

Order No. 115/19

MANITOBA PUBLIC INSURANCE CORPORATION (MPI OR THE CORPORATION):

**PROCEDURAL ORDER FOR THE 2020/21 GENERAL RATE APPLICATION
RE: APPLICATION FOR INTERVENER STATUS
OF INSURANCE BROKERS ASSOCIATION OF MANITOBA**

August 16, 2019

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

Summary

By this Order, the Public Utilities Board of Manitoba (Board) accepts the application for Intervener status of Insurance Brokers Association of Manitoba (IBAM) for the Board's public hearing of the General Rate Application (GRA) of Manitoba Public Insurance Corporation (MPI or Corporation), for the review and approval of base rates and premiums for universal compulsory driver and vehicle insurance to take effect March 1, 2020. The Board also provides IBAM with direction regarding procedural matters for the GRA.

1.0 Introduction

The Pre-Hearing Conference (PHC) for the GRA took place on June 27, 2019. The purpose of the PHC included, among other things, hearing applications from prospective Interveners, considering the issues to be decided by the Board in the GRA, and establishing a timetable for the GRA.

On June 20, 2019, the Board sent a letter to prospective Interveners, including IBAM, which addressed matters such as Intervener responsibilities and the Pre-Hearing Workshop (Workshop), which was scheduled for June 24, 2019. IBAM attended the Workshop, and was provided with a copy of the transcript of the Workshop by the Board the next day. The deadline for filing of applications for Intervener status was June 25, 2019. On that day, IBAM advised the Board Secretary that it intended to make a presentation at the public hearings, rather than apply as an Intervener. Accordingly, IBAM did not file an application for Intervener status by the deadline, nor did it appear at the PHC. IBAM was provided with a copy of the transcript for the PHC by the Board on July 2, 2019.

The Board issued Procedural Order 92/19 on July 5, 2019 and granted Intervener status to the Consumers' Association of Canada (Manitoba) Inc. (CAC), Coalition of Manitoba Motorcycle Groups (CMMG), and Bike Winnipeg (BW).

On July 30, 2019, by letter to the Board, IBAM advised of its intention to apply for Intervener status in the GRA. This Order is required as a result of IBAM filing an application for Intervener status following the issuance of Order 92/19.

IBAM completed its application for Intervener status by filing the necessary application with the Board on August 2, 2019. The Board invited MPI to provide comment on IBAM's application, which MPI did by letter to the Board on August 7, 2019. IBAM provided a reply to MPI's comments by letter to the Board on August 8, 2019.

2.0 IBAM Application for Intervener Status

IBAM advised that it is a not-for-profit organization representing the interests of brokers and consumers of property and casualty insurance in Manitoba, and currently has over 2,000 members. IBAM advised that brokers are the primary interface for MPI customers and Driver and Vehicle Licensing services in Manitoba.

IBAM advised that it represents brokers in discussions with MPI regarding broker compensation, and has been working with MPI on the launch of new products and changes in service delivery, which have an impact on customers or brokers.

In explaining its reasons for intervention, IBAM cited submissions given by MPI and CAC at the PHC on June 27, 2019. In particular, IBAM noted comments: (1) of MPI, that broker commissions and future service delivery may arise in the GRA, and (2) of CAC, that it intends to examine the impact on ratepayers of future changes to MPI's broker agreements.

IBAM has sought Intervener status in order for the Board to be informed of the issues related to broker agreements entered into with MPI, the work and services performed by brokers in the delivery of MPI services, and other related services provided to Manitobans. Further, IBAM advised that it will be affected by the Board's decision in this GRA because the role of brokers in the delivery of MPI services will be a central area of inquiry. In addition, changes in premiums will directly affect brokerages.

IBAM intends to address a number of issues in the GRA, summarized as follows:

- The role played by brokers in providing MPI services and the value provided by brokers;
- The costs associated with the provision of MPI services by brokers and commissions paid for those services compared to other industries and jurisdictions; and

- The effect that a change in the timing of MPI's fiscal year-end will have on current broker agreements, and the effect of rate changes on brokers.

IBAM indicated that it intends to attend throughout the public hearings, give evidence and conduct cross-examination of witnesses. IBAM will also seek an award of costs.

3.0 MPI Response

MPI did not oppose IBAM's application for intervention; however, it asked the Board to take into account certain factors in deliberating on the application.

First, given that IBAM's application was filed significantly past the deadline, MPI submitted that IBAM should be subject to the timetable as previously ordered by the Board in Order 92/19. Accordingly, having missed the deadline for the first round of Information Requests (IRs), IBAM should be limited to one round of IRs.

Second, MPI submitted that IBAM had not included its financial statements or a preliminary draft budget in support of an application for costs. It also took the position that IBAM had not demonstrated that it has insufficient resources to adequately present its case without an award of costs.

Third, MPI expressed the view that if IBAM wishes to restrict its own evidence to pre-filed written testimony, that would not add value to the process – and that procedural fairness would require that IBAM provide *viva voce* testimony in order for its evidence to be adequately tested.

Lastly, by a directive dated July 24, 2019 (the Directive), the Government of Manitoba instructed MPI to engage in conciliation with IBAM to reach an agreement on the Future Service Delivery Strategy under *The Manitoba Public Insurance Act* and *The Drivers and Vehicles Act*. One of the principles set out in the Directive is that MPI and IBAM will not make public statements about the subject matter of the negotiations during the conciliation process.

In its reply to MPI's comments, IBAM acknowledged its late filing but stated that it did not have reason to believe that issues affecting brokers would be key areas of inquiry in the GRA until it had had an opportunity to review the transcripts from the PHC. IBAM recognized that it may not

be possible for it to participate in two rounds of IRs, given its late filing, and would be prepared, if necessary, to participate in one round of IRs only.

With respect to its participation in the hearing, IBAM clarified that while it intends to submit evidence, it will not commit to providing *viva voce* evidence. If granted Intervener status, IBAM would provide further detail as to its intended involvement. IBAM also advised that it intends to follow the Directive, but doing so will not detract from the value that its participation will bring to the GRA.

On the issue of costs, IBAM advised that it intends to make a significant contribution to the GRA, participate in a responsible manner, cooperate with other Interveners to avoid duplication, and represent interests beyond its sole business interests. Further, IBAM indicated that, upon being granted Intervener status, it would provide a detailed cost estimate to the Board in accordance with the Board's Intervener Cost Policy.

4.0 Board Comments and Decisions

After considering the written submissions from IBAM and MPI, the Board approves the application for Intervener status of IBAM. The Board accepts that IBAM's intervention will serve to assist the Board in its examination of the MPI services performed or facilitated by brokers, as well as the costs associated with the provision of those services.

With respect to the issues to be addressed by IBAM, the Board approved the Final Issues List for the GRA in Order 92/19. The Board expects that Issue 9, which addresses MPI's costs of operations and cost containment measures, and Issue 17, which addresses MPI's IT expenses and projects, will be relevant to IBAM's intervention.

Given the late timing of IBAM's application, the Board hereby provides direction to IBAM for its participation in the GRA. The orderly proceeding of the GRA must not be affected by IBAM's decision to file an application after the deadline and therefore the Board will not amend the Timetable, previously approved in Order 92/19, to accommodate this late filing. Further, the Board would refer IBAM to Order 92/19 (and the Schedules thereto) for direction on matters such as the rates by which counsel for the Interveners shall have their rates set, the procedures to be followed

in the GRA, and the IR template to be used by all parties. IBAM is required to follow these procedures.

IBAM should contact the Board to obtain copies of the first round of IRs and responses. In accordance with the Timetable, IBAM will only be permitted to file IRs for the second round, which are due on August 26, 2019. Further, if IBAM intends to present evidence in the GRA, it should so advise the Board and Board counsel as soon as possible, file pre-filed testimony by September 20, 2019, in accordance with the Timetable, and respond to IRs on its pre-filed testimony.

At the PHC, the Board heard submissions regarding the pre-qualification of expert witnesses. Having not participated in the PHC, IBAM cannot participate in the pre-qualification process. Therefore, any expert witnesses it intends to call will need to be qualified in the usual manner in the public hearings.

The Board also directs IBAM to contact Board counsel to discuss the amount of time IBAM anticipates it will require for its direct evidence and cross-examination. The Board expects that IBAM will cooperate with other Interveners and with Board counsel to avoid duplication and restrain regulatory costs.

With respect to costs, the Board issued a new Intervener Cost Policy effective September 28, 2018. Contrary to the comments made by MPI in its response to IBAM's application, IBAM was not required to file a detailed cost estimate with its application. In accordance with the procedures in the Policy at Section 9.0, IBAM must file a detailed cost estimate with the Board following the requirements of the Policy no later than August 26, 2019. Board staff may provide comments on cost estimates, but these are not binding. Section 2.3 of the Policy states that costs awarded shall be at the sole discretion of the Board, and Section 2.4 states that the Board may award only a portion of the costs being sought by an Intervener. The Board may decide to award all, a portion, or none of the costs award sought.

Further, as set out in Section 9.2.7, the filing of Intervener cost estimates and Board staff's review of Intervener cost estimates does not guarantee or disqualify an Intervener from eligibility for a cost award. Any comments from Board staff on Intervener cost estimates are not binding on the Intervener or the Board. All cost awards, whether an advance of funds or a final costs award, are

in the sole discretion of the Board and all applications for cost awards will be considered by the Board in accordance with the criteria in Section 3.0. Board approval will only be granted when it determines the cost awards applications after the hearing.

In determining whether to grant an award of costs, the Board will take into account the factors as set out in Section 3.0 of the Policy, including whether IBAM:

- a) Made a significant contribution that is relevant to the proceeding and contributed to a better understanding, by all parties, of the issues before the Board;
- b) Participated in the hearing in a responsible manner and cooperated with other Interveners who have common objectives in the outcome of the proceedings in order to avoid a duplication of intervention;
- c) Represented interests beyond its sole business interest; and
- d) Had a substantial interest in the outcome of the proceeding and represented the interests of a substantial number of ratepayers.

In accordance with Section 9.4 of the Policy, IBAM will be required to file a Final Cost Award Application on the prescribed PUB form after the hearing is completed.

5.0 IT IS THEREFORE ORDERED THAT:

1. The application for intervener status in the 2020 General Rate Application (GRA) filed by Insurance Brokers Association of Manitoba (IBAM) is hereby granted.
2. IBAM shall be permitted to file one round of Information Requests only, in accordance with the date as set out in the Timetable in **Schedule "B"** to Order 92/19.
3. IBAM shall follow the procedures and Timetable as set out in Order 92/19, and Schedules thereto, in its participation in the GRA.
4. IBAM shall file its detailed cost estimate in accordance with the requirements of the Intervener Costs Policy by August 26, 2019.


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

"Irene Hamilton, Q.C."
Panel Chair

"Dr. Darren Christle"
Secretary

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Secretary