

April 26, 2019

Mr. D. Christle
Secretary and Executive Director
Public Utilities Board
400-330 Portage Avenue
Winnipeg, Manitoba R3C 0C4

Dear Mr. Christle:

**RE: Centra Gas Manitoba Inc. ("Centra")
2019/20 GENERAL RATE APPLICATION ("Application")
Industrial Gas Users ("IGU") Motion for Access to Centra's Confidential Information**

On April 18, 2019, counsel for the Industrial Gas Users ("IGU") filed a Motion with the Public Utilities Board ("PUB") seeking full and complete access to all information that the Board previously determined to be confidential within the Application and not to be placed on the public record.

By email of April 23, 2019, the PUB requested that comments on IGU's Motion be submitted on or before end of business on April 25, 2019 which filing deadline was subsequently extended to April 26, 2019.

Please find attached an unredacted copy of Centra's response to the Motion which is filed in confidence with the PUB. A public version of this document with limited redactions to confidential information will be provided to all of the parties to this proceeding.

If you have any questions with respect to this matter, please contact Liz Carriere at 204-360-3591 or the writer at 204-360-3257.

Yours truly,

MANITOBA HYDRO LEGAL SERVICES DIVISION

Per:



BRENT A. CZARNECKI
Barrister and Solicitor

cc: Bob Peters, Board Counsel
Antoine Hacault, IGU Counsel

CENTRA GAS MANITOBA INC.

**RESPONSE TO MOTION BY INDUSTRIAL GAS USERS FOR DISCLOSURE AND
MISCELLANEOUS OTHER RELIEF**

I. Introduction

In its motion of April 12, 2019, the Industrial Gas Users (“IGU”) seek an order from the Public Utilities Board (the “Board”) granting its legal counsel and consultants access to the “unredacted version of the evidence filed in this proceeding” following execution of a proposed form of solicitor undertaking and confidentiality agreements.

IGU’s motion is inconsistent with the position it advanced at the Pre-Hearing Conference (“PHC”) for this Application upon which submission the Board granted IGU intervener status for the Application:

“...We’re not going to be asking for the things that we don’t need for this group, and there’s probably a good chunk of confidential information we don’t need”.¹

For all of the reasons that follow, Centra respectfully submits that the Board should dismiss IGU’s motion with costs to Centra.

II. Onus

In its letter of February 26, 2019, a panel of the Board accepted Centra’s Rule 13 Confidentiality Motion. The Board concluded that “holding this information in confidence outweighs the public interest in disclosure of this information.”²

IGU bears the onus to clearly demonstrate why it should be entitled to receive an un-redacted version of all the evidence filed in this Application.

This motion requires consideration of a two part test. Firstly, as the Board has previously indicated, confidential information is only to be released to interveners who have a *bona fide* need for access in connection with the regulatory proceeding and who do not have a competing commercial interest or are not otherwise conflicted. Secondly, IGU then must establish how any such *bona fide* need outweighs the Board’s determination that holding the information in confidence is in the public interest.

¹ Page 58 of the Pre-Hearing Transcript dated January 24, 2019.

² PUB Letter dated February 26, 2019, page 3.

IGU must demonstrate with actual evidence as to why providing IGU counsel and consultants full and complete access to the un-redacted Application for IGU's specific interest and approved scope of intervention in the Application is a necessary benefit that outweighs the negative consequences that will occur if disclosure occurs.³ Releasing confidential information to encourage or permit "fishing expeditions" is prohibited.

III. Context for this Motion

IGU's Intervention is Motivated by the Commercial interests of Four Industrial Customers

IGU is an unincorporated informal association without any organizational structure, governing body, assets, or directing resolutions on its intervention in this Application. IGU is not a legal entity, is incapable of legal standing and has no accountability.

IGU represents four private companies who are substantial users of natural gas:⁴

- Gerdau Long Steel North America ("Gerdau"), a large natural gas user, [REDACTED] 2b
- Koch Fertilizer Canada ULC ("Koch"), is an indirect wholly owned subsidiary of Koch Industries, Inc., one of the largest multi-national companies in the world with estimated annual revenues in the amount of \$115 billion, [REDACTED] 2b
[REDACTED] Koch contracts to obtain its own natural gas supply and transportation services and is a direct commercial counterparty to Centra. Koch has been granted Intervener status in its own right and has retained independent legal counsel.
- Maple Leaf Foods ("Maple Leaf") [REDACTED] and 2b
- Simplot Canada (II) Limited ("Simplot") is a T-Service customer. Like Koch, Simplot has been granted Intervener status in its own right.

Gerdau, Koch, Maple Leaf and Simplot are inherently commercially motivated to maximize profit for their respective shareholders, and are adverse in interest to Centra and Sales Service natural gas customers in Manitoba. Koch, Maple Leaf and Simplot are commercial counterparties to Centra, engaging directly or indirectly (with a marketer) in the same natural gas supply and transportation markets as Centra. This includes transacting with Centra for the supply of natural gas and capacity management arrangements.

³ Order 95/10, page 30.

⁴ See IGU Intervener Application Form dated January 10, 2019.

Following discussion with other approved Interveners, IGU advised the Board that BP Canada Energy Group ULC had agreed to allow IGU to take the lead with respect to the balancing fee issue.⁵ The balancing fee issue is solely a concern for T-Service customers and is addressed entirely in seven pages of Tab 12 of the Application without any redactions.

The Information has Already been Accepted as Confidential by the Board

IGU suggests that disclosure of commercially sensitive information to IGU members “does not appear to adversely affect Centra financially”⁶ and that there is “no apparent financial harm to Centra”.⁷ Centra fundamentally disagrees with this assertion.

IGU disregards that in its ruling of February 26, 2019, the PUB has already determined that disclosure could result in undue financial harm to Centra and/or harm Centra’s competitive position in the natural gas, transportation and storage market.

For completeness and to reiterate, the Application contains information relating to the entirety of Centra’s gas supply portfolio and transportation and storage arrangements, including strategic commercial, operational and proprietary information and related market insight which informs the negotiation of Centra’s gas supply contract and the supporting transportation and storage arrangements now and into the future. Disclosure of any of this information to other natural gas market participants, including suppliers, marketers and transportation and storage providers would grant to such parties a competitive advantage over Centra when negotiating and contracting services directly or indirectly with Centra. Centra has consistently treated and filed its gas supply commodity contract and related information as confidential due to the significant commercial and public interest harm it would pose if released to any party with a competing or adverse interest to Centra. Furthermore, Centra’s commercial counterparties may be discouraged from offering their best terms to Centra or even submitting offers if they believe that their confidential terms and conditions will be revealed to other market participants.

Any harm suffered by Centra as a result of disclosure of its gas supply, storage and transportation arrangements will be borne by Centra’s Sales Service customers. Given the pass through nature of gas costs, the interests of Centra in this regard are truly aligned with the interests of its Sales Service customers.⁸

The Board has, without exception, acknowledged the need to maintain the confidentiality of this information, without disclosure to such parties including gas marketers, suppliers and other commercial entities, such as those members of IGU, who have previously participated in Centra’s proceedings as registered interveners.

⁵ Letter from Antoine Hacault dated April 12, 2019.

⁶ Paragraph 8 on page 12 of IGU’s motion.

⁷ Paragraph 9 on page 12 of IGU’s motion.

⁸ See Order 26/17 at page 20.

IV. Argument

Financial Gain to a Third Party

IGU submits that IGU members' use of confidential information to maximize their own financial benefit is not in and of itself a sufficient reason to justify confidential treatment in accordance with the criteria in Rule 13 of the *PUB's Rules of Practice and Procedure*.⁹

Rule 13(3)(a) provides:

(2) The Board may receive information in confidence on any terms it considers appropriate in the public interest,

a) if the Board is of the opinion that disclosure of the information could reasonably be expected

(i) to result in undue financial loss or gain to a person directly or indirectly affected by the proceeding; (emphasis added)

Three of IGU's members are upstream natural gas market participants. IGU explicitly accepts that disclosure could result in financial benefit to three of its members. In the course of transacting either directly or indirectly (by the use of a gas marketer) with Centra, a financial gain to a counterparty necessarily results in a financial loss to Centra as commodity and capacity transactions are a zero-sum game. By way of one simple example, a \$0.25/GJ advantage or win to the seller results in a \$0.25/GJ disadvantage or loss to the buyer. This fact alone provides full justification for the Board's determination of confidential information pursuant to Rule 13, and supports dismissal of this motion.

Proposed Conditions on Access Do Not Sufficiently Address the Potential Significant Risk and Irreparable Harm

Centra appreciates that Mr. Hacault and IGU consultants (namely Mr. Bowman, Mr. McLaren and Ms. Davies all from the firm Intergroup) have proposed to execute a form of solicitor undertaking and confidentiality agreement respectively. However, such agreements only serve as minimal safeguards and do not provide adequate assurances to Centra and its ratepayers. As recognized by IGU, the risk of inadvertent disclosure is real.¹⁰ Despite best efforts of counsel and consultants and without any ill intent, errors do occur and significant damage and irreparable harm may occur with potential damages in the hundreds of millions of dollars .

⁹ IGU Motion, page 12, paragraphs 8-9.

¹⁰ IGU Motion, page 17, paragraph 33.

Such inadvertent disclosure may occur not only between TDS/Intergroup and its 4 clients, but through TDS cross-examination and/or Intergroup testimony in the public portion of the hearing, which would result in CSI being disclosed broadly to any and all gas market participants.

Sanctions under the proposed solicitor undertaking and confidentiality agreement provide limited recompense to Centra and its Sales Service customers in the event of disclosure. These agreements do not provide for liquidated damages or automatic cost consequences in the event of disclosure. Centra is required to commence litigation to enforce the agreements and to seek compensation for damages suffered. It then needs to seek to enforce and attempt to collect upon any judgment it may while hoping that any judgment doesn't become "empty".

In Centra's experience, attempts to contain or retract disclosed information is difficult if not impossible as such attempts only serve to draw more attention to the disclosure and what is known cannot be unknown. Proving and quantifying actual damages in such circumstances is equally challenging and without any guarantee of legitimate enforceability against the persons responsible for the inadvertent or other non-permitted disclosure.

Other mechanisms, such as in camera hearings and Centra vetting material prior to public release, are far from perfect solutions for safeguarding confidential information. These mechanisms are not immune to human error and do little to prevent inadvertent disclosures during public hearings and private conversations. Additionally, the practice of Centra vetting other parties' written material before it is publically released has become increasingly administratively burdensome, time consuming, and inappropriately serves to shift the receiving party's contractual obligation to prevent disclosure of confidential information and all associated liability back onto Centra.

The PUB has previously indicated that providing access under condition of non-disclosure agreements or other mechanisms may not be sufficient to protect confidential information in all instances.¹¹ Centra concurs that conditions on access do not eliminate the significant risks of disclosure.

Does IGU have a Bona Fide Need to Access the Complete Application?

The first issue in this motion is whether IGU has a *bona fide* need to access the complete un-redacted Application considering its approved scope of intervention. Recognizing the risks of disclosure described above, any disclosure must be limited to parties who have a legitimate need to know. This is consistent with the Board's past approach to maintain confidential information to protect Centra's commercial position, the interests of Manitoba ratepayers and the public

¹¹ Order 26/17 at page 21; also see Order 95/10 at page 33-34 for a discussion of the limitations of non-disclosure agreements.

interest. Centra submits that IGU has not identified a *bona fide* need to access all confidential information to support its intervention.

IGU is an informal unincorporated association of four commercial entities who, understandably, seek to protect their individual private businesses and shareholder interests, and who have decided to “work together on issues of common concern related to natural gas rates in Manitoba”.¹² Presumably the four commercial entities of IGU retained TDS and Mr. Hacault as their legal counsel, to speak on behalf of and advocate for their commercial interests. Despite IGU’s assertions, it does not speak on behalf of all of Centra’s industrial customers who are found within eight different rate classes.¹³

IGU’s motion implies that the PUB has granted some form of special independent expert status to its legal counsel and consultants. However, and similar to other interveners in proceedings before the Board, IGU’s role is to represent the specific interests of its client(s), i.e. Gerdau, Koch, Simplot and Maple Leaf. IGU’s motion only asserts that Intergroup will provide fair, objective and non-partisan opinion evidence. IGU’s legal counsel’s obligation is to advance the interests of his clients.

As the PUB is aware, there is a mechanism within *The Public Utilities Board Act* for the Board to appoint an attorney to represent any class of interested persons.¹⁴ That mechanism was not utilized here. The PUB did not appoint or retain Mr. Hacault or Intergroup as independent expert consultants to represent all classes of “industrial” or “large volume” natural gas customers. Furthermore, in the context of this Application, the interests of “industrial” or “large volume” natural gas customers are not capable of being represented as one homogeneous group which is evident by Koch’s retainer of independent counsel to advocate for its individual interests when they diverge from Gerdau, Simplot and Maple Leaf. To date, Koch has committed to allow IGU to lead the balancing fee issue and is “hopeful” that it can work with IGU on all other issues.¹⁵ However, some of IGU’s members may be adverse to the interests of other IGU members on the matter of T-Service balancing fees, which in and of itself presents IGU, and potentially the Board, with a quandary.

In addition, and customary with past Centra proceedings before the Board, there are five industrial customers who have elected to maintain their own independent interventions at their own cost which further indicates that IGU does not broadly represent the interests of all “industrial” customers. In fact, the interests of a number of natural gas industrial customers in Manitoba may be adverse to the interests of [REDACTED] and Simplot on the matter of T-Service balancing fees, including [REDACTED].

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¹² IGU Intervener Application Form dated January 10, 2019.

¹³ Large General Service, High Volume Firm (Sales Service), Mainline (Sales Service), Interruptible, and the four T-Service classes.

¹⁴ *The Public Utilities Board Act*, CCSM c. P280, section 34.

¹⁵ Letter from Lewis Manning dated April 12, 2019.

The Board generally encouraged all Interveners to work collaboratively, and specifically encouraged all Interveners to present a joint intervention on the balancing fee issue under the leadership of IGU.¹⁶ This encouragement is not a special appointment of Mr. Hacault and Intergroup consultants to lead all issues for all industrial customers at a significant cost to other Centra ratepayers.¹⁷

When determining IGU's legitimate need to access confidential information in support of its intervention, there must be a link between the interests of Gerdau, Koch, Simplot and Maple Leaf and the issues within this Application.

[REDACTED] T-Service is a service under which Centra provides transmission and/or distribution of customer-owned gas on Centra's system. T-Service customers source and independently pay for their own upstream natural gas supply and transportation service requirements to the Manitoba delivery area. As such, T-Service customers have no justifiable reason in accessing Centra's confidential information (particularly as contained in Tabs 8 and 9) to assess whether or not the costs of Centra's gas commodity, transportation and storage arrangements have been prudently incurred as these costs are passed through strictly to Sales Service customers without profit or mark-up. T-Service customers such as [REDACTED] and Simplot bear no responsibility whatsoever for these costs and have no legitimate need to access related confidential information.

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To the extent that one member of IGU, [REDACTED], is a Sales Service customer, Centra submits that the significant risk of potential disclosure outweighs any benefit of granting Mr. Hacault and Intergroup consultants full and complete access to Centra's confidential information to advance the commercial interest of this one customer. As the Board is aware, the prudence of Centra's gas commodity, transportation and storage commercial arrangements and associated costs is being extensively canvassed in this hearing by the Consumers Association of Canada ("CAC") together with the Board. [REDACTED], or IGU, can also advise CAC directly with any of its concerns in this regard, such that they are adequately addressed together with all of Centra's Sales Service customers including those residential customers represented by CAC on this issue. The public interest in maintaining confidentiality and avoiding duplication weighs heavily in favour of CAC taking the lead on this issue for all Sales Service customers including [REDACTED].

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Do Any Benefits in Providing IGU Access Outweigh the Risks of Disclosure?

Even if IGU could establish a legitimate need to access all confidential information (which Centra denies), Centra submits the risk of disclosure outweighs any potential benefits of IGU access. The risks within IGU's proposal that only Mr. Hacault as legal counsel and Intergroup as

¹⁶ Order 21/19 at page 21.

¹⁷ IGU's Estimated Budget is \$280,092.25 comprised of Legal Costs for Mr. Hacault in the amount of \$110,052.90 and InterGroup's costs of \$170,039.35.

IGU consultants obtain the confidential information are high. The proposal is practically unworkable (if not impossible), administratively complex and adds costs to all other Centra ratepayers.

Centra understands that TDS and Mr. Hacault have been retained to provide legal services to Gerdau, Koch, Maple Leaf and Simplot. Centra is deeply concerned with the proposed approach that would have Mr. Hacault as legal counsel withholding confidential information from the four members of IGU that have retained Mr. Hacault to represent them (more specifically Gerdau, Koch, Maple Leaf and Simplot) either individually or collectively.

TDS and Mr. Hacault is in a solicitor-client relationship with IGU, or more accurately because IGU is only an informal association and not a legal entity, TDS and Mr. Hacault have been retained by each or some combination of Koch, Gerdau, Simplot and Maple Leaf. The Manitoba Code of Professional Conduct for Lawyers imposes professional and ethical obligations on counsel including that a lawyer inform the client of all information known to him or her that may affect the interests of the client.¹⁸ The solicitor-client relationship requires full disclosure flow from counsel to client. A lawyer must provide legal services upon the client's instructions, following the provision of the lawyer's opinion. A lawyer should clearly specify the facts and assumptions upon which his or her opinion is based to ensure the client is fully and fairly informed.¹⁹

It is unclear how Mr. Hacault intends to provide his legal opinion and obtain instructions in the absence of full disclosure to his clients. Centra submits that there is a strong presumption of information sharing between solicitor and client, as such is required by the nature of the relationship. In the course of obtaining necessary instructions from his client(s), there is a real and substantial risk that Mr. Hacault will inadvertently disclose confidential information. Such disclosure would be subject to solicitor-client privilege and Centra would have no way of knowing that such prohibited disclosure has occurred.

Mr. Hacault has provided "assurances"²⁰ of non-disclosure to the four members of IGU. These assurances have only been provided by legal counsel. In the face of legal counsel's professional and ethical obligations and the practical risk, assurances are not sufficient. In this regard, the comments of the Supreme Court of Canada in *MacDonald Estate* relating to use of confidential information gained through a former client are instructive and equally relevant here:

¹⁸ Code of Professional Conduct, section 3.2-2.

¹⁹ Code of Professional Conduct, section 3.2-2C, Commentary 1 and 2.

²⁰ IGU Motion, paragraph 2, page 2.

“No assurances or undertakings not to use the information will avail. The lawyer cannot compartmentalize his or her mind so as to screen out what has been gleaned from the client and what was acquired elsewhere.”²¹

The Supreme Court went on to find that “*A fortiori* undertakings and conclusory statements in affidavits without more are not acceptable. These can be expected in every case of this kind that comes before the court. It is no more than the lawyer saying “trust me”.”²²

The proposed modification to the Solicitor’s Undertaking and “assurances” by Mr. Hacault are not sufficient to protect the overall public interest in these circumstances. Mr. Hacault has yet to identify and address in any way how he would obtain instructions from his clients when only he, and not his clients, is provided with Centra’s confidential information. Nor has Mr. Hacault demonstrated that any reasonable or adequate measures have been or would be taken to prevent disclosure to his individual clients.

Centra is concerned that given the limited experience of IGU counsel and consultants in gas supply matters, it may be necessary for them to seek clarification on gas supply matters from their clients, who are natural gas market participants. Mr Hacault and Intergroup may inadvertently disclose CSI to their clients because they otherwise will have difficulty effectively participating in the discovery and hearing process.



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Given all of these reasons, IGU’s proposal to access confidential information is not sufficient to adequately protect the confidential information filed in this proceeding. This is particularly so given the magnitude of the risk and irreparable harm to Centra and all of its Sales Service customers in the event of any inadvertent disclosure.

²¹ *MacDonald Estate v. Martin*, [1990] 3 SCR 1235, page 1261.

²² *MacDonald Estate v. Martin*, [1990] 3 SCR 1235, page 1263.



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V. Other Issues

Denial of Procedural Fairness

Centra disagrees with IGU's assertion that a refusal to provide it with the complete Application without any redactions to the confidential information amounts to a denial of procedural fairness. Procedural fairness is determined in context and based on consideration of all relevant factors.

As noted by the PUB in its Order 95/11:

“Procedural fairness is not denied to interveners, who participate in the regulatory process to assist PUB to come to a determination. Interveners are granted status by PUB to participate, but are not thereby given rights equivalent of litigants in a court process, by way of comparison.

PUB acknowledges the need to conduct this GRA proceeding in as transparent and public way as possible, while balancing the rights of MH as applicant to maintain information as confidential if PUB finds that the criteria in Rule 13(2) have been met.”²⁴

To reiterate, the PUB has already accepted confidential information in accordance with the criteria in Rule 13(2). That determination, which is consistent with past Board Orders and governing legislation, does not in any way constitute procedural unfairness or result in a breach of natural justice. It is also noteworthy that the Manitoba Industrial Power Users Group does not receive any confidential information as part of its intervention in Manitoba Hydro's electrical proceedings before the Board.

IGU is not hindered in its ability to assist the Board in its understanding of the relevant issues. IGU has asked first round information requests, is able to seek additional clarification by way of asking second round information requests, can provide pre-filed written evidence and oral evidence from representatives of Gerdau, Koch, Maple Leaf and Simplot and any of their consultants, participate in any cross-examination and present final written or oral submissions. There are substantial opportunities for IGU to meaningfully and fairly engage in this entire proceeding.

Differential Treatment amongst Interveners is Warranted

IGU has repeatedly claimed that it ought to be treated the same as the CAC. Centra disagrees.

CAC notionally represents all residential natural gas users in Manitoba. These Centra customers bear upstream gas supply costs and have a legitimate interest in testing their prudence. CAC is not a commercial counterparty to Centra and does not operate or transact in the upstream natural

²⁴ Order 95/11 at page 15; also see Order 95/10 at page 27.

gas market. In stark comparison to IGU, there is no risk of undue financial gain to CAC or corresponding financial loss to Centra arising from its access to confidential information within the Application.

Furthermore, an executive representative of CAC has executed a confidentiality agreement. As such, and consistent with the Manitoba Code of Professional Conduct for Lawyers, legal counsel for CAC is able to fully inform his client and obtain necessary instructions to properly advocate on behalf of the interests of CAC in the proceeding.

Administrative Issues

IGU submits that because it has not been provided with the complete un-redacted Application, it has complicated any collaboration with CAC and will complicate the hearing of this Application. IGU suggests that selective disclosure cannot be realistically managed. Although Centra agrees that any selective disclosure of information to IGU's legal counsel and consultants will be administratively complex for Centra and the Board to manage, this fact alone does not favour full disclosure to IGU. The administrative burden is far less or non-existent for all parties in the event that Mr. Hacault and IGU consultants (or any other interveners with competing commercial interests) are not provided with any confidential information.

Making all confidential information available to commercial counterparties of Centra that have not established a sufficient interest or entitlement to receive any of the confidential information on the basis of reducing purported administrative burden, particularly given the significant risks of inadvertent disclosure and the potential irreparable commercial harm to Centra, is not in the public interest.

Attempts to Resolve this Issue

Despite repeated verbal and written requests by Centra, IGU has failed to specify what type of confidential information it requires to intervene fully within the scope approved in Order 24/19. IGU's insistence on accessing the entire Application (with some vague limitations on Tab 7) has frustrated any possible resolution, ultimately leading to this motion.

Centra submits that IGU's legal counsel and consultants have not given any reasonable consideration to the alternatives suggested to it which include asking Centra IRs to ensure that Centra's rates are cost-based and fairly reflect the cost to serve each customer class, identify any cost allocation issues, running cost allocation scenarios, or having Centra present or provide it with any necessary confidential information in an alternative format, such as on an aggregated basis. The solutions proposed by Centra were viewed by IGU as "a waste of time and effort".²⁵

²⁵ IGU Motion paragraph 28, page 16.

In particular, Centra would like to respond to the misleading allegation in paragraph 13 of IGU's motion that Centra provided "no explanation" as to why it would not accept IGU's proposal to receive all confidential information within the Application with the limited assurance of a proposed solicitor's undertaking and confidentiality agreements. Prior to and following Mr. Hacault's email of March 20, 2019, there was significant communication between legal counsel including email correspondence on March 18, March 22, April 3, and April 9, lengthy phone discussions on March 22 and April 9, and a face-to-face meeting between Centra representatives (Ms. Carriere and Mr. Kostick) and an Intergroup representative (Mr. McLaren) on April 5.

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

Form of Undertaking and Confidentiality Agreements

IGU legal counsel has raised concerns with the language of the Solicitor Undertaking and the Confidentiality Agreement and has proposed alternative formats. As previously discussed with Mr. Hacault, Centra submits that it is premature for the Board to consider the actual form of confidentiality agreement until the substantive issue of any permitted disclosure as raised in this motion has been decided upon by the Board.

Attached to IGU's Motion is an Undertaking executed by Mr. Hacault. Centra notes that this Undertaking was modified by Mr. Hacault to remove the acknowledgement that a breach could result in cost consequences for his principles, that is his clients Gerdau, Koch, Maple Leaf and Simplot. This elimination of the potential for substantial cost consequences would be unacceptable to Centra.

In the event that this Board grants IGU the relief it seeks in the motion, Centra advises that it will not execute any confidentiality agreement directly with IGU consultants. Centra submits that, similar to the form of solicitor's undertaking, any confidentiality agreement should be made directly between any IGU consultant and the Board itself to more appropriately reflect the fact that the only reason that any disclosure is being made is pursuant to the Board's legislative process in determining Centra's Application. Proceeding in this fashion would also permit the Board to directly respond to any breach of the confidentiality agreement and to seek the necessary damages or penalties from the breaching party.

Budget Amendment and Costs

IGU has given notice that a budget amendment will likely be required as a result of its motion.

As set out above, Centra submits that IGU was unwilling to resolve this issue on anything but its demand to have full and complete access to all of Centra's confidential information. Centra submits that the Board should not award any costs to either Mr. Hacault or IGU consultants for any time spent relating to this motion in steadfastly demanding full and complete access to all of Centra's confidential information when such a remedy is unwarranted and not in the public interest.

If IGU is unsuccessful in this motion, Centra submits that Centra should be awarded costs for its time and expense in attempting to resolve this matter with IGU and in defending this motion and that the amount of the cost award should be deducted directly from the final cost award IGU receives from the Board for its intervention in this proceeding.

VI. Conclusion

Centra recognizes that there is an important public interest in having as open and transparent proceeding as is possible and strives to reasonably fulfil this objective when proceeding before the Board by way of application or otherwise. To this end, Centra's strong preference would be to file all required information and related applications with the Board without any redactions. However, there is an equally important public interest in maintaining the financial viability and wellbeing of Centra. The risks of disclosure of confidential information and potential financial harm are significant and irreparable and will impact and ultimately be borne by all of Centra's Sales Service customers.

Throughout the pre-hearing process for this Application, Centra has used its best efforts to provide all Interveners, including IGU, with a sufficient level of information to understand and test the Application. Centra remains committed to working with IGU's counsel and consultants to identify reasonable ways to provide it with additional information to facilitate its intervention in a manner that adequately protects the confidentiality of the information.

Centra's position on this motion is not an unfair or selective attempt to impose limitations on the scope of IGU's (or any interveners') intervention or the Board's public process to determine the merits of the Application. Centra is obligated to adequately protect confidential information such not to harm its financial interests.

In this Application, the PUB has already accepted that the public disclosure of certain and limited confidential information may result in undue financial loss to Centra and financial benefit to other commercial entities.

IGU's interest in this Application is to further the specific commercial interests of its four members – Gerdau, Koch, Maple Leaf and Simplot. The four members of IGU provide instruction to the consultants they have selected on their behalf with respect to what issues to opine on for their collective interest, and to counsel as to what positions to advance and ultimately advocate for. Access to the complete un-redacted Application by IGU's counsel and consultants is unnecessary and over-reaching for the purposes of pursuing the intervention of the commercial entities Gerdau, Koch, Maple Leaf and Simplot.

IGU's proposal within the motion to restrict confidential information to IGU counsel and consultants is unworkable and without merit given all of the circumstances. Furthermore, it does not adequately protect the confidential information or minimize the significant risks of disclosure and resulting irreparable harm. Centra submits that there are no conditions that could be imposed on access to the complete un-redacted Application that would appropriately mitigate the risks. Centra, not IGU's legal counsel and/or consultants, is ultimately responsible and accountable for these risks on behalf of its ratepayers. As such, IGU's motion should be dismissed with costs to Centra as described above.

In the event the PUB grants IGU's motion, Centra reserves its right pursuant to subsection 13(5) of the Rules to withdraw any and all information and related documents that the Board has accepted to be confidential as part of this Application.