

Order No. 58/18

**AN APPLICATION BY CENTRA GAS MANITOBA INC.
TO REVIEW AND VARY ORDER 79/17**

April 26, 2018

BEFORE: Larry Ring, Q.C., Panel Chair
Marilyn Kapitany, B.Sc.(Hon), M.Sc., Vice Chair
Carol Hainsworth, C.B.A., Member
Susan Nemec, FCPA, FCA, Member
Michael Watson, Member

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1.0 Executive Summary

By this Order, the Manitoba Public Utilities Board (Board) grants the Application of Centra Gas Manitoba Inc. (“Centra” or the “Utility”) to review Board Order 79/17. This Order further establishes a process by which the Board will consider Centra’s submissions as to whether Centra is in non-compliance with Directive 12 of Order 108/15 and if so, the potential penalty associated with non-compliance.

On August 25, 2017, Centra filed an Application requesting that the Board vary its Order 79/17 by rescinding its finding that Centra is in default of Directive 12 of Order 108/15 and rescinding the Board’s Directive 3 of Order 79/17 that Centra pay a penalty for non-compliance.

The Board accepts that the process by which the Board assessed the penalty for non-compliance should be reviewed. The Board therefore grants Centra’s Application to review Order 79/17 Directive 3, with conditions. By this Order, the Board formally provides Centra with notice of default relative to Order 108/15 Directive 12. Furthermore, the Board directs Centra to file, within 30 days of the date of issue of this Order, its submissions regarding the default and potential penalty associated with non-compliance to Order 108/15 Directive 12. As part of its submissions, Centra is also to clarify:

- Whether the June 1, 2017 CGM16 update is still the most current Centra financial update and if it isn’t, Centra is to file the most current financial update; and
- When Centra will file its next GRA.

Overview of the Board’s Authority to Review and Vary Orders

The Public Utilities Board Act (“Act”) provides that the Board may review, rescind, change, alter, or vary any decision or order made by it. The Act further provides that proceedings of the Board shall be governed by rules adopted by the Board.

Rule 36 of the Board’s Rules of Practice and Procedure sets out the process for the Board’s exercise of its authority to review, rescind, change, alter, or vary its own decisions

and orders, also known as a “review and vary” power. A review and vary process may be undertaken on the Board’s own initiative or on written Application by any person.

Where a written Application is filed, Rule 36 establishes a two-step process. At the first step, the Board must determine the preliminary question of whether the matter should be reviewed. This requires consideration of whether there is reason to believe that the order or decision should be rescinded, changed, altered, or varied. At the second step, the Board must decide whether the Application should be dismissed, granted, or the subject of a hearing process.

An Application may be dismissed:

- Where the Applicant has alleged an error of law or jurisdiction or an error of 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
- Where the Applicant has alleged new facts not available at the time of the original hearing 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 the change in circumstances could lead the Board to materially vary or rescind the Board’s order or decision.

2.0 Procedural Background

In Order 85/13, arising from Centra's 2013/14 General Rate Application ("GRA"), the Board set Centra's allowed annual net income at \$3 million (weather-normalized).

During the 2015/16 Cost of Gas proceeding, the Board noted a material improvement in Centra's financial position since the 2013/14 GRA - specifically a doubling of retained earnings. In Order 108/15, arising from the 2015/16 Cost of Gas proceeding, the Board determined that Centra earned \$9.5 million more than what was approved by the Board on a weather-normalized basis. However, Centra's net income is a component of the non-gas costs that are recovered in Centra's Distribution and Transportation (to customers) rates, which are reviewed at a GRA. Centra's net income was therefore not the focus of the 2015/16 Cost of Gas proceeding. The Board determined as follows:

The Board is of the view that the non-gas cost revenue requirement which gives rise to Centra's allowed net income needs to be reviewed in the context of a General Rate Application. Although the Board is approving Centra's gas costs as final in this Order, the Board is of the view that Centra's non-gas earnings must be reviewed, and therefore will not finalize interim rates until the non-gas portions of those rates have been examined. The Board will direct Centra to file a full General Rate Application on or before January 20, 2017 at which time Centra's earnings will be reviewed. Absent a further Order of the Board, Centra's interim rates approved in Order 89/13 will terminate on July 31, 2017, and as of August 1, 2017, the non-gas components embedded in Centra's rates will revert back to the levels last approved on an interim basis in Order 66/11 and subsequently approved as final in Order 85/13. To that extent, unless the Board subsequently orders otherwise, Centra is directed to file rate schedules that reflect the reversion of the non-gas rate components back to the levels approved in Order 66/11 as part of its August 1, 2017 Primary Gas rate application.

Directives 5, 12, and 13 of Order 108/15, dated October 29, 2015, formalized the above Board findings:

- *5: Absent a further Order of the Board with respect to the rates kept interim under Directive 4 of this Order, on July 31, 2017 any then-current interim rates shall terminate and the non-gas components embedded in any of Centra's rates shall revert back to levels approved on an interim basis in Order 66/11 and subsequently approved as final in Directive 14 of Order 85/13.*
- *12: Centra is directed to, by no later than January 20, 2017, file a General Rate Application.*
- *13: Centra is directed to, concurrent with the filing of its August 1, 2017 Primary Gas rate application, file rate schedules that reflect the reversion of the non-gas components of Centra's rates back to the levels approved on an interim basis in Order 66/11 and subsequently approved as final in Order 85/13.*

On January 19, 2017, Centra informed the Board that it would delay the filing of its next GRA in order to permit its internal resources to focus on the preparation of a Manitoba Hydro electric GRA. In its letter to the Board, Centra did not indicate when it would be in a position to file its next GRA nor did Centra specifically request that Order 108/15 Directive 12 be varied.

On April 12, 2017, the Board responded to Centra, stating:

Based on its January 19, 2017 letter Centra is now in default of Board Order 108/15. The Board hereby directs Centra to file its revised rates with the Board, as set out in Directive 5 of Order 108/15, which will come into effect August 1, 2017.

As a Centra GRA may not be filed with this Board for some time, the Board is concerned about financial and other regulatory matters that would normally have been reviewed at a GRA. The Board therefore directs Centra to provide it with the following material [...].

Centra is directed to provide the PUB with the revised rates and requested information by May 31, 2017.

On May 31, 2017, Centra filed updated financial information pertaining to corporate matters, revenue requirement, operation and maintenance expenses, capital, depreciation, and finance expense as required by the Board's letter of April 12, 2017. On June 1, 2017, Centra provided a revised filing to correct a minor error included in its May 31, 2017 submission.

On June 16, 2017, the Board forwarded Centra's June 1, 2017 financial filing to the Interveners of Record and requested comments and review process recommendations by June 30, 2017. No intervener submissions or recommendations were provided.

On July 28, 2017, the Board released interim Order 79/17 regarding Centra's August 1, 2017 Primary Gas rate and the approval of non-Primary Gas rates. In accordance with Order 108/15 Directives 5 and 13, the Board granted rates, effective August 1, 2017, that reflected the reversion of non-gas rate components to the levels approved on an interim basis in Order 66/11 and as final in Order 85/13, for all customer classes except the Special Contract and Power Station classes. In addition, as Centra had not filed a GRA as directed, the Board found Centra to be in default of Order 108/15 Directive 12 and assessed Centra a penalty of \$100 per day. This finding was formalized in Directive 3 of the Order:

3: Centra is in default of Order 108/15 Directive 12 and it BE AND IS HEREBY ORDERED to pay a penalty of \$100 per day, the maximum permitted by The Public Utilities Board Act, calculated from January 21, 2017 until the day the Public Utilities Board receives Centra's General Rate Application that is prepared in accordance with applicable Board directives.

3.0 Centra's Application to Review and Vary Order 79/17

On August 25, 2017, Centra filed an Application with the Board to review and vary Order 79/17 Directive 3, pursuant to Rule 36 of the Board's Rules of Practice and Procedure. Centra specifically requested that the Board rescind its finding that Centra is in default of Directive 12 of Order 108/15 and its Directive 3 that required Centra to pay a penalty for non-compliance.

In its letter to the Board, Centra submitted that the Board ordered penalty for non-compliance without due notice and process to Centra, and therefore acted outside of its jurisdiction and erred in law. Centra outlined its grounds for its review and vary application as follows:

- The decision to delay the Centra GRA filing was made in order to keep the limited regulatory calendar and resources clear to allow full public debate on the Manitoba Hydro GRA and in full recognition of the fact that this would result in the reversion of non-gas rate components. The Utility viewed this as a compromise in the public interest.
- The Board's letter of April 12, 2017, which Centra characterizes as silent as to default of Directive 12, acknowledged that the GRA may not be filed for some time and requested that Centra file certain detailed financial information and rate schedules, presumably in lieu of a full GRA. This, combined with past practice and convention, led Centra to believe that the filing of the detailed financial information and rate schedules were accepted by the Board as an alternative to full compliance with Directive 12.
- Centra fully complied with the Board's letter of April 12, 2017 and did not receive any notice or indication that the PUB considered the steps taken by Centra to be inadequate or that a formal application to review and vary Directive 12 was required.

- As part of its August 1, 2017 Primary Gas Rate Application, Centra, in good faith, presented the Board with potential rate increase mitigation options, arising from the reversion of non-gas rate components, for the Special and Power Station customer classes that resulted in additional (interim) financial loss to Centra than what was intended by the initial Order 108/15 rate rollback.
- Section 48 of *The Public Utilities Board Act* requires due notice and a full opportunity to present evidence and be heard at a public hearing prior to any outlay, loss or deprivation to Centra. The Board failed to comply with these statutorily mandated procedural protections. This is an error of law that renders the action void.
- As of July 28, 2017, Centra has been exposed to a penalty of more than \$18,800 (188 days x \$100/day) without being afforded the opportunity to take any steps to avoid the penalty in that amount. The imposition of the penalty is unprecedented and notice that a penalty was being considered was required to inform Centra of the nature of the proceedings before the Board and to provide Centra with an opportunity to be heard.

On November 7, 2017, Centra's representatives confirmed to Board staff and Board counsel that Centra does not have immediate plans to file a GRA due to Manitoba Hydro's current focus on its electric operations. Centra also indicated that the Board's previous concerns regarding Centra's over-earning on a weather-normal basis appears to have been addressed with the reversion of the non-gas portion of Centra's rates on August 1, 2017. Furthermore, Centra stated that, due to the ongoing corporate re-organization and staff reductions, its rates and regulatory group is capacity constrained in terms of the number of concurrent PUB applications that it can process.

4.0 Board Findings

Section 100 of the Act states:

100. In default of compliance with any order of the board under this Act, when the order becomes effective, the person so in default is subject to a penalty of \$100 per day for every day during which the default continues; and the amount of the penalty shall be fixed and determined by order of the board.

Section 100 is drafted so as to provide the Board with discretion as to the amount of the penalty when a utility is in default of compliance. While, contrary to the claim of Centra, the Board's April 12, 2017 letter gave specific notice that Centra was in default of Order 108/15, the discretion provided for in section 100 supports Centra's position that there should be further notice and further opportunity to make submissions prior to the penalty being imposed.

The Board accepts that the process by which the Board assessed the Order 79/17 Directive 3 penalty should be reviewed. The Board therefore grants with conditions Centra's Application to review Order 79/17 Directive 3. By this Order, the Board also formally provides Centra with notice of default relative to Order 108/15 Directive 12. Furthermore, the Board directs Centra to file, within 30 days of the date of this Order, its submissions regarding the default and potential penalty associated with non-compliance with Order 108/15 Directive 12. As part of its submissions, Centra is also to clarify:

- Whether the June 1, 2017 CGM16 update is still the most current Centra financial update and if it isn't, Centra is to file its most current financial update; and
- When Centra will file its next GRA.

To date, Centra has neither filed a General Rate Application (GRA) nor indicated when it will do so. The Board is concerned about further delay in Centra filing its next natural gas GRA. The Board notes that natural gas charges can represent a significant portion of the energy bills sent to Manitoba Hydro's customers (i.e. those with natural gas service).

Moreover, Centra has not received Board approval for net plant additions to its rate base since 2013. As such, the Board is of the view that regular public reviews of Centra's rates and financial health is in the public interest.

5.0 IT IS THEREFORE ORDERED THAT:

1. Centra Gas Manitoba Inc.'s Application to review Order 79/17 **BE AND HEREBY IS GRANTED** as detailed above, subject to Directive 2 of this Order;
2. Centra Gas Manitoba Inc. is provided with notice of default relative to Order 108/15 Directive 12 and is directed to file, within 30 days of this Order, the information below:
 - a. Centra's submissions regarding the default and potential penalty associated with non-compliance with Order 108/15 Directive 12.
 - b. Whether the June 1, 2017 CGM16 update is still the most current Centra financial update and if it isn't, Centra is to file its most current financial update; and
 - c. When Centra will file its next GRA.
3. Should Centra not comply with the 30 day timeline above, the Review and Vary process will terminate and the Board will enforce Directive 3 of Order 79/17.

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

"Larry Ring, Q.C."
Panel Chair

"Kurt Simonsen"
Associate Secretary

Certified a true copy of Order No. 58/18
issued by The Public Utilities Board



Acting Secretary