

February 07, 2022

VIA E-MAIL

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

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

Dear Dr. Christle:

RE: Reply by Manitoba Public Insurance (“MPI”) to the responses by the Interveners on its Review and Variance of Order 134/21 Application filed on January 14, 2022 (“R&V Application”)

Please accept this correspondence as the reply of MPI to the respective responses of the Manitoba Branch of the Consumers Association of Canada (“CAC”), the Taxi Coalition (“TC”) and the Coalition of Manitoba Motorcycles (the “CMMG”) (collectively, the “Interveners”) to the R&V Application filed by MPI with the Manitoba Public Utilities Board (“PUB”).

Directive 11.13 (DSR)

MPI opposes each of the responses provided by the Interveners in opposition to a variance of Order 134/21 as it concerns Directive 11.13, the Driver Safety Rating (“DSR”) Directive.

The Interveners cite a number of legislative provisions from various statutes to support their assertion that the PUB can direct MPI to adopt a new DSR system that uses the Primary Driver model. Indeed, no less than twelve (12) provisions from various statutes are reproduced in four pages of the response by the TC. The Interveners suggest that these provisions, from the three or four “relevant statutes”, when combined, read in context and interpreted using the modern approach, lead to the inescapable conclusion that the jurisdiction of the PUB allows it to direct MPI to make structural changes to its business. For the reasons set out in the R&V Application, carrying out such a direction in the specific case of the DSR would require the PUB (and MPI) to step into the shoes of the Lieutenant Governor in Council.

If a single statutory provision existed that explicitly allowed for such an intrusive directive, MPI expects that the Interveners would have brought it to the attention of the PUB. However, the Interveners have not identified any such provision because none exists. Instead, an argument is advanced that would have the PUB direct the implementation of a new DSR system under the apparent authority of section 77(b) of *The Public Utilities Board Act, C.C.S.M. c. P280*, by awkwardly incorporating other quasi-relevant statutory provisions and concluding that the current DSR system is a “form of customer classification.” It is not. MPI classifies its customers in a number of ways: by vehicle type (e.g., motorcycle, passenger vehicle, etc.), by use (e.g. all purpose or pleasure) and by territory. And while MPI also classifies customers by their position

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on the DSR Scale (e.g. +12, -8, etc.), it does so for each and every vehicle insured using the Registered Owner model. Put another way, MPI currently assesses the risk of the vehicles of *all* of its customers by looking at the risk posed by the person who owns and registers the vehicle, not by the person who actually drives the vehicle.

Directive 11.13 does not direct MPI to make changes to a classification of customers. Rather, it directs MPI to fundamentally change its business model. It dramatically alters the way in which MPI treats all customers, each of whom would be assessed in accordance with a new system that currently does not exist. Moving an entire population of drivers into an entirely new system (and effectively abolishing the old system), is not classification, it is creation. Directive 11.13 does not direct MPI to move registered owners with a certain risk profile up or down the existing DSR Scale. It directs MPI to determine risk in a whole new way. And the PUB does not possess the requisite jurisdiction to direct the creation of a new model under which customers may be classified by risk. It is not contemplated by any statutory authority, regardless of how many statutory provisions are incorporated by reference and read together.

Transitioning to a new driver model is not about changing the composition of a customer classification.

MPI agrees that the rates charged to each customer class and the composition of customer classes are within the jurisdiction of the PUB. MPI also agrees that the PUB can decide whether rates charged to various classes of customers are unjust, unreasonable, unjustly discriminatory or unduly preferential. MPI further agrees that the PUB can create classes of customers to avoid the charging of unjust and unreasonable rates, and that setting customer classifications is an inherent part of the setting of rates. However, all of this must be addressed in the existing registered owner model, which MPI is currently addressing through its Transition Plan. The Transition Plan is the continuous improvement that the CAC says MPI promised when the DSR was first conceived. To say at this early stage that challenges with the registered owner model will remain, notwithstanding the Transition Plan, is conjecture.

The PUB did approve the DSR prior to its conception. It did not direct MPI to create it and MPI did not first obtain the approval of the PUB and then present the DSR to government for creation through changes to statutes and the development of regulations.

While *Public Utilities Board v. Manitoba Public Insurance Corp. et al.*, 2011 MBCA 88, was indeed a case dealing with matters outside the jurisdiction of the PUB (i.e. the Extension line of business), it nonetheless stands for the proposition that the mandate of the PUB is limited to approving the rates for Basic insurance in a particular insurance year, with any oversight beyond the approval of rates belonging to the provincial government.

The CMMG in its response argues the R&V Application contradicts the position that MPI took in previous hearings. That is not the case. MPI has never agreed to implement a new driver model (at least not within the next 5 years) and not without the required approval from government. While MPI may have indicated it would initiate the process for change, it is important to give context to the exchange cited by the CMMG from the 2021 GRA at page 4 of its response with the following:

2021 GRA Transcript, November 3, 2020 (pages 2287 and 2288) – MPI Closing Argument

MR. STEVE SCARFONE:

So, that leads us into, well, what -- what do we do about the -- the summary or the -- the analysis that was undertaken in the pricing examination and whether a new model might be more appropriate than the existing model.

A couple things there. Well, the primary driver model, if that indeed is -- is the alternative model, may be more actuarial sound, but any change must have two (2) conditions. It must be approved by government. And, as -- as we know, that's not guaranteed even if recommended. And we -- we say it must not needlessly interfere with the implementation of Project Nova.

So, just to be clear, ideally, what the Corporation would like is for this Board and MPIC to be ad idem on the best approach, the best model, in making any recommended changes to government; that's the ideal approach.

But we heard evidence about, and there was a response to an Information Request, well, what if the Corporation and this Board have differing views on which is the best model? That's not ideal. We'd like to be together on this.

So -- but if the Corporation, ultimately, decides that it wants to maintain the registered owner model and make the tweaks that Mr. Johnston spoke of about adjusting the scale so that it better reflects the discounts, then the -- the Corporation would take the Board's opposite view to government and make the government aware that this Board has concerns about maintaining the existing model.

But again, there's a number of stakeholders that need to be considered, including government, and a decision on which model is ultimately the best to move forward with has not yet been made. You'll see there that that decision is projected from mid to late 2021 and it needs to be made with the ongoing development of the Nova Project.

MPI maintains, as indicated by Vice-President Satvir Jatana this past year, that if the PUB were to recommend that MPI adopt a primary driver model, MPI would comply with that directive and make government so aware. However, Ms. Jatana testified further that MPI would also make the government aware of its opposition to a new model at this juncture, along with its rationale for its opposition.

Directive 11.13 was not, however, a recommendation to approach government about a new driver model but rather, the directive takes it one improper step further and directs MPI to actually implement a new driver model, without any consideration to the important role that government must play before any such shift occurs.

Directives 11.19 and 11.20 (ALM Study)

MPI agrees with the following statement at page 18 of the response of the CAC:

“[I]nvestment income serves to lower the overall rate indication for MPI and, as a result, investment decisions have a direct impact on the rate requested by MPI.”

However, because that statement could include all conceivable decisions related to investments, a line has to be drawn concerning which decisions the PUB is entitled to review for reasonableness, particularly given the acknowledgement by the PUB that it cannot direct MPI on the particulars of its portfolio management.

It is already established that this line would be crossed if the PUB were to direct MPI concerning its risk appetite. That is a decision for the MPI Board of Directors, the Investment Committee and the Minister of Finance. Accordingly, any constraints (i.e. investments that might be excluded because they fall outside the risk tolerance of MPI) would similarly cross this line and are not within the oversight of the PUB.

At page 19 of its response, the CAC says that the previous ALM study gave rise to evidence and argument that demonstrated the constraints were inappropriate and did not show the costs of the investment decisions made by MPI. Those arguments were rejected by the PUB.

If the timing of the filing of the ALM Study prevents Intervenors from asking questions in the 2023 GRA, they can ask them in the 2024 GRA. The ALM Study is not being prepared with Intervenors or the PUB as its primary audience.

Directive 11.4 (GLM)

There is a clear difference in interpretation by MPI and the TC. Unfortunately, these differences support that Directive 11.4 is ambiguous and requires amending and/or clarification.

As the PUB knows, MPI devotes considerable resources to maintaining the safety and security of its IT structure and systems. IT security is a top priority for MPI as there is much at stake. The issue is not whether MPI must embed or combine new GLM software with its existing platform. The issue is that the very use of this software on MPI computers poses a potential IT security risk. There is no evidence that MPI could acquire and implement the use of a GLM modelling application within the timeframe stipulated under Directive 11.4.

The use of software in the immediate future to prepare a preliminary set of GLMs based on existing rating factors assumes that MPI can then continue to use the software in order to study and develop additional rating factors, or can easily import its previous work into a new application. This may not be the case and was not canvassed in the 2022 GRA. But this could be the undesired result if MPI is required to quickly choose an application without proper scrutiny. MPI submits that the better approach is to determine which rating variables could be analyzed and then obtain a software solution that can perform an appropriate analysis.

On the use of external consultants to produce an alternative rate indication using GLMs, MPI will remind the PUB of its long-standing aversion to the use of such consultants, where possible. In this case, the issue of the possible use of consultants was not discussed in the 2022 GRA. There is no evidence before the PUB that consultants are available and able to complete the required analysis in time and for an acceptable price.

Finally, MPI has indicated its intention to be a “fast follower” when it comes to industry best practice. With that comes the responsibility to ensure that new practices are indeed best practices. While MPI does not dispute the appropriateness of using GLMs, it must ensure that its future use of GLMs is consistent with its unique business model. The TC advocates for the immediate adoption of GLMs. And while MPI has committed to exploring its use, the evidence does not support the immediate requirement to use them. In fact, the evidence before the PUB was that GLMs have existed for decades. Notwithstanding this, and the fact that external actuarial consultants have reviewed MPI’s GRAs for decades, MPI only received the recommendation to use GLMs in its rate making methodology in the 2022 GRA. MPI therefore submits that the issue is not urgent and that the proposal of MPI to study the issue and present a plan to the PUB is the better approach.

Appendix A (MCT)

The CAC says that MPI can choose to not comply with the 100% MCT target because its legislation that is subordinate to the enabling statute. This finding, although made by the PUB in the 2020 GRA, was not reviewed or confirmed by a court of law, meaning the regulation is still good law. MPI must comply with all legislation, whether statute or regulation. MPI prefers not to prioritize which laws to follow.

Directive 11.11 (VFH)

The VFH framework has yet to be defined and consultants cannot help at this stage.

All of which is respectfully submitted,

Steve Scarfone

Steve M. Scarfone/Anthony Lafontaine Guerra
Legal Counsel

SMS/tm

cc: K. McCandless, Pitblado Law
2022 GRA Registered Interveners (via email)