

REFERENCE NO:

3991 0126

PLEASE REPLY TO:

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Brian Meronek Law Corporation

o also of the Alberta Bar

BRANCH OFFICE - CALGARY

August 7, 2015

Via Email

The Public Utilities Board of Manitoba
400 - 330 Portage Avenue
Winnipeg, MB R3C 0C4

ATTENTION: Mr. Kurt Simonsen, Associate Secretary

Dear Sir:

RE: Centra Gas Manitoba Inc. – 2015/16 Cost of Gas Application

I am responding to the Board's Order 67/15 dated July 17, 2015, specifically in relation to the comments the Board made at page 4 wherein it stated:

"The Board approves Mr. Mark Staufft as a consultant to CAC. The Board does not believe the use of two lawyers on many of the tasks identified by CAC is warranted to adequately represent CAC's interest in this proceeding. The Board requests that CAC provide an explanation for proposed legal resources and why duplication of legal resources on selected tasks is required, including the apparent need for two lawyers to attend the hearing. The Board reminds the CAC that there is no automatic entitlement to costs, and the Board retrospectively assesses the Intervener's contribution to the hearing, utilizing the factors set out in Rules 43 and 44 of the Board's Rules of Practice and Procedure.

I will make the assumption that the Board does not recall having discussed this issue in the past. Accordingly, I am attaching my letter to you dated September 19, 2012 wherein the use of two lawyers was fully canvassed (pages 2-3 of the letter). There is not much more I can add other than to repeat that this firm is providing a partially pro bono service for the consumers of Manitoba in that my involvement is at substantially reduced rates; namely 55% of my commercial rate. I do it because I have been intervening for approximately 27 years on behalf of CAC and feel a certain obligation to the client and also appreciate the value of continuity. My practice has been to mentor associates, much like any other participant in these proceedings (viz:

Board counsel, Manitoba Hydro counsel). This mentoring allows succession in the sense that junior counsel can gain valuable experience, again at reduced rates, so that Mr. Masi will ultimately be able to assume full responsibility for CAC's intervention and discharge his duty to the client in a most professional way.

When we are constantly challenged about the use of junior counsel, especially when CAC is the only intervener and has no resources, I question the utility or value of the Firm's role. I am fully cognizant of the discretion of the Board in ordering costs. At the same time, I ponder the value in emphasizing a \$14,000.00 cost item, when the consumers whom CAC represent bear the potential brunt of a substantial portion of the approximately \$46 million in costs being brought by Centra.

I look forward to the Board's response as it will enable me to assess the value of our Firm's future involvement on behalf of CAC.

Yours truly,

D'ARCY & DEACON LLP

Per:



BRIAN J. MERONEK Q.C.

BJM/mp

Att.

cc: Jonathon Trenchard
Darren Christie
Sven Hombach
Greg Barnlund
Brent Czarnecki
Bob Peters
Shannon Gregorashuk
Ashley Jansen
Nola Ruzycki
Gloria Desorcy
D. Tomas Masi

September 19, 2012

***Via Email and
Regular Mail***

REFERENCE NO:

3991 0121

PLEASE REPLY TO:

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The Manitoba Public Utilities Board
400 - 330 Portage Avenue
WINNIPEG MB R3C 0C4

ATTENTION: Kurt Simonsen, Associate Secretary

Dear Sir:

**RE: Consumers Association of Canada (Manitoba) Inc. (“CAC”)
Application for Costs re: Centra Gas Manitoba Inc. (Centra”)
2012 Transportation & Storage Portfolio Application**

LEGAL ASSISTANT:

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I am responding to your letter of September 13, 2012 firstly, in general, and then in specific reference to the requests set out therein. As the Board is newly constituted, I wish to share some general comments concerning your letter before delving into the specifics.

Background

I have represented Interveners before the Public Utilities Board off and on since 1973; firstly acting on behalf of the Federal Department of National Defence; then the Consumers Association of Canada and Manitoba Society of Seniors (CAC/MSOS) and now CAC. In the course of some 39 years, I have developed an excellent working relationship with the Board which has been built up over the course of involvement in excess of 100 Board hearings. During the course of this working relationship, by and large, every cost application has been vetted and approved with few exceptions. It was not by happenstance, but because CAC, as a major and regular Intervener, knows how to conduct its work in a cost effective and efficient manner and is constantly vigilant in minimizing professional costs and disbursements.

The practice has developed whereby, if the Board has questions about certain disbursements for example, inquiries are made and more often than not, satisfactory answers are given. On occasion, mistakes are uncovered and amendments are made voluntarily to the Cost application to remove costs which are either generally not recognized by the Board or where administrative errors have been made and reversed.

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Consequently, you will understand my surprise and disappointment, along with that of my client, when we received your letter. We were specifically uncomfortable with the reference to your statement: "It is the Board's expectation all Interveners who are seeking costs from the Applicant make every effort to conduct their work in a cost-effective and efficient manner. The Board expects Interveners to demonstrate diligence in minimizing their professional costs and disbursements in the review of an Application."

One could interpret that statement as an admonishment and implied pre-judgment of the questions posed prior to receiving the answers. I trust that such is not the case.

The Board should also appreciate, if it does not so already, that as a volunteer organization, CAC has no resources. It relies on legal counsel and any experts engaged (always at reduced rates) to be able to assimilate, review, assess applications and conduct complex and substantial cases involving large amounts of money and massive amounts of information.

It has always been a "burr in CAC's saddle" that there is no pre-funding regime in place. Accordingly, from the opening of a file until the award of costs and subsequent payment thereof, CAC and its professionals do not get paid "one dime". In addition, the professionals carry, in some cases, large amounts of disbursements. No other participant in the regulatory proceedings is exposed to that fiscal handicap; not the Board; not the Board advisors; not the Board staff; not hired Board consultants; not Hydro representatives and staff; and, not the Court Reporter. We are naturally sensitive when it comes to issues of costs especially when a case such as this one has been extant for over 15 months.

Specific questions

(1) CAC engagement of 2 lawyers

As stated above, CAC does not have resources upon which to draw. The resources fall to legal counsel to marshal. As lead counsel, I have no other choice but to engage the services of junior counsel in our office to assist. It serves two purposes:

- (a) It provides me with relief so that I do not have to expend even more valuable time on the file (at approximately 55% of my normal rates). Junior counsel provide needed assistance both in preparation and presentation.
- (b) It allows for an opportunity for other counsel to "learn on the job" and to be in a position to participate in future hearings in a more substantive way.

Historically, this practice has always been the case. In most prior hearings, I have engaged the assistance of junior counsel. Latterly, Mr. Kris Saxberg of our office was mentored by me and gradually took over the full conduct of cases while I acted as a background consultant. The involvement of two lawyers has never been an issue for the Board. Since Mr. Saxberg has now moved on to other legal challenges, I am intending to do the same with excellent young counsel; namely, Mr. Masi. He is being groomed to take a more active involvement and eventually to assume “the reins” from me.

More importantly, CAC needs to be treated on a level playing field. Board counsel in the past has engaged the services of a junior lawyer to assist. Board counsel is regularly assisted by two other consultants, including at this hearing. The Board hired an energy consultant to advise the Board. Manitoba Hydro not only has 2 – 3 lawyers to call upon at any given time on behalf of Centra, but also regularly presents a panel of witnesses; and has at its disposal a back row of staff and an armada of staff at Manitoba Hydro’s office to assist. To question the use of Mr. Masi at \$17,610 seems somewhat disproportionate to the resources that others are able to utilize.

Lastly, a budget was submitted on May 25, 2012, with the request for approval. The budget included a provision for Mr. Masi at \$21,000 (\$2,390 less than sought in the Cost Application). On June 1, 2012 you wrote a letter indicating that the Board would not be approving the budget; and that I would have to await the outcome of the hearing. If the Board had a concern about my use of a second lawyer, I would have thought it incumbent upon the Board to advise me in advance that such a cost may not be covered. In that case, I would have been able to make a determination as to the extent to which we could or would participate in the hearing.

(2) Trips to Calgary to meet with Mr. Stauff

The Board is questioning three trips charged by lead counsel and a single trip to Calgary charged by assisting counsel.

First of all, let me clarify the issue by stating that there were not three trips; rather there were only two trips. The trip listed as June 7 and 8 with transportation involving myself and Mr. Masi was posted to the wrong file and thus you will see no meeting time with Mr. Stauff logged in our statement of account on those dates. We are enclosing a revised cost summary to delete those disbursements with our apologies.

With respect to the other two trips, in my mind they were completely valid and essential. It is unfortunate that there are no experts in Manitoba to draw upon in these regulatory proceedings; but that is the reality. Furthermore, the subject matter is too complex and too voluminous in my view not to be able to meet face to face. In

terms of efficiency, I have also spoken to Mr. Stauff via teleconference on various occasions but with respect to the two trips in question, they related to reviewing, understanding, assessing the case and preparing information requests and for evidence and cross examination.

The Board will also note that I charged one way airfare only (not for a return flight), for the June 15, 2012 trip in order to be economical.

(3) Upgrade of \$104

In terms of an upgrade, for those individuals who have not flown to Calgary on certain flights, a very small aircraft is used (more suitable to 'hobbits') and with the lack of room for carry on luggage and leg space, the upgrade for the nominal amount of \$104 was well worth it. I could have chosen another flight (larger aircraft) at a more costly excursion amount as prices fluxuate dramatically. Nonetheless, I do not wish to pursue the justification of this item. Accordingly, the revised cost schedule reflects a deletion of that amount.

I wish to advise the Board that these remarks are meant to be constructive even if they are direct. CAC emphasizes that it wishes to maintain the same degree of mutual respect it has experienced with the Board in the past; but wishes to reiterate that its involvement has always been achieved at a modest cost to the customers who it represents in relation to the substantial costs for which they are regularly exposed.

In any event, we would appreciate an alacritous response to our request for costs which was submitted some two months ago.

Yours truly,

D'ARCY & DEACON LLP

Per:



BRIAN J. MERONEK Q.C., on behalf of CAC

BJM/mp

enc.

cc: Doug Bedford

cc: Gloria Desorcy