

**Order No. 130/18**

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

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**September 24, 2018**

**BEFORE: Irene A. Hamilton, Panel Chair  
Robert Vandewater, Member  
Carol Hainsworth, Member  
Mike Watson, 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 (IRs) filed in the 2019/2020 General Rate Application (GRA or the Application). The Board provides direction on the treatment of Intervener evidence arising out of the IR responses.

### 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. The Responses to the Second Round of IRs was filed on September 14, 2018.

On September 14, 2018, concurrently with its filing of responses to Second Round IRs, MPI filed a Notice of Motion with the Board in which it sought leave to file one of the Second Round IR responses in confidence with the Board, on any terms the Board considered appropriate and in the public interest. On September 17, 2018, MPI electronically served a Motion Brief on the Board and the Interveners in the GRA. MPI also filed a supporting Affidavit with the Board only, containing confidential information, in hard copy format.

In its Notice of Motion of September 14, 2018, MPI requested that the Appendices to PUB (MPI) 2-24 be filed confidentially with the Board.

On September 18, 2018, the Board received written responses to the Motion from two of the Interveners in the GRA, Consumers' Association of Canada (Manitoba) Inc. (CAC), and Coalition of Manitoba Motorcycle Groups (CMMG).

The other Intervener in the GRA, 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 Appendices 1 to 5 of PUB (MPI) 2-24 (the Documents) contain information that is commercial and proprietary to the third party who created them. MPI is not authorized to make the information contained in the Documents available for public use. MPI stated that the public release of the Documents could reasonably be expected to result in financial loss or significant harm to the competitive position of the third party.

MPI further stated that it is contractually bound to maintain the Documents in confidence, and that maintaining the confidence of the Documents outweighs the public interest in their disclosure.

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

- a) That a person eligible to receive the Documents 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. a representative, a consultant or a professional advisor of the Board.
- b) That the Documents 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 Documents, 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 *Intervener Responses***

CAC did not object to the conditions requested by MPI for the distribution of the Documents. CAC acknowledged that treating the Documents 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 that if it, or another Intervener, were to file a report as evidence in the GRA based upon or referring to the information contained in the Documents, that evidence would be filed in confidence with the Board and MPI on the date required (October 3, 2018, per Order 123/18). 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 October 9, 2018.

CMMG advised that it was in agreement with CAC's position and did not take issue with the confidential treatment of the Documents.

## **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 and CMMG. The Board has taken into account the evidence filed confidentially by MPI in support of its Motion, and is satisfied that the Documents should be received in confidence, as they meet the test under Rule 13(2). The restrictions requested on the distribution of the Documents 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 Documents be distributed only on the terms as set out in Section 3 below.

The Board notes that the Documents respond to an IR in respect of Issue 19 as set out in Order 82/18, Current IT Strategic Plan and IT Expenses and Projects. Issue 19 has been examined only by the Board and CAC in the course of the IR process in this GRA. Therefore, the Board will restrict the distribution of the Documents to its representatives, consultants and professional advisors, and to those of CAC.

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

The Board further accepts the procedure proposed by CAC is necessary in order to preserve the confidentiality of the Documents 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 Documents, that evidence shall be filed in confidence with the Board and MPI, in accordance with the dates previously set out in Order 123/18.

### **3.0 IT IS THEREFORE ORDERED THAT:**

- 3.1 The Board grants MPI's Motion and hereby grants leave to MPI to file Appendices 1 to 5 of PUB (MPI) 2-24 (the Documents) in confidence with the Board.
- 3.2 The following persons shall be eligible to receive a copy of the Documents:
  - 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 Documents shall execute the Undertaking of Confidentiality and Confidentiality Agreements as set out in Tabs 1-3 of the Motion Brief filed by MPI on September 17, 2018, prior to the receipt of any of the Documents.
- 3.4 No use shall be made of the Documents, or reference made to their contents, at any time where doing so would place the Documents 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 Undertaking of Confidentiality and Confidentiality Agreements.
- 3.5 If any Intervener files a report as evidence in the GRA based upon or referring to the information contained in the Documents, 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.

- 3.6 The terms and conditions placed on the receipt of the Documents, 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 Documents.

THE PUBLIC UTILITIES BOARD

"Irene A. Hamilton"

Panel Chair

"Darren Christle"

Secretary

Certified a true copy of Order No. 130/18  
issued by The Public Utilities Board



Secretary