

Order No. 42/22

**APPLICATION FOR AWARD OF COSTS
BY DUFFY'S TAXI LTD. AND UNICITY TAXI LTD. (TAXI COALITION)
FOR INTERVENTION IN MANITOBA PUBLIC INSURANCE CORPORATION'S
GENERAL RATE APPLICATION FOR THE 2022/23 INSURANCE YEAR (GRA)
AND 2022 SPECIAL REBATE APPLICATION (SRA)**

April 25, 2022

**BEFORE: Irene A. Hamilton, Q.C., Panel Chair
Robert Gabor, Q.C., Chair
Michael Watson, Member**

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1. INTRODUCTION

By this Order, the Public Utilities Board (Board) hereby awards the Taxi Coalition (TC) costs of \$180,819.00, for its intervention in the General Rate Application (GRA) of Manitoba Public Insurance (MPI or the Corporation) with respect to compulsory driver and vehicle insurance premiums for the 2022/23 insurance year, and the 2022 Special Rebate Application (SRA).

The Board provides its reasons for this costs order below.

2. BACKGROUND

By Procedural Order 76/21, dated July 15, 2021, the Board granted an application for Intervener status filed by TC and approved the Final Issues List for the GRA. Order 76/21 also referred to the Board's Intervener Cost Policy, and the criteria applied by the Board in determining whether to award costs to an Intervener.

On July 19, 2021, MPI filed the 2022 Special Rebate Application and in Order 107/21, dated October 4, 2021, the Board ordered that the GRA and SRA be consolidated and heard together.

In its application for Intervener status, TC indicated that it intended to address several issues in the GRA, including issues related to the Capital Management Plan approved by the Board in Order 176/19 (CMP) such as the discontinuance of the capital release mechanism and MPI's reliance on the SRA to return excess capital. TC's application for Intervener status also included a catch-all provision that TC may examine other matters on the Board's Final Issues List, should those matters prove relevant to the TC's interests.

TC participated in the GRA and SRA in the Information Request (IR) process, by calling expert evidence in the public hearings, conducting cross-examination of MPI witnesses, and presenting argument.

3. APPLICATION

On February 24, 2022, TC filed its final Application for an Award of Costs for its intervention (Cost Application), for a total of \$180,819.00, broken down as follows:

2022 GRA and SRA	\$168,875.35
Vehicle For Hire Technical Conference	\$5,271.53
MPI Application for Review and Variance of Order 134/21 following 2022 GRA	\$6,672.12
TOTAL:	\$180,819.00

TC notes that the costs sought for its participation in the GRA and SRA are \$5,413.65 lower than the cost estimate it provided to the Board Secretary on July 16, 2021.

4. MANITOBA PUBLIC INSURANCE COMMENTS

By letter dated March 11, 2022, MPI provided comments to the Board on TC's Cost Application. MPI opposes the Cost Application and submits that the Board should deduct the amount of \$13,495.51 from the total requested by TC, arguing that TC:

- Pursued and argued an issue that was not relevant to the proceedings;
- Engaged in conduct that ignored established procedures;
- Unnecessarily lengthened the duration of the 2022 GRA; and
- Incurred costs that were easily avoidable.

MPI submits that TC's participation in the 2022 GRA was, in part, not responsible because TC made arguments regarding the Driver and Vehicle Administration (DVA) line of business that unnecessarily lengthened the hearing, did not assist the Board in

determining whether the rates sought in the 2022 GRA were just and reasonable, and increased the cost of the hearing.

MPI states that in TC's application for Intervener status, it did not indicate that the DVA transfer issue was an area on which it intended to focus. MPI further states that in the Pre-Hearing Conference held on July 9, 2021, the TC did not advise of any plans to address the DVA transfer issue or any intention to advocate for the reversal of the transfer of funds to DVA. Accordingly, based on these representations, MPI submits that it did not expect TC to advocate, as it later did, in respect of the DVA transfer issue.

MPI states that during the discovery phase of the 2022 GRA, MPI received and answered 44 IRs submitted by TC, none of which pertained to the DVA transfer issue. In its opening statement at the commencement of the public hearings on October 12, 2021, TC did not indicate an express desire to advocate on the DVA transfer issue. MPI states that shortly after presenting its opening statement, TC cross-examined Mr. Eric Herbelin, the Chief Executive Officer of MPI, on the DVA transfer issue, asking questions on the potential impact on the Taxicab Vehicle For Hire (VFH) Class had MPI not transferred excess capital from Extension to DVA.

MPI submits that throughout the course of the oral hearing, TC sought a series of undertakings from MPI regarding the DVA transfer issue, which MPI submits could have been asked by way of IRs. MPI states that responding to these undertakings required it to commit a considerable amount of time and resources during the hearing.

MPI further argues that, since TC did not request information regarding the DVA transfer issue in advance of the oral hearing, the devotion of significant amounts of time to the undertakings regarding the DVA transfer issue was irresponsible.

MPI submits that TC argued for the first time in closing submissions that the transfer by MPI of excess capital from Extension to DVA was unlawful and improper, and advocated

for its reversal. Because another Intervener, the Consumer's Association of Canada (Manitoba) (CAC), also canvassed the DVA transfer issue during their own submissions, MPI submits that there was a duplication of those efforts.

MPI states that the Board found the arguments raised by the TC regarding the legality of the transfer from Extension to DVA to be "irrelevant." MPI submits that TC devoted a significant amount of time asking questions related to the DVA transfer issue which questions could have been asked by way of Information Requests and which MPI argues was of no assistance and served no purpose other than to lengthen the hearing and increase the legal costs charged to the TC.

MPI estimates that the TC incurred \$13,495.51 in additional legal costs that it would not otherwise have incurred had it participated in the hearing in a responsible manner, and arrived at this figure with reference to the fees charged to the TC by counsel leading the advocacy of the issue of DVA transfers. Accordingly, MPI asks that the Board reduce the TC cost award for the 2022 GRA and SRA by this amount, and award \$155,379.84 instead.

5. TC RESPONSE

On March 17, 2022, TC provided a reply to MPI's letter to the Board. TC's position is that:

- It acted in a focused and reasonable manner in addressing the transfers from Extension to DVA, an issue that was properly within the scope of the proceeding and the TC intervention;
- It collaborated effectively with other Interveners to avoid duplication; and
- The undertakings that TC sought with respect to the DVA transfer issue were relevant to the issue of fair and just Taxi VFH rates.

According to TC, the DVA transfer issue was listed on the Board's Final Issues List and fell within the scope of the areas that TC listed in its application for Intervener

status. TC states that MPI's reading of TC's application is narrow, incorrect, and inconsistent with TC's stated expectations at the hearing. TC submits that MPI anticipated that Extension transfers to DVA were going to be a focal point in the hearing. During the hearing, MPI stated that it welcomed questions from the Board and Interveners, and was prepared to answer questions on why certain decisions were made on matters like Extension transfers to DVA.

TC states that it collaborated with the other Interveners on the DVA transfer issue, with CAC taking the lead role, in order to limit duplication. TC notes that Board counsel and other Intervener counsel each addressed different aspects of the DVA transfer issues during the hearing.

With respect to the undertakings sought by TC regarding the DVA transfer issue, TC states that if the Board had been of the view that the evidence sought by TC was irrelevant to the issue of fair and just rates being charged to taxis, it would not have required MPI to provide answers to those undertakings.

TC also comments that, in Order 22/22 the Board ordered CAC full costs for the 2022 GRA and SRA and referenced the fact that transfers between Extension and DVA were specifically included in the Final Issues List, and that this issue was clearly before the Board. TC argues that most of the analysis and reasoning in Order 22/22 is applicable to TC's claim for costs.

6. BOARD FINDINGS

Pursuant to section 56 of *The Public Utilities Board Act*, the Board has jurisdiction to award costs of, and incidental to, any proceeding before the Board.

The Board's Intervener Costs Policy (the Policy) applies to the GRA and SRA. The Policy sets out interveners' eligibility for costs awards and the principles applied by the Board in determining whether to grant an award of costs:

3.1 In any proceeding the Board may award costs to be paid to any Intervener who has:

- 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 their sole business interest; and
- d) a substantial interest in the outcome of the proceeding and represents the interests of a substantial number of ratepayers.

3.2 In determining whether the Intervener should receive the amount of costs sought in a costs application, the Board may consider whether the Intervener did one or more of the following:

- a) made reasonable efforts to ensure that the Intervener's evidence was not unduly repetitive of evidence presented by another Intervener;

- b) made reasonable efforts to cooperate with other Interveners to reduce the duplication of evidence and questions to combine the Intervener's submission with that of similarly interested Interveners;
and
- c) needed legal or technical assistance to take part in a proceeding.

3.3 The Board may award an amount of costs that is less than the amount sought in a costs application, including an award of no costs, where the Board determines that the Intervener did one or more of the following:

- a) asked questions on cross-examination that were unduly repetitive of questions previously asked by another Intervener;
- b) presented in oral evidence significant new evidence, not previously provided in the proceeding, that was available to the Intervener at the time that the Intervener pre-filed its written evidence;
- c) failed to comply with a direction of the Board, including a direction on the filing of the evidence;
- d) submitted evidence and argument on issues that were not relevant to the proceeding;
- e) engaged in conduct that unnecessarily lengthened the duration of the proceeding or resulted in unnecessary costs;

- f) incurred costs that did not assist in the Board's consideration and adjudication of the issues in the proceeding and/or did not contribute to an advancement of the Board's understanding of the issues;
- g) the Intervener failed to provide notification of a material difference in the amount of the Intervener's cost estimate or the scope of the Intervener's participation at the time the material difference should reasonably have been anticipated; or
- h) such other factor(s) as the Board considers relevant.

The Board notes that MPI made similar arguments in this Cost Application as it did with respect to CAC's cost application. The Board rejected those arguments in Order 22/22.

The Board finds that TC made a significant contribution that was relevant to the GRA and SRA and contributed to a better understanding of the issues before the Board. The Board also finds that TC participated in a responsible manner and is not persuaded that TC made any irrelevant contributions or unnecessarily lengthened the proceedings.

MPI's transfers from Extension to DVA were specifically included in the Final Issues List in Order 76/21. The Board did not restrict the scope of TC's intervention in any way, and therefore TC was entitled to ask questions and make submissions regarding any items on the Final Issues List. The DVA transfer issue was clearly before the Board as it was highlighted in the opening and closing submissions of MPI and in the testimony of MPI's President and Chief Executive Officer, and the Board devoted a significant portion of its reasons in Order 134/21 to the issue. Further comment in that regard is found in Order 21/22, issued following on MPI's application for a review and variance of Order 134/21.

The Board's findings in Order 22/22 regarding CAC's cost application are applicable to TC's Cost Application, and bear repeating:

[...] the Board would reasonably expect that all parties would advance any argument or area of inquiry on this issue that, in their judgment, would be a relevant consideration for the Board in its determination of the justness and reasonableness of MPI's rate and rebate requests. Further, the amount of Basic excess capital is affected by transfers from Extension to Basic and therefore the Board finds that the legality of those transfers was a valid area of inquiry.

[...]

It is not unusual for a party to advance an argument or position that is ultimately not accepted by the Board but that, in and of itself, does not necessarily lead to the conclusion that the party making the argument conducted itself irresponsibly. A party does not know how the Board will decide a particular issue when presenting argument or taking a particular position before the Board.

The Board does not accept MPI's characterization of TC's arguments as irrelevant, and there is no reasonable basis to discount TC's costs award in the manner requested by MPI.

For all of these reasons, the Board will grant TC the full amount claimed in its Cost Application.

7. IT IS THEREFORE ORDERED THAT:

1. An award of costs to Taxi Coalition in the total amount of \$180,819.00 BE AND IS HEREBY ORDERED.
2. Manitoba Public Insurance shall pay the Taxi Coalition the costs awarded herein within 15 days of the date of this Order.

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

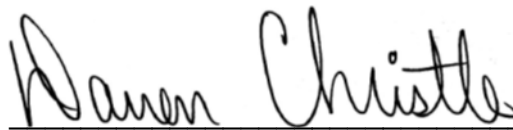
"Irene Hamilton, Q.C."

Panel Chair

"Darren Christle, PhD, CCLP, P.Log., MCIT"

Secretary

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issued by The Public Utilities Board



Secretary