

May 20, 2022

THE PUBLIC UTILITIES BOARD OF MANITOBA  
400-330 Portage Avenue  
Winnipeg, Manitoba  
R3C 0C4

ATTENTION: Dr. D. Christle, Board Secretary and Executive Director

Dear Dr. Christle:

**RE: CENTRA GAS MANITOBA INC. (“CENTRA”) RESPONSE TO CAC MOTION**

Centra is in receipt of the Consumers Association of Canada (Manitoba) Inc. (“CAC”) letter of April 28, 2022 which seeks an order from the Public Utilities Board (“Board” or “PUB”) to access information ruled confidential and further amendments to the timelines and procedure established by PUB Order 36/22. On May 18, 2022 by way of email correspondence, the PUB directed Centra to file any response to the CAC letter by May 20, 2022. Set forth below is Centra’s response.

### Background

On June 15, 2021, Centra filed with the PUB its Cost of Service Methodology Review submission (“COSMR Submission”) in response to a direction of the Board in Order 152/19. Together with its COSMR Submission, Centra brought a motion pursuant to Rule 13 of PUB Rules of Practice and Procedure (“Rules”) to have very limited portions of its COSMR Submission accepted in confidence with the Board; such to facilitate the Board’s conduct of the proceeding entirely in public. The information Centra sought to be confidential is limited and includes:

- Appendix 3 – Functionalization, Classification and Allocation Factor Descriptions - six lines in the 32 page document;
- Portions of Appendix 4 – Illustrative Results of the Proposed Methodology;
- PUB MFR 3 – Schedules 10.1.0 through 10.1.5 and 11.4.1 from the 2019/20 GRA Compliance Filing;
- PUB MFR 6 – four lines in the 14-page Report on Classification of Residential and Commercial Customers filed in the 2007/08 & 2008/09 GRA;
- PUB MFR 10 – 2004 Unaccounted for Gas Study – 3 redactions; and
- PUB MFR 13 – contracts relating to provision of service for the Power Stations and feasibility tests.

Despite being open since June 15, 2021 for CAC to challenge the requested confidential treatment of the very limited information within the COSMR Submission, or alternatively to have the PUB accept the documents in confidence but order conditions permitting access to as set out in Rule 13(3)(b), CAC did not object or challenge Centra's motion for confidential treatment of the very limited, redacted information until this late juncture.

By Order 80/21 dated July 26, 2021, the PUB accepted Centra's motion that it was in the public interest to accept the very limited portions of the COSMR Submission in confidence. The PUB further stated:

To the extent access to confidential information is sought by approved Interveners, Interveners need to first communicate with Centra to resolve the disclosure issues. If disclosure issues are unable to be resolved by communication with Centra, the Board will adjudicate any requests for access by Interveners to confidential information. *That said, the Board notes that the information redacted by Centra may not be required for Interveners to participate fully in the proceeding, and that as such, Intervener access to this information may not be necessary.*<sup>1</sup> (emphasis added)

CAC did not seek to review this PUB finding.

Following submissions by the parties, the PUB issued its second Procedural Order on April 7, 2022, Order 36/22, establishing the issues in scope for this proceeding and a timetable for the procedural steps.

### Position on Motion

#### *Need to Access the Information*

As the moving party, CAC bears the onus of establishing that it has a *bona fide* need to access the confidential information for a specific purpose related to the COSMR proceeding. This analysis must be informed by both the specific issues deemed to be in scope by the PUB in Order 36/22 and the PUB's comments and direction on the nature of this proceeding. The PUB has consistently held that parties in this proceeding are to focus their participation upon the best practices for Manitoba's specific circumstances.<sup>2</sup> In doing so, the PUB rejected the submissions of interveners that a duplicative or extensive review of the cost of service study methodology and model were required at this time.<sup>3</sup>

Beyond its usual and routine blanket assertion that it requires all of the confidential information to participate in this proceeding, CAC has not undertaken any substantive

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<sup>1</sup> Order 80/21 at page 8.

<sup>2</sup> Order 49/20 at page 8; Order 130/20 at page 12; Order 36/22 at page 15.

<sup>3</sup> Order 36/22 at page 15.

analysis to consider its need to access the information ruled to be confidential. For example, CAC requests access to PUB MFR 13 despite the PUB's later determination in Order 36/22 that minimum margin guarantee for the Power Stations class, and this MFR, is not in scope. It is plain and obvious that provision of the confidential version of PUB MFR 13 is unnecessary to permit CAC to participate in this proceeding. The blanket request approach should be discouraged by the PUB especially as in this instance when the moving party has not met its onus of establishing a *bona fide* need for any of the confidential information.

CAC argues it requires access to the confidential information to enable it to understand how "a methodology works" and to consider how it will be applied. CAC has not identified how this objective is dependent upon access to any of the specific confidential information within the COSMR Submission. Centra submits that there is no rational connection, the confidential information in Appendix 3, Appendix 4, PUB MFR 3, PUB MFR 6, PUB MFR 10 or PUB MFR 13 does not in any way provide information related to how any of the proposed methodologies will be applied.

Further, Centra notes that CAC's experts report having extensive experience and direct knowledge with Centra's cost of service methodology during their lengthy careers with Manitoba Hydro. In light of that experience, it is difficult to understand why these experts are not well versed in how Centra's existing and proposed methodology "works".

CAC's illustrative discussion of the coincident peak methodology fails to establish any legitimate need to access the information ruled confidential by the PUB. CAC suggests that it is unclear how the definitions of coincident peak would be applied, whether other definitions were analyzed and how the data may be reflected in the proposed treatment of upstream demand. CAC does not identify which confidential portions of the COSMR Submission contain any of this information, and Centra submits the confidential information will not assist CAC in this regard as the limited confidential information does not address any of those topics. Each of CAC's concerns related to coincident peak methodology can be, and in fact has been, appropriately asked and answered through the Information Request ("IR") process. CAC has filed seven IRs to Atrium and nine IRs to Centra relating to coincident peak methodology, in addition to the approximately 15 IRs requested by other parties on the same topic. IR responses were filed by Centra and provided to all parties on May 16<sup>th</sup>. Centra has filed fully public responses to each of CAC's IRs related to coincident peak methodology.

Centra understands from email correspondence by CAC's counsel sent May 19<sup>th</sup> that CAC may bring further motions related to IR responses. Centra reserves the right to respond to any such motion when filed.

### *Reliance upon the Historical Treatment of Confidential Information*

CAC relies upon its historical access to confidential information in support of its motion. Centra submits that each request to access confidential information needs to be considered independently and based upon the specific circumstances of each regulatory proceeding, including the scope of the issues and the overall purpose of the proceeding as established by the PUB. Reliance upon historical access is irrelevant to this motion. No party to a proceeding, including longstanding ones such as CAC, have an automatic and perpetual entitlement to information that has been deemed confidential by the PUB in accordance with its Rules.

Access to confidential information upon execution of non-disclosure agreements and other mechanisms is not an entitlement of parties in a regulatory proceeding. In each case, only if a *bona fide* need to access the information is established by the moving party, the PUB can then consider whether the access conditions can appropriately mitigate the risks of disclosure.<sup>4</sup> Centra submits in this case, even if a *bona fide* need to access the information had been established by CAC in its motion, which has not occurred, confidentiality agreements do not sufficiently mitigate the risk of disclosure, inadvertent or otherwise, particularly where there is little to no benefit to be gained from any such disclosure.

Centra notes that in the 2019/20 General Rate Application, despite executing confidentiality agreements, confidential information was inadvertently disclosed on the public record.<sup>5</sup> These types of inadvertent disclosures represent a material risk to Centra and its customers and highlight that confidentiality agreements are not a perfect solution. The best way to protect the collective interest of Centra and its customers is to fully restrict access to confidential information where provision of that information is not necessary for a party's full participation in the proceeding.

### *Procedural Fairness*

CAC suggests its access to the confidential information is a matter of procedural fairness. This argument is specious and has been previously rejected by the PUB:

Within its jurisdiction, the Board is not required to rely solely upon public filings, and may refer to confidential documentary filings or in camera testimony, to make determinations and to carry out its mandate. Procedural fairness is not denied to Interveners, who participate in the regulatory process to assist the Board to come to a determination; Interveners are granted status by the Board to participate, but

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<sup>4</sup> Order 26/17 at page 21.

<sup>5</sup> See Centra's letter of March 8, 2019 filed in confidence.

are not thereby given rights equivalent of litigants in a court process, by way of comparison.<sup>6</sup>

Those comments apply equally to CAC's motion.

CAC also suggests that Centra's position on access to confidential information is impinging on compressed timelines. This submission is inappropriate and without merit. As noted above, CAC was aware, or ought to have been aware, since June 15, 2021 that Centra viewed portions of its COSMR Submission as confidential, and that the PUB accepted that submission in its Order 80/21 issued July 26, 2021. CAC has had ample opportunity to communicate with Centra to attempt to resolve the dispute and bring a motion before the Board long before bringing it at the last hour potentially jeopardizing the Board's timetable for this proceeding to the prejudice of Centra and other parties who have made all efforts to strictly comply with the timetable.

Centra further notes that CAC failed to comply with the PUB's direction in Order 80/21 to communicate with Centra to resolve disclosure issues. Given the confidential nature of the information, which the PUB accepted outweighed the public interest in disclosure, Centra reasonably and responsibly asked basic questions to CAC's legal counsel attempting to gain some understanding as to the basis for CAC's request to access the confidential information. CAC's legal counsel did not respond, choosing instead to directly bring a motion. In light of potential harm of disclosure and the PUB's finding that interveners may not require access, Centra's request was responsible and prudent. To characterize a single request in attempting to gain a basic understanding as to why confidential information was required by CAC in accordance with the Board's guidance as "overkill" is inappropriate.

Centra understands from the email correspondence of CAC counsel dated May 19<sup>th</sup>, that CAC now intends to amend the relief sought in this motion. In its April 28<sup>th</sup> submission, CAC sought "The opportunity to file supplemental evidence in connection with the redacted information if the existing timetable does not permit". Based on the email of May 19<sup>th</sup>, it now appears that CAC now intends to seek an extension of time to file all its written evidence pending the resolution of this motion. CAC did not provide any explanation as to why it cannot file some written evidence within the timelines set out in Order 36/22 as it originally contemplated in its motion. Centra submits that CAC should be required to file its evidence within the timelines set out by the PUB in Order 36/22, and as CAC originally indicated it would be prepared to do so.

Centra submits that even if successful on this motion, CAC should be required to file its written evidence on May 25, 2022 and be granted leave to file any supplemental evidence pending the outcome of this motion thereafter. In light of CAC's delay in bringing this motion,

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<sup>6</sup> Order 95/10 at page 27; also see Order 95/11 at page 15.

this intervener should be required to work strictly towards meeting the timelines established in Order 36/22.

In conclusion, Centra submits that CAC has failed to meet its onus in establishing a *bona fide* need for the very limited amount of confidential information contained in the COSMR Submission to fully participate in this proceeding. The confidential information within the COSMR Submission is not required at all for interveners to perform an assessment of how each methodology can be utilized by Centra. The IR process provided CAC with a full opportunity to seek answers to the questions identified by CAC which it availed itself to. Centra responded to all CAC IRs publicly, with one minor exception – CAC/Centra I-13(e) which relates to cost allocation of Delivered Service. As such, Centra requests the PUB deny all relief sought by CAC, including any extension of time that is formally requested by CAC to the filing deadline of its written evidence by May 25, 2022, and order that CAC is barred from seeking a reimbursement of any of its costs related to its motion.

Should you have any questions with respect to this submission, please contact the writer at 204-360-5580.

Yours truly,

**MANITOBA HYDRO LEGAL SERVICES**

Per:



Jessica Carvell  
Barrister & Solicitor