

Order No. 123/18

**MOTION BY MANITOBA PUBLIC INSURANCE
SEEKING CONFIDENTIAL TREATMENT OF CERTAIN RESPONSES TO
INFORMATION REQUESTS IN THE 2019/2020 GENERAL RATE APPLICATION**

September 12, 2018

BEFORE: Robert Gabor, Q.C., Chair
Irene A. Hamilton, Member
Robert Vandewater, Member
Carol Hainsworth, Member

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1. SUMMARY

By this Order, the Public Utilities Board (Board) grants the Motion of Manitoba Public Insurance (MPI or the Corporation) seeking confidential receipt by the Board of certain responses to Information Requests (the IR Responses), filed in the 2019/2020 General Rate Application (GRA or the Application). The Board provides direction on the treatment of any Intervener evidence and further Information Requests (IRs) arising out of the IR Responses. The Board also issues revisions to the timetable approved in Order 82/18, which are required as a consequence of the Motion.

1.0 Overview

MPI filed the GRA on June 15, 2018. On June 29, 2018, following the Pre-Hearing Conference, the Board issued Procedural Order No. 82/18. Order 82/18 permitted two rounds of IRs to be issued to MPI by the Board and approved Interveners.

The First Round of IRs was filed on July 11, 2018, and responses were filed by MPI on August 8, 2018. The Second Round of IRs, which arose out of responses provided by MPI to the First Round IRs, was filed on August 20, 2018.

On August 8, 2018, concurrently with its filing of responses to First Round IRs, MPI filed a Notice of Motion with the Board in which it sought leave to file certain of the First Round IR responses in confidence with the Board, on any terms the Board considered appropriate and in the public interest. On August 19, 2018, MPI electronically served a Motion Brief on the Board and the Interveners in the GRA. MPI also filed supporting Affidavits with the Board only, containing confidential information, in hard copy format.

In its Notice of Motion of August 8, 2018, MPI requested the following IR Responses, or portions thereof, be filed confidentially with the Board:

- PUB (MPI) 1-27
- PUB (MPI) 1-49
- PUB (MPI) 1-55
- PUB (MPI) 1-57
- PUB (MPI) 1-58
- PUB (MPI) 1-59
- PUB (MPI) 1-61
- PUB (MPI) 1-62
- PUB (MPI) 1-67
- PUB (MPI) 1-72
- CAC (MPI) 1-56
- CAC (MPI) 1-60
- CAC (MPI) 1-63
- CAC (MPI) 1-66

In its Motion Brief of August 19, 2018, MPI stated that it had determined, upon further review, that certain of the IR Responses for which it initially requested confidential treatment could be in fact placed on the public record.

Accordingly, on August 20, 2018, MPI filed with the Board revised IR Responses, which placed on the public record certain information it had initially sought to be kept confidential. Following this filing, MPI's request for confidential treatment affected the following IR Responses only:

- PUB (MPI) 1-27 (Attachment C)
- PUB (MPI) 1-49 (Part C)
- PUB (MPI) 1-55
- PUB (MPI) 1-57 (Portion of response)

- PUB (MPI) 1-58 (Attachment A)
- PUB (MPI) 1-61 (Appendices 1-6)
- PUB (MPI) 1-62 (Attachment A, Appendices 1, 2, 5)
- PUB (MPI) 1-67 (Appendix 1)
- PUB (MPI) 1-72 (Portions of Appendix 1)
- CAC (MPI) 1-56 (Portions of Appendix 1)
- CAC (MPI) 1-60 (Attachment 1)
- CAC (MPI) 1-63 (Parts A and C)
- CAC (MPI) 1-66 (Part B)

On August 22, 2018, the Board received a written response to the Motion from one of the Interveners in the GRA, Consumers' Association of Canada (Manitoba) Inc. (CAC).

The other Interveners in the GRA, Coalition of Manitoba Motorcycle Groups (CMMG) and Canadian Automobile Association Manitoba (CAA), did not file any response to the Motion.

The Board did not require an oral hearing on the Motion.

2. PARTIES' POSITIONS AND BOARD FINDINGS

2.0 MPI

MPI took the position that the following IR Responses, or portions thereof, for which it sought confidential treatment, contain third-party proprietary, confidential or commercially sensitive information: PUB (MPI) 1-27, PUB (MPI) 1-49, PUB (MPI) 1-58, and CAC (MPI) 1-60.

In addition, certain IR Responses, or portions thereof, contain MPI confidential or commercially sensitive information: PUB (MPI) 1-55, PUB (MPI) 1-57, PUB (MPI) 1-61, PUB (MPI) 1-62, PUB (MPI) 1-67, PUB (MPI) 1-72, CAC (MPI) 1-56, CAC (MPI) 1-63, and CAC (MPI) 1-66.

MPI would not oppose the circulation any of the IR Responses by the Board provided the following conditions were to be imposed:

- a) That a person eligible to receive the IR Responses be:
 - i. a representative, a consultant or a professional advisor of a registered intervener granted standing to intervene on an issue or issues falling within the ambit of matters raised in each of the respective documents; or
 - ii. representative, a consultant or a professional advisor of the Board.
- b) That the IR Responses not be provided until or unless the person executed an Undertaking of Confidentiality and a Confidentiality Agreement (forms of which were appended to MPI's Motion Brief); and
- c) That no use could be made of the IR Responses, or reference made to their content, at any time where doing so would place the confidential information on the public record or make it available to persons other than individuals who had complied with the requirement to execute the Undertaking of Confidentiality and a Confidentiality Agreement.

2.1 CAC

CAC advised did not object to the conditions requested by MPI for the distribution of the IR Responses. CAC acknowledged that treating the IR Responses as confidential would impair the public interest in disclosure of the information; however, the proposed conditions on access would be a minimal impairment to the public interest.

CAC requested one amendment to the approach requested by MPI: that if it, or another Intervener, were to file a report as evidence in the GRA based upon or referring to the confidential information contained in the IR Responses, that evidence be filed in confidence with the Board and MPI on the date required (September 24, 2018, per Order 82/18). In consultation with MPI, the Intervener would then determine the need for, and prepare, a redacted version for public disclosure, if applicable, to be filed by September 26, 2018.

2.2 *Board Findings*

Proceedings before the Board are public, and documents filed with the Board by a party to a proceeding are placed on the public record. However, the Board may receive information in confidence on any terms it considers appropriate in the public interest, when the test under Rule 13(2) is met:

- (a) If the Board is of the opinion that disclosure of the information could reasonably be expected
 - i. to result in undue financial loss or gain to a person directly or indirectly affected by the proceeding; or
 - ii. to harm significantly that person's competitive position

or

- (b) If
- i. the information is personal, financial, commercial, scientific or technical in nature; or
 - ii. the information has been consistently treated as confidential by a person directly affected by the proceeding; and
 - iii. the Board considers that the person's interest in confidentiality outweighs the public interest in the disclosure of the information.

On hearing a motion under Rule 13, the Board may order the information in question be placed on the public record, order the document not be placed on the public record with such conditions on access imposed as the Board considers appropriate, order an abridged version of the document be placed on the public record, or make any other order the Board finds to be in the public interest. Rule 13(5) allows the filing party to request that the document be withdrawn prior to being placed on the public record where the Board has determined to place any part of the document on the public record.

The Board has reviewed and considered all of the information filed by MPI, as well as the submissions of CAC. The Board has taken into account the evidence filed confidentially by MPI in support of its Motion, and is satisfied that the IR Responses, or portions thereof, identified as confidential by MPI should be received in confidence, as they meet test under Rule 13(2). The restrictions requested on the distribution of the IR Responses are necessary in order to protect third party proprietary information, confidential, proprietary or commercially sensitive information.

Accordingly, the Board grants MPI's Motion. The Board accepts the conditions imposed on the receipt of the Documents as outlined in MPI's Motion materials, and orders that the IR responses be distributed only on the terms as set out in Section 3.

The Board notes that the documents to be treated in confidence respond to IRs issued on behalf of the Board or of CAC. Therefore, the Board will restrict the distribution of the IR Responses to its representatives, consultants and professional advisors, and to those of CAC.

The Board recognizes that further evidence containing confidential information from the IR Responses may be generated as a result of the distribution of the IR Responses to CAC and the Board. Therefore, the Board will require that any Second Round IRs or other evidence arising out of the information contained in the IR Responses be subject to the same restrictions as the IR Responses themselves.

The Board further accepts the procedure proposed by CAC is necessary in order to preserve the confidentiality of the IR Responses and the information contained therein, and therefore orders that if any Intervener files a report as evidence in the GRA based upon or referring to the information contained in the IR Responses, that evidence shall be filed in confidence with the Board and MPI.

The Timetable approved in Order 82/18 required that second round IRs be filed on August 20, 2018, at which time MPI's Motion was pending. Given MPI's Motion and the need for this Order, however, any Second Round IRs arising out of the IR Responses have yet to be filed. This necessitates that the Board direct a filing date for any Second Round IRs arising out of the IR Responses, as well as for those IR responses for which the request for confidential treatment was ultimately withdrawn by MPI.

The Board therefore orders that any Second Round IRs arising out of the IRs affected by this Order shall be served on MPI by **Thursday, September 20, 2018**. MPI shall provide responses to the Second Round IRs by **Monday, October 1, 2018**. The Board recognizes that in the Timetable approved in Order 82/18, Intervener evidence was to be filed by September 24, 2018, and that in order to file their evidence, Interveners may require MPI's responses to Second Round IRs. Accordingly, the Board has ordered certain revisions to the Timetable which was approved in Order 82/18, to permit

Intervener evidence to be filed following receipt of responses to Second Round IRs which arise out of the IR Responses. The Revised Timetable is attached as **Schedule "A"**, with revisions underlined.

As set out in the Revised Timetable, Intervener evidence is to be filed with the Board on October 3, 2018. As a result, the dates in Directive 3.9 of Order 89/18 are revised such that if any Intervener files a report as evidence in the GRA based upon or referring to the confidential information contained in the IR Responses, that evidence shall be filed in confidence with the Board on October 3, 2018. In consultation with MPI, the Intervener shall then determine the need for, and prepare, a redacted version for public disclosure, if applicable, to be filed by October 9, 2018.

3.0 IT IS THEREFORE ORDERED THAT:

3.1 The Board grants MPI's Motion, and hereby grants leave to MPI to file the following IR Responses, or portions thereof as identified by MPI, in confidence with the Board:

- a. PUB (MPI) 1-27 (Attachment C)
- b. PUB (MPI) 1-49 (Part C)
- c. PUB (MPI) 1-55
- d. PUB (MPI) 1-57 (Portion of response)
- e. PUB (MPI) 1-58 (Attachment A)
- f. PUB (MPI) 1-61 (Appendices 1-6)
- g. PUB (MPI) 1-62 (Attachment A, Appendices 1, 2, 5)
- h. PUB (MPI) 1-67 (Appendix 1)
- i. PUB (MPI) 1-72 (Portions of Appendix 1)
- j. CAC (MPI) 1-56 (Portions of Appendix 1)
- k. CAC (MPI) 1-60 (Attachment 1)
- l. CAC (MPI) 1-63 (Parts A and C)
- m. CAC (MPI) 1-66 (Part B) (the IR Responses)

- 3.2 The following persons shall be eligible to receive a copy of the IR Responses:
- a. Representatives, consultants or professional advisors of the Consumers' Association of Canada (Manitoba) Inc. (CAC); or
 - b. Representatives, consultants or professional advisors of the Board.
- 3.3 Any eligible person as set out in Directive 3.2 intending to receive the IR Responses shall execute the Undertakings of Confidentiality and a Confidentiality Agreements as set out in Tabs 1-6 of the Motion Brief filed by MPI, prior to the receipt of any of the IR Responses.
- 3.4 No use shall be made of the IR Responses, or reference made to their contents, at any time where doing so would place the IR Responses or the information contained therein on the public record or make them available to persons other than those authorized as set out herein who have executed the required Undertakings of Confidentiality and Confidentiality Agreements.
- 3.5 The terms and conditions placed on the receipt of the IR Responses, as set out in Directives 3.2 to 3.4, shall apply to the receipt of Second Round Information Requests and Second Round Information Request Responses arising out of the IR Responses and the information contained therein.
- 3.7 Second Round Information Requests arising out of the IR Responses shall be served on MPI by Thursday, September 20, 2018.
- 3.8 MPI shall provide responses to the Second Round Information Requests arising out of the IR Responses by Monday, October 1, 2018.
- 3.9 Directive 3.9 of Order 89/18 is revised such that if any Intervener files a report as evidence in the GRA based upon or referring to the information contained in the IR Responses or the documents or information designated as confidential in Order 89/18, that evidence shall be filed in confidence with the Board and MPI on

October 3, 2018. The Intervener shall consult with MPI and determine the need for, and prepare, a redacted version for public disclosure, if applicable, to be filed by October 9, 2018.

- 4.0 The terms and conditions placed on the receipt of the IR Responses, as set out in Directives 3.2 to 3.4, shall apply to the receipt of any of those portions of Intervener evidence containing information from the IR Responses.
- 4.0 **Schedule "A"** is the Revised Timetable for this GRA, with revisions underlined.

THE PUBLIC UTILITIES BOARD

"Robert Gabor, Q.C."

Chair

"Darren Christle"

Secretary

Certified a true copy of Order No. 123/18
issued by The Public Utilities Board



Secretary

SCHEDULE "A"**REVISED HEARING TIMETABLE**

ITEM	2018 DATES	Day of the Week	2018 Elapsed Working Days
1. Application filed and served	June 15, 2018	Friday	0
2. Notice of Public hearing to be published	June 16, 2018	Saturday	0
3. PUB Workshop	June 22, 2018	Friday	5
4. Interveners complete Registration	June 22, 2018	Friday	5
5. Pre-hearing Conference	June 25, 2018	Monday	6
6. Procedural Order Issued	July 04, 2018	Wednesday	12
7. Round One Information Requests Filed	July 11, 2018	Wednesday	17
8. Round One Information Responses Filed	August 08, 2018	Wednesday	36
9. Parties to file motions on Round One IRs	August 09, 2018	Thursday	37
10. Board to hear motions	August 10, 2018	Friday	38
11. Round Two Information Requests Filed	August 20, 2018	Monday	44
12. Round Two Information Responses Filed	September 14, 2018	Friday	62

13. Reminder Notice of Public Hearing Published	September 2018	15, Saturday	62
14. Parties to File any Motions	September 2018	17, Monday	63
15. Board to hear all Motions	September 2018	19, Wednesday	65
16. <u>Round Two Information Requests Filed for Confidential IR Responses</u>	<u>September 2018</u>	<u>20, Thursday</u>	<u>66</u>
17. Meeting of Legal Counsel	September 2018	21, Friday	67
18. <u>Round Two Confidential Information Responses Filed</u>	<u>October 1, 2018</u>	<u>Monday</u>	<u>73</u>
19. <u>Interveners to file pre-filed testimony to all parties</u>	<u>October 3, 2018</u>	<u>Wednesday</u>	<u>75</u>
20. <u>Information Requests on Intervener Evidence</u>	<u>October 5, 2018</u>	<u>Friday</u>	<u>77</u>
21. <u>Interveners Information Responses</u>	<u>October 10, 2018</u>	<u>Wednesday</u>	<u>79</u>
22. <u>MPI Rebuttal Evidence</u>	<u>October 12, 2018</u>	<u>Friday</u>	<u>81</u>
23. Hearing commences	October 15 to 19	Monday to Friday	5 days
	October 22 to 26	Monday to Friday	5 days
	October 29 to November 2	Monday to Friday	5 days
Board Issues Order	December 2018	3,	