

**Order No. 181/19**

**AWARD OF COSTS TO  
INDUSTRIAL GAS USERS  
FOR INTERVENTION IN THE  
CENTRA GAS MANITOBA INC.: 2019/20 GENERAL RATE APPLICATION**

---

**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

**Table of Contents**

**1.0 Summary ..... 3**

**2.0 Application..... 3**

**3.0 Centra Gas Manitoba Inc.’s Comments ..... 6**

**4.0 Board Findings ..... 7**

**5.0 IT IS THEREFORE ORDERED THAT: ..... 9**

## 1.0 Summary

By this Order, the Public Utilities Board of Manitoba (“Board”) approves an award of costs of \$233,427.09 to the Industrial Gas Users (IGU) for their intervention in the Centra Gas Manitoba Inc. (Centra Gas) 2019/20 General Rate Application.

## 2.0 Application

On October 1, 2019, IGU 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 IGU 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, IGU filed its projected budget with the Board. Board staff acknowledged the budget proposal. After staff review and comment, IGU provided a revised budget on April 3, 2019.

IGU filed subsequent budget updates on June 28, 2019 and August 14, 2019, with Board staff. The first update was to reflect an update of the actual level of effort for the discovery phase of the proceeding following a motion for disclosure of commercially sensitive information (CSI). The second update was to reflect an update of the actual level of effort for discovery and evidence phases of the proceeding.

On October 1, 2019, IGU filed its final Cost Application, for its participation in Centra Gas's 2019/20 General Rate Application, for \$251,013.31 inclusive of tax, fees and disbursements. IGU provided statements of accounts, as summarized in the following table.

	<b>April 2019 Budget</b>	<b>June 2019 Budget</b>	<b>August 2019 Budget</b>	<b>Costs Application Total</b>
<b>Legal Costs:</b>				
A.Hacault, TDS Law				
Fees	\$96,330.00	\$107,787.00	\$117,021.00	\$86,839.50
Disbursements	\$1,200.00	\$1,200.00	\$1,200.00	\$589.20
Taxes	\$12,522.90	\$14,012.31	\$15,212.73	\$10,450.01
<b>Consultant Costs:</b>				
P. Bowman/A. McLaren, InterGroup Consultants Ltd.				
Fees	\$89,655.00	\$100,566.25	\$100,566.25	\$70,305.00
Disbursements	\$1,000.00	\$1,000.00	\$1,000.00	\$1,288.12
Taxes	\$4,482.75	\$5,028.31	\$5,028.31	\$3,675.84
M. Davies, InterGroup Consultants Ltd.				
Fees	\$40,192.00	\$47,552.00	\$47,522.00	\$41,184.00
Disbursements	\$0.00	\$0.00	\$0.00	\$0.00
Taxes	\$2,009.60	\$2,377.60	\$2,377.60	\$2,059.20
G. Labonte, France Financial Consulting				
Fees	\$30,000	\$20,400.00	\$21,840.00	\$31,200.00
Disbursements	\$1,200.00	\$1,200.00	\$1,200.00	\$1,759.65
Taxes	\$1,500.00	\$1,020.00	\$1,092.00	\$1,662.79
<b>TOTAL COSTS</b>	<b>\$280,092.25</b>	<b>\$302,143.47</b>	<b>\$314,089.89</b>	<b>\$251,013.31</b>

IGU provided detailed timesheets, invoices and a written submission describing IGU's participation in the Board's review of Centra Gas's 2019/20 General Rate Application in support of its Cost Application. IGU's cost intervention claim is \$63,077 under its last submitted budget and \$29,079 under its initial budget submission.

TDS Law represented IGU in addressing the issues identified by the Board as in scope for IGU in this proceeding.

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

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

- The eligibility for a cost award, as IGU failed to meet criteria 3.1(c) and (d) in the Board's Intervener Costs Policy, stating IGU did not represent interest beyond the sole business interests of four of its members. In addition, IGU submitted evidence and argument on issues that were ruled out-of-scope by the Board, not relevant to the proceeding, and unnecessarily lengthened the time and increased costs of the proceeding. In the event the Board determines that IGU qualifies for a cost award, Centra requested the amounts be significantly reduced or eliminated.
- The increased time for Discovery phase from the original budget, for both legal and consultants time, is unreasonable and not supported by the timesheets. Centra recommended that Board award IGU its budgeted amount for Discovery plus an amount for the CSI motion that is supported by the time sheets:
  - o Legal Costs for A. Hacault be reduced by at least 20 hours for a total of 80.2 for Discovery.
  - o P. Bowman/A. McLaren 103.5 hours for Discovery (85 hour estimated and 18.5 hours for CSI motion work).
  - o M. Davies 85.5 hours for Discovery (75 hours estimated and 10.5 hours for CSI motion work).
- The costs claimed by the Gas Specialist G. Labonte are unreasonable, as there was a lack of understanding of and duplicated work by IGU witnesses and consultants for the issue of balancing fees. Centra requested the costs for G. Labonte be denied or significantly reduced to 20 hours.
- Photocopying costs of \$550.00 when Centra provided hard copies and electronic copies of materials to intervening parties. Centra requested photocopying costs be reduced by half.

## 4.0 Board Findings

The Board has reviewed the Cost Application by IGU, as well as the comments provided by Centra Gas and rebuttal explanation(s) submitted by M. Davies of InterGroup Consultants Ltd., on November 13, 2019.

The Board finds that IGU meets the requirements for a cost award. The Board was satisfied that IGU represented interests beyond the participating members at the GRA.

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.

The Board concurs with IGU that additional time was required for the discovery phase of the proceeding, as a result of a breakdown in communication between Centra and IGU that resulted in a CSI Motion and Board Order. This resulted in delayed the timelines for information requests for IGU and increased time and costs for both IGU Legal Counsel

and Consultants. Therefore, the Board does not reduce the total number of hours claimed by IGU Legal Counsel and InterGroup Consultants.

Having considered the Industrial Gas User's cost submissions and the comments by Centra in accordance with the criteria set out in Section 3.3(f)(h) of the Intervener Costs Policy the Board,

The Board finds that work done by Consultant Labonte was duplicative of work by other IGU witnesses on the issue of balancing fees. In addition, the Board finds that Consultant Labonte did not advance the Board's understanding of the issue of balancing fees.

The Board, in its discretion, awards Consultant Labonte \$17,311.22 rather than the requested \$34,622.44.

The Board approves taxes and disbursements as applied for 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 IGU photocopying costs in the amount of \$275.00.

The Board awards the amount of \$233,427.09 to IGU 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 Industrial Gas Users for an award of costs **BE AND IS HEREBY APPROVED** in the total amount of \$233,427.09.
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. 181/19  
issued by The Public Utilities Board

  
Assistant Associate Secretary