

**Order No. 95/18**

**CENTRA GAS MANITOBA INC.  
COMPLIANCE WITH ORDER 108/15 DIRECTIVE 12**

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**July 20, 2018**

**BEFORE:** Larry Ring, Q.C., Panel Chair  
Marilyn Kapitany, B.Sc.(Hon), M.Sc., Vice Chair  
Carol Hainsworth, C.B.A., Member  
Susan Nemec, FCPA, FCA, Member  
Michael Watson, Member

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## 1.0 Executive Summary

By this Order, the Manitoba Public Utilities Board (Board) finds Centra Gas Manitoba Inc. (“Centra” or the “Utility”) to be in default of Order 108/15 Directive 12. This Board finding was determined following the Board’s review of Centra’s submission that was filed in response to Order 58/18 Directive 2. By this Order, the Board further directs Centra to file, by August 17, 2018, its detailed submissions relative to the associated penalty, including the effective date of the penalty, per Section 100 of *The Public Utilities Board Act*.

## 2.0 Procedural Background

### ***The 2013/14 General Rate Application and the 2015/16 Cost of Gas Proceedings***

In Order 85/13, arising from Centra’s 2013/14 General Rate Application (“GRA”), the Board set Centra’s allowed annual net income at \$3 million on a weather-normalized basis.

In Order 108/15, arising from Centra’s 2015/16 Cost of Gas proceeding, the Board noted a material improvement in Centra’s financial position since the 2013/14 GRA - specifically a doubling of retained earnings. However, as Centra’s increased net income was not the focus of the 2015/16 Cost of Gas proceeding, the Board determined the following:

*The Board is of the view that the non-gas cost revenue requirement which gives rise to Centra’s allowed net income needs to be reviewed in the context of a General Rate Application. Although the Board is approving Centra’s gas costs as final in this Order, the Board is of the view that Centra’s non-gas earnings must be reviewed, and therefore will not finalize interim rates until the non-gas portions of those rates have been examined. The Board will direct Centra to file a full General Rate Application on or before January 20, 2017 at which time Centra’s earnings will be reviewed. Absent a further Order of the Board, Centra’s interim rates*

*approved in Order 89/13 will terminate on July 31, 2017, and as of August 1, 2017, the non-gas components embedded in Centra's rates will revert back to the levels last approved on an interim basis in Order 66/11 and subsequently approved as final in Order 85/13. To that extent, unless the Board subsequently orders otherwise, Centra is directed to file rate schedules that reflect the reversion of the non-gas rate components back to the levels approved in Order 66/11 as part of its August 1, 2017 Primary Gas rate application.*

Directives 5, 12, and 13 of Order 108/15, dated October 29, 2015, formalized the above cited Board findings:

- *5: Absent a further Order of the Board with respect to the rates kept interim under Directive 4 of this Order, on July 31, 2017 any then-current interim rates shall terminate and the non-gas components embedded in any of Centra's rates shall revert back to levels approved on an interim basis in Order 66/11 and subsequently approved as final in Directive 14 of Order 85/13.*
- *12: Centra is directed to, by no later than January 20, 2017, file a General Rate Application.*
- *13: Centra is directed to, concurrent with the filing of its August 1, 2017 Primary Gas rate application, file rate schedules that reflect the reversion of the non-gas components of Centra's rates back to the levels approved on an interim basis in Order 66/11 and subsequently approved as final in Order 85/13.*

### ***Centra's 2017 Submissions and the Related Board Findings***

On January 19, 2017, Centra informed the Board that it would delay the filing of its next GRA to permit its internal resources to focus on the preparation of a Manitoba Hydro electric GRA. In its letter to the Board, Centra did not indicate when it would file its next GRA nor did Centra specifically request that Order 108/15 Directive 12 be varied.

On April 12, 2017, the Board responded to Centra, stating:

*Based on its January 19, 2017 letter Centra is now in default of Board Order 108/15. The Board hereby directs Centra to file its revised rates with the Board, as set out in Directive 5 of Order 108/15, which will come into effect August 1, 2017.*

*As a Centra GRA may not be filed with this Board for some time, [...] the Board therefore directs Centra to provide it with the following material [...].*

*Centra is directed to provide the PUB with the revised rates and requested information by May 31, 2017.*

On May 31, 2017, Centra filed updated financial information sought in the Board's letter of April 12, 2017. On June 1, 2017, Centra provided a revised filing to correct a minor error included in its May 31, 2017 filing.

On June 16, 2017, the Board forwarded Centra's June 1, 2017 financial filing to the Interveners of Record and requested comments and review process recommendations be provided by June 30, 2017. No Intervener submissions or recommendations were provided.

On July 28, 2017, the Board issued interim Order 79/17 regarding Centra's August 1, 2017 Primary Gas rate and the approval of non-Primary Gas rates. In accordance with Order 108/15 Directives 5 and 13, the Board granted rates, effective August 1, 2017, that reflected the reversion of non-gas rate components to the levels approved on an interim basis in Order 66/11 and on a final basis in Order 85/13, for all customer classes except the Special Contract and Power Station classes. In addition, as Centra had not filed a GRA by January 20, 2017 as directed, the Board found Centra to be in default of Order 108/15 Directive 12 and assessed Centra a penalty of \$100 per day. This finding was formalized in Order 79/17 Directive 3:

*3: Centra is in default of Order 108/15 Directive 12 and it BE AND IS HEREBY ORDERED to pay a penalty of \$100 per day, the maximum permitted by The Public Utilities Board Act, calculated from January 21, 2017 until the day the Public*

*Utilities Board receives Centra's General Rate Application that is prepared in accordance with applicable Board directives.*

### ***Centra's Application to Review and Vary Order 79/17***

On August 25, 2017, Centra filed an Application with the Board to review and vary Order 79/17 Directive 3, pursuant to Rule 36 of the Board's Rules of Practice and Procedure. Centra specifically requested that the Board rescind its finding that Centra is in default of Directive 12 of Order 108/15 and its Order 79/17 Directive 3 that required Centra to pay a penalty for non-compliance.

In its August 25, 2017 Application to the Board, Centra submitted that the Board ordered a penalty for non-compliance without due notice and process to Centra, and therefore acted outside of its jurisdiction and erred in law. Centra outlined its grounds for its review and vary application as follows:

- The decision to delay the Centra GRA filing was made in order to keep the limited regulatory calendar and resources clear to allow full public debate on the Manitoba Hydro electric GRA and in full recognition of the fact that this would result in the reversion of non-gas rate components. The Utility viewed this as a compromise in the public interest.
- Centra believed that its letter of January 19, 2017, consistent with past practice and convention, was adequate in lieu of a motion to review and vary Order 108/15 Directive 12.
- Centra fully complied with the Board's letter of April 12, 2017 and did not receive any notice or indication that the PUB considered the steps taken by Centra to be inadequate or that a formal application to review and vary Directive 12 was required.
- As part of its August 1, 2017 Primary Gas Rate Application, Centra, in good faith, presented the Board with potential rate increase mitigation options, arising from

the reversion of non-gas rate components, for the Special and Power Station customer classes that resulted in additional (interim) financial loss to Centra which was more than what was intended by the initial Order 108/15 rate rollback.

- Section 48 of *The Public Utilities Board Act* requires due notice and a full opportunity to present evidence and be heard at a public hearing prior to any outlay, loss or deprivation to Centra. The Board failed to comply with these statutorily mandated procedural protections. This is an error of law that renders the action void.
- As of July 28, 2017, Centra has been exposed to a penalty of more than \$18,800 (188 days x \$100/day) without being afforded the opportunity to take any steps to avoid the penalty in that amount. The imposition of the penalty is unprecedented and notice that a penalty was being considered was required to inform Centra of the nature of the proceedings before the Board and to provide Centra with an opportunity to be heard.

In Order 58/18 dated April 26, 2018, the Board granted Centra's Application to review Order 79/17 Directive 3 and established a process by which the Board would consider Centra's submissions as to whether Centra was in non-compliance with Directive 12 of Order 108/15 and if so, the potential penalty associated with such non-compliance. Order 58/18 Directive 2 stated:

*2: Centra Gas Manitoba Inc. is provided with notice of default relative to Order 108/15 Directive 12 and is directed to file, within 30 days of this Order, the information below:*

- a. Centra's submissions regarding the default and potential penalty associated with noncompliance with Order 108/15 Directive 12.*
- b. Whether the June 1, 2017 CGM16 update is still the most current Centra financial update and if it isn't, Centra is to file its most current financial update; and*
- c. When Centra will file its next GRA.*

### 3.0 Centra's Response to Order 58/18

On May 24, 2018, Centra filed a letter in response to Order 58/18 Directive 2. In its submission, Centra stated that its position remains, for all of the reasons and circumstances cited in its submission dated August 25, 2017, that it is not in non-compliance with Directive 12 of Order 108/15 and any potential penalty is unwarranted, unprecedented and unnecessary given all of the circumstances.

Centra also confirmed that the CGM16 financial forecast filed with the Board on June 1, 2017 is the current approved financial forecast and that the Utility's updated financial forecast (CGM18) will be filed with the Board as part of Centra's next General Rate Application.

With respect to the timing of Centra's next GRA, Centra explained that it anticipates being in a position on or around October 31, 2018 to file with the Board the financial and revenue requirement materials that will comprise Volume 1 of Centra's next GRA. After that and by approximately November 30, 2018, Centra expects to file the cost allocation, rates, and customer impact materials that will comprise Volume 2 of Centra's next GRA.

## 4.0 Board Findings

Section 100 of the Public Utilities Board Act states:

*100. In default of compliance with any order of the board under this Act, when the order becomes effective, the person so in default is subject to a penalty of \$100 per day for every day during which the default continues; and the amount of the penalty shall be fixed and determined by order of the board.*

Centra's May 24, 2018 submission in response to the Board's finding the Utility in default has been considered in the context of the Board's Rules of Practice and Procedure. The Board is of the opinion that Centra has not raised a substantial doubt as to the correctness of the Board's Order or decision and the Board confirms its finding that Centra is in default of the Board's Directive in relation to filing a GRA.

In the review process established in Order 58/18, and in addition to the review of the issue of non-compliance with Directive 12 of Order 108/15, the Board indicated it would also consider Centra's submissions as to the potential penalty associated with such non-compliance.

Centra is now directed to file, by August 17, 2018, its detailed submissions relative to the associated penalty for non-compliance with Order 108/15 Directive 12, including the effective date of the penalty.

## 5.0 IT IS THEREFORE ORDERED THAT:

1. Centra Gas Manitoba Inc. **BE AND IS HEREBY** in default of Order 108/15 Directive 12.
2. Centra Gas Manitoba Inc. file, by August 17, 2018, its detailed submissions relative to the penalty associated with its non-compliance with Order 108/15 Directive 12, including the effective date of the penalty.

Board decisions may be appealed in accordance with the provisions of Section 58 of *The Public Utilities Board Act*, or reviewed in accordance with Section 36 of the Board's Rules of Practice and Procedure. The Board's Rules may be viewed on the Board's website at [www.pubmanitoba.ca](http://www.pubmanitoba.ca).

THE PUBLIC UTILITIES BOARD

"Larry Ring, Q.C."  
Panel Chair

"Kurt Simonsen"  
Associate Secretary

Certified a true copy of Order No. 95/18  
issued by The Public Utilities Board

  
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Acting Secretary