

**Order No. 129/22**

**AWARD OF COSTS TO  
CONSUMERS ASSOCIATION OF CANADA (MANITOBA) INC.  
FOR INTERVENTION IN THE  
REVIEW OF CENTRA GAS MANITOBA INC. COST OF SERVICE METHODOLOGY**

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**December 8, 2022**

**BEFORE: Marilyn Kapitany, B.Sc.(Hon), M.Sc., Panel Chair  
Susan Nemec, FCPA, FCA, Member**

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## 1.0 Summary

By this Order, the Public Utilities Board of Manitoba (“Board”) approves Consumers’ Association of Canada (Manitoba) Inc.’s (CAC) Application for a cost award of \$205,790.74 for its intervention in the review of Centra Gas Manitoba Inc. (Centra Gas) Cost of Service Methodology.

## 2.0 Procedural History

The Board directed Centra Gas to file an application for a comprehensive review of its cost of service methodology by May 1, 2020. However, due the COVID-19 pandemic and through Centra’s requests to reschedule this matter, the process was delayed (see Orders 49/20, 130/20, and 51/21), resulting in the Board extending the filing deadline to June 15, 2021.

Centra Gas filed its completed cost of service methodology review application on June 15, 2021. On July 25, 2021, the Board issued its first Procedural Order (81/21) directing a process for the cost of service methodology review and established a deadline for Intervener applications.

On August 5, 2021, CAC filed an Application for Intervener status and on August 9, 2021 filed its budget with the Board. By way of Letter Decision on March 7, 2022, the Board approved CAC, Industrial Gas Users, and Koch Fertilizer Canada, ULC as interveners.

On April 7, 2022, the Board issued a second procedural Order establishing which issues were to be considered in scope and which issues were out of scope, together with a timetable for the cost of service methodology proceeding.

On April 18, 2022, CAC updated its budget amending the time estimate from 764 hours to 690 hours.

On April 27, 2022, CAC filed a motion with the Board requesting access to confidential information contained in the Centra Gas filing materials. On May 31, 2022, after reviewing

the motion, the Board denied CAC's motion to gain access to commercially sensitive information contained within the Centra Gas filing.

On July 22, 2022, the Board issued Order 78/22 which was the third procedural order in this matter and in which the Board determined that there would be no oral hearing but instead requested written submissions from parties on all of the in-scope issues. The Board's Order also invited parties to appear before the Board to provide time-limited closing oral submissions on August 17, 2022.

On August 17, 2022, the Board heard oral submissions from parties and issued its final decision on October 12, 2022 in Order 109/22.

### 3.0 Application

On September 19, 2022, CAC filed its final Cost Application for its participation in the review of the Centra Gas Cost of Service Methodology Proceeding, seeking \$205,790.74 inclusive of tax, fees, and disbursements. CAC provided statements of accounts, as summarized in the following table.

	<b>Budget Total August 2021</b>	<b>Amended Budget April 2022</b>	<b>Costs Application Total September 2022</b>
<b>Legal Costs:</b>			
Legal Counsel	\$67,320.00	\$61,200.00	\$40,597.20
Disbursements	\$1,000.00	\$1,000.00	\$75.00
Taxes	\$3,416.00	\$3,110.00	\$4,875.41
Total Legal Costs	\$71,736.00	\$65,310.00	\$45,547.61
<b>Consultant Costs:</b>			
<b>D. Rainkie</b>	\$63,000.00	\$56,721.00	\$69,125.18
Disbursements	\$200.00	\$200.00	\$0.00
Taxes	\$3,000.00	\$2,701.00	\$3,291.68
Total	\$63,000.00	\$56,721.00	\$69,125.18
<b>K. Derksen</b>	\$81,640.00	\$73,580.00	\$86,779.00
Disbursements	\$300.00	\$300.00	\$0.00
Taxes	\$4,097.00	\$3,694.00	\$4,338.95
Total	\$86,037.00	\$77,574.00	\$91,117.95
Total Consultant Costs	\$149,037.00	\$134,295.00	\$160,243.13
<b>TOTAL COSTS</b>	<b>\$220,773.00</b>	<b>\$199,605.00</b>	<b>\$205,790.74</b>

CAC's Cost Application was supported by detailed invoices and a written submission describing CAC's participation in the Board's review of Centra Gas' Cost of Service Methodology proceeding. CAC's cost intervention request is \$14,982.26 lower than its original budget submission, but is \$6,185.74 higher than the amended budget. As per CAC's explanation, the variances in the final costs from the amended budget of April 19, 2022 are due to the increased hours associated with the access to confidential

information motion and the time to respond to an increased number of information requests that were asked on CAC's experts' evidence.

#### **4.0 Centra Gas Manitoba Inc. Comments**

On September 28, 2022, Centra Gas provided its comments regarding CAC's Cost Application. Centra Gas stated its concern regarding the role of the consultants, legal counsel and the intervening organization, stating that it was not apparent that the CAC organization took an active role intervening or managing professional services in a responsible and cost-effective manner.

Centra Gas also provided comments regarding the assessment of reasonable costs, including duplication of work, consultants performing work outside their technical expertise, costs associated with access to confidential information motion and information requests, out of scope evidence, presenting new evidence, and using incorrect tariff rates.

Centra Gas stated it remains concerned, as in previous proceedings with the consultants, about potential duplication of work between the two consultants and additionally, duplication of work between the consultants and legal counsel. Centra Gas submits there is limited information provided on which to conclude whether there was duplication between the two consultants.

Centra Gas submits that no costs should be awarded for the work related to the CAC's motion to the Board seeking access to confidential information motion, as CAC was not successful in this motion and that the motion unnecessarily lengthened the proceeding. Centra Gas further states that the CAC access to confidential information motion did not assist the Board in its consideration or understanding of the issues.

Centra Gas submitted that the consultants performed work outside the areas of their technical expertise, including doing legal advocacy and case management services, and therefore should not be compensated for this work. Centra Gas also notes that the consultants filed evidence that evaluated the research completed by Atrium which, in Centra Gas's submission, was deemed out of scope. In addition, Centra Gas brings

forward for the Board's consideration whether CAC provided new evidence in the oral closing submission, by way of Tabs 2, 4, and 6 of the CAC Book of Documents (CAC Exhibit 13) that should have been introduced earlier in the proceedings.

Lastly, Centra Gas notes that CAC used tariff rates effective February 2022 and not the rates approved in 2021 recognizing the application was filed June 15, 2021.

## **5.0 Consumers' Association of Canada (Manitoba) Response**

On October 7, 2022, CAC responded to the comments provided by Centra Gas regarding the CAC Cost Application. CAC submitted that its intervention contributed to a better understanding of the issues for the Board, provided a comprehensive evaluation of Cost of Service policy, provided a comprehensive evaluation and explanation of the pros and cons of the in-scope issues that otherwise would have been lacking. CAC further stated:

*The roles, allocation of issues, and associated tasks of CAC's Legal Counsel and Consultants were planned under the direction and guidance of the CAC Executive Director (and prior to her untimely death) at the outset of this proceeding as part of the intervenor registration and budget process;*

CAC also provided a breakdown of consultant allocation of issues and analysis of total actual hours for both consultants to illustrate there was no duplication of work efforts.

## 6.0 Board Findings

Pursuant to Section 56 of *The Public Utilities Board Act*, the Board has jurisdiction and discretion to award costs of, and incidentals to, any proceeding before the Board. For this hearing, the Board adopted an “Intervener Costs Policy”. The purpose of this Policy was to set out the Board’s procedures for considering requests for Intervener costs and to provide guidance to Interveners on how to apply for funding of costs for participation in Board Proceedings.

Sections 3.1 and 3.2 of the Intervener Costs Policy describe Intervener eligibility for a cost award and the Board’s principles in determining the amount of the cost award:

3.1 *In any proceeding the Board may award costs to be paid to any Intervener who has:*

- a) *made a significant contribution that is relevant to the proceeding and contributed to a better understanding, by all parties, of the issues before the Board;*
- b) *participated in the hearing in a responsible manner and cooperated with other Interveners who have common objectives in the outcome of the proceedings in order to avoid duplication of intervention;*
- c) *represented interests beyond their sole business interest; and*
- d) *a substantial interest in the outcome of the proceeding and represents the interests of a substantial number of ratepayers.*

3.2 *In determining whether the Intervener should receive the amount of costs sought in a costs application, the Board may consider whether the Intervener did one or more of the following:*

- a) *made reasonable efforts to ensure that the intervener’s evidence was not unduly repetitive of evidence presented by another intervener;*
- b) *made reasonable efforts to cooperate with other interveners to reduce the duplication of evidence and questions or to combine the intervener’s submissions with that of similarly interested interveners; and*



c) *needed legal or technical assistance to take part in the proceeding.*

The Board has reviewed the Cost Application by CAC, as well as the comments provided by Centra Gas and reply explanation submitted by CAC on October 7, 2022.

The Board finds that CAC meets the requirements for a cost award.

CAC's intervention in the proceeding added value by providing reasonable evidence, contributing to the Board's understanding on cost allocations within the Centra Gas model and on the identified in-scope issues. The Board finds that CAC participated in a responsible manner. The Board finds that CAC participated actively in the proceeding through information requests, submitting evidence, and concluding remarks that assisted the Board in its decisions.

The Board finds, that the CAC statement of accounts and further clarification letter of October 7, 2022, providing the additional breakdown of consultant roles and assigned responsibilities, sufficiently addressed the issues of concern. The Board does not agree with Centra Gas' characterization of there being duplication in the CAC experts roles and the Board finds that no duplication was demonstrated.

Although Centra Gas perceives that the CAC organization's engagement with its legal counsel and experts was insufficient and potentially allowed for role duplication between the experts, the Board finds it important to note that during the course of the proceeding the Executive Director for CAC died unexpectedly. While it is ideal for organizations to actively manage professional services, in this instance there were limitations, and the Board accepts CAC's explanation in this regard.

The Board notes that Centra Gas has also made submissions regarding CAC's increased costs for the access to confidential information motion that was filed. Though the Board did not grant CAC access to the confidential information, the Board finds that CAC was reasonably entitled to make its request and should be paid for its time in advancing its motion. The Board heard both sides of the motion filed by CAC. While it was Centra Gas

that convinced the Board of its position, the Board finds that CAC brought a valid concern to the Board for decision.

Regarding the Board's schedule of rates for professional services, CAC identified its days of work prior to and following the February 1, 2022 effective date of the revised schedule of rates. CAC used the approved rate for each time period but did not exclusively use the schedule of rates that was effective when this proceeding began. As per the Board's Intervener Cost Policy, the approved rates in place at the start of the proceeding should be used throughout. However, the Board finds that given the procedural history noted above, including the numerous delays, the proceeding resumed in February 2022 as directed in the Board's February 18, 2022 letter to Centra Gas. The scope of this proceeding was only set out in the second procedural order (36/22) issued on April 7, 2022. The Board finds these are exceptional circumstances and will approve the use of the February 1, 2022 schedule of rates as submitted by CAC.

Having considered all of the Consumers Association of Canada (Manitoba) Inc.'s cost submissions and the comments by Centra Gas, the Board awards the total amount of \$205,790.74 to CAC for intervention in the Board's review of Centra Gas's Cost of Service Methodology Proceeding.

Recognizing the time delays in adjudicating this matter, and also recognizing the approaching business year end, the Board will direct Centra Gas to pay the amount of the approved costs to CAC within 15 calendar days of the date of this Order. The Board appreciates Centra Gas' efforts in this regard.

## 7.0 IT IS THEREFORE ORDERED THAT:

1. The Application of Consumers' Association Canada (Manitoba) for an award of costs **BE AND IS HEREBY APPROVED** in the total amount of \$205,790.74
2. Costs shall be payable by Centra Gas Manitoba Inc. within fifteen (15) days of the date of this Order.


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

Marilyn Kapitany, B.Sc.(Hon), M.Sc.  
Panel Chair

"Rachel McMillin, B.Sc."  
Associate Secretary

Certified a true copy of Order No. 129/22  
issued by The Public Utilities Board

  
Associate Secretary