

MANITOBA) **Order No. 133/15**
)
THE PUBLIC UTILITIES BOARD ACT) **December 1, 2015**

Before: Régis Gosselin, B ès Arts, M.B.A., C.P.A., C.G.A., Chair
Neil Duboff, BA (Hons), LLB, TEP, Member
Marilyn Kapitany, B.Sc. Honours, MSc.

**ORDER WITH RESPECT TO AWARD OF COSTS
TO THE CONSUMERS ASSOCIATION OF CANADA (MANITOBA) INC.**

FOR PARTICIPATION IN

CENTRA GAS MANITOBA INC.'S 2015/16 COST OF GAS APPLICATION

INTRODUCTION

By this Order, the Public Utilities Board (Board) approves an award of costs of \$97,020.88 to the Consumers Association of Canada (Manitoba) Inc (CAC).

The CAC intervened in the Board's deliberation of Centra Gas Manitoba Inc.'s 2015/16 Cost of Gas Application.

CAC Application

The CAC filed a Cost Application with the Board on November 6, 2015.

Subsection 56(1) of *The Public Utilities Board Act* provides:

Cost in discretion of board

56(1) The costs of, and incidental to, any proceeding before the board are in the discretion of the board, and may be fixed in any case at a sum certain or may be taxed.

In exercising its discretion, the Board is guided by Rule 43 of the Board's *Rules of Practice and Procedure*:

43. In any proceeding the Board may award costs to be paid to any intervener who has:
- (a) made a significant contribution that is relevant to the proceeding and contributed to a better understanding, by all parties, of the issues before the board;
 - (b) participated in the hearing in a responsible manner and cooperated with other Interveners who have common objectives in the outcome of the proceedings in order to avoid a duplication of intervention;
 - (c) insufficient financial resources to present the case adequately without an award of costs; and

(d) a substantial interest in the outcome of the proceeding and represents the interests of a substantial number of the ratepayers.

The Board approved Intervener status to the CAC in the Board's Procedural Order (Order 67/15) dated July 17, 2015.

The CAC's original budget, and applied for costs, are outlined in the Table below:

CAC Budget and Costs for Centra Cost Of Gas Review 2015/16				
		Budget	Actual	Difference
Legal Costs - Darcy & Deacon				
Brian J. Meronek QC				
	fees	\$39,200.00	\$47,521.80	-\$8,321.80
	GST	\$1,960.00	\$2,376.09	-\$416.09
	RST	\$2,744.00	\$3,801.74	-\$1,057.74
	Subtotal	\$43,904.00	\$53,699.63	-\$9,795.63
D.T. Masi				
	fees	\$14,381.00	\$0.00	\$14,381.00
	GST	\$719.05	\$0.00	\$719.05
	RST	\$1,006.67	\$0.00	\$1,006.67
	Subtotal	\$16,106.72	\$0.00	\$16,106.72
Disbursements - legal				
		\$5,102.00	\$3,180.34	\$1,921.66
	GST	\$255.10	\$159.02	\$96.08
	Subtotal	\$5,357.10	\$3,339.36	\$2,017.74
SUBTOTAL LEGAL		\$65,367.82	\$57,038.99	\$8,328.83
Consultants				
Mark Stauff				
	fees	\$27,264.00	\$36,574.50	-\$9,310.50
	GST		\$1,828.73	-\$1,828.73
	RST			\$0.00
	Subtotal	\$27,264.00	\$38,403.23	-\$11,139.23
Disbursements				
		\$1,250.00	\$1,506.67	-\$256.67
	GST		\$71.99	-\$71.99
	Subtotal	\$1,250.00	\$1,578.66	-\$328.66
SUBTOTAL CONSULTANTS		\$28,514.00	\$39,981.89	-\$11,467.89
TOTAL BUDGET		\$93,881.82	\$97,020.88	-\$3,139.06

In Procedural Order 67/15 the Board approved the CAC as an Intervener in accordance with the CAC's request to review all issues related to the Centra's Cost of Gas Application. The Board also ordered Centra to provide the CAC with the confidential information included in the Cost of Gas Application, and any additional confidential documentation as provided in the proceeding, upon execution of an Undertaking of Confidentiality from CAC legal counsel and a Non-Disclosure Agreement from Mr. Stauff (CAC's expert consultant) and Ms. Desorcy (CAC's representative). The Board subsequently received copies of all executed Undertakings of Confidentiality and Non-Disclosure Agreements. The CAC therefore participated in this proceeding having full access to all documentation and evidence as filed by parties.

In its Cost Application, the CAC highlighted that it has been involved in this process since August 1, 2014 when it received Centra's initial Application to dispose of an estimated net balance in the Non-Primary Gas Purchased Gas Variance Accounts (PGVA) of \$45.7 million owing to Centra as of October 31, 2014. The CAC's Cost Application therefore includes legal and consultant time to review Centra's initial Application, as well as time spent to intervene on the Cost of Gas Application.

The CAC claims it made a substantial contribution to the review process since its commencement in August of 2014. The CAC participated through its legal counsel and its expert consultant (Mr. Stauff) in the review the initial Application by means of Information Requests and subsequent Cost of Gas Application by means of Information Requests, provision of expert evidence, cross-examination of Centra witnesses, and preparation of a written closing submission. The CAC claims that their participation in this process led to the discovery of information that was not apparent in Centra's Application.

The CAC suggests it cooperated with Board counsel and was scrupulous in directing its expert (Mr. Stauff) on issues in order to avoid redundancy. The CAC also notes that it

did not contest many of the aspects of Centra's Application thereby reducing the number of contentious issues.

The CAC's original budget was \$93,881.82; the total amount sought in CAC's Cost Application is \$97,020.88. The CAC is therefore over budget by \$3,139.06. The CAC attributed the increase in cost to the use of senior legal counsel, the requirement to submit written final argument, and the overall nature of the proceedings given process matters to manage commercially sensitive information. Legal counsel for the CAC also found it necessary for two trips to Calgary to meet its expert consultant. In an effort to reduce the costs of travel, legal counsel did not charge hotel accommodation or food costs.

Actual legal costs were \$57,038.99; legal costs were therefore under budget by \$8,328.83.

Actual expert consulting costs (Mr. Mark Stauff) were \$39,981.89. This exceeds the original budget by \$11,467.89. The CAC did not provide an explanation for the additional costs incurred by Mr. Stauff.

Centra Comments

By letter dated November 19, 2015 Centra had no objections to the CAC's Application for Costs.

BOARD FINDINGS

The CAC is an independent, non-profit, volunteer organization working to inform and empower consumers, and to represent the consumer interest in Manitoba. The CAC has a history of intervening on behalf of consumers in applications before the Board from Centra Gas. The Board recognizes that the CAC has limited financial resources to intervene on an Application such as this.

The Board finds that the CAC made a significant contribution to this proceeding and provided information on issues that otherwise would not be apparent to the Board. The CAC also worked cooperatively with Board counsel in an effort to avoid duplication of information requests. The Board appreciates the efforts of the CAC in dealing with process considerations to manage commercially sensitive information associated with this Application.

The Board notes that legal costs were under budget by \$8,328.83. The Board finds legal costs to be reasonable for the scope of services required and appreciates the efforts of the CAC legal counsel to manage time and disbursement costs within budget.

The Board notes that costs for the CAC expert consultant (Mr. Stauff) are over budget by \$11,467.89. The CAC did not provide an explanation for this budget overrun. The Board understands that additional time may have been required by Mr. Stauff in the preparation of final written submissions as directed by the Board during the proceeding, as well as additional time to respond to undertakings. Despite these considerations, Mr. Stauff is still approximately 40 percent over the original budget.

The CAC suggests that the Board should examine the CAC's Cost Application in light of the original budget. The CAC's total estimated budget for its intervention was \$93,881.82; actual costs were \$97,020.88. The CAC claims this budget overrun of approximately \$3,000 represents only three percent of its original budget estimate.

The Board appreciates the evidence provided by Mr. Stauff and recognizes Mr. Stauff has provided valuable expert evidence in past proceedings before this Board. However, the CAC should have made the Board aware of Mr. Stauff's budget pressures before applying to the Board for Costs.

Although the CAC's expert consultant exceeded his original budget, the Board acknowledges that the CAC's overall Cost Application was largely on budget with a

modest cost overrun of approximately \$3,000. The Board also recognizes Manitoba Hydro had no objections to the CAC's Cost Application. The Board will therefore grant the CAC's Cost Application of \$97,020.88.

IT IS THEREFORE ORDERED THAT:

1. The Application of the Consumers Association of Canada (Manitoba) Inc. for an award of costs of \$97,020.88 **BE AND IS HEREBY APPROVED.**
2. Costs be payable by Manitoba Hydro as soon as possible within 30 days of the date of this Order.

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

THE PUBLIC UTILITIES BOARD

"Régis Gosselin, B ès Arts, MBA, CPA, CGA"

Chair

"Kurt Simonsen"

Acting Secretary

Certified a true copy of Order No. 133/15
issued by the Public Utilities Board

Acting Secretary