

**Order No. 91/19**

**A MOTION BY KOCH FERTILIZER CANADA, ULC TO GAIN ACCESS  
TO CONFIDENTIAL FILINGS IN CENTRA GAS MANITOBA INC.'S 2019/20  
GENERAL RATE APPLICATION**

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**July 3, 2019**

**BEFORE:** Larry Ring, Q.C., Panel Chair  
Marilyn Kapitany, B.Sc., (Hon), M.Sc., Board Vice-Chair  
Mike Watson, Member  
Susan Nemec, FCPA, FCA, Member

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## 1.0 Executive Summary

By this Order, the Public Utilities Board partially approves Koch Fertilizer Canada, ULC's Motion. Access to certain confidential documentation that was filed in this General Rate Application by Centra Gas Manitoba Inc. is granted to only Koch Fertilizer Canada, ULC's legal counsel (Lewis Manning of Lawson Lundell LLP) and consultant (Brian Collins of Brubaker & Associates Inc.), however the Hearing Timetable established in Order 24/19 will not be suspended or altered.

## 2.0 Overview

Koch Fertilizer Canada ULC's ("Koch") intervention in Centra Gas Manitoba Inc.'s ("Centra") 2019/20 General Rate Application ("GRA") is unusual in that Koch was approved in Order 24/19 to intervene on its own behalf and also as a member of the Industrial Gas Users ("IGU") which was approved as a separate Intervener. In Order 24/19, the Board cautioned all Interveners that they were to work within the approved scope of issues and were required to avoid duplication with other interveners on matters of evidence and the testing of issues they have in common.

### 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 result to the detriment of Centra and its customers. Consequently, Centra 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.

It should also be noted that Centra 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.

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

In Order 77/19, the Board granted limited access to specific confidential documentation to only the lawyer and consultants for IGU after these parties executed a solicitor's undertaking and non-disclosure agreement.

## **Koch's Motion for Access to Confidential Filings**

As attempts between Koch and Centra to resolve disclosure issues related to Centra's confidential information have not been mutually satisfactory, Koch filed a Motion with the Board on June 14, 2019 requesting an Order granting only Koch's lawyer (Lewis Manning of Lawson Lundell LLP) and Koch's consultant (Brian Collins of Brubaker & Associates Inc.) access to the confidential information contained in Tabs 10 and 11 of Centra's GRA, as well as the related Information Request responses. Tab 10 addresses Centra's cost allocation and rate design while Tab 11 sets out Centra's proposed rates and customer impacts.

Koch's Motion also requests the suspension of the current hearing timetable set out in Order 24/19 to allow Koch additional time to consider and respond to Centra's proposed approach to the functionalization and allocation of system costs in Centra's Cost Allocation Study. Koch also wants to consider Centra's continued use of the Peak and Average methodology in the cost of service study compared to alternative methodologies that use coincident peak design allocators or those that use direct assignment of transmission facilities that are used to provide service to Koch. Koch wants to assess the level of the potential cross-subsidization that may be inherent in Centra's Cost Allocation Study

Koch, in its Motion and in its June 21 Reply to Centra, maintains it does not have a competing interest to Centra's when it comes to cost of service issues as it is a customer, that has been approved as an Intervener, and is seeking to test Centra's evidence as to whether its rates are just and reasonable.

Koch does not contest the Board's decisions as to what is considered confidential information and to be kept off the public record. Rather, Koch agrees to maintain the confidentiality as determined by the Board. Consistent with Order 77/19, Koch offers to maintain the confidentiality of the requested information through the safeguards of only Koch's counsel and consultant having access provided they execute a solicitor's

undertaking and a non-disclosure agreement. Koch's counsel and consultant also agree that they will not provide any confidential information to anyone else unless approved by the Board.

### **Centra's Position**

Centra's June 19, 2019 submission requests Koch's Motion be dismissed.

Centra opposes Koch's attempts to obtain a significant extension of the timelines established in Order 24/19 when the cost allocation methodology and Koch's resulting and proposed rates were known since the outset of the GRA.

Centra sees Koch's Motion as an attempt to convert this GRA proceeding into a full Cost Allocation Study Methodology Review which Centra sees as inappropriate, unfair and prejudicial to Centra's other customers who stand to receive a rate reduction.

Centra submits Koch's Motion is a duplication of the efforts of IGU (of which Koch is also a member) which was granted access to the same information Koch now seeks. Furthermore, it is inappropriate to provide confidential information to Koch because it is a commercial counterparty and competitor of Centra. Even though Koch's lawyer and consultant will not share any confidential information with Koch, Centra sees the non-disclosure agreements and solicitor's undertakings by Koch's consultant and counsel as minimal protection of the confidential information.

### 3.0 Board Findings

As indicated in Order 77/19, the confidential information that Centra seeks to keep off the public record can be found in the following Tabs or sections or related Information Request responses 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

The Board determines that to assist the Board in Centra's 2019/20 GRA, only Koch's counsel (Lewis Manning of Lawson Lundell LLP) and consultant (Brian Collins of Brubaker & Associates Inc.) should be granted access to the confidential information in Tabs 10 and 11 only, provided they execute appropriate non-disclosure agreements and solicitor's undertakings, which approved forms are attached unsigned to Koch's Motion. Likewise, the confidential information in Centra's responses to the Information Requests based only on Tabs 10 and 11 should be made available to Koch's lawyer and consultant provided they have executed the solicitor's undertaking with the Board and non-disclosure agreement with Centra. Under no circumstances are any other representatives of Koch or its related or affiliated companies 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 7, 8, and 9. Centra is to provide Tabs 10 and 11 and related Information Request responses in a fully unredacted form to Koch's counsel and consultant. Furthermore, Centra is to provide the portions of the pre-hearing update and rebuttal evidence related to Tabs 10 and 11 in a fully unredacted form to Koch's counsel and consultants. The pre-hearing update is expected to be filed in July and the rebuttal in

August according to the schedule in Order 24/19. Koch's counsel and consultant are also to be provided access to the unredacted versions of Intervener evidence that pertains to Tabs 10 and 11. This includes the evidence of IGU consultant Mr. Andrew McLaren and of CAC consultant Ms. Kelly Derksen.

Since the filing of Koch's Motion, Centra has provided confidential responses to additional IGU written Information Requests which appear to address the specific cost allocation methodology concerns and options that Koch now formally raises in its Motion. Additionally, Mr. Collins has filed written evidence on behalf of Koch on June 21, 2019, which addresses Koch's cost allocation issues. With those confidential Information Request responses now available to Koch and with Mr. Collins having filed evidence on behalf of Koch, the Board agrees with Centra that no changes to the Hearing Schedule should be made. Should the information contained in Mr. Collins written evidence and any Information Request responses require factual corrections based on his access to the Tab 10 and 11 confidential information, those corrections are to be made forthwith after Mr. Collins' receipt and review of the confidential information.

The question as to whether Centra's Cost Allocation Study methodology ought to be reviewed is a matter for Parties to address in their previously requested submissions to the Board as to what issues, if any, should be heard in oral evidence in August, 2019.



#### **4.0 IT IS THEREFORE ORDERED THAT:**

1. Koch's Motion for access to the confidential information contained in Tabs 10 and 11 and the related Information Request responses, pre-hearing update, rebuttal, and Intervener evidence in Centra's 2019/20 GRA BE AND IS HEREBY APPROVED provided:
  - a. Koch's counsel (Lewis Manning of Lawson Lundell LLP.) executes a Solicitor's Undertaking to the Board, satisfactory in form such as that attached to Koch's Motion, and
  - b. Koch's consultant (Brian Collins of Brubaker & Associates Inc.) executes a non-disclosure agreement with Centra, satisfactory in form such as that attached to Koch's Motion, and
  - c. Koch's counsel and consultants are not to provide any confidential information related to this GRA to any other representatives of Koch or its related or affiliated companies.
  
2. Koch's Motion for a suspension or alteration of the Hearing Schedule for Centra's 2019/20 GRA established in Order 24/19 BE AND IS HEREBY DENIED:

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.pubmanitoba.ca](http://www.pubmanitoba.ca).

THE PUBLIC UTILITIES BOARD

"Larry Ring"  
Panel Chair

"Rachel McMillin"  
Assistant Associate Secretary

Certified a true copy of Order No. 91/19  
issued by The Public Utilities Board

  
Assistant Associate Secretary