

APPLICATION TO REVIEW AND VARY ORDER 134/21

January 14, 2022



MANITOBA
PUBLIC INSURANCE

Table of Contents

RV.1	Introduction	3
RV.2	Directive 11.13 – Driver Safety Rating (DSR) Directives.....	3
RV.2.1	Relevant Facts	3
RV.2.2	Grounds	5
RV.2.3	Resulting Prejudice or Damage from Existing Order	9
RV.2.4	Remedy Sought	9
RV.3	Directives 11.19 and 11.20 – Asset and Liability Management (ALM) Study Directives	9
RV.3.1	Relevant Facts	9
RV.3.2	Grounds	12
RV.3.3	Resulting Prejudice or Damage from Existing Order	13
RV.3.4	Remedy Sought	13
RV.4	Directive 11. 4 - Generalized Linear Models (GLMs) Directive.....	13
RV.4.1	Relevant Facts	13
RV.4.2	Grounds	14
RV.4.3	Resulting Prejudice or Damage from Existing Order	14
RV.4.4	Remedy Sought	15
RV.5	Appendix A - 100% Minimum Capital Test (MCT) Single Point Target.....	15
RV.5.1	Relevant Facts	15
RV.5.2	Grounds	15
RV.5.3	Resulting Prejudice or Damage from Existing Order	16
RV.5.4	Remedy Sought	16
RV.6	Directive 11.11 - Vehicle For Hire (VFH) Directives	17
RV.6.1	Relevant Facts	17
RV.6.2	Grounds	18
RV.6.3	Resulting Prejudice or Damage from Existing Order	19
RV.6.4	Remedy Sought	19
RV.7	Directive 3 – Alternate Rate Indication Directive.....	20
RV.7.1	Relevant Facts	20
RV.7.2	Grounds	22
RV.7.3	Resulting Prejudice or Damage from Existing Order	22
RV.7.4	Remedy Sought	22
RV.8	Directive 5 – Fleet Program Directive	22
RV.8.1	Relevant Facts	22
RV.8.2	Grounds	23
RV.8.3	Resulting Prejudice or Damage from Existing Order	23
RV.8.4	Remedy Sought	23
RV.9	Pages 56-59 - Comments made by the PUB relating to the transfer of funds to the Driver and Vehicle Administration (DVA) line of business.....	23
RV.9.1	Relevant Facts	23
RV.9.2	Grounds	26
RV.9.3	Resulting Prejudice or Damage from Existing Order	31
RV.9.4	Remedy Sought	31

RV.1 Introduction

Pursuant to Section 36 of the Public Utilities Board (PUB) of Manitoba *Rules of Practice*, Manitoba Public Insurance (MPI) applies to the PUB for a review and a rescinding, changing, altering and/or varying of Order 134/21, dated December 15, 2021, issued in the context of the MPI 2022 General Rate Application (GRA) and, in particular, the following directives and other paragraphs/appendices therein:

1. Directive 11.13;
2. Appendix A;
3. Directive 11.19;
4. Directive 11.20;
5. Directive 11.4;
6. Directive 11.11;
7. Directive 3;
8. Directive 5; and
9. Portions of pages 56-59.

RV.2 Directive 11.13 – Driver Safety Rating (DSR) Directives

RV.2.1 Relevant Facts

Directive 11.13 reads as follows:

"11.13 In the 2023 GRA, the Corporation shall bring forward a five-year plan for the implementation of the Primary Driver rating model. The five-year plan shall address such issues as:

- a. Required regulatory changes and a timeline for the initiation of the regulatory changes;*

- b. Required IT changes and a timeline for the implementation of the IT changes;
- c. The process the Corporation will employ to obtain the necessary primary driver information from ratepayers; and
- d. The Corporation's communications plans in order to educate ratepayers about the rating model change."

PUB Order 1/21, issued following the hearing of the 2021 GRA, contains Directive 10.12, which includes the following statement:

"In the 2022 GRA the Corporation shall bring forward a plan, including timelines, major milestones and implementation date, for any changes to the Driver Safety Rating model, including a date by which the Corporation will file an application for any such changes with the Board."

(emphasis added)

In its 2022 GRA Application, MPI outlined its compliance with Directive 10.12¹ and identified a plan to advance driver charges towards their actuarially-indicated targets (Transition Plan). Given the disparity between the current discount/premium charge and the indicated discount/premium charge, to remedy any cross-subsidization between DSR levels in a reasonable manner, MPI recommended the gradual implementation of the Transition Plan over a period of five-years. The PUB agreed, finding in Order 134/21 that, by implementing its Transition Plan, MPI was "...moving in the right direction with respect to the actuarial soundness of vehicle premium discounts..."²

In Order 134/21, the PUB also found the changes proposed by MPI to the existing DSR model (i.e. the Registered Owner model) were just and reasonable and approved the use of the Transition Plan in the 2022/2023 insurance year³. However, the PUB also criticized MPI, stating that it had "completely disregarded" Directive 10.12 from Order 1/21, citing a passage from the Executive Summary portion of Order 1/21 in support of its finding.⁴

In response to information requests (IRs) received during the course of the 2022 GRA, MPI stated that it had no plans to move from the existing Registered Owner model to any

¹ 2022 GRA Application, Part VI, DSR, pg. 8 (starting at DSR.5);

² Order 134/21, pg. 91;

³ *Ibid*, pg. 17;

⁴ *Ibid*, pg. 91;

other model (including the Primary Driver model) for at least the next 5 years.⁵ MPI witnesses also explained why MPI elected to develop and implement the Transition Plan for the existing Registered Owner model in lieu of adopting a new Primary Driver model⁶.

As MPI previously advised the PUB and reiterates herein, as changes to existing legislation is required, MPI cannot unilaterally change the existing DSR model or implement a new one. It must obtain the approval of the Government of Manitoba (Government) and legislative changes must be implemented beforehand. Notwithstanding that it did not receive any evidence to the contrary, the PUB has nonetheless directed MPI to “bring forward a five-year plan for the implementation of the Primary Diver model.”⁷

RV.2.2 Grounds

While MPI is obliged to comply with PUB Directives, it is under no such obligation to comply with any “findings” not forming part of a directive and is certainly under no obligation to comply with any comments made in the Executive Summary portion of an Order. MPI maintains it complied with Order 1/21, Directive 10.12, which required:

1. a plan – MPI developed the Transition Plan;
2. a timeline – the Transition Plan outlines a five year implementation period;
3. major milestones – the Transition plan includes annual incremental gap reductions; and
4. an implementation date – the Transition Plan identifies an April 1, 2022 start date.

More importantly, the PUB does not have the requisite jurisdiction to direct MPI to implement a new DSR model (or direct that MPI make plans to implement one). MPI repeats that the implementation of a new DSR model is not possible without Government approval and legislative changes.

⁵ See MPI responses to Information Requests CAC(MPI) 1-54 and CMMG(MPI) 2-10;

⁶ 2022 GRA Hearing Transcript, October 21, 2021, pages 1713, line 4 to 1718, line 2 and 1755, from line 11;

⁷ *Supra.* 2, pg. 122;

As per Section 25 of *The Crown Corporations Governance and Accountability Act*, C.C.S.M. c. C336 (CCGA) and Section 6.4 of *The Manitoba Public Insurance Corporation Act*, C.C.S.M. c. P215 (MPIC Act), the jurisdiction of the PUB is limited to approving changes to premiums charged to customers of its Universal Compulsory Automobile Insurance (Basic) product.

In *Public Utilities Board v. Manitoba Public Insurance Corp. et al.*,⁸ the Manitoba Court of Appeal confirmed that the mandate of the PUB is, "...to review and approve the MPIC's rate bases and premiums charged with respect to compulsory driver and vehicle insurance."⁹ Additionally, the Court of Appeal stated the following regarding the disclosure of MPI policies, plans and decisions to the PUB:

"As regards the failure to advise the PUB of any plans, plans do not affect the rates that are subject to review in a particular year. While plans, if implemented, may well affect the rates for basic insurance in future years, those rates will be subject to review by the PUB if and when the plans are realized and put into effect. Until then, the mandate to review and comment on long-term plans has been left to the Crown Corporations Council and the government, and the PUB has not demonstrated how they are relevant to, or affect, its ability to carry out its mandate in any particular year. The fact is that the government has the right to change legislation and to require that the MPIC make changes to its business, and neither the government nor the MPIC are required to give the PUB any advance notice. This is an issue for the government and not the PUB."¹⁰

(emphasis added)

If the PUB is not entitled to any future plans that do not affect the rates currently under review, it follows *a fortiori* that the PUB also cannot direct MPI to develop any such plans.

Further, Directive 11.13 either assumes facts not in evidence (i.e. Government-approval of the Primary Driver model) or ignores material facts (i.e. that pursuant to Subsections 33(1)(h) and 33(1)(h.1) of the MPIC Act, the Lieutenant Governor in Council (LGiC) is the only one who can, through regulatory changes, fundamentally alter the DSR system). As previously indicated, the DSR system currently operates through the use of the

⁸ 2011 MBCA 88;

⁹ *Ibid*, at para. 31;

¹⁰ *Ibid*, at para. 43;

Registered Owner model. Established by regulation¹¹, the Registered Owner model forms the basis for the “plan premium” as defined in Subsection 1(1) of the MPIC Act, including any discount or additional amount under Subsection 6.1(3) of the MPIC Act (i.e. under the DSR system).

As stated by the Court of Appeal in *PUB v. MPI* above, the PUB can only approve premiums charged for compulsory driver and vehicle insurance¹², which MPI submits refers to premiums *under the existing DSR model as prescribed by Government regulation*. The PUB cannot direct MPI to implement or use a different DSR model than the one approved by Government and prescribed by law, even if it believes that a different driver model is superior.

Pursuant to Subsection 6.4(2) of the MPIC Act, MPI must obtain the approval of the PUB before it can establish a new plan premium for Basic. However, this provision does not permit the PUB itself to initiate the creation of a new plan or compel MPI to do so (i.e. create a new driver model). Where MPI seeks to establish a new plan premium under the MPIC Act, the role of the PUB commences at the end of the process to establish the new plan, not at the beginning:

"Application for review by the PUB

6.4(2)

The corporation must apply to The Public Utilities Board for approval before changing an existing plan premium, or establishing a new plan premium, for its plans of universal compulsory automobile insurance."

(emphasis added)

Even if Subsection 6.4(2) of the MPIC Act was not clear in this regard, subsection 33(1.1) of the MPIC Act makes it clear that any regulation change touching upon the amount of premiums charged for Basic must first be made by the LGiC, which change is then subject to the approval of the PUB:

¹¹ *Driver Safety Rating System Regulation*, Man. Reg. 13/2009;

¹² *Supra.* 8, at para. 34;

"Review by PUB

33(1.1)

No regulation changing the amount of an additional driver premium, a base driver premium or a discounted driver premium — together being the premiums charged by the corporation for compulsory driver insurance — may be made under subsection (1) unless the Lieutenant Governor in Council is satisfied that the proposed change has been approved by The Public Utilities Board in accordance with Part 4 of The Crown Corporations Governance and Accountability Act."

(emphasis added)

This provision again contemplates a top-down change process (i.e. Government to PUB). Further, the inclusion of the word "amount" underscores that the authority of the PUB is limited to approving premium amounts *under the existing model*. Section 33(1.1) of the MPIC Act does not allow for changes to the DSR model itself. An example of this process in action can be found in the 2018 GRA, when the PUB approved changes to the demerit side of the scale within the existing DSR model.

Directive 11.13 therefore upsets the control that Government has over MPI as per the MPIC Act, along with the distribution of responsibility under the legislative scheme (*vis-à-vis* the PUB). It also usurps the ultimate decision-making role of Government in matters related to the future operations of MPI, including the selection of DSR models, when any such changes later become enshrined in legislation.

Additionally, in the process of assessing the practicalities of complying with Directive 11.13, MPI believes that it may not have the required legislative authority to "obtain the necessary primary driver information from ratepayers." The PUB correctly assumes that, prior to establishing a Primary Driver Model, MPI must know who those primary drivers will be. However, Subsection 36(1) of *The Freedom of Information and Protection of Privacy Act*, C.C.S.M. c. F175 prohibits MPI from collecting personal information unless:

- a) the collection is information authorized by or under an enactment of Manitoba or Canada (which it is not); or

- b) the information relates directly to and is necessary for an existing service, program or activity of the public body (a new driver model is not an existing service or program); or
- c) the information is collected for law enforcement purpose or crime prevention, (which it is not).

While this may not be an insurmountable obstacle, it underscores the ways in which the PUB is attempting to effect regulatory change of an existing legislated insurance program as opposed to carrying out its mandate. MPI respectfully submits that directing MPI in this manner falls outside of the jurisdiction of the PUB.

RV.2.3 Resulting Prejudice or Damage from Existing Order

MPI cannot comply with Directive 11.13 as currently written.

RV.2.4 Remedy Sought

MPI respectfully requests that the PUB rescind Directive 11.13 from Order 134/21 along with Directive 10.12 from *Appendix A* to Oder 134/21.

RV.3 Directives 11.19 and 11.20 – Asset and Liability Management (ALM) Study Directives

RV.3.1 Relevant Facts

Directive 11.19 reads as follows:

"11.19 The Corporation shall file its ALM study to be undertaken in 2022 with the 2023 GRA".

Directive 11.20 itemizes the content PUB expects the ALM study to include and states:

"With respect to the ALM study to be undertaken in 2022, the Corporation shall:

- a. Consider the use of a real liability benchmark, as opposed to a nominal liability benchmark;
- b. Require the study to examine the reasons for higher investment returns in MPI's peers;
- c. Refrain from imposing constraints on the type of investments included; and
- d. Require the provision of an objective opinion regarding the prudence of including or excluding various assets in the Basic Claims portfolio, including:
 - i. Whether the inclusion of growth assets is prudent while maintaining the surplus volatility (the relevant risk) at levels that are consistent with the risk appetite of the Corporation; and
 - ii. If so, what weighting of equities and other non-fixed income assets may be included to achieve the best possible expected risk-adjusted return."

In the 2022 GRA, the evidence established that Mercer completed the last ALM study in an accelerated manner (which was unusual and not the way in which MPI would have preferred handling such an important study). The PUB also heard that, but-for the changes to the International Financial Reporting Standards (IFRS) and the recent sustained trend of rising inflation, MPI would not normally undertake a new ALM study at this early stage.¹³ Glenn Bunston, Director of ALM & Investment Management, testified as to the importance of having sufficient time to conduct the study, stating:¹⁴

"And, again, based on the last three (3) studies that I personally was involved with at MPI, I know that a significant amount of work is involved for both MPI's internal investment team, as well as for the consultant selected. And it is, as you pointed out, important work for selecting the asset allocation for the Corporation. So we want to make sure that we allow sufficient time to -- to do that work and that we don't rush through it."

¹³ 2022 GRA Hearing Transcript, October 20, 2021, page 1521, starting at line 6:

¹⁴ *Ibid*, page 1626, starting at line 3;

The completion of the ALM study (and therefore its filing), to the extent it first involves putting it out for tender, garnering and evaluating any bids, and then completion by a third party, is largely outside the control of MPI. The ability of MPI to comply with the requirement in Directive 11.19 to file the ALM Study with the 2023 GRA, is not certain. This was confirmed by Mr. Bunston when he testified as follows:

"THE CHAIRPERSON: Sorry, just following up on those questions. In terms of the timing, do you anticipate that by the next GRA you'll have completed the process? You'll receive the study, it will go through the different committees, go to the Board, and you'll have approval so that we -- we will be able to deal with it at the next GRA?"

MR. GLENN BUNSTON: Well, we're going to work toward having the study completed in time for the GRA. I doubt that it would be approved by the Investment Committee and the Board by that time, just looking at the dates that the Committee meets. But the study -- we're working towards having the study completed by then.

THE CHAIRPERSON: Okay. Do you think the study would be completed by the time of the filing of the GRA?"

MR. GLENN BUNSTON: That will depend on the amount of time it takes to complete the study. It's -- we're hopeful that it will be and we are working toward that, and that's why we're trying to get the request for proposals issued as soon as possible, so we can start the work as soon as possible.

THE CHAIRPERSON: Thank you."¹⁵

MPI recently completed the request for proposals (RFP) process and awarded the new ALM study contract to Mercer. MPI remains committed to completing the ALM Study as soon as reasonably practicable and, if it would be of assistance to the PUB, to providing it with monthly status reports, including when it expects to file the ALM study, but MPI cannot commit to a particular filing date.

¹⁵ *Supra.* 6, page 1687 line 7 to page 1688, line 8;

RV.3.2 Grounds

The PUB again lacks the requisite jurisdiction to direct MPI to undertake and file a new ALM study, by a particular date, or at all. Further, the PUB cannot direct the content of any ALM study. Finally, the timelines imposed in Directive 11.19 are impractical and/or MPI may not be able to comply with them.

The ALM study represents the ways in which MPI may decide to organize its investments in the future. These studies are prepared for the benefit of the MPI Board of Directors, to facilitate informed decisions based on the established risk appetite. Moreover, the results of the ALM Study will have no impact on the rates to be approved in the 2023 GRA. Restating the findings of the Manitoba Court of Appeal in *PUB v. MPI* above, until such time as plans are realized and put into effect, the task of reviewing and commenting on long-term plans belongs to Government. The PUB can only issue directives that impact the approval of rates in the current year.

As to the content of any ALM Study, the PUB previously found:

"[w]hen 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."¹⁶

MPI has not imposed any constraints on the types of investments that Mercer can include in the study; however, as professional investment advisers, Mercer will, in the course of their engagement, consider a number of factors when analyzing certain investments, some of which will not be recommended for purchase. Having Mercer conduct a detailed analysis of all available investments (including those that are clearly not appropriate) will result in unnecessary costs and lengthen the time needed to complete the study. Again, the PUB does not possess the requisite jurisdiction to direct the completion of the ALM study in a particular way.

¹⁶ Order 159/18 at pg. 9;

Finally, the ALM study will be prepared by someone other than MPI (i.e. Mercer), meaning the ability for MPI to file the document with the PUB is not within its exclusive power and control.

RV.3.3 Resulting Prejudice or Damage from Existing Order

MPI cannot assure compliance with Directives 11.19 and 11.20 as currently written.

RV.3.4 Remedy Sought

Notwithstanding the fact that the PUB does not possess the jurisdiction to issue Directives 11.19 and 11.20, MPI welcomes and values the views and opinions expressed by the PUB in Order 134/21 (and has passed them along). MPI is also committed to filing the ALM study. However, MPI respectfully requests that the PUB rescind Directives 11.19 and 11.20. In the alternative, MPI respectfully requests that 11.19 be varied to remove a particular filing date and that 11.20 be varied so as to only recommend that the ALM study include specific content.

RV.4 Directive 11.4 - Generalized Linear Models (GLMs) Directive

RV.4.1 Relevant Facts

Directive 11.4 of Order 134/21 reads as follows:

"In the 2023 GRA, the Corporation shall provide an alternative rate indication using a preliminary set of Generalized Linear Models using existing rating factors, and bring forward a plan to study additional rating factors and interactions in order to address the question of territorial subsidies, among others."

Directive 11.4 directs MPI to file an alternative rate indication using a new rating methodology in the 2023 GRA.

MPI agrees that use of GLMs may be appropriate and, in the course of the 2022 GRA, indicated its willingness to explore their use in the future.¹⁷

RV.4.2 Grounds

MPI respectfully submits that producing an alternative rate indication using a preliminary set of GLMs is not something that MPI can complete in a few months. Appropriate software is required and is expensive. Proper integration with other MPI technology is crucial. MPI is not interested in exploring the possible use of any free internet software (as was suggested at the hearing) due to security, privacy and compliance concerns. MPI must purchase new software of this nature through an RFP. Given the potential complexities that arise when new software is introduced to the new IT system (i.e. Duck Creek), along with compliance with security protocols and corporate policies, MPI submits that the adoption of GLMs is more realistically a two-year timeline (including employee training and transition). This timeline is an estimate and is provided here without a detailed analysis (i.e. a final estimate may be shorter or longer).

An additional factor is that MPI is currently in the midst of transforming its Actuarial Department (i.e. expanding staff and their qualifications). As a result, even if the required software were in place today (which it is not), MPI would experience significant challenges in meeting the requirements of Directive 11.4 while onboarding new staff.

As such, MPI cannot comply with Directive 11.4 to file an alternative rate indication using GLMs with its 2023 GRA. It could commit to doing so in the 2024 GRA at the earliest.

RV.4.3 Resulting Prejudice or Damage from Existing Order

MPI is unable to comply with Directive 11.4 as currently written.

¹⁷ 2022 GRA Hearing Transcript, October 18, 2021, page 27, starting at line 23;

RV.4.4 Remedy Sought

MPI respectfully requests that Directive 11.4 be rescinded. In the alternative, MPI respectfully requests that Directive 11.4 be varied as follows:

"In the 2023 GRA, the Corporation shall submit a plan for the possible implementation of GLM, which plan, if implemented, would include the study of additional rating factors and interactions in order to address the question of territorial subsidies, among others."

RV.5 Appendix A - 100% Minimum Capital Test (MCT) Single Point Target

RV.5.1 Relevant Facts

In Order 1/21, Directive 10.7, the PUB directed MPI to file, in the 2022 GRA, an analysis supporting the level of the Basic target capital level (100% MCT) or the use of a single target capital level (versus a range) to promote rate stability.

MPI moved away from using a range for Basic capital when the *Reserves Regulation*, M.R. 76/2019, came into force on April 12, 2019. Additionally, the 100% MCT target for Basic also serves as the anchor under the existing Capital Management Plan (CMP).

Directive 10.7 appears in Appendix A to Order 134/21 as outstanding (List of Directives not Complied With).

RV.5.2 Grounds

MPI is bound by the *Reserves Regulation* and must therefore use a single point target of 100% MCT for Basic capital. MPI reiterated this when it stated the following in its response to information request PUB (MPI) 2-15:

"MPI has not completed a target capital range analysis. In light of its mandatory adherence to a single point target under the Reserves Regulation (see MPI's response to CAC (MPI) 1-96), and having moved away from use of the Dynamic Capital Adequacy Test, the range analysis

was not prioritized by MPI. In addition, with the departure of MPI's Chief Actuary in June 2021, a response to the request made of MPI in PUB (MPI) 1-29(b) was not possible. MPI will however be proposing amendments to its Capital Management Plan in the 2023 GRA (which may involve the use of a range in conjunction [sic] with its 100% MCT target under the Reserves Regulation). Although the details of any such mechanism are not yet conceived, MPI will ensure that this analysis is available to the PUB for review and consideration in the course of that GRA.

MPI also provided further detail in response to information requests PUB (MPI) 1-29, part b; and PUB (MPI) 2-16, part b.

MPI respectfully submits that its use of anything other than 100% MCT, including the use of a single point target, lower or higher than 100% MCT, could render it in non-compliance with the law.

RV.5.3 Resulting Prejudice or Damage from Existing Order

In addition to potentially rendering MPI in violation of the law, compliance with Directive 10.7 from Order 1/21 would require MPI to employ use of its limited and valuable actuarial resources in order to prepare an analysis that could only be considered for theoretical use given that MPI could not legally adopt the results. The diversion of these resources from other projects (which projects MPI has assessed as being higher priority) means that MPI might not be able to complete these projects, in the time required, or at all.

RV.5.4 Remedy Sought

MPI respectfully submits that the PUB must change Order 134/21 to remove reference in Appendix A to Directive 10.7 of Order 1/21.

RV.6 Directive 11.11 - Vehicle For Hire (VFH) Directives

RV.6.1 Relevant Facts

Directive 11.11 of Order 134/21 reads as follows:

11.11 The Corporation shall include the following matters in its Vehicle For Hire framework review:

- a. Whether MPI requires any regulatory or municipal by-law changes in order to collect relevant information for the VFH rate design(s);*
- b. Which DSR model(s) best reflect risk and incentives to reduce risk;*
- c. Whether the fleet program, or some variation of that program, which takes into account the claims experience of multiple vehicles and multiple drivers is appropriate for corporately owned VFH fleets of two or more vehicles;*
- d. Whether anyone or more other metrics, such as time on the road or kilometers driven or driver risk, are appropriate for designing VFH premiums;*
- e. Whether time bands should be adjusted to better reflect the business operations and risk of VFH;*
- f. Collection of and analysis of relevant data in order to better understand the causes of high relativities of VFH, and in particular of Taxicabs, in their major class;*
- g. Analyze and report on whether it continues to be appropriate to have Passenger VFH and Private Delivery services in a different major classes;*
- h. Analyze and report on the relative probability, as between the Passenger VFH and the other VFH classifications, as to whether there will be a serious loss claims experience in the future;*

- i. *Collect and analyze, if available, relevant data on the composition of and characteristics of the Passenger VFH Class, including (based on a metric such as per week or per month) time available for fares, number of fares taken, time of day (e.g. evenings, weekends, etc.) on the road, and kilometers driven; and*
- j. *Report on whether and which parts, if any, of the proposed VFH framework require regulatory changes or Board approval.*

In regards to the fleet program, Directive 11.11, part c), the evidence before the PUB in the 2022 GRA confirms that the administrative burden is too high on MPI to implement this¹⁸. In regards to Directive 11.11, parts g) and h), the PUB repeated Directive 10.8 from Order 1/21. There are no findings in Order 134/21 that provide a rationale or comment on the analysis filed by MPI in response to information requests TC(MPI) 2-7 (Appendices 1 to 4).

In Directive 11.11, parts f) and i), the PUB directs MPI to collect and analyze relevant data. The evidence in the record shows that MPI has been working with a number of stakeholders to obtain more data.

In regards to the regulatory changes referenced in Directive 11.11, part j), MPI expects to complete the process in June 2022 and to finalize its report by November 2022.

RV.6.2 Grounds

For Directive 11.11, part b), MPI respectfully submits that the PUB does not have the requisite jurisdiction to order MPI to adopt a new DSR model (please refer to section 2.2 herein for the supporting analysis).

MPI addressed Directive 11.11, part d), in the 2022 GRA. The evidence put forth states that MPI believes that historical claims experience is the most appropriate metric in designing VFH premiums. Additional metrics such as kilometers driven may be used in the rate calculation methodology.

¹⁸ 2022 GRA, VFH Chapter, section VFH.5, part c;

MPI submits that it has complied with Directive 10.8 in Order 1/21. The duplication of this Directive in Directive 11.11, parts g) and h), without explanation or clarification on what the PUB expects, means duplication of effort by MPI. While MPI can certainly refine and add to its previous analysis, it can only do so if Order 134/21 contains a clear indication of what is required.

For Directive 11.11, parts f) and i), MPI cannot force third parties to share data they own. The PUB heard evidence that MPI made attempts to request some of this information but that the information was not available or not forthcoming¹⁹.

For Directive 11.11, parts c) and j), MPI is unable to comply with the timeline identified in Directive 11.11.

RV.6.3 Resulting Prejudice or Damage from Existing Order

MPI cannot assure compliance with Directive 11.11 as currently written.

RV.6.4 Remedy Sought

MPI respectfully requests that the PUB rescind Directive 11.11, parts b), c), d) f) g) h); i) and j) from Order 134/21. In the alternative, should the PUB require additional information to be filed in the 2023 GRA, MPI respectfully submits that the PUB must acknowledge the evidence MPI filed in the 2022 GRA and state what else needs to be undertaken. Further in the alternative, MPI requests that the PUB vary Directive 11.11, part i) to read as follows:

"Request and analyze, if made available, relevant data on the composition of and characteristics of the Passenger VFH Class, including (based on a metric such as per week or per month) time available for fares, number of fares taken, time of day (e.g. evenings, weekends, etc.) on the road, and kilometers driven; and"

¹⁹ 2022 GRA Hearing Transcript, October 22, 2021, page 2032;

RV.7 Directive 3 – Alternate Rate Indication Directive

RV.7.1 Relevant Facts

Directive 3 of Order 134/21 reads as follows:

"In the 2023 GRA, the Corporation shall provide an alternative rate indication by use and territory. For this alternative rate indication:

- a. The Corporation shall remove actual serious losses (consistent with the current approach) and allocate serious losses based on the frequency of collision claims for each vehicle type;*
- b. The Corporation shall split vehicle type among passenger vehicle, light truck, heavy truck, bus, motorcycle, trailer, and off-road vehicle; and*
- c. The Corporation shall consider whether this approach is expected to result in less volatility for smaller uses or territories, and whether an adjustment to its credibility standard or minimum credibility may be warranted."*

As detailed in the Ratemaking chapter of the 2022 GRA, for each major class – Private Passenger, Commercial, Public, Motorcycles, Trailers, and Off-Road Vehicles (ORVs) (or major class 1, 2, 3, 4, 5, and 6 respectively) – MPI employs the same approach to calculating the required rates as for the overall.²⁰

In calculating the indicated pure premiums, MPI gave equal weight to historical indicators. For almost all major classes and coverages, MPI used data for the five most recent years. For Serious Losses, MPI used data for the ten most recent years for Accident Benefits - Other (Indexed) as well as for IRI (in order to better smooth out the larger volatility in the data).

To determine the actual or raw relativities, MPI first arranged the claims costs and earned units by applicable rating variables. For higher accuracy and also to smooth out year-to-year fluctuations, MPI used data for the five most recent insurance years –

²⁰ *Supra.* 1, pg. 1035;

2016/17 to 2020/21. MPI used data for the ten most recent years – 2011/12 to 2020/21 – for PIPP claims costs resulting from Serious Loss incidents.

For claims costs, MPI started with the total claims costs for all coverages as presented in Appendix 9 Table 8 - Reported Loss and ALAE with Hail and Actual Serious Losses. These claims costs include the changes to the Basic product. MPI then adjusted these claims costs for each of the five insurance years, as applicable:

1. deducted the claims costs resulting from Serious Loss incidents as presented in Appendix 9 Table 9 - Reported Serious Losses and ALAE;
2. for the claims costs presented in Appendix 9 Table 9 - Reported Serious Losses and ALAE, calculated the 10-year average; and
3. added the 10-year average back into the claims costs.

Due to the impact of the ongoing COVID-19 Pandemic, MPI did not change its methodology or treatment of the reported losses in the 2022 GRA. This affected all insurance uses in a similar fashion and the 2020 loss year represents only one of the five years that MPI uses (and one of ten years for Serious Losses) to determine raw relativities.

Sylvain Dion and Jason Wong of Dion Strategic, the expert witnesses called by the TC, raised an issue as to whether or not a serious loss loading should be applied to the Passenger VFH class. MPI uses the average of ten years of serious losses to smooth the serious losses for each use and territory. In the first three years of Passenger VFH, there were no serious losses for this use in any territory. Despite this, Dion Strategic was of the view that a serious loss loading should be applied to the Passenger VFH class, to reflect their “inherent” exposure to risk and help to avoid inadequate pricing.

Dion Strategic also recommended consideration of the use of serious loss loadings for all uses and territories to reflect the potential exposure for serious losses, whether or not historical serious losses have actually occurred.

RV.7.2 Grounds

MPI requires clarification on part a) of Directive 3, namely to *"remove actual serious losses (consistent with the current approach) and allocate serious losses based on the frequency of collision claims for each vehicle type"*. There are no findings that would otherwise expand and clarify the PUB intention and its expectation on this matter.

For part b) of Directive 3, the PUB directed MPI to "split vehicle type among passenger vehicle, light truck, heavy truck, bus, motorcycle, trailer, and off-road vehicle". However, MPI submits that Order 134/21 contains no findings that clarify this Directive. MPI respectfully submits that the PUB must clarify how MPI is to treat all passenger vehicle uses regarding the use of serious loss loading.

RV.7.3 Resulting Prejudice or Damage from Existing Order

Without clarification, MPI could act in a manner which it reasonably believes to amount to compliance with Directive 3 and the PUB, interpreting the Directive differently, could later find that MPI did not comply with it.

RV.7.4 Remedy Sought

MPI respectfully requests that the PUB vary Order 134/21 to include the rationale (findings) supporting the need for Directive 3 and further vary Directive 3 to clearly set out what changes it expects for the alternative rate indication.

RV.8 Directive 5 – Fleet Program Directive

RV.8.1 Relevant Facts

Directive 5 of Order 134/21 reads as follows:

"In the 2023 GRA, MPI shall file an analysis and proposal for modifications to the fleet program to better reflect cost causation."

This Directive requires MPI to review its current fleet program and to file an analysis in the 2023 GRA. MPI agrees that its fleet program needs to be reviewed.

RV.8.2 Grounds

MPI respectfully submits that a proper analysis of its fleet program would require the use of resources currently devoted to other relevant matters, including ensuring compliance with other directives issued by the PUB. As such, MPI cannot ensure compliance with Directive 5 in time for the filing of the 2023 GRA.

RV.8.3 Resulting Prejudice or Damage from Existing Order

MPI believes that the imposition of a short timeline in Directive 5 means that it will almost certainly be unable to comply with the Directive.

RV.8.4 Remedy Sought

MPI respectfully requests that the PUB rescind Directive 5 from Order 134/21. In the alternative, MPI respectfully submits that the PUB vary Directive 5 so that it does not require MPI to file the analysis by the 2023 GRA.

RV.9 Pages 56-59 - Comments made by the PUB relating to the transfer of funds to the Driver and Vehicle Administration (DVA) line of business

RV.9.1 Relevant Facts

Pages 55-59 of Order 134/21 read as follows:

"...the Board has jurisdiction over the Basic line of business, but not over Extension or SRE. By requesting that the Board effectively reverse the transfers from Extension to DVA and credit those amounts to ratepayers through a rebate, the Interveners have asked the Board to exceed its jurisdiction. The adoption of the CMP and the presumptive transfers from Extension to Basic have necessarily brought Extension's operations within the review of the Board, but ultimately the Board cannot direct MPI what to do with Extension funds. Further, the provisions of the PUB Act upon which the Taxi Coalition relied in support of its argument that the Board can direct the reversal of the Extension transfers are of no assistance, as those provisions apply only to a "public utility" defined in that Act, which does not include MPI.

As a result, the Board is not in a position to order the relief sought by the Interveners, regardless of the validity of the transfers.

Regarding the specific challenge brought by CAC to the legality of the transfers, any finding that the Board might make in that regard will be irrelevant to the outcome of these proceedings, due to the Board's lack of jurisdiction over Extension. The transfers from Extension to DVA, without oversight, demonstrate why the Board should have jurisdiction over Extension.

MPI's financial statements lacked transparency regarding the transfer. The notes to the financial statements did not contain adequate disclosure about the transfer of \$63 million from Extension to DVA. MPI advised the Board about the transfer when it filed the Application; however, on a stand-alone basis the financial statements did not provide the necessary information in order for the general public to discern the nature or amount of this material financial transaction.

From 2004 to 2021/22, MPI has transferred \$194 million from Extension to DVA. After MPI implemented the CMP, transfers from Extension were built into MPI's forecast and therefore the Board began to examine Extension in detail. This GRA was the first occasion that the Board had sufficient information before it to analyze the impact of an Extension transfer to DVA instead of to Basic. MPI's transfer of funds from Extension to DVA reduced the amount available to rebate to Basic ratepayers by approximately \$113.4 million. If the Government of Manitoba intends to use monies held by MPI for government purposes, the process that must be followed is set out in section 44 of the MPIC Act, which provides that where MPI's assets exceed its liabilities at year-end, an order may be made by the Lieutenant Governor in Council, directing MPI to pay a portion of that excess to the Government. This process ensures transparency when the Government appropriates MPI's profits for government purposes:

Excess of assets

44(1) If the financial statement which, but for this section, the minister would be required to lay before the Legislative Assembly under section 43 shows that the assets of the corporation at the end of the year for which the statement is made exceed its liabilities at the end of that year, the Lieutenant Governor in Council may, by order, direct that the corporation pay to Her Majesty in right of Manitoba forthwith after the statement, amended as provided in subsection (2), has been laid before the

Legislative Assembly such portion of the remaining excess as the Lieutenant Governor in Council may determine; but not so as to reduce the remaining balance of the excess of assets over liabilities below 125% of the total of the unearned premiums upon all its outstanding unmatured policies, calculated pro rata for the time expired, together with the amount of outstanding claims and all its other liabilities of every kind.

Adjustment of financial statement

44(2) Any payment which the Lieutenant Governor in Council directs to be made under subsection (1) shall be shown in the statement of liabilities included in the financial statement to be laid before the Legislative Assembly under section 43 as an amount owing by the corporation at the end of the year for which the statement is made, and the excess of assets over liabilities shown by that financial statement shall reflect that increase in the liabilities.

The cost to MPI to administer DVA has increased since 2004 but the level of funding from the Government has not covered those costs. By using Extension surplus to cover the DVA shortfall, MPI ratepayers are effectively subsidizing what once was a Government responsibility. While all Basic ratepayers are also DVA customers, not all DVA customers are Basic ratepayers. Further, although MPI refers to DVA as a line of business, it is not a business in the true sense because it is an expense to MPI and all income generated must be paid to the Government. In Orders issued shortly after MPI assumed its duties as administrator under the DVA, the Board expressed concern with how the DVA line of business was allocated in the Corporation's financial operations. In Order 148/04, the Board commented as follows:

[...] the explanation given by MPI for its decision to place the DDVL operation within Extension, means that its functions and responsibilities would be outside of the regulatory process and, therefore, not within the purview of the Board. This is not acceptable to the Board. This is not a decision that the Board can accept without comment and criticism. The decision on the placement of DDVL is a public policy decision taken without consultation with the Board and its process. If left as it is, the Board and future GRA processes will have no jurisdiction to question, discuss or direct major areas of concern and importance relative to Basic Insurance.

In Order 150/05, the Board specifically expressed a concern that with the DVA line outside the purview of the Board, deficits associated with DVL operations would shrink the transfer of retained earnings from Extension to the Basic RSR. The Board stated:

Accordingly, the Board can have little assurance as to the reliability of MPI's forecasts of future annual transfers from Extension to Basic Insurance and its RSR. As matters now stand, the costs of operating the DVL division, including potential and long overdue computer upgrades, is expected to reduce the transfer of funds from Extension to Basic Insurance and the RSR by \$40 million over the next five years. Absent this flow of income into the RSR, future rates will likely be higher than they would otherwise be.

Accordingly, the Board can have little assurance as to the reliability of MPI's forecasts of future annual transfers from Extension to Basic Insurance and its RSR. As matters now stand, the costs of operating the DVL division, including potential and long overdue computer upgrades, is expected to reduce the transfer of funds from Extension to Basic Insurance and the RSR by \$40 million over the next five years. Absent this flow of income into the RSR, future rates will likely be higher than they would otherwise be.

However, the Board expresses its dismay at MPI's decision to yet again disregard its commitment to transfer Extension excess retained earnings to Basic and questions the prudence of MPI's decision to use Extension excess to essentially pre-fund DVA through to 2026/27. The Board has concerns about the reliability of MPI's assurances about future transfers from Extension to Basic, given what has transpired."

RV.9.2 Grounds

Having found that DVA transfers are outside of its jurisdiction, the findings addressed by the PUB in these pages (financial statements showing transfer from DVA to Extension, section 44 of the MPIC Act, and MPI decisions regarding excess Extension monies) are not relevant, do not properly reflect the evidence adduced before the PUB and unnecessarily include disparaging comments that bring the reputation of MPI into disrepute.

In *PUB v. MPI* above, the Manitoba Court of Appeal observed as follows:

"Jurisdiction of the PUB

31 The mandate of the PUB, in the context of this case, is set out in s. 26 of The CCAA, that being to review and approve the MPIC's rate bases and premiums charged with respect to compulsory driver and vehicle insurance. As can be seen from its annual orders, the PUB has expressed dissatisfaction with three aspects of its mandate:

- from the beginning of its oversight of the MPIC, the PUB has expressed dissatisfaction with its limited jurisdiction and has been looking both to obtain information related to the non-basic lines of business and to expand its jurisdiction to include the review of rates for non-basic lines of business;

- the PUB has taken the position that driver and vehicle licensing should have been included with the basic line of business, rather than the non-basic, and for many years has been recommending that it be moved so that it will be subject to review by the PUB; and

- the PUB has expressed dissatisfaction with the fact that it has not been involved in the planning for significant changes to the MPIC's operations affecting both the basic and non-basic lines of business, but rather has only received disclosure at the subsequent general rate application.

32 Notwithstanding the fact that the PUB has made its concerns known to the government on an annual basis since 1989, the government has not made any changes to the PUB's legislated mandate to expand its jurisdiction. Clearly, the government must be aware of the PUB's concerns and, notwithstanding, is either satisfied with the PUB's existing limited mandate or, at least to date, has chosen not to act on those concerns."

In Order 134/21, the PUB clearly expresses further dissatisfaction with its jurisdiction. However, in so doing, it also expresses opinions about the conduct of MPI that are clearly outside its jurisdiction and immediately follow its acknowledgment that it could not order any relief as it concerned the transfer of funds to DVA.

In *PUB v. MPI* above, the Manitoba Court of Appeal further observed:

"33 While all parties agree that its mandate, as set out in s. 26, must be interpreted in accordance with the scheme of the legislation, the PUB has looked at only two statutes, being The PUB Act and The CCAA. In fact, that scheme also includes The MPIC Act, which legislates additional significant controls by the government over the activities of the MPIC.

34 Under the legislative scheme, the Crown Corporations Council has the mandate to review all long-term plans and to receive and review the annual financial statements for the MPIC's entire business, which would include both basic insurance and the non-basic lines of business. The government receives financial disclosure of the MPIC's entire operation, including both basic and non-basic lines of business, which includes an annual report of its operations and the annual audited financial statements, all of which are subject to public review by a committee of the Legislature. The government has the ultimate authority to approve and enact all rates for both basic insurance and the non-basic lines of business, subject to the proviso that it cannot approve rates for basic insurance that have not been approved by the PUB. It, therefore, has the ultimate responsibility for the financial health of the MPIC. It is within this legislative scheme that the PUB's mandate to review the rates for only basic insurance must be interpreted."

In 2017, the Legislature enacted the CCGA to modernize public oversight of all crown corporations, including MPI. The Legislature determined that an alternative method of oversight was appropriate, different than what the PUB had proposed since 1989. To say that MPI transferred funds to DVA "without oversight" is both legally and factually incorrect.

At page 57 of Order 134/21, the PUB states:

"MPI's financial statements lacked transparency regarding the transfer. The notes to the financial statements did not contain adequate disclosure about the transfer of \$63 million from Extension to DVA. MPI advised the Board about the transfer when it filed the Application; however, on a stand-alone basis the financial statements did not provide the necessary information in order for the general public to discern the nature or amount of this material financial transaction."

Mark Giesbrecht, the Chief Financial Officer of MPI, testified in the 2022 GRA and identified where the transfer of the \$60 million to DVA was located in the 2020/21 Audited Financial Statements (TR 1306)²¹. Mr. Giesbrecht also explained that the 2020/21 Audited Financial Statements represented a higher level of transparency as for the first time, specific note disclosures were included displaying the full financial picture of each line of business (including the DVA), portraying the statement of financial position and operations for each segment. External auditors were not only aware of the transfer, but approved both the MD&A and the financial statements.

For the limited purpose of a GRA, the financial statements do not stand alone. MPI made it clear throughout the proceeding that a \$60 million transfer to DVA occurred, explained why it occurred, when it occurred and invited the PUB and interveners to ask questions about the transfer (see pages 9 to 10 of the Overview and the Pre-Hearing Conference transcript, pp 31 – 33, 47 – 48). Indeed, PUB advisors and Intervenor legal counsel asked numerous questions. Mr. Giesbrecht also offered to ensure that future MD&As more clearly explained similar transfers²².

To find there was no transparency to the general public concerning this financial transaction is contrary to the evidence presented to the PUB at the hearing of the 2022 GRA.

The PUB also made findings related to section 44 of the MPIC Act. This issue was not identified in Order 76/21, following the Pre-Hearing Conference, because it has no application to the \$60 million transfer to DVA. Section 44 of the MPIC Act applies where the LGiC directs MPI to pay moneys to Her Majesty in Right of Manitoba. The evidence before the PUB was that a transfer occurred within MPI (i.e. from its Extension line of business to DVA) and not to Government. The relevant section of the MPIC Act is Section 16, which states:

²¹ 2022 GRA Hearing Transcript, October 19, pages 1306-1307;

²² *Ibid*, page 1306, Line 6.

"Moneys of the corporation

16 All moneys required by this Act and the regulations, or any other Act or regulations, to be paid to the corporation and all premiums and other consideration payable for insurance provided by the corporation, and any other moneys that may become due and payable to the corporation by the regulations or otherwise shall be paid to the corporation, and may be retained by the corporation and shall be used and dealt with for no other purpose than to carry out the powers of the corporation in accordance with this Act and the regulations. [emphasis added]

As the PUB correctly found, it has no jurisdiction over Extension. As a result, any findings or commentary concerning Section 44 of the MPIC Act are not relevant to its mandate.

The PUB also concluded that DVA "is not a line of business in the true sense because it is an expense to MPI and all income generated must be paid to the Government." With respect, there was no evidence before the PUB as to what constitutes a "line of business", and it is again beyond the jurisdiction of the PUB to draw conclusions about how MPI must characterize its administration of *The Drivers and Vehicles Act*.

The PUB referred to prior GRAs from 2005, 2007, 2010 and 2011, then stated:

"The Board noted its unease about the lack of funding from the Government for DVA operations, from the very inception of the arrangement between the Government and MPI. In this GRA, the Board's concern, that deficits from the DVA line of business would reduce the amount transferred from Extension to Basic, was clearly borne out. The limits of the Board's jurisdiction restrict it from taking any action to remedy this problem."

There are two fundamental problems with this statement. First, until the moment in time when the MPI Board of Directors approves the transfer of money from Extension to Basic, the PUB has no jurisdiction to consider Extension moneys for the purpose of approving Basic rate changes. Second, any issues that may exist between MPI and the Government related to the adequacy of Government funding for a non-Basic line of business is of no moment as it concerns the mandate of PUB.

The PUB concludes this section with the following statements:

"However, the Board expresses its dismay at MPI's decision to yet again disregard its commitment to transfer Extension excess retained earnings to Basic and questions the prudence of MPI's decision to use Extension excess to essentially pre-fund DVA through to 2026/27.

The Board has concerns about the reliability of MPI's assurances about future transfers from Extension to Basic, given what has transpired."

Assertions that MPI "yet again disregard its commitment..." is a marked departure from the evidence presented at the hearing as well as a plain reading of the CMP and PUB Order 1/21 (where the PUB acknowledged MPI's position on the application of the CMP). The comment also implies repeated instances of MPI not transferring excess Extension monies to Basic, and fails to acknowledge there was actually just one earlier instance, whereby the monies went directly from Extension to Basic customers in the form of a rebate.

RV.9.3 Resulting Prejudice or Damage from Existing Order

The prejudice or damage that results to MPI from the existing Order 134/21 is clear. Taken together, the offending paragraphs clearly disparage MPI and lower its reputation in the eyes of ratepayers and Manitobans generally.

RV.9.4 Remedy Sought

MPI respectfully requests that the PUB change or alter Order 134/21 and remove all paragraphs after the following sentence on page 56 thereof:

"Regarding the specific challenge brought by CAC to the legality of the transfers, any finding that the Board might make in that regard will be irrelevant to the outcome of these proceedings, due to the Board's lack of jurisdiction over Extension."

to the Heading "5.0 Capital Management Plan and Basic Target Capital Level(s)" on page 59 (along with any corresponding summaries or references throughout the Order).

Date: January 14, 2022

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