August 20, 2019

Via E-Mail

The Manitoba Public Utilities Board
400 – 330 Portage Avenue
Winnipeg, MB R3C 0C4

Attention: Darren Christle, Board Secretary/Executive Director

Dear Sir:

RE: MPIC 2020 General Rate Application – Motion to Compel Response to Round 1 Information Requests

This is further to the above-noted motion brought by the Consumers' Association of Canada – Manitoba Branch ("the CAC") and the letter in support thereof sent to the Public Utilities Board ("the Board") on August 15, 2019.

Notwithstanding the refusal by Manitoba Public Insurance ("MPI") to respond to each of the Information Requests listed below, MPI takes this opportunity to emphasize that the refusals are not simply gratuitous resistance. MPI has demonstrated throughout this General Rate Application ("GRA") that it is committed to full and open transparency. Decisions to not answer Information Requests are made based upon solid rationale, because refusing to answer is on its face contrary to MPI's transparency mandate.

MPI feels strongly about presenting its GRA to the Board within the existing legal framework (i.e. *The Manitoba Public Insurance Corporation Act* ("the Act"), its Regulations, AAP break-even ratemaking, etc.). MPI opposes answering these Information Requests because they are outside the legal framework of the rate approval process, and in some cases add the burden of significant and unnecessary expense for ratepayers.

CAC (MPI) 1 – 8 and CAC (MPI) 1 – 14 (Reserves Regulation)

The Reserves Regulation, M.R. 76/2019 ("the Regulation") forms part of the existing framework within which MPI must file the 2020 GRA. The Regulation, enacted under the Act, has been in force since April 12, 2019 and MPI must comply with the directions provided thereunder, including the direction to set capital reserve targets at 100% MCT for Basic and 200% MCT for Extension. For that reason, any briefing materials that may be in the possession of MPI regarding the merits of 100% MCT or the rationale for 200% MCT are of no relevance.

In its motion, the CAC recognizes cabinet privilege, but claims that any internal briefing materials in MPI's possession are not subject to cabinet privilege. With respect, this is a distinction without a difference. There is no difference for the reasons set out in the MPI's 'Rationale for Refusal' -- any information that MPI has in its possession would have been sent to Cabinet as part of MPI's Cabinet Submission, thereby

rendering it confidential. Moreover, the privilege attached to a Cabinet Submission belongs to Cabinet, MPI is not able to waive the privilege. MPI has since reached out to government and was advised that Cabinet has made no decision to waive its privilege over preparatory materials.

The CAC seeks the internal briefing materials that constitute the Cabinet Submission in an effort to show the universally accepted capital target of 100% MCT has no merit. Assuming this could somehow be shown, it matters not because MPI is bound by the target and mandated to implement a mechanism for compliance. This same obligation applies equally to the Extension capital target of 200% MCT.

MPI will continue to comply with its regulatory framework.

Lastly, the CAC says the rationale for the Regulation is an issue to be canvassed in this proceeding. Procedurally, that is not correct. Issue 18 (other than the proposed Capital Management Plan) is not engaged until such time as notice is provided pursuant to *The Constitutional Questions Act*. As notice has not yet been provided, the condition precedent has not been discharged. As such, any requests for information or briefing materials in relation to the legality of the Regulation is out of scope and therefore unfounded. Documents that may relate to something not yet in issue in this proceeding can be of no relevance. Indeed, the CAC says in its motion that the information, if obtained, will inform the notice under *The Constitutional Questions Act*; a tacit admission by the CAC that the Information Requests are designed to perhaps reveal something where nothing currently exists, a fishing expedition.

All that said, should the CAC serve notice pursuant to *The Constitutional Questions Act*, thereby making the validity of the Regulation a proper issue, the information requested is still not producible because of cabinet privilege.

CAC (MPI) 1 – 15 (d) (Alternative DCAT)

Quite simply, the DCAT is not the legal basis for setting Basic's capital targets. The Regulation has usurped the role of the DCAT. As indicated above, MPI has no choice but to accede to the Regulation, to bring the 2020 GRA within this component of the existing framework. The results of any alternative DCAT are irrelevant to the legal requirements that form the basis for MPI's GRA.

The CAC has indicated its intention to challenge the validity of the Regulation. Should that occur, along with a final disposition by a court of law that some or all of the Regulation was enacted by Cabinet without the requisite authority under the Act, MPI would then revert to the DCAT for the setting of capital targets (because part of the current framework will have been found by a judge to be of no force and effect).

No such disposition has occurred.

Producing an alternative DCAT is resource intensive. MPI cannot justify expending the resources and costs associated with preparing another DCAT to calculate capital targets, particularly now that the legal framework has made clear the operation of Basic at 100% MCT. MPI has no discretion to depart from the 100% MCT under the Regulation.

CAC (MPI) 1 – 29 (a) (Potential Changes to Determination Provisions under PIPP)

The 180-day determinations under PIPP are found under Part 2 of the Act. While changes may be afoot, the existing framework remains the same. Any such changes, if made, have no bearing on the claims costs (or the claims forecast) for the 2020 GRA. Accordingly, the information sought is speculative and not relevant to the issues being considered in this GRA.

Further, as indicated above, any briefing materials or information sent to Cabinet as part of MPI's Cabinet Submission, are confidential and subject to cabinet privilege. That privilege can only be waived by Cabinet. Documents that might exist internally are captured by the privilege because they formed part of the Cabinet Submission.

CAC (MPI) 1 – 23 and CAC (MPI) 1 – 24 (e) (Shadow Portfolios)

The investment strategy of MPI, and the particulars of the Asset Liability Management study were fully canvassed at the 2019 GRA. MPI did not include certain assets in its segregated portfolios, including real return bonds ("RRB's"). The Board found that the investment options selected by MPI for its portfolios were reasonable[1]. The Board also found that it cannot direct MPI as it concerns the particulars of its portfolio management[2].

The shadow portfolios were ordered to allow the Board to make a comparison against MPI's actual portfolios. However, the shadow portfolios are a retrospective comparison that do not reflect the principles and risk tolerance adopted by MPI's Board of Directors during the development of the investment strategy. As MPI has stated, and the CAC has acknowledged, there are myriad of possible shadow portfolios that could be created to compare against MPI's actual portfolio. However, only MPI's custom benchmark[3] of the actual portfolio reflects the intent of MPI's investment strategy. The Board ordered that the shadow portfolios be prepared after consultation with the Board. Following consultation, MPI engaged Mercer to run the shadow portfolios without the constraints MPI had imposed on the portfolios, which constraints the Board had previously found to be reasonable. MPI has complied with the Order. The Board could have directed a technical conference to occur, with the CAC and its advisors involved, but chose not to. Now the CAC would have the Board order an alternative shadow portfolio with a maximum allocation to RRB's, a portfolio entirely inconsistent with MPI's investment strategy, and one that will not allow for meaningful review and comparison.

[1] Order No. 159/18 page 89
[2] Order No. 159/18 page 88
[3] See INV Appendix 9

Given that the Basic and Pension portfolios contain no RRB's, and were found last year to be reasonable, preparing a shadow portfolio that maximizes investments in RRB's only serves to undermine the previous findings of the Board. Not unlike an alternative DCAT, running shadow portfolios that contain a maximum allocation to RRB's is uneconomical and serves no legitimate rate-setting purpose.

MPI's Board of Directors in consultation with the Government of Manitoba are charged with the responsibility of making decisions on the composition of its investment portfolio. The current investment strategy is underway, but not yet fully implemented. At a future point in time, the Board of Directors will review its investment strategy and make a decision on future investment portfolios. The composition of future investment portfolios will be based upon future conditions and requirements. Additional alternative shadow portfolios cannot in any way assist this Board's decision on the 2020 GRA or any future rate application.

The fundamental concern that MPI has with this Information Request is that it will cost ratepayers money to respond, and the answers it seeks will not assist the Board in approving this rate application or future rate applications.

Thank you for your consideration of the foregoing. Please do not hesitate to contact the undersigned should you have any questions.

Yours truly,

Steve M. Scarfone
Legal Counsel

SMS/nr