

MANITOBA) Order No. 207/02
)
THE PUBLIC UTILITIES BOARD ACT) December 5, 2002

BEFORE: G. D. Forrest, Chairman
R. Mayer, Q.C., Vice-Chairman
K. Kinew, Member

**APPLICATION BY THE CONSUMERS' ASSOCIATION OF
CANADA (MANITOBA) INC. AND MANITOBA SOCIETY OF
SENIORS FOR AN AWARD OF COSTS FOR PARTICIPATING
IN THE CONSIDERATION OF A FILING BY MANITOBA
HYDRO REGARDING INTEGRATION ACTIVITIES AS A
RESULT OF THE ACQUISITION OF CENTRA GAS MANITOBA
INC.**

Background

A public hearing was held in the City of Winnipeg, commencing April 16, 2002 to consider issues arising out of a filing by Manitoba Hydro ("Hydro") regarding integration activities as a result of the acquisition of Centra Gas Manitoba Inc. ("Centra"). The Consumers' Association of Canada (Manitoba) Inc. and Manitoba Society of Seniors (the "Applicant" or "CAC/MSOS") were granted intervenor status to present a joint intervention.

Application by CAC/MSOS

By letter dated July 15, 2002 the Applicant, through its Counsel filed with the Board, the appropriate hearing and summary sheets detailing the claim for costs. The total claim for costs is \$307,077.21 comprised of professional fees (legal, accounting and consultant) of \$273,552.72, disbursements of \$13,663.00 and GST of \$19,861.49.

The Applicant, in commenting about the nature of its intervention, noted that the hearing was complex and there was voluminous documentation and information to be reviewed and assessed. The Applicant submitted that they provided a major contribution, giving the Board the benefit of countervailing views in the form of the expert witness panel assembled.

The Applicant, noting that other intervenors have varied and different objectives, submitted that there was no duplication by its intervention. The Applicant also noted its lack of financial resources and substantial interest in the filing and the outcome of the proceedings. The Applicant asked that the Order as to costs to be rendered as soon as possible.

Centra responded to the request for costs by the Applicant by way of letter dated July 26, 2002, indicating that it felt constrained in evaluating the submission before the hearing of the matter has been completed. Centra also expressed concern over the high costs being sought, particularly in respect of the preparation time for final argument. Centra also expressed concern on the matter of costs sought for the engagement of Stephen Johnson Accountants. Centra also expressed concern about an invoice from

Digi-Tran which related to the first two days of the Status Update Hearing. Centra asked that the costs sought in this instance be reduced to reflect its concerns and the nature and scope of the evidence filed suggesting that a maximum cost award of \$250,000 would be appropriate for this intervention.

The Applicant responded to Centra's submission by way of letter dated August 30, 2002. The Applicant noted that costs are awarded on the basis of contribution and not final results, and that since it was the Board's intent to issue separate Orders, for the integration matter and for the status update matter the Board could assess any duplication in respect of the Applicant's cost award for the status update matter. The Applicant rejected the suggestion that too much time was spent on this matter noting the amount of work involved and the need to spend the time to assist the Board to understand the issues through argument. The Applicant noted that its accountants had a detailed role in assisting Counsel prepare for the case. The Applicant submitted that the costs are warranted and that the consumers received substantial value by intervening. The Applicant by way of letter dated September 27, 2002 responded to the Board's request providing details of travel expenses and submitted a further claim of \$545.10 for additional travel expenses. By way of letter dated November 22, 2002 the Applicant indicated a total of \$385.86 was not properly included in the claim and asked that it be deleted.

Board Comments

The Board has reviewed the submissions of the Applicant and the comments provided by Centra Gas.

The Board notes that the subject matter of the hearing

has significant financial implications for the ratepayers of Manitoba.

With respect to this Application for costs, the Board finds that the Applicant has demonstrated financial need and that the Intervenor do have a substantial interest in the proceeding. Furthermore, the Board finds that the Applicant did represent its interest in a responsible manner, respected the public hearing process and co-operated with others.

The Board has reviewed carefully the exchange regarding the Applicant's costs.

The Board generally receives final argument shortly after the evidentiary portion of the hearing. This allows for a succinct and concise submission without impeding the ability of the party to present their argument. The Board is concerned in this application about the amount of time spent by the Applicant in preparing for final argument and the apparent duplication, as seen by the Board, of two Counsel working on the preparation of final argument. All parties must be conscious of the time spent on these matters which subsequently become the subject of costs. The Board is of the opinion that, in the circumstances, the claim by the Applicant for costs in respect of the closing submission is not reasonable and will reduce the claim by an amount of \$10,000 plus GST of \$700.00.

The Board has also considered the matter of the claim for costs of the Applicant's accounting consultants including those costs relating to secretarial services. The Board is in agreement with the position of Centra and will disallow costs totaling \$1,295.00 plus GST of \$90.65. All the other costs are approved.

In reviewing this matter the Board has again noted the tone and tenor of the correspondence from the Applicant in response to Centra's position on the claim for costs. In this regard the position of the Board is clear. The utility should be able to raise legitimate concerns about intervenor's costs and the intervenor should be provided with an opportunity to defend its costs. The Board expects this process to proceed without turning openly adversarial and personal. The Board, in Order No. 116/01, addressed this issue as follows:

"The Board is concerned about the tone and tenor in the correspondence exchanged between the parties regarding this Application for costs. All parties have a role to ensure and verify that the regulated service is delivered to the consumer in a reliable and most economical manner and all parties have a responsibility to ensure that role is fulfilled in a cost effective manner. Historically, these roles have been carried out in a highly professional and courteous manner and the Board expects to see the continued co-operation of all parties."

The Board again noted its concern in Order 117/01.

In light of the previous comments by the Board and the tone and tenor of the correspondence on behalf of the Applicant, the Board will order a further reduction of \$2,500.00 plus GST of \$175.00 in costs. The Board does not expect this issue to reoccur.

The Board will deny the Applicant's claim of \$426.25 for transcripts with respect to the Manitoba Hydro Status Update Hearing. The Applicant's further claim for additional travel expense of \$545.10 is denied. The Board will reduce the Applicant's claim by \$385.86 as per the new information provided by

the Applicant.

The Board does not accept the suggestion of Centra that a maximum cost award of \$250,000 for this intervenor's intervention would be more appropriate.

All of the other costs submitted on behalf of the Applicant will be approved.

IT IS THEREFORE ORDERED THAT:

1. The Consumers' Association of Canada (Manitoba) Inc. and Manitoba Society of Seniors' application for an award of costs BE AND IS HEREBY APPROVED in the amount of \$291,474.61.
2. These costs shall be paid by Centra Gas Manitoba Inc. within 15 days of the date of this Order.

THE PUBLIC UTILITIES BOARD

"G. D. FORREST"

Chairman

"H. M. SINGH"

Acting Secretary

Certified a true copy of Order
No. 207/02 issued by The Public
Utilities Board

Acting Secretary