

Order No. 86/17

**AN ORDER RESPECTING WATER AND/OR WASTEWATER UTILITIES
SIMPLIFIED RATE APPLICATION PROCESS AND
REVISED MINIMUM FILING REQUIREMENTS
FOR MUNICIPALLY OWNED PUBLIC UTILITIES**

August 3, 2017

BEFORE: Robert Gabor, Q.C., Chair
Hugh Grant, Ph.D. (Economics), Member
Carol Hainsworth, C.B.A., Member
Marilyn Kapitany, BSc. (Hon), M.Sc., Member
Shawn McCutcheon, Member
Sharon McKay, Member
Allan Morin, B.A., (Econ), ICD.D, Member
Susan Nemec, FCPA, FCA, Member
Larry Ring, B.A., LLB, Q.C., Member
Rhéal Teffaine, Q.C., Member
Robert Vandewater, B.A., FCSI., CPA (Hon), CA (Hon), KStJ., CD, Member
Michael Watson, Member

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1.0 Executive Summary

By this Order, the Manitoba Public Utilities Board (Board or PUB) establishes a new, simplified rate application filing process (Simplified Process). This process applies to municipally-owned public utilities operating water and/or wastewater systems (utility), which meet the designated criteria, and wish to request Board approval for revised rates. Those utilities which do not meet the designated criteria will be required to continue using the current rate application process (Full Process) to request Board approval for revised rates.

The designated criteria, procedure and Minimum Filing Requirements for rate applications using the Simplified Process (MFRSP) are described in detail in this Order and summarized in the attached Schedule “A”.

This Order also introduces shorter, revised Minimum Filing Requirements for Full Rate Applications (MFRFP) attached as Schedule “B”. Utilities should follow MFRFP when preparing submissions using the Full Process from the date of this Order.

Rationale for the PUB’s decisions may be found under “Board Findings on the Issues”.

2.0 Background

The PUB has rate and other regulatory responsibilities for all of Manitoba's water and/or wastewater utilities, with the exception of the City of Winnipeg. The PUB has a regulatory caseload including approximately 240 water and/or wastewater utilities, made up of approximately 200 municipal utilities and 40 cooperative or privately owned utilities. The Board typically reviews applications using a paper-based review, but the Board may hold a public hearing if it determines it to be in the best interest of stakeholders.

The Board has previously recognized that many water cooperatives and privately owned utilities have very small customer bases and annual revenue requirements, and has historically regulated these utilities on a "complaint-based model" to constrain regulatory costs. These utilities are typically able to introduce rate changes simply by notifying their customers and providing the PUB with financial information in support of the rate changes. If the increase is significant or if a proposed rate increase results in a number of stakeholder responses, it may prompt the Board to review the proposed changes in greater detail. The Board has authority to require utilities to submit a full rate application at any time it determines this is in the best interest of stakeholders.

Prior to this Order, the Board required all municipally owned public utilities to provide a full rate application based on the Minimum Filing Requirements established in 2014. This process can be quite lengthy in both the preparation by the applicant and the review by the PUB. The Board found that many municipalities would delay preparing the rate application until several or many years of deficits had occurred and the financial position of the utility was vulnerable. Based on discussions with the Manitoba Municipal Administrators' Association (MMAA) and its members, it appears this was largely due to the considerable cost, in municipal resources and/or consulting fees, in preparing the rate application for the Board.

3.0 Designated criteria

The following criteria are required in order for a utility to qualify to apply for revised rates using the Simplified Process:

1. The utility must be compliant with all regulatory reporting, including but not limited to:
 - a. The audited financial statements being relied upon for evidence by the Board in the application must be current and prepared in compliance with *The Municipal Act* section.190.
 - b. All outstanding utility deficits should have received approval of the Board.
 - c. All directives from previous Board Orders should have been followed, including submitting copies of all by-laws after third reading, as required.
2. The utility must not be experiencing an operating deficit which is the lower of \$10,000 or 5% of operating expenses, when calculated for regulatory purposes. This includes the appropriate adjustments for capital grants and contributed assets as outlined in Board Order No. 151/08, available on the PUB website at www.pubmanitoba.ca.
3. The utility must not be experiencing an unexplained annual operating surplus which is in excess of 20% of operating expenses, when calculated for regulatory purposes. This includes the appropriate adjustments for capital grants and contributed assets as outlined in Board Order No. 151/08, available on the PUB website at www.pubmanitoba.ca. An example of an explained surplus would be a utility making an annual contribution to reserves for a planned expenditure; when providing the explanation, all details and supporting documentation about the intended purpose of the reserve should be included.

4. The municipality must have reviewed the utility operations and expects the requested rate will be adequate to meet operating costs for the year. If the revised rates are inadequate, the Full Process should be initiated to apply for the necessary rate revisions.
5. The utility must be seeking a rate increase of no more than 3% over the current utility rate and the current utility rate must have been in effect for a minimum of one (1) year from the date of application under the Simplified Process. The revised rate must apply equally to all customers of the utility; however, the utility may request a different revision for the customer service charge, water and/or wastewater rates. For example, a qualified utility may request a 2% rate increase for water, a 1% increase in the customer service charge and no change in wastewater rates, if appropriate. A utility that has domestic and wholesale rates and only wishes to increase one of those rates must apply using the Full Process.
6. Requests for multi-year increases will be denied; however utilities may make annual requests for rate increases using the Simplified Process, as long the utility continues to meet the designated criteria.
7. The Simplified Process is at the discretion of the Public Utilities Board, and applicants may be subject to the Full Process at any time, and for any reason, without explanation or appeal.

The responsibility for determining whether or not a utility meets the designated criteria lies with the applicant utility. If a utility that clearly does not meet the designated criteria attempts to submit an application using the Simplified Process, the Board will deny the application, and charge a processing fee of \$500.00.

4.0 Simplified rate application process

The minimum filing requirements for a rate application using the Simplified Process:

1. Utility rates by-law, after first reading only, detailing rates, billing information, penalties, fees, etc and rescinding past by-law.
2. Copy of past by-law.
3. Signed affidavit asserting that the utility meets the Board's designated criteria under Section 3.1, the utility is not experiencing an operating deficit as set out in Section 3.2, and the requested rate is expected to be adequate to meet operating costs for the year.
4. Audited financial statements and budget information must be up to date on Manitoba Municipalities Online (MMO), or submitted directly to the Board for review.
5. Explanation for an annual operating surplus in excess of 20% of operating expenses, as set out in Section 3.3.

Once the MFRSP have been received:

- A Notice of Application will be drafted by the Board and, once approval has been received by the applicant, it must be published in conjunction with the Board's Rules of Practice and Procedure, which are available on the PUB website at www.pubmanitoba.ca.
- Once the Notice period has closed, the Board will review the evidence, and determine if the information provided is sufficient to make a decision, and whether to proceed by way of paper based review or call a public hearing.

5.0 Board Findings on the Issues

Issue 1 – Simplified Process

The Board has long counseled utility owners to implement regular, inflationary type rate increases; however, it recognizes that the process to apply for revised rates was burdensome for those utilities seeking only smaller, inflationary type increases.

The Board sought to find a way to accommodate utilities who met the designated criteria to put smaller, inflationary type rate increases into effect, without compromising the integrity of the Board's mandate.

The Simplified Process requires the utility to provide the Board with the evidence relevant to a ratemaking decision, and will permit the Board to establish justification, transparency and intelligibility in its decision-making process, while alleviating some of the regulatory burden on those utilities which are compliant and meet the designated criteria. The Board's process and its outcome must be reasonable and, as always, the applicant utility bears the burden of proof on a rate application.

The new process the Board is introducing must be procedurally fair and reasonable. Therefore, the Simplified Process must take into account relevant evidence, and also must continue to comply with the rules of procedural fairness. In essence, procedural fairness requires that the individuals affected by administrative decisions must be given the opportunity to present their case in some fashion. The decision must be made using a fair, impartial and open process. This includes adequate notice to permit affected persons to know how they might be affected and to prepare themselves adequately to make representations. It also requires that all information relied upon by the tribunal when making its decision must be available to affected individuals. This is clearly contemplated by the Board's existing Full Process and will continue to be employed in the Simplified Process.

The Board has worked with its stakeholders, staff and legal advisors to develop a simplified rate application process that addresses the disadvantages of the current rate application process, while meeting the required tests of reasonableness and procedural fairness.

The Board's objectives in introducing a Simplified Process are:

1. Allow utilities to keep up with rising operating costs using minimal resources;
2. Provide an incentive for municipalities to remain compliant and current;
3. Introduce smaller rate increases on a regular basis, which is generally preferred by ratepayers;
4. Decrease the backlog of rate and deficit applications with the PUB; and
5. Allow the PUB to focus its resources on the utilities that require the most assistance.

The Board's implementation of the Simplified Process is not intended to allow non-compliant utilities an opportunity to circumvent the processes involved in applying for revised rates. If a utility has any questions or concerns about whether or not it meets the designated criteria, the Board encourages the municipality to consult with Board staff prior to applying using the Simplified Process.

Issue 2 – Minimum Filing Requirements for full rate applications

The Board also wanted to consider the regulatory burden on those utilities which do not meet the designated criteria. With that in mind, the existing Minimum Filing Requirements were reviewed in great detail, and several items were removed from the listing. While these items may be necessary in reviewing a small number of rate applications, the Board determined it expedient to request the information as necessary, rather than making it a requirement for all applications.

6.0 IT IS THEREFORE ORDERED THAT:

- 1) All Manitoba municipalities owning and operating public utilities meeting the designated criteria, as outlined in this Board Order, have the option to file an application for revised rates using the Simplified Process, found as Schedule “A” to this Board Order, effective the date of this Board Order.
- 2) All Manitoba municipalities owning and operating public utilities which do not meet the designated criteria, as outlined in this Board Order, are required to file an application for revised rates using the existing current rate application filing procedure, including the amended Minimum Filing Requirements – Full Process, found as Schedule “B” to this Board Order.
- 3) The Minimum Filing Requirements for Municipalities Filing Applications for Revised Rates with the Public Utilities Board – Full Process be revised, as per Schedule “B” to this Board Order, effective the date of this Board 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

“ROBERT GABOR, Q.C.”

Chair

“JENNIFER DUBOIS, CPA, CMA”

Acting Secretary

Certified a true copy of Order No. 86/17 issued
by The Public Utilities Board

Acting Secretary

Schedule “A”

Water and Wastewater Utilities – Determined Criteria and Minimum Filing Requirements for Municipalities Filing Applications for Revised Rates with the Public Utilities Board (Board) - Simplified Application Process (MFRSP)

The following determined criteria are required in order for a utility to qualify to apply for revised rates using the Simplified Process:

1. The utility must be compliant with all regulatory reporting, including but not limited to:
 - a. The audited financial statements being relied upon for evidence by the Board in the application must be current and prepared in compliance with *The Municipal Act* section.190.
 - b. All outstanding utility deficits should have received approval of the Board.
 - c. All directives from previous Board Orders should have been followed, including submitting copies of all by-laws after third reading, as required.
2. The utility must not be experiencing an operating deficit which is the lower of \$10,000 or 5% of operating expenses, when calculated for regulatory purposes. This includes the appropriate adjustments for capital grants and contributed assets as outlined in Board Order No. 151/08, available on the PUB website at www.pubmanitoba.ca.
3. The utility must not be experiencing an unexplained annual operating surplus which is in excess of 20% of operating expenses, when calculated for regulatory purposes. This includes the appropriate adjustments for capital grants and contributed assets as outlined in Board Order No. 151/08, available on the PUB website at www.pubmanitoba.ca. An example of an explained surplus would be a utility making an annual contribution to reserves for a planned expenditure; when providing the explanation, all details and supporting documentation about the intended purpose of the reserve should be included.

4. The municipality must have reviewed the utility operations and expects the requested rate will be adequate to meet operating costs for the year. If the revised rates are inadequate, the full rate application process should be initiated to apply for the necessary rate revisions.
5. The utility must be seeking a rate increase of no more than 3% over the current utility rate and the current utility rate must have been in effect for a minimum of one (1) year from the date of application under the Simplified Process. The revised rate must apply equally to all customers of the utility; however, the utility may request a different revision for the customer service charge, water and/or wastewater rates. For example, a qualified utility may request a 2% rate increase for water, a 1% increase in the customer service charge and no change in wastewater rates, if appropriate. A utility that has domestic and wholesale rates and only wishes to increase one of those rates must apply using the full application process.
6. Requests for multi-year increases will be denied; however utilities may make annual requests for rate increases using the Simplified Process, as long the utility continues to meet the designated criteria.
7. The Simplified Process is at the discretion of the Public Utilities Board, and applicants may be subject to the full application process at any time, and for any reason, without explanation or appeal.

The responsibility for determining whether or not a utility meets the designated criteria lies with the applicant utility. If a utility that clearly does not meet the designated criteria attempts to submit an application using the Simplified Process, the Board will deny the application, and charge a processing fee of \$500.00.

Minimum Filing Requirements for Municipalities Filing Applications for Revised Rates with the Public Utilities Board (Board) - Simplified Application Process (MFRSP)

1. Utility rates by-law, after first reading only, detailing rates, billing information, penalties, fees, etc and rescinding past by-law.
2. Copy of past by-law and Board Order No. approving the rates currently in use.
3. Signed affidavit asserting that the utility meets the Board's designated criteria, the utility is not experiencing an operating deficit, and the requested rate is expected to be adequate to meet operating costs for the year.
4. Explanation for an annual operating surplus in excess of 20% of operating expenses.
5. Audited financial statements and budget information must be up to date on Manitoba Municipalities Online (MMO), or submitted directly to the Board for review.

Once the MFRSP have been received:

- A Notice of Application will be drafted by the Board and, once approval has been received by the applicant, it must be published in conjunction with the Board's Rules of Practice and Procedure, which are available on the PUB website at www.pubmanitoba.ca.
- Once the Notice period has closed, the Board will review the evidence, and determine if the information provided is sufficient to make a decision, and whether to proceed by way of paper based review or call a public hearing.

Schedule “B”

Water and Wastewater Utilities - Minimum Filing Requirements for Municipalities Filing Applications for Revised Rates with the Public Utilities Board (Board) – Full Process (MFRFP)

The Application shall include 1 paper copy and an electronic copy which can be forwarded by email, via Dropbox or provided on a USB drive.

Application and Financial:

1. Utility rates by-law, after first reading only, detailing rates, billing information, penalties, fees, etc. and rescinding past bylaw.....
 2. Rate Study using Board Guidelines as applicable.....
 3. Commentary on the reasons for the rate increase.....
 4. Available on MB Municipalities Online: prior year’s utility financial statements (audited, if available noting Schedule 9 prepared for the Board’s purposes is unaudited), current year’s utility budget (page 6*), current year capital plan (page 13*), 5 year utility capital plan (page 14*), utility debenture schedules (page 12*) and operating forecast for the next 2 years.....
- *Pages from municipal Financial Plan template.
5. Proposed method of financing 5 Year Capital Plan.....
 6. Cost Allocation Policy with respect to shared services and equipment between the utility and general operations¹.....
 7. Statement on the need for contingency.....
 8. Statement on the need for reserves, if requested.....
 9. Statement on adequacy of equity position and plans to address if insufficient (below the Board’s 20% of prior year’s operating expenses² target level).....
 10. Summary of operating deficits in the last 5 years i.e. amount and approved method of recovery, including Board Order No. granting approval.....
 11. Details of any incentives or special rate treatment provided to large volume users with an explanation.....
 12. If rates are determined on a Residential Equivalent Unit basis, confirmation that the assessments have been reviewed and remain accurate. Comment on the potential use of meters.....
 13. Details of connection charges and developer agreements related to the extension of service.....

Details of Operating System (s):

14. Description of the system(s) indicating age, condition and capacity to meet current and future needs of the ratepayers.....
15. If the Utility has been notified it is non-compliant with water quality and environmental regulation, provide the timeline and manner of recovery of any associated costs to become compliant.....

16. Statement as to whether service is extended beyond the municipality or LID boundary and if so, details of any surcharges levied or proposed.....
 17. Details of any plant being decommissioned and any resulting expenses set up as an environmental liability to be collected in rates.....
 18. Commentary on unaccounted for water if the amount exceeds 10% and if related to a deteriorating system, provide a plan to address.....
- Other:**
19. If a declining block rate is used, provide commentary on any consideration given to reducing or eliminating such blocks.....
 20. Details of any notification of revised rates provided to customers and summary of response.....
 21. If utility rates are collected with taxes or on tax bills confirmation that utility operating costs are not being offset by the Education Property Tax Credit.....
 22. If any public consultation has been held or is planned in anticipation of the application, provide details.....
 23. A signed statement from the applicant with the statement “the information contained within this application is certified as true and accurate”.....

Notes:

1. In the Board’s Order No. 93/09, the Board referred to a suggested cost allocation matrix to be followed by municipalities noting that once a policy was developed any changes thereto required the Board’s approval.
2. Target equity position is determined as per Board Order 93/09

Revised August 2017