



October 11, 2023

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

Sent via Email

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

Dear Dr. Christle,

Re: MPIC 2024 General Rate Application – CAC Manitoba Response to MPI Motion for Confidential Treatment of Financial Condition Test and IFRS14 Opinion

CAC Manitoba has received and reviewed the October 9, 2023 Manitoba Public Insurance (“MPI”) Notice of Motion seeking confidential treatment of two documents prepared by external vendors. CAC Manitoba opposes this motion and provides these comments in Response pursuant to Rule 22(4) of the Public Utilities Board’s (“PUB”) *Rules of Practice and Procedure*.

The documents in question, being the corporation’s 2023 Financial Condition Test and an opinion on the proper application of an accounting standard (IFRS14), are both necessary for the Board to set just and reasonable rates in this proceeding. They relate to the financial health of the corporation and the recognition of certain costs in rates, both of which are central to the rate setting exercise.

Notwithstanding the Board’s ability to set rates relying on confidential filings, the importance of these documents in this rate setting process makes their public disclosure a matter of significant public interest. As a result, MPI’s requests for confidential treatment do not meet the requirements of the test set out at the Rule 13 of the Board’s *Rules of Practice and Procedure*. The relief sought should not be granted.

Rule 13 of the Board’s *Rules of Practice and Procedure* reads as follows:

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Confidentiality

13. (1) *Where, a document is filed with the Board by a party in relation to any proceeding, the Board shall, subject to subsection (2), place the document on the public record.*

(2) *The Board may receive information in confidence on any terms it considers appropriate in the public interest,*

a) if the Board is of the opinion that disclosure of the information could reasonably be expected

(i) to result in undue financial loss or gain to a person directly or indirectly affected by the proceeding; or

(ii) to harm significantly that person's competitive position.

or

b) if

(i) the information is personal, financial, commercial, scientific or technical in nature; or

(ii) the information has been consistently treated as confidential by a person directly affected by the proceeding; and

(iii) the Board considers that the person's interest in confidentiality outweighs the public interest in the disclosure of the information.

(3) *Where disclosure of any document is refused due to a claim for confidentiality and a claim for public disclosure of such documents has been made, the Board shall hear such claim on a motion made under Rule 22, and may*

a) order the document be placed on the public record, subject to Subsection 13(5);

b) order the document not be placed on the public record, with such conditions on access imposed as the Board considers appropriate;

c) order an abridged version of the document to be placed on the public record;
or

d) make any other order the Board finds to be in the public interest.

(4) *For purposes of hearing a motion in respect of a disputed claim under Subsection (3), the Board may examine the document or other evidence in question to ascertain whether or not the claim for confidentiality or the claim for public disclosure will be sustained.*

(5) *Where the Board has decided to place on the public record any part of a document that was filed in confidence in accordance with Subsection 13(2) and 13(3), the party who*



filed the document shall be given an opportunity to request that it be withdrawn prior to its placement on the public record.

Rule 13(1) creates a presumption that documents filed will be placed on the public record. This is consistent with the public nature of the regulatory process, which recognizes the importance of transparency and accountability of Crown Corporations.

Rule 13(2) permits the Board to exercise discretion to grant confidential treatment to documents that meet the provided criteria, but only on terms that are “appropriate in the public interest.” This invites the Board to weigh the public interest value in public disclosure of the document against the merits of the claims of confidentiality. Ultimately, however, if a document is to be granted confidential status, the terms governing the treatment of that document must be “appropriate in the public interest.”

For both the 2023 Financial Condition Test prepared by Ernst & Young and the Deloitte opinion on the application of IFRS14, the confidential information is explained by MPI to be the third party service providers’ “analyses and methodologies”.

This is essentially the only rationale provided by MPI. The affidavit of Mr. Tadeu Meira filed in support of MPI’s Motion indicates at paragraph 5 that the Ernst & Young “analysis and methodologies” are products of a “model unique to [Ernst & Young].” The Meira affidavit notes at paragraph 8 that the information of concern to Deloitte is their “analysis and methodologies”.

MPI’s claims of confidentiality over these documents are broad, explaining that the proprietary “analysis and methodologies” satisfy 4 out of the 5 possible rationales for confidential treatment of documents set out at rule 13.¹ MPI’s materials do not acknowledge, however, the central role these documents will play in the present proceeding.

The Financial Condition Test report is a common piece of evidence in GRA proceedings which has not historically been granted confidential treatment. It has historically been treated as a reliable indicator of the corporation’s financial health to inform the setting of just and reasonable rates.

The Deloitte opinion on the applicability of IFRS14 may be determinative of the extent to which initiative costs will be reflected in 2024/25 rates. This issue must be settled in order to respect the Board’s regulatory principle of Intergenerational Equity,² in addition to its potentially significant impact on rates.

¹ MPI references rule 13(2)(a)(i), (ii), and 13(2)(b)(i), (ii).

² Public Utilities Board, “Regulatory Principles”, online: <http://www.pubmanitoba.ca/v1/about-pub/regulatoryprinciples.html>.



It is concerning to CAC Manitoba that MPI can retain third parties to conduct work so central to rate setting and then claim confidentiality simply because the vendors may have applied a unique approach to the very work that MPI asked them to do. It is noteworthy that MPI no claim of confidentiality with respect to the documents' contents or conclusions.

CAC Manitoba acknowledges that other documents have been granted confidential treatment for comparable reasons in this proceeding.³ However, the two specific documents that are the subject of this Motion are differentiable on the basis of their centrality to the rate setting process.

CAC Manitoba anticipates MPI relying heavily on these documents to discharge the onus in proving its case, even if they are granted confidential treatment. This reality, coupled with the public nature of the regulatory process, materially elevates the public interest in public disclosure.

CAC Manitoba recognizes the difficult position MPI is in communicating a position taken by a third party.

However, confidential treatment of these documents is not consistent with the public nature of the process and the expectations of accountability placed on public institutions like MPI. MPI has not met the requirements of rule 13, and CAC Manitoba asks the Board to decline the relief sought by MPI.

CAC Manitoba thanks the Board for its consideration of these written comments and looks forward to addressing this matter in oral submissions on October 12, 2023.

Thank you,



Chris Klassen*
Attorney
Public Interest Law Centre

Katrine Dilay
Attorney
Public Interest Law Centre

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

cc: PUB Counsel
MPI

³ See, for example, PUB Order 111/23 at page 15 which approves confidential treatment of documents for reasons including the protection of third party proprietary information.

