

Order No. 77/19

**A MOTION BY THE INDUSTRIAL GAS USERS TO GAIN ACCESS
TO CONFIDENTIAL FILINGS IN CENTRA GAS MANITOBA INC.'S 2019/20
GENERAL RATE APPLICATION**

June 4, 2019

BEFORE: Marilyn Kapitany, B.Sc., (Hon), M.Sc., Board Vice-Chair
Carol Hainsworth, C.B.A., Member
Mike Watson, Member
Susan Nemec, FCPA, FCA, Member

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1.0 Executive Summary

By this Order, the Public Utilities Board grants Industrial Gas Users access to only certain limited and specific information that was filed in this General Rate Application in confidence by Centra Gas Manitoba Inc.

2.0 Overview

In Order 24/19, the Public Utilities Board (“Board”) granted approval for Industrial Gas Users (“IGU”) to intervene in Centra Gas Manitoba Inc.’s (“Centra’s”) 2019/20 General Rate Application (“GRA”). IGU is an informal association of companies who are substantial users of natural gas. IGU’s membership consists of:

- Gerdau Long Steel North America – Manitoba Mill;
- Koch Fertilizer Canada ULC;
- Maple Leaf Foods; and
- Simplot Canada (II) Limited

Three of these IGU members are Transportation Service customers of Centra and consequently arrange their own natural gas commodity supply and transportation to Centra’s service territory in Manitoba. Transportation Service customers have a contract with Centra for the delivery of the natural gas on Centra’s system to the customer’s premises. The fourth member of IGU takes Sales Service from Centra, meaning Centra procures and delivers natural gas to satisfy the customer’s requirements.

The stated purpose of IGU’s intervention is to ensure Centra’s rates are cost-based and fairly reflect the cost to serve each customer class. IGU submits its member companies are long-term economic contributors to Manitoba, and as such require stable and predictable rates over the long-term.

Confidential Filings

Portions of Centra's GRA filings have been provided to the Board in confidence together with a request pursuant to PUB Rules of Practice and Procedure that those filings not be placed on the public record. Centra is concerned that public disclosure of certain information, including information on Centra's transactions, commercial arrangements, operations, and customer specific information will expose Centra and its ratepayers to increased costs and irreparable harm if this confidential information was to become public. Centra submits the potential for adverse pricing activity by market participants will be to the detriment of Centra. Consequently, the Utility submits its 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.

The Board has adjudicated Centra's requests for confidentiality and where information is not to be placed on the public record, Centra has had to redact such information from what is filed on the public record.

Centra has advised that it 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 counterparties of Centra. Execution of solicitor's undertakings and non-disclosure agreements are 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.

Centra advised the Board that Centra entered into non-disclosure agreements with the Consumers Association of Canada – Manitoba branch ("CAC") and its consultants to obtain access to the confidential documents in this GRA. The lawyers for this Intervener have executed solicitor's undertakings to gain access to the confidential information.

The confidential information that Centra seeks to keep off the public record can be found in the following Tabs or sections of its GRA filing:

Tab 7 - Natural Gas Volume Forecast and DSM Plans;

Tab 8 - Gas Supply and Costs;

Tab 9 - Storage and Transportation Arrangements;

Tab 10 - Cost Allocation and Rate Design;

Tab 11 - Customer Impacts;

Tab 13 – Liability Insurance

IGU represents the interests of predominantly Transportation Service customers in this GRA. Those Transportation Service customers are market participants and therefore competitors of Centra in the upstream natural gas commodity and transportation market.

IGU's Motion for Access to Confidential Filings

As attempts between IGU and Centra to resolve disclosure issues related to Centra's confidential information have not been mutually satisfactory, IGU filed a Motion with the Board requesting an Order granting IGU's lawyer and consultants access to all of Centra's filed confidential information. IGU maintains it requires access to the information that has been redacted from the public record in order to meaningfully intervene on behalf of industrial gas users. IGU offers to sign non-disclosure agreements and solicitor's undertakings similar in form to what others have signed to gain access to the confidential information. Notably, IGU's members will not be provided any access to any confidential information to further protect the confidentiality of Centra's documents. IGU's counsel has indicated IGU's members are aware and concur that IGU will not be representing the individual interests of members. Instead, IGU and its counsel will be representing the interests of industrial and large volume gas consumers in Manitoba.

In bringing its Motion for access to confidential information, IGU does not contest the Board's decisions as to what is considered confidential and to be kept off the public record. This Intervener agrees to maintain the confidentiality as determined by the Board.

Centra's Position

Centra raises concerns respecting the informality of the association of IGU members as well as the fact that they are commercial counterparties to Centra, engaging directly or indirectly in the same natural gas supply and transportation markets as does Centra.

Even though IGU's lawyer and consultants will not share any confidential information with its members, Centra sees the non-disclosure agreements and solicitor's undertakings by IGU's counsel and consultants as minimal protection of the confidential information.

Centra questions whether IGU has a bona fide need to access the complete unredacted Application, considering the scope of this Intervener's involvement. Centra points out that one IGU member is a Sales Service customer whose interest in accessing confidential information is duplicitous of the Sales Service customers represented by CAC.

Centra maintains that IGU should be treated differently than CAC, as the latter Intervener is not a commercial counterparty to Centra and does not operate or transact in the upstream natural gas market in which Centra does. Centra states that this different treatment is not a denial of procedural fairness.

3.0 Board Findings

The Board finds that to assist the Board in Centra's 2019/20 GRA, IGU's lawyer and consultants should be granted access to the confidential information in Tabs 7, 10 and 11, provided they execute appropriate non-disclosure agreements and solicitor's undertakings.

The Board finds that, IGU's lawyer and consultants should not be granted access to the confidential information in Tabs 8, 9 and 13. IGU has not convinced the Board that the interests of IGU's single Sales Service customer are sufficiently different from other Sales Service customers represented by CAC and its expert consultant to grant access to Tabs 8, 9, or 13.

Likewise, the confidential information in Centra's responses to the Information Requests based only on Tabs 7, 10 and 11 should be made available to IGU's lawyer and consultants provided they have executed solicitor's undertakings with the Board and non-disclosure agreements with Centra.

Under no circumstances are the individual members of IGU to be granted access to any confidential information.

The Board recognizes that some of the information in Tabs 10 and 11 provide indications of the contents of Tabs 8 and 9. Centra is to provide Tabs 10 and 11 in a fully unredacted form to IGU's counsel and consultants. Furthermore, Centra is to provide the portions of the pre-hearing update and rebuttal evidence related to Tabs 7, 10 and 11 in a fully unredacted form to IGU's counsel and consultants. The pre-hearing updated is expected to be filed in July and the rebuttal in August according to the schedule in Order 24/19,

4.0 IT IS THEREFORE ORDERED THAT:

1. IGU's Motion for access by their consultants and lawyer to the confidential information contained in Tabs 7, 10 and 11 and the related Information Request responses in Centra's 2019/20 GRA BE AND IS HEREBY APPROVED provided:
 - a. IGU's counsel executes a Solicitor's Undertaking to the Board, satisfactory in form, and
 - b. IGU's consultants execute non-disclosure agreements with Centra, satisfactory in form, and
 - c. IGU's counsel and consultants are not to provide any confidential information related to this GRA to IGU members.
2. IGU's Motion for access to the confidential information contained in Tabs 8, 9, and 13 and the related Information Request responses in Centra's 2019/20 GRA BE AND IS HEREBY DENIED:
3. IGU shall be granted one week from the date it is provided the above confidential information to pose any additional written information requests to Centra and Centra is to use its best efforts to expedite the responses.

Board decisions may be appealed in accordance with the provisions of Section 58 of *The Public Utilities Board Act*, or reviewed in accordance with Section 36 of the Board's Rules of Practice and Procedure. The Board's Rules may be viewed on the Board's website at www.pub.gov.mb.ca.

THE PUBLIC UTILITIES BOARD

"Marilyn Kapitany, B. SC. (Hons), M. Sc."
Panel Chair

"Rachel McMillin"
Assistant Associate Secretary

Certified a true copy of Order No. 77/19
issued by The Public Utilities Board



Assistant Associate Secretary