

Order No. 125/18

**CENTRA GAS MANITOBA INC.
DEFAULT OF ORDER 108/15 DIRECTIVE 12**

September 18, 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”) varies a prior Order and imposes an administrative monetary penalty of \$35 per day on Centra Gas Manitoba Inc. (“Centra”) for its default in filing a General Rate Application as required by Order 108/15 Directive 12. The penalty commences as of July 20, 2018 and continues until the day the Board receives Centra’s General Rate Application. In reaching this decision the Board reviewed Centra’s submission in response to Order 95/18 Directive 2 and Section 100 of *The Public Utilities Board Act* which permits a maximum penalty of \$100 per day.

2.0 Procedural Background

The 2013/14 General Rate Application and the 2015/16 Cost of Gas Proceedings

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 on a ‘weather-normalized’ basis.

In Order 108/15, arising from 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. However, as Centra’s additional net income was not the focus of the 2015/16 Cost of Gas proceeding, the Board determined the following:

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.

Centra's 2017 Submissions and the Related Board Findings

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 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 per 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 submission of June 1, 2017 to the Interveners of Record for comments by June 30, 2017. No intervener submissions or recommendations were subsequently received by the Board.

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 finalized 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 Order 79/17 Directive 3:

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.

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 also rescind its Order 79/17 Directive 3 that required Centra to pay a penalty for non-compliance. In its letter to the Board, Centra submitted that the Board ordered a penalty for non-compliance without due notice and process to Centra, and therefore acted outside of its jurisdiction and erred in law.

In Order 58/18 (dated April 26, 2018), the Board granted Centra's Application to review Order 79/17 Directive 3. Order 58/18 further established a process by which the Board

would consider Centra's submissions as to whether Centra was in non-compliance with Directive 12 of Order 108/15 and if so, the potential penalty associated with non-compliance. Order 58/18 Directive 2 stated:

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.*

Centra's Order 58/18 Compliance Submission

On May 24, 2018, Centra filed its submission regarding Order 58/18 Directive 2. In its submission, Centra stated that its position remains that it is not in non-compliance with Directive 12 of Order 108/15 and any potential penalty is unwarranted, unprecedented and unnecessary given all of the circumstances. With respect to the timing of Centra's next GRA, Centra explained that it anticipates being in a position to file its complete GRA materials by no later than November 30, 2018.

On July 20, 2018, the Board released Order 95/18 regarding Centra's compliance with Order 108/15 Directive 12. In Order 95/18, the Board stated "*The Board is of the opinion that Centra has not raised a substantial doubt as to the correctness of the Board's Order or decision and the Board confirms its finding that Centra is in default of the Board's Directive in relation to filing a GRA.*" Order 95/18 Directive 2 also stated:

2: *Centra Gas Manitoba Inc. file, by August 17, 2018, its detailed submissions relative to the penalty associated with its non-compliance with Order 108/15 Directive 12, including the effective date of the penalty.*

3.0 Centra's Order 95/18 Compliance Submission

On August 14, 2018, Centra filed its submission in response to Order 95/18 Directive 2. In its submission, Centra stated that any potential penalty is unwarranted and unnecessary. Centra further submitted that if the Board determines that a penalty ought to be considered, that it be considered only if Centra does not file its next GRA by November 30, 2018. In addition, if Centra does not file its next GRA by November 30, 2018, any potential penalty should be assessed effective December 1, 2018 and such penalty should be well below the maximum amount of \$100.00 per day of section 100 of *The Public Utilities Board Act* ("Act").

Additionally, Centra submitted that:

- The overarching intention of section 100 of the Act is not to punish public utilities for non-compliance but rather to promote compliance on a go forward basis.
- Neither the Act nor any Board rule or policy provide guidelines or criteria to be applied when determining whether to impose a penalty and in setting the amount of that penalty.
- Centra has never before been assessed a penalty or been found guilty of an offence pursuant to the Act.
- The severity of this non-compliance has had no impact upon natural gas operations or the safe and reliable provision of natural gas to Centra's consumers. Furthermore, the default was not a result of carelessness, negligence, or intentional defiance of the Board. Rather, the Board was informed of the status of the situation and was provided with Centra's financial and other information upon request.
- The minimal impact of the non-compliance upon Centra's ratepayers was mitigated by Centra fully complying with the directives of the Board's letter of April 12, 2017. Additionally, the reversion of the non-gas components of Centra's rates for all customer classes, except for the Special Contract and Power Station classes, took

effect August 1, 2017 and has since had a punitive impact on Centra's net income earnings.

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 regarding the amount of the penalty when a utility is in default of compliance. The Board has used its discretion in determining whether to impose a penalty and if so, in what amount.

After reviewing Centra's submission of August 14, 2018, the Board finds that a penalty should be imposed on Centra for the Order 95/18 finding of default relative to Order 108/15 Directive 12. Furthermore, the Board finds that the penalty shall be in the amount of \$35 per day from July 20, 2018 until the date Centra files its General Rate Application with the Board.

Centra has had a history of delaying compliance to prior Board Directives. In Order 108/15, the Board stated:

The Board remains concerned about Centra's late-filing of applications and responses to Directives or delaying when it brings matters to the Board's attention.

Directive 17 of Order 85/13 required Centra to file a Cost of Gas Application by no later than January 31, 2014. Centra did not abide by this directive and instead, on January 29, 2014, advised that it did not intend to file a Cost of Gas Application for the 2013/14 gas year (which starts on November 1 and ends on October 31).

Centra justified that decision based on expecting only a net balance of \$0.3 million in the non-Primary Gas PGVAs owing to Centra effective October 31, 2014, which it considered to be immaterial. It also cited the need to avoid additional resource and scheduling impacts on Centra and the Board during the Needs For and Alternatives To (NFAT) Review of Manitoba Hydro's Preferred Development Plan.

Until June 12, 2014, the Board did not receive updates from Centra despite the Supplemental Gas PGVA balance rapidly increasing throughout the months of February and March, culminating in an eventual \$62 million balance by the end of March. Earlier notification would not have changed the circumstances giving rise to the gas costs and does not affect the prudence of Centra's substantive decisions at the time. However, by choosing to only advise the Board of the problem at the end of the heating season in June 2014, Centra unilaterally foreclosed the Board's ability to order interim relief during the 2013/14 gas year.

Despite this history, the Board agrees that Centra has never before been assessed a penalty or been found guilty of an offence pursuant to *The Public Utilities Board Act*. Furthermore, the Board agrees that, given the mitigation steps taken by Centra to date, Centra's non-compliance with Order 108/15 Directive 12 has had a minimal impact on Centra's ratepayers. In addition, Centra has committed to filing its next GRA by November 30, 2018. In these circumstances, the Board finds that an administrative monetary penalty in the amount of \$35 per day, rather than the \$100 per day maximum in the legislation, to be reasonable in this case.

Regarding the penalty effective date, the Board notes that, due to Order 58/18, which granted Centra's request to review and vary Order 79/17 Directive 3, the Board found Centra to be in default of Order 108/15 Directive 12 on July 20, 2018, the date Order 95/18 was issued. While Centra has committed to filing its next GRA by November 30, 2018, the Board finds that imposing the above penalty as of July 20, 2018 to be appropriate in this case. The Board further expects Centra to comply with its November 30, 2018 GRA filing deadline.

5.0 IT IS THEREFORE ORDERED THAT:

1. Directive 3 and the \$100 per day maximum administrative monetary penalty in Order 79/17 **BE AND IS HEREBY VARIED** such that Centra Gas Manitoba Inc. **BE AND IS HEREBY ORDERED** to pay an administrative monetary penalty of \$35 per day, calculated from July 20, 2018 until the day the Public Utilities Board receives Centra's General Rate Application.

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

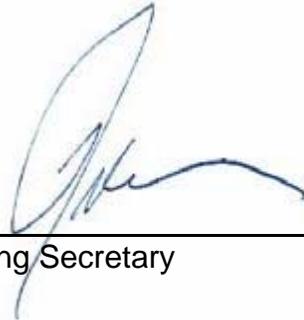
"Larry Ring, Q.C."

Panel Chair

"Kurt Simonsen"

Acting Secretary

Certified a true copy of Order No. 125/18
issued by The Public Utilities Board



Acting Secretary