

IN THE MATTER OF:

An application by The Manitoba Public Insurance Corporation to The Public Utilities Board of Manitoba for review and approval of its rate bases and premiums charged with respect to compulsory driver and vehicle insurance effective from April 1, 2023 to March 31, 2024, pursuant to s. 25(1) of *The Crown Corporations Governance and Accountability Act*, C.C.S.M. c. C336.

AND IN THE MATTER OF:

An application by The Manitoba Public Insurance Corporation to The Public Utilities Board of Manitoba for a review of Order 4/23 with respect to compulsory driver and vehicle insurance effective from April 1, 2023 to March 31, 2024, pursuant to Rule 36 of the Rules of Practice and Procedure of The Public Utilities Board.

REPLY TO INTERVENER RESPONSES TO APPLICATION TO REVIEW ORDER 4/23

February 24, 2023



**MANITOBA
PUBLIC INSURANCE**

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RV.1 Introduction

Through this submission, MPIC provides its limited reply to the respective responses filed by counsel for the following interveners, namely, the Consumers Association of Canada (Manitoba Branch) (“CAC”), the Taxi Coalition (“TC”) and the Coalition of Manitoba Motorcycle Groups (“CMMG”) on February 21, 2023. Where the positions of MPIC and these Interveners materially diverge or where a statement of fact or law is claimed, MPIC provides additional comment, as appropriate.

RV.2 Legal Test for Review and Vary Applications

Reply to CAC Submission

MPIC takes no issue with the statement of the law espoused by the CAC. MPIC does not claim that the issue to be resolved on a Review and Vary (R&V) Application is “whether reasonable persons might have come to a different conclusion based on the same evidence” and does not propose this to be the standard by which the PUB should assess the merits of its R&V Application.

The preliminary question on an R&V Application is whether the PUB should conduct a review of the subject order, on the basis that there is reason to believe that the said order should be rescinded, changed, altered or varied. The PUB may determine this preliminary question with or without a hearing.¹

If the PUB answers the preliminary question in the affirmative, the PUB may dispose of the R&V Application in one of three ways. First, it may grant the R&V Application on the basis of the evidence and submissions presented. Second, it may dismiss the R&V Application on that same basis. Third, it may require a hearing or proceeding to obtain additional evidence and submissions.²

In any case, MPIC agrees that, in order to be successful in its R&V Application, it bears the onus of establishing that:

¹ Rules of Practice and Procedure, r. 36(4);

² *Ibid.*, r. 36(5);

1. Order 4/23 contains one or more errors of law or jurisdiction or of fact that raise substantial doubts as to the correctness of the Order; and/or
2. new facts exist that:
 - a. were not available at the time the PUB heard the 2023 GRA; and
 - b. could lead the PUB to materially vary or rescind its Order.

MPIC submits that its R&V Application specifically identifies the grounds for the relief requested. In each case, the ground is either an alleged error of fact (Directives 12.1(b), 12.15 and 12.18(b)) or an alleged new fact (Directives 12.6, 12.14, 12.15, 12.16, 12.17, 12.18(c)(i), 12.19, 12.20, 12.21, 12.23 and 12.24). Where a new fact is alleged to exist, it is clear that the new fact was not available at the time of the hearing of the 2023 GRA and that the existence of the new fact is sufficient to support a change in Order 4/23.

RV.3 Request for a PUB Review of Order 4/23 per s. 26(3) of CCGA

Reply to CAC Submission

In its submission, the CAC asks the PUB to exercise its authority under section 26(3) of *The Crown Corporations Governance and Accountability Act*³ to respond to what it claims is a substantial change in the circumstances that gave rise to Order 4/23, namely, a Winnipeg Free Press news article, which states that the Minister responsible for MPIC confirmed that MPIC is committed to reducing its proposed increase in full-time equivalents as part of a revised budget for the 2023/24 fiscal year.⁴

MPIC respectfully submits that the issue of whether the PUB should exercise its discretion to review its own order is one that the CAC should have raised separately from its response to the R&V Application. The two issues are not intertwined, and the CAC provides no

³ C.C.S.M. c. C336;

⁴ CAC correspondence dated February 21, 2023, pg. 2;

justification for combining its own request for relief with a response to the relief requested by MPIC.

Accordingly, MPIC will file concurrently a separate response to the above request.

RV.4 Directives 12.1(d) – Deferral of initiatives costs

Reply to CAC Submission

At pages 4-5 of its submission, the CAC states: "...the Board's comments regarding initiative spending did not only address Project Nova, and that the regulatory principle of intergenerational equity is not limited in relevance or application to specific types of expenditures such as information technology."

In reply, MPIC refers the PUB to its direction that MPIC create a deferral account for rate-setting purposes that "...will accumulate the integration costs and will be recovered when Project Nova is fully in-service."⁵ The costs to be included in this deferral account are the costs of all initiatives. As a result, either the PUB intentionally directed MPIC to defer the costs of initiatives unrelated to Project NOVA until such time as the Project is fully in-service (as the CAC appears to suggest) or it did so unintentionally, based on the erroneous assumption that all of the initiatives listed in MPIC Exhibit 96 were in some way related to Project NOVA, such that it would be just and reasonable that their costs be recovered from future ratepayers. MPIC expects that Directive 12.1(d) unintentionally connects the deferral of the costs of all initiatives to the complete implementation of Project NOVA, because to direct otherwise would clearly violate the principle of intergenerational equity.

The CAC further submits that Directive 12.1(b) remains appropriate because the PUB clearly indicated that it would establish the period of recovery for the deferred expenses in the 2024 GRA. In reply, MPIC respectfully submits that the CAC has parsed the words of the PUB without providing the entire context. Although the PUB did state that it would establish the period of recovery in the 2024 GRA, that statement follows the qualifying (and more important) statement that the costs "...will be recovered when Project Nova is fully in-service." The only reasonable interpretation is that MPIC cannot recover costs for initiatives unrelated to Project NOVA until Project NOVA is fully implemented and that PUB

⁵ Order 4/23, pgs. 55-56;

will decide that timeframe in the next GRA. Had the PUB been aware of the fact that some of the initiative expenses identified in the expense forecast for the 2023/24 and 2024/25 rating years relate to systems that will benefit current ratepayers, MPIC expects that it would have issued a different directive than it did.

Finally, the CAC takes issue with the claim by MPIC that it already defers the expenses of certain initiatives related to Project NOVA in accordance with IFRS and argues that the PUB "...has not previously ordered the creation of a regulatory deferral account for initiative expenses."⁶ While correct, depreciation and amortization are accounting principles that enable companies to gradually expense various resources of economic value over time and, as a result, these practices achieve the same or a similar end.

MPIC therefore repeats that the PUB should grant the relief claimed in its R&V Application.

RV.5 Directive 12.6 – Fleet Program Proposal

Reply to CAC Submission

The CAC contends that the PUB should not revisit this Directive on the basis that the R&V Application fails to present new facts that could reasonably support a material change in the decision of the PUB.

The R&V Application provides new facts, specifically, the proposal of MPIC to revisit its cost allocation methodology for fleet rebates and to conduct a formal review of its Fleet Program. However, MPIC believes that it is prudent and reasonable to engage the PUB through this process to confirm the intention of its directives, obtain relief where appropriate and ultimately minimize the potential for misunderstandings. MPIC reminds the PUB that it used the same process last year to clarify Directive 11.13 from Order 134/21 (2022 GRA).⁷ By proceeding in this manner, MPIC seeks to avoid the possibility of a later finding by the PUB that it did not comply with the wording, spirit or intent of Directive 12.6.

⁶ February 21, 2023 Response of CAC, pg. 5;

⁷ Order 21/22, pg. 21;

Reply to TC Submission

The TC submission raises concerns that the proposal put forward by MPIC for a broader review of its Fleet Program lacks specific timeframes. To clarify, MPIC does propose two filings for the 2024 GRA:

1. a report on any changes made by MPIC to the existing cost allocation methodology for fleet rebates (to ensure that the methodology does not result in cross-subsidization); and
2. a proposal for a formal review of its Fleet Program;

MPIC submits that its proposal for a review of the Fleet Program will include timelines for its completion and the presentation of any recommendations. However, prior to finalizing its proposal, MPIC cannot comment on an appropriate timeframe. MPIC recommends that the proposal, with timeframes, be canvassed during the 2024 GRA. MPIC will seek to obtain approval of the proposal by the PUB, which will necessarily require it to comment on the timelines set out therein. MPIC submits that now is not the appropriate time to set timeframes which may later be unworkable once the proposal is finalized.

MPIC therefore repeats that the PUB should grant the relief claimed in its R&V Application.

RV.6 Directive 12.14 and Appendix A – DSR Changes

Reply to CAC Submission

The central argument raised by the CAC is that the PUB should maintain its finding that MPIC failed to comply with Directive 11.15 from Order 134/21 (2022 GRA). That the PUB should grant the creation of DSR levels +18 through +20 does not appear to be a point of contention.

However, MPIC respectfully submits that the PUB should find that the creation of DSR levels +18 through +20, along with the fact that MPIC selected higher than the current discount rate percentages for DSR levels +9 through +16 is sufficient to establish compliance by MPIC with Directive 11.15.

The comment the PUB made in Order 4/23, that the MPIC plan to move discounts/premiums closer to their actuarial targets over the next five years did not comply with Directive 11.15 assumes that MPIC did not ultimately apply for changes to any DSR discount levels. MPIC submits that the R&V Application establishes that this is not the case and that MPIC is committed to continue changing the DSR, as it proposed in the 2022 GRA. However, MPIC also committed to moving discounts closer to actuarially-indicated targets in a manner that is revenue neutral,⁸ which limits its ability to immediately resolve any dislocation. Finally, the evidence before the PUB is that the implementation of Generalized Linear Modelling (GLM) will impact the actuarial targets, which could result in a large dislocation between actual and actuarially indicated rates (despite efforts to address any dislocation prior to GLM implementation). MPIC can only do so much at this time to address the DSR discount dislocation problem.

Reply to CMMG Submission

The CMMG asserts that there was no error of fact in Order 4/23 relating to Directive 12.14 and Appendix A. In reply, MPIC submits that the error of fact is established by the misunderstanding between what the PUB and MPIC each believed MPIC had requested as relief. MPIC submits that it did not suddenly change its request for relief in its closing submissions. However, if the PUB interpreted its submission as precisely doing this (which appears to be the case), the parties were clearly not *ad item*. Alternatively, by confirming that it did not intend to abandon its original claim for relief, MPIC provides the PUB with new facts that could materially change the directive at issue (as well as Appendix A). Therefore, MPIC submits that there are clear grounds for the PUB to revisit and revise Directive 12.14.

The CMMG, like the CAC, does not advocate against the creation of DSR levels +18 through +20 but does argue that the PUB should not vary Appendix A and should continue to find that MPIC did comply with Directive 11.15 from Order 134/21 (2022 GRA). In essence, the CMMG argues that MPIC failed to put forth a DSR transition plan that would manage dislocation in a timely manner. MPIC submits that, as Directive 11.15 did not define the phrase “timely manner”, it was open to MPIC to draft a plan for PUB approval that it believed reasonably satisfied the aims of this Directive. That the PUB ultimately varied the

⁸ 2023 GRA e-book, pg. 2069;

proposed plan does not necessarily support a finding that MPIC did not comply with Directive 11.15. MPIC clearly laid out the basis for its proposed transition plan and highlighted the factors it considered when determining what it believed were the most appropriate adjustments to make. The PUB should view this as amounting to satisfaction of the Directive. Otherwise, one is left with a Directive that obligates MPIC to put forth a proposal that must satisfy ambiguous criteria and that leaves MPIC unable to determine whether it will be viewed as complying with the Directive until it is reviewed. If that were the case, the only way in which MPIC could have ensured compliance with Directive 11.15 would have been to have presented its proposal to the PUB in advance of the 2023 GRA and sought confirmation that same was acceptable. However, MPIC submits that doing so would have defeated the purpose of Directive 11.15, which was to ensure that MPIC presented a transition plan in the 2023 GRA for the PUB to review. MPIC did so and that plan was ultimately adjusted by the PUB.

Reply to TC Submission

The TC submission contains many of the same arguments raised by the CAC and CMMG. MPIC repeats and relies on its reply to the submissions of the CAC and CMMG in answer to the position advanced by the TC on this Directive and Appendix A.

MPIC therefore repeats that the PUB should grant the relief claimed in its R&V Application.

RV.7 Directive 12.15 – DSR Discounts move one-fourth

Reply to CAC Submission

The CAC argues that there is no error of fact, law or jurisdiction and no new fact that would support a review and variation of this Directive. MPIC, it submits, is simply attempting to relitigate matters that were already canvassed and settled.

With respect, the position advanced by the CAC fails to appreciate that Order 4/23 does not address the evidence put forth by MPIC on the dangers of changing discounts for all DSR levels pending the implementation of GLM. Although the PUB states in Order 4/23 that it supports the transition by MPIC to the use of GLM, it provides no indication that it considered the significant problems that could arise by not deferring the DSR transition

plan. In fact, Order 4/23 does not acknowledge the request by MPIC to defer the transition plan.

As a result, the only reasonable inference that can be drawn is that the PUB did not consider this evidence or the request by MPIC. By not considering this evidence, the PUB erred, and MPIC submits that it should redress same by considering the available evidence. It may be that that PUB did not appreciate that the request by MPIC not to change DSR discounts for DSR levels other than +9 through +16, was a specific request that it defer the DSR transition plan to accord with the GLM implementation plan, in which case there would certainly be grounds to revisit Directive 12.15 on the basis of new facts.

Reply to TC Submission

The TC submission contains many of the same arguments raised by the CAC in its submission. MPIC therefore repeats and relies on its reply to the submissions of the CAC in answer to the position advanced by the TC on this Directive.

Reply to CMMG Submission

The CMMG submission on this Directive is essentially the same as those provided by the CAC and TC. MPIC repeats and relies on its reply to the submissions of the CAC in answer to the position advanced by the CMMG on this Directive.

MPIC therefore repeats that the PUB should grant the relief claimed in its R&V Application.

RV.8 Directive 12.16 – Five-year plan for Rating Models

Reply to CAC Submission

While the CAC agrees that MPIC did provide new facts to the PUB, it argues that these new facts are insufficient to support the making of any changes to Directive 12.16. It argues that MPIC already possesses the authority under s. 6(2)(d) of *The Manitoba Public Insurance Corporation Act*, C.C.S.M. c. P215 (“MPICA”), which states:

"Additional powers

6(2) *The corporation has the power and capacity to do all acts and things necessary or required for the purpose of carrying out its functions and powers and, without limiting the generality of the foregoing, the corporation may*

...

(d) prescribe the information and detail required to be set out on any form;"

In presenting this argument, the CAC appears to be applying the *obiter* comments of the Honourable Justice Steel in the Court of Appeal decision referenced in the R&V Application.

MPIC did not disclose the content of the report received from the Office of the Ombudsman of Manitoba (the "Ombudsman") on account of s. 53(1) of *The Freedom of Information and Protection of Privacy Act*, C.C.S.M. c. F175 ("FIPPA"), which states:

"Statements and reports not admissible in evidence

53(1) A statement made or an answer given by a person during an investigation or audit by the Ombudsman, and a report or recommendation of the Ombudsman, is inadmissible in evidence in a court or in any other proceeding, except

(a) in a prosecution for perjury in respect of sworn testimony;

(b) in a prosecution for an offence under this Act;"

(c) in a review conducted by the adjudicator under this Act when the Ombudsman is a party; or

(d) in an application for judicial review of an adjudicator's order under this Act."

MPIC received confirmation from the Ombudsman that it could disclose the existence of its report, but that the report itself could not be admitted into evidence where the decision maker could then rely upon it in making a decision (which is the reason MPIC decided against including the report with its R&V application). If concerned about the specifics of the request that prompted the response from the Ombudsman, MPIC understands that others, including the PUB and Interveners, could present similar requests to the Ombudsman.

Similarly, MPIC cannot disclose the nature of the information provided to the Government of Manitoba (the "Government"), as same is protected by cabinet confidence. MPIC notes that this privilege is claimed by the Government and cannot be waived by MPIC on its behalf. Indeed, MPI made a request of the Government to share in this application the Briefing Note as referenced in the affidavit of Satvir Jatana, but that request was denied.

If the PUB is unclear as to why MPIC, as a precursor to the detailing of an effective 5-year plan, must collect new data in order to conduct a pricing examination, MPIC submits that the PUB should consider varying Directive 12.16 and direct MPIC to meet with its actuarial advisors by April 30, 2023, to review the existing data and confirm the current set of assumptions that are rooted within the 5-year plan that MPIC filed in the 2023 GRA.

However, if the issue is limited to whether there currently exists sufficient authority for MPIC to begin collecting data to conduct a pricing examination of any alternative to the current registered owner rating model, and if one were to accept the argument that this authority exists by virtue of the form-making power under s. 6(2)(d) of the MPICA, one would still need to resolve the following questions:

1. can one reconcile the form-making power (i.e., under s. 6(2)(d) of the MPICA) with the prohibition under s. 36(1)(b) of FIPPA on the collection of personal information by a public body such as MPIC, unless that information relates directly to and is necessary for an existing service, program or activity of the public body (in other words, would an alternative rating model that may or may not be in use constitute an existing service, program or activity and would the collection of personal information be considered necessary if not for use in the existing rating model)?

2. does the form-making power limit the ability of MPIC to collect third party driver information in ways other than by a "form" (e.g., telephone survey)?
3. if MPIC were to create a new form that required registered owners to provide pertinent personal information about other drivers of their vehicles (i.e., full name and driver's licence number):
 - a. would MPIC be required to obtain the consent of the other drivers of their vehicles for the use of their information (e.g., by way of the addition of a consent line on the form) or could it avoid this requirement simply by virtue of the fact that it already required the registered owner to include this information on its form;
 - b. notwithstanding the fact that the registered owner model would otherwise remain the effective rating model, during the period in which MPIC would be gathering information for the purposes of conducting a pricing analysis, could it deny the registered owner a discount on their vehicle premium (or take other measures against them or others to compel compliance) if they or one or more other drivers failed or refused to provide them with the information necessary to complete the new form?

MPIC submits that the answers to the above questions are not clear and could add significantly more time and cost to any transition plan. For example, MPIC expects that conducting a pricing analysis by way of a telephone survey would be quicker, easier and much more cost effective than requiring customers (perhaps multiple for the same vehicle) to complete and return a printed or electronic form.

MPIC also submits that, without clear authority, it would, in effect, be operating in a legal "grey zone", which could expose it to legal liability, as previously explained. MPIC seeks to avoid this situation, which is why it believes that it requires the assistance of the Government before it can update its five-year transition plan to include further details, such as specific start dates and implementation schedules.

As a result, the facts submitted by MPIC are not only new but also material and support a variation of Directive 12.16 as requested by MPIC in its R&V Application.

Reply to CMMG Submission

The submission of the CMMG is similar to that of the CAC and does not raise any new arguments that MPIC has not already addressed above. As a result, MPIC repeats and relies on its reply to the submissions of the CAC in answer to the position advanced by the CMMG on this Directive.

RV.9 Directives 12.17, 12.18(c)(i) and 12.19 – Report on NOVA Funding Envelopes

Reply to CAC Submission

The CAC raises concerns that any variations to these Directives should preserve the intention of the PUB to provide oversight and accountability over Project NOVA. To be clear, MPIC does not seek an alternative process whereby the PUB would be unable to maintain its ability to oversee progress and/or to hold MPIC accountable. MPIC submits that there is a practical issue, there are no funding envelopes for Project NOVA. This fact makes it impossible for MPIC to comply with Directives 12.17 and 12.18(c)(i), as currently worded. This does not preclude the substitution of another process that the PUB may find to be equally appropriate. MPIC simply iterates that the reporting must be possible in order to avoid a finding that MPIC failed to comply with the directive. As for Directive 12.19, MPIC is not opposed to the inclusion of a deadline, as it is certainly committed to meeting with the staff and advisors of the PUB in advance of the 2024 GRA. However, MPIC did not wish to commit itself (or the PUB) to a particular timeline that may prove unachievable.

RV.10 Directive 12.18(b) – Revised Scope of Project NOVA

Reply to CAC Submission

The CAC argues that the PUB ought not to vary Directive 12.18(b) by reason that there exists no error of fact, law or jurisdiction and no new facts. The CAC further suggests that MPIC may respond to the Directive by restating the existing scope of Project NOVA without confirming whether the PUB would consider same to be non-compliance with the Directive. MPIC respectfully submits that it is not prepared to be so bold and believes that such a move would not be an appropriate way to build a respectful relationship.

MPIC submits that it appears that, in issuing Directive 12.18(b), the PUB relied on a factual error, namely, that the scope of Project NOVA was somehow different (i.e., larger) than it was when it was called the Legacy Systems Modernization project. This error would be material in the sense that it would challenge the very need for the Directive. Additionally, the PUB may have erred by assuming that MPIC could provide more detail on Project NOVA Releases 3 and 4 in advance of the completion of the pre-discovery and discovery phases. Again, MPIC believes it is material that the PUB considers that it will only have access to limited information in advance of the completion of these phases.

MPIC does note however that it has also offered an alternative revision to the Directive that would allow the PUB to receive timely updates regarding Project NOVA. MPIC has also committed to including detailed information about the Project in the 2024 GRA.

MPIC therefore repeats that the PUB should grant the relief claimed in its R&V Application.

RV.11 Directives 12.20 & 12.21 – External Review of ICAM and five-year Forecast with ICAM Revisions

Reply to CAC Submission

MPIC notes that the CAC was the only Intervener to address this topic and did so in support of the relief claimed by MPIC. MPIC offers no further reply.

RV.12 Directive 12.23 – Investment Committee Recommendations

Reply to CAC Submission

The CAC submission supports the relief claimed by MPIC. MPIC offers no further reply.

Reply to CMMG Submission

The CMMG submission supports the relief claimed by MPIC. MPIC offers no further reply.

RV.13 Directive 12.24 – Mercer Peer Comparison Report

Reply to CAC Submission

MPIC notes that the CAC was the only Intervener to address this topic and did so in support of the relief claimed by MPIC. MPIC offers no further reply.

Date: February 24, 2023

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