

Order No. 131/20

**MUNICIPALITY OF ROSSBURN
SUNSET POINT WATER UTILITY
INTERIM *EX PARTE* WATER RATES**

November 2, 2020

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

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1.0 Executive Summary

By this Order, the Public Utilities Board (Board) approves the request of the Municipality of Rossburn (Municipality) for interim *ex parte* basis water rates for the Sunset Point Water Utility (Utility) effective January 1, 2020.

January 1, 2020

Annual Service Charge	\$	58.00
Water Charge (per REU)	\$	923.20
Annual Minimum Charge	\$	981.20

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

2.0 Board Methodology

Review Process

When reviewing an application, the Board has at its disposal two approaches, a paper review process or a public hearing. After the publication of the Notice of Application, the Board considers the application and responses, if any, and determines which method of review is most appropriate. Whenever reasonable, the Board can review the application using a paper review process, which saves the cost of a public hearing.

Where there is an urgent need for initial or revised rates and the Board determines it to be in the best interest of all parties, the Board may establish interim *ex parte* rates.

Contingency Allowance and Utility Reserves

The Board's Water and Wastewater Rate Application Guidelines recommend an annual contingency allowance equal to 10% of the variable operating costs.

Working Capital

Board Order No. 93/09 established utilities should maintain a minimum working capital surplus, in an amount equal to 20% of annual expenses. The working capital surplus is the Utility fund balance, excluding any capital-related items plus Utility reserves.

Operating Deficits

By law, Manitoba utilities are not allowed to incur deficits. In the event that a deficit does occur, the Utility is required by *The Municipal Act* to obtain Board approval for both the deficit and recovery methodology. The Board is therefore duty bound to approve reasonable rates based on reasonable expense projections.

Cost Allocation Methodology

The Board requires all municipalities to review the costs shared between the general operations of the municipality and the Utility, and to allocate appropriate and reasonable costs to the Utility, based on a policy known as a Cost Allocation Methodology. This policy must be submitted to the Board for approval and cannot be changed without approval by the Board. The Board's requirements regarding cost allocation methodologies can be found in Board Order No. 93/09.

Unaccounted for Water

Water losses may be caused by such events as distribution line losses, service leaks, water used for fire fighting or line flushing, and under-registration of water meters. The Board Guidelines require utilities to compare the volume of water produced or purchased against the volume of water sold, to determine the percentage of unaccounted for water. Unaccounted for water volumes of approximately 10% are considered industry standard.

The Board expects any utility experiencing a greater volume of unaccounted for water to provide an explanation and plan to address the water losses.

3.0 Background

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

The Utility has been charging an annual rate of \$284.40 to any property owner within the Sunset Point development with a water connection since 2011. The rate was calculated using

the rates approved by the Board for the Town of Rossburn Utility in Board Order No. 77/10, issued July 2010. The two utilities are not connected and do not share any physical infrastructure. The rates are inadequate and the Utility has incurred significant annual operating deficits since at least 2013.

On November 14, 2016, the Municipality applied to the Board for approval of initial rates to be set on an interim basis. There was no requested change to the flat rate of \$284.40 per connection. On March 2, 2017 the Board issued Board Order No 28/17, granting approval of the initial rates. The Board Order also directed the Utility to submit a copy of the water rate by-law once it had had third and final reading, to file an application for revised rates on or before June 30, 2017 and to file applications for approval of all operating deficits no later than April 30, 2017.

4.0 Application

On June 3, 2020, the Municipality submitted an application for revised water rates for the Utility, and requested the Board approve the rates effective January 1, 2020 on an interim, *ex parte* basis. The application included a rate study prepared by the Municipality's consultant and By-law No. 2020-005, having had first reading March 2, 2020. The rates proposed in the current by-law and rate study did not match, and there was no indication of which by-law was being rescinded.

The application was reviewed for completeness, and the Board contacted the Municipality on June 23, 2020 with a list of deficiencies in the application, including discrepancies between the proposed rates in the by-law and rate study and the outstanding deficit applications for the years 2013 to 2019. The Municipality responded, advising the utility rates approved in Board Order No. 28/17 had never been authorized by by-law as required and resubmitted By-law 2020-005 on June 8, 2020. By-law 2020-005 had not been given second reading to approve the changes to Schedule A.

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

5.0 Board Findings

The Board grants approval of revised water rates on an interim *ex parte* basis effective January 1, 2020. Generally, the Board does not approve retroactive rate increases, as they do not allow ratepayers to mitigate the increases by adjusting their consumption. In the case of Sunset Point, the rates are set on a flat rate, not by consumption. The current rates are inadequate; the Utility has been experiencing significant annual operating deficits with no plan for how it will recover these deficits.

The Board is duty bound to approve rates based on reasonable revenue requirements. There is no alternative source of funding for utility operations; these costs must be recovered through Utility rates paid by ratepayers.

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

There is no provision for a Utility or Municipality to "defer" a deficit. The deficits in question have been incurred, and the time is past due for the Municipality to determine how it proposes to recover these deficits, and apply to the Board for approval.

The Board has not received any deficit application from the Municipality, despite having requested these applications on several occasions, including by way of a Board Order directive. The Board is sympathetic to the financial situation of the Utility and the burden this represents for its ratepayers, but allowing the Municipality to continue to delay its obligation to deal with the issues only creates a larger problem to solve. The perils of inaction are evidenced here, as the Utility is now trying to resolve deficits totalling over \$150,000 with very few connected customers to share the burden.

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

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

The Utility has been charging ratepayers without a by-law since 2011. It is imperative the Municipality address this and give the current utility by-law third and final reading at the next meeting of Council.

The Board's directives and found in the final section of the Order and beginning with "IT IS HEREBY ORDERED THAT" or similar. Directives are not recommendations, and must be complied with or appealed as outlined below. The Municipality did not comply with any of the directives from Board Order No. 28/17. The Board expects future directives to be complied with promptly and in full, or the Municipality will file a request to review and vary. Pursuant to *The Public Utilities Board Act*, the Board can apply penalties for non-compliance.

6.0 IT IS HEREBY ORDERED THAT:

1. The Municipality of Rosscburn's application for revised water rates effective January 1, 2020 for the Sunset Point Water Utility on an interim *ex parte* basis, BE AND IS HEREBY APPROVED.

2. The Municipality of Rossburn amend its water rate By-Law for the Sunset Point Water Utility to reflect the decisions in this Order and submit a copy to the Public Utilities Board once it has received third and final reading.
3. The Municipality of Rossburn's request to defer the Public Utilities Board's approval of the Sunset Point Water Utility's operating deficits, BE AND IS HEREBY DENIED.
4. The Municipality of Rossburn file applications for approval of all operating deficits experienced by the Sunset Point Water Utility, including method of recovery, on or before November 30, 2020.

Board decisions may be appealed in accordance with the provisions of Section 58 of *The Public Utilities Board Act*, or reviewed in accordance with Section 36 of the Board's Rules of Practice and Procedure (Rules). The Board's Rules may be viewed on the Board's website at www.pubmanitoba.ca.

Fees payable upon this Order - \$150.00

THE PUBLIC UTILITIES BOARD

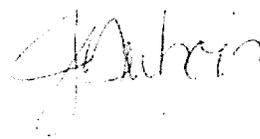
"Shawn McCutcheon"

Panel Chair

"Jennifer Dubois, CPA, CMA"

Assistant Associate Secretary

Certified a true copy of Order No. 131/20
issued by The Public Utilities Board



Assistant Associate Secretary

SCHEDULE A TO BY-LAW NO. 2020-005
Schedule of Water Rates for Properties Serviced by Sunset Point Utility

January 1, 2020
SCHEDULE OF ANNUAL RATES

1. Customer Service Charge
The annual customer service charge shall be \$58.00
The annual water commodity charge shall be \$923.20

2. Commodity Rates
The commodity rate for all treated water supplied shall be based on one residential equivalency unit. The annual water usage rate for one residential equivalent unit shall be \$981.20

The following clauses take effect January 1, 2020:

3. Annual Billing
Accounts shall be billed annually. A late payment charge of 1.25% compounded monthly shall be charged on the dollar amount owing after the billing due date. The due date will be at least twenty (20) days after the mailing of the bills.

4. Service To Customers Outside Sunset Point Limits
The Council of Rosscorn Municipality may sign Agreements with customers for the provision of water services to properties located outside the boundaries of the Sunset Point Water Utility. Such Agreements shall provide for payment of the appropriate rates set out in the Schedule, as well as a surcharge, set by Resolution of Council, which shall be equivalent to the frontage levy, general taxes, and special taxes for the Utility purposes in effect at the time or may be in effect from time to time, and which would be levied on the property concerned if it were within Sunset Point water utility boundaries. In addition, all costs of connecting to the Utility's mains, and installing and maintaining service connections, will be paid by the customer.

5. Disconnection
The Public Utilities Board has approved the Conditions Precedent to be followed by the Municipality with respect to disconnection of service for non-payment including such matters as notice and the right to appeal such action to The Public Utilities Board. A copy of the conditions precedent is available for inspection at the Municipality's offices.

6. Outstanding Bills

Pursuant to Section 252(2) of The Municipal Act, the amount of all outstanding charges for water services are a lien and charge upon the land serviced and shall be collected in the same manner in which ordinary taxes upon the land are collectible, and with like remedies.