from this theoretical concept and have adopted what can only be described as a "regulated monopoly". The utility regulations exist to protect the public from monopolistic behaviour and the consequent inelasticity of demand while ensuring the continued quality of an essential service (see Kahn, at p. 11).

4 As in any business venture, public utilities make business decisions, their ultimate goal being to maximize the residual benefits to shareholders. However, the regulator limits the utility's managerial discretion over key decisions, including prices, service offerings and the prudency of plant and equipment investment decisions. And more relevant to this case, the utility, outside the ordinary course of business, is limited in its right to sell [page152] assets it owns: it must obtain authorization from its regulator before selling an asset previously used to produce regulated services (see MacAvoy and Sidak, at p. 234).

5 Against this backdrop, the Court is being asked to determine whether the Board has jurisdiction pursuant to its enabling statutes to allocate a portion of the net gain on the sale of a now discarded utility asset to the rate-paying

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(d) with respect to an order made by the Board, the ERCB or the PUB in respect of matters referred to in clauses (a) to (c), make any further order and impose any additional conditions that the Board considers necessary in the public interest;

...

[page167]

PUBA

37 In matters within its jurisdiction the Board may order and require any person or local authority to do forthwith or within or at a specified time and in any manner prescribed by the Board, so far as it is not inconsistent with this Act or any other Act conferring jurisdiction, any act, matter or thing that the person or local authority is or may be required to do under this Act or under any other general or special Act, and may forbid the doing or continuing of any act, matter or thing that is in contravention of any such Act or of any regulation, rule, order or direction of the Board.

42 Some of the above provisions are duplicated in the other two statutes (see, e.g., PUBA, ss. 85(1) and 101(2)(d)(i) ; GUA, s. 22(1) ; see Appendix).

43 There is no dispute that s. 26(2) of the GUA contains a prohibition against, among other things, the owner of a utility selling, leasing, mortgaging or otherwise disposing of its property outside of the ordinary course of business without the approval of the Board. As submitted by ATCO, the power conferred is to approve without more. There is no mention in s. 26 of the grounds for granting or denying approval or of the ability to grant conditional approval, let alone the power of the Board to allocate the net profit of an asset sale. I would note in passing that this power is sufficient to alleviate the fear expressed by the Board that the utility might be tempted to sell assets on which it might realize a large profit to the detriment of ratepayers if it could reap the benefits of the sale.

44 It is interesting to note that s. 26(2) does not apply to all types of sales (and leases, mortgages, dispositions, encumbrances, mergers or consolidations). It excludes sales in the ordinary course of the owner's business. If the statutory scheme was such that the Board had the power to allocate the proceeds of the sale of utility assets, as argued here, s. 26(2) would naturally apply to all sales of assets or, at a minimum, exempt only those sales below a certain value. It is apparent that allocation of sale proceeds to customers is not one of its purposes. In fact, s. 26(2) can only have limited, if any, application to non-utility assets not related to utility function (especially when the sale has passed the "no-harm" [page168] test). The provision can only be meant to ensure that the asset in question is indeed non-utility, so that its loss does not impair the utility function or quality.

45 Therefore, a simple reading of s. 26(2) of the GUA does permit one to conclude that the Board does not have the power to allocate the proceeds of an asset sale.

46 The City does not limit its arguments to s. 26(2); it also submits that the AEUBA, pursuant to s. 15(3), is an express grant of jurisdiction because it authorizes the Board to impose any condition to any order so long as the condition is necessary in the public interest. In addition, it relies on the general power in s. 37 of the PUBA for the proposition that the Board may, in any matter within its jurisdiction, make any order pertaining to that matter that is not inconsistent with any applicable statute. The intended meaning of these two provisions, however, is lost when the provisions are simply read in isolation as proposed by the City: R. Sullivan, *Sullivan and Driedger on the Construction of Statutes* (4th ed. 2002), at p. 21; *Canadian Pacific Air Lines Ltd. v. Canadian Air Line Pilots Assn.*, [1993] 3 S.C.R. 724, at p. 735; *Marche*, at paras. 59-60; *Bristol-Myers Squibb Co. v. Canada (Attorney General)*, [2005] 1 S.C.R. 533, 2005 SCC 26, at para. 105. These provisions on their own are vague and open-ended. It would be absurd to allow the Board an unfettered discretion to attach any condition it wishes to an order it makes. Furthermore, the concept of "public interest" found in s. 15(3) is very wide and elastic; the Board cannot be given total discretion over its limitations.

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47 While I would conclude that the legislation is silent as to the Board's power to deal with sale [page169] proceeds after the initial stage in the statutory interpretation analysis, because the provisions can nevertheless be said to reveal some ambiguity and incoherence, I will pursue the inquiry further.

48 This Court has stated on numerous occasions that the grammatical and ordinary sense of a section is not determinative and does not constitute the end of the inquiry. The Court is obliged to consider the total context of the provisions to be interpreted, no matter how plain the disposition may seem upon initial reading (see *Chieu v. Canada (Minister of Citizenship and Immigration)*, [2002] 1 S.C.R. 84, 2002 SCC 3, at para. 34; Sullivan, at pp. 20-21). I will therefore proceed to examine the purpose and scheme of the legislation, the legislative intent and the relevant legal norms.

2.3.3 Implicit Powers: Entire Context

49 The provisions at issue are found in statutes which are themselves components of a larger statutory scheme which cannot be ignored:

> As the product of a rational and logical legislature, the statute is considered to form a system. Every component contributes to the meaning as a whole, and the whole gives meaning to its parts: "each legal provision should be considered in relation to other provisions, as parts of a whole" ... .
>
> (P.-A. Côté, *The Interpretation of Legislation in Canada* (3rd ed. 2000), at p. 308)

As in any statutory interpretation exercise, when determining the powers of an administrative body, courts need to examine the context that colours the words and the legislative scheme. The ultimate goal is to discover the clear intent of the legislature and the true purpose of the statute while preserving the harmony, coherence and consistency of the legislative scheme (*Bell ExpressVu*, at para. 27; see also *Interpretation Act*, R.S.A. 2000, c. I-8, s. 10 (in Appendix)). "[S]tatutory interpretation is the art of finding the legislative spirit embodied in enactments": *Bristol-Myers Squibb Co.*, at para. 102.

[page170]

50 Consequently, a grant of authority to exercise a discretion as found in s. 15(3) of the AEUBA and s. 37 of the PUBA does not confer unlimited discretion to the Board. As submitted by ATCO, the Board's discretion is to be exercised within the confines of the statutory regime and principles generally applicable to regulatory matters, for which the legislature is assumed to have had regard in passing that legislation (see Sullivan, at pp. 154-55). In the same vein, it is useful to refer to the following passage from *Bell Canada v. Canada (Canadian Radio-Television and Telecommunications Commission)*, [1989] 1 S.C.R. 1722, at p. 1756:

> The powers of any administrative tribunal must of course be stated in its enabling statute but they may also exist by necessary implication from the wording of the act, its structure and its purpose. Although courts must refrain from unduly broadening the powers of such regulatory authorities through judicial law-making, they must also avoid sterilizing these powers through overly technical interpretations of enabling statutes.

51 The mandate of this Court is to determine and apply the intention of the legislature (*Bell ExpressVu*, at para. 62) without crossing the line between judicial interpretation and legislative drafting (see *R. v. McIntosh*, [1995] 1 S.C.R. 686, at para. 26; *Bristol-Myers Squibb Co.*, at para. 174). That being said, this rule allows for the application of the "doctrine of jurisdiction by necessary implication"; the powers conferred by an enabling statute are construed to include not only those expressly granted but also, by implication, all powers which are practically necessary for the accomplishment of the object intended to be secured by the statutory regime created by the legislature (see Brown, at p. 2-16.2; *Bell Canada*, at p. 1756). Canadian courts have in the past applied the

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Katrine Dilay

doctrine to ensure that administrative bodies have the necessary jurisdiction to accomplish their statutory mandate:

> When legislation attempts to create a comprehensive regulatory framework, the tribunal must have the powers which by practical necessity and necessary implication flow from the regulatory authority explicitly conferred upon it.

[page171]

Re Dow Chemical Canada Inc. and Union Gas Ltd. (1982), 141 D.L.R. (3d) 641 (Ont. H.C.), at pp. 658-59, aff'd (1983), 42 O.R. (2d) 731 (C.A.) (see also *Interprovincial Pipe Line Ltd. v. National Energy Board*, [1978] 1 F.C. 601 (C.A.); *Canadian Broadcasting League v. Canadian Radio-television and Telecommunications Commission*, [1983] 1 F.C. 182 (C.A.), aff'd [1985] 1 S.C.R. 174).

52 I understand the City's arguments to be as follows : (1) the customers acquire a right to the property of the owner of the utility when they pay for the service and are therefore entitled to a return on the profits made at the time of the sale of the property; and (2) the Board has, by necessity, because of its jurisdiction to approve or refuse to approve the sale of utility assets, the power to allocate the proceeds of the sale as a condition of its order. The doctrine of jurisdiction by necessary implication is at the heart of the City's second argument. I cannot accept either of these arguments which are, in my view, diametrically contrary to the state of the law. This is revealed when we scrutinize the entire context which I will now endeavour to do.

53 After a brief review of a few historical facts, I will probe into the main function of the Board, rate setting, and I will then explore the incidental powers which can be derived from the context.

2.3.3.1

Historical Background and Broader Context

54 The history of public utilities regulation in Alberta originated with the creation in 1915 of the Board of Public Utility Commissioners by *The Public Utilities Act*, S.A. 1915, c. 6. This statute was based on similar American legislation: H. R. Milner, "Public Utility Rate Control in Alberta" (1930), 8 *Can. Bar Rev.* 101, at p. 101. While the American jurisprudence and texts in this area should be considered with caution given that Canada and the United States have very different political and constitutional-legal regimes, they do shed some light on the issue.

55 Pursuant to *The Public Utilities Act*, the first public utility board was established as a [page172] three-member tribunal to provide general supervision of all public utilities (s. 21), to investigate rates (s. 23), to make orders regarding equipment (s. 24), and to require every public utility to file with it complete schedules of rates (s. 23). Of interest for our purposes, the 1915 statute also required public utilities to obtain the approval of the Board of Public Utility Commissioners before selling any property when outside the ordinary course of their business (s. 29(g)).

56 The Alberta Energy and Utilities Board was created in February 1995 by the amalgamation of the Energy

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1905 CarswellBC 20
British Columbia Trial

Vancouver (City) v. British Columbia Telephone Co.

1905 CarswellBC 20, 1 W.L.R. 461

City of Vancouver v. British Columbia Telephone Co.

Morrison, J.

Judgment: June 29, 1905.

Counsel: *Joseph Martin* , K.C., and *A. McEvoy* , for plaintiffs.
E.P. Davis , K.C., and *L.G. McPhillips* , K.C., for defendants.

Subject: Public
Headnote
Communications Law --- Telephone and telegraph services — Telephone companies
Statutes --- Interpretation — Extrinsic aids — Statutes in pari materia
Construction of Statutes.

Action for an injunction restraining defendants from digging up the streets of the city of Vancouver for the purpose of putting their wires underground, and for a declaration of the rights of the respective litigants as to the control of the city streets, whether defendants had the right to enter upon any street whatever, merely subject to the approval of plaintiffs, or whether plaintiffs had the absolute control of the streets.

Morrison, J. :

1 This is an action brought by the corporation of the city of Vancouver against the British Columbia Telephone Company, Limited, for wrongfully excavating a certain lane within the limits of the plaintiff corporation, and for an injunction restraining them from a repetition of the acts complained of.

2 In the month of April, 1905, defendants notified plaintiffs of their intention to lay wires underground, and asked their permission to do so. Accordingly conferences were held between them, resulting in the engineers of the respective parties, under proper instructions, locating manholes along the route where the streets were to be excavated. A plan of the said route and located manholes was approved by the engineer of plaintiffs, who duly signed the same. Up to this time he had neither heard nor was he aware that plaintiffs had any objection to the proposed work of defendants. Some time afterwards, however, he did hear that plaintiffs had some objections, and upon defendants requesting him to sign a letter giving them permission to lay their wires underground, he refused.

3 On 14th June, 1905, defendants entered upon and commenced excavating the lane in question for the purpose of installing their conduits therein, whereupon plaintiffs objected, and the present action was brought, wherein the parties seek a declaration of their rights under their respective charters.

4 The defendants claim to derive some of their present powers from the New Westminster and Burrard Inlet Telephone Company, Limited, incorporated in 1884, under the name of the New Westminster and Port Moody Telephone Company, and in 1886 the charter was amended and the name changed to the New Westminster and Burrard Inlet Telephone Company, Limited. It is contended on behalf of plaintiffs that this charter has expired. I do not agree with this contention. By sec. 23 of the Act of 1884, the powers and privileges of the company were to continue for 10 years from the passing of the Act. By sec. 7 of the amending Act of 1886 the powers and privileges granted by the principal Act and by the amending Act were to continue for a period

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of 12 years from the passing of the amending Act. By sec. 4 of the New Westminster and Burrard Inlet Telephone Company Amending Act, 1891, sec. 7 is repealed, the effect of which, in my opinion, is to continue the existence of the company.

5 On 6th April, 1886, Vancouver city was incorporated. On 31st August, 1900, an Act to revise and consolidate the Vancouver Incorporation Act was passed, sub-sec. 15 of sec. 125 of which empowers the city to pass a by-law as follows:

> For authorizing any gas, water, telephone, electric light, district messenger, power, heating, tramway, street railway company, to lay down pipes, erect poles, string wires under or over the public streets, lanes, or squares, and to operate the business connected therewith for a period of years, subject to such regulations and such terms of payment for the privilege as the council sees fit: Provided that no gas, water, telephone, electric light, district messenger, power, heating, tramway, or street railway company shall have any powers or right to lay down pipes, erect poles, string wires, or in any way interfere with the streets, lanes, or squares of the city, or operate any business in the city connected therewith, unless a by-law has been passed under the provisions hereof granting permission to do so and containing the terms and regulations under which the same may be done and terms of payment to the city therefor.

6 And sec. 218 provides that:

> Every public street, road, square, lane, bridge, or other highway in the city shall be vested in the city (subject to any right in the soil which the individuals who laid out such road, street, bridge, or highway may have reserved), and such public street, road, square, lane, or highway shall not be interfered with in any way or manner whatsoever by excavation or otherwise by any street railway, gas, or waterworks company, or any companies, or by any company or companies that may hereafter be incorporated, or any other person or persons whomsoever, except having first made application and received permission of the city engineer in writing.

7 This section is the same as sec. 213 of the Act of 1886, except that the latter omits any reference to companies hereafter to be incorporated.

8 On 6th April, 1886, the New Westminster and Burrard Inlet Telephone Company's amending Act was passed, secs. 1, 2, and 3 of which give the company power to erect poles in the city of Vancouver without the supervision of the council, but no authority is given to place wires underground.

9 The Vancouver Electric Light Company was also incorporated on 6th April, 1886, and by sec. 25 the powers conferred are made exercisable in conformity with the city by-laws.

10 On 20th April, 1891 (ch. 67), the Vernon and Nelson Telephone Company was incorporated. Sub-sec. (b) of sec. 7 enacts:

> And in municipalities the breaking up and opening of streets for the erection of poles or for carrying wires underground shall be subject to the approval of the municipal council of such municipalities.

11 On 11th May, 1903, the Vernon and Nelson Telephone Company's Act was amended, and sec. 5 thereof enacts as follows:

> Section 7, except sub-secs. a, b, and c thereof, of said ch. 67, is hereby repealed and the following enacted in lieu thereof:
>
> (1) The company may construct, erect, operate, and maintain a line or lines of telephone along the sides of and across or under any highway, streets, public bridges, or any such places in and throughout the province of British Columbia as the company from time to time determines; and the company may, by its servants, agents, or workmen, enter upon any highway, street, public bridge, or any such place in the province of British Columbia, for the purpose of erecting, operating, and maintaining its line or lines of telephone along the sides of or across or under the same, and may construct, erect, and maintain such and so many poles and other works and devices as the company deems necessary for making, completing, supporting, using, working, operating, and maintaining the system of communication by telephone, and may stretch wires thereon and from time to time as often as the company, its agents, officers, or workmen think proper, break up or open any part or parts of the said highways or streets, subject however to the following provision:

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Sub-section b of sec. 7 of the Act, 1891, ch. 67:

And in municipalities the breaking up and opening of streets for the erection of poles or for carrying the wires underground, shall be subject to the approval of the municipal council of such municipalities.

12 Section 6 enables the company to acquire the property, undertakings, franchises, business, rights, contracts, powers, or privileges of other companies having objects in whole or in part similar to the objects of their own, and power is by the same section given such companies to dispose of such powers, etc. By virtue of this enactment the defendant company acquired the powers, etc., of the "New Westminster and Burrard Inlet Telephone Company, Limited."

13 On 6th July, 1904, by the approval of the Lieutenant-Governor in council, the name of the "Vernon and Nelson Telephone Company, Limited," was changed to that of the "British Columbia Telephone Company, Limited," the name in which defendants appear in this action.

14 It is contended on behalf of plaintiffs that defendants are subject to sub-sec. 15 of sec. 125 and sec. 218 of the Vancouver Incorporation Act, 1900, and that none of the powers contained in defendant company's charter in any way affect plaintiffs. In this view I do not agree.

15 The streets were vested in the city for certain general purposes such as securing to the public thoroughfares throughout the city. And powers were given by the legislature to the company in respect to those streets for certain other purposes.

16 Those respective powers may subsist together. I can find no provision of the legislature which empowers the city to prohibit the defendant company from exercising its statutory powers, nor is there any authority enabling the defendant company to exercise certain of those powers without the approval of the city. The city cannot prohibit the company from exercising its powers by a refusal to approve. Even if there should be a conflict between the provisions of the city charter and that of the defendant company, by the application of well known canons of construction of statutes I am bound to hold that those of the defendant company in this instance prevail. Neither sub-sec. 15 of sec. 125 of the Act of 1900 (even if it applied to the defendant company, which in my view of the nature of the powers conferred upon it by the legislature it does not), nor yet sec. 218 can prevail as against sec. 5 of the company's charter of 1903, which is specific and unambiguous in its enactments.

17 The Act respecting the New Westminster and Burrard Inlet Telephone Company, Limited, the Vancouver Incorporation Act, 1886, and the Act respecting the Vancouver Electric Light Company, were all passed on the same day. The telephone company and the electric light company were given power to erect poles and string wires in the streets of the city. The electric light company is to exercise this power in conformity to by-law. This restriction does not apply to the telephone company. I look at the electric charter to assist in ascertaining the intention of the legislature, when legislating upon the same subject matter in the same locality.

18 These Acts in so far as they give similar powers in the same municipality, are to that extent statutes in pari materia, and may be looked at in ascertaining the meaning of the legislature: Committee of London Clearing Bankers v. Commissioners of Inland Revenue, [1896] 1 Q. B. 227-8; Colquhoun v. Brooks, 14 App. Cas. 506 , 59 L. J. Q. B. 59.

19 When the legislature passed sec. 218 of the charter, 1886, on the same day, did they intend its scope to include the telephone company? If so it is most reasonable to expect some specific enactment to that effect either in the city charter or that of the company, but there is none. Again if there is a conflict, the company's charter being later in date, or at least in receiving the royal assent, must prevail: The King v. Justices of Middlesex, 2 B. & Ad. at p. 821; Dryden v. Overseers of Putney, 1 Ex. 223, 232; Attorney-General v. Great Eastern R. W. Co., L. R. 7 Ch. 475 ; Taylor v. Corporation of Oldham, 4 Ch. D. 395 ; Trustees of Birkenhead Docks v. Laird, 18 Jur. 883; City and South London R. W. Co. v. London County Council, [1891] 2 Q. B. 513.

20 In the present action it is contended on behalf of the city that no permission as required by sec. 218 of the Act of incorporation, 1900, was given. Being of the opinion that the Vernon and Nelson Telephone Company Amendment Act, 1903, empowers the defendant company to enter upon and break up the streets of the city for the purposes of its works subject to the

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approval of the council, which is a right to regulate not to prohibit, it might not be necessary for me to deal with the question as to whether the consent mentioned in sec. 218 was given or not. However, I find as a fact that permission was asked by defendants to lay their wires underground along the route indicated in the plan, produced at the trial, and that the city engineer, under proper instructions from plaintiffs, approved of the plan, and by appending his signature thereto gave the consent contemplated by the legislature. Plaintiffs have not sustained any damage by the acts of defendants.

21 As the injunction sought is to prevent a repetition of the acts complained of, I must refuse it, since these acts were quite within the powers of defendants to commit. Further, I am not satisfied, having regard to the proceedings herein, that defendants contemplate the invasion of any of the plaintiffs' rights.

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The Public Utilities Board

2nd Floor
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Winnipeg, Manitoba
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M A N I T O B A	)	Order No. 192/89
	)	
THE PUBLIC UTILITIES BOARD ACT	)	
	)	
THE CROWN CORPORATIONS PUBLIC REVIEW AND ACCOUNTABILITY AND CONSEQUENTIAL AMENDMENTS ACT	)	December 14, 1989

BEFORE: E. J. Robertson, Chairman
M. Anseeuw, Member
T. Anderson, Member
H. Enns, Member
L. Gosselin, Member
E. Janzen, Member
S. Lount, Member

AN APPLICATION BY THE MANITOBA PUBLIC INSURANCE CORPORATION FOR A FINAL ORDER APPROVING COMPULSORY VEHICLE INSURANCE RATES AND DRIVERS INSURANCE RATES FOR THE 1990/91 INSURANCE YEAR

MG 1256

The Corporation's witnesses testified that the break-even loss ratio for the 1990/91 insurance year is 90.9, and that the range of reasonableness for loss ratios is between 80 and 90. The Board is aware that the loss ratios for the standard and merit rate classes contained in this application are based on only 12 to 15 months of actual data and that some loss ratios expressed are for insurance use groups containing less than 100 insurance units. There are, however, five year loss ratios used to assign experience increases and also ratios which indicate that some insurance uses are paying premiums considerably greater than those that may be equitable.

Because of the limited nature of data currently available, the Board will allow the increase in premiums to be allocated as proposed by the Corporation. The Board will, however, expect the Corporation to identify its loss experiences of the differing rate groups and further substantiate why a particular vehicle group's rate is fair when considered with other groups and its loss experience.

It is this information that will assist the Board and interested parties in improving the determination of fairness of the Corporation's rates in the future.

JURISDICTION OF THE BOARD

All counsel and representatives appearing before the Board agreed that the Board's jurisdiction is pursuant to Part IV (being Sections 26 - 29, both inclusive) of The Crown Act and the Public Utilities Board Act where it applies.

The matter of jurisdiction was first raised when the Corporation's witness indicated "in view of the fact that Extension rates for the 1990 insurance year are not known at this time, it is impossible to comment on what Extension rates might be for the 1991 insurance year." (Page 222 of the Transcript).

There followed considerable discussion between Board Counsel and Corporation Counsel regarding jurisdiction, primarily as to whether or not the Board was entitled to information when it required same on the effect and impact on the Rate Stabilization Reserve of the budgeted contribution, not only of Basic Coverage, but also of the Extension Coverage.

The Board is of the view that the magnitude and constitution of the Rate Stabilization Reserve is an integral part of the due and proper fixing of rates charged by the Corporation pursuant to the Manitoba Public Utilities Corporation and Crown Acts.

Recommendation 7.11 of the Autopac Review Commission (ARC) stated:

> "Recommendation 7.11: That the government of Manitoba issue a public directive to the Corporation setting an Autopac retained surplus target of about 15 percent of premiums. (This would amount to $40 to $50 million at prevailing premium levels.) The government directive should indicate that, if the Autopac surplus falls below ten percent or exceeds 20 percent of premiums, the corporation should and would be expected to take remedial action."

Evidence presented at this hearing by the Corporation indicated that the Board of Directors of the Corporation had adopted this policy at a recent meeting of the Board.

Also, evidence led by the Corporation at all three hearings before this Board indicated that the Extension or Optional Coverage was considerably more profitable than the Basic Coverage. For the insurance year ending February 28, 1989 (actual) the Extension Coverage earned a profit of $24.7 M on premiums written of $41.5 M, whereas the Basic Coverage earned $9.5 M on premiums written of $225.1 M. (All numbers have been rounded).

The Board wishes to comment on how the total Autopac Coverage is constituted.

There are actually three parts of automobile insurance coverage, one being the Special Risk Endorsement which is underwritten by the General Insurance part of the Corporation and as this does not formally constitute a part of Autopac or the Automobile Insurance Division, it will not be dealt with in this Order.

The coverage of the Automobile Insurance Division (Autopac) is in two parts - Basic, or Compulsory Coverage which was specifically detailed in testimony led by the Corporation's President and Chief Executive Officer as being:

AUTOPAC COVERAGE - BASIC

Third Party Liability	$200,000.00
Underinsured Motorist	$200,000.00
Accident Benefits (no fault)	weekly disability, medical expenses impairment benefits, death benefits, funeral expenses
All Perils	$350.00 deductible for passenger cars and $40,000.00 maximum insured value

There is no disagreement that the Board's jurisdiction extends to "compulsory driver insurance provided by that Corporation." There are no extension rates for driver's insurance provided by the Corporation.

The second part is the extension or optional coverage provided by the Corporation and forming part of Autopac which may briefly be described as including:

AUTOPAC COVERAGE - EXTENSION

Third Party Liability	$200,000.00 up to $2,000,000
Underinsured Motorist	$200,000.00 up to $2,000,000
Accident Benefits (no fault)	same as Basic

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Order No. 159/18

MANITOBA PUBLIC INSURANCE CORPORATION (MPI OR THE CORPORATION): COMPULSORY 2019/2020 DRIVER AND VEHICLE INSURANCE PREMIUMS AND OTHER MATTERS

December 3, 2018

BEFORE: Robert Gabor, Q.C., Chair
Irene Hamilton, Member
Robert Vandewater, Member
Carol Hainsworth, Member

The Board finds that the Corporation continues to rely much more heavily on consultants than do its peers in the area of IT. The Board appreciates that the Corporation has challenges in reducing the ratio of consultants to staff given the non-solicitation clauses in its contracts with vendors. The Board understands that these contracts provide a valuable service to MPI, but is concerned that MPI could become overly dependent on vendors. The Board has therefore directed the Corporation, in the 2020 GRA, to report on its progress in reducing the ratio of IT consultants to staff, and in managing relationships with IT vendors.

The Board did not receive an updated Asset Liability Management (ALM) study in the 2018 GRA. The Board was able to review the ALM study, prepared by Mercer Canada, in depth this year. The Board also heard about MPI's decision to segregate its investment portfolio into five distinct portfolios, as a result of the Mercer ALM study recommendations.

When it comes to the Corporation's overall investment strategy, the Board recognizes that its oversight role does not extend to directing the Corporation as to the particulars of its portfolio management. The Board finds that the Corporation has selected from a range of reasonable options for its portfolios as a result of the Mercer ALM study.

That said, the Board recognizes that it may be the case that the Corporation has foregone an opportunity to hedge against long-term risks by rejecting Real Return Bonds and reducing real assets in its new portfolio. To that end, the Board has directed that the Corporation run shadow portfolios to be evaluated against the portfolios selected by the Corporation. First, the Board has directed the Corporation to run shadow portfolios for the Basic and Pension portfolios, effective March 1, 2019, with the inclusion of Real Return Bonds as part of an optimal bond portfolio mix. Second, the Board has directed the Corporation to immediately engage Mercer to run shadow portfolios for Basic and Pension effective March 1, 2019, without the constraints imposed by the Corporation. Reports on the results of the shadow portfolios are to be filed in the 2020 GRA. As well, the Board has directed the Corporation to file a post-implementation review of its ALM strategy. The Board will review the shadow portfolios and the post-implementation review

in the 2020 GRA. The Board expects that the shadow portfolios and the post-implementation review will serve to inform it, and the Corporation, as to whether the Corporation's ALM strategy is reasonable. If a review in the 2020 GRA indicates that the Corporation did not employ a reasonable strategy, the Board will comment further at that time.

The Board again deliberated on the appropriate level of and methodology for setting MPI's Rate Stabilization Reserve (RSR) and Total Equity target capital range. The purpose of the RSR is to protect motorists from rate increases that would otherwise have been necessary due to unexpected variances from forecasted results and due to events and losses arising from non-recurring events or factors.

In the 2018 GRA, the Corporation requested a Basic Total Equity target capital range of $201 million to $438 million, and the Board ordered that the range be $180 million to $325 million. In this GRA, the Board has approved a Basic Total Equity target capital range of $140 million to $315 million, based on the results of the Corporation's target capital analysis updated to reflect market interest rates as of the end of September 2018, using the Naïve interest rate forecast. The Board directs, however, that in the 2020 GRA, the Dynamic Capital Adequacy Testing base scenario forecast must fully reflect any expected capital adjustments arising from the thorough capital management plan, which the Board has directed to be presented in the next GRA.

The Board acknowledges the Corporation's view that adequate capital in the RSR is required in order to permit MPI to provide stable and predictable Basic rates, and recognizes the risks associated with Basic being undercapitalized, leaving MPI and ratepayers in a vulnerable position in the event of severe adverse events. The Board recognizes, however, that considerable work has been devoted and progress made over many previous GRAs and through a collaborative process with stakeholders on the issue of the appropriate methodology to be used to establish the Basic Total Equity target capital range. The Board is concerned, however, that it is receiving the same positions from the parties year after year and would like to avoid re-visiting the same

arguments. The Board would prefer to establish a standard so that the issue can be determined for a longer period than one year, and then the results of a standard methodology can be evaluated. To this end, the Board intends to engage the services of an independent consulting actuary with experience in target capital analysis to engage stakeholders in discussion to understand their preferred approaches to Basic target capital analysis and prepare expert evidence for the 2020 GRA, setting out the expert's opinion on best practices in that regard.

The Board's approval of the Corporation's target capital methodology in this Order should not be seen as a specific endorsement or rejection of any particular approach to the Basic target capital analysis going forward, as the Board intends to examine this issue further, following receipt of the independent consulting actuary's expert evidence in the 2020 GRA.

The Board has, in past Orders, expressed the view that the Corporation's non-compulsory Extension line of business should be regulated. One of the reasons for this is the Board's concern that the level of Basic Total Equity could be depleted at a time when the Extension line of business contains significant reserves. However, the Board's concern is alleviated somewhat given that the Corporation intends to bring forward a capital management plan with rules for transfers from other lines of business. The Board will withhold comment in this Order that it be given the jurisdiction to regulate Extension, and will await the review of the capital management plan at the next GRA.

In Order 130/17, in providing its rationale for directing a wide-ranging Technical Conference on road safety to take place in early 2019, the Board commented that road safety and loss prevention is a complex, multi-faceted area involving multiple stakeholders. The Board directed that the issue of road safety would not be reviewed in the same level of detail in this GRA as it had in prior years. Therefore, in the public hearings for this GRA, the Board heard evidence on the Corporation's road safety expenditures, but not on specific initiatives and programs. The Board expects that all aspects of road safety will be thoroughly reviewed in the forthcoming Technical

Conference and looks forward to receipt of the information shared in the Technical Conference in the 2020 GRA.

In this GRA, the Board implemented a process change whereby the issues to be reviewed were identified and approved by the Board on an interim basis prior to the preparation of the GRA, and then finalized after the Pre-Hearing Conference. The Board will seek comments from the parties as to whether this process was beneficial in focusing the areas to be reviewed in detail in this Application.

The Board has made a number of directives in this Order. The Board hereby directs the Corporation to file with the Board, on or before April 1, 2019, a report advising as to the status of its compliance with each of the directives contained herein.

This Order reflects the Board's findings on matters which arose over the course of the proceeding through oral testimony and documentary evidence. Public access to the full transcripts of the public portions of the hearing, including cross-examination, presentations and closing statements, as well as documentary evidence are available on the Board's website (www.pub.gov.mb.ca).

Interested parties may also review MPI's Annual Report and quarterly financial statements on MPI's website (www.mpi.mb.ca).

1. THE RATE APPLICATION

1.1. Procedural History

On June 15, 2018, the Corporation filed with the Board the 2019 General Rate Application (GRA or Application) seeking approval of premiums for Basic, for the fiscal year commencing March 1, 2019 and ending February 29, 2020. The Application was filed in accordance with the provisions of *The Crown Corporations Governance and Accountability Act* and *The Public Utilities Board Act*.

new Asset Liability Management strategy. The review should provide an update on the progress of implementation of the new portfolios, the disposition of the existing portfolio to fund new investment classes, interest rate risk exposure changes, investment income reporting changes including the allocation methodology for balance sheet and investment income and Investment Policy Statement changes.

The Board expects that the shadow portfolios and the post-implementation review will serve to inform it, and the Corporation, as to whether the Corporation's Asset Liability Management strategy is reasonable.

8. RATE STABILIZATION RESERVE AND TARGET CAPITAL RANGE

8.1. Purpose of the RSR

By Order 162/16, the Board approved the following definition of the purpose of the Rate Stabilization Reserve (RSR):

> *To protect motorists from rate increases that would otherwise have been necessary due to unexpected variances from forecasted results and due to events and losses arising from non-recurring events or factors.*

8.2. Basic RSR and Total Equity Balances

In its Application, the Corporation requested a Basic Total Equity target capital range of $143 million to $305 million. The lower threshold of $143 million was found to be equivalent to a 34% Minimum Capital Test (MCT) ratio, and was based on an adaptation of the Dynamic Capital Adequacy Testing (DCAT) analysis based on a 1-in-40-year probability level, with routine management / regulatory action, over a two-year time horizon. The upper threshold of $305 was found to be equivalent to an 85% MCT ratio, based on a two-year, 1-in-40 DCAT scenario with no management action.

A summary of the recent actual and expected future, composition of Basic total equity is provided below:

	Actual		Forecast	Projected	Outlook
Years Ending 28/29 February	**2017**	**2018**	**2019**	**2020**	**2021**
Basic RSR Opening Balance	194	99	171	306	324
Basic Net Income (Loss)	(123)	35	135	18	18
Basic RSR Before Transfers	71	134	306	324	342
Transfer in from Non-Basic Retained Earnings	27.8	37	-	-	-
Basic RSR	**99**	**171**	**306**	**324**	**342**
Basic AOCI	82	40	(52)	(44)	(35)
Basic Total Equity	**181**	**211**	**254**	**280**	**307**

As in the past, the Board also looks to the overall financial strength of the Corporation in establishing rates. On an overall basis, as at February 28, 2017 the Corporation reported retained earnings of $261.5 million (including $162.3 million in Extension and SRE) and total equity of $357.2 million (including $176.2 million in Extension and SRE).

8.3. Dynamic Capital Adequacy Testing (DCAT)

The requirements for an actuary undertaking a DCAT investigation for a Canadian property-casualty insurance company are set out in the Standards of Practice promulgated by the Canadian Institute of Actuaries, along with additional guidance provided in Educational Notes. DCAT was developed by the Canadian Institute of Actuaries to address a private sector regulatory requirement for a financial condition report to be prepared annually by the appointed actuary for those insurers subject to that regulation. DCAT tests the forecasted financial strength of an insurer's capital position under a series of plausible adverse scenarios addressing a number of specified, different risk factors.

The Standards of Practice specify that an insurer's financial condition will be deemed satisfactory *"if throughout the forecast period, under the base scenario and all plausible adverse scenarios, the statement value of the insurer's assets is greater than the statement value of its liabilities, and under the base scenario, the insurer meets the supervisory target capital requirement."*

The annual Basic DCAT investigation undertaken by the Corporation's Chief Actuary and Vice President, Product and Risk Management is done because it reflects prudent best practices in Canada, as a means to identify plausible threats to the Corporation's satisfactory financial condition, actions which lessen the likelihood of those threats, and actions that would mitigate a threat if it materialized.

In general, the DCAT base scenario financial forecast would reflect the best estimate financial forecast of insurance operations. In a Basic context, this generally means the DCAT base scenario financial forecast matches the financial forecast for the contemporaneous GRA.

In the current GRA, this is true in all respects (including the use of a Naïve interest rate forecast) except that the DCAT base scenario financial forecast excludes the expected revenue arising from the Corporation's proposed Net CMP, which gradually rises from about $22.7 million up to $25.6 million on a written premium basis from 2019/20 to 2022/23.

In defending its decision to exclude the Net CMP from the DCAT, the Corporation argued that:

- If Basic has a satisfactory financial condition without a CMP, it should also have a satisfactory financial condition with a CMP;
- It is appropriate to exclude any assumed capital adjustments in the best estimate base scenario forecast until such time that the Corporation brings forward and gets approval for a capital management plan;

- It is not appropriate to include the CMP in the estimation of the Basic target capital range, which is adapted from the DCAT; and
- Exclusion of any proposed capital adjustments in the estimate of the Basic target capital range will result in more consistent year-to-year assessments of the capital targets.

The DCAT investigation included in the current application was otherwise prepared in a manner consistent with prior years. Because Basic's financial forecast, and the DCAT base scenario, both reflect the expected impact of the Corporation's proposed ALM strategy, sensitivity to shifting interest rates and any decline in the market value of equity investments has been significantly reduced for Basic. Nevertheless, a Combined Scenario, reflecting adverse changes to interest rates, equity investments and loss ratios which are estimated to be plausible in aggregate, continues to be identified as the most significant plausible adverse scenario tested in the DCAT investigation, as in prior years.

The Corporation's Chief Actuary concluded that the future financial condition of Basic is satisfactory as at February 28, 2018. In its evidence, the Corporation also indicated that it is presently working on enhancements to its modelling of the risk associated with the misestimation of Basic's policy liabilities, the benefits of which will be reflected in future Basic DCAT investigations.

8.4. Target Capital Analysis

In recent years, through an extensive collaborative process, an approach to estimating a Basic target capital range was developed as an adaptation of the DCAT investigation. At a very high level, the Basic target capital analysis uses the most significant plausible adverse scenario identified in the DCAT investigation to estimate what level of Basic Total Equity is needed at the start of the forecast period such that:

- For the lower threshold, Basic Total Equity remains above $0; and

- For the upper threshold, Basic Total Equity remains above the lower threshold.

In each instance, the modelling is done at a specified probability level for the adverse scenario over a specified time horizon. Over the course of recent years, a consensus had been reached that a 1-in-40-year (or 97.5th percentile) probability level and a two-year time horizon are appropriate for Basic for both the lower and upper thresholds of the Basic target capital range.

In the 2018 GRA, the Corporation requested a target capital range of $201 million to $438 million. In Order 130/17, the Board set a Basic target capital range of $180 million to $325 million for the 2017/18 fiscal year following the consensus approach described above, using an iterative modelling approach and assuming:

- For the lower threshold, the adverse scenario be considered after routine management / regulatory actions (including rate changes and RSR rebuilding fees); and
- For the upper threshold, the adverse scenario be considered after routine management / regulatory actions (including only rate changes and not including RSR Rebuilding Fees).

The previously Board-approved iterative modelling approach tests a specified target capital level against specified adverse circumstances.

In the current application, the Corporation did not follow the iterative methodology, citing the following reasons:

- The lower threshold must be greater than or equal to the minimum capital required to achieve satisfactory financial condition;
- Any target capital methodology must be based on best estimates;
- The target capital analysis must reflect an appropriate time horizon for which the

Corporation can respond to adverse financial events;

- The lower and upper thresholds are calculated before the inclusion of capital maintenance or capital build/release provisions; and
- For the RSR to be effective and reduce the incidence of RSR rebuilding fees, the Basic Total Equity balance cannot be at or about the lower threshold for a material period of time.

The Corporation's proposed modelling approach tests the current Basic financial forecast (in this instance, excluding the proposed Net CMP), shifted to a specified target capital level at the start of the forecast period, against specified adverse circumstances.

The Corporation also elected to estimate the upper threshold based on modelling of the adverse scenario before routine management / regulatory actions.

In the Application as originally submitted, and based on the foregoing approach, the Corporation proposed a Basic Total Equity target capital range of $143 million to $305 million, which it indicated was equivalent to a range of 34% to 85% when expressed in terms of the MCT.

In MPI Exhibit #26, filed in the course of the public hearings, the Corporation provided an updated estimate of the Basic target capital range reflecting market interest rates as of the end of September 2018. This updated Basic Total Equity target capital range was $140 million to $315 million (or an MCT range of 34% to 88%), after correction of a calculation error with respect to the lower threshold was provided in oral testimony.

MPI Exhibit #26 also provided the estimated Basic target capital range following the previously Board-approved iterative modelling approach using a 50/50 interest rate forecast reflecting market interest rates as of the end of September 2018. This alternative Basic Total Equity target capital range was $122 million to $250 million.

fully reflect any expected capital adjustments arising from the thorough capital management plan which the Board will also direct to be proposed in the next GRA.

With this decision, the Board recognizes that is has departed from Order 130/17 with respect to the Basic target capital modeling approach. In that GRA, MPI requested a lower target capital threshold of $201 million and an upper threshold of $438 million. The Board approved a Basic Total Equity target capital range of $180 million to $325 million based on an iterative modeling approach designed to test specific target capital levels. The Board acknowledges the concerns again raised by the Corporation with respect to this approach, including:

- That the resulting lower threshold to the Basic target capital range is below the level it believes is required for Basic to have a satisfactory financial condition;
- That the upper threshold to the Basic target capital range should be modeled before routine management / regulatory actions;
- That inclusion of the Net Capital Maintenance Provision in the base scenario financial forecast is not appropriate for Basic target capital purposes; and
- That the assumed capital transfers from the Extension line of business are problematic because they represent amounts that the MPI Board of Directors may be unable, or unwilling to transfer, and assume a subsidization of Basic that is inconsistent with the principle that Basic should be self-supporting.

All other things being equal, the lower the Basic Total Equity target capital lower threshold, the more likely that the need for an RSR rebuilding fee will be deferred. This is because Basic Total Equity needs to fall farther before triggering that outcome. In a similar manner, the lower the upper threshold is set for the Basic Total Equity target capital range, the more likely that the need for an RSR rebate will come sooner, as Basic Total Equity does not need to rise as far before triggering that outcome.

Furthermore, in general terms, and all other things being equal, the narrower the width of the Basic Total Equity target capital range, the more likely that a given GRA will need to request either an RSR rebuilding fee or an RSR rebate, as the narrower range permits less volatility in actual versus expected Basic financial results before triggering one of these outcomes.

These general observations speak to the importance of setting the Basic target capital range to reflect modeling of the risks faced by Basic over an appropriate time horizon and considering the Corporation's appetite for risk.

The Board acknowledges the Corporation's view that adequate capital in the RSR is required in order to permit MPI to provide stable and predictable Basic rates, and recognizes the risks associated with Basic being undercapitalized, leaving MPI and ratepayers in a vulnerable position in the event of severe adverse events. The question facing the Board every year is what constitutes "adequate capital" as the Board is also concerned that rates should not be increased simply to provide the Corporation with a financial cushion. What is required are just and reasonable rates. The Board recognizes, however, that considerable work has been devoted and progress made over many previous GRAs and through a collaborative process with stakeholders on the issue of the appropriate methodology to be used to establish the Basic Total Equity target capital range. The Board is concerned that it is receiving the same positions from the parties year after year, that the level of capital is either inadequate or too generous. The Board would like to avoid re-visiting the same arguments and, rather, would prefer to establish a standard so that the issue can be determined for a longer period than one year and then the results of a standard methodology can be evaluated. To this end, the Board intends to engage the services of an independent consulting actuary with experience in target capital analysis to:

- Engage stakeholders in discussion to understand their respective preferred Basic target capital analysis approaches; and

- Prepare expert evidence for the next GRA setting out their opinion on best practices for Basic target capital analysis purposes.

The Board's approval of a Basic Total Equity target capital range of $140 million to $315 million, reduced from that approved in Order 130/17, takes into account the clear evidence that the Corporation's risk profile has been favourably affected by the ALM initiative. The Board's acceptance of the results of the Corporation's methodology in this Order should not be seen as a specific endorsement or rejection of any particular approach to the Basic target capital analysis going forward, as the Board intends to examine this issue further, following receipt of the independent consulting actuary's expert evidence in the 2020 GRA.

The Board has, in past Orders, expressed the view that the Corporation's non-compulsory Extension line of business should be regulated. One of the reasons for this is the Board's concern that the level of Basic Total Equity could be depleted at a time when the Extension line of business contains significant reserves. However, the Board's concern is alleviated somewhat given that the Corporation intends to bring forward a capital management plan with rules for transfers from other lines of business. The Board will withhold comment in this Order that it be given the jurisdiction to regulate Extension, and will await the review of the capital management plan at the next GRA.

9. ROAD SAFETY

In Order 130/17, the Board indicated that the issue of road safety would not form a significant part of this Application, as the Board had ordered that a Technical Conference take place in early 2019, addressing in depth a number of road-safety related issues. The Board commented that, in addition to the Interveners to the 2018 GRA, Technical Conference would benefit from the involvement of the membership of the Provincial Road Safety Committee and the Board intends to invite those members to participate in the conference.

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Public Utilities Board

Régie des services publics

Order No. 162/16

MANITOBA PUBLIC INSURANCE CORPORATION (MPI OR THE CORPORATION): COMPULSORY 2017/2018 DRIVER AND VEHICLE INSURANCE PREMIUMS AND OTHER MATTERS

December 15, 2016

BEFORE: Robert Gabor, Q.C., Chair
Karen Botting, B.A., B.Ed., M.Ed., Vice Chair
The Hon. Anita Neville, P.C., B.A. (Hons.), Member
Allan Morin, B.A., ICD.D., Member

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Dr. Simpson and Ms. Sherry expressed the opinion that an MCT of 100% is not an appropriate test for setting the upper target of the RSR: 100% MCT does not arise from the use of a specific DCAT adverse scenario and probability level.

5.6. Interveners' Positions

CAC

CAC took the position that the RSR is not aimed at addressing the solvency of the Corporation; rather, its purpose is to mitigate against rate shock. As a result, the use of the MCT, which is a solvency test, is not appropriate in setting the upper bound of the RSR target range. CAC's position, relying on the evidence of its experts, was that the RSR should be tied to risk, based on the analytical foundation employed by the DCAT methodology. CAC pointed to evidence from Dr. Simpson, that the MCT has no direct link to any specified risk scenario at any specified tolerance range. An RSR that is too large may raise issues of inter-generational inequity. If the upper limit for the RSR were to be set using 100% MCT, it would provide protection against exhausting Basic Total Equity beyond a 1-in-200 year event, and perhaps above a 1-in-5000 year event.

CAC asserted that MPI should employ a test that is responsive to the risk faced by it, which is the DCAT. CAC took the position the RSR range should be set based on the DCAT plausible adverse scenarios, to be internally consistent with DCAT methodology, with the range perhaps being established with reference around a 1-in-40 year target, or midpoint. If the Board were to adopt the SIRF as the best estimate, the DCAT-established RSR range would cover off interest rate risk, as it was intended to do.

CMMG

CMMG was supportive of an RSR range that would see the minimum amount set by the DCAT serve not as the minimum, but as the upper bound of the range. In CMMG's view, the RSR has not been used frequently since its inception and on occasion has been used for purposes outside those for which it was intended. CMMG stated that the amount of the upper limit for the RSR, as requested by MPI, on the basis of 100% MCT, should be viewed critically.

5.7. *Board Findings*

The Board finds that the Corporation's amended wording for the stated purpose of the RSR more accurately reflects how RSR balances are affected in practice.

The Board continues to favour the use of scenario testing adapted from the annual Basic DCAT investigation for purposes of setting Basic target capital levels, expressed in terms of Basic total equity. This approach is consistent with the objective of setting Basic target capital levels to be specific to the risk profile of the Corporation's Basic insurance operations.

The Board continues to support the use of the most significant 97.5th percentile plausible adverse scenario with routine management and regulatory actions over a two-year time horizon for the purposes of setting the lower threshold of the Basic target capital range. From the 2016 Basic DCAT investigation and target capital analysis, the Corporation selected the Combined scenario for this purpose, and proposed $159 million of Basic total equity as the lower threshold, which the Board is prepared to approve. This after consideration of how close this is positioned relative to the $161 million lower threshold indicated by the Board's preferred approach as is substantially reflected in MPI Exhibit #77.

The Board is concerned with the potential implications of the Corporation's view that the Basic DCAT investigation and target capital analysis are using "aggressive assumptions". It is the Board's expectation, and for that matter a requirement of accepted actuarial practice in Canada, that the Corporation's Basic Application, including the rate indications, the Basic DCAT investigation and the target capital analysis, be prepared on a best estimate basis. Doing otherwise complicates the regulatory review process.

For purposes of setting the upper threshold of the Basic target capital range, the Board withdraws its support of the use of the MCT and a threshold MCT ratio of 100%. The Board is concerned that the degree of conservatism implied by the Corporation's proposal may be excessive based on the Corporation's scenario testing at the more extreme percentile levels of possible outcomes, potentially giving rise to a risk of moral hazard. The Board sees the objectivity of the MCT as both a plus and a minus. The test's objectivity is a plus because it is a standardized metric, facilitating comparison over time for a given entity, and comparison between entities at a given point in time. It is because of these positive attributes that the Board directs the Corporation to continue to include MCT calculations for all scenarios in its DCAT

investigation and target capital analysis. The test's objectivity is a minus because it is designed for private sector property-casualty insurance entities. While they share many similarities with the Corporation's Basic insurance operations, they also have many important differences, which have a bearing on the Corporation's Basic risk profile. The Board is also concerned about setting an upper threshold based on a 100% MCT ratio when the test itself is often subject to change by OSFI. This typically changes what any given entity needs in capital at a given point in time in order to achieve a given MCT ratio.

With respect to the setting of the upper threshold of the Basic target capital range, the Board believes the question that still needs to be answered is this: *beyond what percentile level is it no longer reasonable and appropriate for the Corporation to hold funds against possible adverse circumstances, instead of rebating these excess funds back to the ratepayers.* The Board recognizes that the Corporation's focus to date on using the MCT for upper threshold purposes may have limited its efforts on scenario testing at the more extreme percentile levels of possible outcomes. To this end, the Board directs that the next Application will include the appropriate scenarios in support of the proposed upper threshold for the Basic target capital range. This includes the iterative approach favoured by the Board as substantially reflected in MPI Exhibit #77, and also includes testing of at least 99th and 99.5^{th} percentile outcomes.

In addition, the Board appreciates the Corporation's view that the upper threshold should be set based on consideration of the likelihood of triggering an RSR Rebuilding Fee, rather than the likelihood of exhausting Basic total equity. The Board believes both perspectives are relevant, and directs the Corporation to reflect consideration of both in the next Application.

The Board favours the continuation of the collaborative process between Applications as a means of more promptly advancing the evolution of this process, and so encourages the Corporation to avail itself of input and feedback from stakeholders. The Board therefore orders that the collaborative process on the use of the DCAT for setting of Basic target capital levels be continued, and that the process include a Technical Conference in that regard. The Technical Conference shall take place on a date mutually agreed upon as between the Board and MPI, which date shall be sufficiently early such that the information shared in the Technical Conference will be included in the 2018 GRA. The Technical Conference on the use of the DCAT for setting of Basic target capital levels shall be held together with the Technical

Conference on Basic Ratemaking in Accordance with Accepted Actuarial Practice in Canada referred to in Section 6.5 below.

In effect, the Board is not approving any upper threshold for the Basic target capital range for 2017/18. The Board recognizes that this position is not sustainable over the longer term, but in the near term, based on current forecasts, the likelihood of a breach of any reasonable upper threshold appears to be quite remote.

The Board continues to hold the view that the Extension line of business should be regulated, given the Corporation's market position as a near monopoly provider of non-compulsory auto insurance in Manitoba. The Board recommends to Government, therefore, that its jurisdiction be extended to include the Extension line of business, including rates and target capital levels, as well as the SRE target capital levels.

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MANITOBA Order No.98/14

THE PUBLIC UTILITIES BOARD ACT

THE MANITOBA PUBLIC INSURANCE ACT

THE CROWN CORPORATIONS PUBLIC REVIEW AND ACCOUNTABILITY ACT August 29, 2014

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:

ORDER WITH RESPECT TO MOTION TO COMPEL ANSWERS TO FIRST ROUND INFORMATION REQUESTS

that from the 1990 GRA to the 2012 GRA, the average number of Information Requests posed to MPI was 600 per year, with over 800 at the 2010 GRA and approximately 1200 at each of the 2011 and 2012 GRAs. MPI did not provide information relative to the 2013 GRA or the 2014 GRA, but stated that in the 2015 GRA, approximately 784 Information Requests (including parts) were posed in the First Round, including the Impugned IRs, together with 250 Information Requests in the Second Round.

MPI agreed that once the Board decides upon Basic Rates pursuant to a GRA, the Corporation's response to the rate decision is entirely within the realm of the Board of Directors of MPI.

MPI advised the Board, in a letter submitted by MPI's Chief Executive Officer, Mr. Dan Guimond, dated August 18, 2014, that "It appears that the mandate provided to the PUB through the legislation is not being followed. The Basic line of business, as a result of this jurisdictional issue, now has a serious capital deficiency and a deficiency in premiums." When asked about this statement at the hearing of the pending motions, MPI stated that in each of the last two years, Basic has posted losses of approximately $60 million per year, and that the RSR was less than half of what MPI believes it should be, partially because at the 2014 GRA the Board granted a 0.9% rate increase instead of the 1.9% rate increase that MPI applied for.

After a review of the content of the 2015 GRA, and the components which gave rise to the $69 million loss to Basic in 2013/14, MPI acknowledged that the main reasons for the recent losses in Basic were claims costs, higher than expected interest rates and actuarial adjustments.

MPI stated that it seeks to work with the Board in a collaborative way to establish parameters relative to what evidence is or is not relevant to and admissible in the GRA process.

4.0 ANALYSIS

Role of the Board

In the past, the Board has characterized the key elements of its independent review function and rate-setting role as follows:

- Ensuring that forecasts are reasonably reliable;
- Ensuring that actual and projected costs incurred are necessary and prudent;
- Assessing the reasonable revenue needs of an applicant in the context of its overall general health;
- Determining an appropriate allocation of costs between classes; and
- Setting just and reasonable rates in accordance with statutory objectives.

(Board Order 5/12 issued January 17, 2012 relative to Manitoba Hydro)

The Board's rate-setting role includes the consideration of evidence that is relevant to these key factors; evidence that can assist the Board in the determination of the issues, including the setting of just and reasonable rates.

Basic Rates are reviewed by the Board, and the Board's approval is required prior to MPI implementing any change in Basic Rates pursuant to the CCPRA, which provides as follows:

> s. 26(1) Notwithstanding any other Act or law, rates for services provided by Manitoba Hydro and the Manitoba Public Insurance Corporation shall be reviewed by The Public Utilities Board under *The Public Utilities Board Act* and no change in rates for services shall be made and no new rates for services shall be introduced without the approval of The Public Utilities Board.
>
> s. 26(3) The PUB Act applies with any necessary changes to a review pursuant to this Part for rates for services.
>
> s. 26(4) In reaching a decision pursuant to this Part, The Public Utilities Board may
>
> (a) take into consideration
>
> (i) the amount <u>required</u> to provide sufficient moneys to cover operating, maintenance and administration expenses of the corporation,

(ii) interest and expenses on debt incurred for the purposes of the corporation by the government,

(iii) interest on debt incurred by the corporation,

(iv) reserves for replacement, renewal and obsolescence of works of the corporation,

(v) any other reserves that are <u>necessary</u> for the maintenance, operation, and replacement of works of the corporation,

(vi) liabilities of the corporation for pension benefits and other employee benefit programs;

(vii) any other payments that are <u>required</u> to be made out of the revenue of the corporation,

(viii) any compelling policy considerations that the board considers relevant to the matter,

<u>(ix) any other factors that the board considers relevant to the matter; and</u>

(b) hear submissions from any persons or groups or classes of persons or groups who, in the opinion of the board, have an interest in the matter.

(emphasis added)

As well, it is clear that the Board has broad powers to compel the production of documents. Pursuant to the PUB Act:

<u>s. 24(4)</u>: The Board, except as herein otherwise provided, as respects....the production and inspection of documents....and all other matters necessary or proper for the due exercise of its powers, or otherwise for carrying any of its powers into effect, has all such powers, rights and privileges as are vested in the Court of Queen's Bench or a judge thereof;

<u>s. 27(2):</u> The Board...may, where it appears expedient....

(c) require the production of all books, plans, specifications, drawings and documents; and

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The Public Utilities Board

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M A N I T O B A	) Order No. 168/90
	)
THE PUBLIC UTILITIES BOARD ACT	)
	)
THE CROWN CORPORATIONS PUBLIC REVIEW AND ACCOUNTABILITY AND CONSEQUENTIAL AMENDMENTS ACT	) December 7, 1990

BEFORE: H. Enns, Acting Chairman
T. Anderson, Q.C., Member
E. Janzen, Member

AN APPLICATION BY THE MANITOBA PUBLIC INSURANCE CORPORATION FOR A FINAL ORDER APPROVING COMPULSORY VEHICLE INSURANCE RATES FOR THE 1991/92 INSURANCE YEAR AND CONFIRMATION OF INTERIM EX PARTE ORDER 10/90

ITEM	ESTIMATES - X $1,000 1990/91 ORIGINAL/ 1989	1990/91 SEPTEMBER/ 1990	1991/92 SEPTEMBER/ 1990	INCREASE (DECREASE) OVER 1991
PREMIUMS EARNED:				
Motor Vehicles	$252,164	$250,893	$277,473	$26,580
Driver Premiums	21,432	22,850	21,822	(1,028)
Reinsurance Ceded	(2,205)	(2,248)	(2,400)	(152)
Investment Income	46,900	50,381	54,030	3,649
TOTAL EARNED REVENUE	318,291	321,876	350,925	29,049
CLAIMS COSTS:				
Claims Incurred	246,588	257,437	275,719	18,282
Claims Expenses	32,124	32,093	35,569	3,476
SUB-TOTAL	278,712	289,530	311,288	21,758
OTHER EXPENSES:	39,962	39,466	43,242	3,776
TOTAL COST/EXPENSE	318,674	328,996	354,530	25,534
NET INCOME(LOSS) BASIC	(383)	(7,120)	(3,605)	3,515
NET INCOME(LOSS) EXTENSION	10,820	13,540	9,641	(3,899)
NET INCOME(LOSS) AUTOMOBILE DIVISION	$10,437	$6,420	$6,036	$(384)

1991 Original - Filed September 89
1991 September - Filed September 90
1992 September - Filed September 90

In its application for the 1990/91 insurance year, the Corporation's forecast of total earned revenues for Basic Insurance was $318,291,000. Forecast revenues for 1990/91 were revised in in September 1990 to $321,876,000. The major increase in revenues of $3,585,000 from that originally forecast was in investment income due to higher than projected interest rates.

As noted in the above table, claims incurred costs are the most significant cost component of the Corporation's operations.

As noted under Section 2, the Corporation forecasted claims

incurred costs using two forecasting methods. To recover the costs forecasted under the traditional forecasting method, the Corporation stated that an average increase in basic motor vehicle premiums of $30,033,000 or 11.9% would be required.

Under the pure premium method the average increase in basic motor vehicle premiums of 11% would be required to recover the claims incurred cost forecast under that model.

The Corporation testified that both forecasting methods are conservative and accordingly, in their opinion, produce higher claims incurred costs than that which Management of the Corporation feels will be realized. It was the Corporation's view that an overall increase in basic motor vehicle premiums of $17,080,000 or 6.56% combined with the effect of vehicle upgrading, vintaging and merit/non-merit shift of $9,500,000 results in a total motor vehicle increase of $26,580,000 would be sufficient for the Corporation for the 1991/92 insurance year.

From the above table it can be noted that with the proposed increase in forecasted revenues for basic insurance a loss of $3,605,000 will be incurred which together with a profit from extension insurance of $9,641,000 will produce a net profit for the Automobile Division of $6,036,000.

When questioned about the reasonableness of forecasting a loss on basic coverage and accordingly, making no contribution to the RSR from basic insurance, the Corporation stated that this practice is consistent with the Corporation's views that "these reserves assist the Corporation in setting rates on long term trends rather than short term financial results".

In the 1991/92 application, the Corporation's forecasts are for total earned revenues of $331,710,000, without the effect of the

requested rate increase. The increase in revenue of $9,834,000 over 1990/91 is expected to result from:

1. Increase in investment income of $1,514,000 due to increased returns and improved cash flows.

2. Increase in vehicle premiums of $9,500,000 due to vehicle upgrading, partially offset by vintaging and the movement from non-merit to merit categories.

3. Decrease in driver's premiums of $1,028,000 due to movement from non-merit to merit categories.

4. Increase in Reinsurance Ceded costs $152,000.

Including the effect of the requested rate increase, the Corporation's evidence is that the total earned revenues for 1991/92 will be $350,925,000, a further increase of $19,215,000. The further increase in revenues will result from:

1. Increase in vehicle premiums of $17,080,000 (6.56%) due to the general across-the-board increases of $12,880,000 as well as experience and special adjustments of $4,200,000.

2. Increase in Investment Income of $2,135,000.

BOARD FINDINGS

As previously discussed under other sections of this Order related to claims incurred costs and claims and other expenses, the Board will accept the Corporation's forecasts for this application. The Board notes that the revenue requested is insufficient to recover basic coverage costs. The Corporation has stated in its evidence

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M A N I T O B A	)	
	)	
THE PUBLIC UTILITIES BOARD ACT	)	Order 128/15
	)	
THE MANITOBA PUBLIC INSURANCE ACT	)	
	)	December 1, 2015
THE CROWN CORPORATIONS PUBLIC	)	
REVIEW AND ACCOUNTABILITY ACT	)	

Before: Régis Gosselin, B ès Arts, M.B.A., C.P.A., C.G.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 OR THE CORPORATION): COMPULSORY 2016/2017 DRIVER AND VEHICLE INSURANCE PREMIUMS AND OTHER MATTERS

CMMG

CMMG accepted the position of CAC in respect of the RSR. In particular, CMMG's position was that MPI bears no solvency risk and as such the MCT is not the appropriate test to apply in setting the target range for the RSR. CMMG also expressed the view that anything more than a 1-in-20 year scenario in setting the lower RSR target would result in intergenerational inequity and that the scenarios that the Corporation intends to protect itself against, in requesting the RSR range that it has, are too remote to justify such a range.

5.5 Board Findings

In Order 135/14, the Board ordered MPI to prepare and file a discussion paper relative to the nature and purpose of the RSR and the long-standing definition of the RSR as follows:

> The purpose of the RSR is to protect motorists from rate increases made necessary by unexpected events and losses arising from non-recurring events or factors.

The evidence reflects that on an annual basis the net operating results of Basic impact the balance of the RSR, and in particular PWC, by letter filed in the Application stated:

> Given the nature of the industry and the difficulty in predicting operating results, the RSR is often used for more than just offsetting extreme, one-time events, but rather absorbing the variances from plan each year

In the view of the Board, the annual net operating results of Basic do not constitute unexpected or non-recurring events or factors, and as such the definition of the RSR should be worded more broadly to accord with reality. The Board asks that MPI file a proposed, revised definition of the RSR at next year's hearing, for review and comment by all parties.

As set out above, the Board has ordered previously that it accepted the DCAT methodology, in principle but on a preliminary basis, for the purposes of establishing the

RSR target range for Basic. In addition, the Board ordered that MPI respond to a document attached as Appendix "E" to Order 135/14, and engage in an ongoing dialogue, among all parties relative to Phase I of Appendix E and with a view to finalizing both Phase I and Phase II of the collaborative process. The progress made relative to Phase I is an example of the collaboration and co-operation exhibited by MPI, with which the Board is pleased The Board orders that MPI continue to participate in the collaborative process and to complete Phase II thereof, which ongoing dialogue should take place among all parties that wish to participate.

For Fiscal 2016, as recommended by MPI, the Board orders that the two year return period, 1-in-40-year probability level, Combined Scenario including Management and Regulatory action should be utilized for the purposes of setting the lower Total Equity capital target for Basic, calculated at $231 million by MPI. At the 2017 GRA, after Phase II (above-referenced) is completed, the Board will hear evidence on potential changes in approach in this regard. The Board notes that this choice of scenario will likely enable the Corporation's Chief Actuary to continue to provide a favourable opinion regarding the satisfactory financial condition of Basic.

The Board has considered the arguments that a 1-in-40 probability level would result in excess reserves and intergenerational inequity, and has balanced these possibilities with rate-making principles, including the importance of rate stability. The Board notes that selection of a lower threshold (i.e., based on a higher probability scenario) would otherwise be expected to increase the frequency with which MPI would need to request an RSR rebuilding fee, in effect leading to rate instability. The Board has determined that for Fiscal 2016, use of the two year return period, 1-in-40-year probability level, Combined Scenario including Management and Regulatory action will result in an appropriate balance between the various needs of policyholders and the satisfactory financial condition of Basic.

The remaining work to be done relative to Phase II and Appendix E is intended to result in a better understanding and acceptance of the plausible adverse scenarios and is expected to

assist the Board in establishing an ongoing, appropriate Basic RSR/capital target range for the future with more confidence.

The Board has stated in the past that the MCT is a valuable yardstick that can be utilized to measure MPI's capital adequacy at different points in time for comparative purposes. With respect to the upper target capital total, the Board approves the use of a 100% MCT ratio on a notional basis only. The 100% of MCT result will represent the notional upper limit for the rate reserve, a limit which may yet be altered based on the supplemental DCAT analysis to be completed. The notional upper limit will preclude any Board ordered rebates, unless the rate reserve exceeds either the notional upper limit of the rate reserve calculated using the MCT or the upper limit set using the DCAT, if that is the upper limit test ultimately selected by the Board.

While the MCT functions principally as a federal regulatory solvency test, it represents an important yardstick for determining the financial condition of Canadian insurers. A notional upper limit based either directly on the MCT or indirectly in relation to the MCT will testify to the soundness of this very important Manitoba institution. While the adoption of an upper limit based on the DCAT and/or the MCT will result in higher reserves than would otherwise be the case based on the Kopstein range, it will support longer term rate stability for ratepayers and will enhance public confidence in the Corporation.

The Board understands that the MCT is set and administered by the Office of the Superintendent of Financial Institutions (OSFI), an organization entirely external to MPI, that OSFI alone controls the terms of the MCT and that the methodology for calculating the MCT are subject to change (and have changed) frequently. While MPI has provided a written commitment to use the "currently available" MCT Guideline as of the year-end date of the DCAT report, it has not done so in practice. The Board notes that MPI's 2015 DCAT report (looking forward from 28 February 2015) was prepared utilizing the OSFI MCT Guideline that became effective 1 January 2013, which was revised by OSFI with an updated MCT Guideline that became effective 1 January 2015.

As such, the Board requires that MPI report back to the Board annually with respect to what MCT Guideline was used within the DCAT report, whether that MCT Guideline was the most recently issued Guideline, and what upper limit target capital level MPI is seeking for the upcoming fiscal year. The Board is not prepared to commit to review this issue every four years given its concerns relative to the currency of the MCT Guideline. In addition, the Board requires MPI's commitment to proactively model the MCT as it is changed by OSFI to assess how this might affect target capital levels.

As in the past, the Board looks to the overall financial strength of the Corporation in establishing rates. The Board notes that on an overall basis MPI is in a financially strong position with retained earnings of over $378.1 million as at February 28, 2015, including $200.2 million in Extension and SRE.

The Board is pleased by the Corporation's decision to transfer some excess retained earnings from Extension and SRE into the RSR prior to the end of 2014/15, to assist Basic ratepayers and alleviate, at least in part, the shortfall in the Basic RSR. The Board notes the commitment of the Corporation to do so again prior to the end of 2015/16, to the extent that the balance of the RSR is below the minimum target capital level sought by MPI, of $231 million. The Board again recommends that the Corporation should develop an ongoing and transparent strategy for the disposition of the excess retained earnings funds to the benefit of ratepayers. The Board continues to be concerned about the moral hazard associated with excess reserves, the risk of improvised or irregular decisions to spend funds that should be used, as a matter of course, to provide support to Basic insurance, without which MPI's other lines of business could not exist.

As the Board has expressed in the past, and most recently in Order 135/14, the Board continues to hold the view that the Extension and SRE lines of business should be regulated, given MPI's market position as a near monopoly provider of non-compulsory auto insurance in Manitoba. The Board recommends to the Government, therefore, that its jurisdiction be extended to include non-Basic lines of business, including rates and retained earnings.

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Order No. 130/17

MANITOBA PUBLIC INSURANCE CORPORATION (MPI OR THE CORPORATION): COMPULSORY 2018/2019 DRIVER AND VEHICLE INSURANCE PREMIUMS AND OTHER MATTERS

December 4, 2017

BEFORE: Robert Gabor, Q.C., Chair
Carol Hainsworth, Member
Allan Morin, B.A., ICD.D., Member
Robert Vandewater, B.A., FCSI, CPA (Hon), CA (Hon), KStJ., C.D., Member
Michael Watson, Member

7.7. Board Findings

The Board considers the lower threshold for the Basic Total Equity target capital range to be significantly more important to the protection of the public interest than is the case for the upper threshold. The lower threshold mitigates the risk of insolvency and protects the interests of ratepayers, and in particular claimants. It ensures that Basic insurance is sufficiently capitalized to provide reasonable comfort that it will be able to meet its policyholder obligations. By contrast, the upper threshold mitigates the risk of prematurely triggering an RSR rebate. While RSR rebates are of general interest to Basic ratepayers, the public interest is best protected by setting an appropriate upper threshold to meet the risks of unforeseen events. This must be balanced against the opportunity cost created by Basic retaining capital that would otherwise be retained by Basic ratepayers.

With respect to the lower threshold, MPI's proposed approach in this Application is closely aligned with the approach adopted by the Board from the previous Application, reviewed in the Technical Conference in 2017 and adopted again in this Order. Both seek to protect against Basic Total Equity falling below $0 over a two-year time horizon at a 1-in-40-year (97.5th percentile) outcome level after routine management / regulatory actions. The key difference is in the modeling approach. The Corporation bases its estimate ($201 million) on scenario testing against the Application's "best estimate" financial forecast. The Board's approach has evolved from Order 135/14 and bases its estimate ($161 million) on iterative scenario testing against a modified financial forecast designed to simulate the behaviour of Basic insurance were it operating at a level of capitalization over the forecast period approximately equivalent to the proposed threshold.

The Corporation has noted its reservations about the iterative modeling approach, namely that creating the modified financial forecast requires significant transfers from its competitive lines that do not reflect best estimate expectations. The Board agrees that such transfers are not best estimate expectations, but rather sees these transfers as a theoretical means to an end, that "end" being the testing of Basic's resilience to adverse circumstances when operating at about the proposed threshold level.

Since the Board has decided to approve use of the 50/50 forecast of interest rates (rather than the Naïve forecast), the Board notes that the Application's lower threshold estimate of $201 million

increases by approximately $16 million, to $217 million, based on the September 30, 2017 50/50 forecast. Accordingly, the Board has estimated the approved lower threshold for the Basic Total Equity target capital range as $180 million reflecting the $161 million iterative estimate plus the $16 million adjustment for changing to the 50/50 forecast, subject to rounding up.

With respect to considerations relating to the upper threshold, the Board understands the merits of the MCT for providing a relatively simple, convenient and objective metric of Basic's relative financial strength. Nevertheless, the Board continues to prefer to have the upper threshold determined in a like manner to the lower threshold, thereby directly reflecting Basic's risk profile through scenario testing substantially modeled from Basic's own experience.

Throughout these proceedings, the Board has come to appreciate the advantages of basing the modeling for the upper threshold on scenario testing against the risk of triggering an RSR rebuilding fee. In effect, this modeling approach tests the width of the Basic Total Equity target capital range. It has the added advantage of not requiring the modeling of events at exceptionally remote probability levels, as might be required when scenario testing against the risk of insolvency.

The Board has concluded that testing over the same time horizon as used for lower threshold purposes (two years) is appropriate, since this again provides a reasonable time frame for formation, proposal and approval of a non-routine management / regulatory response to the emerging adverse circumstances.

In reaching its conclusion, the Board balanced the public interest considerations noted earlier, and its assessment of the level beyond which it is no longer reasonable and appropriate for the Corporation to hold funds against possible adverse circumstances, instead of rebating these excess funds back to ratepayers. As indicated by Dr. Simpson, an overly conservative reserve affects ratepayers' opportunity to otherwise spend or invest. Moreover, alternative measures, such as extending rebuilding over fiscal years (as has been ordered in the past), can ameliorate the impact of rebuilding fees and the Corporation's concerns of rate shock. For the purposes of this Order, the Board has decided to align this choice with that used for lower threshold purposes, namely testing 1-in-40-year adverse outcomes against the risk of triggering an RSR rebuilding fee.

The Board has decided that scenario testing in support of determining the upper threshold should be after routine management / regulatory rate change actions (i.e., not including routine

management / regulatory RSR rebuilding fee actions). The Board finds that it would be counter-productive to include routine RSR rebuilding fee actions when scenario testing against the risk of triggering an RSR rebuilding fee.

For clarification, the Board's use of the term "routine" in this context means historically "normal" actions (i.e., not exceptional), which could reasonably be expected to be taken in response to the emerging adverse circumstances being modeled, over and above any rate change or RSR rebate or RSR rebuilding fee that is included in the underlying base scenario financial forecast. The scenario testing provided by the Corporation did not align with the Board's request to include routine management / regulatory rate change actions. Accordingly, an approximation has been made to account for this in the Board's decision on the upper threshold. In future applications, the Board expects the Corporation to provide scenario testing consistent with this meaning of routine management / regulatory actions.

Based on these considerations, the Board has estimated the approved upper threshold for the Basic Total Equity target capital range as $325 million, comprised of $295 million to reflect iterative modeling of a 1-in-40-year scenario over a two-year time horizon after routine management / regulatory actions testing to maintain Basic Total Equity above the iterative $161 million lower threshold, plus the $16 million adjustment for changing to the September 2017 50/50 forecast as applied for lower threshold purposes, plus $11 million as an approximation to reverse the estimated impact of including a 2% RSR rebuilding fee as a routine management / regulatory action in 2019/20 (one-half of 2% of 2019/20 net written premium, reflecting the estimated earned portion of the assumed RSR rebuilding fee at the end of fiscal year 2019/20 as referenced in MPI Exhibit #44), subject to rounding up.

The Board notes that in the history of MPI, Total Equity supporting Basic RSR has only exceeded a threshold of $325 million once, as a result of an actuarial adjustment in the last quarter of fiscal year 2011. At that time, Total Equity exceeded $600 million which, of course, exceeds even the current request for an upper threshold at 100% MCT or $438 million and would have resulted in a rebate in any event.

As set out in past Orders, the Board has demonstrated a willingness to rebuild the total equity of the Corporation when necessary through premium surcharges. A multi-year RSR plan was last

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MANITOBA	Order No.156/06
THE PUBLIC UTILITIES BOARD ACT	
THE MANITOBA PUBLIC INSURANCE ACT	
THE CROWN CORPORATIONS PUBLIC REVIEW AND ACCOUNTABILITY ACT	November 20, 2006

Before: Graham Lane, C.A., Chairman
Leonard Evans, LL.D. (Hon.), Member
Eric Jorgensen, Member

MANITOBA PUBLIC INSURANCE: COMPULSORY 2007/08 DRIVER AND VEHICLE INSURANCE PREMIUMS, PREMIUM REBATE, AND OTHER MATTERS.

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d) prospects with respect to the eventual results from MPI's PIPP program review, potentially improved cost control and/or rehabilitation of injured claimants would enhance MPI's long-term financial prospects; and

e) prospects to arise out of MPI's study of the casual factors of accidents, in that in full awareness of the annual costs of such matters as speeding, impaired driving, lack of driver and passenger restraints, single-vehicle collisions – including with wildlife, should assist in road safety program design.

In short, the Board notes the existence of ongoing situations (anti-theft, development of PIPP benchmarks, the 2010 targets for injury and fatality reductions, and the BPR) and planned projects (Driver Safety Rating) that should contribute to further improvements to the financial prospects of MPI.

And, MPI advised of no plans for future benefit or coverage changes of a material nature, let alone changes to be applied retroactively to a deleterious result. It is hoped and expected that any such proposals would be costed and discussed at a Board hearing before being adopted, with retroactivity avoided. Retroactivity may affect intergenerational equity as it involves costs for which no premiums have been collected, placing a burden on the RSR. Even if such an event materializes, the Board expects the means will be found to meet the challenge. To enhance the RSR ahead of *unknown* future amendments associated with higher costs and retroactive application is to assume MPI and government, present and future, would act before considering the implications for policyholder interests.

MPI began in 1971 without a RSR, fully dependent for financial assurance on its monopoly, as that of a mandatory insurance program, backed by the legislature and government that put it in place in support. Careful actions and monitoring over thirty-five years, with a major program amendment being implemented on the apprehension of a risk of future unacceptable rate increases (the implementation of PIPP), suggest that the RSR is only one mechanism by which unacceptably high premium increases have and can be avoided.

Yet, the Board recalls former US Secretary of Defence Donald Rumsfeld's observation: *We know what we know and we don't know what we don't know.* This simple observation may be worthy of consideration when reflecting on the question of what should be the size of MPI's RSR.

Professors Hum and Simpson, engaged by CAC/MSOS to provide expert *economic evidence,* suggested that the kind of unexpected event that *would* deplete MPI's RSR could be expected to occur once in forty years. They further suggested that the odds of such an adverse event happening two years in a row, an occurrence that would severely test the RSR, could be expected *once in sixteen hundred years*. Mr. Christie suggested that the RSR should be sufficient to meet the risk of being overwhelmed by an unforeseen non-recurring negative event that could be expected once *in a hundred years.*

The Board is of the view that accumulating an RSR to handle *anything* might be acceptable in a society where all of its members have no immediate personal fiscal concerns and are fine with having their service agencies hold their funds in reserve; this society is not in this situation.

Based on MPI's current investment policy, if Board-deemed excess RSR funds are not rebated to policyholders, they would be largely be invested in bonds, now with an average issue rate below 5%. It is not difficult to imagine that a great number of MPI's policyholders incur interest rates considerably higher than 5% on their debts, and would appreciate a return of excess MPI reserves for their personal use. It has not escaped the Board that funds restored to the economy benefit the economy.

The Board does not agree that the RSR should be so large as to make it a virtual impossibility that a premium surcharge representing a rate shock, even a general rate shock, would ever be required. Both the potential for rebates and premium surcharges play a role in providing the balance between the interests of MPI and its Basic program and the interests of its policyholders. As CAC/MSOS recommended at the hearing, the Board confirms the generally understood principle that goes back to Judge Kopstein's 1988 report: MPI is not to *knowingly* budget for a loss, particularly a material loss.

Rebate

Briefly put, the Board was not convinced by MPI's evidence and argument that the Board's target range for the RSR, as amended to reflect further growth of annual gross written premiums, is too low. Nor is the Board in agreement with MPI's view that an OSFI MCT-based approach to determining capital adequacy should be preferred over the "made-in-Manitoba" Risk Analysis/VAR approach.

Arriving at this position in light of the possible consequences for policyholders was not easy for the Board. The Board's angst over the matter is primarily due to MPI's indication that it will not honour its assurance of only a year ago to continue the annual transfer to Basic RSR of deemed excess retained earnings of the two competitive lines of business, Extension and SRE. That is, unless the Board accepts a MCT-based higher RSR target range, MPI will cease making the transfers.

Notwithstanding the "risk", the Board rejects MPI's insistence for a higher RSR target range, and will continue to count on MPI "doing the right thing" for motorist policyholders, for whose benefit the Corporation was created and operates.

As to the amount of rebate, the Board will restrict it to 10%, notwithstanding a 10% rebate will not reduce the pro forma aggregate of RSR and IIF to the Board's revised RSR range maximum. The claims experience of 2006/07 is not complete, and variations in investment experience are to be expected.

Rebate Distribution Methodology

As to the method of distribution for the rebate directed by the Board, and having considered the administrative costs involved, the Board rejects MPI's suggestion that rebates be provided through the subsequent year's premium billings rather than being paid separately, as was the case last year. If it were to be paid by discounting 2007/08 rates, the rebate would benefit the policyholders of 2007/08, not those of 2005/06.