

MANITOBA) **Order No. 32/13**
)
THE PUBLIC UTILITIES BOARD ACT) **March 26, 2013**

BEFORE: Régis Gosselin, BA, MBA, CGA, Chair
Raymond Lafond, BA, CMA, FCA, Member
Marilyn Kapitany, B.Sc. (Hons.), M.Sc., Member

CENTRA GAS MANITOBA INC.
AUTHORIZATION OF A NEW CROSSING AGREEMENT WITH THE
RURAL MUNICIPALITY OF ST. FRANCOIS XAVIER

1.0 Executive Summary

By this Order, the Manitoba Public Utilities Board (Board) approves, on an interim ex-parte basis, Centra Gas Manitoba Inc.'s (Centra) application for a new crossing agreement with the Rural Municipality of St. Francois Xavier.

2.0 The Application

On March 8, 2013, Centra on its own behalf and on behalf of the RM of St. Francois Xavier, applied to the Board for interim ex parte approval and authorization of a Crossing Agreement.

The Crossing Agreement is required to address planned construction of new natural gas transmission facilities through the RM of St. Francois Xavier and the RM of Rosser that will provide needed capacity for a new gas distribution line that will serve the RM of Headingley and the western part of the City of Winnipeg.

The proposed Crossing Agreement is reflective of the generic form of franchise agreement approved by the Board in Order 159/11.

The RM of St. Francois Xavier gave first reading to By-law No. 16-2012 on December 18, 2012 which authorized the RM of St. Francois Xavier to enter into the Crossing Agreement subject to approval of the Board.

3.0 Board Findings

The Board notes that the application was filed in a manner consistent with the Board's requirements and is reflective of the relevant terms of the generic form of franchise agreement approved by the Board in Board Order 159/11. The Board will therefore approve the application on an interim ex parte basis, with the approval to be confirmed at a later date.

4.0 IT IS THEREFORE ORDERED THAT:

1. The new Crossing Agreement between Centra Gas Manitoba Inc. and the Rural Municipality St. Francois Xavier attached as Schedule "A" to this Order, BE AND IS HEREBY APPROVED, on an interim ex-parte basis.
2. This interim Order will remain in full effect until confirmed or otherwise by a subsequent Order of the Board.

THE PUBLIC UTILITIES BOARD

"RÉGIS GOSSELIN, BA, CGA, MBA"
Chair

"HOLLIS SINGH"
Secretary

Certified a true copy of Order No. 32/13
issued by The Public Utilities Board

Secretary

SCHEDULE "A"

MEMORANDUM OF AGREEMENT made this day of , 2013.

BETWEEN:

CENTRA GAS MANITOBA INC.,

(hereinafter called the "Company"),

OF THE FIRST PART,

- and -

RURAL MUNICIPALITY OF ST. FRANCOIS XAVIER,

(hereinafter called the "Municipality"),

OF THE SECOND PART.

WHEREAS the Company wishes to lay a pipe line across the highways and other roads or lands (the "Highways") herein after designated for the conveying of natural gas by or through the pipe line (the "Pipe Line") for the purpose of upgrading its existing transmission and distribution system for distributing and selling natural gas in the Rural Municipality of Headingley, the existing franchise areas in the Rural Municipality of Rosser and the City of Winnipeg and to other franchised areas in the vicinity of the Pipe Line in the Province of Manitoba (the "Purpose");

AND WHEREAS the Council of the Municipality, pursuant to the power and authority contained in The Municipal Act, being Cap. M225 of the Revised Statutes of Manitoba, has passed a by-law granting to the Company the right and privilege to lay the Pipe Line

and authorizing the Municipality to enter into an agreement with the Company as hereinafter set forth;

NOW THIS AGREEMENT WITNESSETH that in consideration of the premises and the mutual covenants and conditions contained herein, the Company and the Municipality hereby mutually covenant and agree as follows:

1. The Company will duly construct, lay and maintain the Pipe Line for the Purpose across all those portions of the highways or lands in River Lots 200 through 227 in the Parish of St. François Xavier (the "Territory") as shown coloured pink on a plan hereto annexed and marked as Appendix 1.

2.(1) Prior to the installation of any part of the Pipe Line, the Company shall file plans with the municipal engineer, which shall mean a professional engineer employed directly or indirectly by the Municipality or such other person as may be designated by the council of the Municipality to carry out the functions and duties of the Municipal Engineer as herein described ("Municipal Engineer"), showing the location, depth and size of all mains, pipes or conduits and any other equipment or structures (but not including geodetic information) intended to be installed or constructed and shall comply with all by-laws of the Municipality relating to the construction of such works. The Municipality, by its Municipal Engineer, shall approve the plans as to the location of the Pipe Line and any changes thereto arising in course of construction within the Municipality, which approval shall not be unreasonably withheld or unduly delayed. The Pipe Line shall be placed in such locations as agreed by the Municipal Engineer and the Company.

2.(2) The Company shall supply to the Municipality plans showing the location of the Pipe Line within the Municipality on an as-built basis, as requested by the Municipality, but in no event shall such plans be provided more than twice in any 12-month period.

Such plans shall be provided either on paper or in a mutually agreeable format. All of the conditions for the supply of as-builts are to be mutually agreed upon.

2.(3) The pipe, materials and other equipment to be used in the Pipe Line and the Company's transmission system shall be of the kinds and qualities satisfactory to the Public Utilities Board of Manitoba (the "Board"), and shall be in compliance with *The Gas Pipe Line Act* (Manitoba) and the regulations thereunder.

3. Unless another process is established through municipal bylaw, the Company shall give notice to the CAO or designate of the Municipality, of its intention to open or break up any of the Highways of the Municipality not less than seven (7) days before the beginning of such work, except in cases of emergency arising from defects or breaking of the pipe or other works, when immediate notice shall suffice; and, subject to the same exception and as otherwise provided in this Agreement, the Company shall not begin any such work unless it has obtained approval therefore in writing from the Municipal Engineer.

4. The Company agrees:

- (a) in the execution of the rights and powers granted hereby and in the performance of the work in connection therewith, it shall do as little damage as possible and shall keep passage of the Highways as far as may be practicable free and uninterrupted;
- (b) it shall not interfere with, disturb or damage any existing pipes or lines of other utilities, unless the express consent of such other utilities is first had and received;
- (c) it shall, within a reasonable time after any construction work, restore the Highways and other areas where construction has occurred to a state of repair as nearly as possible equal to their former state, unless another

process is established by municipal bylaw. Within thirty (30) days of completion of the restoration work the Company shall give notice in writing to the Municipal Engineer that the work and restoration have been completed and inspected. The Municipal Engineer acting reasonably shall advise the Company in writing of any deficiencies in connection with the construction work or restoration. If the Municipality fails to provide such advice within six (6) months of the Company's notice to the Municipality and unless an extension of time has been mutually agreed, the Municipality will be deemed to have accepted the restoration work;

- (d) in the execution of the power granted hereby, it shall construct, locate and operate the Pipe Line in such manner as will not endanger the public health or safety;
- (e) any part of the Pipe Line found not in accordance with the depth of cover requirements established by the Board pursuant to *The Gas Pipe Line Act* (Manitoba) as a result of improper installation shall be lowered, relocated or suitably protected by, and at the expense of the Company;
- (f) all costs in connection with the removal or relocation of any part of the Pipe Line, including the cost of repairs to any Highways, shall be the Company's responsibility except where such removal or relocation is required by the Municipality; and,
- (g) notwithstanding paragraph (f) above, where the removal or relocation of any part of the Pipe Line is required by the Municipality, the costs and expenses incurred in the removal and replacement or the relocation shall be as follows:

(i) the Municipality shall pay to the Company an amount equal to the cost of labour and material required in the original construction of that part of the Pipe Line that the Municipality requests to be relocated, less depreciation and the value of any material salvaged; and

(ii) the Company shall be responsible for the construction costs incurred for the removal or relocation of the Pipe Line.

5.(1) The Company shall protect and indemnify the Municipality against any damages or expenses in connection with the execution of the powers granted hereby and under *The Gas Pipe Line Act* (Manitoba), and from and against all claims, demands, and actions by third persons in respect of damages sustained by reason of any operations of the Company and in relation to the Pipe Line.

5.(2) The Company shall satisfy the Board that it has in place at all times liability insurance coverage sufficient to satisfy any potential claim, demand or action against the Company or the Municipality for such damages.

6.(1) Before the Municipality makes any repairs of, or alterations to, any of its public services which will involve excavations or which may in any way affect any of the Company's lines plant or equipment, the Municipality shall give notice as set forth in the regulations in effect at that time and made pursuant to *The Gas Pipe Line Act* (Manitoba).

6.(2) Where practicable, the Municipality shall have regard to the reasonable directions of the Company concerning any such repairs and alterations, but, in any event, the Municipality is free of all liability in connection with any damage done by reason of any such repairs or alterations.

7. Subject to any applicable legislation now or hereafter enacted in that regard, the Company shall pay to the Municipality any taxes that may be legally and properly levied by the Municipality against the Company.

8. The Company shall maintain in force during the currency hereof, a policy of insurance provided by an insurance company licensed to do business in the Province of Manitoba, insuring against public liability and property damage in connection with the operations of the Pipe Line within the Territory.

9. The term of this Agreement shall be for thirty (30) years and thereafter shall be deemed to be automatically renewed for an additional term of ten (10) years, and at the end of the said ten (10) year renewal term, this Agreement will be further automatically renewed and extended for additional terms of ten (10) years from time to time. Provided always that either party may, at the time of any such renewal and with the consent of the other party in writing, change or amend the terms of this Agreement.

10. The Company agrees that it shall provide written notice to the Municipality at least two (2) years prior to the expiration of the term hereof and of each renewal hereof, of the Municipality's election as set forth in paragraph 9 hereof.

11. Subject to the provisions of *The Public Utilities Board Act* (Manitoba), the Company shall not without the consent of the Municipality, such consent not to be unreasonably withheld, assign this Agreement or the rights, powers and privileges granted hereby or any of them; provided however the Company may assign this Agreement to any corporation with which the Company may then be associated or affiliated, as those terms are used in *The Corporations Act* (Manitoba) and the *Income Tax Act* (Canada).

12. This Agreement will be binding upon and enure to the benefit of the parties and their successors and assigns.

13. This Agreement shall be binding upon the Company and the Municipality and their respective successors and assigns.

IN WITNESS WHEREOF the Company and the Municipality have caused this agreement to be executed as of the day and year first above written.

RURAL MUNICIPALITY OF ST. FRANCOIS XAVIER

Per: _____
Reeve

Per: _____
Chief Administrative Officer

CENTRA GAS MANITOBA INC.

Per: _____
Authorized Signing Officer

Per: _____
Authorized Signing Officer

