

MANITOBA

Order No. 74/09

THE PUBLIC UTILITIES BOARD ACT

May 4, 2009

Before: Graham Lane, C.A. Chairman
 Leonard Evans, LLD, Member
 Monica Girouard, CGA, Member

**ORDER IN RESPECT OF CONSUMERS' ASSOCIATION OF CANADA
(MANITOBA) INC./MANITOBA SOCIETY OF SENIORS' MOTION FOR
FULL AND ADEQUATE RESPONSES BY CENTRA GAS MANITOBA
INC. TO FIRST ROUND INFORMATION REQUESTS**

Introduction

By this Order, and in advance of an upcoming public hearing of Centra Gas Manitoba Inc.'s (Centra) General Rate Application (GRA) the Public Utilities Board (Board) denies a Motion by Consumers' Association of Canada (Manitoba) Inc. and Manitoba Society of Seniors (CAC/MSOS) seeking an Order compelling Centra to provide further and better answers to information requests.

The Board advises as to the approach it expects to be taken to resolve and or clarify differences between information sought and provided in its proceedings, and seeks the cooperation of all parties to its proceedings to avoid what could be interpreted as unnecessary adversarial actions. The Board accepts that differences may still exist after parties seek clarification of information or resolution of differences, and the Board advises that it is prepared to adjudicate such differences.

The Board finds that such time expenditures as were incurred by CAC/MSOS' with respect to its now dismissed Motion appear neither to have been warranted nor to have delivered value to consumers and expects CAC/MSOS to file a revised budget, one deleting the time expended on the preparations of its Motion and related submissions.

Background

To allow for the orderly exchange of evidence prior to the public hearing into Centra's 2010/11 and 2011/2012 GRA, the Board issued procedural Order 12/09, dated February 17, 2009, which included a timetable (Schedule A to the Order).

Pursuant to the timetable, Information Requests (IRs) were posed to Centra by various Parties, including CAC/MSOS, and following Centra's response to the first round of IRs, CAC/MSOS filed a Motion on April 9, 2009 seeking an Order from the Board compelling Centra to provide full and adequate responses to 36 specific IRs for which, CAC/MSOS submitted, Centra's initial answers were deficient.

In its response to the Motion, and by way of an April 17, 2009 letter, Centra provided some additional information, and either indicated what information is unavailable or objected to producing some of the information requested. CAC/MSOS' response of April 21, 2009 addressed aspects of the process raised in the response from Centra as well as aspects of the merits of certain of CAC/MSOS' requests.

Board Findings

The alleged deficient responses to CAC/MSOS' IRs can be grouped into four categories:

- i. Documents and definitions;
- ii. Historical information;
- iii. Parent company information; and
- iv. Electronic and proprietary information.

i. Documents and Definitions

The Board finds that Centra's initial response and its April 17, 2009 response adequately respond to those alleged deficient IRs where CAC/MSOS sought documents and/or definitions. In some instances, documents are not available and Centra so indicated. In other instances, definitions have now been provided. There is also information forthcoming in response to second round IRs that will further respond to CAC/MSOS' requests.

ii. Historical Information

Centra was requested to provide information relating back to 2002 and 2003.

Centra objected to the inclusion of information that predates 2003/04, absent justification and relevance having been provided, claiming it would be time consuming to create and that the matters have been previously canvassed at past GRA and the Status Update proceedings.

The Board notes that perhaps some of the information sought resides in the evidence in 2007/08 and 2008/09 GRA, and is accessible for CAC/MSOS' review. Further, the Board accepts that historical information is difficult to obtain – such as explanations of variances between forecast and actual results and year-over-year variances for years gone by.

In Order 118/03 (at page 51), the Board noted:

Because of its significant changes to Centra's accounting system since the last GRA, Centra is unable to present certain components of its cost of operations in the same format as previous GRAs.

...Centra's costs of operating prior to and subsequent to the new accounting method are not comparable.

While such historical information may provide further data points, such information should only be sought when the relevance of it can be readily established. With respect to this Motion, the relevance of historical information to the current GRA has not been established.

iii. Parent Company Information

As Centra is a wholly owned subsidiary of Manitoba Hydro, there are costs allocated from MH to Centra's gas operations. The integrated cost allocation methodology is based on full absorption costing principles, with accounting for costs by function and business unit.

As noted in Order 118/03 (pages 51 and 58):

Activity charges form the basis for cost allocation to the gas and electric utilities. Activity charges are based on the time spent performing capital, operating and administrative, and supportive functions within the company and are calculated by multiplying hours spent by activity rates that are designed to cover groups of like costs within specific resource centres. Primary costs incurred specifically by Centra for its gas operations are allocated exclusively to Centra. Administrative and general overhead costs that cannot be specifically connected with either gas or electric operations are treated as common overhead.

The Board is satisfied that the accounting cost allocation methodology provides a fair allocation of operating and capital costs to Centra. The change in accounting requires a leap of faith in that there is a lack of comparability between how costs were presented in 1998 versus the current application. However, the Board's concern is tempered by the fact that on an overall basis, the projected 2003/04 cost of operation is not significantly higher than that approved in 1998, which is partly attributable to planned synergies subsequent to the acquisition of Centra by Hydro.

The Board notes that the \$49.3 million in cost of operations for 2003/04 will represent a baseline from which future applications will be measured, which will allow the Board to review cost of operations by activity and function on a comparative basis.

In the current Centra GRA, a detailed examination of MH's electric costs is neither relevant nor needs to be tested. The costs related to electric operations are largely driven independently from gas operations.

In Order 99/07 (on pages 107/108) the issue of the Allocation of MH's costs to Centra was also addressed:

The Board understands that with Centra having no staff complement, with MH employing all staff to operate both MH and Centra, MH incurs all O&A costs, for both MH and Centra, and that costs deemed incurred by Centra are allocated to it.

As CAC/MSOS represented, the integrated cost allocation methodology, while accepted as fair for the purposes of this Order, does not provide an adequate level of transparency for the purposes of a GRA.

Although the integrated cost allocation methodology does not provide the transparency requested by CAC/MSOS, the Board accepts the methodology as an appropriate method to allocate costs. The Board is satisfied with Centra's assertions, backed by the independent review undertaken in 2002 and subsequent "clear" audit opinions, that the methodology remains sound. The Board further notes both MH and Centra are not only audited by the same independent external auditor, but are also subject to the overview of the Auditor General of Manitoba. With no qualification indicated in the auditors' reports and with the testimony of Centra's witnesses evidencing that the system in place and reviewed in 2002 has not been altered, the Board, particularly given overall O&A trends in Centra since 2002, accepts that the allocation of costs to Centra has been fairly done to-date.

In coming to this conclusion, the Board notes that Centra's O&A costs have increased at a much lower annual rate than have MH's over the past five years. Based on the evidence available, the Board is satisfied that Centra has been allocated an appropriate share of MH's costs, and that those costs directly assigned to Centra (with respect to financing, tax and allowable Net Income) are reasonable.

That said, with the organizational integration and operational changes that have taken place since 2002, the Board finds it now to be appropriate to review the integrated cost allocation methodology, to ensure it remains appropriate. The Board intends on either undertaking or directing an independent cost allocation methodology review, the form to be determined at a future date.

The Board holds it to be important to achieve acceptance of the current allocation methodology by all parties. An independent review, outside of the GRA process, should accomplish the goal of gaining intervener acceptance of the validity of the approach, and this is in the public interest.

Until that review has been undertaken, the Board is satisfied that MH is taking the necessary care to ensure its allocation of O&A costs to Centra is fair and reasonable. The Board finds that Centra customers are not being held responsible through rates for charges/expenses that should be met by electricity customers.

In addition, with respect to the review of cost development and the allocation methodology the Board intends to undertake prior to the next GRA proceeding, the Board will involve both MH/Centra and registered interveners in developing the terms of reference for the review.

Such a review was last conducted in 2002, and there have been many changes in MH and Centra operations since then, this justifies the undertaking of a new review.

Since Order 99/07, Centra has deferred proposing the terms of reference for such a review, as described above, until after IFRS impacts are known.

The trends in allocations to Centra are relevant information that Centra has made, and has agreed to make, available through the current GRA process. No further directive from the Board is required.

iv. Electronic and Proprietary Information

Centra objected to providing various schedules in electronic format, as well as other information which it claims is proprietary. Rather, Centra has indicated that these issues should be considered in an organized fashion, outside of a GRA setting, having regard to both gas and electricity issues.

Both the requests by CAS/MSOS and Centra's response have aspects of déjà vu:

In Order 118/03 (at page 94) the Board previously addressed this issue:

20.5.1 Intervener Positions

CAC/MSOS requested the Board require Centra, at all future hearings to submit its application in electronic form, as well as hard copy, in an effort to improve the hearing process, all with the laudable goal of increasing efficiency and reducing costs.

20.5.2 Centra's Position

Centra stated it was not is not opposed to electronic filings in principle, as long as it is done on a reasonable basis over a period of time. Centra believes that it would be premature to direct that the next Application be filed electronically. It would be preferable to try this approach from the commencement of a more manageable proceeding and see how it develops.

20.5.3 Board Findings

The Board acknowledges that as technology advances, there will be a natural evolution of the regulatory process towards more extensive electronic filings. However, the adoption of a full electronic filing at the time would be an extremely costly and difficult process. The Board shares a view of Centra that the approach towards electronic filings should be undertaken on a more manageable proceeding to assess the benefits of such an approach from a regulatory process standpoint, and only with the prior consultation and approval of the Board.

Obviously, the issue of electronic filings has not been addressed outside of the GRA process; however, the Board's views have not changed. It is open to CAC/MSOS and/or Centra to provide working guidelines for stakeholders' review and input into using more extensive electronic filings. The Board can provide input from its research of the practices and experiences of other jurisdictions.

Until the electronic filing process evolves, Centra will continue to be required to run "scenarios and sensitivity-testing" as reasonably requested by other Parties. Likewise, proprietary information that cannot be disclosed is to be aggregated before disclosure.

Adversarial Nature of this Motion

The Board is concerned with the apparent adversarial nature of CAC/MSOS' Motion, together with the time, effort and expense that accompanied it.

The Information Request process is designed to provide pre-hearing discovery of the facts that support the Application and the Evidence, and the best efforts of all

parties are required. Some of the hundreds of IRs may be capable of multiple interpretations, or may be misinterpreted. Likewise, responses to IRs may require clarification.

The first avenue of clarification or resolution of differences, between what information was intended to be sought and what was provided in response, rests between counsel for the respective parties (or representatives where parties are not represented by counsel). The Board appreciates that differences may still exist after parties seek clarification of information or resolution of differences, and the Board is prepared to adjudicate such differences.

To the extent that such resolution was not sought between parties to this Motion is unfortunate – as many of the alleged deficiencies, as well as the rationale for certain objections could have been discussed, if not resolved, in a non adversarial manner. While such an approach may not have obviated the need for a motion, the Board is convinced that such an approach would have reduced the list of alleged deficiencies and focused any remaining issues requiring Board adjudication.

The Board expects such consultations will first occur should similar concerns arise in the future.

CAC/MSOS counsel has indicated in his April 9, 2009 letter to the Board, respecting the intervention budget forecast for CAC/MSOS, that:

“...There has been significant time expended to filing a motion requiring Centra to provide further and better answers to information requested.”

In light of the Board's comments above, such time expenditures neither appear to have been warranted nor to have delivered value to consumers - some of whom CAC/MSOS represents - that are expected to pay for such expenditures of time.

From the budget information filed, the time expended on this Motion is not apparent. A revised budget should be filed by CAC/MSOS deleting the time expended on the preparations of its Motion and related submissions.

As well, the Board reminds Interveners that a) cost awards are at the sole discretion of the Board, and b) the Board does not provide pre-hearing assurance that anticipated applications for cost, for which budgets are filed, will be met. The Board makes its cost award decisions following a proceeding and the filing of an application for costs. Interveners are further reminded that interventions for which cost awards are to be sought should be conducted in an effective and efficient manner, keeping ever mindful that rates reflect awarded costs and affect consumers.

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.

IT IS THEREFORE ORDERED THAT:

The Motion by CAC/MSOS, seeking an Order compelling Centra to provide further and better answers to information requests, BE AND IS HEREBY DENIED.

THE PUBLIC UTILITIES BOARD

"GRAHAM LANE, CA"
Chairman

"GERRY GAUDREAU, CMA"
Secretary

Certified a true copy of Order No. 74/09
issued by The Public Utilities Board

Secretary