

MANITOBA) Order No. 154/07
)
THE PUBLIC UTILITIES BOARD ACT) December 3, 2007

BEFORE: Graham Lane, CA, Chairman
Leonard Evans, LL.D., Member
Eric Jorgensen, Member

AWARD OF COSTS: CONSUMERS' ASSOCIATION OF CANADA
(MANITOBA) INC./MANITOBA SOCIETY OF SENIORS -
INTERVENTION,
COMPETITIVE NATURAL GAS LANDSCAPE PROCEEDING

Introduction

By this Order, the Public Utilities Board (Board) approves an award of costs of \$199,041.78 to the Consumers' Association of Canada (Manitoba) Inc./ Manitoba Society of Seniors (CAC/MSOS), with respect to CAC/MSOS' participation in the Board's Competitive Natural Gas Landscape in Manitoba proceeding.

Application

The Board recently held a public hearing on the Competitive Natural Gas Landscape in Manitoba. The proceeding was held in September, concluding with closing arguments presented on October 25 and 26, 2007.

Pursuant to Section 56 of *The Public Utilities Board Act*, the Board has jurisdiction to award costs of, and incidental to, any Board proceeding, and the Board's Rules of Practice and Procedure (Rules) stipulate four criteria for determining whether costs should be awarded, those being whether an Intervener:

1. made a significant contribution relevant to the proceeding and contributed to a better understanding by all parties of the issues before the Board;
2. participated in the hearing in a responsible manner and cooperated with other Interveners with common objectives to avoid a duplication of intervention;

3. had insufficient financial resources to present the case adequately without an award of costs; and
4. had a substantial interest in the outcome of the proceeding, and represented the interests of a substantial number of Centra's customers.

CAC/MSOS applied for \$205,044.81, comprised of:

Legal	Fees	\$117,090.60	
	Disbursements	<u>8,486.70</u>	
	Sub-Total		\$125,577.30
Consulting			
Dr. M. VanAudenrode	Fees:	\$17,702.00	
	Disbursements	<u>1,506.25</u>	
	Sub-Total		\$19,208.25
Mr. M. Stauff	Fees:	\$59,320.25	
	Disbursements	<u>939.01</u>	
	Sub-Total		<u>\$60,259.26</u>
GRAND TOTAL			<u>\$205,044.81</u>

In support of its application, CAC/MSOS noted that its request was relatively close to its original budget for its intervention of \$192,936.00.

CAC/MSOS opined that there had been no duplication of its effort with those of the other interveners and that, with respect to the use of consultants, it had made a concerted effort to

restrain regulatory costs and had achieved efficiency and effectiveness.

CAC/MSOS requested that the Board vary its normal practice with respect to the maximum hourly rates payable to consultants. CAC/MSOS noted that Mr. Stauff is a lawyer with more than 20 years of experience, and that Dr. VanAudenrode is a senior economist. They also noted that their lead counsel, though not having practiced 20 years, "has acted as counsel on more gas hearings than any other 20-year lawyer in this jurisdiction, with the exception of (reference to another lawyer known to the Board)."

Centra's Comment

Centra noted that CAC/MSOS's claim was virtually double that made by the retailer intervention team, while acknowledging that CAC/MSOS retained an additional expert, compared to the retailer intervention, that accounted for a portion of the difference.

Centra questioned CAC/MSOS' decision to use expert witnesses, opining that it may have been more beneficial for the proceeding if CAC/MSOS had, instead, relayed its members experiences with the competitive natural gas market in Manitoba.

Finally, Centra expressed concern with CAC/MSOS' request for the funding of legal and consulting service rates higher than those normally paid by the Board, and with what Centra viewed as an

excessive number of hours recorded for consultations between the lawyers from D'Arcy & Deacon, citing this as representing possible duplication of effort.

CAC/MSOS Response

CAC/MSOS objected to Centra's comparison to the amounts claimed by the retailers' intervention, noting that that claim had been unsupported by detail. CAC/MSOS acknowledged that it did use two expert witnesses, as opposed to just the one engaged by the retailers, though noting that the retailers' expert witness' participation was extremely limited in comparison to the contribution of CAC/MSOS' Consultants.

CAC/MSOS further opined that producing expert witnesses was much more meaningful than providing anecdotal stories about customer "experience at the door".

Board Findings

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

CAC/MSOS is well known to the Board, and the Board accepts that CAC/MSOS not only had a material interest in the outcome of the proceeding, but also participated responsibly, while being a non-profit organization lacking the ability to participate effectively without a cost award.

The Board finds that the matters canvassed and commented upon by CAC/MSOS' intervention were germane to the matters at hand.

With respect to Centra's objection concerning CAC/MSOS' use of consultants and the cost comparison made to the intervention of the retailers, the Board agrees with CAC/MSOS that a comparison with the costs cited by the retailers is not relevant, both as to the fact that the retailers engaged only one consultant and with respect to the retailers' cost estimate being unsupported by detail costing.

The Board was concerned with a potential overlap and duplication of effort in terms of legal consulting costs, as raised by Centra, however, the Board notes that in large measure that duplication was attributable to the hearing being held over from June to September as a result of a late filing of information on the part of Centra. The late filing required extra consultative effort by CAC/MSOS because the intended primary CAC/MSOS legal counsel was unavailable for the majority of the September session.

That said, the Board continues to caution interveners to ensure that there is no duplication or overlap of services in conducting interventions.

The Board notes CAC/ MSOS' request for higher rates than those normally allowed by the Board; billing rates are limited to the rates the Board provides its own legal counsel and advisors. The Board is not prepared to vary its practice, thus the hourly rates sought by CAC/MSOS will be adjusted to meet the Board's practice.

Accordingly, the claim has been adjusted to reflect consistency with rates allowed:

Legal	Fees	\$112,415.22	
	Disbursements	<u>8,486.70</u>	
	Sub-Total		\$120,901.92
Consulting			
Dr. M. VanAudenrode	Fees:	\$16,374.35	
	Disbursements	<u>1,506.25</u>	
	Sub-Total		\$17,880.60
Mr. M. Stauff	Fees:	\$59,320.25	
	Disbursements	<u>939.01</u>	
	Sub-Total		<u>\$60,259.26</u>
GRAND TOTAL			<u><u>\$199,041.78</u></u>

In summary, while the Board will meet the majority of CAC/MSOS' request, the award will be reduced to reflect lower billing rates for consultants and counsel, as well with respect to minor adjustments to disbursements to reflect Board policy.

The Board remains appreciative of CAC/MSOS' involvement in its proceedings.

IT IS THEREFORE ORDERED THAT:

1. Consumers' Association of Canada (Manitoba) Inc./Manitoba Society of Seniors' request for an award of costs is varied, and is HEREBY APPROVED in the total amount of \$199,041.78; and
2. Costs be payable by Centra Gas Manitoba Inc. within 30 days of the date of this Order.

THE PUBLIC UTILITIES BOARD

"GRAHAM F. J. LANE CA"
Chairman

"G. GAUDREAU, CMA"
Secretary

Certified a true copy of
Order No. 154/07 issued by
The Public Utilities Board

Secretary