

Motion for Disclosure and miscellaneous other relief

Relief sought

1. By this Motion IGU, an authorized intervener, seeks the following relief:
 - (a) An order pursuant to Rule 13 (3) d) of the PUB's Rules of Practice and Procedure that Antoine F. Hacault, having executed the Solicitor's Undertaking, be provided with an unredacted version of the evidence filed in this proceeding.
 - (b) An order pursuant to Rule 13 (3) d) of the PUB's Rules of Practice and Procedure that Patrick Bowman, Andrew McLaren and Melissa Davies, upon executing the PUB approved form of Confidentiality Agreement, be provided with an unredacted version of the evidence filed in this proceeding.
 - (c) Direction as to whether, with respect to the Consultant Confidentiality Agreement, the PUB approves an agreement similar in content to that signed by PUB advisors which is to be signed by representatives of Intergroup or if it approves the modified draft form sent by Centra Gas to IGU for review.
 - (d) An extension of the time in which to ask Interrogatories on CSI not previously disclosed.
 - (e) If not all of the CSI is disclosed, what portions are to be disclosed?

Procedural History and Concerns with respect to CSI

2. Centra had opposed the intervention of Industrial Gas Users ("IGU") on various grounds including "... how such an Intervener would determine its scope and directions." (PUB Order 24/19 at pp. 18 and 19). It also opposed the IGU intervention on grounds of duplication. The same themes seem to come up in denying Intergroup's attempt to have access to CSI, notwithstanding

assurances of signing required Confidentiality Agreements and non-disclosure to the 4 members of IGU.

3. It is hoped that Centra will, prior to the hearing of this Motion, find some way to provide public information to Intergroup which will allow Intergroup to provide its expert opinions. It is hoped that Centra will attempt to respond to IR's asked by Intergroup (which may require CSI) in a way that Intergroup can perform its services and in a way that puts relevant information on the public record so that this GRA is a transparent process. After all, to the extent possible, the PUB process is to be public and transparent.

4. In its November 30, 2018 letter to the PUB, Centra filed a Rule 13(2) Motion seeking an Order of the PUB that it would receive portions of its evidence in this GRA in confidence.

5. Amongst the grounds cited by Centra Gas in its November 30, 2018 letter:

Furthermore, as indicated in previous correspondence to the PUB, the current unlimited pricing discretion afforded to TransCanada Pipelines Limited ("TCPL") in establishing short-term firm and interruptible transportation bid floors on the Canadian Mainline has caused Centra to consider historical and forecast annual gas supply and gas cost information as commercially sensitive. Centra is concerned that public disclosure of certain information, including information on Centra's transactions, commercial arrangements, and operations, will expose Centra and its ratepayers to increased costs and irreparable harm by virtue of Centra being a captive shipper on the Canadian Mainline. If this confidential information was to become public, the potential for adverse pricing activity by market participants will result to the detriment of Centra. Consequently, Centra's competitive market position is reasonably expected to be prejudiced by public disclosure of this confidential information, including the potential for material cost increases to Centra and its ratepayers.

6. The PUB, in Order 26/17, summarized Centra Gas' objection to the disclosure to TCPL of a Centra Report on the possible replacement of its Western Canadian gas supply contract which

had been filed in confidence with the PUB. That decision provides some background on the CSI issues faced by Centra:

Centra states that its gas supply contract is its single most important commercial arrangement, and that the supporting transportation and storage arrangements are inextricably linked to, and are significantly impacted by, Centra's gas supply contract. (p. 13 of 23)

Centra argues that similar information as contained in the Report has been consistently treated confidentially, as ruled by the Board with respect to details of Centra's supply, storage, and pipeline transportation portfolio, peak demand, and the correlation between weather and demand in the 2015/16 Cost of Gas Proceeding. Centra argues that, since at least 2009, Centra has without exception, treated and filed its gas supply commodity contract and related information as highly 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. (p. 14 of 23)

7. In Order 26/17 the PUB found in part:

Rule 13(2)(a)(i) is met because disclosure of the information could reasonably be expected to result in undue financial loss to Centra and Centra's ratepayers, and undue financial gain to TCPL and other parties with whom Centra must negotiate contracts, including TCPL's affiliates. The Report contains strategic commercial and proprietary information regarding Centra's gas supply contract and related market insight, including requirements, strategies and prospective contracting options regarding Centra's gas supply portfolio and supporting transportation and storage arrangements now and into the future. If the Report were filed on the public record, parties with whom Centra negotiates contracts for commodity, transportation and storage services would have commercial information that would undermine Centra's negotiating position. This could result in Centra having to contract at higher prices, with the burden of the additional cost passed on to Centra's ratepayers, and the corresponding financial gain benefitting TCPL and other entities with whom Centra negotiates. (p. 18 of 23)

The Board denies TCPL's request to grant TCPL access to the Report, including access on condition of non-disclosure agreements or other mechanisms to protect the information. The Board finds that there are no conditions that could be imposed on access that would appropriately mitigate these risks. Given the content of the report, harm could result from disclosure to any TCPL or affiliated

company personnel. The public interest would not be furthered by granting any form of access to TCPL and that the public interest could be harmed by any such access. TCPL's interest in the report is acknowledged to be commercial and it is reasonable to expect that any manner of disclosure of the Report to TCPL could reasonably be expected to result in undue financial loss to Centra and to harm significantly Centra's competitive position in negotiating with TCPL or TCPL's affiliated companies, including major regional transportation and storage providers. (pp. 21 and 22 of 23)

8. In Order 24/19 with respect to this GRA, the PUB directed parties as follows with respect to CSI:

As previously indicated by Centra, the Utility is open to providing confidential or commercially sensitive information to certain Interveners and their consultants if they do not provide advice to competing parties or commercial counter-parties of Centra. Execution of solicitor's undertakings and non-disclosure agreements will be required to provide some protection to Centra in the event of any prohibited disclosure. To the extent access to confidential information is sought, Interveners need to first communicate with Centra to resolve the disclosure issues before bringing motions to the Board to resolve remaining disputes.

9. By email from TDS LLP to Centra dated March 18, 2019 [**Tab 1**] details of the information being sought was set out:

It seems to us that there is no apparently reason to treat us differently than Mr. Meronek and the consultants engaged by the other Consumers. Our clients are also consumers.

As a starting point, we advise that we request the following:

- Any redacted information in Tabs 1 – 6 and related appendices (financial forecast and capital filings)
- Tab 8 & Tab 8 Schedules – again including gas related costs, we need to understand full impact of costs for customer classes to understand allocations specifically to the rate classes we are representing.
- Tab 9 and related appendices
- Tab 10 and related appendices – including all gas related costs, this is necessary to understand the full cost allocation impacts for customer classes
- Tab 11 and related (Appendix 11.1 and 11.2)

- Tab 12 and related appendices
- Tab 13 and related appendices

With respect to the information redacted at Tab 7, if any of that data is used in cost allocation, we request those parts of Tab 7. We would also like any portions of Tab 7 where any DSM information is redacted.

We will see if we can work without having the natural gas forecasts for now but reserve our client's rights should we determine that it is required. ...

If there are allocators for the cost allocation schedules we would also need all of those regardless if they are gas related or non-gas related to be able to see how the full cost allocation schedules work. I have not seen any of this so far in the filings.

Grounds raised by Centra Gas to claim CSI protection and to refuse disclosure even if the required undertaking and agreement are signed.

10. In a March 20, 2019 email from Centra to TDS LLP [Tab 2], Centra explained its concerns

with respect to the request of IGU as follows:

Centra will not provide any of the CSI information currently found in Tabs 8, 9, 10 & 11 to IGU and its members. Unlike CAC, who we understand has retained Rick DeWolfe to review Tabs 8 and 9 to assess gas, transportation and storage costs on behalf of all ratepayers, IGU's stated purpose for intervening does not include a review of gas costs. Accordingly, and given Mr. DeWolfe's involvement, neither IGU nor any of the member entities have a need to be provided with gas costs and portfolio CSI. Furthermore, T-Service customers participate in the same upstream gas market for both transportation (including directly holding TCPL Mainline capacity) and supply, either directly or through gas marketers, who may be Centra counterparties. Koch is also a commercial counterparty of Centra. As such, Centra is not prepared to share any gas cost or portfolio CSI with IGU or the member entities who independently or with a natural gas marketer/agent, understandably seek to maximize their own financial benefit by lowering their individual delivered gas costs. Accordingly, sharing CSI with IGU and these entities has the strong potential to result in financial harm to Centra's other system supply customers/ratepayers.

11. In response to the concern that IGU or its members not be provided with CSI, Thompson Dorfman Sweatman LLP, solicitors for IGU, have communicated to Centra that Antoine F. Hacault and representatives of Intergroup are willing to agree to not share CSI with IGU or the members of IGU. [REDACTED]

[REDACTED] IGU and CAC have also since clarified that it not expected there will be overlap between the opinion evidence their respective gas experts will provide.

12. A detailed response was provided by TDS LLP to Centra by email dated March 22, 2019 as follows:

We certainly have a different view than Centra as to the scope of our client's authorized intervention, which is not limited to the interests of the 4 members of IGU. We addressed this both in the written application and in my comments on January 24, 2019. See also the Board's comment at p. 11 of its Order 24/19:

Additionally, IGU indicated that it will also work more broadly to reach out to other industrial customers and associations who are not formal members, to ensure they have accurate information about how the proposed rate changes will affect them. IGU is interested in collaborating with other industrial gas users with similar interests.

At p. 84 of the transcript, I did indicate that we didn't foresee being involved in item 10 of the issues list which was liability insurance or in item 19(ii) which was a subsection of Rate design. We note that Item 19 in the preliminary list did not find its way to the approved list in Order 24/19. All other items in the preliminary list were approved by the PUB.

We note that the PUB, at p. 20 of 29 in Order 24/19 ruled as follows:

The Board has considered the Intervener Applications that were submitted in advance of the Centra Pre-Hearing Conference as well as the submissions at the Pre-Hearing Conference. Subject to the condition that Interveners are to work within the scope of issues approved by the Board, as enumerated at Appendix "A" of this Order, the Board approves separate Intervener status for each of: BP Canada Energy Group ULC; Bunge Canada; Consumers'

Association of Canada (Manitoba) Inc.; Koch Fertilizer Canada, ULC; Industrial Gas Users; McCain Foods (Canada); Richardson International Limited; Simplot Canada (II) Limited; TransCanada PipeLines Limited; and Unifor Local 681, all subject to working within the scope of issues that is approved by the Board.

And then at page 23 of its Order:

The Board has concluded that, subject to the Board's directions as to collaboration and non-duplication, each Intervener is approved to participate on the issues it has identified as relevant in its submissions and within scope as indicated in the Issues List.

If you review my comments made on January 24, 2019, I took the approach that everything was relevant except to the extent indicated otherwise (pp. 84 and 85 of the transcript).

Although you are correct that the PUB expects collaboration and avoiding duplication where possible, this does not in our respectful view, mean that Centra can unilaterally decide what is in the best interests of the classes IGU is expected to represent. There are some instances where the interests of residential consumers are common with those of industrial and larger users but there are instances where they are not in common. Further, in Hydro GRA's we have always been provided with all the information so we can assess it. Thereafter, MIPUG and CAC and other interveners could determine to what extent there was commonality. MIPUG and CAC and other interveners could also thereafter discuss who might take a primary or lead role and who might take a secondary role. Collaboration has never been taken as requiring that either CAC or the Industrial Users or any other intervener for that matter to completely abdicate and hand over specific issues to the other. Manitoba Hydro has never taken the view that it can unilaterally decide which part of the application materials we get to see based on its view of what we should or should not be addressing in our intervention.

The PUB, at page 22, made it clear that IGU is to lead for the Industrial Classes on all issues except where it identifies a specific industrial user will lead on that distinct issue:

Likewise, Industrial Gas Users is to notify the Board in writing prior to the date for Intervener Information Requests of Centra, which of the other approved Interveners it is leading and on which issues.

For your convenience, we reproduce the scope issues which IGU is expected to address:

Appendix A

Issues List

The following issues are considered to be within or outside the scope of Centra's 2019/20

GRA, as indicated:

1. Rate changes requested
2. Centra's strategic plan
3. Financial targets
4. Changes in finances and financial assumptions since Order 85/13
5. Finance expense including interest rate forecast and debt management Strategy
6. Accounting changes and implementation of IFRS
7. Depreciation expense and methodology - changes since Order 85/13
8. O & A expense:
 - i. Impacts of VDP and staffing levels
 - ii. Cost containment measures
 - iii. 360 Portage space costs per Order 85/13 p.64
9. Integrated Cost Allocation Methodology (allocation of costs between MH and Centra)
10. Liability insurance - appropriate levels of coverage
11. Capital expenditures and rate base additions and retirements since Order 85/13
12. Return on rate base including return on equity
13. Demand Side Management
 - i. DSM Deferral Account - disposition of the regulatory asset and liability
 - ii. DSM spending in prior years since the last GRA and in the test year as well as assumptions in the forecast;
 - iii. DSM program design is not in scope except for lower income programs;
 - iv. Bill affordability is not in scope;
 - v. Affordable Energy Program and the continuation of the Furnace Replacement Program and disposition of account balances
14. Bill impacts on consumers:
 - i. Macro-economic impacts of the proposed rate changes which includes evidence from industrial customers as to the effect Centra's proposed rate adjustments will have on their businesses;
 - ii. Carbon levy impacts and presentation of the levy on customer bills
15. Load forecast

16. Gas costs
 - i. Gas cost forecast including supply, storage, and transportation arrangements
 - ii. Actual gas costs since the 2015 Cost of Gas proceeding; disposition of Purchased Gas Variance Accounts and other gas cost deferral accounts
 - iii. Western Canadian Gas supply contracts
 - iv. NEB proceedings related to TCPL tolls and Mainline segmentation
 - vi. U.S. storage and transportation assets post-Mar 2020
17. Cost of Service Study results and methodology (allocation of costs to customer classes)
18. Western Transportation Service - responsibility for costs incurred to administer Western Transportation Service and Agency Billing and Collection service
19. Fixed Rate Primary Gas Service – program results, continuation, program design, and risk thresholds
20. Feasibility test true-ups for main extensions over 500 meters;
21. Approval of interim orders: Primary Gas rates; franchises and crossing Agreements
22. Terms and conditions of service
 - i. Customer services and products provided by Centra
 - ii. Company labour rates for chargeable services
23. Compliance with Orders and Directives (per Order 85/13 page 62)
24. Rate design is not in scope except for an update on Centra's ongoing stakeholder consultation process related to its five part rates;

We hope that Centra Gas will reconsider its position which would have the effect of essentially eliminating IGU's ability to represent a class of users which has not had the benefit of full and proper representation in previous GRA's. The position being taken by Centra Gas will, we submit, also severely limit the quality of information which the PUB will have with respect to this class of users.

We note that the CSI undertaking which you provided for me and the CSI agreement which you provided for Intergroup requires confidentiality except to the extent we speak to others who have also signed undertakings and confidentiality agreements. This would preclude the writer and Intergroup from sharing the information with the 4 specific companies. It is not intended that the 4 companies

sign confidentiality agreements with a view of receiving CSI. I am unsure what, if anything, you are implying with respect to the writer and Intergroup consultants when you assert in the email below that sharing information with IGU raises a strong potential to result in financial harm.

If the concern of Centra is that each of the 4 specific companies should not be signing a Confidentiality Agreement which would result in them receiving CSI let us know. We can seek appropriate assurances from the 4 companies to deal with that concern.

13. Mr. Czarnecki was then away on spring break. No explanation has been provided since his return as to why the suggested solution of not distributing CSI to IGU members fails to appropriately manage risk.

14. IGU has unsuccessfully attempted to work out a solution with Centra Gas on this basis.

15. IGU is not challenging the Centra Gas claim to CSI. Antoine F. Hacault, legal counsel has signed the approved Undertaking [Tab 3]. That Undertaking has been modified at paragraph 2(b) to delete the permission to disclose CSI to the client for the purpose of advising the client.

16. Intergroup representatives are willing to sign a confidentiality agreement in form and content approved by the PUB. Intergroup representatives (with the exception of Mr. Bowman who is out of the Country) have signed Expert Declarations [Tab 4] confirming various duties including at paragraph 1:

I understand that my duty in providing written reports and giving evidence is to help the Public Utilities Board, and that this duty overrides any obligation to the parties by whom I am engaged or the persons who have paid or are liable to pay me. I confirm that I have complied and will continue to comply with my duty.

17. Although an Expert Declaration is not required in Manitoba, the Expert Declaration provides further assurance to the PUB and to Centra that, in accordance with the authorized scope

of intervention by IGU, Intergroup will provide fair, objective and non-partisan opinion evidence on issues which affect IGU generally and not limited to its 4 member companies.

Issues

1. Whether the arrangements proposed by IGU appropriately mitigate the risk of potential disclosure? If not, are there alternative arrangements and agreements which can appropriately manage risk and allow IGU to meaningfully participate in this GRA? Specifically whether Antoine F. Hacault and Intergroup representatives agreeing to the proposed obligations, as detailed in the attached agreements and expert declaration, not to provide redacted information to members of IGU unless any of those members are successful in getting PUB authorization to received CSI, sufficiently mitigates the risk.

Need for information to be able to meaningfully participate in the authorized scope of intervention

1. CAC has been provided with full access to CSI following the execution by its solicitor of an Undertaking and the execution by CAC consultants of a Confidentiality Agreement.

2. The PUB, in Order 24/19 granted intervener status to IGU on all issues in Scope as per Appendix A to Order 24/19.

3. In the March 18, 2019 email from TDS LLP to Centra it was briefly explained why Intergroup needed CSI to provide opinion evidence on issues in the scope of the IGU intervention.

4. In addition, we provide the following specific examples of inability to perform the scope of services:

- (a) Load forecast (issue 15 in Appendix A of Order 24/19) – significant portions of Appendix 7-1 (natural gas load forecast) are redacted, making the document useless for understanding Centra’s load forecast methods and the results underpinning the revenue forecast.
- (b) Gas costs (issue 16 in Appendix A of Order 24/19) – significant portions of Tab-8 and several related appendices are redacted or not available publicly at all.

- (c) Cost of service (issue 17 in Appendix A of Order 24/19) – significant portions of schedules 10.1.0; 10.1.1; 10.1.2; 10.1.3; 10.1.5; and 10.1.6 are redacted making it impossible to understand the cost allocation methods.

5. We submit that the starting point is that all of the Application material is relevant to the issues set out in Appendix A of Order 24/19.

6. We identified in our submission at the pre-hearing the issues IGU would not be dealing with.

7. Because the gas forecast seemed to be the major focus of concern of Centra on CSI, we have suggested that initially Centra at least:

With respect to the information redacted at Tab 7, if any of that data is used in cost allocation, we request those parts of Tab 7. We would also like any portions of Tab 7 where any DSM information is redacted.

8. Next, the CSI is not proposed to be shared with IGU members. This accommodation is being provided notwithstanding that the reason relied on by Centra to refuse to provide CSI to IGU members does not appear to adversely affect Centra financially. Rather Centra refuses to provide CSI on the ground:

Centra is not prepared to share any gas cost or portfolio CSI with IGU or the member entities who independently or with a natural gas marketer/agent, understandably **seek to maximize their own financial benefit by lowering their individual delivered gas costs.** (emphasis added)

9. It is certainly not apparent that this reason provided by Centra meets the tests in rule 13 of the PUB rules:

- (a) There is no apparent financial harm to Centra – only a potential financial benefit to some of the IGU members (s. 13(2)a(i));
- (b) There is no apparent or alleged significant harm to Centra’s competitive position (s. 13(2)a(ii));
- (c) We submit that the disclosure of CSI being limited to Antoine F. Hacault and representatives of Intergroup so as to allow a full and proper intervention in this GRA with respect to the classes of Industrial Customers is in the public interest and

outweighs the risk of inadvertent disclosure of CSI with all the procedural protections adhered to prior to in camera hearings and prior to public redacted versions being made available.(s. 13(2)b)(iii)

10. There is no evidence to suggest that Intergroup will not respect the undertakings made in the Expert's Declaration or in the Confidentiality Agreement.

Misplaced focus on IGU membership

11. There appears to be a misplaced view or understanding that Intergroup and Thompson Dorfman Sweatman LLP have been retained to advocate a position on behalf of the 4 members of IGU. Koch is an industrial customer. Simplot and Maple Leaf are T-Service customers. Finally, Gerdau is non T-Service customer which sources its gas through Centra Gas.

12. This issue was raised at the pre-hearing conference and is being raised again. It appears to be based on the incorrect premise that Intergroup, as consultants, are hired to be advocates for a particular class of users or for a particular user within the group.

13. As confirmed by the Expert Declaration, Intergroup is not retained to advocate a particular position. They are retained to provide independent, fair and objective expert opinions on the issues listed in Appendix A. It is irrelevant that IGU retained the services of Intergroup to provide opinions on the in-scope issues.

14. By way of analogy, if an appraiser is retained to provide an expert opinion on the market value of a particular property, it is irrelevant whether it is the owner or the Bank who retained the appraiser. The task is the same - "provide an opinion on market value" of a particular property.

15. The same is true of any particular issue before the PUB which is in scope for IGU. For example, issue 17 is:

17. Cost of Service Study results and methodology (allocation of costs to customer classes)

16. There are a number of regulatory principles applicable to a Cost of Service Study including causation concepts and costs not being put in rate base unless and until they are “used and useful”. An expert opinion from Intergroup on issue 17 will be what it will be. Intergroup is there to assist the PUB.

17. It is presumptive to speculate that having Intergroup opine on the issue 17, by way of example, is duplicative. The relevant evidence has not yet been made available to Intergroup. We don't know what Intergroup's expert evidence will be on any one or more of the issues.

18. In addition, Intergroup may well bring a different perspective for the PUB to consider. One should not automatically assume that the expert opinion by Intergroup will be useless. In any event, the PUB, through cost award mechanisms has some measure of control if there is unnecessary duplication. Even if there is some overlap, that is not necessarily a bad outcome. The PUB has the opportunity to see where opinions converge and diverge.

Full and Fair Hearing

19. CAC has been provided with full access to all CSI.

20. We understand that IGU is to collaborate with CAC and other industrial gas users with similar interests – T-Service and non T-Service (p. 11 of 29, Order 24/19). We understand that the PUB is hoping to give Industrial Gas Users generally a voice in this GRA. Some issues are particular to this sector of customers. With respect to other issues there is overlap with other classes of customers such as residential customers. On other issues, CAC and IGU experts may have reasonable differences of opinion and put forward different evidence.

21. We submit it would be a denial of procedural fairness to leave a category of customers – the industrial customers – without the ability to have relevant evidence to conduct an analysis and present in camera expert evidence and the cross-examine on relevant in camera evidence.

22. We submit there needs to be a solution found so that industrial customers have their natural justice rights protected. Section 48 of *The Public Utilities Board Act*, C.C.S.M. c. P280 confirms the legislative intent of having a full opportunity to produce evidence and be heard as follows:

Orders involving expense to parties to be after notice and hearing

48 The board shall not make an order involving any outlay, loss, or deprivation to any owner of a public utility, or any person without due notice and **full opportunity** to all parties concerned, **to produce evidence** and **be heard** at a public hearing of the board, except in case of urgency; and in that case, as soon as practicable thereafter, the board shall, on the application of any party affected by the order, re-hear and reconsider the matter and make such order as to the board seems just. (emphasis added)

23. Significant increases are being proposed with respect to a large segment of industrial customers. This cries out for a solution to allow a meaningful participation by industrial customers.

24. The general rule is that the full opportunity to be heard is to be at a public hearing of the PUB. Surely if commercial interests require some parts of the hearing to be in camera, the right of industrial customers to a full opportunity to be heard and to produce evidence extends to in camera portions of the hearing. We submit that every reasonable effort should be made to find a solution should the one being proposed by IGU be considered as not sufficiently managing the CSI issue.

25. Centra Gas appears to want to impose limits on IGU's scope of intervention. It appears to be attempting to mount a collateral attack on PUB Order 24/19. If Centra wanted to challenge the wide scope of issues on which IGU was authorized to intervene, it could have applied for a review and vary or could have filed an appeal (that right is noted at the end of the Order).

26. Centra Gas appears to be of the view that Intergroup must prove to Centra Gas and satisfy Centra Gas that redacted CSI is relevant to its tasks.

27. First, there are entire appendices which are completely redacted:

- (a) Appendix 8.1 Design Firm Peak Day Winter;
- (b) Appendix 8.2 Design Firm Peak Day Summer;
- (c) Tab 9 Storage and Transportation Arrangements.

28. We submit that it is unreasonable to expect Intergroup to speculate and guess as to the content of completely redacted documents and then ask IR's on what one would expect to be in the documents. This is a waste of time and expense. The IR process is designed to get more details about known information – not to get a glimpse of and possibly a partial disclosure of a completely redacted document.

29. Other Tabs have a significant number of redactions. Again the IR process was not intended as being the first step in getting relevant information. It is intended to obtain further details on disclosed information. To require Intergroup to attempt to exhaustively detail what it needs is a pure waste of time. It is also an impossible task because Intergroup needs to speculate on things such as the content of tables which have been partially or completely redacted.

30. Presumably the redacted information is relevant to the GRA and the issues which are in Appendix A of Order 24/19. The very fact of the information being redacted confirms it is highly relevant information.

31. The extent of the efforts made by IGU to attempt to resolve the CSI issue without a Motion have required material expenditures of time and effort not contemplated by the budget filed with the PUB. IGU hereby gives notice to the PUB that a budget amendment will likely be required. Trying to understand a filing with highly redacted information is inefficient and unproductive.

32. If the PUB grants Intergroup and Antoine F. Hacault access to CSI, it will necessarily involve some additional time to go through the information a second time. This could have been avoided.

Risk of inadvertent disclosure

33. There is always a risk of inadvertent disclosure notwithstanding the best of intentions. One of the members of IGU, Gerdau, is a non T-Service industrial customer. It sources its gas from Centra. As is the case with residential customers, industrial customers who purchase their gas from Centra have a vested interest in minimizing the risk of inadvertent disclosure of CSI if that disclosure may result in higher prices.

34. By way of contrast with CAC, IGU has not requested that it be provided with CSI. In fact the Solicitor's Undertaking has been amended to exclude "save and except to advising client".

35. Processes to minimize inadvertent disclosure have been developed in collaboration with the PUB and Centra to vet proposed public versions of IR's, responses to IR's and reports. There will be an in camera portion of the hearing.

36. It makes sense if Intergroup and the writer are to collaborate with Mr. Meronek and CAC's consultants that these discussions can occur without having to always be concerned about what can and can't be discussed in private meetings with them. It also makes sense from a hearing perspective to have PUB, CAC and IGU lawyers and consultants all working with two sets of information – one public version and one redacted version.

37. It is hard to imagine how a hearing could be conducted if there was only selective disclosure to Mr. Hacault and Intergroup of CSI. Do we have one public portion and 2 distinct in camera portions? How can that be realistically managed?



[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Undertaking and Confidentiality Agreement

39. Attached is a signed Undertaking by Antoine F. Hacault [Tab 3].

40. Attached is a draft Confidentiality Agreement provided by Centra [Tab 5] with questions in red font colour as to why the draft provided for Intergroup is different than the one signed by Board advisors. The attached copy also reproduces in different font the paragraphs which are different or missing. We understand there are and should be differences in the penalty portions. However, we have not received a response from Centra as to why other differences are required.

41. We bring the differences to the attention of the PUB and look for direction as to what form of Confidentiality Agreement it expects to be executed should it decide that CSI is to be shared with Intergroup.

42. We understand that Centra is willing to look at this issue if the PUB rules in favor of the IGU Motion. Perhaps it would be in order for PUB counsel, Centra counsel and the writer to meet and recommend a form of Advisor Confidentiality Agreement which the PUB could then approve as it deems fit.

Extension to ask IR's on CSI

43. Given the lack of access to CSI and CSI related IR's it is unknown at this time whether Intergroup would ask additional IR's on CSI. We ask for a one week extension to ask those IR's on CSI. That one week extension would start after Intergroup and Antoine F. Hacault have been provided with a complete unredacted copy of all information.


Short appearance in person

44. IGU has done its best to understand and propose to Centra a solution to its concerns about disclosing CSI to IGU members by limiting that disclosure to Mr. Hacault and to Intergroup.

45. Subject to direction from the PUB, a short in person appearance may be the best way to allow questions to be asked by the PUB and to find a solution to the issues being raised in this Motion and in the written response which Centra will be providing to this Motion.

All of which is respectfully submitted on April 11, 2019.

Thompson Dorfman Sweatman LLP

Per: 
Antoine F. Hacault of Counsel
for Industrial Gas Users

TAB 1

Antoine Hacault

From: Antoine Hacault
Sent: Monday, March 18, 2019 4:12 PM
To: Czarnecki, Brent
Cc: Carvell, Jessica; Gregorashuk, Shannon; Carriere, Liz; Peters, Bob; Melissa Davies; Andrew McLaren
Subject: RE: Centra to PUB re: Comments on Proposed Budget of the Consumers Association of Canada (Manitoba) and Industrial Gas Users for the 2019/20 General Rate Application
Categories: Filing...

Thank you Mr. Czarnecki.

This is the first time that we are involved in a Centra Gas GRA. It is the writer's understanding based on the materials filed by Centra Gas that most if not all of the material Centra Gas now files as CSI was on the public record and that the reason for claiming CSI relates mostly to TCPL (see your November 30, 2018 letter to Mr. Christle setting out the grounds for claiming CSI protection).

It seems to us that there is no apparently reason to treat us differently than Mr. Meronek and the consultants engaged by the other Consumers. Our clients are also consumers.

As a starting point, we advise that we request the following:

- Any redacted information in Tabs 1 – 6 and related appendices (financial forecast and capital filings)
- Tab 8 & Tab 8 Schedules – again including gas related costs, we need to understand full impact of costs for customer classes to understand allocations specifically to the rate classes we are representing.
- Tab 9 and related appendices
- Tab 10 and related appendices – including all gas related costs, this is necessary to understand the full cost allocation impacts for customer classes
- Tab 11 and related (Appendix 11.1 and 11.2)
- Tab 12 and related appendices
- Tab 13 and related appendices

With respect to the information redacted at Tab 7, if any of that data is used in cost allocation, we request those parts of Tab 7. We would also like any portions of Tab 7 where any DSM information is redacted.

We will see if we can work without having the natural gas forecasts for now but reserve our client's rights should we determine that it is required.

If all the CSI information is listed per Centra's 2019-20 GRA website that should likely cover it. If there are additional materials not listed please send us a full list of the confidential information redactions so that we can review and make sure we have everything we need.

If there are allocators for the cost allocation schedules we would also need all of those regardless if they are gas related or non-gas related to be able to see how the full cost allocation schedules work. I have not seen any of this so far in the filings.

We hope this assisted in starting to compile information.

Yours truly,

Antoine F. Hacault

Partner

P 204-934-2513

TF 855-483-7529

F 204-934-0530

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From: Czarnecki, Brent <BACzarnecki@hydro.mb.ca>

Sent: Monday, March 18, 2019 2:38 PM

To: Antoine Hacault <AFH@tdslaw.com>

Cc: Carvell, Jessica <jcarvell@hydro.mb.ca>; Gregorashuk, Shannon <sgregorashuk@hydro.mb.ca>; Carriere, Liz <lcarriere@hydro.mb.ca>; Peters, Bob <BobPeters@FillmoreRiley.com>

Subject: RE: Centra to PUB re: Comments on Proposed Budget of the Consumers Association of Canada (Manitoba) and Industrial Gas Users for the 2019/20 General Rate Application

Thanks for your email, Antoine.

From the PHC at page 58, you stated "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".

Consistent with what the Corporation does with electric proceedings (and as I understand from electric proceedings, MIPUG is not provided with electric CSI) we seek to protect commercially sensitive information to protect the interests of the utility and its ratepayers. As a starting point we do not provide the entire un-redacted application to those who request same such that they can distill further what CSI they intend to use. Instead, and in efforts to best protect the commercially sensitive nature of the information, the requesting party needs to establish what specific CSI they seek, why is it essential for them to access that portion of the CSI and for what specific intended purpose (for their proposed intervention). I note that an undertaking and an NDA only serve as a default and minimal safeguard to the Corporation after any limited access to CSI is established. In the event of a breach, inadvertent or otherwise, the undertaking or NDA is difficult to enforce and leaves little recourse to the utility to recover on the irreparable and unquantifiable harm that may result.

We also need to be mindful of releasing any customer specific information that is requested.

Everything within the Application that is redacted is contained within the public version of the Application and has been available to you and your members/consultants for quite some time so I once again encourage you to first advise what specific parts of the redacted Application you are seeking (for example what pages, charts or figures) explaining why so I can receive instructions on your request. Based upon your email below, my guess is that your request will focus on cost allocation issues but would appreciate some clarity from you on what specific redacted information you are actually seeking. We too are trying to be mindful of the administrative and process/hearing issues that may need to be sorted out if and when Centra agrees to provide you with whatever CSI you request.

In the event that we receive instructions to provide you with certain specific portions of CSI that you request from us, we are attaching the PUB's standard form of Solicitor's Undertaking and Non-Disclosure Agreement (for the non-lawyers) who you are proposing and have been accepted by Centra (or the Board if by way of motion) as having a legitimate need to know any CSI.

If you want to discuss further, please let me know.

I am copying Bob Peters as well so he is aware of our collective attempts of trying to resolve this issue by way of agreement instead of IGU advancing a formal motion to the Board.

Regards,
Brent

Brent Czarnecki
Legal Counsel
Manitoba Hydro Law Division
22nd Floor - 360 Portage Avenue
Winnipeg, MB R3C 2P4
Ph: (204) 360-3257
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From: Antoine Hacault [<mailto:AFH@tdslaw.com>]
Sent: Monday, March 18, 2019 10:11 AM
To: Czarnecki, Brent
Subject: RE: Centra to PUB re: Comments on Proposed Budget of the Consumers Association of Canada (Manitoba) and Industrial Gas Users for the 2019/20 General Rate Application

Dear Mr. Czarnecki,

We would appreciate receiving the proposed confidentiality agreement. Is it possible to send it to us today or tomorrow. We have been requesting a copy of it for quite some time now.

I note we are authorized to intervene with respect to cost allocation issues. Although I don't know everything that was redacted this issues alone would require us to have complete disclosure of all cost components of Centra Gas' operations. I know I am repeating myself again but the easiest thing is obviously to provide us with all CSI under the confidentiality agreement. I would think that anything that is considered CSI which should not be shared with one or more of the IGU members can be specifically addressed in the Confidentiality Agreement. Just because I see CSI or Intergroup sees CSI doesn't necessarily mean that we can't agree to use certain parts of CSI for our review and for our participation in the in camera sessions but not disclose or share that information with a specific member of IGU.

Yours truly,

Antoine F. Hacault
Partner
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From: Czarnecki, Brent <BACzarnecki@hydro.mb.ca>

Sent: Friday, March 15, 2019 5:28 PM

To: Antoine Hacault <AFH@tdslaw.com>

Subject: Re: Centra to PUB re: Comments on Proposed Budget of the Consumers Association of Canada (Manitoba) and Industrial Gas Users for the 2019/20 General Rate Application

Antoine - I read the transcript from the PHC. It appears your position has changed considerably from then when you indicated you would may only be requesting a limited amount of CSI.

I remain puzzled why you would have any interest in all CSI especially relating to gas supply, transportation and storage issues - which forms the bulk of CSI in the Application - given the clients I understand you are now retained by.

Perhaps it is best if we chat on Monday.

Best regards,
Brent

On Mar 15, 2019, at 5:15 PM, Antoine Hacault <AFH@tdslaw.com<<mailto:AFH@tdslaw.com>>> wrote:

SECURITY NOTICE: This email originated outside Manitoba Hydro. Verify all links and attachments from unknown senders before opening. Search 'email security' on mpower.

Dear Mr. Czarnecki,

Now that you have completed your comments on the proposed budgets, could you please provide us with a copy of the confidentiality agreement so we can review it, and if appropriate sign it. We need to get going on collaboration and IR's and are hampered in our ability to do so by the extensive redactions.

Antoine F. Hacault
Partner
P

204-934-2513

<image001.jpg>

TF

855-483-7529

F

204-934-0530

E

afh@tdslaw.com<<mailto:donna@tdslaw.com>>

W

<http://tdslaw.com><<https://smex12-5-en-ctp.trendmicro.com:443/wis/clicktime/v1/query?url=http%3a%2f%2ftdslaw.com&umid=727bf7f4-854d-4caf-96e2-a750e78c8291&auth=6cbdf31d7b306b326483808fe8d1b1afeb2741f1-295c626e5e2c1b553d8527fad37da3b493bc09ba>>

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From: Jansen, Ashley <AJansen@hydro.mb.ca<mailto:AJansen@hydro.mb.ca>>
Sent: Friday, March 15, 2019 5:04 PM
To: "+WPG1002 - CCA Public Utilities (CCA)'
(publicutilities@gov.mb.ca<mailto:publicutilities@gov.mb.ca>)'
<publicutilities@gov.mb.ca<mailto:publicutilities@gov.mb.ca>>; "Christle, Darren (PUB)'
(Darren.Christle@gov.mb.ca<mailto:Darren.Christle@gov.mb.ca>)'
<Darren.Christle@gov.mb.ca<mailto:Darren.Christle@gov.mb.ca>>;
'Rachel.McMillin@gov.mb.ca<mailto:Rachel.McMillin@gov.mb.ca>'
<Rachel.McMillin@gov.mb.ca<mailto:Rachel.McMillin@gov.mb.ca>>;
'bmeronek@ddwestllp.com<mailto:bmeronek@ddwestllp.com>'
<bmeronek@ddwestllp.com<mailto:bmeronek@ddwestllp.com>>; Antoine Hacault
<AFH@tdslaw.com<mailto:AFH@tdslaw.com>>
Cc: Carriere, Liz <lcarriere@hydro.mb.ca<mailto:lcarriere@hydro.mb.ca>>; Gregorashuk, Shannon
<sgregorashuk@hydro.mb.ca<mailto:sgregorashuk@hydro.mb.ca>>; Czarnecki, Brent
<BACzarnecki@hydro.mb.ca<mailto:BACzarnecki@hydro.mb.ca>>; Carvell, Jessica
<jcarvell@hydro.mb.ca<mailto:jcarvell@hydro.mb.ca>>
Subject: Centra to PUB re: Comments on Proposed Budget of the Consumers Association of Canada
(Manitoba) and Industrial Gas Users for the 2019/20 General Rate Application

Good afternoon,

Please see attached.

Thank you,

Ashley Jansen, CPA, CMA
Regulatory Services Supervisor
Regulatory Services Department
Manitoba Hydro
12-360 Portage Ave.
Winnipeg, MB R3C 0G8
Ph: (204) 360-5247

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<Centra to PUB re Comments on Proposed Budgets of CAC and IGU for the 2019-20 GRA.PDF.awsec>

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TAB 2

Antoine Hacault

From: Czarnecki, Brent <BACzarnecki@hydro.mb.ca>
Sent: Wednesday, March 20, 2019 3:46 PM
To: Antoine Hacault
Cc: Carvell, Jessica; Patrick Bowman; Melissa Davies; 'Peters, Bob'; McMillin, Rachel (FIN); Gregorashuk, Shannon
Subject: RE: Centra to PUB re: Comments on Proposed Budget of the Consumers Association of Canada (Manitoba) and Industrial Gas Users for the 2019/20 General Rate Application

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Antoine,

We confirm that:

1. There is no CSI in Tabs 1-6, 12 and 13 - with the one exception of Appendix 13.3 with respect to Centra's liability insurance - which we don't believe IGU has any legitimate need to access consistent with what you identified at the PHC – that Centra's liability insurance was not an issue that IGU would address. In addition, Centra's liability insurance has previously been canvassed and extensively reviewed by the PUB with no changes and although this issue doesn't need any additional review by any intervener, CAC has identified this as an issue they "may" need to further test; and
2. Centra will not provide any of the CSI information currently found in Tabs 8, 9, 10 & 11 to IGU and its members. Unlike CAC, who we understand has retained Rick DeWolfe to review Tabs 8 and 9 to assess gas, transportation and storage costs on behalf of all ratepayers, IGU's stated purpose for intervening does not include a review of gas costs. Accordingly, and given Mr. DeWolfe's involvement, neither IGU nor any of the member entities have a need to be provided with gas costs and portfolio CSI. Furthermore, T-Service customers participate in the same upstream gas market for both transportation (including directly holding TCPL Mainline capacity) and supply, either directly or through gas marketers, who may be Centra counterparties. Koch is also a commercial counterparty of Centra. As such, Centra is not prepared to share any gas cost or portfolio CSI with IGU or the member entities who independently or with a natural gas marketer/agent, understandably seek to maximize their own financial benefit by lowering their individual delivered gas costs. Accordingly, sharing CSI with IGU and these entities has the strong potential to result in financial harm to Centra's other system supply customers/ratepayers.

We also note that the PUB's first round IRs are to be provided to Centra by April 5, 2019 – one week prior to the filing of Intervener first round IRs on April 12, 2019. In the interest of collective efficiency and to avoid duplication of costs and resources, we suggest that IGU firstly review the PUB IRs which may also seek information "to understand full impact of costs for customer classes to understand allocations specifically to the rate classes" that IGU has cited below for the basis for its request for CSI.

Additionally, if necessary, Centra representatives are willing to meet with IGU's consultant(s) to better understand what specific CSI they seek and for what specific purpose, such to explore if there are other ways for Centra to provide such or similar information (perhaps as an example on an aggregated basis) without providing CSI to IGU and its four members.

Antoine - can you also clarify as to whether Koch and Simplot are foregoing their own independent interventions and that you have now been formally retained to represent their individual and collective interests. We are trying to further assess if and how IGU could obtain any customer specific information with respect to these entities independent of Centra providing same – [REDACTED]

Regards,
Brent

Brent Czarnecki
Legal Counsel
Manitoba Hydro Law Division
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Fax: (204) 360-6147

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From: Antoine Hacault [mailto:AFH@tdslaw.com]
Sent: Tuesday, March 19, 2019 6:24 PM
To: Czarnecki, Brent
Cc: Carvell, Jessica; Patrick Bowman; Melissa Davies
Subject: RE: Centra to PUB re: Comments on Proposed Budget of the Consumers Association of Canada (Manitoba) and Industrial Gas Users for the 2019/20 General Rate Application

Dear Mr. Czarnecki,

I confirm that the 4 companies you list are the companies which operate under Industrial Gas Users for purposes of this GRA. To be clear, as is the case for MIPUG, the confidential information of each company is not shared between companies. For example, in MIPUG that issue arises both for Hydro and MIPUG because Chemtrade and ERCO are direct competitors. We intend to operate in the same manner for Industrial Gas Users.

If necessary, we can further explore with you how this issue can be handled in the Centra Gas GRA process. If the discussion and evidence on CSI occurs in camera and we have a clear understanding of what should not be disclosed to any one or more of these companies, we should be able to navigate through this.

Should any other companies wish to join the group we will contact you to discuss.

Yours truly,

Antoine F. Hacault
Partner

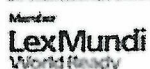
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TAB 3

UNDERTAKING OF CONFIDENTIALITY

TO: THE PUBLIC UTILITIES BOARD OF MANITOBA

WHEREAS on November 30, 2019, Centra Gas Manitoba Inc. ("Centra") filed a 2019-20 General Rate 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, Antoine F. Hacault, partner with Thompson Dorfman, Sweatman LLP, am acting as legal counsel for the Industrial Gas Users, an approved Intervener, 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 me, in my capacity as a practicing lawyer; and

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

- 2 -

2. I hereby undertake:

(a) to use the Confidential Information disclosed under the conditions of the Undertaking

AFH

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 any expert IGU may engage, provided they

sign a Confidentiality Agreement, 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 and except with respect to Confidential Information shared by Centra with the intervener Koch and which Koch has in turn shared with me. 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 Proceeding or within 10 days after the end of my participation in this Proceeding, expunge all documents and materials containing Confidential Information, including notes, charts, memoranda,

AFH

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: Winnipeg, Manitoba, this 10th day of *April*, 2019.

Signature:

Antoine F. Hacault

Name: Antoine F. Hacault

Address: 1700 – 242 Hargrave Street

Telephone: (204) 934-2513.

Fax: (204) 934-0530

Email: afh@tdslaw.com

TAB 4

EXPERT'S DECLARATION

EXPERT'S DECLARATION

I, MELISSA DAVIES DECLARE THAT:

- 1 I understand that my duty in providing written reports and giving evidence is to help the Public Utilities Board, and that this duty overrides any obligation to the parties by whom I am engaged or the persons who have paid or are liable to pay me. I confirm that I have complied and will continue to comply with my duty.
- 2 I confirm that I have not entered into any arrangement where the amount or payment of my fees is in any way dependent on the outcome of the case.
- 3 I acknowledge that it is my duty to provide evidence in relation to this proceeding as follows:
 - to provide opinion evidence that is fair, objective and non-partisan;
 - to provide opinion evidence that is related only to matters that are within my area of expertise; and
 - to provide such additional assistance as the Public Utilities Board may reasonably require to determine an issue.
- 4 I know of no conflict of interest of any kind.
- 5 I will advise the party by whom I am instructed if, between the date of my report and the hearing, there is any change in circumstances which affect my answers to point 4.
- 6 I will identify the sources of all information I have used.
- 7 I will exercise reasonable care and skill in order to be accurate and complete in preparing this report.
- 8 I will endeavour to include in my report those matters, of which I have knowledge or of which I have been made aware, that might adversely affect the validity of my opinion. I will clearly state any qualifications to my opinion.
- 9 I have not, without forming an independent view, included or excluded anything which has been suggested to me by others, including my instructing lawyers.
- 10 I will notify those instructing me immediately and confirm in writing if, for any reason, my report requires any correction or qualification.

11 I understand that:

- 11.1 my report may form the evidence to be given under oath or affirmation;
- 11.2 questions may be put to me in writing for the purposes of clarifying my report and that my answers shall be treated as part of my report and covered by my statement of truth;
- 11.3 I may be required to attend at a hearing to be cross-examined on my report by a cross-examiner assisted by an expert.

STATEMENT OF TRUTH

I confirm that I will make clear which facts and matters referred to in a report are within my own knowledge and which are not. Those that are within my own knowledge I will be confirmed to be true. The opinions I will express represent my true and complete professional opinions on the matters to which they refer.

Signature.....*M. Davies*..... Date.....April 10, 2019.....

EXPERT'S DECLARATION

EXPERT'S DECLARATION

I Robert Andrew McLaren DECLARE THAT:

- 1 I understand that my duty in providing written reports and giving evidence is to help the Public Utilities Board, and that this duty overrides any obligation to the parties by whom I am engaged or the persons who have paid or are liable to pay me. I confirm that I have complied and will continue to comply with my duty.
- 2 I confirm that I have not entered into any arrangement where the amount or payment of my fees is in any way dependent on the outcome of the case.
- 3 I acknowledge that it is my duty to provide evidence in relation to this proceeding as follows:
 - to provide opinion evidence that is fair, objective and non-partisan;
 - to provide opinion evidence that is related only to matters that are within my area of expertise; and
 - to provide such additional assistance as the Public Utilities Board may reasonably require to determine an issue.
- 4 I know of no conflict of interest of any kind.
- 5 I will advise the party by whom I am instructed if, between the date of my report and the hearing, there is any change in circumstances which affect my answers to point 4.
- 6 I will identify the sources of all information I have used.
- 7 I will exercise reasonable care and skill in order to be accurate and complete in preparing this report.
- 8 I will endeavour to include in my report those matters, of which I have knowledge or of which I have been made aware, that might adversely affect the validity of my opinion. I will clearly state any qualifications to my opinion.
- 9 I have not, without forming an independent view, included or excluded anything which has been suggested to me by others, including my instructing lawyers.
- 10 I will notify those instructing me immediately and confirm in writing if, for any reason, my report requires any correction or qualification.

11 I understand that:

- 11.1 my report may form the evidence to be given under oath or affirmation;
- 11.2 questions may be put to me in writing for the purposes of clarifying my report and that my answers shall be treated as part of my report and covered by my statement of truth;
- 11.3 I may be required to attend at a hearing to be cross-examined on my report by a cross-examiner assisted by an expert.

STATEMENT OF TRUTH

I confirm that I will make clear which facts and matters referred to in a report are within my own knowledge and which are not. Those that are within my own knowledge I will be confirmed to be true. The opinions I will express represent my true and complete professional opinions on the matters to which they refer.

Signature.....*R. A. M. M. M.*..... Date.....*Apr 1 9 2019*.....

TAB 5

THIS AGREEMENT made this _ day of _____, 2019

CENTRA GAS MANITOBA INC.,

(called "Centra") of the first part,

- and -

(called the "Confidant")

of the second part.

WHEREAS on November 30, 2018, Centra filed the 2019/2020 General Rate 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 the Industrial Gas Users ("IGU") as an Intervener for the review of the Application (the "Proceeding"), legal counsel for which Interveners ~~are~~ is 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.

Brent – please explain why the following exceptions generally found in this type of agreement and which is in the PUB consultant Agreement is not also in the form you provided to us:

- information that was in the public domain, placed on the public record or known to the Confidant prior to the time of disclosure; or
- information that is lawfully disclosed to the Confidant from a Third Party or source not subject to a restriction on such disclosure provided the Confidant can provide evidence of same; or
- information that is approved, in writing, for disclosure without restriction by a duly authorized representative of Centra;

"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 ~~who that~~ ~~have~~s 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 IGU 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.

Again please explain why the following paragraph is in the Board advisor Agreement but not in the draft you sent to us.

(c) Pursuant to disclosure authorized by Centra and under this Agreement.

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:~~ i) without PUB approval, or ii) without the prior written consent of Centra, or [REDACTED]
[REDACTED]
[REDACTED]
- 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.

Again, please explain why the following is in PUB advisor Agreement but not in the draft you sent to us. (d) Not disclose Confidential Information to any other employee of the Confidant and/or any other consultants, independent contractors or seconded personnel retained by the PUB or the Confidant unless they have executed an undertaking or confidentiality agreement 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.

Brent, what is shown in highlight is not in the PUB advisor agreement. Again why is it added? Third Party is broadly defined. Intergroup has no control over third parties and cannot force them to cooperate. Intergroup is likely not in a position to know if a Third Party has received notice of compelled disclosure.

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.

Brent, why is the following clause from the PUB advisor agreement is deleted.

For the purposes of this Article, the Parties contemplate that only a limited amount of time and resources will need to be expended on behalf of the Confidant. If more than a reasonable amount of time and resources are required, the Parties agree to discuss an appropriate amount of compensation.

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.

Again, why has the following wording been deleted. We note that in this GRA there are previous time frames which are no longer CSI because of time having passed by. Therefore, in a couple of years when Centra files its next GRA much of the CSI will be in the unredacted and public. The clause which was deleted from the draft you sent to us contemplates that situation. The draft you sent to us creates a continuing obligation because the information was CSI in this GRA. It does so irrespective of whether the information becomes public information.

or until such Confidential Information enters the public domain provided such Confidential Information has not entered the public domain by way of breach of a provision of confidentiality

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 an 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 0GB
Attn: 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: _____

Per: _____