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February 21, 2023

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

Attention: Dr. Darren Christle, Executive Director and Board Secretary

Re: Manitoba Public Insurance – Substantial Change in Circumstances and MPI Application to Review and Vary Public Utilities Board Order 4/23

The Manitoba Branch of the Consumers' Association of Canada (CAC Manitoba) provides these comments for two distinct purposes.

First, CAC Manitoba writes to bring to the attention of the Public Utilities Board (PUB or Board) what appear to be substantial changes in the circumstances of Manitoba Public Insurance (MPI) that call into question the accuracy of the 2023/24 and 2024/25 financial forecasts relied upon by the PUB in issuing Order 4/23. Relying on the statutory authority of the PUB,¹ CAC Manitoba asks the Board to request details about these changes from MPI and, if appropriate, to modify Order 4/23 accordingly to reflect potentially significant reductions in the corporation's expense forecasts.

Second, CAC Manitoba writes in response to MPI's application to review and vary Order 4/23. CAC Manitoba appreciates the invitation by the Board to submit these comments in response to MPI's application.

¹ In particular, *The Crown Corporations Governance and Accountability Act*, CCSM c C336 at ss 25(3), 26(3); *The Public Utilities Board Act*, CCSM c P280 at s 78(1)(e).



Government direction to reduce FTEs constitutes substantial change in circumstances

Based on publicly-available information, it appears that MPI has reduced its projected growth in full-time equivalent (FTE) employees for the 2023/24 fiscal year. This potentially significant reduction in MPI's forecasted expenses should translate directly to a reduction in rates.

In the 2023 GRA, MPI filed evidence before the Board indicating that significant increases in its FTE staffing levels were underway and were projected to continue through 2024/25.² The Board and Interveners expressed significant concerns in response to these drastic increases,³ and the Board noted that absent meaningful efforts to contain costs, "there is a significant risk that MPI's next rate request will be found to not be just and reasonable."⁴

Soon after the release of Order 4/23, it became public knowledge through media reporting that MPI's proposed FTE increases were not acceptable to government. The responsible Minister is quoted on the public record confirming that MPI committed to reducing its proposed FTE increases in a revised budget for the 2023/24 fiscal year.⁵

This reality directly calls into question the accuracy of the financial forecasts on which Order 4/23 is based. As a result, it is likely that the rates approved by the PUB on the basis of information available at the time are now unjustifiably high.⁶

MPI has not offered information clarifying what, if any, changes have been made to its intended FTE growth or its projected expenses for the near-term future. However, the comments of the Minister provide a basis for reasonable confidence that such changes have been made.

As a result, CAC Manitoba asks the Board to exercise its authority under section 26(3) of *The Crown Corporations Governance and Accountability Act* to respond to this apparent substantial

² See, for example, Order 4/23 at 91.

³ See, for example, Order 4/23 at 109.

⁴ Order 4/23 at 110.

⁵ Winnipeg Free Press, "MPI slashes hiring plan amid outcry: Crown auto insurer was warned budget with hundreds of new staff may not be approved" (28 January 2023).

⁶ CAC Manitoba has estimated that a reduction in the 2022/23 Budget to 2021/22 Actual levels should lead to a reduction in the Basic AAP rate of approximately 1.84%.



change in MPI's circumstances by reviewing Order 4/23, requesting information as may be necessary to clarify the changes in MPI's circumstances, and to modify its Order as appropriate.⁷

Given the centrality of the financial forecast to the approved rate, any consideration of Order 4/23 in response to MPI's review and vary application or otherwise cannot be undertaken in the absence of this information.

MPI's Application to Review & Vary Order 4/23

CAC Manitoba provides the following comments in response to MPI's application to review and vary Order 4/23.

CAC Manitoba acknowledges that with respect to directives 12.20, 12.21, 12.23 and 12.24, MPI may meet the requirements of the legal test such that these directives may be varied. CAC Manitoba further acknowledges that MPI's application may meet the requirements of the legal test such that its request for relief respecting directives 12.14, 12.17 and 12.19 may be granted in part.

The remaining elements of MPI's application should be dismissed. Each request for relief will be discussed in turn below.

The legal test for a review and vary application

Under s. 44(3) of the *Public Utilities Board Act*, the board may review, rescind or vary its orders.⁸

Rule 36 (4) of the Public Utilities Board Rules of Practice and Procedure indicates that:

The Board shall determine, with or without a hearing, in respect of an application for review, the preliminary question of whether the matter should be reviewed and whether there is reason to believe the order or decision should be rescinded, changed, altered or varied.

Rule 36 (5) a) of the Rules of Practice and Procedure authorizes the Board to, after its determination of the preliminary question above:

⁷ CAC Manitoba also relies on section 25(3) of the *Crown Corporations Governance and Accountability Act* and section 78(1)(e) of *The Public Utilities Board Act*, CCSM c P280 to confirm the Board's authority to require MPI to provide information necessary to verify the apparent changes in its financial circumstances.

⁸ *Public Utilities Board Act*, CCSM c P280, s 44(3).



- a) dismiss the application for review if,
 - i) in the case where the applicant has alleged an error of law or jurisdiction or an error in fact, the Board is of the opinion that the applicant has not raised a substantial doubt as to the correctness of the Board's order or decision; or
 - ii) in the case where the applicant has alleged new facts not available at the time of the Board's Hearing that resulted in the order or decision sought to be reviewed or a change of circumstances, the Board is of the opinion that the applicant has not raised a reasonable possibility that the new facts or the change in circumstances as the case may be, could lead the Board to materially vary or rescind the Board's order or decision; or
- b) grant the application; or
- c) order a hearing or proceeding be held.

In essence and recognizing that the onus lies with the Applicant, the issue is not whether reasonable persons might have come to a different conclusion based on the same evidence but whether:

- a) there is an error of law, jurisdiction or fact that raises substantial doubt as to the correctness of the decision; or,
- b) new facts or a change in circumstances have arisen or been learned that raise a reasonable possibility that the Board's decision might be materially changed.⁹

Directive 12.1(d) – Deferral of initiatives costs

MPI's application to review and vary directive 12.1(d) should be dismissed as MPI has failed to identify errors of fact, jurisdiction or law, and has not identified new facts or changes in circumstances.

In issuing directive 12.1(d), the Board acted in a manner consistent with the principle of intergenerational equity to ensure that the costs borne by ratepayers are reflective of the services and benefits they receive from MPI. CAC Manitoba notes that the Board's comments

⁹ See also PUB Order 90/18, p 6-7 where the Board discusses its authority regarding review and vary applications.



regarding initiative spending did not only address Project Nova,¹⁰ and that the regulatory principle of intergenerational equity is not limited in relevance or application to specific types of expenditures such as information technology.

Further, the Board made clear that the period of recovery for deferred expenses would be established in the 2024 GRA.¹¹ If it is MPI's position that the recovery of expenses associated with certain initiatives should take place on a timeline not connected to Project Nova, this can be canvassed at that time with the benefit of a full evidentiary record.

Lastly, CAC Manitoba does not accept MPI's statement that it already defers expenses related to Project Nova.¹² The PUB has not previously ordered the creation of a regulatory deferral account for initiative expenses. CAC Manitoba presumes that MPI is referring to its amortization and depreciation of capital costs over time, as described in the Expenses chapter of the GRA, and not to regulatory deferral accounting as the Board is referring to, and as is discussed in IFRS 14.

MPI's application to review and vary this directive should be dismissed.

Directive 12.6 – Fleet Program Proposal

MPI's application to review and vary Directive 12.6 should be denied. This request arises from an apparent concern that in the next GRA, MPI may be found not in compliance with this directive due to its newly-developed plans to conduct a formal review of the Fleet Program after the 2024 GRA.

MPI proposes to revise this directive to no longer require it to provide an analysis and proposed modifications of the fleet program cost allocation methodology. Instead, MPI would like to simply "report on any changes made to the cost allocation methodology..." and to file a proposal for a subsequent potential future Fleet Program review.

While the possibility of a potential future formal review of the Fleet Program may constitute a new fact within the meaning of the legal test, it does not meet the threshold of raising a reasonably possibility that the Board's decision might be materially changed.

¹⁰ See, for example, PUB Order 4/23 at 9 and 110, where the Board identifies an "apparent lack of management control over IT expenses."

¹¹ PUB Order 4/23 at 55-56.

¹² MPI's Review and Vary Application at page 7.



The Board has rightly expressed concerns about cost allocation in the Fleet Program since the 2022 GRA, and a resolution to this issue should not be further delayed. MPI's application on this point should be denied.

Directive 12.14 and Appendix A – DSR Changes

MPI's application to review and vary Directive 12.14 and Appendix A may be allowable in part.

In issuing this directive, the Board appears to have relied upon MPI's clear assertion at paragraph 208 of its written closing submission, in which it stated that the relief sought was "limited" to increasing the maximum merit level of the DSR scale from +16 to +17.

If the Board accepts MPI's clarification that it continued to seek the relief identified in its application as an error in fact, it may be appropriate to grant the creation of DSR levels +18 through +20. MPI explains that accomplishing this in a single effort would create operational efficiencies while preserving the Board's authority to reserve approval of their use for future GRAs.

However, this clarification offered by MPI has no bearing on the Board's unequivocal finding that MPI's response to directive 11.15 from Order 134/21 was inadequate and unsatisfactory. As CAC Manitoba made clear during the hearing process, MPI's proposal to allocate its requested rate decrease to the DSR discounts most acutely in need of correction was not appropriately responsive to the long-standing unfairness that is perpetuated by cross-subsidization in the DSR scale. The PUB took decisive action in response, including by making a finding of fact regarding directive 11.15.

MPI has not met the requirements of the legal test necessary for the Board to review and vary its finding of fact regarding directive 11.15 of Order 134/21. However, MPI's clarification of its relief sought may constitute an error of fact such that the Board may elect to grant the creation of DSR levels +18 through +20.

Directive 12.15 – DSR Discounts move one-fourth

MPI's application to review and vary directive 12.15 should be dismissed as it does not meet the requirements of the legal test. MPI has raised no new facts or changes in circumstances, nor has it alleged errors of fact, jurisdiction or law.



MPI's arguments in support of its application to review and vary this directive are repetitive of those raised during the GRA hearing. This portion of the review and vary application constitutes an attempt to relitigate an issue thoroughly canvassed in the hearing and as such should be dismissed.

Directive 12.16 – Five-year plan for Rating Models

MPI's application to review and vary Directive 12.16 should be dismissed. MPI has introduced new facts regarding this issue through the affidavit of Satvir Jatana, but the nature of this evidence is such that these new facts should be given little weight, and as such they do not raise a reasonable possibility that the Board's decision might be materially changed.

Ms. Jatana has provided the Board with evidence that MPI sought and received input from the Ombudsman regarding its authority to require insured. However, without knowledge of either the contents of MPI's request or the specifics of the Ombudsman's opinion, the Board cannot know whether the Ombudsman's opinion was appropriately contextualized, or even whether they were informed of the PUB's past directives on this issue. As a result, this evidence can be afforded little weight.

The same principle applies to Ms. Jatana's evidence regarding government's apparent unwillingness to implement requested regulatory amendments. The PUB has not been informed what amendments were requested, what reasons were given, or why government elected to decline MPI's request, and as such should place little weight on the evidence provided.

CAC Manitoba notes further that MPI has not made clear how amendments to the *Automobile Insurance Plan Regulation*, being subordinate legislation, would grant MPI authority that it does not already possess including by virtue of section 6(2)(d) of *The Manitoba Public Insurance Corporation Act*.

The Board has directed MPI to further develop its plans regarding alternative rating models in large part to ensure that premiums more appropriately reflect driver risk, which is a core element of ensuring that rates are just and reasonable. While MPI has introduced new facts, the pressing nature of this issue is such that they do not raise a reasonable possibility that the Board's decision would be materially changed. MPI's application to review and vary directive 12.16 should be dismissed.



Directives 12.17, 12.18(c)(i) and 12.19 – Report on Nova Funding Envelopes

MPI's application respecting these directives may be allowable in part, but CAC Manitoba cautions that any action taken in response should preserve the accountability and oversight that the Board intended to impose to address its concerns regarding Project Nova.

Regarding the legal test, MPI identifies what may be a minor error of fact by clarifying that its Board of Directors does not presently exercise an approval function over the funding envelopes for the individual component initiatives of Project Nova. This suggests that there is a reasonable possibility that the Board's order may be materially changed to the extent that directives 12.17 and 12.19 may misstate the role of the Board of Directors.

However, CAC Manitoba's understanding of the Board's intent in issuing these directives was to impose accountability and oversight on a project about which it has significant and justified concerns. In principle, CAC Manitoba supports the Board's directives and urges the Board to preserve the reporting mechanisms it intended to create.

To do so, it may be appropriate for the Board to rescind directive 12.17 so long as the rigour of the reporting mechanisms of 12.18(c) and 12.19 are preserved. For directive 12.19, this may be achieved by granting the revision sought by MPI while also imposing a deadline so that the meeting required by the directive can still effectively serve as a meaningful update to the Board between the 2023 and 2024 GRAs.

However, the minor error of fact identified by MPI does not raise a reasonable possibility that directive 12.18(c)(i) would be materially changed, and as such this request for relief should be denied. In CAC Manitoba's view, the fact that the Board of Directors may not be responsible for approving funding envelopes will not prevent the governance consultant from commenting on the funds provided to each of the project components.

Following the 2023 GRA, the Board made findings of fact regarding significant risks and concerning mismanagement associated with Project Nova. CAC Manitoba shares these concerns, and urges the Board to proceed with caution and to ensure that the effective oversight mechanisms it intended to create are preserved.



Directive 12.18(b) – Revised Scope of Project NOVA

MPI's application to review and vary directive 12.18(b) should be denied. While MPI has provided multiple excerpts of material previously before the Board, it has failed to identify new facts or changes of circumstances and has not alleged errors of fact, law or jurisdiction.

If it is MPI's position that all elements of Project Nova are essential to the replacement of its legacy systems, the corporation can support that position before the Board in responding to directive 12.18(b). The question of whether MPI's submissions on that point satisfy the PUB that MPI is in compliance with the directive is the Board's to make at such time as is appropriate. It is not an appropriate use of the review and vary process for MPI to present argument relating to the scope of Project Nova, or to seek to amend a directive out of a concern that it may be found not in compliance.

MPI's application to review and vary directive 12.18(b) should be dismissed.

Directives 12.20 and 12.21 – External Review of ICAM and five-year Forecast with ICAM Revisions

CAC Manitoba acknowledges that the update provided by MPI on its progress regarding the external review of ICAM may constitute new information within the meaning of the legal test.

While CAC Manitoba views the resolution of this issue as requiring urgency due to the significant costs associated with Project Nova, it acknowledges that MPI's application on this point is reflective of practical constraints. MPI's application to review and vary directives 12.20 and 12.21 should be granted.

Directive 12.23 – Investment Committee Recommendations

CAC Manitoba acknowledges that the update provided by MPI regarding the timeline of Investment Committee meetings may constitute new information within the meaning of the legal test.

MPI's application to review and vary directive 12.23 should be granted.



Directive 12.24 – Mercer Peer Comparison Report

CAC Manitoba acknowledges that the clarification provided by MPI regarding the respective roles of Mercer and Ellement Consulting Group may constitute new information within the meaning of the legal test.

MPI's application to review and vary directive 12.24 should be granted.

Conclusion

CAC Manitoba appreciates the opportunity granted by the Board to provide comment on MPI's application to review and vary Order 4/23. However, MPI's application must be viewed in light of the fact that substantial changes to the corporation's circumstances appear to have taken place, but about which MPI has failed to be forthcoming with necessary information.

Any consideration of a review of Order 4/23 must necessarily take into account revisions to the corporation's near-term financial forecast that have been implemented following the closing of the hearing. These changes have the potential to significantly reduce the corporation's projected expenses for the coming year, and if left unaddressed, creates a risk that the rates approved in Order 4/23 may no longer be just and reasonable.

CAC Manitoba thanks the Board for its consideration of these comments.

Sincerely,



Chris Klassen*
Attorney

*Chris is an independent lawyer retained by
The Public Interest Law Centre in this matter

Enclosure (1)

Cc: PUB counsel
MPI counsel
Counsel for 2023 GRA Interveners

