

**Order No. 180/19**

**AWARD OF COSTS TO  
CONSUMERS ASSOCIATION OF CANADA (MANITOBA) INC.  
FOR INTERVENTION IN THE  
CENTRA GAS MANITOBA INC.: 2019/20 GENERAL RATE APPLICATION**

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**December 11, 2019**

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

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## 1.0 Summary

By this Order, the Public Utilities Board of Manitoba (“Board”) approves an award of costs of \$480,200.86 to the Consumers’ Association of Canada (Manitoba) Inc.’s (CAC) for their intervention in the Centra Gas Manitoba Inc. (Centra Gas) 2019/20 General Rate Application.

## 2.0 Application

On October 2, 2019, CAC filed with the Board an Application for an Award of Costs for their intervention at the Centra Gas 2019/20 General Rate Application.

Pursuant to Section 56 of *The Public Utilities Board Act*, the Board has jurisdiction 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. This Policy applied and was followed for the Centra Gas 2019/20 General Rate Application.

Sections 3.1 and 3.2 of the Intervener Costs Policy describes 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 a 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 approved Intervener status to CAC in Procedural Order No. 24/19 dated February 20, 2019. In the same Order, the Board requested all approved interveners to file a budget proposal with the Board by March 4, 2019.

On March 4, 2019, CAC filed its projected budget with the Board. Board staff acknowledged the budget proposal. After staff review and comment, CAC provided a revised budget on April 3, 2019.

On October 2, 2019, CAC filed its final Cost Application, for its participation in Centra Gas's 2019/20 General Rate Application, for \$510,905.33 inclusive of tax, fees and disbursements. CAC provided statements of accounts, as summarized in the following table.

	<b>Budget Total</b>	<b>Costs Application Total</b>
<b>Legal Costs:</b>		
B. Meronek, Q.C. /DD West LLP		
Fees	\$187,800.00	\$108,784.50
Disbursements	\$10,000.00	\$2,168.77
Taxes	\$25,709.74	\$13,561.59
<b>Consultant Costs:</b>		
D. Rainkie/K. Derksen		
Fees	\$262,560.00	\$284,340.00
Disbursements	\$1,000.00	\$548.07
Taxes	\$13,178.00	\$14,244.40
R. DeWolf		
Fees	\$50,000.00	\$26,280.00
Disbursements	\$2,000.00	\$0.00
Taxes	\$2,600.00	\$1,314.00
Metsco Energy Solutions Inc.		
Fees	\$50,000.00	\$52,800.00
Disbursements	\$2,000.00	\$0.00
Taxes	\$2,600.00	\$6,864.00
<b>TOTAL COSTS</b>	<b>\$609,447.74</b>	<b>\$510,905.33</b>

CAC provided detailed invoices and a written submission describing CAC's participation in the Board's review of Centra Gas's 2019/20 General Rate Application in support of its Cost Application. CAC's cost intervention claim is \$98,542 under its budget.

DD West LLP Barristers & Solicitors represented CAC in addressing the issues identified by the Board as in scope for CAC in this proceeding.

### 3.0 Centra Gas Manitoba Inc.'s Comments

On October 30, 2019, Centra Gas provided its comments regarding CAC's Cost Application. Centra Gas disputed the following costs related to the Cost Application:

- The total number of hours claimed by Consultants Rainkie and Derksen of 1184 (\$284,340.00 in costs), stating that the number of hours and the allotment between the two consultants raised the concern of duplicative work. Centra requested the total number of hours be reduced to 388, to be more reasonable and comparable to the hours submitted by other consultants from CAC.
- Photocopying costs of \$1,408.93 when Centra provided hard copies and electronic copies of materials to intervening parties. Centra requested photocopying costs be reduced by half.
- Parking costs of \$25.00 submitted for days that there was no hearing scheduled and no time recorded in the time sheets. Centra requested these costs be refused.
- Tax claim of \$35,983.99 in GST and PST on professional services and disbursements. Centra stated that CAC did not identify whether any of that tax amount can be recovered through an Input Tax Credit, pursuant to Section 7 of the Intervener Cost Policy.

### 4.0 Board Findings

The Board has reviewed the Cost Application by CAC, as well as the comments provided by Centra Gas and rebuttal explanation(s) submitted by B. Meronek, Q.C., on November 4, 2019.

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

The Board found this GRA challenging given the number of years between rate applications. The Board is concerned about the high costs of these proceedings and takes the cost award process and payment to Interveners seriously, as it is ultimately a cost passed on to ratepayers. The Board reiterates its position, as stated in Board Order

No. 152/19, that Centra's delay in filing for a GRA has given rise to matters that would not otherwise have been an issue, has complicated matters that would otherwise have been routine, and has resulted in negative impacts to customers.

As indicated in sub-section 56(1) of *The Public Utilities Board Act* the costs of, and incidental to, any proceeding before the Board are at the discretion of the Board.

In Procedural Order 24/19 in respect of Centra's 2019/20 GRA the Board, indicated Interveners are required to avoid duplication, and are to collaborate among themselves in the development of their scope of work for the issues on which they are approved. The Board further wrote in Order 24/19 that the filing of Intervener cost estimates does not guarantee or disqualify an Intervener from eligibility for a cost award and any comments provided by Board staff on Intervener cost estimates are not binding on the Intervener or the Board. All cost awards, whether an Advance of Funds or a final cost award, are at the sole discretion of the Board.

An audit of the time entries and rationale for CAC Consultants Rainkie and Derksen, revealed that there are overlaps in time with identical rationale where it appears there could be duplicative work. The Board finds the level of detail provided by the joint submission by Rainkie and Derksen does not allow the Board to determine that these were focussed individual efforts or that these costs were reasonable. The onus is on the Intervener to satisfy the Board that its costs are just and reasonable.

Having considered the Consumers Association of Canada (Manitoba) Inc.'s cost submissions and the comments by Centra in accordance with the criteria set out in Section 3.3(h) of the Intervener Costs Policy the Board, in its discretion, the Board adjusts the amount for CAC Consultants Rainkie and Derksen to \$269,132.47 rather than the requested \$299,132.47.

Further, the Board approves the tax amounts as filed and disbursements with the exception of photocopying costs. Both parties have made reasonable statements and

rebuttal arguments and the Board finds that sharing the photocopying costs is appropriate. The Board awards CAC photocopying costs in the amount of \$704.47.

The Board awards the total amount of \$480,200.86 to CAC for intervention in the Board's review of Centra Gas's 2019/20 General Rate Application.



**5.0 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 \$480,200.86.
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

"Larry Ring, Q.C."  
Panel Chair

"Rachel McMillin, B.Sc."  
Assistant Associate Secretary

Certified a true copy of Order No. 180/19  
issued by The Public Utilities Board

  
Assistant Associate Secretary