

M A N I T O B A) Order No. 151/08
)
THE PUBLIC UTILITIES BOARD ACT) November 7, 2008

BEFORE: Graham Lane, CA, Chairman
Monica Girouard, CGA, Member
Susan Proven, P.H.Ec., Member

**WATER AND/OR SEWER UTILITIES
FINANCIAL REPORTING REQUIREMENTS**

1.0 EXECUTIVE SUMMARY

By this order, the Public Utilities Board (Board) establishes financial reporting requirements for owners of regulated public utilities operating water and/or sewer systems (utility). These requirements pertain to budgeted, anticipated and year-end operating deficits, as well as transfers to operations.

The filing criteria, format and timing of the reporting requirements are described below:

1.1 Budgeted operating deficit:

An owner of a public utility budgeting for an operating deficit shall apply to the Board for approval to incur the deficit and shall advise the Board of the method proposed to recover the deficit, using Board approved forms (Appendix 1 for municipalities and Appendix 2 for other utility owners).

Municipalities shall file such applications on or before April 1 of the budget year. For other utility owners, the application shall be filed with the Board within 60 days of the utility's budget having been prepared.

1.2 Anticipated operating deficit:

An owner of a public utility (which provided for a breakeven or a surplus result in its budget but subsequently determines it is likely an operating deficit may be incurred during the year, prior to any transfers), shall apply to the Board for approval of the now-anticipated operating deficit and shall advise the Board of the method proposed to recover the deficit, using Board approved forms. These forms are to be filed as soon as practicable once the owner of the utility becomes aware of the anticipated operating deficit.

1.3 Actual operating deficit:

Unless prior approval has been obtained, an owner of a public utility shall report to the Board the actual operating deficit in its utility where such deficit either exceeds \$10,000 or represents 5% of the utility's operating budget, and shall advise the Board of the proposed method to recover the deficit, using Board approved forms. Municipalities shall file the report not later than April 1 in the year following the operating deficit. For other regulated utilities, the report must be filed within 90 days following the year of the operating deficit.

1.4 Transfers to the utility:

When an owner of a utility provides for a transfer from an internal fund or reserve (accumulated surplus, reserve funds, or the General Operating Fund) in the preparation of its budget or at any other time, the owner shall submit to the Board details of such transfers including:

- 1.4.1 amount of the transfer;
- 1.4.2 reason(s) for the transfer; and
- 1.4.3 statement as to the adequacy of rates.

For municipalities, the details shall be filed on or before April 1 if part of the budget and for other times, when anticipated. For other utility owners, this information must be filed as soon as possible once it becomes known.

Note: For municipalities, transfers to meet debenture payments, grants to pay for planned capital projects, and planned transfers from the General Operating Fund to repay the utility for services provided beyond the utility's boundary are excluded from this notification requirement.

1.5 Minimum Accumulated Surplus:

Where an owner of a public utility intends to employ accumulated surplus funds derived from the operation of the utility, the amount used shall not reduce the remaining balance of the accumulated surplus to less than 20% of the prior year's aggregate utility operating expenses, excluding amounts to service debenture debt collected by taxes.

1.6 Filing deadlines:

An owner of a public utility shall, in its schedule, allow a minimum of 45 days to obtain the Board's approval. In exceptional instances and upon application, the Board may consider alternate filing dates.

Note: For municipally owned utilities the above requirements largely reflect current legislative requirements. For non-municipally owned utilities now being regulated on a "complaints based" model, such owners may file for an exemption to these requirements, providing reasons for such an exemption being granted. The Board has sole discretion as to whether or not to grant exemptions.

2.0 BACKGROUND

The Board regulates approximately 200 water and/or sewer utilities in Manitoba which are owned by municipalities, cooperatives and private companies. Water utilities are public utilities as defined in *The Public Utilities Board Act* and regulation is mandatory. Sewer-only utilities need to be declared by the Board to be public utilities to be regulated.

The Board has general oversight responsibility over public utilities and has specific jurisdiction over the rates charged. Municipalities are governed by *The Municipal Act* which sets out, amongst other things, certain requirements for operating deficits.

Due to the past unfortunate event in Walkerton, Ontario and general concerns about safe and adequate water supplies, the challenge faced by owners and staff of public utilities is significant and increasing. A number of communities face aging infrastructure and boil water advisories, a common theme not unique to Manitoba. These issues are driving the need for effective vigilance concerning the provision of safe drinking water in sufficient supply to meet the needs of consumers.

Further, the environmental impact of sewage treatment operations is of growing concern, recently heightened in Manitoba by expressed concerns about nutrient loadings in Lake Winnipeg. These concerns have manifested themselves in new challenges calling for nutrient removal and resultant considerable expenditures by utilities, as well as increases in consumer rates to address same.

The funding of aging infrastructure in times of limited resources represents a further significant challenge and the prioritization of capital projects requires hard choices and increased public consultation.

The Federal and Provincial Governments (through programs such as the Municipal Rural Infrastructure Fund, and the Gas Tax Rebate Program and the Manitoba Water Services Board) are providing financial assistance to owners. However, should the current level of financing not be available or reduced, longer-range forecasting and planning will be required if the future needs of consumers are to be met. This could have major rate implications which will need to be monitored carefully.

All owners are facing these challenges within the confines of limited budgets and some municipalities face others including declining population and/or industries. To contain operating costs, some owners are sharing certified plant operators (where possible), regionalizing systems and incorporating long-range forecasting in their business plans, and are doing so successfully.

The Board has been supportive of such efforts with a high degree of transparency through its public hearing process.

These owners are providing an essential service for their ratepayers consistent with the need to protect the environment. All owners, and to some extent this Board, have a duty to ensure that each owner has sufficient resources to fulfil its mandate to provide safe drinking water in sufficient supply to meet the needs of its consumers.

In furtherance of this important mandate and in the current environment, the Board has determined it advisable to review its reporting requirements all with a view to enjoining owners of public utilities to meet these challenges with rates that are just and reasonable.

With respect to municipalities, many of these requirements reflect a codification of current requirements. For all other owners, these requirements will be new, and in the Board's opinion, reflect the new and important realities of being an essential service provider to the public in a monopoly environment.

3.0 BUSINESS CRITERIA:

3.1 Revenue Requirement:

Well-functioning water and/or sewer utilities are critical for public safety, the environment and the long-term economic well-being of communities.

Municipally owned public utilities are expected to operate on a breakeven basis; however, if an operating deficit is budgeted or anticipated, municipalities are required to establish a plan to address the deficit, either through the use of accumulated surplus, reserves, rate increases, surcharges, tax levies or grants. Operating deficits, and the manner in which they are to be addressed, are to be approved by the Board. The avoidance of addressing revenue shortfalls, in the absence of compelling mitigating circumstances, is not acceptable.

It has not been unusual in recent experience for the Board to receive an application for rate increases of 50% or higher, largely as a result of years of inattention to costs, regulatory developments, extraordinary situations requiring major upgrades to facilities, or rate inadequacy. On occasion, the Board has approved increases higher than those applied for, and has also provided owners with enabling authority for further rate increases which may be implemented without requiring further Board approval.

It is critical for the revenue requirements of a utility to be reviewed on a frequent basis to keep abreast of the needs of the utility.

3.2 Fully-allocated costs:

A fully and properly priced utility rate should allow an owner to provide utility services more effectively and efficiently in a just and reasonable manner.

However, to accomplish this objective requires utility owners to fully account for the "true" costs of operating utilities and to fairly allocate the cost of all shared services (staff time and equipment), shared between the utility and any other operation of the owner.

3.3 Users-Pay Principle:

The Board supports the principle of user-pay utility rates. It is only when rates are set on a user pay basis that the rates send the correct price signal to ratepayers and allows ratepayers to make decisions about their use of the services.

Appropriate rates allow for the full appreciation of the true value of services being provided and will enable an owner to better meet the objectives of *The Sustainable Development Act*.

4.0 REGULATORY FRAMEWORK AND REPORTING

The Municipal Act and The Public Utilities Board Act set out the obligations of owners of public utilities with respect to the regulation of water and/or sewer utilities. By this Order, the Board has codified its requirements to assist owners to discharge

these obligations and further, has chosen to make the requirements applicable to both municipally owned and all other water and/or sewer public utilities. The reporting requirements are as follows:

4.1. Approval of Rates

All owners must obtain the Board's approval for the utility rates charged (rates include connection, reconnection, late and any other charges related to a water and/or sewer service).

The Board has developed Water and Sewer Guidelines, sample rate studies and by-laws to assist owners with developing just and reasonable rates sufficient to meet the needs of the utility, recognizing the issue of inter-generational equity. With regard to the latter, the Board is particularly sensitive to ensuring that the cost and the use of the services are attributed to the same ratepayers to the maximum extent possible.

The principles of sound rate making are set out in the guidelines, which are under review. This will be an issue of further correspondence in the future.

4.2 Approval of Budgeted Operating Deficits

Municipalities have a legislative requirement to obtain the Board's approval if budgeted expenditures exceed the sum of budgeted revenues (including transfers to the utility). The Board, in this Order, extends this requirement to all owners of water and/or sewer utilities.

For municipalities such approval is required before council can finalize its budget and submit its financial plan to the minister responsible, or such other party as may be required by legislation.

The Board has developed an application form (Appendix 1 for municipalities and Appendix 2 for other utility owners) setting out the information required for the Board to provide approval of the budgeted operating deficit and the method for recovery.

Recognizing that *The Municipal Act* requires municipalities to submit their financial plan to the minister responsible by May 15, the Board determined it was reasonable to require all applications for approval of a budgeted deficit to be filed by municipalities on or before April 1, in order for the Board to consider the application and issue its decision, by order, in time for the May 15 deadline.

For all other owners, such budgeted operating deficits must be filed with the Board within sixty days of the utility's budget having been prepared.

4.3 Approval of Anticipated Operating Deficits

All owners must obtain the Board's approval when it is determined during the fiscal year that utility expenditures are likely to exceed budgeted revenues and transfers. For planned expenditures, prior approval must be sought, using Board approved forms.

The Board recognises that expenditure may be of an urgent nature and prior approval cannot be immediately obtained. These applications shall be filed within sixty days from the date the expenditure is incurred.

4.4 Reporting of Actual Operating Deficits and Approval of Recovery

If, at the end of the year, the approved budgeted or anticipated operating deficit does not materialize, or is less

than projected, no further action will be required. However, if the amount of the final operating deficit exceeds the amount approved by the Board by more than either \$10,000 or 5% of the operating budget, or if the cause of the deficit differs from that upon which approval of the budgeted or anticipated operating deficit was granted, a report of the actual deficit and the proposed method of recovery shall be filed with the Board.

Similarly, an actual operating deficit unbudgeted or unanticipated during the year will require a report of the actual amount of the deficit and the proposed method of recovery for Board approval, again if the amount is greater than either \$10,000 or 5% of the operating budget.

Completion of the appropriate form is to be accompanied by the necessary information including when the expenditure causing the deficit was incurred.

This report and application is required to be filed within 90 days following the year in which the actual operating deficit was incurred, and for municipalities, on or before April 1.

4.5 Reporting of Transfers to the Utility

Transfers from unrestricted reserves, accumulated surplus or, in the case of municipalities, the General Operating Fund, may:

- reduce the financial strength of the utility;
- offset a reserve augmented through rates by the Board;
- result in a subsidy to the utility; or
- mask an otherwise demonstrated and evident need for a rate increase.

For these reasons, the Board requires all owners to apprise them of any transfer. For municipalities, such reporting will not be required for transfers from the General Operating Fund to repay debenture debt, to reimburse utility costs for providing service beyond the utility boundaries, or to record grants for a planned capital project.

Transfers which may otherwise offset an operating deficit, budgeted or anticipated, compromise the ability of the Board to determine whether the rates are adequate to meet the needs of the utility.

Accordingly, where transfers are planned, all municipal owners are required to advise the Board of those plans, in order that the Board can review the reasonableness of the transfer as it pertains to the sustainability of the utility going forward. Municipalities must file by April 1 if the transfer is included in the budget and if during the year, when anticipated.

For all other owners, transfers must be reported when anticipated and if part of the budget process, the budget shall be filed.

Note: For municipally owned utilities, the above requirements largely reflect current legislative requirements. For non-municipally owned utilities which are regulated on a "complaints based" model, such owners may file for an exemption to these requirements, providing reasons for the exemption.

5.0 REPORTING FORMS AND BOARD ASSISTANCE

The Board has developed Guidelines and sample rate studies and bylaws to assist owners of public utilities in developing revised

rates. The Board has also developed forms for reporting of budgeted, anticipated and actual deficits. All documents are available on the Board's website at <http://www.pub.gov.mb.ca/water.html>.

Further, Board staff is available to all utility owners to gain a full understanding of the Board's requirements, and to assist owners, utility staff and consultants in making applications.

6.0 ACCOUNTING CHANGES FOR Public Sector Accounting Board (PSAB)

This order does not address changes that will be required by municipalities because of changes in Public Sector Accounting standards. This will be the subject of a further order in due course.

7.0 LATE FILING PENALTIES

Of concern to the Board is the timeliness of responses to Board enquiries or directives. The time and cost of monitoring and following up on delinquent filings is not insignificant. For the Board to effectively perform its responsibilities, the cooperation of all owners is essential.

Where a filing deadline cannot be met, owners or operators are required to so advise the Board, with an explanation, and seek authority for a deadline extension, providing the expected revised filing date.

The Public Utilities Board Act provides for late filing fees of up to \$100 per day. While the Board has been and will be reluctant to invoke this provision, it will do so in situations of unexplained and/or serious delinquency. Such penalties would represent an easily avoided cost, and the Board looks for cooperation.

8.0 CONCLUDING REMARKS:

This generic order is not the first of its kind, and is unlikely to be the last.

In 2004, the Board issued an order affecting all municipalities setting out the late payment fees to be charged on overdue utility accounts. More recently, the Board issued another generic order affecting all public utility owners, setting out the Conditions Precedent allowing for the disconnection of utility service for non-payment.

In both these cases, as with this order, the Board consulted with the Association of Manitoba Municipalities and the Manitoba Municipal Administrators Association prior to issuing its order.

9.0 IT IS THEREFORE ORDERED THAT:

1. All owners of public utilities budgeting for an operating deficit shall file with the Public Utilities Board an application for approval of the budgeted deficit, with a proposed method of recovery, for municipalities on or before April 1 of the budget year, and for all other owners within sixty days of the utility budget having been prepared.
2. All owners of public utilities anticipating an operating deficit shall file an application with the Board for approval of the anticipated operating deficit with a suggested method of recovery before the expenditure is incurred, except in case of emergency when such applications shall be made within sixty days of incurring the expenditure.
3. All owners of public utilities shall report to the Board an actual operating deficit which exceeds either \$10,000 or 5% of the annual operating budget and apply for approval of the recovery of the deficit, unless prior approval has been granted. Where the cause of the deficit is different from that budgeted or anticipated, this reporting requirement will apply. For municipalities, the report shall be filed on or before April 1. All other owners shall file the report within 90 days of the end of the year in question.
4. All owners of public utilities shall report to the Board any transfer to the utility included in its budget or at any other time from:
 - a) accumulated surplus;
 - b) reserves; or
 - c) for municipalities, the general fund (except for any amount transferred for debenture repayment, reimbursement of utility operating costs as a result of utility services being

