

MANITOBA) Order No. 138/05
)
THE PUBLIC UTILITIES BOARD ACT) October 13, 2005

BEFORE: Graham F. J. Lane, B.A., C.A., Chairman
M. Girouard, C.G.A., Member
Mario J. Santos, B.A., LL.B., Member

CENTRA GAS MANITOBA INC.: APPLICATION BY
CONSUMERS' ASSOCIATION OF CANADA (MANITOBA)
INC./MANITOBA SOCIETY OF SENIORS FOR AN AWARD OF
COSTS ARISING OUT OF A GENERAL RATE APPLICATION.

Introduction

Following a Pre-Hearing Conference on February 11, 2005, The Public Utilities Board (Board) issued Order No. 22/05 approving a public hearing process for Centra Gas Manitoba Inc.'s (Centra) General Rate Application (GRA). Among other matters, the Order approved intervenor status for the Consumers' Association of Canada (Manitoba) Inc. and the Manitoba Society of Seniors (CAC/MSOS) for a public hearing that followed in May and June 2005.

Following the GRA and active participation therein, CAC/MSOS applied to the Board for an award of costs. In accordance with the Board's normal process, Centra commented on CAC/MSOS' application and, subsequently, CAC/MSOS responded to Centra's concerns. This Order provides the Board's response to CAC/MSOS' application and directs Centra to provide a payment to CAC/MSOS in the amount of \$185,000.00.

Application

CAC/MSOS applied for an award of costs of \$240,649.72, comprised of:

Fees and disbursements:

Fees (Note 1)	\$201,678.50
Disbursements	\$ 15,378.48
GST	\$ 15,136.48
RST	\$ 8,456.26
TOTAL	<u>\$240,649.72</u>

Note 1 (Composition of Fees):

Legal Fees	\$120,803.50
Stephen & Johnston	\$ 62,597.50
Econalysis	<u>\$ 18,277.50</u>
TOTALS	<u>\$201,678.50</u>

On September 29, 2005, CAC/MSOS submitted an additional claim for a transcript invoice from Digi-Tran Inc. in the amount of \$2,092.71. CAC/MSOS' application included costs attributable to the Judicial Review initiated by CAC/MSOS with respect to Board Order 13/05.

In support of an application that materially exceeded its pre-hearing budget, CAC/MSOS submitted that the complex issues involved in the GRA required increased study and analysis and that its budget overage was primarily due to the elongated hearing and unanticipated post-hearing costs. CAC/MSOS noted its numerous GRA information requests, extensive cross-examination and effective closing argument. With respect to unanticipated costs, CAC/MSOS noted the inclusion of its claim for legal fees related to the Judicial Review, which it claimed was appropriate because of a strong nexus between the Judicial Review and the GRA.

CAC/MSOS advised there was no duplication of its effort with those of the other interveners and the Board, or between its two counsel, and that the effectiveness of its intervention reduced costs which otherwise might have arisen. With respect to the use of its two consultants, CAC/MSOS submitted that in a concerted effort to restrain regulatory costs it had provided clear direction to guide their involvement. CAC/MSOS further noted that it had relied on junior counsel while its senior counsel was responsible for overall

supervision, issue identification and assistance with CAC/MSOS' closing submissions.

In conclusion, CAC/MSOS opined that the GRA had benefited from its participation, which had identified many areas of concern and led to reductions in the approved rate increases.

Centra's Comment

Centra criticized the magnitude of CAC/MSOS' cost application, contrasted it with a much lower cost award to CAC/MSOS arising out of a lengthier Manitoba Hydro electricity GRA, and suggested that CAC/MSOS' application be significantly reduced.

Centra noted that CAC/MSOS had filed an updated budget a day before the commencement of the hearing that projected overall costs for its participation of \$181,000. Centra questioned costs, including disbursements, applied for by CAC/MSOS relating to pre-hearing activity and noted that GRA's duration was only one day longer than expected and post-hearing work should relate only to responses to undertakings.

Centra advised it was unable to comment on the scope or contribution of one of CAC/MSOS' consultants, Econalysis, and thus was unable to determine if there was duplication between the efforts of those involved by CAC/MSOS. With regards to costs pertaining to the Judicial Review, Centra submitted that as the review is a separate proceeding, one in which the Board is a party, a request for costs was inappropriate.

In summary, Centra recommended the Board award costs in the amount of \$177,809.26, an amount that excludes all costs applied for by CAC/MSOS related to the judicial review.

CAC/MSOS' Rebuttal

CAC/MSOS noted that Centra had not criticized its participation, and submitted that the primary consideration in the awarding costs should be the intervener's contribution.

CAC/MSOS noted that its budget estimates were made without the input of its consultants. It also noted that the revised and reduced legal fee estimate included in its pre-hearing budget reflected its response to the Board's regulatory cost concerns, and its decision that senior counsel would not appear at the hearing.

With respect to the costs arising out of the Judicial Review, CAC/MSOS submitted that it was not foreclosed from recovering costs related to the Judicial Review through this application, and that the Board had the jurisdiction and precedent to provide costs. CAC/MSOS submitted that costs related to the Judicial Review should be met as the review benefits all stakeholders. CAC/MSOS opined that denial of Judicial Review costs would be punitive, and any amount that may be later awarded by the Court will represent only a small part of the actual costs incurred.

CAC/MSOS provided correspondence indicating support for its cost award submission, from CAC/MSOS' Counsel on the Manitoba Hydro GRA file and from the executive directors of both client organizations. In defending the billing rates of its senior counsel and consultants,

CAC/MSOS cited an inability to hire adequate expertise other than for market rates.

In summary, CAC/MSOS submitted that it had been responsive to the Board's concerns with respect to regulatory costs and had provided an effective intervention, an indispensable service in the proceedings.

Board Findings

Cost awards are at the Board's discretion. The Board makes cost awards on the basis of long-established criteria. These criteria require applicants have a material interest in the proceeding, lack the financial resources necessary to participate in the absence of a cost award, and to participate responsibly.

CAC/MSOS is well known to the Board, and the Board accepts CAC/MSOS had a material interest in the outcome of the proceeding, participated responsibly and is a non-profit organization lacking the ability to participate effectively without cost award eligibility.

The matters raised and commented on by CAC/MSOS during the hearing were germane to the matters at hand. While the Board may not share the perspective of CAC/MSOS with respect to all elements of its participation at the GRA and cost application, it is satisfied that CAC/MSOS contributed to the GRA.

With respect to the quantum of costs sought by CAC/MSOS, the Board has several concerns.

While the Board appreciates that intervenor budgets are prepared based upon best estimates and variances arise due to factors both within and outside of the ability of an Intervener to reasonably control, it has a concern with the variance for legal costs excluding the Judicial Review component. As Centra have commented, the hearing's length was only one day longer than planned and CAC/MSOS' pre-hearing preparation was extensive.

The Board is also concerned with billing rates exceeding those the Board meets with respect to its own Counsel and advisors, it has raised this issue previously and has not changed its view. CAC/MSOS was specifically cautioned on this point prior to the GRA. CAC/MSOS is aware of the Board's interest in restraining regulatory costs, and in continuing an implicit acknowledgement of the public service nature of its regulatory hearings.

With respect to CAC/MSOS' application for costs arising out of the Judicial Review, the Board considers this a separate proceeding and will not award costs.

In summary, the Board will meet the majority of the claim. Deductions will be made to reduce compensation with respect to some of the hourly rates applied for by CAC/MSOS, to delete costs associated with the Judicial Review and to take into partial account Centra's other concerns. All this being said, the Board is appreciative of CAC/MSOS' involvement in the proceedings.

IT IS THEREFORE ORDERED THAT:

1. The application of the Consumers' Association of Canada (Manitoba) Inc./Manitoba Society of Seniors' for an award of costs BE AND IS HEREBY APPROVED in the total amount of \$185,000.00; and
2. These costs shall be paid by Manitoba Hydro as of the date of this Order.

THE PUBLIC UTILITIES BOARD

"GRAHAM F. J. LANE, B.A., C.A."
Chairman

"H. M. SINGH"
Acting Secretary

Certified a true copy of Order
No. 138/05 issued by The Public
Utilities Board

Acting Secretary