

Order No. 58/22

**MOTIONS BY THE CONSUMERS' ASSOCIATION OF CANADA (MANITOBA) INC.
AND THE INDUSTRIAL GAS USERS TO GAIN ACCESS TO CONFIDENTIAL
INFORMATION AND COMPUTER MODELS IN CENTRA GAS MANITOBA INC.'S
COST OF SERVICE STUDY METHODOLOGY REVIEW APPLICATION**

May 31, 2022

BEFORE: Larry Ring, Q.C., Panel Chair
Marilyn Kapitany, B.Sc. (Hon), M.Sc., Board Vice-Chair,
Susan Nemec, FCA, FCPA, Member

Table of Contents

1.0 Executive Summary 3

2.0 Background Information and Motions by CAC Manitoba and IGU..... 5

3.0 Board Findings 16

4.0 IT IS THEREFORE ORDERED THAT: 18

Appendix A 20

1.0 Executive Summary

Centra Gas Manitoba Inc.'s ("Centra") Cost of Service Study ("COSS") is used to allocate costs among the utility's different customer classes. The COSS methodology is intended to identify the costs of serving the different customer classes based on the nature of the costs that are incurred and the services provided. The output of the COSS may then be used as a tool in determining the rate design and the specific rates for each of the different customer classes.

Both the Consumers' Association of Canada (Manitoba) Inc. ("CAC Manitoba") and the Industrial Gas Users ("IGU") filed separate motions with the Public Utilities Board ("Board"), seeking to gain access to information that the Board received from Centra in confidence and also to gain access to Centra's COSS computer model or a proxy model.

By this Order, the Board denies both Motions.

Given that all Parties to Centra's COSSMR Application proceeding accepted Atrium as an expert cost of service study consultant, qualified to review Centra's existing COSS methodology and to review Centra's existing COSS computer model, a key step in this review has been completed. Based on the submissions filed, the Board finds no need in having CAC Manitoba's or IGU's experts also review the existing COSS computer model or a proxy model. Likewise, with one limited exception, the Board finds that to make their COSS recommendations, Interveners do not need access to the limited customer-specific and gas supply arrangement information that has been filed in confidence with the Board and not placed on the public record.

However, in this Order, the Board approves Koch Fertilizer Canada, ULC ("Koch") being provided access to all of its own customer-specific data that has been redacted from the public record of this proceeding by Centra. Koch is then at liberty to determine to whom that data is provided, for what use, and under what terms.

The Board also grants Centra's motion that certain information within the Information Responses be received by the Board in confidence pursuant to Rule 13 of the Board's Rules of Practice and Procedure which are available on the Board's website at <http://www.pubmanitoba.ca>.

The Revised Timetable for the continuation of the orderly review of the Centra Cost of Service Study Methodology Review Application is attached to this Order as Appendix "A".

2.0 Background Information and Motions by CAC Manitoba and IGU

General

Following several Applications to Review and Vary the filing date, Centra filed its Cost of Service Study Methodology Review Application (“COSSMR Application”) with the Board on June 15, 2021. Centra filed both a public version of the COSSMR Application as well as a version containing proposed redactions of information that Centra requested the Board accept as confidential and not place on the public record. Also contained within Centra’s COSSMR Application was a fully public report from Atrium Economics LLC (“Atrium”), which reviewed Centra’s existing COSS methodology and provided recommendations for a revised COSS methodology.

In the Board’s first Procedural Order 80/21, dated July 26, 2021, the Board granted Centra’s Motion for certain information (i.e. customer-specific information and gas supply arrangements) within the COSSMR Application to be received in confidence and not placed on the public record, pursuant to the Board’s Rules of Practice and Procedure:

The Board accepts Centra’s submissions regarding its Rule 13(2) request and the Board has determined that the proposed redacted information will be held in confidence by the Board pursuant to Rule 13(2)(a) and (b). The Board finds that the proposed redacted information is consistent with information that the Board has previously received in confidence in past proceedings. The Board is satisfied that holding this information in confidence outweighs the public interest in disclosure of this information. [Order 80/21 p. 8 of 9]

The Board also indicated, in Order 80/21, on page 9 of 9:

To the extent access to confidential information is sought by approved Interveners, Interveners need to first communicate with Centra to resolve the disclosure issues. If disclosure issues are unable to be resolved by communication with Centra, the Board will adjudicate any requests for access by Interveners to confidential information. That said, the Board notes that the information redacted by Centra may not be required for Interveners to participate fully in the proceeding, and that as such, Intervener access to this information may not be necessary.

By way of a letter to the parties on March 7, 2022, the Board approved Intervener status for Consumers' Association of Canada (Manitoba) Inc. ("CAC Manitoba"), Industrial Users Group ("IGU"), and Koch Fertilizer Canada, ULC ("Koch").

In the Board's second Procedural Order 36/22, dated April 7, 2022, the Board approved a list of in-scope issues for the COSS Methodology Review proceeding as well as a list of topics that are not in-scope for the COSS Methodology Review proceeding:

...the Board finds that in-scope topics for this proceeding include:

- 1. Allocation of Transmission and Distribution Plant;*
- 2. Determination of Downstream Demand Allocation Factors;*
- 3. Direct Assignment of High-Pressure Transmission Plant to Customers Classes including Postage Stamp Ratemaking;*
- 4. Classification and Allocation of Distribution Plant including the indexing of the service line study to current costs;*
- 5. Allocation of Upstream Capacity Resources;*
- 6. Allocation of demand-side management costs;*
- 7. Amendments to the COSS methodology for Rate Re-bundling impacts;*
- 8. Elimination of the Co-op class;*
- 9. Allocation of operation & maintenance, customer service, and administrative expenses; and*
- 10. Near-term rate impact measure for the Special Contract Class and Power Station Class.*

The Board further finds that the following topics are not in-scope for Centra's COSS Methodology Review Application:

- Minimum margin guarantee for the Power Stations class;*
- Matters of Rate Design & introduction of a Zone of Reasonableness; and*
- Customer Class Rate Impacts. [Order 36/22 p. 13 of 20]*

Additionally, in Order 36/22 the Board approved a timetable for the initial process steps to be followed to facilitate the Board's adjudication of Centra's COSSMR Application.

All Parties to Centra's COSSMR Application proceeding accepted Atrium as an expert cost of service study consultant, qualified to review Centra's existing COSS methodology

and to review Centra's existing COSS computer model that allocates the Board's approved revenue requirements to the various customer classes.

As the Board has previously indicated, the focus of this proceeding is not to have Interveners audit or review the existing COSS computer model nor to focus on the rate impacts of any particular methodology. The COSS methodology to be used in Manitoba should be evaluated on its own merits, and as such, the rate impacts of the allocation methods should not be the focus of the COSS review or be used to influence the final decisions. In Procedural Order 36/22, customer class rate impacts have been ruled out-of-scope in this proceeding. Rate impacts and rate design are issues more appropriately reviewed in the context of Centra's next General Rate Application.

As required by the timetable, on May 16, 2022, Centra filed its responses to the written information requests of the Board, CAC Manitoba, IGU, and Koch related to Centra's COSSMR Application. As part of these information request response submissions and pursuant to Rule 13 of the Board's Rules of Practice and Procedure, Centra requested that a portion of its information request responses be received by the Board as confidential and not placed on the public record.

Furthermore, Centra set out its reasons for not providing full responses to information requests IGU/Centra I-1(a-b) and Koch/Centra I-1(a-c, and f), which mainly dealt with requests for access to an electronic computer model of Centra's COSS. Pursuant to Rule 16 of the Board's Rules of Practice and Procedure, Centra stated that these information requests were not relevant nor necessary for the satisfactory understanding of the matters to be considered in the COSS Methodology Review proceeding.

CAC Manitoba's Motion for Access to Confidential Information

On April 27, 2022, CAC Manitoba filed a Motion ("CAC Motion") with the Board requesting:

1. Immediate access to all redacted information immediately upon receipt by Centra of an executed Confidentiality Agreement;
2. The opportunity to submit written information requests in connection with the redacted information; and
3. The opportunity to file supplemental evidence in connection with the redacted information.

In its submission, CAC Manitoba explained that it was unsuccessful in gaining access to the redacted materials through negotiations with Centra, despite CAC Manitoba having no commercial interest in the redacted information. Furthermore, CAC Manitoba explained that its experts require access to redacted data in order to review and test a complete evidentiary record, as well as assess the appropriateness of the proposed methodology.

CAC Manitoba's Motion also indicates that should its request for access to the confidential information be denied by the Board, then access to a non-confidential computer model of Centra's COSS (i.e. an electronic COSS model containing "dummy" values within a general order of magnitude of the original confidential values) may be a workable alternative. However, CAC Manitoba expressed its concerns regarding having adequate time to meaningfully incorporate information derived from this alternate COSS model in their pre-filed evidence which was due on May 25, 2022.

Centra's Response to CAC Manitoba's Motion

On May 20, 2022, Centra filed its response to CAC Manitoba's Motion. Centra submits that CAC Manitoba failed to meet its onus in establishing a *bona fide* need for the very limited amount of confidential information contained in Centra's COSSMR Application to fully participate in this proceeding. Furthermore, Centra argues that CAC Manitoba's requests are inconsistent with the Board's findings in Order 80/21, which noted that "*the information redacted by Centra may not be required for Interveners to participate fully in the proceeding*"¹.

Centra also submits that the confidential information within the COSSMR Application is not required at all for Interveners to perform an assessment of how each methodology can be utilized by Centra. Rather, Centra states that CAC Manitoba's requests appear to focus upon COSS methodology implications or customer class rate impacts, which the Board expressly ruled out of scope for this proceeding in Order 36/22.

Additionally, Centra argues that CAC Manitoba relies upon its historical access to confidential information, which is irrelevant to this motion as no party to a proceeding has an automatic and perpetual entitlement to information deemed confidential by the Board in accordance with its Rules of Practice and Procedure. Centra also references prior Board Orders 95/10 and 95/11, which previously found that procedural fairness was not denied to Interveners who did not receive access to confidential information. Centra further submits that confidentiality agreements do not sufficiently mitigate the risk of disclosure, inadvertent or otherwise, particularly where there is little to no benefit to be gained from any such disclosure.

Finally, Centra argues that CAC Manitoba failed to comply with the Board's direction in Order 80/21 to communicate with Centra to resolve disclosure issues and that the late

¹ See p. 8 of PUB Order 80/21 (July 26, 2021).

filing of its Motion jeopardizes the Board's timetable for this proceeding to the prejudice of Centra and other parties.

As a result, Centra requests that the Board deny all relief sought by CAC Manitoba and order that CAC Manitoba is barred from seeking reimbursement of any of its costs related to its motion.

CAC Manitoba's Reply

On May 25, 2022, CAC Manitoba filed its reply to Centra's May 20, 2022 submission. CAC Manitoba submits that access to the confidential information (and access to an electronic COSS model) is within the scope of Order 36/22 and would represent the most effective and efficient approach for CAC Manitoba and its experts to carry out an objective review of the evidentiary record. Furthermore, CAC Manitoba observes that the Board did not clearly prohibit Intervener access to confidential information in Order 80/21, and that the Board has previously developed procedures and confidentiality undertakings to facilitate the release of confidential information to approved parties.

In this case, CAC Manitoba submits that the redacted information and electronic COSS model can be provided by Centra with reasonable 'work effort'. CAC Manitoba also argues that since the customer classes represented by the Interveners bear the financial responsibility of any cost allocations included in rates, Interveners are fully entitled to the COSS models that drive those customer class cost allocations.

In response to Centra's comments on the late filing date of the Motion, CAC Manitoba asserts that its record of communications with Centra regarding attempts to gain access to the Application's redacted materials began on August 3, 2021, with multiple other attempts initiated in April 2022.

As a result, CAC Manitoba updated its Motion to request the following relief:

1. Obtain un-redacted copies of the existing and proposed Centra COSS computer model;
2. The opportunity to issue information requests to Centra regarding the confidential information;
3. The opportunity to make submissions with respect to the remaining steps and timelines in the regulatory process, including the timing for filing Intervenor Evidence;
4. Any confidential information provided to CAC Manitoba also be provided to IGU/Koch as a result of its motion for disclosure of additional information.
5. An award of costs for the time and resources consumed as a result of this motion.

IGU's Motion for Access to Confidential Information

On May 19, 2022, IGU Manitoba filed a Motion ("IGU Motion") with the Board seeking the following relief:

1. That Centra provide full responses to Information Request IGU/Centra I-1 (i.e. access to computer model);
2. That any Board-ordered responses to CAC Manitoba from Centra also be provided to IGU;
3. That the Board order Centra to provide to IGU such information as is deemed relevant and which will allow IGU's consultants to provide opinions on the issues in scope at this proceeding;
4. That the Board order that IGU's counsel and experts be provided unredacted evidence upon signing Confidentiality Agreements and on the condition that no individual members of IGU be granted access to any confidential information;
5. That IGU be granted an extension of time to file its pre-filed evidence (e.g. one week after receipt of the unredacted materials and the response to IGU/Centra I-1).

In its submission, IGU explains that Centra's approach to answering information requests is inconsistent and unfair. IGU submits that Intervener requests for a fully-linked COSS model (such as in IGU/Centra I-1 and Koch/Centra I-1) seek to help assess the appropriateness of Atrium's and Centra's COSS recommendations and whether alternate methodologies may be more appropriate for Centra's specific circumstances in Manitoba. However, IGU states that after fairly extensive negotiation efforts, it was unable to resolve its data access issues with Centra.

IGU argues that attempting to choose a COSS method by description without the specifics of the COSS computer model, as proposed by Centra in this proceeding, is not a best practice and is inconsistent with the practice of other Boards in Canada. As such, not providing IGU access to redacted information and an electronic COSS model will limit the

tools and information available to IGU's experts and impact the quality of opinion and advice offered to assist the Board in its decision-making process. IGU stresses that access to the requested information is especially important in this case as the COSS methodologies approved in this proceeding will likely guide rate-making in Manitoba for several years.

Additionally, IGU argues that if Centra does not agree to provide a COSS computer model following the Board's adjudication of the appropriate methodologies to be built into the COSS model, then the current COSS methodology review stage is the appropriate time to provide an active COSS model to Interveners. Furthermore, IGU submits that if the concern is that taking out confidential information from a live computer model takes too much time, the solution is to have Interveners' counsel and experts sign confidentiality agreements in the form previously determined by the Board (e.g. at the 2019/20 Centra General Rate Application).

Centra's Response to IGU's Motion

On May 24, 2022, Centra filed its response to IGU's Motion. Centra submits that IGU has not established that the electronic COSS model requested in information request IGU/Centra I-1, nor any of the confidential information filed in this proceeding, is relevant and necessary for the satisfactory understanding of Centra's COSS matters or how each methodology can be utilized in Manitoba.

Centra explains that its COSS model is the technical tool that allows for the implementation of Centra's COSS methodology but its contents give no guidance as to whether certain methodologies are superior to others or are appropriate for Centra's specific circumstances. Furthermore, Centra states that the confidential COSS model, or one that contains either historically public information (or fully-public "dummy" values that are within a general order of magnitude of the original confidential values), cannot be provided with reasonable effort. This is because Centra's existing COSS model currently contains significant metadata and legacy information that is not appropriate or necessary

to be provided to third parties. Furthermore, preparing an electronic COSS model that contains non-confidential “dummy” values would also require substantial work effort to ensure that the original confidential information continues to be protected and that the model continues to produce substantially similar results as the original.

Centra further argues that IGU’s requests appear to be focused on auditing the formulas and calculations of the COSS model, rather than the appropriateness of the methodologies themselves.

In this case, Centra submits that confidentiality agreements do not sufficiently mitigate the risk of disclosure, particularly where there is little to no benefit to be gained from the disclosure of such information to Interveners. Additionally, Centra references prior Board findings (in Orders 95/10 and 95/11) where procedural fairness was found not to be denied to Interveners despite interveners not being granted access to certain confidential information filed by the applicant.

Finally, Centra requests that the Board deny all relief sought by IGU and order, given IGU’s late filing of its motion which inevitably results in a significant delay in the Board’s COSS Methodology Review timetable approved in Order 36/22, that IGU is barred from seeking reimbursement of any of its costs related to its motion.

IGU’s Reply

On May 26, 2022, IGU filed its reply to Centra’s submission of May 24, 2022. In regards to Centra’s statement that IGU did not act in a timely manner in advising Centra of its need for access to CSI, IGU’s counsel asserts that multiple attempts to resolve issues, including arranging meetings with Centra to discuss various proposed data access alternatives, were in fact initiated with Centra between June 15, 2021 and May 2022. Since Centra has now rejected all provided options that avoided the need for confidential information, granting IGU’s request for access to confidential information and the electronic COSS model may now be the only way to achieve full and fair disclosure.

IGU, which includes Koch as a member, indicates that the confidential information that pertains to Koch should be provided to Koch, and then Koch can decide who has access to its information.

Furthermore, IGU argues that Centra's submission falls short of satisfying its onus that the access to confidential information alternatives proposed by IGU, or some variation of them, cannot be provided by Centra with reasonable effort. As well, IGU observes that Section 24(4) of *The Public Utilities Board Act* provides the Board with the same procedural powers as those of a Queen's Bench judge and that the Supreme Court of Canada's decision in *Canada v. Vavilov*, 2019 SCC 65 (CanLII), further supports the Board utilizing a significantly broad pre-hearing discovery process.

IGU also observes that Centra's COSSMR Application includes the illustrative modeling of its proposed COSS changes, which further supports IGU's view that the availability of the electronic COSS model is relevant as well as being standard in other jurisdictions and a best practice during COSS review proceedings.

Centra's Confidentiality Motion re: Information Responses

In the filing of a limited number of its Responses to Information Requests, Centra requested that the Board receive the redacted portions in confidence pursuant to Rule 13 of the Board's Rules of Practice and Procedure.

Centra's grounds for seeking specific information not to be placed on public record were coded in its Redaction Criteria which was filed with Centra's May 16, 2022, covering letter with the Information Responses.

3.0 Board Findings

The Board finds that the key step, the review of the COSS methodology and model, has been completed by Atrium. All Parties to Centra's COSSMR Application proceeding accepted Atrium as an expert cost of service study consultant, qualified to review Centra's existing COSS methodology and to review Centra's existing COSS computer model. The Interveners did not challenge Atrium's independence.

In addition to its review, Atrium has also made recommendations as to which specific COSS methodologies should be revised for use in Manitoba. The in-scope methodological issues are listed above and in Procedural Order 36/22. Centra has provided its recommendations as to which specific methodologies should be used. As the Board found on page 15 of Order 36/22:

Based on the Parties' submissions, the Board finds that there is no need for Interveners' additional comprehensive reviews of the existing COSS methodology (or model) and for evaluating Atrium's report for completeness. Instead, Interveners are to focus their submissions on the appropriateness of Atrium's and Centra's COSS recommendations or provide alternative methodologies appropriate for Centra's specific circumstances in Manitoba, without the need to duplicate the extensive review already conducted by Atrium. If relied on in this proceeding, Interveners are to re-file (and not duplicate) their expert evidence, on the in-scope issues, previously filed in Centra's last General Rate Application.(emphasis added)

Based on the submissions filed, the Board finds no need in having CAC Manitoba's or IGU's experts also review the existing COSS computer model or a proxy model. Likewise, with the limited exception related to Koch noted below, the Board finds that to make their COSS recommendations, Interveners do not need access to the limited customer-specific and gas supply arrangement information that has been filed in confidence with the Board and not placed on the public record.

The Board finds that the written information and descriptions provided by Atrium and Centra, together with responses to the written Information Requests, to be sufficient to

communicate the COSS methodologies that are being reviewed and are in-scope in this proceeding.

The Board further finds that it is premature and not within the scope of this proceeding to review the implementation of any COSS methodologies that may be accepted by the Board. Any issues related to the implementation of any new COSS methodologies should be addressed following the Board's issuance of its final Order and Centra filing its compliance submissions. The Board expects the next Centra General Rate Application will include consideration of COSS matters.

IGU's May 26, 2022, Motion, on behalf of Koch (as contained in IGU's Reply Submission), seeks disclosure to Koch of Koch's own confidential information in this proceeding. Because the near-term rate impact measure affecting limited customer numbers is in-scope in this proceeding, the Board finds that Koch is to immediately be provided access to its own data that have been redacted and kept off the public record in this proceeding by Centra. Koch is then at liberty to determine to whom those data are provided, for what use, and under what terms.

The Board finds that any cost determinations related to CAC's Motion and IGU's Motion will be made when Interveners file their Cost Applications following the evidentiary portion of this proceeding.

The Board finds that the proposed redacted information in Centra's Information Request Responses, filed on May 16, 2022, will be held in confidence by the Board pursuant to Rule 13(2)(a) and (b). The Board finds that the proposed redacted information is consistent with the information that the Board has previously received in confidence in past proceedings. The Board is satisfied that holding this information in confidence outweighs the public interest in the disclosure of this information.

To address the issue of requested revisions to the Timetable, the Board finds the Revised Timetable attached as Appendix "A" to be reasonable to continue with the orderly exchange of evidence in this proceeding.

4.0 IT IS THEREFORE ORDERED THAT:

1. CAC's April 27, 2022 Motion seeking full access to the redacted information filed in confidence with the Board, or alternatively access to Centra's COSS computer model BE AND IS HEREBY DENIED;
2. IGU's May 19, 2022 Motion seeking responses to Information Request IGU/Centra I-1 (COSS computer models) and access to Board-approved redacted confidential information BE AND IS HEREBY DENIED;
3. IGU's May 26, 2022 Motion on behalf of Koch (as contained in IGU's Reply Submission), seeking Koch to be immediately provided access to its own data that has been redacted and kept off the public record in this proceeding by Centra, BE AND IS HEREBY APPROVED.
4. Centra's request that the Board receive certain information within the Responses to Information Requests in confidence pursuant to Rule 13 BE AND IS HEREBY APPROVED.
5. The Revised Timetable for the orderly review of the Centra Cost of Service Study Methodology Review Application BE AND IS HEREBY APPROVED as attached to this Order as Appendix "A".

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.

THE PUBLIC UTILITIES BOARD

"Larry Ring, Q.C."

Panel Chair

"Rachel McMillin, B.Sc."

Associate Secretary

Certified a true copy of Order No. 58/22
issued by The Public Utilities Board



Associate Secretary

Appendix A**Centra Gas Manitoba Inc.****Cost of Service Study Methodology Review Application****Revised Timetable**

Item	Date (by no later than)
PUB First Round Information Requests to Centra and Atrium	April 18, 2022
Intervener First Round Information Requests to Centra and Atrium	April 22, 2022
Centra and Atrium Responses to First Round Information Requests	May 16, 2022
Intervenors to File Pre-Filed Evidence	June 3, 2022
Information Requests on Intervener Evidence	June 8, 2022
Intervener Information Request Responses	June 13, 2022
Centra Rebuttal Evidence	June 16, 2022
Comments from Centra and Intervenors – Need & Scope for Oral Hearing and Written Submissions	June 20, 2022
Procedural Order Issued – Oral and/or Written Issues	TBD
Public Hearing Commences	August 2022 with specific dates TBD