

Order No. 22/21

**MUNICIPALITY OF ROSSBURN
SUNSET POINT WATER UTILITY
UTILITY DEFICITS 2013 to 2019**

February 3, 2021

BEFORE: Shawn McCutcheon, Panel Chair
Mike Watson, Panel Member

Table of Contents

1.0	Executive Summary.....	3
2.0	Background	3
3.0	Application.....	4
4.0	Board Findings	6
5.0	IT IS HEREBY ORDERED THAT:.....	8

1.0 Executive Summary

By this Order, the Public Utilities Board (Board) denies the request of the Municipality of Rossburn (Municipality) to extend the deadline to submit outstanding deficit applications for the Sunset Point Water Utility (Utility) until September 2021.

The Board will direct the Municipality to submit completed deficit applications on or before February 28, 2021. There will be no extensions granted.

The reasons for the Board's decisions are under Board Findings.

2.0 Background

This decision is best read in conjunction with Board Order Nos. 28/17 and 131/20, available on the Board's website.

The Rossburn Municipality was formed in January 2015 with the amalgamation of the Town of Rossburn and the Rural Municipality of Rossburn (RM). The Sunset Point Utility is located within the former RM. The water plant was installed in 2007 by the developer and gifted to the RM in 2009. In September 2009 the RM took over operations of the Utility, and began charging for the services in the final quarter of 2011. The RM believed this was a "private utility" and did not request or receive Board approval for the utility rates.

The Utility has been charging an annual rate of \$284.40 to any property owner within the Sunset Point development with a water connection since 2011. The rate was calculated using the rates approved by the Board for the Town of Rossburn Utility in Board Order No. 77/10, issued July 2010. The two utilities are not connected and do not share any physical infrastructure. The rates are inadequate and the Utility has incurred significant annual operating deficits since at least 2013.

On November 14, 2016, the Municipality applied to the Board for approval of initial rates to be set on an interim basis. There was no requested change to the flat rate of \$284.40 per connection. On March 2, 2017 the Board issued Board Order No 28/17, granting approval of

the initial rates. The Board Order also directed the Utility to submit a copy of the water rate by-law once it had had third and final reading, to file an application for revised rates on or before June 30, 2017 and to file applications for approval of all operating deficits no later than April 30, 2017.

On June 3, 2020, the Municipality submitted an application for revised water rates for the Utility, and requested the Board approve the rates effective January 1, 2020 on an interim, *ex parte* basis. The Board reviewed the application, and discovered the utility rates approved in Board Order No. 28/17 had never been authorized by by-law as required.

The Board had also noted in its June 23, 2020 letter to the Municipality that the Municipality had not submitted any applications for the deficits incurred from 2013 to 2019. The Municipality's response stated this was due to the Municipality not having a plan for deficit recovery. The Municipality requested, "that deficit approval be deferred at this time".

On November 2, 2020 in Board Order No. 131/20, the Board granted approval of revised water rates on an interim *ex parte* basis effective January 1, 2020. The Board also denied the Municipality's request to "defer" the actual deficits experienced by the Utility, advising there is no provision in legislation to allow the Municipality to do so. The Board directed the Municipality to file applications for all outstanding deficits on or before November 30, 2020.

On November 13, 2020 the Board sent a letter to the Municipality with information requests relating to the rate application. Information request number three of this letter was an additional request for the Municipality to submit deficit applications with proposals for recovery of the deficits.

3.0 Application

On December 1, 2020, the Municipality submitted a letter and back up documents in response to the Board's information requests from November 13, 2020. The response to information request number three advised the new rates approved in Board Order NO. 131/20 would put the Utility in a breakeven position beginning in 2020.

The Municipality repeated it had had a meeting in January 2020 with the ratepayers on the Sunset Point Utility system “who were upset about the rate increase and were very vocal about deficit recovery.” The Municipality expressed concern that “Were the deficit to be completely recovered by the 28 current users, each user would be responsible for about \$5,300.”

The Municipality advised the Board it is in discussions with Manitoba Water Services Board (MWSB) about options to expand the Utility to make it more viable. The Municipality went on to state this process will entail working with MWSB to investigate servicing options, obtaining cost estimates, circulating information to property owners, holding public meetings(s), following up on options and making a decision on the viability of expanding Sunset Point Utility to service part or all of the existing seasonal water system that services the Rossman Lake resort area.

The Municipality stated, “Reasonable water rates spread out over a larger customer base we feel may allow for a portion of recovery through a rate rider on the existing users’ water bills.”

The Municipality’s response advised Council is considering other sources of funds to recover the accumulated debt. It provided two examples, the first being land owned by the Municipality that could be sold as a potential cottage lot, with the funds from that sale used to partially offset the Sunset Point deficit. The second example was using the Sunset Point development fees currently held in reserve towards the deficit.

In its letter, the Municipality advised it “is very concerned about adding deficit recovery to the Sunset utility bills at this time and would like time to adequately review options.” and requested the Board “set a more attainable deadline of September 30, 2021 to file a deficit reduction plan for Sunset Point Utility.”

The Municipality did not submit an application to the Board for approval of the outstanding deficits, nor did the Municipality provide a Council resolution supporting its informal request for an extension to September 30, 2021. The Municipality did not file a request to review and vary the Board’s decision regarding the outstanding deficit applications.

4.0 Board Findings

The Board denies the Municipality's request for an extension to September 30, 2021 to file its applications for 2013 to 2019 operating deficits.

This Board Order will mark the third time the Board has formally ordered the Municipality to submit outstanding deficit applications since 2017. In Board Order No. 131/20, the Board clearly explained that directives found in Board Orders are mandatory, and failure to comply may result in the Board imposing penalties. Despite this, the Municipality continues to be non-compliant with directives and following the Board's processes to appeal Board decisions.

In Board Order No. 131/20, the Board made clear its objective when it stated, "The Board is sympathetic to the financial situation of the Utility and the burden this represents for its ratepayers, but allowing the Municipality to continue to delay its obligation to deal with the issues only creates a larger problem to solve. The perils of inaction are evidenced here, as the Utility is now trying to resolve deficits totalling over \$150,000 with very few connected customers to share the burden.

The Board will order the Municipality to file applications for all outstanding deficits, including the proposed method of recovery, on or before November 30, 2020.

The Municipality has demonstrated a lack of urgency in dealing with the ongoing financial issues experienced by the Utility. This is unacceptable, and is directly responsible for the difficulties faced by the Municipality and ratepayers."

The Board does not find the Municipality's request for "time to adequately review options" persuasive, in light of the fact the Municipality was first directed by the Board to apply for outstanding deficits on or before April 30, 2017. The Municipality was also directed to submit a rate application on or before June 30, 2017, which may have resulted in fewer deficits to be recovered.

The Board will order the Municipality to file applications for all outstanding deficits, including the proposed method of recovery, on or before February 28, 2021. There will be no extensions granted.

The Board supports the Municipality considering alternative sources to recover the deficit, but these proposals must be submitted to the Board as part of a formal application in order for the Board to consider them and approve, vary or deny the recovery methods.

Section 164(4) of The Municipal Act states: *The council must ensure that the amount of estimated revenue and transfers provided for in the utility budget is not less than the amount of estimated expenditures in respect of the utility unless, before adopting the operating budget, the council obtains The Public Utilities Board's written approval, which may include any condition the Board considers necessary or advisable.*

As the Municipality explained in its “Q&A document” provided to utility customers, the Municipality would need to provide a very convincing argument to the Board to have them approve funds other than those collected from the Utility’s ratepayers. The Board will consider any properly quantified and supported rationale, but the Municipality must first submit the application.

The Board has been contacted by the Sunset Point Homeowners Association (HOA) and given copies of communications between the HOA and the RM. The Board recommends the RM work with the HOA to develop a plan to present to the Board for approval in the time frame provided.

The Board will not entertain any further delays in attending to the matter of these deficits. Any delay on the part of the Municipality may result in penalties and the Board setting a recovery methodology using what evidence it has at hand.

This is an extraordinary step, and the Board has no desire to issue a decision on the method of recovery without the benefit of the Municipality’s cooperation and input. The Municipality’s ongoing refusal to comply with Board directives forces the Board to consider taking this drastic action, as failing to do so makes the Board complicit in the Municipality’s failure to act.

5.0 IT IS HEREBY ORDERED THAT:

1. The Municipality of Rossburn's request to extend the deadline to submit outstanding deficit applications to September 30, 2021, BE AND IS HEREBY DENIED.
2. The Municipality of Rossburn file applications for approval of all operating deficits experienced by the Sunset Point Water Utility, including method of recovery, on or before February 28, 2021.

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 (Rules). The Board's Rules may be viewed on the Board's website at www.pubmanitoba.ca.

Fees payable upon this Order - \$150.00

THE PUBLIC UTILITIES BOARD

"Shawn McCutcheon"

Panel Chair

"Jennifer Dubois, CPA, CMA"

Assistant Associate Secretary

Certified a true copy of Order No. 22/21

issued by The Public Utilities Board



Assistant Associate Secretary