

Order No. 132/17

**MANITOBA PUBLIC INSURANCE CORPORATION (MPI OR THE CORPORATION):
APPLICATION FOR INTERIM 2018/19 VEHICLES FOR HIRE PREMIUM RATES**

**PROCEDURAL ORDER
MOTION FOR DIRECTIONS ON PROCEDURE**

December 12, 2017

**BEFORE: Irene A. Hamilton, Acting Chair
Robert Vandewater, Member
Carol Hainsworth, Member**

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1.0 Executive Summary

By this Order, the Public Utilities Board of Manitoba ("Board") directs Manitoba Public Insurance ("MPI" or "the Corporation") as to the procedure related to its proposed Application for Interim 2018/19 Vehicles for Hire Premium Rates ("Application"). The Board also establishes a timetable pertaining to the Application.

2.0 Overview

On December 4, 2017, the Corporation filed a Notice of Motion, pursuant to Rule 4(3) The Board's Rules of Practice and Procedure, for an Order for directions on procedure relating to the Application.

The Corporation sought an order finding that special circumstances exist to warrant that the Application proceed ex parte pursuant to section 45 of The Public Utilities Board Act, C.C.S.M. c. P280 ("the Act").

The Corporation also offered, in the alternative, an abbreviated hearing process which would provide for an Information Request process, a one-day oral hearing, the receipt of written submissions from interveners and interested parties and opportunity for interveners to provide comment on the process for approval of final 2018/19 rates.

2.1 Background and Grounds for Motion

By its Notice of Motion, the Corporation submitted as follows:

- a) On November 10, 2017, Royal Assent was given to Bill 30 which establishes The Local Vehicles for Hire Act, S.M. 2017, c. 36 ("LVH Act"). The LVH Act abolishes regulation of the taxi industry in Winnipeg through the Taxicab Board and transfers regulatory responsibility for all vehicles for hire to each municipality. The LVH Act comes into force on February 28, 2018 and allows for a new class of vehicles for hire beyond the traditional taxi cab.

- b) To offer compulsory insurance for vehicles for hire, the Corporation must seek Board approval of premium rates for this new class of vehicles for hire and, possibly, for new premium rates for the existing classes of vehicles for hire.
- c) In order to provide compulsory insurance for vehicles for hire by March 1, 2018, the Corporation submitted that it must be in receipt of an Order from the Board approving premium rates for this new class of vehicle no later than January 15, 2018, in order to allow the Corporation to implement necessary system changes and to work with government to enact the required regulation amendments so that it can apply the required charges as of March 1, 2018.
- d) The Corporation could not have filed an application for vehicles for hire premium rates prior to the passage of Bill 30 and thereafter required additional time to analyze and review any implications from The City of Winnipeg's proposed By-Law concerning vehicles for hire operating in Winnipeg.
- e) The limited time before the LVH Act is in force, combined with requirement for Board approval of rates, creates a "special circumstance", warranting the unusual step of requesting approval of interim rates on an ex parte basis.
- f) That an ex parte interim order is necessary in order to avoid obvious public harm that will result if there is no appropriate insurance product available when the LVH Act comes into force.

3.0 Board Findings

The Act provides the Board with the jurisdiction to establish its own procedure for the hearing of applications before it. Section 24 of the Act provides as follows:

Procedure governed by rules

24(1) All hearings and investigations conducted by the Board shall be governed by rules adopted by the Board.

Rules of evidence not binding on Board

24(2) The Board is not bound by the technical rules of legal evidence.

Rules of practice, their publication

24(3) The Board may make rules of practice, not inconsistent with this Act, regulating its procedure and the times of its sittings, but the rules do not come into force until they are published on the Board's website.

Board to have powers of Court of Queen's Bench in certain matters

24(4) The Board, except as herein otherwise provided, as respects the attendance and examination of witnesses, the amendment of proceedings, the production and inspection of documents, the enforcement of its orders, the payment of costs, and all other matters necessary or proper for the due exercise of its powers, or otherwise for carrying any of its powers into effect, has all such powers, rights, and privileges as are vested in the Court of Queen's Bench or a judge thereof.

Evidence by affidavit or report

24(6) The Board may, in its discretion, accept and act upon evidence by affidavit or written affirmation or by the report of a member or of any officer or technical adviser appointed hereunder or obtained in such other manner as it may decide.

Section 15(3) of the Act states that all sittings of the Board for hearing applications and taking evidence shall be open to the public. However, section 45 of the Act empowers the Board to make an interim ex parte order if the special circumstances of any case so require.

Ex parte hearings are rare and the party seeking an ex parte application must show why special circumstances "require" it. The special circumstances necessary to require an ex parte hearing would include those instances where notice of the application would cause harm to the applicants or the public.

As an alternative, Section 47(2) of the PUB Act provides that the Board may make an interim order and reserve further direction either for an adjourned hearing of a matter or for a further application.

While the Rules of Practice and Procedure apply to all proceedings of the Board, Rule 3(2) provides that the Board may dispense with, vary or supplement any of the provisions of the Rules. Rule 4(1) further provides that, in any proceeding, the Board may issue directions on procedure which will govern the conduct of that proceeding and will prevail over any provision of the Rules that is inconsistent with those directions.

The Rules further contemplate that a proceeding before the Board may be conducted entirely in writing (see: Rule 2(i), (s)). This is also clearly contemplated in the Act, as section 24(6) permits the Board to accept or act upon evidence by affidavit or written affirmation.

The Board controls its own process and therefore can expedite the manner of an interim hearing if it is necessary to do so. It is not reasonable to dispense with notice simply to expedite the process. Given that section 15(3) of the Act makes it clear that the public has a right to attend Board hearings, the Board is of the view that urgency alone is not sufficient to proceed on an ex parte basis, especially where an expedited hearing can achieve the objective of public participation even when there is very limited time to do so.

It appears that the primary reason for the Corporation's request for an ex parte hearing is one of urgency. Given the foregoing, the Board finds that the Application can proceed as a hearing conducted entirely in writing, with notice to the public. This will permit the Application to be heard on an expedited basis, while at the same time satisfying the need for the opportunity for public participation.

Accordingly, the Board has determined that in the present case special circumstances do not exist that require a hearing of the Application to proceed on an ex parte basis.

The Board, however, appreciates the urgency of the matter and therefore is prepared to order that the Application proceed as a written hearing on an expedited basis.

As there will be no oral hearings, the Board further orders that the contents of the Application and responses to Information Requests shall be confirmed by sworn or affirmed affidavit.

4.0 IT IS THEREFORE ORDERED THAT:

1. The Application for Interim 2018/19 Vehicles for Hire Premium Rates to be filed by the Corporation shall proceed as a written hearing on an expedited basis.
2. The contents of the Application for Interim 2018/19 Vehicles for Hire Premium Rates and responses to Information Requests be confirmed by sworn or affirmed affidavit.
3. The Corporation shall forthwith after receipt of this Order, and no later than December 15, 2017, publish a Notice of Application electronically on the Corporation's website.
4. The Corporation shall forthwith after the receipt of this Order, and no later than December 15, 2017, serve the Notice of Application on interveners to the 2018 General Rate Application, representatives of the vehicle for hire industry and all interested parties identified in Appendix "A" to the letter dated June 16, 2017 from the Public Utilities Board to the Corporation.
5. Schedule "A", as attached, shall be the timetable for the hearing of the Application.

Board decisions may be appealed in accordance with the provisions of Section 58 of *The Public Utilities Board Act*, or reviewed in accordance with Section 36 of the Board's Rules of Practice and Procedure. The Board's Rules may be viewed on the Board's website at www.pubmanitoba.ca.

THE PUBLIC UTILITIES BOARD

"Robert Gabor, Q.C."
Chair

"Darren Christle"
Secretary

Certified a true copy of Order 132/17
issued by the Public Utilities Board



Secretary

SCHEDULE "A"

TIMETABLE

ITEM	DATES	Day of the Week	Elapsed Working Days
1. Application filed and served	December 15, 2017	Friday	0
2. Notice of Public hearing to be published	December 15, 2017	Friday	0
3. Interveners complete Registration	December 20, 2017	Wednesday	3
4. Last day to file as an Intervener	December 20, 2017	Wednesday	3
5. Board to circulate list of Interveners	December 22, 2017	Friday	5
6. MPI to be in receipt of information requests	December 29, 2017	Friday	8
7. MPI to provide responses to information requests	January 4, 2018	Thursday	11
8. MPI to file and serve written submissions	January 5, 2018	Friday	12
9. Interveners to file and serve written submissions	January 9, 2018	Tuesday	14
10. MPI to file and serve written reply submissions	January 10, 2018	Wednesday	15
11. Board issues Order	January 15, 2018	Monday	18