

August 12, 2021

THE PUBLIC UTILITIES BOARD OF MANITOBA
400-330 Portage Avenue
Winnipeg, Manitoba
R3C 0C4

ATTENTION: Dr. D. Christle, Board Secretary and Executive Director

Dear Dr. Christle:

**RE: CENTRA GAS MANITOBA INC. (“CENTRA”)
Comments on Applications for Intervener Status for Centra’s Gas Cost of Service Study
Methodology Review**

On July 26, 2021, the Public Utilities Board of Manitoba (“PUB”) issued Order 80/21 providing procedural direction with respect to Centra’s Gas Cost of Service Study Methodology Review (“COSMR”). In the Order, the PUB required interested parties to provide applications for intervener status within ten days of the Order. Centra was then to provide any comments on the intervener applications within three business days of the request to intervene which timeframe was extended by the PUB upon the request of Centra by an additional three days. On August 5, 2021, Centra received the intervener applications from the Consumers Association of Canada (Manitoba) Inc. (“CAC”), the Industrial Gas Users (“IGU”) and Koch Fertilizer Canada, ULC (“KOCH”) and provides its comments with respect to these applications herein.

General Principles

The key principles for considering intervener applications are set out in Rule 27 of the PUB’s Rules of Practice and Procedure, the Interim Intervener Cost Policy and past PUB Orders, and include:

- Intervener applications should set out a clear understanding of the issues to be addressed;
- Interveners are to assist with the PUB’s understanding of the issues in the proceeding; and
- Interveners are to provide value and avoid duplication; a failure to do so may have cost consequences.

When considering the potential additional value that can be provided by the consultants proposed by the interveners in this specific proceeding together with the associated costs, it is essential to consider the fact that Centra retained an independent, third party expert consultant, Atrium, to assist the PUB and all interested parties in this proceeding by addressing

all technical and policy related issues as identified in the 2019/20 GRA proceeding. Atrium has conducted a fulsome review of Centra's cost of service methodology and related matters. As set out by the PUB in Orders 49/20 and 130/20, independent experts bring efficiencies to the public hearing process and allow for all parties to then focus their submissions:

*The Board notes Centra's plan to retain an independent consultant to assist in addressing the specific cost allocation concerns raised in the 2019/20 General Rate Application with respect to an appropriate cost of service study methodology. The Board expects that the independent expert will be in a position to provide a variety of alternative cost of service study methodology options, each alternative supported by reasons, **such that Centra and other Parties will be able to focus their recommendations on the best practices for Manitoba's specific circumstances. The Board acknowledges that the use of independent experts can bring efficiencies to the public hearing process provided that their evidence is fair, objective, and non-partisan.** (emphasis added - Order 49/20 at page 8)*

In reviewing the intervener applications and considering the consultants proposed by the interveners, the PUB must also be guided by the Supreme Court of Canada in *White Burgess Langille Inman v. Abbott and Haliburton Co.*, 2015 SCC 23 on the admissibility of expert evidence wherein the Supreme Court cautioned that expert opinion evidence poses real dangers as it may be misused and distort the fact-finding process. To address those dangers, the Supreme Court of Canada outlined four threshold criteria for the admissibility of expert evidence:

- the evidence must be relevant to some issue in the application;
- the evidence must be necessary to assist the trier of fact;
- the evidence does not contravene an exclusionary rule; and
- the witness must be a properly qualified expert to opine on the issues in the application.

In addition, Centra submits that when the PUB is adjudicating on the reasonableness of each of the intervener applications, it must also take into account the well-trodden path in reaching this COSMR. This COSMR is a continuation from issues raised and addressed in the 2019/20 General Rate Application ("GRA") wherein each of the proposed interveners through the use of the same consultants (namely Ms. Derksen for CAC, Mr. Andrew McLaren of InterGroup for IGU and Mr. Collins for KOCH) analyzed and filed extensive evidence on cost of service methodology issues and tested that and Centra's evidence through two rounds of information requests.

As directed by the PUB in Order 152/19 following the 2019/20 GRA, Atrium's independent expert report and Centra's COSMR submission details Centra's cost of service study methodology, explains the methodology and the classification and allocation factors used, and includes information that addresses the specific cost allocation concerns raised in the

evidence and final submissions provided by the interveners in the 2019/20 GRA, such to avoid an inefficient and costly repeat hike of the well-trodden path from the 2019/20 GRA.

KOCH

With respect to KOCH's application for intervener status, Centra notes that the key issue it expects to address is the treatment of transmission cost allocations and the impact to the Special Contract Class as well as the timely implementation of Centra's proposed recommendations in its COSMR Application. It appears from KOCH's application that it does not oppose the changes to the cost of service methodology proposed by Centra. Centra does not object to KOCH's proposed intervention which does not seek an award of costs.

While Centra appreciates that KOCH intends to bear the cost of its own intervention, it is concerned about the potential duplication between the intervention of KOCH and IGU. In particular, Centra notes that as currently proposed, KOCH would be putting forward evidence from four different experts, one through its own intervention and three through IGU, using the same legal counsel whose costs are proposed to be compensated through the intervention of IGU. This potential for duplication should be addressed at the outset and avoided as it may contribute to lengthy and costly proceedings with little added value.

CAC

Centra does not oppose CAC's application for intervener status. However, Centra objects to CAC's proposed expert consultants and the substantial costs given the context and circumstances leading to this proceeding as detailed above.

Centra's primary concern regarding CAC's application is that it proposes to engage two consultants as part of this process with one consultant, Ms. Kelly Derksen, to evaluate "technical" issues and the other consultant, Mr. Darren Rainkie, to evaluate "policy" issues. CAC's application fails to provide sufficient detail as to which of the issues listed in Attachment A to the application will be addressed by each consultant individually. Notably, the preliminary list of issues the CAC intends to address are primarily technical in nature as they focus on the different concepts and considerations specific to a COSMR and extend to the evaluation of the completeness of Atrium's review. These issues appear to be in-scope for this proceeding and a proper continuation of the same work previously completed within the expertise of Ms. Derksen as part of the 2019/20 GRA. None of these issues identified can be characterized as high-level "policy" issues and even if they were, such issues relate directly to the professed expertise of Ms. Derksen as noted in her CV:

*"Independent expert witness on **ratemaking policy**, cost of service, rate design and regulatory compliance matters before MPUB on behalf of the Consumers Coalition,..."*

In accordance with Ms. Derksen's qualifications as set forth in her CV including her previous and extensive career with Centra on these same matters, she is properly qualified and capable to independently evaluate any "policy" issues that result from the cost of service matters raised in this proceeding. Furthermore, CAC is also supported by legal counsel with 48 years of experience and has the benefit of institutional knowledge of issues resulting from its

extensive experience over the past 30 years, together with the extensive and lengthy experience of CAC's Executive Director Ms. Gloria Desorcy, in Centra regulatory proceedings. As such, CAC has sufficient resources to formulate any policy position it may want to advance as part of this proceeding without the necessity and associated cost of Mr. Rainkie's assistance.

Importantly and in accordance with the guidance from the Supreme Court, Mr. Rainkie is not an expert in cost of service methodology matters. His CV does not establish any significant experience, as a witness or otherwise, or specific education in addressing cost of service methodology matters. This fact is entirely consistent with CAC's past recent practice of not attempting to qualify Mr. Rainkie as an expert on the matters within this Application instead putting forward Ms. Derksen as an expert on cost of service matters in the 2019 Centra GRA and the 2019/20 Electric Rate Application, despite the fact that Mr. Rainkie was also retained as an expert and appeared as a witness for other unrelated matters in those proceedings when he intentionally deferred to Ms. Derksen on cost of service matters.

Further, Centra notes that this Board has found that Ms. Derksen and Mr. Rainkie engaged in duplicative, unreasonable work in past proceedings (see Orders No. 118/19 and 180/19). While such duplication can be addressed through cost awards, it is preferable and far more efficient for all parties to avoid potential duplication from the outset of a proceeding, before the proverbial horse has left the barn. Permitting duplicative and irrelevant evidence from unqualified consultants is contrary to the guidance from the Supreme Court of Canada and would unnecessarily add complexity and cost to this proceeding which is ultimately borne by Centra's customers.

Centra submits the engagement of two consultants on behalf of the CAC is excessive and is unnecessary given the context of this proceeding and the fact that Mr. Rainkie does not possess the required expertise for the subject matter. The use of both Ms. Derksen and Mr. Rainkie as consultants by CAC will result in duplicative efforts as is demonstrated in the cost estimate provided by CAC for its intervention and is not in the best interests of customers. Accordingly, Centra respectfully requests that the PUB exercise its discretion to control its own process from the outset by formally limiting CAC's use of consulting services to only Ms. Derksen for this proceeding by way of Board Order before any additional costs are unnecessarily incurred by Mr. Rainkie as part of his proposed extensive involvement in this proceeding.

In addition to its opposition to the retainer of two consultants by CAC, Centra is also deeply concerned by CAC's budget estimate filed August 9, 2021. As noted above, the majority of the issues raised in this COSMR have already been extensively reviewed in the 2019/20 GRA. In that proceeding CAC filed an expert report authored by Mr. Rainkie and Ms. Derksen which included a lengthy submission authored by Ms. Derksen on cost of service issues. CAC received \$269,132 in a PUB cost award specifically for the costs associated with the work done by Mr. Rainkie and Ms. Derksen in that proceeding. To reiterate, all parties to this proceeding now have the benefit of the independent Atrium report. CAC's proposed budget of \$220,773 for this proceeding, which includes \$86,037 for Ms. Derksen's work, appears excessive given the

expected efficiencies resulting from the previous review of these issues (and the costs already incurred by ratepayers associated with that review) and now the involvement of Atrium as an independent expert consultant.

IGU

Despite the passage of time since the 2019 GRA, IGU's "core" membership consists of only five customers, one of whom has maintained an independent intervention, and nothing further has been completed to formalize the legal standing or governance of IGU into an accountable member association or organization. Centra has some 141 customers in the high-volume firm, mainline firm, interruptible and special contract classes, of which only five are members of IGU. As such, the informal IGU association does not represent the interests of a substantial number of ratepayers and has not demonstrated that it represents interests beyond the sole business and monetary interest of these five customers that would justify providing IGU with a potential award of costs for this proceeding.

Despite the requirement to "be specific" in identifying the key issues IGU intends to address, IGU's application only outlined high level issues, stating that its review of Centra's materials are still in the preliminary stages. Centra's COSMR was filed and circulated to interested parties on June 15, 2021 and is relatively short compared to previous applications and is a continuation of issues raised in the 2019 GRA. IGU has ignored to specifically identify the key issues it intends to address through its intervention on behalf of the five members despite the PUB's requirement that it do so at this stage of the proceeding.

Centra further notes with concern that IGU intends to address rate design issues that ought to be considered out of scope for this proceeding. IGU indicates that "industrial rate design for T-Service customers are of particular concern" and that it "will focus its intervention on... impacts to rates and riders charged to industrial gas users". As the PUB stated at page 27 of Order 164/16, issues related to rate design should not be considered in a review of cost of service methodology. Impact to rates and rate riders are not relevant to this proceeding and Centra respectfully submits that IGU's intervention should be restricted to those matters properly within the scope of this proceeding and of specific interest to the five customers, once those are properly and adequately identified.

Centra strongly objects to IGU's proposed use of three expert consultants. Centra notes that the "Evidence to be provided on issues in scope" for each of the named consultants reads identical to, and is a complete duplication of, each other. There is also significant overlap with the third unidentified consultant who is proposed to give evidence on the same issues of cost-of-service methodologies, benefit-cost considerations, cost-based rate design, and balancing fee cost allocation. IGU has provided no explanation as to why it requires three consultants to provide evidence on substantially the same issues, nor has IGU addressed whether it can collaborate with KOCH and its consultant Mr. Brian Collins, such that IGU would not require independent expert evidence in addition to the services to be provided by Mr. Collins. It is open to IGU and KOCH to jointly retain Mr. Collins. Centra submits the engagement of three consultants and the associated cost by IGU for this proceeding is excessive, unreasonable, will result in duplication and will not add value to the PUB and ratepayers in this proceeding.

Centra acknowledges that one of the named consultants, Mr. Patrick Bowman, has experience in cost of service matters for utilities, albeit primarily with electric utilities, and that he previously worked with Mr. McLaren at InterGroup, the consultant last used by IGU on cost of service issues at the 2019/20 GRA. However, and as is the case with Mr. Rainkie, Mr. Dale Friesen's CV does not provide or reveal any significant experience or education in cost of service methodology issues. Centra submits that Mr. Friesen simply does not have adequate experience or qualification to add any value to this proceeding and as such, he should not be qualified as an expert as part of this proceeding.

Centra respectfully requests the PUB exercise its discretion to control its own process from the outset by formally limiting IGU to the use of the consulting services of Mr. Bowman and direct IGU and KOCH to consider jointly retaining Mr. Collins and to report back to the PUB on the outcome of those considerations.

Centra also opposes IGU's request for costs. IGU does not represent a substantial number of Centra's ratepayers. Similar to KOCH, Gerdau, Maple Leaf, Simplot and Roquette, are all large commercial entities and do not lack financial resources to present their own or collective case to the PUB without the potential of a cost award to be borne by all of Centra's customers. In fact, a more formal national member organization of large industrial gas users known as the Industrial Gas Users Association ("IGUA") routinely participates in regulatory proceedings without qualifying for or seeking cost awards from regulators. It is inappropriate for all Centra ratepayers to bear the cost of the individual or collective intervention of five commercial entities.

Conclusion

Overall, Centra is deeply concerned with the increasing cost associated with regulatory proceedings, and the little regard that CAC and IGU have shown towards regulatory efficiency and cost containment. Centra has an obligation to manage its costs in a reasonable manner, which extends to the costs associated with regulatory proceedings.

Centra engaged an independent consultant to provide an objective and unbiased review of the existing cost of service methodology and propose alternatives where appropriate. The cost of this independent consultant will already be borne by Centra ratepayers. The PUB acknowledged in Order 49/20 that the use of independent experts can result in efficiencies and allow parties to focus their submissions. These potential efficiencies seemingly have been ignored by both CAC and IGU in their proposed interventions and budget estimates, including their proposed utilization of an additional five consultants to conduct a general wholesale review of all cost of service methodology issues. Neither CAC nor IGU's proposed interventions appear to take a focused approach despite the PUB's expectations for this proceeding to be most efficient given the use of Atrium as an independent consultant. In particular, Centra is disappointed to see the proposed use of consultants who, despite having no experience in cost of service methodology matters, are to receive the highest compensation permitted under the PUB tariff to duplicate the efforts of other consultants, including Atrium.

Centra appreciates the opportunity to provide submissions on the intervener applications and budget estimates. The above submissions are without prejudice to Centra's right to make further or additional submissions on the admissibility or weight to be placed on any intervener evidence that is permitted by the PUB, or final cost awards. Centra looks forward to receiving a formal Board Order addressing and ruling upon the matters raised in this submission. Should you have any questions with respect to this submission, please contact the writer at 204-360-3257 or Darryl Martin at 204-360-4487.

Yours truly,

MANITOBA HYDRO LEGAL SERVICES

Per:

A handwritten signature in blue ink, appearing to read "Brent Czarnecki", with a stylized flourish at the end.

Brent Czarnecki
Barrister & Solicitor