

IBAM EXHIBIT 25

TAB 1



MANITOBA

THE CROWN CORPORATIONS GOVERNANCE AND ACCOUNTABILITY ACT

C.C.S.M. c. C336

LOI SUR LA GOUVERNANCE ET L'OBLIGATION REDDITIONNELLE DES CORPORATIONS DE LA COURONNE

c. C336 de la *C.P.L.M.*

As of 2019-10-25, this is the most current version available. It is current for the period set out in the footer below.

Le texte figurant ci-dessous constitue la codification la plus récente en date du 2019-10-25. Son contenu était à jour pendant la période indiquée en bas de page.

PART 4

PUBLIC UTILITIES BOARD REVIEW OF RATES

Hydro and MPIC rates review

25(1) Despite any other Act or law, rates for services provided by Manitoba Hydro and the Manitoba Public Insurance Corporation shall be reviewed by The Public Utilities Board under *The Public Utilities Board Act* and no change in rates for services shall be made and no new rates for services shall be introduced without the approval of The Public Utilities Board.

Definition: "rates for services"

25(2) For the purposes of this Part, "rates for services" means

- (a) in the case of Manitoba Hydro, prices charged by that corporation with respect to the provision of power as defined in *The Manitoba Hydro Act*; and
- (b) in the case of The Manitoba Public Insurance Corporation, rate bases and premiums charged with respect to compulsory driver and vehicle insurance provided by that corporation.

Application of Public Utilities Board Act

25(3) *The Public Utilities Board Act* applies with any necessary changes to a review pursuant to this Part of rates for services.

Factors to be considered, hearings

25(4) In reaching a decision pursuant to this Part, The Public Utilities Board may

- (a) take into consideration
 - (i) the amount required to provide sufficient funds to cover operating, maintenance and administration expenses of the corporation,

PARTIE 4

EXAMEN DES TARIFS PAR LA RÉGIE DES SERVICES PUBLICS

Examen des tarifs

25(1) Malgré toute autre loi ou règle de droit, les tarifs afférents aux services fournis par l'Hydro-Manitoba et la Société d'assurance publique du Manitoba sont examinés en vertu de la *Loi sur la Régie des services publics* par la Régie des services publics et aucun changement dans ces tarifs ne peut être effectué de même qu'aucun nouveau tarif ne peut être introduit sans l'approbation de celle-ci.

Sens de « tarif »

25(2) Pour l'application de la présente partie, le terme « **tarif** » s'entend :

- a) dans le cas de l'Hydro-Manitoba, des prix fixés par cette corporation relativement à la fourniture d'énergie au sens de la *Loi sur l'Hydro-Manitoba*;
- b) dans le cas de la Société d'assurance publique du Manitoba, des bases de taux utilisées ainsi que des primes exigées à l'égard de l'assurance-automobile obligatoire fournie par cette corporation.

Application de certaines dispositions

25(3) La *Loi sur la Régie des services publics* s'applique, avec les adaptations nécessaires, à tout examen que vise la présente partie et qui porte sur des tarifs.

Éléments à considérer

25(4) Afin de prendre une décision en vertu de la présente partie, la Régie des services publics peut :

- a) tenir compte :
 - (i) des besoins financiers de la corporation pour qu'elle puisse assumer ses dépenses de fonctionnement, d'entretien et d'administration,

- (ii) interest and expenses on debt incurred for the purposes of the corporation by the government,
 - (iii) interest on debt incurred by the corporation,
 - (iv) reserves for replacement, renewal and obsolescence of works of the corporation,
 - (v) any other reserves that are necessary for the maintenance, operation, and replacement of works of the corporation,
 - (vi) liabilities of the corporation for pension benefits and other employee benefit programs,
 - (vii) any other payments that are required to be made out of the revenue of the corporation,
 - (viii) any compelling policy considerations that the board considers relevant to the matter, and
 - (ix) any other factors that the Board considers relevant to the matter; and
- (b) hear submissions from any persons or groups or classes of persons or groups who, in the opinion of the Board, have an interest in the matter.

- (ii) des intérêts et des frais relatifs aux dettes que le gouvernement contracte pour les besoins de la corporation,
 - (iii) des intérêts sur les dettes de la corporation,
 - (iv) des sommes à mettre en réserve pour le remplacement, la rénovation et l'obsolescence des ouvrages de la corporation,
 - (v) des autres sommes à mettre en réserve qui sont nécessaires à l'entretien, à l'exploitation et au remplacement des ouvrages de la corporation,
 - (vi) des obligations de la corporation relativement aux programmes d'avantages destinés aux employés, y compris les prestations de pension,
 - (vii) des autres paiements qui doivent être faits sur les revenus de la corporation,
 - (viii) des considérations de principe importantes qu'elle estime pertinentes à l'affaire,
 - (ix) des autres éléments qu'elle estime pertinents à l'affaire;
- b) entendre les présentations des personnes, des groupes ou des catégories de personnes ou de groupes qui, à son avis, ont un intérêt dans l'affaire.

MPIC

25(5) In the case of a review pursuant to this Part of rates for services of the Manitoba Public Insurance Corporation, The Public Utilities Board may take into consideration, in addition to factors described in subsection (4), all elements of insurance coverage affecting insurance rates.

Société d'assurance publique du Manitoba

25(5) Dans le cas d'un examen visé à la présente partie et portant sur les tarifs de la Société d'assurance publique du Manitoba, la Régie des services publics peut prendre en considération, en plus des éléments mentionnés au paragraphe (4), tous les éléments de la garantie d'assurance qui touchent les taux d'assurance.

TAB 2



MANITOBA

THE PUBLIC UTILITIES BOARD ACT

C.C.S.M. c. P280

LOI SUR LA RÉGIE DES SERVICES PUBLICS

c. P280 de la *C.P.L.M.*

As of 2019-10-25, this is the most current version available. It is current for the period set out in the footer below.

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General supervision over utilities

74(1) The board has a general supervision over all public utilities and the owners thereof subject to the legislative authority of the Legislature, and may make such orders regarding equipment, appliances, safety devices, extension of works or systems, reporting, and other matters, as are necessary for the safety or convenience of the public or for the proper carrying out of any contract, charter, or franchise involving the use of public property or rights.

Inquiries by board

74(2) The board shall conduct all inquiries necessary for the obtaining of complete information as to the manner in which owners of public utilities comply with the law, or as to any other matter or thing within the jurisdiction of the board.

Board may refrain from exercising power

74.1(1) The board may make a determination to refrain, in whole or in part and conditionally or unconditionally, from the exercise of any power or the performance of any duty under this Act

- (a) in relation to any matter before it; or
- (b) in relation to
 - (i) any public utility,
 - (ii) any person who is subject to this Act, or
 - (iii) any product or class of products supplied or service or class of services rendered within the province by a public utility, or by a person referred to in subclause (ii), that is subject to this Act;

where the board finds as a question of fact that the public utility, person, product, class of products, service or class of services is or will be subject to competition sufficient to protect the public interest.

Exception

74.1(2) The board shall not make a determination to refrain under subsection (1) in relation to a public utility, person, product, class of products, service or

Surveillance générale des services publics

74(1) La Régie assure la surveillance générale de tous les services publics, et de leurs propriétaires, qui relèvent de l'autorité législative de la Législature et peut, en ce qui concerne les équipements, appareils, dispositifs de sécurité, l'extension des ouvrages ou des systèmes, les rapports à soumettre et autres questions, rendre les ordonnances nécessaires pour la sécurité ou la commodité du public ou pour l'exécution appropriée d'un contrat, d'une charte ou d'un privilège relatif à l'usage de biens ou de droits publics.

Enquêtes de la Régie

74(2) La Régie mène toutes les enquêtes nécessaires à l'obtention de renseignements complets sur la façon dont les propriétaires de services publics se conforment à la loi ou sur toute question ou chose relevant de la compétence de la Régie.

Abstention de la Régie

74.1(1) La Régie peut s'abstenir d'exercer, en tout ou en partie et aux conditions qu'elle fixe, les pouvoirs et fonctions que lui confère la présente loi :

- a) à l'égard d'une question qu'elle étudie;
- b) à l'égard :
 - (i) de services publics,
 - (ii) des personnes auxquelles s'applique la présente loi,
 - (iii) des produits, des services, des catégories de produits ou des catégories de services que fournit, dans la province, un service public ou une personne mentionnée au sous-alinéa (ii) auxquels s'applique la présente loi,

dans le cas où elle conclut, comme question de fait, que les services publics, les personnes, les produits, les services, les catégories de produits ou les catégories de services font ou feront l'objet d'une concurrence suffisante pour protéger l'intérêt du public.

Exception

74.1(2) La Régie ne peut s'abstenir, conformément au paragraphe (1), d'exercer ses pouvoirs et fonctions à l'égard de services publics, de personnes, de produits,

class of services, if the board finds as a question of fact that to refrain would be likely to impair unduly the establishment or continuation of a competitive market for that public utility, person, product, class of products, service or class of services.

Imposition of conditions on associated person

74.1(3) Where the board considers it appropriate in relation to a determination under subsection (1) to refrain from exercising any power or performing any duty in relation to a product or class of products supplied or service or class of services rendered by a public utility or by a person referred to in subclause (1)(b)(ii), it may impose conditions on any person or company associated, in supplying the product or class of products or rendering the service or class of services, with

- (a) the public utility;
- (b) the owner of the public utility; or
- (c) the person.

S.M. 1997, c. 11, s. 5.

Receivers, etc., subject to board

75 The fact that a receiver, manager, or other official of any public utility, or a sequestrator of the property thereof, has been appointed by any court in the province, or is managing or operating a public utility under the authority of any such court, or that the public utility is being wound up voluntarily, does not prevent the exercise by the board of any jurisdiction conferred by this Act; but every receiver, manager, or official is bound to manage and operate any such public utility in accordance with this Act and with the orders and directions of the board, whether general or referring particularly to the public utility; and every such receiver, manager, or official, and every person acting under him, shall obey all orders of the board within its jurisdiction in respect of the public utility, and is subject to having them enforced against him by the board, notwithstanding the fact that the receiver, manager, official, or person is appointed by, or acts under the authority of, any court.

de services, de catégories de produits ou de catégories de services si elle conclut, comme question de fait, que cela aurait vraisemblablement pour effet de compromettre indûment la création ou le maintien d'un marché concurrentiel pour les services publics, les personnes, les produits, les services, les catégories de produits ou les catégories de services.

Imposition de conditions

74.1(3) Si elle considère comme approprié de s'abstenir, conformément au paragraphe (1), d'exercer ses pouvoirs et fonctions à l'égard de produits, de services, de catégories de produits ou de catégories de services que fournit un service public ou une personne mentionnée au sous-alinéa (1)b(ii), la Régie peut imposer des conditions à toute personne ou compagnie qui est associée, relativement à la fourniture des produits, des services, des catégories de produits ou des catégories de services :

- a) au service public;
- b) au propriétaire du service public;
- c) à la personne.

L.M. 1997, c. 11, art. 5.

Séquestres

75 Le fait qu'un receveur, un dirigeant ou autre responsable d'un service public ou un séquestre de ses biens a été nommé par un tribunal de la province ou gère ou exploite un service public sous l'autorité d'un tel tribunal, ou encore que le service public est liquidé volontairement, n'empêche pas l'exercice par la Régie de la compétence que lui confère la présente loi. Tout receveur, dirigeant ou responsable doit gérer et exploiter le service public en conformité avec la présente loi et avec les ordonnances et directives de la Régie, qu'elles soient générales ou qu'elles se rapportent spécifiquement au service public. Le receveur, le dirigeant ou le responsable et toute personne agissant sous ses ordres doit obéir aux ordonnances de la Régie visant le service public, prises dans les limites de sa compétence, lesquelles peuvent lui être opposées par la Régie, malgré le fait qu'il ait été nommé par un tribunal ou qu'il agisse sous l'autorité de ce dernier.

General powers

76 The board may

- (a) investigate, upon its own initiative, upon a request of the minister or the Lieutenant Governor in Council, or upon complaint in writing, any matter concerning any public utility;
- (b) appraise and value the property of any public utility wherever in the judgment of the board it is necessary so to do, for the purpose of carrying out any provision of this Act, and in making the valuation, may have access to and use any books, documents, or records in the possession of any department of the executive government of the province or of any board, commission, or association that reports to the government or of any municipality in the province;
- (c) require every owner of a public utility to file with it complete schedules of every classification employed and of every individual or joint rate, toll, fare, or charge made, charged, or enacted by it for any product supplied or service rendered within the province as specified in the requirement.

Orders as to utilities

77 The board may, by order in writing after notice to, and hearing of, the parties interested,

- (a) fix just and reasonable individual rates, joint rates, tolls, charges, or schedules thereof, as well as commutation, mileage, and other special rates that shall be imposed, observed, and followed thereafter, by any owner of a public utility wherever the board determines that any existing individual rate, joint rate, roll, charge or schedule thereof or commutation, mileage, or other special rate is unjust, unreasonable, insufficient, or unjustly discriminatory or preferential;
- (b) fix just and reasonable standards, classifications, regulations, practices, measurements, or service to be furnished, imposed, observed, and followed thereafter by any such owner;
- (c) direct any railway, street railway, or traction company, to establish and maintain at any junction or point of connection or intersection with any other line of the road, or with any line of any other

Pouvoirs généraux

76 La Régie peut :

- a) faire enquête sur toute affaire concernant un service public, de sa propre initiative, à la demande du ministre ou du lieutenant-gouverneur en conseil, ou à la suite d'une plainte écrite;
- b) faire expertiser et évaluer les biens de tout service public lorsqu'à son avis, il est nécessaire de le faire pour l'application d'une disposition de la présente loi et, à cette fin, consulter et utiliser les livres, documents ou registres en possession des ministères du gouvernement de la province, d'une Régie, d'une commission ou d'une association qui fait rapport au gouvernement, ou d'une municipalité dans la province;
- c) exiger du propriétaire d'un service public qu'il dépose ses barèmes détaillés de toutes les classifications utilisées et de tous les taux individuels ou conjoints, tarifs, prix de billets ou charges, demandés, imposés ou adoptés pour tout produit fourni ou service rendu dans la province, de la façon spécifiée dans l'exigence.

Ordonnances concernant les services publics

77 La Régie peut, par ordonnance écrite et après avis aux parties intéressées et audition de celles-ci :

- a) fixer des tarifs individuels ou conjoints, des taux, des charges justes et raisonnables ou leurs barèmes, ainsi que des tarifs d'abonnement, des tarifs kilométriques et d'autres tarifs spéciaux qui seront imposés, observés et suivis par la suite par le propriétaire d'un service public, lorsque la Régie estime que ces tarifs, taux, charges et barèmes existants sont injustes, déraisonnables, insuffisants, injustement discriminatoires ou préférentiels;
- b) établir des normes, classifications, règlements, pratiques, mesures justes et raisonnables à adopter, à imposer, à observer et à suivre par le propriétaire ou des services justes et raisonnables à fournir par celui-ci;
- c) ordonner à toute compagnie de chemins de fer, de chemins de fer vicinaux ou de locomobile d'établir et d'entretenir, à toute intersection, tout point de raccordement ou de croisement avec une autre voie

TAB 3

1997 CarswellMan 125
Manitoba Court of Appeal

Centra Gas Manitoba Inc. v. Manitoba (Public Utilities Board)

1997 CarswellMan 125, [1997] 6 W.W.R. 301, [1997] M.J. No. 165, 70 A.C.W.S. (3d) 567

**Centra Gas Manitoba Inc., Applicant, and The
Public Utilities Board of Manitoba, Respondent**

Scott C.J.M.

Heard: March 6, 1997

Judgment: April 8, 1997

Docket: AI 96-30-03053

Counsel: *A.S. Hollingworth* and *M.T. O'Neill*, for applicant.

R.F. Peters and *K.L. Kalinowsky*, for respondent.

J.F. Rook, Q.C., for Enron Capital & Trade Resources Canada Corp.

R.J. Graham and *T.J. Gilmor*, for Consumers' Association of Canada (Manitoba) Inc. and Manitoba Society of Seniors.

P.B. Budd and *G.C. Vegh*, for PanEnergy Marketing.

Subject: Public

Related Abridgment Classifications

Public law

IV Public utilities

IV.5 Regulatory boards

IV.5.c Practice and procedure

IV.5.c.iii Statutory appeals

IV.5.c.iii.B Grounds for appeal

IV.5.c.iii.B.1 Lack of jurisdiction

Headnote

Public Utilities --- Regulatory boards — Practice and procedure — Statutory appeals — Grounds for appeal — Lack of jurisdiction

Board ordering utility not to enter into shared service arrangements with unregulated affiliates — Utility arguing that board had no authority to make order — Board reasonably interested in corporate structure that could affect consumers' rates — Board having jurisdiction over discriminatory rates and broad jurisdiction to protect public interest — Board having jurisdiction to make order — Public Utilities Board Act, C.C.S.M., c. P280, ss. 74(1), 77, 82, 82(1).

In 1995, C Inc., a natural gas supplier, applied to the Public Utilities Board of Manitoba for permission to include in its rate base the cost of rental water heaters offered to customers. The request was refused, after which C Inc. assigned its rental contracts to an unregulated affiliate company. The board then held a hearing to review the role of C Inc. in supplying natural gas. The board concluded that it was important to ensure that C Inc. did not subsidize unregulated competitive activities or accept financial risk of its affiliates. The board set out criteria as to when shared service arrangements would be permitted. The board ordered that C Inc. not enter into new shared facility arrangements with affiliated companies, and make applications to the board for permission to continue any existing shared service arrangements.

C Inc. applied for leave to appeal the board's order. It argued that the board had interpreted s. 82(1) of the *Public Utilities Board Act* (Man.) too broadly, as to empower it to regulate all contracts made by owners of public utilities with affiliates, whether the contract had bearing upon the utility aspect of the owner's extended enterprises or not. C Inc. argued that the board had no jurisdiction to restrict C Inc. from competing in businesses which did not form part of the public utility.

Held: The application for leave to appeal was denied.

While the powers of any administrative tribunal must be stated in its enabling statute, they may exist by necessary implication from the wording of the statute, its structure, and its purpose. The primary purpose of public utility commissions is to protect the public interest. Therefore, any order by the board should be appraised to determine whether it reasonably promoted that legislative intent. It was not unreasonable that the board be concerned with a corporate structure that could affect rates offered to a utility's customers. The board's order, designed to ensure that no cross-subsidization existed between regulated and unregulated entities, fell within the board's jurisdiction over discriminatory rates, conferred by s. 82 of the Act. It was also consistent with the board's broader power to consider protection of the public interest under ss. 74(1) and 77. The board had authority to make the order. The application for leave to appeal should be dismissed.

Table of Authorities

Cases considered by *Scott C.J.M.*:

- Bell Canada v. Canada (Radio-Television & Telecommunications Commission)* (1989), 38 Admin. L.R. 1, [1989] 1 S.C.R. 1722, 60 D.L.R. (4th) 682, 97 N.R. 15 (S.C.C.) — applied
- Bell Telephone Co. v. Canadian National Railway*, [1932] S.C.R. 222, 39 C.R.C. 186, [1932] 2 D.L.R. 753 (S.C.C.) — applied
- Bell Telephone Co. v. Canadian National Railway*, [1933] A.C. 563, 41 C.R.C. 168, [1934] 1 D.L.R. 310 (Canada P.C.) — referred to
- Central Hudson Gas & Electric Corp. v. New York (Public Service Commission)* (1980), 447 U.S. 557, 100 S. Ct. 2343, 65 L. Ed. 2d 341 — referred to
- Chevron Canada Resources Ltd. v. Gabrielle* (1990), 68 Man. R. (2d) 230 (Man. C.A.) — applied
- Consolidated Edison Co. of New York v. Public Service Commission of New York* (1979), 390 N.E.2d 749 (U.S. N.Y.) — applied
- Consolidated Edison Co. of New York v. Public Service Commission of New York* (1980), 447 U.S. 530, 100 S. Ct. 2326, 65 L. Ed. 2d 319 (U.S. N.Y.) — referred to
- D.F. Bast v. Pennsylvania (Public Utility Commission)* (1958), 138 A.2d 270 (U.S. Pa. Super.) — considered
- Denver Chicago Transport Co. v. Poulson* (1961), 112 N.W.2d 410 (U.S. Neb.) — considered
- Island Telephone Co., Re* (1988), 70 Nfld. & P.E.I.R. 112, 215 A.P.R. 112 (P.E.I. C.A.) — applied
- Kenora (Town) Hydro Electric Commission v. Vacationland Dairy Co-operative Ltd.* (1994), (sub nom. *Hydro Electric Commission of Kenora (Town) v. Vacationland Dairy Co-operative Ltd.*) 162 N.R. 241, [1994] 1 S.C.R. 80, (sub nom. *Hydro Electric Commission of Kenora (Town) v. Vacationland Dairy Co-operative Ltd.*) 68 O.A.C. 241, 18 Admin. L.R. (2d) 1, 110 D.L.R. (4th) 449 (S.C.C.) — applied
- Lindsay v. Manitoba (Motor Transport Board)* (1989), 57 Man. R. (2d) 233 (Man. C.A.) — applied
- Morehouse Natural Gas Co. v. Louisiana (Public Service Commission)* (1962), 140 So. 2d 646 (U.S. La.) — considered
- Myers v. Blair Telephone Co.* (1975), 230 N.W.2d 190 (U.S. Neb.) — considered
- Nova Scotia (Public Utilities Board) v. Nova Scotia Power Corp.* (1976), 18 N.S.R. (2d) 692, 20 A.P.R. 692 (N.S. C.A.) — applied
- Portage la Prairie (City) v. Inter-City Gas Utilities Ltd.* (1970), 12 D.L.R. (3d) 388 (Man. C.A.) — considered
- Sayre v. Pennsylvania (Public Utility Commission)* (1947), 54 A.2d 95 (U.S. Pa. Super.) — considered
- Telstar Communications Inc. v. Rule Radiophone Service Inc.* (1980), 621 P.2d 241 (U.S. Wyo.) — considered
- West-Man Culvert & Metal Co. v. Manitoba Provincial Municipal Assessor*, [1992] 5 W.W.R. 56, 94 D.L.R. (4th) 260, 9 C.P.C. (3d) 33, 81 Man. R. (2d) 112, 30 W.A.C. 112 (Man. C.A.) — applied
- Wuziuk v. Manitoba (Director of Social Services) (No. 2)* (1979), 3 Man. R. (2d) 81 (Man. C.A.) — applied

Statutes considered:

- Public Utilities Board Act*, R.S.M. 1987, c. P280; C.C.S.M., c. P280
- s. 44(3) — referred to
 - s. 58 — pursuant to
 - s. 58(1) — considered
 - s. 74(1) — considered

s. 77 — considered

s. 82 — referred to

s. 82(1) — considered

APPLICATION for leave to appeal order of public utility board.

Scott C.J.M.:

1 This is an application for leave to appeal brought by Central Gas Manitoba Inc. (Centra) from Order 110/96 of the Public Utilities Board of Manitoba (the Board), made on November 4, 1996. The application for leave comes before this Court pursuant to the provisions of sec. 58 of *The Public Utilities Board Act*, C.C.S.M., c. P280 (the *Act*) which grants a right of appeal with leave upon:

- (a) any question involving the jurisdiction of the Board or
- (b) any point of law or
- (c) any facts especially found by the Board relating to a matter before the Board.

In its application, Centra specifically states that leave to appeal is not sought with respect to matters of fact.

2 Centra is the owner of a public utility that is required to be licensed and is licensed by the Board to provide natural gas to residential and commercial customers in the city of Winnipeg and in many other communities within the province.

3 The decision in question arises from a generic hearing instituted by the Board to review the role of Centra in the supply of natural gas to Manitoba consumers within the new deregulated environment for gas distribution in Canada. Seven issues were identified. The decision of November 4, 1996, deals only with the last:

Discuss the guidelines for acceptable conduct between Centra Gas Manitoba Inc. and affiliated companies, including the methodology and costing for the transfer of assets, the sharing of resources including human resources and the use of the common name.

4 Centra takes issue with the following provisions of the Board's order:

.....

6. Centra not enter into any new shared facility arrangements between Centra and its affiliated companies.

7. With respect to existing shared services or facilities Centra shall:

(i) within 30 days of the date of this Order, identify all shared services or facilities with all affiliates including, for example, shared arrangements with Westcoast Energy Inc., Westcoast Gas Inc., Minell Pipeline Ltd. and Centra Gas Services Inc.

(ii) within 30 days of the date of this Order, confirm that all shared services effective the date of this Order are being provided on a fully-allocated cost basis and all shared facilities are being provided at fair market value.

(iii) within 60 days of the date of this Order, provide details of any shared services related to the ERP for fiscal years 1995 and 1996 with a comparison of the costing arrangement that existed prior to the date of this Order and the costing arrangement set out in this Order using fully-allocated costs or fair market value as the case may be.

(iv) within 60 days of the date of this Order, make application to the Board for the continuation of any existing shared service consistent with the criteria previously set out by the Board.

(v) within 60 days of the date of this Order, provide a plan to phase out all shared facility arrangements within 90 days of the date of this Order.

8. With respect to any proposed or existing shared service arrangement Centra shall provide a statement ensuring that the criteria set out in section 8.3 [of the Reasons for Decision] are met.

9. Centra shall not allow any Centra affiliate operating in Manitoba to advertise its relationship with Centra.

10. Centra shall ensure that its affiliates operating in Manitoba clearly state in all media, correspondence and contracts that its activities are not regulated by the Board.

The Facts

5 Preceding the 1996 hearings that led to the order, Centra, in its 1995 general rate application, requested that it be allowed to include in its rate base the cost of equipment of two new programs, one being an Equipment Rental Program (ERP) through which Centra offered to rent natural gas water heaters to customers. The Board rejected Centra's request since the ERP was a competitive service offering. By Order 49/95 it directed Centra to exclude from the rate base the cost of the ERP equipment and to exclude from its revenue requirement the cost of providing the service. Centra thereupon elected to assign the ERP contracts to Centra Energy Services (CES), an unregulated affiliate of Centra's parent company.

6 The 1996 review process then followed. Extensive submissions and evidence were taken during public hearings in Winnipeg which extended from June 10 to July 10, 1996. Thirty-eight parties registered with the Board as interested parties and ten (which include those granted intervenor status before this Court) participated fully in the proceedings.

7 During these hearings Centra acknowledged that the Board had a role to play to ensure that no cross-subsidization took place between the regulated entity and any non-regulated affiliate.

8 In lengthy reasons, the Board concluded that:

...it has the jurisdiction under Sections 74 and 82 of the *Public Utilities Board Act* to order the prohibition of the use of the Centra name by the affiliates of Centra.

9 Its rationale for restricting the use of the name Centra was:

The Board is concerned that consumers may not understand that, while affiliated companies may share the same name as the utility, these affiliated companies are not subject to the regulatory oversight afforded the utility.

10 As to the ERP, the Board decided that:

...any transfer of assets from the regulated utility to an affiliate is a transaction as defined by Section 82(1)(i) of the *Public Utilities Board Act*, ...

Since no information was provided as to the value of the ERP contracts in the 1995 hearing, the Board decided that it should be investigated during the next general rate application.

11 Centra's relations with its affiliates was the most significant issue at the generic hearing. The Board noted:

This [utility relationship with affiliates] is an important consideration in the evolutionary process of deregulation, as Centra's relationship with its affiliates may impact on the cost and deliverability of the service of the regulated entity. It is important to ensure that Centra does not subsidize unregulated competitive activities or accept any of the financial risk of its affiliates.

12 The Board was therefore of the view that "...there should be no shared facilities and, in principle, no shared services" (shared services include accounting, collections, human resource administration, administration generally and the like):

The Board is also cognizant that the appropriate relationship between Centra and its affiliates must be in the best interest of the ratepayers and also must strike a balance between permitting Centra's affiliates to engage in competitive ventures and retaining a level playing field for all competitors.

.....

A related issue of concern is whether Centra's relationship with its affiliates detracts from the competitive marketplace.

13 The Board set out five basic principles:

- (1) There should be no shared facilities;
- (2) There should be no shared executives;
- (3) There should be no shared staff or employees;
- (4) There should be separate Boards of Directors;
- (5) There may be up to 25% of those Directors shared.

14 With respect to existing or future services, the following criteria were established:

- (a) The exact nature of the economy of scale and scope must be determined by means of a cost benefit analysis;
- (b) The shared service must not be to any detriment of the regulated utility. The provision of services should not be the driver in increased staffing, capital expansion or technology choices;
- (c) The shared service must not result in undue disadvantage to any competitors in the market;
- (d) The terms and conditions for utilizing the shared service shall not be structured in such a manner which discourages utilization by those other than affiliates;
- (e) The shared service cannot be provided by the parent company of the affiliates or the market place at the current time or at some time in the future in a reasonable and cost effective manner.

15 By application dated January 27, 1997, Centra applied to the Board for a variation order pursuant to sec. 44(3) of the *Act*. The variation order was denied on March 5, 1997.

The Act

16 Of particular pertinence to this application are the following sections of the *Act*:

General supervision over utilities

74(1) The board has a general supervision over all public utilities and the owners thereof subject to the legislative authority of the Legislature, and may make such orders regarding equipment, appliances, safety devices, extensions of works or systems, reporting, and other matters, as are necessary for the safety or convenience of the public or for the proper carrying out of any contract, charter, or franchise involving the use of public property or rights.

Orders as to utilities

77 The board may, ...

- (a) fix just and reasonable individual rates, ... wherever the board determines that any existing individual rate ... is unjust, unreasonable, insufficient, or unjustly discriminatory or preferential;
- (b) fix just and reasonable standards, classifications, regulations, practices, measurements, or service....

Restriction on Powers of Owners of Public Utilities

17

Discriminatory rates

82(1) No owner of a public utility shall

.....

- (i) subject to subsections (12) and (13), enter into any contract or arrangement, other than a contract to provide the services that the public utility provides, at rates approved by the board, with a company or firm in which the owner of the public utility or a director thereof has an interest, unless the public utility has filed with the board the contract, or a memorandum describing and giving full details of the arrangement, and has received from the board a written acknowledgement that the filing has been made as required therein.

The Law

18 There is no serious dispute as to the criteria to be applied on an application for leave to appeal.

19 In addition to showing that a point of law or jurisdiction is involved, an applicant must also demonstrate that the point is "arguable." The granting of leave is discretionary even if a question of jurisdiction or a point of law is raised. See *West-Man Culvert & Metal Co. v. Manitoba Provincial Municipal Assessor* (1992), 81 Man. R. (2d) 112 (Man. C.A.); *Lindsay v. Manitoba (Motor Transport Board)* (1989), 57 Man. R. (2d) 233 (Man. C.A.); *Chevron Canada Resources Ltd. v. Gabrielle* (1990), 68 Man. R. (2d) 230 (Man. C.A.). Thus, not every question of law or jurisdiction warrants the granting of leave to appeal. In *Wuziuk v. Manitoba (Director of Social Services) (No. 2)* (1979), 3 Man. R. (2d) 81 (Man. C.A.), Huband J.A. noted (at p. 82):

Simply because a valid question of law is raised, does not give an automatic entitlement for leave to appeal to this court. The issue must be one of importance; not just for the immediate case, but in determining other similar disputes which are apt to arise in future.

20 Furthermore, by virtue of its very terms the right of appeal under sec. 58(1) of the *Act* is not unlimited. In *Portage la Prairie (City) v. Inter-City Gas Utilities Ltd.* (1970), 12 D.L.R. (3d) 388 (Man. C.A.), Freedman J.A. (as he then was) said (at pp. 391-92):

Manifestly the right of appeal permitted by the statute is broad and comprehensive. But it is not unlimited. It does not extend, for example, to matters of policy decided by the Board in the exercise of its discretion. In such areas an appellate Court will not substitute its discretion for that of the Board. Whether this result follows from a strict construction of the statute or from a policy of judicial self-restraint is not now the important thing. What is important is the settled jurisprudence on the subject. Our highest Court in Canada, in the case of *Union Gas Co. of Canada Ltd. v. Sydenham Gas & Petroleum Co., Ltd.*, 7 D.L.R. (2d) 65, [1957] S.C.R. 185, 75 C.R.T.C. 1, has charted the proper course for us on the subject. What was involved in that case was an order of the Ontario Fuel Board refusing to approve a by-law under which Sydenham Gas would have acquired a franchise to construct works for the transmission of natural gas to the premises of one company in the Town of Wallaceburg. The Fuel Board concluded that in terms of public convenience and necessity the by-law should not be approved. On appeal — there being a right of appeal "upon any question of law or fact" — the Court of Appeal reversed the decision of the Board and ordered that a certificate of approval issue. On further appeal to the Supreme Court of Canada the order of the Court of Appeal was set aside and that of the Fuel Board was restored. Kerwin, C.J.C., for himself and Abbott, J., declared, at p. 68, that the issue

...is not merely a matter of procedure; it goes to the jurisdiction of the Court of Appeal, and that jurisdiction does not include the substitution of that Court's views as to public convenience and necessity for those of the Board...

And Rand, J., writing for himself and Kellock, J., expressed the matter thus at p. 69:

What the Court did was to exercise an administrative jurisdiction and to substitute its judgment on the application for that of the Board. In this I think it exceeded its powers.

That a Court should leave matters of policy and of administration to the Board appears to make good sense. This is more than a matter of modest self-denial. It springs from a recognition that the Court is not a rate-making body; that a public utilities board of trained personnel and with expert assistance in technical areas has been specifically created for that purpose; and that in general it can perform such tasks much better than the Court. That does not mean that the Court should hesitate to assert all the powers which it lawfully possesses on appeal. It means only that it should not seek to extend those powers into questions of administrative policy or discretion.

Grounds of Appeal

21 The application for leave asserts four errors:

A. The PUB erred in law and exceeded its jurisdiction by ordering Centra to be prepared to discuss the transfer of the customer contracts related to the ERP made out in the name of Centra Gas Manitoba Inc. at the 1997 General Rate Application Proceeding.

B. The PUB erred in law and exceeded its jurisdiction by ordering Centra Gas not to allow any affiliated company operating in Manitoba to advertise its relationship with Centra.

C. The PUB erred in law and exceeded its jurisdiction by ordering that Centra Gas ensure that its affiliates operating in Manitoba clearly state in all media, correspondence and contracts that its activities are not regulated by the PUB.

D. The Board erred in law and exceeded its jurisdiction by prohibiting any new shared facility arrangements and by requiring Centra Gas to insure that all of the criteria set out in Section 8.3 of the Reasons for Decision were met with regard to any existing or proposed shared arrangements.

The Argument

22 Centra says that the real issue is: Who manages a regulated utility in light of the rapidly changing conditions in the natural gas industry, the Board or the company? The Board it says erred in law in interpreting the *Act* in general and sec. 82(1) in particular so broadly as to empower it to regulate all contracts made by owners of public utilities with its affiliates, whether the contract has any bearing upon the public utility aspect of the owner's extended enterprises or not. Section 74(1) of the *Act* does not assist the Board since the power to make orders relating to the use of "public property or rights" cannot apply to non-public utility functions of Centra or its affiliates. There is simply no jurisdiction to restrict Centra or its affiliates from competing in businesses which do not form part of the public utility or to regulate the transfer of non-utility assets to a related company.

23 The respondents answer that the Board had clear and express statutory authority to make the order and refer to the "plain wording" of secs. 74(1) and 77 and various subsections of sec. 82(1).

The Decision

24 Before embarking on an examination of the detailed and technical provisions of the *Act*, it is essential to first look at the underlying purpose of public utilities legislation like the *Act*. This is especially so in cases such as this where, not surprisingly, clear and explicit statutory authorization directed toward the precise points in issue cannot be found.

25 In the United States, where the scope of this kind of legislation has been the subject of considerable jurisprudence, it has been stated that public service or public utility commissions "are not intended primarily for the benefit of established utilities; their primary purpose is to serve the interests of the public. They represent the public and are for the benefit of the state and its citizens" (from *Corpus Juris Secundum* (West Publishing Company, St. Paul, 1993), v. 73B, para. 61, p. 293).

26 The protection of the public interest has been cited time and time again in American authorities as being paramount to the interests of the utility involved. See *Myers v. Blair Telephone Co.*, 230 N.W.2d 190 (U.S. Neb. 1975); *Telstar Communications Inc. v. Rule Radiophone Service Inc.*, 621 P.2d 241 (U.S. Wyo. 1980); *Morehouse Natural Gas Co. v. Louisiana (Public Service Commission)*, 140 So. 2d 646 (U.S. La. 1962); *Denver Chicago Transport Co. v. Poulson*, 112 N.W.2d 410 (U.S. Neb. 1961); *D.F. Bast v. Pennsylvania (Public Utility Commission)*, 138 A.2d 270 (U.S. Pa. Super. 1958); and *Sayre v. Pennsylvania (Public Utility Commission)*, 54 A.2d 95 (U.S. Pa. Super. 1947).

27 There are, of course, Canadian decisions in which it has also been held that public utilities commissions are primarily directed towards protection of consumers and the public interest. See *Island Telephone Co., Re* (1988), 70 Nfld. & P.E.I.R. 112 (P.E.I. C.A.) and *Nova Scotia (Public Utilities Board) v. Nova Scotia Power Corp.* (1976), 18 N.S.R. (2d) 692 (N.S. C.A.). This point was recently emphasized by Iacobucci J. (dissenting in the result but not on this point), when he remarked in *Kenora (Town) Hydro Electric Commission v. Vacationland Dairy Co-operative Ltd.*, [1994] 1 S.C.R. 80 (S.C.C.) (at p. 90):

Public utilities in Canada operate as highly regulated monopolies which exist for the benefit of the public. The fact, therefore, that this appeal involves such an entity, rather than two private litigants, affects the assessment of the policy concerns which inform the applicable legal principles. In other words, there is a statutory regime operating here which impresses the private dispute with a public interest component.

28 The foregoing authorities confirm the critical importance of examining the powers of the Board in relation to its purpose.

29 As the Supreme Court of Canada stated in *Bell Canada v. Canada (Radio-Television & Telecommunications Commission)*, [1989] 1 S.C.R. 1722 (S.C.C.) (at p. 1756):

The powers of any administrative tribunal must of course be stated in its enabling statute but they may also exist by necessary implication from the wording of the act, its structure and its purpose. Although courts must refrain from unduly broadening the powers of such regulatory authorities through judicial law-making, they must also avoid sterilizing these powers through overly technical interpretations of enabling statutes.

30 Thus, the proper approach to the interpretation of legislation, such as the provisions under review here, is obvious. In this respect I can do no better than to refer to several passages of the leading American authority of *Consolidated Edison Co. of New York v. Public Service Commission of New York*, 390 N.E.2d 749 (U.S. N.Y. 1979), reversed on other grounds, 447 U.S. 530, 100 S. Ct. 2326, 65 L. Ed.2d 319 (U.S. N.Y. 1980), and *Central Hudson Gas & Electric Corp. v. New York (Public Service Commission)* (1980), 447 U.S. 557, 100 S. Ct. 2343, 65 L. Ed. 2d 341 (U.S. S.C. 1980). Chief Judge Cooke stated (at p. 752):

It is, of course, a fundamental postulate of administrative law that the Public Service Commission, like other agencies, is possessed of only those powers expressly delegated by the Legislature, together with those powers required by necessary implication [citations omitted]. Nevertheless, the absence of explicit statutory authorization need not be fatal to a given assertion of regulatory power by the commission. For, as we have recognized previously, the Legislature on occasion broadly declares its will, specifying only the goals to be achieved and policies to be promoted, while leaving the implementation of a program to be worked out by an administrative body (see, e.g. *Matter of Sullivan County Harness Racing Assn. v. Glasser*, 30 N.Y.2d 269, 276, 332 N.Y.S.2d 622, 625, 283 N.E.2d 603, 606; cf. *Matter of Bates v. Toia*, 45 N.Y.2d 460, 464, 410 N.Y.S.2d 265, 267, 382 N.E.2d 1128, 1130). In such cases, the sheer breadth of delegated authority precludes a precise demarcation of the line beyond which the agency may not tread. What is called for, rather, is a realistic appraisal of the particular situation to determine whether the administrative action reasonably promotes or transgresses the pronounced legislative judgment (cf. *Matter of Broidrick v. Lindsay*, 39 N.Y.2d 641, 646, 385 N.Y.S.2d 265, 267, 350 N.E.2d 595, 597).

31 After referring to the provisions of the appropriate New York statutes (in essence the equivalent of secs. 74(1) and 77 of the *Act*), he went on to say (at p. 754):

This construction becomes all the more reasonable when viewed in the context of the entire regulatory scheme. Rather than restricting the PSC's authority, the Legislature has invested that agency with all powers needed to carry out the purposes of the Public Service law, as well as power to supervise generally the operation of electric and gas corporations and electric and gas plants.

32 To similar effect is the pronouncement of our Supreme Court in *Bell Telephone Co. v. Canadian National Railway*, [1932] S.C.R. 222 (S.C.C.), affirmed (1933), [1934] 1 D.L.R. 310 (Canada P.C.), in which Rinfret J., writing for the Court, in considering the authority of the Dominion Railway Board which had been given a broad supervisory mandate with respect to *inter alia* the "safety and convenience of the public," said (at pp. 229-30):

The primary concern of Parliament in this legislation is public welfare, not the benefit of railways. With that object in view, almost unlimited powers are given the Board to ensure the protection, safety and convenience of the public. It may prescribe such terms and conditions as it deems expedient.

33 Thus the proper approach in this matter is to adopt the procedure suggested by Chief Judge Cooke in *Consolidated Edison Co. of New York*, which is to make a "realistic appraisal" of the facts and issues in order to determine whether the administrative order complained of "reasonably promotes" or transgresses the legislative intent, after having examined the legislative scheme as a whole. Once this is done, the answer on the facts of this case is inevitable.

34 The provisions in the Board's order, designed to ensure that no cross-subsidization exists between regulated and unregulated entities, clearly meet the fundamental jurisdictional test of power over discriminatory rates (sec. 82) and are consistent with broader consideration of protection of the public interest under secs. 74(1) and 77. It is not unreasonable that the *Act* would allow the Board to be concerned about the corporate structure that could well, at the end of the day, affect the rates offered to the utilities' customers. How can it be said that this is not a matter that affects the public interest? As noted earlier in *Bell Canada v. Canada (Radio-Television & Telecommunications Commission)*, the powers of any administrative tribunal may often need to be exercised by necessary implication from the wording of the *Act*, its structure and purpose.

35 This determination, based on a broad principled examination of the *Act*, makes it unnecessary to conduct an elaborate review of the specific subsections of 82. It is plain that the Board possesses the authority to make the orders complained of. The applicants have not presented an arguable case for the granting of leave to appeal. The application is accordingly dismissed with costs.

Application denied.