

MANITOBA) Order No. 116/01
)
THE PUBLIC UTILITIES BOARD ACT) July 25, 2001

BEFORE: G. D. Forrest, Chairman
M. Santos, Member
M. Girouard, Member

**APPLICATION BY THE CONSUMERS' ASSOCIATION OF
CANADA (MANITOBA) INC. AND MANITOBA SOCIETY OF
SENIORS FOR AN AWARD OF COSTS FOR PARTICIPATING
IN THE CONSIDERATION OF AN APPLICATION BY CENTRA
GAS MANITOBA INC. FOR APPROVAL OF SUPPLEMENTAL
GAS AND TRANSPORTATION (TO CENTRA) RATES**

Background

A public hearing was held in the City of Winnipeg, commencing March 14, 2001 to consider issues arising out of an application by Centra Gas Manitoba Inc.'s ("Centra") for approval of Supplemental Gas and Transportation (to Centra) Rates. The Consumers' Association of Canada (Manitoba) Inc. and Manitoba Society of Seniors were granted intervenor status to present a joint intervention.

Application by CAC/MSOS

By letters dated April 30, 2001 and May 28, 2001 Counsel for the Consumers' Association of Canada (Manitoba) Inc. and the Manitoba Society of Seniors (the "Applicant") filed with the Board the appropriate hearing and summary sheets. The total claim for costs is \$267,605.07 comprised of professional fees of \$227,839.50, disbursements of \$20,727.88 and GST of \$19,037.69.

The Applicant, in commenting about the nature of its intervention, noted the significant issues which were under consideration at the hearing and that it provided the Board "with expert advice from an array of stakeholders in the natural gas marketplace". The Applicant also noted the commitment made by CAC/MSOS in terms of time and expenses, the fact that the hearing consumed 12 days spread over the course of a month, the significant number of hours required prior to the hearing and the logistics of retaining, meeting and co-ordinating with five expert consultants.

The Applicant also noted that it was important for the Board "to understand that in order to retain competent and committed consultants CAC/MOS had to guarantee payment". The Applicant submitted that "the cost consequences of the intervention are but a fraction of the amounts at stake."

The Applicant submitted that there was no duplication, and that CAC/MSOS was the main counter balance to the application of Centra. The Applicant also noted its lack of financial resources and substantial interest in the process and the outcome of the proceedings.

The Applicant noted that a substantial outlay of

disbursements have been incurred.

The Applicant requested that an Order as to costs be rendered within 15 days.

Centra's Position

By correspondence dated May 31, 2001 and June 1, 2001 Centra noted that CAC/MSOS had provided "evidence from multiple experts on the same or similar topics in addition to using a number of advisors behind the scenes" Centra submitted "that CAC/MSOS's approach of engaging multiple experts and advisors at the two recent Centra hearings has led to significant duplication of effort and unnecessary costs on the part of CAC/MSOS and unnecessary effort on the part of Centra and the PUB to deal with the plethora of information requests and evidence. Centra is also concerned that if the PUB approves CAC/MSOS's cost submission in its entirety that it will send a message that this type of approach is acceptable and will result in a substantial increase in hearing costs in the future that must be borne by Centra's customers."

Centra further objected to the request of CAC/MSOS to have Centra pay the costs within 15 days stating that established guidelines and practices should not be altered. Centra further noted "the summary of the positions of the various CAC/MSOS witnesses in its [Centra's] Rebuttal evidence is no way indicative of the contribution that these witnesses provided but rather was intended to summarize the areas of agreement and disagreement, between Centra and the intervenors, for the PUB."

Centra submitted "the arrangement between the experts and CAC/MSOS seems to be open ended with little or no attempt by

CAC/MSOS to specify the terms of engagement or control the cost of those experts. It appears that it was left up to the discretion of the expert to determine which areas to cover and the depth of their review and participation. This is evident when you compare the wide variation in hours that were spent by Ms. DeJulio, Mr. Ilnycky and Mr. Forget on essentially the same material. Ms. DeJulio's time totalled 112 hours (15 days) and Mr. Ilnycky's time totalled 143 hours (19 days) while Mr. Forget's hours totalled 262 (35 days).".

Centra also submitted "There was a significant duplication of effort and overlap between the Gas Supply experts, Ms. DeJulio, Mr. Ilnycky and Mr. Forget in the areas of the changes to the TCE contract, Centra's capacity management activities and the outsourcing of Centra's gas supply assets.".

Centra recommended that the Board disallow a substantial portion of the submission of CAC/MSOS. Centra submitted "the duplication in the evidence and effort of the Gas Supply experts, Ms. DeJulio, Mr. Ilnycky and Mr. Forget, was at the very least 50%. As such, Centra is recommending that the PUB disallow \$43,750 (50% of \$87,500) of these fees." and "that the PUB disallow \$46,913 (39.8% of \$117,872) of CAC/MSOS's legal fees". Accounting for further out-of-pocket expenses, Centra recommended "a total disallowance of \$104,262". Centra also asked that the Board "give direction to CAC/MSOS, that future use of multiple experts to address the same matters is inappropriate and places an unacceptable cost burden on Centra's ratepayers".

CAC/MSOS Response to Centra's Position

CAC/MSOS responded to Centra's comments by way of letter

dated June 6, 2001.

CAC/MSOS maintained that the quality of the intervention is important and that it was not trying to match the resources of the utility. CAC/MSOS further stated that given the importance of the matter the engagement of four experts and two advisors was not excessive.

CAC/MSOS submitted that its contribution was material, that the number of consultants used was reasonable in the circumstances, that the hours submitted by the experts was reasonable and that what the utility describes as duplication of effort and overlap CAC/MSOS chooses to view as a reinforcement of a position from different perspectives.

CAC/MSOS stated that its request for payment in 15 days was not asking for special treatment as it has been done in the past and Centra is capable of making such a payment.

BOARD COMMENTS

The Board has reviewed the submissions of CAC/MSOS and the comments provided by Centra Gas.

The Board notes that the subject matter of the hearing was indeed of a complex nature and has significant financial implications for the ratepayers of Manitoba. The Board notes that the matter of the TCPL contract and the matter of Centra's hedging are issues of which the Board has expressed concerns for some time now and a thorough and detailed review of these matters is of benefit to the ratepayers.

The Board also notes the position of Centra with regards to the implications of intervenor costs on rates and ratepayers. The Board is mindful that all cost submissions must be reasonable and meet the criteria for the award of any costs as outlined by the Board but is also mindful that the intervention of interested parties plays a significant role in the process.

The Board also notes the position of Centra with regards to the matter of engagement letters, the number of consultants retained, the number of hours claimed by each consultant and the matter of duplication and overlap. The Board notes that all intervenors run the risk of disallowed costs if the criteria as outlined by the Board is not met.

With respect to this Application for costs, the Board finds CAC/MSOS has demonstrated financial need and that they do represent a substantial interest in the proceeding. Furthermore, the Board finds that CAC/MSOS did represent its interest in a responsible manner with highly competent expert witnesses. As in the past CAC/MSOS respected the public hearing process and co-operated with others.

The Board accepts CAC/MSOS' position that this hearing was not a perfunctory hearing. While many of the issues related to commodity costs are market driven, Centra has a responsibility to respond to such conditions prudently and in so doing must exercise good judgement. It is the exercise of this judgement that must be scrutinized to ensure it has acted in the public interest. The Board is satisfied that CAC/MSOS again focused its attention and resources on those critical areas identified in this hearing.

The Board is also satisfied that the complexity of the issues at this hearing resulted in increased efforts on all parties. Accordingly, the Board finds that CAC/MSOS' reliance on advisors to assist it in identifying issues of concern and in managing the complex issues is not unreasonable.

By CAC/MSOS' own admission, the evidence of its experts did cross-over in the area of transportation contracts, capacity asset management and outsourcing which it views as a reinforcement of a position from different perspectives. As noted by Centra the amount of time spent by these experts amounted to 571 hours or 68.9 person days for fees totalling \$87,500. This overlap was observed by the Board in the proceeding and in the Board's opinion such efforts were, to some extent, duplicitous and unnecessary. While clearly there was some effort made to manage this overlap, the Board is of the view that a reduction in costs in the amount of \$10,000 should be made to reflect the unnecessary duplication of effort that the Applicant required of Mr. Forget. Even by making this reduction, the Board appreciates the complexity of organizing an intervention and encourages all intervenors when retaining experts to be mindful of the Board's criteria for awarding costs. The balance of the Application for costs will be allowed in full, as submitted.

The Board is concerned about the tone and tenor in the correspondence exchanged between the parties regarding this Application for costs. All parties have a role to ensure and verify that the regulated service is delivered to the consumer in a reliable and most economical manner and all parties have a responsibility to ensure that role is fulfilled in a cost effective manner. Historically, these roles have been carried out in a highly professional and courteous manner and the Board expects to

see the continued co-operation of all parties.

IT IS THEREFORE ORDERED THAT:

1. The Consumers' Association of Canada (Manitoba) Inc. and Manitoba Society of Seniors' application for an award of costs BE AND IS HEREBY APPROVED in the amount of \$257,605.07.
2. The costs shall be payable by Centra Gas Manitoba Inc. within 15 days of the date of this Order.

THE PUBLIC UTILITIES BOARD

"G. D. FORREST"

Chairman

"H. M. SINGH"

Acting Secretary

Certified a true copy of Order
No. 116/01 issued by The Public
Utilities Board

Acting Secretary