

January 31<sup>st</sup>, 2022

VIA EMAIL: [darren.christle@gov.mb.ca](mailto:darren.christle@gov.mb.ca)

Dr. Darren Christle  
Board Secretary and Executive Director  
The Public Utilities Board  
400 – 330 Portage Avenue  
Winnipeg, MB R3C 0C4

Dear Dr. Christle:

**Re: MPI Application to Review and Vary Order 134/21  
Position of the Coalition of Manitoba Motorcycle Groups (CMMG)**

---

CMMG has had an opportunity to review the Application to Review and Vary Order 134/21 (Application) from Manitoba Public Insurance (MPI) dated December 15, 2021.

CMMG submits that MPI's application should be dismissed as it relates to Order 134/21 Directives 11.13 and Appendix A, 11.19, 11.20, 11.11(b) and Order. CMMG submits that MPI's Application that Pages 56-59 of Order 134/21 be changed or altered should also be dismissed. CMMG takes no position regarding the other relief claimed in MPI's Application.

**Directive 11.13 – Driver Safety Rating (DSR) Directives**

**Failure to Comply with Board Order 1.21 Directive 10.12**

MPI has taken issue with Directive 10.12 in Appendix A of Board Order 134/21. The Corporation asserts that it has complied with the Directive and takes issue with the Board's comments that MPI has "completely disregarded" Directive 10.12.

Directive 10.12 of Board Order 1/21 reads as follows:

*10.12      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.*

The Corporation has taken the position that by providing a proposal for changes to the DSR scale as outlined in the 2022 Application along with a Transition Plan<sup>1</sup>, that the Corporation has complied with all requirements of Directive 10.12.

PUB Order 1/21 also included Directive 10.11 which reads as follows:

*10.11 In the 2022 GRA, the Corporation shall file proposed driver premium rates and vehicle premium discounts that are more statistically consistent with the estimated claims cost per driver for each level of the Driver Safety Rating scale, including incorporating the Driver Safety Rating into its minimum bias analysis used to set rating relativities.*

The plan, timeline, major milestones and implementation date that the Corporation references in this Application<sup>2</sup> all relate changes in the DSR scale as referenced in Directive 10.11. The changes proposed by the Corporation do not relate to any changes in the DSR model as was required by Directive 10.12. The Corporation has effectively attempted to blend Directive 10.11 and 10.12 to demonstrate their compliance. In fact, the Corporation provided a plan, timeline, milestones and implementation date for changes in the DSR scale which were not required by Directive 10.11.

In response to Directive 10.12, a single sentence in the Application addresses that issue:

*“MPI intends to use the current Registered Owner model in the near term...”<sup>3</sup>*

Through the Information Request (IR) process, MPI confirmed that the Corporation has no intention of changing the DSR model in the next 5 years. In this way, while MPI has partially complied with Directive 10.12 by providing a plan, MPI has failed to comply with the bulk of the Directive which also required a timeline, milestones and implementation date of changes to the DSR model.

### Jurisdiction of PUB over DSR

The Corporation has taken the position that “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).”<sup>4</sup>

---

<sup>1</sup> 2022 GRA Application, Part VI – DSR Pg 9 - 14

<sup>2</sup> MPI Application to Review and Vary Order 134/21 Pg 5

<sup>3</sup> 2022 GRA Application Part VI – DSR Pg 14 Line 7

<sup>4</sup> MPI Application to Review and Vary Order 134/21 Pg 5

Section 25(1) of *The Crown Corporations Governance and Accountability Act*, (CCGA) provides as follows:

“Despite any other Act or law, rates for services provided by Manitoba Hydro and the Manitoba Public Insurance Corporation shall be reviewed by The Public Utilities Board under *The Public Utilities Board Act* and no change in rates for services shall be made and no new rates for services shall be introduced without the approval of The Public Utilities Board.”

The CCGA Act defines “rates for services” as “rate bases and premiums charged with respect to compulsory driver and vehicle insurance provided by that corporation”.

*The Manitoba Public Insurance Corporation Act* (MPIC Act) provides several definitions for driver premiums that relate to the driver safety rating system:

“**additional driver premium**” means the premium for a driver’s certificate that, in addition to the base driver premium, must be paid by a driver who, under the driver safety rating system established by the regulations, as the number of demerits prescribed in the regulations

“**adjusted additional driver premium**” means the premium for a driver’s certificate

(a) that has been fixed by the Rates Appeal Board as the result of an appeal under clause 65(4)(a), and

(b) that, in addition to the base driver premium, must be paid by a driver who, under the driver safety rating system established by the regulations, has the number of demerits prescribed in the regulations;

“**base driver premium**” means the base premium for a driver’s certificate that must be paid by a driver who has no merits, or has one or more demerits, under the driver safety rating system established by the regulations;

“**discounted driver premium**” means the discounted premium for a driver’s certificate that must be paid by a driver who has one or more merits under the driver safety rating system established by the regulations;

The Driver Safety Rating system creates a discount, or additional premium that is to be charged to an insured based on their merits or demerits on the scale. The DSR model

which determines the value of a discount or additional premium charged, falls directly within the jurisdiction of the Public Utilities Board.

The *MPIC Act* provides the Board's jurisdiction to approve or vary plan premiums at section 6.4(3) which reads as follows:

*"The Public Utilities Board may either approve or vary the plan premiums applied for by the corporation, and must make its decision in accordance with Part 4 of The Crown Corporation Governance and Accountability Act"*

As outlined above the DSR model and scale directly impacts the plan premiums applied for by the Corporation. The Public Utilities Board has jurisdiction to review rates for service which include plan premiums. Further the PUB has jurisdiction not only to approve or reject those premiums, but by virtue of section 6.4(3) may vary the plan premium applied for by the corporation. As the DSR model and scale determines the premiums charged, the DSR model and scale fall within PUB jurisdiction to approve or vary the premiums applied for. Based on the 2022 GRA MPI confirmed their intention not to change the DSR model. PUB, by virtue of Order 134/21 has not approved this plan, but has varied the plan by directing MPI to proceed with a five-year plan for the implementation of the Primary Driver Model.

While Section 33(1)(h) of the *MPIC Act* makes it clear that the Lieutenant Governor in Council has jurisdiction to make regulations to establish a driver safety rating system, this provision does not diminish the power conferred to PUB by section 6.4(3) of the *MPIC Act*.

The position taken by the Corporation in this Application is blatantly contradictory to the evidence provided by MPI counsel, and witnesses throughout previous hearings. MPI has repeatedly confirmed the process for transition to a new DSR model, and specifically acknowledged that MPI would commence the process to the Lieutenant Governor in Council where PUB recommended or directed a change to the DSR model.

In the 2021 GRA, the following exchange occurred between counsel for CMMG and MPI:

MS. CHARLOTTE MEEK: "Sure. Yeah. I just wanted to be a little bit more specific in my question to say that, where the Board makes a recommendation, specifically a change in the DSR system to the Primary Driver Model, would MPI then initiate the process?"

MR. STEVE SCARFONE: "Yeah. So I think the response is there before us where it indicates, if at the end of this General Rate Application, or more accurately, at the end of the Board's review of the model, if either MPI,

the Board, or both recommend changing the model, the MP – MPI would initiate the process.”<sup>5</sup>

In the 2022 GRA, MPI again confirmed the process for changes to the DSR system and that MPI would commence the process upon a recommendation or direction from the Board:

MS. SATVIR JATANA: “What I’m saying that if the PUB recommended direction to go that route, we could absolutely take those decisions forward. However, we would also make it apparent MPI’s position on it, for all of the reasons I’ve stated earlier.”<sup>6</sup>

MPI’s position in this Application is contrary to the statutory regime and contrary to MPI’s evidence and position throughout previous General Rate Applications.

The Corporation has argued that the PUB “is not entitled to any future plans that do not affect the rates currently under review” and further that PUB “cannot direct MPI to develop any such plans”. To support this position MPI has made reference to *Public Utilities Board v. Manitoba Public Insurance Corp. et al.*<sup>7</sup>, a Manitoba Court of Appeal case where the Court was reviewing PUB’s request to obtain various additional pieces of financial information and information regarding other plans, policies and decisions of the Corporation. Notably, PUB was specifically seeking information “relating to MPIC’s divisions other than compulsory driver and vehicle insurance”<sup>8</sup>.

The Court’s comments regarding plans are specific to those being sought, which are those plans relating to divisions of MPI, other than compulsory driver and vehicle insurance for which PUB has jurisdiction. This is distinguishable from the issue before us, where PUB has directed that plans be made for the DSR model which significantly impacts the Basic insurance program for which PUB has ultimate jurisdiction.

Further, as outlined above, the statutory scheme clearly contemplates and perhaps encourages PUB involvement in the creation and review of plans and/or decisions relating to the Basic insurance program. This is evident in the *MPIC Act* at section 33(1.1) which requires that the Lieutenant Governor in Council ensure “that the proposed change has been approved by The Public Utilities Board”. Clearly this requires that any proposed changes (or in other words, plans) be presented to the Board for approval prior to presentation to government. Coupled then with 6.4(3) of the *MPIC Act*, the PUB after a review in accordance with Part 4 of the *CCGA Act*, may choose to vary the proposal provided by MPI.

---

<sup>5</sup> Transcript October 27, 2020 Page 1574 Line 23 – 1575 Line 10

<sup>6</sup> Transcript October 21, 2021 Page 1795 Line 6 – 11

<sup>7</sup> 2011 MBCA 88

<sup>8</sup> Ibid para 1

Directive 11.13 does not usurp the responsibility or control of Government. Where MPI “initiates the process” to bring this recommendation to the Lieutenant Governor in Council, Government then has a clear opportunity to weigh in on the recommended change from PUB, along with the requisite information from MPI to evaluate the implications of that change on the Corporation as a whole. MPI’s concerns around collection of personal information are insignificant, as the directive requires provision of “the process the Corporation will employ to obtain the necessary primary driver information from ratepayers”. MPI may provide a position about what steps must be taken to allow that information to be obtained, in time for the initiation of the new DSR model.

It is the position of CMMG that Directive 11.13 from Order 134/21 is well within the jurisdiction of PUB and does not need to be rescinded and Directive 10.12 from Appendix A to Order 134/21, requires no modification.

### **Directives 11.19 and 11.20 – Asset and Liability Management (ALM) Study Directives**

MPI has asserted that PUB does not have the jurisdiction to direct MPI to undertake and file a new ALM study or to direct the content of any ALM study.

The ALM study previously undertaken provided essential information to the Board in its review of the Basic insurance program. In reaching a decision, pursuant to section 25(5) of the *CCGA Act* the Board takes into consideration “all elements of insurance coverage affecting insurance rates”.

Throughout previous GRAs it has been acknowledged by the Board and by MPI on numerous occasions that the motorcycle class is more affected by changing interest rates than other vehicle classes. This is due to the specific nature of the make-up of the motorcycle basic rate. As a result, MPI’s investment strategy has been of particular concern for the CMMG.

It is necessary for the Board to have all relevant information required to evaluate MPI’s investment decisions, which in turn impact MPI’s proposed insurance rates. In order for the Board to determine whether MPI’s investments fall within the realm of ‘reasonable’ and consequently whether the rate request is reasonable, the Board requires information evaluating MPI’s investment decisions and strategy. As it is necessary for the Board to evaluate MPI’s investment strategies in their examination of the rate request, the Board may then direct MPI to provide the requisite information to allow for that thorough examination. While the Board has acknowledged that its jurisdiction does not extend to directing the Corporation to invest in a particular manner, by directing that the ALM study be completed and requiring the inclusion of specific information, the Board has not exceeded its jurisdiction.

The benefit obtained by the Board in having the ALM Study prepared in advance of the 2023 hearing, will also benefit Interveners and the public. It is impossible for the Board itself or any interveners to commission a similar study regarding MPI's investment strategies. It has also been demonstrated that the Information Request process in the GRA is very time consuming and demanding of MPI's staff. The examination of the issue of Investments is important and relevant in each year of hearings.

MPI's investment strategy forms the basis of many IRs and takes up days of the public hearing each year. Interveners have questions about alternate investment strategies and have called experts in the past to examine MPI's investment decisions and possible alternate methodologies. The Directives from the Board stem from the examinations of Interveners from last year's GRA and inform MPI of the relevant information that will assist in next year's GRA. This advanced notice of relevant information which will assist the Board and Interveners in the upcoming GRA, will expedite the process for all parties. Quite contrary to MPI's assertion that these additional pieces of information will prove to unnecessarily increase the cost to MPI, it is the position of CMMG that it will in fact reduce overall costs for the public hearings in the long term.

MPI has asserted that it "cannot commit to a particular filing date" but has confirmed that Mercer has been retained to complete the study. MPI has not provided any documentation from Mercer indicating that they are unable to complete the study within the timeframe as required by Directive 11.19. MPI traditionally files the GRA at the end of June each year. From the filing of this Application on January 14<sup>th</sup>, Mercer has over 5 months to complete the ALM Study to have it filed concurrently with the 2023 GRA. The previous ALM Study was completed in a period of 2.5 months at the request of MPI. It appears that this is not a situation where MPI cannot have the study completed, but rather that MPI is unwilling to comply with the Board's direction.

### **Directive 11.11 Vehicle For Hire (VFH) Directives**

#### **Directive b.**

CMMG reiterates its position that the Board has the requisite jurisdiction regarding the DSR model, to order MPI to adopt a new DSR model.

### **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**

The Corporation has asserted that the PUB's comments regarding DVA transfers are not relevant, do not properly reflect the evidence of the proceeding and include disparaging comments which bring the reputation of MPI into disrepute.

## Financial Statements

MPI has asserted that the financial statements of the Corporation sufficient identify the \$60 million transfer to DVA. In fact, Mr. Giesbrecht explained during his cross examination by Board counsel, that the transfer can be found where one examines the difference between the financial position of DVA in March 31<sup>st</sup> of 2020 and in March 31<sup>st</sup> of 2021 and compares that to the loss in net income for that year. He acknowledged that MPI can make an improvement to make it more explicit and to state that there has been a transfer<sup>9</sup>. Unless an individual knew exactly where to look and what to look at, this transfer would not be discernable and does not meet the threshold of transparency. Mr. Giesbrecht's explanation supports the Board's determination that "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"<sup>10</sup>.

MPI is a crown corporation which has a monopoly over provision of vehicle insurance to Manitobans. PUB throughout the review process provides integral commentary on MPI processes to the Manitoba public. While PUB may not have jurisdiction over the Extension line of business, that does not preclude PUB from commenting on business decisions made by MPI which directly impact the rates of insureds. MPI's business decisions have altered the effect of the Capital Management Plan, and how automatic transfers from the CMP will impact basic rates. It is integral that Manitobans understand the previous statements and promises from MPI, MPI's current actions, and have a commentary from PUB on the appropriateness of MPI's behaviour. Manitobans rely on PUB to provide a summary and explanation of the public hearings, which include the relevant commentary provided by PUB. As Manitoba customers have no ability to change insurance providers where they are unsatisfied with MPI's business decisions PUB's comments act as a pseudo public response.

## Conclusion

CMMG respectfully submits that for the reasons herein, that MPI's Application regarding the above identified directives be dismissed.

Sincerely,

**BD OAKES JARDINE KANESKI UNRUH LLP**

**PER:**



**CHARLOTTE MEEK**

---

<sup>9</sup> Transcript of Proceedings, October 19, 2021 Page 1306 - 1307

<sup>10</sup> Board Order 134/21 Pg 57