

**Order No. 35/23**

**MANITOBA PUBLIC INSURANCE CORPORATION (MPI OR THE CORPORATION):  
COMPULSORY 2023/24 DRIVER AND VEHICLE INSURANCE PREMIUMS  
AND OTHER MATTERS**

**APPLICATION FOR REVIEW AND VARIANCE OF ORDER 4/23  
FILED BY MANITOBA PUBLIC INSURANCE CORPORATION**

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**March 21, 2023**

**BEFORE:** Robert Gabor, K.C., Chair  
Irene A. Hamilton, K.C., Panel Chair  
George Bass, K.C., ICD. D, Member  
Susan Boulter, Member

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## 1.0 SUMMARY

On January 11, 2023, the Public Utilities Board (Board) issued Order No. 4/23 with respect to the General Rate Application (GRA) of Manitoba Public Insurance (MPI or the Corporation) for rates and premiums for compulsory vehicle insurance and driver insurance premiums (Basic), effective April 1, 2023. The Board also issued a number of other directives, including those related to the treatment of certain initiative expenses, aspects of the Driver Safety Rating (DSR) system, MPI's major Information Technology (IT) initiative, Project Nova, and MPI's investments.

MPI filed this application on February 10, 2023, seeking an order rescinding, changing, altering and/or varying certain directives (the Directives) and portions of Order 4/23. The Board sought written responses from Interveners in the GRA, which were filed with the Board on February 21, 2023. MPI filed a reply on February 24, 2023.

## 2.0 MPI POSITION

MPI's application requests relief related to a number of directives from Order 4/23. The Directives and portions of Order 4/23 at issue are included at Appendix A to this order.

MPI's position on each of the Directives is summarized below.

### 2.1 *Directive 12.1(d) - Deferral of Initiative Costs*

This Directive requires that, as part of the overall rate 3.8% decrease ordered, MPI is to adjust the expense forecast for 2023/24 and 2024/25, for rate-setting purposes, to remove all initiative expenses.

MPI requests that the Board vary Directive 12.1(d) to allow MPI to continue to defer the initiative expenses according to its existing methodology and recover from ratepayers in the 2024 GRA amount ordered to be deferred (approximately \$23.7M).

MPI's rationale for this request was that the Board based its decision on a factual error that all of the initiative expenses relate to systems that do not benefit current ratepayers; i.e., systems related to Project Nova. If MPI were to defer the initiative expenses as directed, that would impair its ability to recover them from ratepayers at the time that the benefits begin to flow, resulting in intergenerational inequity. MPI also submitted that the amounts deferred would accumulate over time to the point where it would not be able to recover them from ratepayers in an equitable manner without compromising rate stability.

MPI requested, in the alternative, that the Directive be varied to require it to file in the 2024 GRA a breakdown of the initiative expenses allocated to the Basic line of business, including the relationship of the initiative to Project Nova, and include the total budget, the deferred amount, and the expensed amount considered for ratemaking purposes for the 2023/24 and 2024/25 rating years.

## **2.2 Directive 12.6 - Fleet Program Proposal**

This Directive requires that in the 2024 GRA, MPI file an analysis and proposal for modifications to the fleet program to better reflect cost causation. MPI proposes that for the 2024 GRA, it will revisit the cost allocation methodology for fleet rebates to ensure that they are not cross-subsidized by non-fleet policies, and to file a multi-year plan for how it intends to conduct a more thorough review of the fleet program. The latter, a more thorough review, would inform the development of a revised fleet insurance framework to be executed over multiple years.

In the event that the Board does not accept this proposal, then MPI requests that this Directive be varied to remove the requirements for an analysis and proposal and replace them to require MPI to:

*"[...] report on any changes made to the cost allocation methodology for fleet rebates (to ensure that they are not cross-subsidized by non-fleet policies) and file a proposal for how MPI intends to conduct a formal review*

*of its Fleet Program, the goal of which review will be to provide recommendations for improvements to and to inform the development of a revised fleet insurance framework."*

MPI stated that it is concerned that it may be in non-compliance with the intent of Directive 12.6 if it is not varied as requested.

### **2.3 Directive 12.14 and Appendix A - Driver Safety Rating Changes**

Directive 12.14 requires MPI to increase the top of the Driver Safety Rating (DSR) scale from +16 to +17 for the 2023/24 policy year, to increase premium discounts by 3% for DSR levels +15 to +17, by 2% for levels +9 to +14, and by 1% for levels +3 to +8.

Appendix A records the Board's finding that MPI did not comply with Directive 11.15 from Order 134/21 following the 2022 GRA. Directive 11.15 required MPI to bring forward a DSR transition plan in this GRA to manage the required increase in the base rate and year-to-year rate dislocation, while moving DSR vehicle discounts and driver premiums to actuarial targets in a timely manner.

MPI states that there was some inconsistency in the relief it initially requested, the evidence it presented in the public hearings, and its position set out in closing submissions. MPI clarifies that it maintains its position as set out in the initial filing, which included:

- The creation of DSR levels +17 through to +20;
- An increase in the maximum merit level under the DSR scale from +16 to +17 in the 2023/24 policy year;
- An allocation of the overall rate decrease to the DSR vehicle discount levels with the most significant need for rate decreases based on actuarial indications; levels +9 to +16; and
- No changes to DSR driver premiums.

- Regarding the request to create DSR levels +18, +19, and +20, the creation of new DSR levels requires administrative effort and changes to *The Driver Safety Rating System Regulation*, M.R. 13/2009. MPI requests the approval of these additional levels at this time, in order to undertake that administrative and regulatory work once rather than over successive years.

MPI requests that the finding of non-compliance in Appendix A be rescinded as a result, because, having clarified its requests, it did in fact comply with Directive 11.15.

#### **2.4 Directive 12.15 - DSR Discounts**

This Directive requires that in the 2024 GRA, all DSR discounts be moved one-fourth of the way to the actuarially indicated discounts, rounded down to the nearest whole number. MPI requests that this Directive be rescinded and that the implementation of the DSR transition plan (from Order 134/21, Directive 11.15) be incorporated into its Generalized Linear Models (GLM) transition plan, which MPI has stated it will be running over the next couple of years and will be using in future GRAs starting with the 2025 GRA.

MPI refers to evidence from its witnesses in the public hearings indicating that MPI expects DSR discounts will continue to change, due to the expected use of GLMs in future GRAs. MPI argues that implementation of Directive 12.15 could create unnecessary confusion among customers regarding the DSR discount scheme, and wants to avoid a scenario in which ratepayers at a certain DSR discount level experience a reduction in the amount of their discount while moving up on the DSR scale.

## 2.5 Directive 12.16 - Five-Year Plan for Rating Models

This Directive requires MPI to file an update to its five-year plan to transition from the Registered Owner rating model to Primary Driver, Listed Driver or Primary/Listed Driver Hybrid. The update is to include a detailed workplan, start date, and a schedule.

MPI requests that the Board vary this Directive to permit it to file an update in the 2026 GRA, so that MPI can discuss the plan with the Government of Manitoba (Government) and advise the Board in the 2024 calendar year whether and when regulation changes will be forthcoming.

MPI advises that on January 12, 2023, the Government denied its request to make changes to regulations at this time that MPI considers necessary for it to collect driver information from the registered owners of MPI-insured vehicles. According to MPI, because three of the four rating models identified in the Directive require MPI to collect driver information, it cannot update its five-year implementation plan without regulatory changes, because it cannot collect driver information from registered owners without the knowledge and consent of those drivers.

Directive 12.6 builds on Directive 11.13 from Order 134/21, which directed MPI to bring forward in this GRA a plan, including major milestones and implementation date, for any changes to the DSR model, including a date by which MPI would file an application for changes with the Board. MPI filed an application to review and vary Directive 11.13, which was denied by the Board in Order 21/22, released on February 28, 2022. Regarding Directive 11.13 from Order 134/21, MPI submitted that obtaining the necessary driver information from ratepayers was prohibited by subsection 36(1) of *The Freedom of Information and Protection of Privacy Act*, C.C.S.M. c. F175 (FIPPA) unless:

- a) the collection is information authorized by or under an enactment of Manitoba or Canada; or



- b) the information relates directly to and is necessary for an existing service, program or activity of the public body; or
- c) the information is collected for law enforcement purpose or crime prevention.

MPI then filed an application for leave to appeal Directive 11.13 in the Manitoba Court of Appeal. In her decision dismissing MPI's application<sup>1</sup>, Madam Justice Steel commented in *obiter* regarding MPI's ability to collect driver information, and noted that section 6(2) of *The Manitoba Public Insurance Corporation Act*, C.C.S.M. c. P215 (the "Act") gives MPI the power and capacity to do all acts and things necessary for the carrying out of its functions, including the power to prescribe the information and detail required to be set out in any form.

MPI submits that, despite this statement from the court, it may in fact not have the requisite legal authority to collect and compel the production of driver information of third parties, and, because the Government has declined consideration of required regulatory changes, MPI cannot update its five-year plan to include further details. At this time, the most that MPI states it can do is provide the Board with an updated plan that includes non-specific start dates and schedules.

MPI also advises that it requested a preliminary opinion from the Manitoba Ombudsman and that the response it received supports the "cautious" approach it intends to take.

MPI argues that, without the requested variance of Directive 12.16, there is a strong possibility that it will be in non-compliance in the 2024 GRA. Alternatively, MPI requests that the Board vary the Directive to clarify its expectations in terms of start dates, schedules and details sought regarding steps after the initial collection of data, in light of the new information it has provided.

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<sup>1</sup> *The Manitoba Public Insurance Corporation v. The Public Utilities Board*, 2022 MBCA 86.

## **2.6 Directives 12.17, 12.18(c)(i) and 12.19 – Report on Project Nova Funding Envelopes**

These Directives, generally, require MPI to provide updates to the Board regarding funding envelopes for Project Nova. Directive 12.17 requires MPI to file a report of funding envelopes developed for the project within 14 days following approval by its Board of Directors. Directive 12.18(c)(i) requires MPI to file, in the 2024 GRA, a report from the Project Nova independent governance consultant addressing funding envelopes for the Project, including a description and size of each. Directive 12.19 requires MPI to meet with Board staff and advisors to review all aspects of Project Nova including, but not limited to: Project deliverables; timeline; budget; discount rate; and any new elements added to the initiative within 30 days after funding envelopes have been presented to the MPI Board of Directors.

MPI requests that the Board rescind Directive 12.17 and 12.18(c)(i), and vary Directive 12.19 to remove the requirement to report within 30 days after funding envelopes have been presented to the Board of Directors and replace it with a requirement to report “as soon as reasonably practicable.”

The rationale for MPI’s request to vary these Directives is that the Board of Directors does not approve funding envelopes for Project Nova. On February 10, 2022, the MPI Board of Directors approved the 2022 re-baselined budget on a global basis, and the MPI President and Chief Executive Officer, Chief Transformation Officer, and Chief Information Technology Officer may now disburse the approved budget amounts.

MPI submits that it cannot comply with Directive 12.17 because the Board of Directors does not approve of funding envelopes for the Project, and is similarly unable to comply or ensure compliance with those portions of Directives 12.18(c)(i) and 12.19 that relate to funding envelopes described in Directive 12.17.

## **2.7 Directive 12.18(b) – Revised Scope of Project Nova**

Directive 12.18(b) requires MPI to file with the Board by April 15, 2023, or such other date as agreed upon by MPI and the Board, a revised Project Nova scope which provides clear definition of the Legacy Systems Modernization (LSM) elements of the Project, the associated cost, and the target dates for achievement of those elements of the Project.

MPI requests that the Board rescind this Directive and submits that it cannot comply with Directive 12.18(b) because:

- Project Nova is not simply a larger scoped version of the original LSM project; and
- The evidence in the public hearings was that MPI does not expect to complete the pre-discovery and discovery phases of Project Nova Releases 3 and 4 until approximately the summer of 2023, and these exercises will assist MPI in defining the minimum viable product for each release. Until MPI has better understanding of these releases it cannot report on its expectations.

Alternatively, MPI requests that the Board vary the Directive to remove reference to the words “revised project scope” and replace them with “project update,” remove the reference to clear definition of the LSM elements of the project, and remove the April 15, 2023 deadline and replace it with a requirement to report “as soon as reasonably practicable following the completion of the discovery phases for Releases 3 and 4.”

## **2.8 Directives 12.20 and 12.21 – External Review of Integrated Cost Allocation Methodology (ICAM) and Five-Year Forecast with ICAM Revisions**

Directive 12.20 requires MPI to file, in the 2024 GRA, a third-party review of MPI’s integrated cost allocation methodology (ICAM) and to bring forward revisions for approval in the 2024 GRA. Directive 12.21 requires MPI to file a five-year financial forecast incorporating recommended changes to the ICAM in the 2024 GRA.

MPI requests that the Board vary these Directives to require a filing deadline of the 2025 GRA instead of 2024 GRA.

MPI's rationale for this request is that, while it does not oppose the substance of the Directives, it cannot assure the Board that it will retain an external third-party consultant in time to review and prepare a report regarding the existing ICAM prior to the filing of the 2024 GRA. MPI requires sufficient time to initiate the tendering process, obtain ministerial approval, select the most appropriate candidate, and collaborate with the candidate on the Project.

MPI advises that it has initiated this process and will abide by the current policies and procedures for the procurement of services with a view to complying with the Directives as soon as possible. Without variance of these Directives, MPI believes that the Board will likely conclude that it has not complied with them in the 2024 GRA.

## **2.9 Directive 12.23 – Investment Committee Recommendations**

Directive 12.23 requires MPI to file with the Board recommendations made by Mercer to the Investment Committee on November 10, 2022, as soon as reasonably practicable; and by January 31, 2023, to file the recommendations made by the Investment Committee to the MPI Board of Directors and the resulting decisions approved by the MPI Board.

MPI requests that the Board vary this Directive to remove the words “on November 10, 2022,” and to remove the deadline of January 31, 2023, and replace it with the words “as soon as reasonably practicable.”

MPI advises that the Investment Committee did not meet on November 10, 2022, and when it met on November 28, 2022, the committee did not discuss Mercer's recommendations. At the time of filing this application, the Investment Committee was scheduled to receive the recommendations on February 9, 2023, and the first opportunity for the MPI Board of Directors to receive the committee's recommendations would be

March 23, 2023. However, given the complexity of the recommendations, the Board of Directors may not approve them until its next meeting, scheduled for June 22, 2023.

Accordingly, MPI submits that while it does not oppose the substance of this Directive, due to the postponement of the presentation of the recommendations, MPI cannot comply with the Directive as currently written.

### **2.10 Directive 12.24 – Mercer Peer Comparison Report**

Directive 12.24 requires that in the 2024 GRA, MPI file a report from Mercer comparing MPI's investment returns against suitable peer investment managers selected by Mercer. MPI requests that the Board vary this Directive to remove the requirement that the report be from Mercer specifically.

MPI advises that it already obtains the same, or a similar, report from Ellement Consulting Group (Ellement), and therefore, while it is not opposed to filing an investment management comparison report, it knows of no reason why it must specifically engage Mercer for this task.

MPI submits that, Board does not vary this Directive, it may result in prejudice to MPI. Directing MPI to specifically engage with Mercer limits its ability to obtain this information at a lower cost and/or in some other beneficial way. Accordingly, this may result in MPI's inability to comply with Order-in-Council No. 41/2023, which requires it to adhere to certain policies and procedures respecting the procurement of goods and services.

### 3.0 INTERVENER RESPONSES

The Board received comments from the Interveners in response to MPI's application, which are summarized below.

#### 3.1 *Consumers' Association of Canada (Manitoba) Inc. (CAC)*

CAC acknowledged that MPI may meet the requirements of the applicable legal test such that Directives 12.20, 12.21, 12.23 and 12.24 may be varied. In addition, the request for relief respecting Directives 12.14, 12.17 and 12.19 may be granted in part.

CAC's position is that the balance of MPI's requests should be dismissed:

- Directive 12.1(d): CAC argues that MPI has failed to identify any errors of fact, jurisdiction or law, and has not identified any new facts or changes in circumstances warranting a variance. The Board acted in a manner consistent with the principle of intergenerational equity in issuing this Directive, in order to ensure that the costs borne by ratepayers are reflective of the services and benefits received from MPI. In addition, the Board in Order 4/23 noted that the period of recovery for deferred expenses would be established in the 2024 GRA. If it is MPI's position that the recovery of expenses associated with certain initiatives should take place on a timeline not connected to Project Nova, this can be canvassed in the 2024 GRA with the benefit of a full evidentiary record.
- Directive 12.6: CAC submits that, while the possibility of a potential future formal review of the fleet program may constitute a new fact within the meaning of the legal test, it does not meet the threshold of raising a reasonable possibility that the Board's decision would be materially changed. CAC noted that the Board has expressed concerns about cost allocations in the fleet program since the 2022 GRA and there should not be further delay on this issue.

- Directive 12.14 and Appendix A: CAC does not take issue with the creation of DSR levels +18 through to +20. However, this does not have an impact on the Board's finding that MPI's response to Directive 11.15 from Order 134/21 was inadequate. CAC reiterated the position it advanced in the public hearings, which is that MPI's proposal to allocate its requested rate decrease to the DSR discounts most in need of correction was not appropriately responsive to the longstanding unfairness perpetuated by cross-subsidization in the DSR scale.
- Directive 12.15: MPI's application to review and vary this Directive should also be dismissed, as it does not raise any new facts, change in circumstances, or errors of fact, jurisdiction or law. MPI's arguments in support of its application to review and vary this directive are, in CAC's view, repetitive of those raised during the public hearing and rejected by the Board.
- Directive 12.16: Although MPI has introduced new facts regarding the Government's denial of regulatory changes, these new facts should be given little weight. Without information as to either the contents of MPI's request to the Manitoba Ombudsman or the specifics of the Ombudsman's opinion, the Board cannot know whether the opinion was appropriately contextualized or whether the Ombudsman was informed of the Board's past directives on this issue. CAC submits this same principle applies to the evidence regarding the Government's unwillingness to implement requested regulatory amendments. The Board has not been informed what amendments were requested, the reasons for the amendments or why the Government elected to decline MPI's request. Further, CAC notes that MPI has not made clear how amendments to regulations would grant MPI the statutory authority it does not already possess by virtue of the *Act*, as noted in the decision of Madam Justice Steel.

- Directives 12.17, 12.18(c)(i) and 12.19: CAC submits these directives may be allowable in part, but any variance should preserve the accountability and oversight that the Board intended to impose in order to address its concerns regarding Project Nova. It may be appropriate for the Board to rescind Directive 12.17, provided that the rigour of the reporting mechanisms of 12.18(c)(i) and 12.19 are preserved. The minor error of fact identified by MPI does not raise a reasonable possibility that Directive 12.18(c)(i) would be materially changed, and as such, MPI's request for relief in respect of that Directive should be denied. The fact the MPI Board of Directors may not be responsible for approving funding envelopes does not prevent a governance consultant from commenting on the funds provided to each of the project components.
- Directive 12.18(b): MPI has not provided any new facts, change of circumstances or alleged any errors of fact, law or jurisdiction on the part of the Board. If it is MPI's position that all elements of Project Nova are essential to the replacement of its legacy systems, then MPI can respond to Directive 12.18(b) providing support for that position.

### **3.2 Coalition of Manitoba Motorcycle Groups (CMMG)**

CMMG is not opposed to the relief sought by MPI in respect of Directive 12.23, nor is it opposed to the creation of DSR levels +18 to +20 in respect of Directive 12.14. CMMG opposes the relief sought in respect of the following:

- Appendix A: CMMG takes the position that there should be no change to the finding that MPI did not comply with Directive 11.15 from Order 134/21, on the basis that, even with the clarification provided by MPI in this application, the changes to the DSR proposed by MPI in this GRA do not move towards driver premiums and vehicle premium discounts in a "timely manner."



- Directive 12.15: CMMG submits that MPI has not provided any new information that would warrant a variance, and is simply re-arguing points it made in the GRA.
- Directive 12.16: The information that MPI has provided about its concerns is speculative, and without an opportunity to scrutinize the correspondence between MPI and the Ombudsman, the Board does not have a complete evidentiary record.

### **3.3 *The Taxi Coalition (TC)***

TC took a position on Directive 12.6, Appendix A, and Directive 12.15:

- Directive 12.6: While TC it is not necessarily opposed to having MPI undertake a broader review and analysis of the fleet program, it does have concerns about the absence of a specific timeframe in which MPI intends to complete this broader review. The cross-subsidization inherent in the current fleet program should be addressed in a timely manner. Therefore, if the Board is inclined to vary Directive 12.6, it should include a timeframe within which MPI is required to file. Otherwise, this Directive should remain unchanged.
- Appendix A and Directive 12.15: TC argues that MPI has not brought forward any new evidence or any errors in fact, law, or jurisdiction in support of its application to review and vary these findings and Directive. For at least the past three GRAs, there has been recognition of extensive cross-subsidization within the DSR system, and the vehicle premium discounts provided at each DSR level are not actuarially indicated. Despite Directive 11.15 in Order 134/21, MPI has made no substantive changes to its plan to address the issue of cross-subsidization. This fails to comply with the Board's requirement that the transition take place in a timely manner. The requests to vary Directive 12.15 and rescind Appendix A are therefore not justified.

## 4.0 MPI REPLY

On February 24, 2023, MPI filed a reply to the Interveners' responses. In summary, MPI raised following points:

- Directive 12.1(d): The wording of this Directive requires that the costs of all initiatives be included in a regulatory deferral account, and MPI expects that the Board unintentionally connected the deferral of all initiative expenses to the complete implementation of Project Nova. The only reasonable interpretation of this Directive is that MPI cannot recover costs for initiatives unrelated to Project Nova until the project is fully implemented. Had the Board been aware that some of the initiative expenses forecast for 2023/24 relate to systems that will benefit current ratepayers, MPI expects that the Board would have issued a different directive.
- Directive 12.6: The application raises the new information that MPI intends to conduct a formal review of the fleet program. The proposal for the fleet review will include timelines for completion; however, prior to finalizing its proposal MPI cannot comment on the appropriate timeframe.
- Directive 12.14 and Appendix A: The finding that MPI did not comply with Directive 11.15 from Order 134/21 assumes that MPI did not apply for changes to any DSR discount levels, but this is not the case. The creation of DSR levels +18 to +20 and the selection of higher than current discount rate percentages for levels +9 to +16 is sufficient to establish compliance. Further, the requirement to address dislocation "in a timely manner" permitted MPI some discretion to prepare a plan for approval that, in its view, reasonably satisfied this Directive.

- Directive 12.15: The Board did not address the evidence from MPI on the risks of changing discounts for all DSR levels pending the implementation of GLMs. By not considering this evidence, the Board erred.
- Directive 12.16: MPI did not disclose the contents of the report from the Ombudsman due to section 53(1) of FIPPA, which provides that reports and recommendations made by the Ombudsman are inadmissible in legal proceedings. Further, the nature of MPI's communications with the Government are subject to cabinet privilege. MPI asked for permission from Government to produce the briefing note regarding the regulatory changes but the Government denied its request. There remain significant legal questions about MPI's authority to collect the necessary data under the *Act* and FIPPA, and without clear authority MPI could be operating in a legal "grey zone."
- Directives 12.17, 12.18(c)(i) and 12.19: MPI is not opposed to the substitution of these Directives with another process deemed appropriate by the Board. It is not opposed to the inclusion of a deadline for the completion of Directive 12.19.
- Directive 12.18(b): The Board relied on a factual error in issuing this Directive in that it is premised on the assumption that the scope of Project Nova is different than the initial LSM project. This error is material.

## 5.0 BOARD FINDINGS

Pursuant to the Board's Rules of Practice and Procedure, and in particular, Rules 36(1) and 40(2) thereof, the Board may on application or on its own initiative review, rescind, change, alter or vary any decision or Order it has made. The Board's jurisdiction in that regard flows from section 44(3) of *The Public Utilities Board Act* (the *Act*).

In accordance with Rule 36(4), upon receipt of an application for review and variance, the Board is to determine, with or without a hearing, in respect of an application for review, the preliminary question of whether the matter should be reviewed and whether there is reason to believe the order or decision should be rescinded, changed, altered or varied.

After determining the preliminary question under Rule 36(4), pursuant to Rule 36(5), the Board may:

- a) Dismiss the application for review if,
  - i. In the case where the applicant has alleged an error of law or jurisdiction or an error in fact, the Board is of the opinion that the applicant has not raised a substantial doubt as to the correctness of the Board's order or decision; or
  - ii. In the case where the applicant has alleged new facts not available at the time of the Board's hearing that resulted in the order or decision sought to be reviewed or a change of circumstances, the Board is of the opinion that the applicant has not raised a reasonable possibility that the new facts or change in circumstances, could lead the Board to materially vary or rescind the Board's order or decision; or
- b) Grant the application; or
- c) Order that a hearing or proceeding be held.

The Board has reviewed and considered the information and positions advanced by MPI with respect to each of the Directives sought to be varied, in accordance with Rules 36 and 40(2). The Board's findings in respect of each of the Directives is as follows.

#### **Directive 12.1(d) - Deferral of Initiative Costs**

The Board accepts the position advanced by CAC that MPI has not raised any new facts or a change in circumstances that would warrant a variance of this Directive. MPI made its concerns about the impact of deferral of initiative expenses on rate stability apparent in the public hearings, and the Board considered this in arriving at its decision. MPI has not referred to any new information in its request to vary this Directive.

In ordering the deferral of all initiative expenses, the Board understood that this could include systems outside of Project Nova. The fact is, however, that most of these expenses relate to Project Nova, which is far from complete, and regardless, the Board intends to review the period of recovery for deferred expenses in the forthcoming 2024 GRA. This review will include consideration of whether to impose a directive requiring that MPI defer expenses for any initiative until the system is live, bearing in mind the delays in Project Nova to date.

#### **Directive 12.6 - Fleet Rebate Program**

The substance of Directive 12.16 is identical to that of Directive 11.5 in Order 134/21, which was issued following the 2022 GRA. MPI applied to rescind Directive 11.5, and alternatively, to not require compliance of Directive 11.5 in this GRA.

In Order 21/22, issued on February 28, 2022, the Board varied Directive 11.5 to require compliance in the 2024 GRA. The Board was not prepared to rescind the Directive because it found that there was a need for a review of the program.

All that Directive 12.6 does is reiterate a Directive issued in the 2022 GRA and varied in Order 21/22. While a future formal review of the fleet program is a new fact, it is also the case that the Board has made clear the need for the information described in Directive

12.6 for two years in a row. MPI has had notice for over a year of its requirement to file an analysis and proposal for modifications to the fleet rebate program, and the Board is not prepared to vary this Directive further.

### **Directive 12.14 and Appendix A - DSR Changes**

The Board understood, based on MPI's closing submissions, that MPI was no longer seeking any changes to the DSR discounts and that MPI was seeking an increase to the maximum merit level of the DSR scale from +16 to +17.

The clarification that MPI intended to request the creation of DSR levels +18 through to +20 raises new material facts or circumstances, and the Board grants MPI's request to vary Directive 12.14 in that regard.

Nevertheless, MPI has not provided the Board with any new information that is material to its finding that MPI did not comply with Directive 11.15 from Order 134/21. While MPI has clarified that it intended to allocate the applied-for overall rate decrease to the DSR vehicle discount levels with the most significant need for rate decreases based on actuarial indications, this does not amount to moving towards actuarial targets in a timely manner.

MPI already stated in the public hearings that in order to manage the required increase to the base rate and the year-to-year rate dislocation, changes to the DSR would need to occur over several years and that it was not able to create a long-term plan with specific timelines or discounts, referring to International Financial Reporting Standards (IFRS) 17 and 9 unknowns and their impact on the capital position of MPI, and GLM implementation.

Moreover, the Board notes that the implementation of GLMs is in the early stages, and MPI had sought to vary Directives issued in the 2022 GRA regarding a move towards GLMs. The Board does not have any comfort that, if it were to delay moving discounts closer to actuarially indicated targets to accommodate the transition to GLMs that this would occur in any reasonable timeframe.

### **Directive 12.15 - DSR Discounts Move One-Fourth**

Similarly to the finding in Appendix A, MPI has not raised any new facts or changes in circumstances, nor has it alleged any material errors of fact, or of jurisdiction or at law that would justify rescinding or varying this Directive to be incorporated into the GLM transition plan. MPI clearly stated its position on this issue in the GRA hearing, which the Board considered.

The Board also accepts the concern raised by CMMG that GLMs may not be introduced until 2024 or 2025 and it is unreasonable to delay any further change pending implementation of GLMs.

### **Directive 12.16 - Five-Year Plan for Rating Models**

MPI's explanation of potential barriers to the transition to a new rating model has been a theme of the last several GRAs. The Board has commented on this on many occasions in previous orders.

In Order 21/22, which was issued after MPI applied to review and vary Directive 11.13 from Order 134/21, the Board summarized the history of the issue:

*"The history of the on-going development of a DSR program that is more just and reasonable for ratepayers was set out extensively in Board Order 134/21. As set out in that history, MPI repeatedly requested review and variation of the Board's DSR directives, initially to permit additional time to review the availability and practicality of other analytical tools and ratemaking methodologies and to research alternatives to the registered owner model. Thereafter, upon being directed by the Board to provide a pricing examination of the Registered Owner and Primary Driver models, MPI again requested a variation on the basis that changes to the DSR might have an impact on one or more of the Automobile Insurance Plan Regulation, Driver Safety Rating System Regulation under the MPIC Act*

*and the charges for licences, registrations, permits and other services regulation under the HTA. MPI also stated that it must coordinate the impact of DSR changes on its major IT initiative, Project Nova, and that its Board of Directors would require more time to decide on a direction for the DSR.*

*MPI then asked for a further variance so that it would not be required to advise in the next GRA as to which DSR rating model it intended to proceed with, but instead that it would file information in the 2021 GRA as to the timeline and major milestones for such a decision. The Board granted MPI's request on that basis, however, in the 2021 GRA, MPI simply advised that it is developing recommendations for the future of the DSR system but it did not plan to make any changes prior to the completion of Project Nova. In response, the Board again directed the Corporation to bring forward, in this GRA, a plan, including timelines, major milestones and implementation date, for any changes to the DSR model, including a date by which MPI file an application for any such changes with the Board. The Board emphasized that timeline for Project Nova requires that MPI move forward on DSR changes without delay. However, instead, in the 2022 GRA, MPI advised that it intends to continue to use the Registered Owner model and will not be considering any changes to its model for five years. As stated in Board Order 134/21, this was not compliance, but rather complete disregard for Directive 10.12.*

*Directive 11.13 was necessary given MPI's reluctance and unwillingness over the past five GRAs to carry out necessary steps to permit the proper evaluation of a DSR program that will provide for just and reasonable rates based on risk. As such, Directive 11.13 directs MPI, in no uncertain terms, to carry out the requisite foundation for such a change if it is approved by the Board."*



MPI raised the potential need for regulatory change early in this process but it appears to have only recently engaged with the Government in that regard. This is but one of the barriers that MPI has identified over the years to initiate the transition to a new rating model.

The Board has heard MPI's submissions regarding its concerns about the ability to collect data under existing legislation over the past two GRAs. MPI's concern is that it may be operating in a legal "grey zone". However, the Board accepts the position advanced by CAC, that it is not clear how amendments to *The Automobile Insurance Plan Regulation* would grant MPI authority that it does not already possess under the *Act* when the regulation is subordinate to the legislation.

Further, Pursuant to subsection 6.4(2) of the *Act*, MPI must obtain the approval of the Board before it can establish a new plan premium for Basic, and subsection 33 (1.1) of the *Act* provides that no regulation changing the amount of premiums charged for Basic may be made unless the change has been approved by the Board.

While MPI has made clear that its report received from Ombudsman is not admissible in these proceedings and its communications with Government are protected by cabinet privilege, that does not inexorably lead to the conclusion that the Board must therefore accept MPI's position that regulatory change is a prerequisite to compliance with this Directive. Of note is that MPI has characterized its approach as a cautious one. It does not appear to be the case that MPI is categorically stating that it *does not* possess the legal authority to commence data collection; rather, it wants more time before having to comply with the Board's Directive. The Board has previously heard evidence from MPI that the only Canadian jurisdictions that use a Registered Owner model are Manitoba and Saskatchewan. The Board has no evidence from MPI about what, if any, analysis it has undertaken to determine the legislative basis for collection of data on primary drivers in other Canadian jurisdictions, which would be a logical step for MPI to take in ascertaining its authority to collect data.

The Board also raised a concern in past orders about MPI's previously-held position that it would need to complete Project Nova before undertaking the work on a new rating model. This would create a risk that, following completion of the project, there would be challenges in incorporating a new rating model into MPI's systems.

In this GRA, MPI introduced two new rating models for the Board to consider alongside the Primary Driver model. It is inconsistent for MPI to raise new rating models at this stage in the process while, at the same time, it takes the position that it cannot consider new models due to privacy concerns.

The Board reiterated its concerns about continued delays in a transition to a new rating model in Orders 134/21 and 21/22. MPI must take the necessary steps to ensure compliance with Directive 12.16. The history of this issue is replete with requests by MPI to delay its progress.

Bearing the foregoing in mind, MPI's request to defer this Directive to the 2026 GRA, or to otherwise vary this Directive, is dismissed.

### **Directives 12.17, 12.18(c)(i) and 12.19 - Report on Nova Funding Envelopes**

The Board acknowledges the clarification provided by MPI that specific funding envelopes have not been presented to the Board of Directors. That said, the substance of the information is nonetheless required.

Accordingly, the Board will vary Directive 12.17 such that it will require a report of budget allocations rather than funding envelopes developed for Project Nova, within 14 days following the approval of such allocations from time to time pursuant to MPI's applicable internal approval practices.

With respect to Directive 12.18(c)(i), given the size of Project Nova, the history of the budget and the delays in implementation of the project, the Board remains of the view that a report from an independent governance consultant is required. However, recognizing again that the terminology "funding envelopes" may not be applicable here,

the Board will vary Directive 12.18(c)(i) to require a report from the Project Nova independent governance consultant addressing the budget allocations for the Project, including a description and size of each.

Finally, with respect to Directive 12.19, the Board will vary this Directive to simply remove the reference to "funding envelopes" and require that the meeting among MPI and Board staff and advisors set out therein take place no later than May 12, 2023, or such other date as agreed between the Board and MPI.

### **Directive 12.18(b) - Revised Scope of Project Nova**

MPI has provided a lengthy explanation in support of its position that there has been no change in the scope of Project Nova from what was encompassed by LSM. The intention of the Directive can simply be fulfilled by replacing the reference to a "revised project scope" to "current project scope", and the Board will vary this Directive accordingly.

The Board is not prepared to remove the reporting deadline from April 15, 2023 and replace it with a requirement for MPI to report as soon as reasonably practicable following the completion of the discovery phases for Releases 3 and 4. By the time that discovery is completed for these releases, Project Nova may have already exceeded its latest budget.

That said, the Board does not accept that the project's scope has remained consistent from what was initially intended. There is ample evidence from this GRA that MPI characterizes Project Nova as transformational when that was not included within the original LSM concept. In the 2020 GRA, MPI's evidence was that the objective of LSM was to modernize the in-house applications and technology used to deliver services for:

- Personal and commercial automobile insurance;
- Physical damage claims; and

- Driver licensing, vehicle registration, and associated registry functions.<sup>2</sup>

Therefore, the original LSM scope was systems-centric.

The evidence from MPI's Chief Transformation Officer (CTO) in this GRA, referenced by MPI in its application for review and variance, included that:

*"For Project Nova the objectives have not changed since the onset. Our focus is still on modernizing our systems. It is centered around technology risk, information security, business agility, customer self-serve, cost savings and efficiency.*

...

*So, as you're aware, NOVA began as a Legacy system modernization; that's how it was envisioned at the onset. And we learned really quickly that simply moving our Legacy platforms would not suffice. We would need to do more as an organization to improve on how we service Manitobans.*

*And so then the transition from a Legacy system modernization project to Project Nova started, and it became a transformational initiative and less of a Legacy system modernization. [emphasis added]*

MPI has indicated a need to improve customer experience and in order to do so, must transform its business model.

MPI's CTO also stated that, following the 2022 re-baseline of Project Nova, certain aspects of the project were moved into other initiatives. That being the case, MPI is clearly

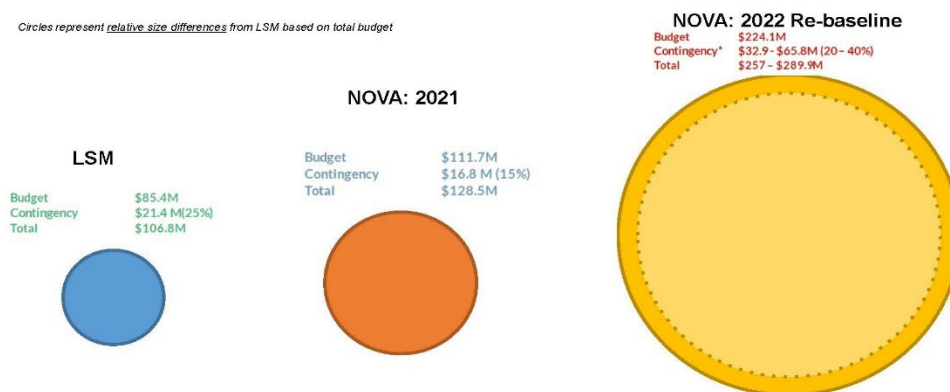
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<sup>2</sup> 2020 GRA Part IV(ii) – IT Appendix 5 Legacy Systems Modernization p. 2

moving scope from Project Nova into other areas which, in and of itself, would demonstrate a change in project scope.

It is well-established that the budget for the project has also increased significantly, from \$106.M, to \$128.5M, and most recently to, \$257M to \$289.9M<sup>3</sup>. In the public hearings in this GRA, MPI's President and Chief Executive Officer indicated the budget could end up exceeding the most recent estimates.

The increase in the project budget is depicted below:



The costs, objectives, and timeline for the project have all changed since LSM. This is a change in scope.

<sup>3</sup> All amounts inclusive of contingency.

### **Directives 12.20 and 12.21 - Revisions to ICAM**

The Board has considered the timing challenges MPI might encounter in order to meet the deadlines required in these Directives. Recognizing this, along with the fact that none of the Interveners have taken issue with MPI's request, the Board is prepared to grant the request to require compliance in the 2025 GRA.

### **Directive 12.23 - Investment Committee Recommendations**

Given the new information provided by MPI that the Investment Committee did not meet on November 10, 2022, and may not approve recommendations from Mercer until June 22, 2023, the Board is prepared to vary Directive 12.23.

Therefore, the reference to November 10, 2022 and the reporting deadline of January 31, 2023, shall be removed. Nevertheless, it is incumbent on MPI to provide the Board with timely reporting on recommendations for and changes to its investment strategy, as was the intention of the Directive as initially worded. Therefore the Board will not vary the reporting deadline to a time as is reasonably practicable and instead will vary the Directive to require MPI to:

- File the schedule for the Investment Committee meetings and MPI Board of Directors meetings to the end of calendar year 2023, by April 30, 2023 and to provide the Board with updates should there be any change to these schedules, within 15 days of those changes being made;
- File the recommendations made by Mercer to the Investment Committee within 15 days of receipt by the Investment Committee; and
- File the recommendations made by the Investment Committee to the MPI Board of Directors, within 15 days of the Investment Committee deciding on those recommendations and the resulting decisions approved by the MPI Board of Directors within 15 days of such approval.

**Directive 12.24 - Mercer Peer Comparison Report**

While MPI has indicated that it receives the same or a similar report from Ellement to that required by this Directive, it has not indicated whether Ellement has access to the same peer investment managers as does Mercer.

Further, Mercer has been significantly involved in MPI's investment strategy for a number of years and has provided evidence in GRAs. Nevertheless, the Board recognizes the inefficiency if in fact it were to require MPI to file two reports which are substantially the same.

Based on the limited information provided by MPI regarding the scope and details of the Ellement report, the Board does not have the requisite degree of comfort to grant the request as stated by MPI. Instead, the Board will maintain Directive 12.24 unless and until MPI files a copy of the report from Ellement no later than 30 days from the date of this Order, and the Board is satisfied that in fact the Ellement report provides the same information required by this Directive.

## 6.0 IT IS THEREFORE ORDERED THAT:

1. Directive 12.14(a) of Order 4/23 be varied to read as follows:

12.14. The Board hereby orders the following changes to the Driver Safety Rating (DSR) system:

- a. The top of the DSR scale shall increase from DSR +16 to DSR +20 in the 2023/24 policy year;

2. Directive 12.17 of Order 4/23 be varied to read as follows:

12.17. MPI shall file with the Board a report of budget allocations developed for Project Nova, within 14 days following the approval of such allocations from time to time pursuant to MPI's applicable internal approval practices..

3. Directives 12.18(b) and (c)(ii) of Order 4/23 be varied to read as follows:

12.18. In the 2024 GRA, MPI shall file the following with respect to Project Nova:

- b. A current project scope for the Board's information by April 15, 2023, or such other date as agreed upon by MPI and the Board, which provides clear definition of legacy systems modernization elements of the project specifically, the associated cost, and the target dates for achievement of those elements of the project;

- c. A report from the Project Nova independent governance consultant addressing the following topics:

- i. The budget allocations for the project, including description and size of each;

4. Directive 12.19 of Order 4/23 be varied to read as follows:



12.19. MPI shall meet with Board staff and advisors to review all aspects of Project Nova and MPI 2.0, including but not limited to project deliverables, timeline, budget, discount rate, and any new elements added to the initiative by May 12, 2023, or such other date as agreed between the Board and MPI.

5. Directive 12.20 of Order 4/23 be varied to read as follows:

12.20. In the 2025 GRA, MPI shall file a third-party review of MPI's integrated cost allocation methodology (ICAM) and to bring forward revisions to the ICAM for approval by the Board in the 2025 GRA.

6. Directive 12.21 of Order 4/23 be varied to read as follows:

12.21. In the 2025 GRA, MPI shall file a five-year financial forecast incorporating recommended changes to the ICAM.

7. Directive 12.23 of Order 4/23 be varied to read as follows:

12.23. MPI shall:

a. File the schedule for the Investment Committee meetings and MPI Board of Directors meetings to the end of calendar year 2023, by April 30, 2023, and provide the Board with updates should there be any change to these schedules, within 15 days of those changes being made;

b. File the recommendations made by Mercer to the Investment Committee within 15 days of receipt by the Investment Committee; and

c. File the recommendations made by the Investment Committee to the MPI Board of Directors, within 15 days of the Investment Committee deciding on those recommendations and the resulting decisions approved by the MPI Board of Directors within 15 days of such approval.

8. Directive 12.24 of Order 4/23 be varied to read as follows:

24. MPI shall file the report from Ellement Consulting Group within 30 days of the date of this Order for review by the Board, following which the Board will advise whether MPI shall be required to file a report from Mercer in the 2024 GRA comparing MPI's investment returns against suitable peer investment managers selected by Mercer.

9. MPI's application to review and/or vary Directives 12.1(d), 12.6, 12.15, and 12.16 of Order 4/23 are hereby dismissed.

10. MPI's application to rescind Appendix A of Order 4/23 is hereby dismissed.

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](http://www.pubmanitoba.ca).

THE PUBLIC UTILITIES BOARD

"Irene Hamilton, K.C."

Panel Chair

"Jennifer Dubois, CPA, CMA"

Assistant Associate Secretary

Certified a true copy of Order No. 35/23 issued  
by The Public Utilities Board



Assistant Associate Secretary

## **APPENDIX A - BOARD DIRECTIVES AND FINDINGS**

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

1. There shall be an overall 3.8% rate decrease in compulsory vehicle insurance premiums for the 2023/24 insurance year, effective April 1, 2023, for all major classes combined. This rate decrease is, as derived in accordance with Accepted Actuarial Practice in Canada, based on a Naïve interest rate forecast taking into account interest rates as at August 31, 2022. This rate decrease is a combination of the 0.05% rate decrease as requested by MPI, along with the additional impact on the AAP rate indication of the following items:

d. The expense forecast for 2023/24 and 2024/25 for rate-setting purposes is to be adjusted by the removal of all initiative expenses. The net affect being a -1.92% decrease in the rate indication;

6. In the 2024 GRA, MPI shall file an analysis and proposal for modifications to the fleet program to better reflect cost causation.

14. The Board hereby orders the following changes to the Driver Safety Rating (DSR) system:

b. The top of the DSR scale shall increase from DSR +16 to DSR +17 in the 2023/24 policy year;

c. Premium discounts for DSR Levels +15 to +17, shall increase by 3% (from 37% to 40%);

d. Premium discounts for DSR Levels +9 to +14 shall increase by 2%; and

e. Premium discounts for DSR Levels +3 to +8 shall increase by 1%.

15. The Board hereby orders that in the 2024 GRA, that all DSR discounts will be moved by one fourth of the way to the actuarially indicated, rounded down to the nearest whole number.

16. In the 2024 GRA, MPI shall file an update to the five-year plan filed in this GRA, which includes detailed workplan, start date, and schedule for the Corporation to bring forward about rating modes Registered Owner, Primary Driver, Listed Driver and Primary/Listed Driver Hybrid to the Board for approval.

17. MPI shall file with the Board a report of funding envelopes developed for Project Nova within 14 days following approval by the MPI Board of Directors.

18. In the 2024 GRA, MPI shall file the following with respect to Project Nova:

b. A revised project scope for the Board's information by April 15, 2023, or such other date as agreed upon by MPI and the Board, which provides clear definition of legacy systems modernization elements of the project specifically, the associated cost, and the target dates for achievement of those elements of the project;

c. A report from the Project Nova independent governance consultant addressing the following topics:

i. The funding envelopes for the project, including description and size of each;

19. MPI shall meet with Board staff and advisors to review all aspects of Project Nova and MPI 2.0, including but not limited to project deliverables, timeline, budget, discount rate, and any new elements added to the initiative, within 30 days after funding envelopes have been presented to the MPI Board of Directors.

20. In the 2024 GRA, MPI shall file a third-party review of MPI's integrated cost allocation methodology (ICAM) and to bring forward revisions to the ICAM for approval by the Board in the 2024 GRA.

21. In the 2024 GRA, MPI shall file a five-year financial forecast incorporating recommended changes to the ICAM.

23. The Corporation shall file with the Board the recommendations made by Mercer to its Investment Committee on November 10, 2022, as soon as reasonably practicable; and, by January 31, 2023, file the recommendations made by the Investment Committee to the MPI Board and the resulting decisions approved by the MPI Board.

24. In the 2024 GRA, MPI shall file a report from Mercer comparing MPI's investment returns against suitable peer investment managers selected by Mercer.

## LIST OF DIRECTIVES NOT COMPLIED WITH

Order and Directive No.	Directive
134/21, 11.15	In the 2023 GRA, the Corporation shall bring forward a DSR transition plan to manage the required increase in the base rate and year-to-year rate dislocation, while moving the DSR vehicle discounts and driver premiums to actuarial targets in a timely manner.