

M A N I T O B A) **Order No. 67/15**
)
THE PUBLIC UTILITIES BOARD ACT) **July 17, 2015**

BEFORE: Régis Gosselin, B ès Arts, MBA, CPA, CGA, Chair
Neil Duboff, BA (Hons), LLB, TEP, Member
Marilyn Kapitany, B.Sc. (Hon), M.Sc., Member

**PROCEDURAL ORDER IN RESPECT OF
CENTRA GAS MANITOBA INC.'S
2015/16 COST OF GAS APPLICATION**

1.0 Executive Summary

This Procedural Order of the Public Utilities Board (Board) relates to Centra Gas Manitoba Inc.'s (Centra) 2015/16 Cost of Gas Application. By this Order, the Board:

- Grants intervener status to the Consumer's Association of Canada – Manitoba Inc. (CAC) and Just Energy Manitoba L.P.;
- Establishes a Hearing Schedule for the review of the Application;
- Approves a form of Undertaking of Confidentiality and Non-Disclosure Agreement for any party seeking to apply to obtain access to confidential information filed on the record of this proceeding;
- Seeks an explanation from CAC as to assignment of proposed legal resources for this proceeding.

2.0 Procedural History and Applications for Intervener Status

On May 25, 2015, Centra filed a 2015/16 Cost of Gas Application with the Board. The entire version of the Application was filed in confidence pursuant to Rule 13 of the Board's Rules of Practice and Procedure.

On June 2, 2015, the Board advised Centra that it did not consider the Application to be a valid filing since the entire Application was filed in confidence. The Board directed Centra to file a redacted version on the public record. The Board received a redacted version of the Application on June 12, 2015. Centra subsequently published the Board's public "Notice of the Application" in Manitoba newspapers and provided a copy of the Notice to all past Interveners of Record, gas marketers, contract customers, high-volume customers, and municipalities with gas franchises.

The Board received Applications for Intervener status from the Consumers' Association of Canada (Manitoba) Inc. (CAC) and Just Energy Manitoba L.P. (Just Energy).

The CAC is an independent, non-profit, volunteer organization working to inform and empower consumers, and to represent the consumer interest in Manitoba. The CAC has a history of intervening on behalf of consumers in applications before the Board in respect of Centra.

The CAC indicated that it intends to intervene on all issues raised in Centra's Application, appear throughout the hearing, produce and test evidence, and present argument. It further indicated that it intends to retain Mark Stauff, an energy consultant, as an expert witness. The CAC intends to apply to the Board for award of costs.

Just Energy is a natural gas marketer licensed by the Board to market natural gas in Manitoba, with affiliates operating throughout Canada and the United States. It intends to intervene on areas pertaining to Centra's transportation and storage portfolio. Just Energy indicated that it intends to present argument but does not wish to appear throughout the hearing or produce or test Centra's evidence or call witnesses. Just Energy stated that it will not apply for costs.

By way of correspondence dated July 7, 2015, the Board requested Centra's position with respect to the Intervener applications. On July 9, 2015, Centra indicated that it did not object to either of the two applications, but that it reserved its right to make submissions if either of those parties requested access to confidential information filed with the Board pursuant to Rule 13.

On June 14, 2015, the CAC wrote to the Board to request access to confidential information for its legal counsel Brian Meronek and Tomas Masi, CAC's executive director Gloria Desorcy, and for their proposed consultant, Mr. Stauff. The CAC also provided a revised form of Undertaking of Confidentiality to be signed by legal counsel and Confidant Agreement to be signed by Ms. Desorcy and Mr. Stauff. On June 15,

2015, Centra advised the Board that for purposes of this proceeding, CAC's proposed wording with respect to the Undertaking of Confidentiality and the Non-Disclosure Agreement was acceptable. Centra did not object to any of CAC's designated parties having access to commercially sensitive material however Centra did raise a concern regarding Mr. Stauff's involvement given his past and possible future representation with one of Centra's counterparties. For the purpose and scope of this proceeding Centra was willing to accept Mr. Stauff as CAC's consultant upon his signing of the Confidant Agreement.

On June 15, 2015, the CAC filed their proposed budget for its intervention in this proceeding. CAC also indicated they would need two weeks to file their Round 1 Information Requests upon receipt of the unredacted Application.

On June 16, 2015 Centra filed its response to CAC's proposed budget. Centra observed CAC was proposing the engagement of two lawyers and highlighted the Board's concerns regarding over-representation by Intervener legal Counsel at Manitoba Hydro's recent 2015 General Rate Application. Centra also identified CAC assumed 4-5 days of hearing time versus the scheduled three days of hearing time.

3.0 Board Findings

Intervener Status and Intervener Costs

The Board approves Just Energy Manitoba LP and the Consumers Association of Canada (Manitoba) as Interveners to this Proceeding. Just Energy is approved to intervene on issues pertaining to Centra's transportation and storage portfolio; CAC is approved to intervene on all relevant issues associated with the Application.

The Board approves Mr. Mark Stauff as a consultant to CAC. The Board does not believe the use of two lawyers on many of the tasks identified by CAC is warranted to adequately represent CAC's interest in this proceeding. The Board requests that CAC

provide an explanation for proposed legal resources and why duplication of legal resources on selected tasks is required, including the apparent need for two lawyers to attend the hearing. The Board reminds the CAC that there is no automatic entitlement to costs, and the Board retrospectively assesses the Intervener's contribution to the hearing, utilizing the factors set out in Rules 43 and 44 of the Board's Rules of Practice and Procedure.

Hearing Schedule

The Hearing Schedule set out in **Appendix "B"** is established for this proceeding. It is the Board's intention to proceed based on one round of written Information Requests to Centra, along with a three-day oral hearing on September 28, 29, and 30, 2015.

The Board will make best efforts to file all of their Information Requests on July 20, 2015 in accordance with the original draft schedule. The CAC is asked to make its best efforts to file Round 1 Information Requests on public material by July 27, 2015 and on confidential material no later than August 4, 2015 pending the timely signing of Undertakings and Confidant Agreements. The Board expects CAC to review the Board's Information Requests filed on July 20, 2015 to avoid possible duplication with CAC's Information requests.

Access to Confidential Information

The Board directs Centra to provide Brian Meronek, Tomas Masi, Gloria Desorcy and Mark Stauff with a full unredacted confidential Cost of Gas Application and confidential answers to Information Requests, plus any additional confidential documentation filed in this proceeding. In the case of Messrs. Meronek and Masi, this Directive is conditional on them first filing an executed Undertaking of Confidentiality with the Board in the form proposed by the CAC in its July 14, 2015 correspondence. In the case of Ms. Desorcy and Mr. Stauff, this Directive is conditional on them first entering into a Non-Disclosure Agreement with Centra in the form proposed by the CAC in that same correspondence.

4.0 IT IS ORDERED THAT:

1. The following parties be, and hereby are, granted Intervener status for Centra's 2015/16 Cost of Gas Application:
 - (a) Consumers' Association of Canada (Manitoba) Inc.
 - (b) Just Energy Manitoba L.P.
2. Centra is directed to provide Brian Meronek, Tomas Masi, Gloria Desorcy and Mark Stauff with a full unredacted confidential Cost of Gas Application and confidential answers to Information Requests, plus any additional confidential documentation filed in this proceeding. In the case of Messrs. Meronek and Masi, this Directive is conditional on them first filing an executed Undertaking of Confidentiality with the Board in the form proposed by the CAC in its July 14, 2015 correspondence. In the case of Ms. Desorcy and Mr. Stauff, this Directive is conditional on them first entering into a Non-Disclosure Agreement with Centra in the form proposed by the CAC in that same correspondence. Copies of the Undertaking of Confidentiality and Non-Disclosure Agreement are provided in **Appendix "A"**.
3. The Consumers Association of Canada (Manitoba) file, by July 21, 2015, an explanation for needing two lawyers to represent CAC and file a revised legal budget reflecting changes to legal resource assignments.
4. The Hearing Schedule set out in **Appendix "B"** is established for the hearing of this proceeding.

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.pub.gov.mb.ca.

THE PUBLIC UTILITIES BOARD

Régis Gosselin, B ès Arts, MBA, CPA, CGA
Chairman

"Kurt Simonsen"
Acting Secretary

Certified a true copy of Order No. 67/15 issued
by The Public Utilities Board

Acting Secretary

APPENDIX "A" - UNDERTAKING OF CONFIDENTIALITY

TO: THE PUBLIC UTILITIES BOARD OF MANITOBA

WHEREAS on May 25 and June 12, 2015, Centra Gas Manitoba Inc. ("Centra") filed a Cost of Gas Application ("Application") with the Public Utilities Board of Manitoba ("Board"), which Application was filed partially in confidence pursuant to Rule 13 of the Board's Rules of Practice and Procedure;

AND WHEREAS the Board has approved registered Interveners for the review of the Application, legal counsel for which Interveners are entitled to obtain access to information filed in confidence upon the execution of an Undertaking of Confidentiality to the Board in a form approved by the Board.

AND WHEREAS I, Brian Meronek, Q.C., partner with D'Arcy & Deacon LLP, am acting as legal counsel for CAC in the review of this Application (the "Proceeding") and in this capacity, I require access to Confidential Information in the record of this Proceeding.

1. I understand and agree that:
 - (a) "Confidential Information" means any information relating to the Application that has been filed with the Board in confidence pursuant to Rule 13 of the Board's Rules of Practice and Procedure, save and except information filed pursuant to Rule 13 for which the Board has rejected Centra's claim for confidentiality and which has been placed on the public record;
 - (b) the execution of this Undertaking is a condition of my being granted access to the Confidential Information;
 - (c) this Undertaking will be filed with the Board;
 - (d) Centra may seek injunctive relief against me if it so chooses in the case of a threatened or actual disclosure, but by signing this undertaking, I make no admission as to any liability for any disclosure and will defend against any application for relief sought, as I deem necessary;
 - (e) in the event that I breach this undertaking there may be consequences which could include, without limitation, the following:
 - (i) a denial or reduction of costs to, or a cost award against, my

principals or me personally; and

- (ii) an immediate revocation of my rights to receive Confidential Information

2. I hereby undertake:

- (a) to use the Confidential Information disclosed under the conditions of the Undertaking exclusively for purposed of my client's approved intervention with respect to the Proceeding;
- (b) not to divulge Confidential Information disclosed under the conditions of this Undertaking to any person, save and except to my advising client Gloria Desorcy (Executive Director of CAC) and any expert CAC may engage, provided they sign a Confidant Agreement satisfactory to the Board, whether in any report or in providing advice, or, without limitation, in information requests, direct examination, cross-examination or in the making of submissions, regardless of form, format or medium and whether oral or written. By way of exception, I may disclose Confidential Information to the Board, Board staff or to any person who has been authorized by the Board to receive such information. For greater clarity, to the extent that the Confidential Information requires to be assessed and tested in the Proceeding, any party can seek advance Board approval that such use of Confidential Information, in whatever manner, be placed before the Board in confidence or in camera;
- (c) not to reproduce, in any manner, Confidential Information disclosed under the conditions of this Undertaking except for purposes described in paragraphs (a) and (b) above;
- (d) to take prudent, reasonable steps to keep confidential and to protect the Confidential Information disclosed under the conditions of this Undertaking;
- (e) to return to the Board, under the direction of the Board, all Confidential Information, including notes and memoranda based on such information, or to destroy such documents and materials and to file with the Board, a certificate of destruction at the end of the Proceeding or within a reasonable time after the end of my participation in the Proceeding. For purposes of this paragraph the Proceeding is deemed to have ended on the date on which the period for filing a motion to review and vary or motion for leave to appeal of the Board's final order in respect of the Proceeding expires or, if a motion to review

and vary or motion for leave to appeal is filed, upon issuance of a final decision by the Board or the court of competent jurisdiction from which no further review or appeal can or has been taken;

- (f) with respect to Confidential Information in electronic media, I will:
 - (i) promptly following the end of this hearing or within 10 days after the end of my participation in this hearing, expunge all documents and materials containing Confidential Information, including notes, charts, memoranda, transcripts and submissions based on such Confidential Information, from all electronic apparatus and data storage media under my direction or control and file with the Board Secretary an affidavit of destruction in the form prescribed by the Board pertaining to the expunged documents and materials; and
 - (ii) continue to abide by the terms of this Undertaking in relation to any such documents and materials to the extent that they subsist in any electronic apparatus and data storage media under my direction or control and cannot reasonably be expunged in a manner that ensures that they cannot be retrieved; and
- (g) to report promptly to the Board any violation of this Undertaking.

3. The obligations created herein shall not preclude my:

- (a) using or disclosing the Confidential Information at a time when Confidential Information is generally available to the public other than as a direct or indirect result of any disclosure by me which is prohibited hereunder; and
- (b) disclosing the Confidential Information to the extent such disclosure is required by law, court order or competent authority of any governmental body or professional discipline body, provided that, other than in respect of a mandated disclosure to the signatory's governing law society or legal professional liability insurer, the Board and Centra are provided with notice promptly upon my becoming aware that such notice is required.

Dated at Winnipeg, Manitoba, this _____ day of July, 2015.

Signature: _____

Name: Brian Meronek, Q.C.

(please print)

Address: 2200 – One Lombard Place, Winnipeg, MB, R3B 0X7

Telephone: 204-925-5355

Fax: 204-943-4242

Email: bmeronek@darcydeacon.com

THIS AGREEMENT made this _____ day of _____, 2015

BETWEEN:

CENTRA GAS MANITOBA INC.,
(called "Centra")
of the first part,

- and -

(_____),
(called the "Confidant")
of the second part

WHEREAS on May 25 and June 12, 2015, Centra filed a Cost of Gas Application ("**Application**") with the Public Utilities Board of Manitoba ("**Board**"), which Application was filed partially in confidence pursuant to Rule 13 of the Board's Rules of Practice and Procedure;

AND WHEREAS the Board has approved registered Interveners for the review of the Application (the "**Proceeding**"), legal counsel for which Interveners are entitled to obtain access to information filed in confidence upon the execution of an Undertaking of Confidentiality to the Board in a form approved by the Board.

NOW THEREFORE IN CONSIDERATION OF the sum of Ten (\$10.00) dollars and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

ARTICLE 1 DEFINITIONS

In this Agreement:

“Confidential Information” means any information relating to the Application that has been filed with the Board in confidence pursuant to Rule 13 of the Board’s Rules of Practice and Procedure, save and except information filed pursuant to Rule 13 for which the Board has rejected Centra’s claim for confidentiality and which has been placed on the public record.

“Permitted Uses” has the meaning set forth in Article 2 below.

“Person” shall be broadly interpreted to include, without limitation, any corporation, partnership, other entity, or individual.

“Reverse Engineer” means to discover, synthesize or otherwise recreate the Confidential Information following a detailed examination.

“Third Party” means any Person other than Centra, the Confidant, other Confidants who have signed Non-Disclosure Agreements, the Panel, the Board’s Executive Director and Board Staff, any legal counsel of record for the Board or for registered interveners that has signed an Undertaking of Confidentiality in respect of the Application, and any non-staff advisors to the Panel who have signed a non-disclosure agreement.

ARTICLE 2 PERMITTED USES

The Confidant may use Confidential Information for the following purposes (called **“Permitted Uses”**):

- (a) To carry out critical analysis, form conclusions, and advise Intervener legal counsel who have signed an Undertaking of Confidentiality regarding the subject matter of the Application.
- (b) To prepare a report suitable for filing on the public record of the proceeding and testify on the public record of the proceeding. Without the consent of the Board obtained in advance, the Confidant shall not include in the report or testimony any Confidential Information or any information that would enable a Third Party to Reverse-Engineer Confidential Information. To the extent that the Confidant relies upon

Confidential Information to arrive at a conclusion, the Confidant may include in the Report or testimony information at a level of summary and aggregation which will not disclose Confidential Information or enable a Third Party to reverse-engineer Confidential Information, subject always to the Confidant providing a redacted Report on the public record and a complete report in confidence to the Board and/or testifying in camera where Confidential Information is discussed.

ARTICLE 3 CONFIDENTIALITY

Except as specifically provided in Article 2 above (Permitted Uses), the Confidant shall:

- (a) Keep the Confidential Information in the strictest confidence;
- (b) Not disclose Confidential Information to any Third Party without the prior written consent of Centra;
- (c) In the case of a disclosure to a Third Party with the prior written consent of Centra, obtain from the Third Party an undertaking or confidentiality agreement satisfactory in form to the Board and Centra on terms no less restrictive than those in this Agreement;
- (d) Take prudent, reasonable steps to protect Confidential Information in its possession from inadvertent disclosure; and
- (e) At the conclusion of the Proceeding and following a request from the Board to do so, destroy, or return to Centra under the direction of the Board, all copies in all formats of Confidential Information in the Confidant's possession. For purposes of this paragraph the conclusion of the Proceeding is the date on which the period for filing a motion to review and vary or motion for leave to appeal of the Board's final order in respect of this Proceeding expires or, if a motion to review and vary or motion for leave to appeal is filed, upon issuance of a final decision by the Board or the court of competent jurisdiction from which no further review or appeal can or has been taken.

If the Confidant so chooses, they may solicit Centra's comments on particular documents that are in the process of being prepared in the interests of avoiding inadvertent disclosures.

ARTICLE 4 COMPELLED DISCLOSURE

In the event that the Confidant, or a Third Party referred to in Article 3(c) above, receives notice indicating that they may or shall be legally compelled to disclose any of the Confidential Information, the Confidant shall provide Centra with prompt notice so that Centra may at Centra's sole discretion seek a protective order or other appropriate remedy.

The Confidant and any such Third Party shall cooperate fully with Centra protecting the confidential and proprietary nature of the Confidential Information sought to be compelled to be disclosed, including providing assistance to Centra in the prosecution and defense of any action(s) or proceeding(s) brought or made in respect of such matters.

In the event that such protective order or other remedy is not obtained, or that Centra waives compliance with the provisions of this Agreement, the Confidant or Third Party shall furnish only that portion of the Confidential Information in respect of which it shall be legally required to disclose.

ARTICLE 5 FURTHER COVENANTS

The Confidant shall:

- (a) use the Confidential Information only for the Permitted Uses and for no other purpose whatsoever; and
- (b) not use or reverse engineer Confidential Information for personal gain in any fashion, other than for the receipt of compensation for his or her participation in this proceeding.

ARTICLE 6 NO LICENCE

The Confidant agrees that the Confidential Information is the property of Centra, its contractual counterparties and domestic customers, and the Confidant shall not contest or challenge any of their rights in or to any Confidential Information. The Confidant does not receive any right, title or interest of any nature whatsoever in or to any Confidential Information.

ARTICLE 7 CONTINUING OBLIGATION

This Agreement is effective upon execution by both parties, and the obligations of Confidant under this Agreement shall not terminate but shall continue without limitation of time.

ARTICLE 8 EQUITABLE REMEDIES

In the event of a breach, or threatened breach, of this Agreement by the Confidant, the parties agree that the harm suffered by Centra may not be compensable by monetary damages alone and, accordingly, that Centra shall, in addition to any other available legal or equitable remedies, be entitled to seek and injunction against such breach or threatened breach.

ARTICLE 9 NOTICES

Any notice or other communication required or permitted to be given under this Agreement must be in writing and shall be delivered to:

- | | |
|--|----------------------|
| a) Centra
Manitoba Hydro
360 Portage Avenue (22)
Winnipeg, Manitoba R3C
0G8 Attn: VP General
Counsel and Corporate
Secretary
Fax: (204) 360-6147 | b) Confidant: |
|--|----------------------|

or such other addresses as either party may notify the other of in writing. Notices may be given by personal service or fax transmission. Any notice given by personal service shall be deemed to have been effectually given and received at the date and time of actual delivery. Any notice sent by fax transmission shall be deemed to have been effectually given and received on the next business day following transmission.

ARTICLE 10 INTERPRETATION AND ENFORCEMENT

This Agreement shall be subject to, interpreted, performed and enforced in accordance with the laws of Manitoba and the applicable laws of Canada without regard to Manitoba or federal Canadian law governing conflicts of law, even if one or more of the parties to this Agreement is resident of or domiciled in any other province, state, or country. The parties hereby irrevocably attorn to the exclusive jurisdiction of the Court of Queen's Bench of Manitoba, Winnipeg Centre. The recitals hereof form an integral part of this Agreement. Section headings in this Agreement are for the convenience of the parties only, and shall not affect the interpretation of this Agreement.

ARTICLE 11 SEVERABILITY

If any provision in this Agreement is illegal, invalid or unenforceable at law, it shall be deemed to be severed from this Agreement and the remaining provisions shall continue in full force and effect. The parties agree that they shall endeavor to replace any such severed provision with a new provision which achieves substantially the same practical effect and which is valid and enforceable.

ARTICLE 12 WAIVER

No failure or delay by Centra in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any right, power or privilege hereunder. No waiver of any provision of this Agreement, or a breach thereof, shall be effective unless it is in writing and signed by the party waiving the provision or the breach thereof.

ARTICLE 13 ASSIGNMENT

Confidant shall not assign this Agreement without the prior written consent of Centra. No assignment of this Agreement shall operate so as to relieve Confidant from any obligation of this Agreement.

ARTICLE 14 FURTHER ACTS AND ASSURANCES

Each of the parties shall, from time to time, do all acts and things and execute from time to time all such further documents and assurances as may be necessary to carry out and give effect to the terms and conditions of this Agreement.

ARTICLE 15 FAX EXECUTION

This Agreement may be executed in any number of counterparts, including counterparts signed by fax, each of which shall be deemed an original and all of which together shall constitute one in the same instrument. A photocopied and/or fax copy of this Agreement bearing the signature of each party, in a single document or counterparts thereof as provided herein, shall be deemed an original execution version of this Agreement.

IN WITNESS WHEREOF the parties hereto have duly executed this Agreement on the date first above written.

CENTRA GAS MANITOBA INC.

Per: _____
Name:
Title:

[CONFIDANT]

WITNESS

[INDIVIDUAL NAME]

APPENDIX “B” – HEARING SCHEDULE

Step in the Hearing	Due Date (No Later Than)
Receipt of Information Requests	Monday, July 20, 2015
Receipt of CAC Intervener Information Requests on Public Information (best efforts)	Monday, July 27, 2015
Receipt of CAC Information Requests on Confidential Information	Tuesday, August 4, 2015
File Response to Information Requests	Friday, August 21, 2015
Receipt of Intervener Evidence	Friday, August 28, 2015
All Parties File Information Requests of Intervener Evidence	Friday, September 04, 2015
Interveners to File Responses to Information Requests	Monday, September 14, 2015
Centra to File Rebuttal Evidence	Wednesday, September 23, 2015
Cost of Gas Hearing (3 days)	Monday, September 28, 2015