

REFERENCE NO:

3991 0126

PLEASE REPLY TO:

Brian J. Meronek Q.C.

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Brian Meronek Law Corporation

o also of the Alberta Bar

BRANCH OFFICE - CALGARY

July 14, 2015

Via Email

Manitoba Hydro
Regulatory Services Department
12th Floor – 360 Portage Avenue
Winnipeg, MB R3C 2P4

ATTENTION: Jonathon Trenchard, CMA

Dear Sir:

RE: Centra Gas Manitoba Inc. – 2015/16 Cost of Gas Application

Further to my email of yesterday's date, I am now in a position to more fully respond to the issue of confidentiality. I have had an opportunity to assess the Application with our expert and it is quite apparent that, without an unredacted version of the Application, meaningful intervention would be impossible. While appreciating the commercial sensitivity of the material in principle, the stakeholders who I represent are entitled to a full and unfettered representation. These stakeholders in large part are the same stakeholders who Centra has an interest to protect, so that the objectives of Centra and CAC are not divergent in that regard.

Accordingly, we are prepared to sign an Undertaking and Confidant Agreement in the revised draft forms attached. The revisions are noted by underlining for easy comparison. In order to obtain appropriate instructions and to give fulsome advice, my reporting client Gloria Desorcy needs to be privy to whatever information I obtain; otherwise I will not be fulfilling my legal obligation to maintain an appropriate solicitor-client relationship. Consequently, I expect that Ms. Desorcy and Mark Staufft will sign a revised Confidant Agreement and I will sign the revised Undertaking as amended. The amendments further specify the ability for CAC to carry out meaningful intervention without handicap while equally protecting Information, which the Board deems to be Confidential Information.

In terms of a timetable, once the Board makes its deliberation with respect to this issue, then I would expect that the first round of Information Requests will be able to be provided within two weeks of receipt of the unredacted Application. The timetable can flow therefrom accordingly. I note that a five week period for response has been incorporated, I assume to take into account the summer months.

All of the above is predicated on the information being deemed to be confidential. Until CAC receives the unredacted Application, no opinion can be rendered as to whether indeed some or all of the information sought to be protected by Centra is in fact confidential and CAC reserves the right to challenge any information before the Board that it deems not to be confidential.

A budget will be submitted by way of separate cover hopefully tomorrow.

Yours truly,

D'ARCY & DEACON LLP

Per:

A handwritten signature in blue ink, appearing to read "B. Meronek", is written over a light blue horizontal line.

BRIAN J. MERONEK Q.C.

BJM/mp

Att.

cc: Kurt Simonsen
Darren Christie
Sven Hombach
Greg Barnlund
Brent Czarnecki
Shannon Gregorashuk
Ashley Jansen
Nola Ruzycki
Gloria Desorcy

THIS AGREEMENT made this ____ day of _____, 2015

BETWEEN:

CENTRA GAS MANITOBA INC.,
(called "Centra")
of the first part,

- and -

(_____),
(called the "Confidant")
of the second part.

WHEREAS on May 25 and June 12, 2015, Centra filed a Cost of Gas 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 (the "**Proceeding**"), 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.

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.

"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 that has 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 Intervener 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.

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 the prior written consent of Centra;
- (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;
- (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.

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.

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.

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 0G8
Attn: VP 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

[INDIVIDUAL NAME]

UNDERTAKING OF CONFIDENTIALITY

TO: THE PUBLIC UTILITIES BOARD OF MANITOBA

WHEREAS on May 25 and June 12, 2015, Centra Gas Manitoba Inc. ("Centra") filed a Cost of Gas 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, Brian Meronek, Q.C., partner with D'Arcy & Deacon LLP, am acting as legal counsel for CAC 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, my principals or me personally; and
 - (ii) an immediate revocation of my rights to receive Confidential Information.

2. I hereby undertake:

- (a) to use the Confidential Information disclosed under the conditions of the Undertaking exclusively for purposes 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 my advising client Gloria Desorcy (Executive Director of CAC) and any expert CAC may engage, provided they sign a Confidant Agreement satisfactory to the Board, 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. 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 hearing or within 10 days after the end of my participation in this hearing, expunge all documents and materials containing Confidential Information, including notes, charts, memoranda,

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 at Winnipeg, Manitoba, this _____ day of July, 2015.

Signature: _____

Name: Brian Meronek, Q.C.

(please print)

Address: 2200 – One Lombard Place, Winnipeg, MB, R3B 0X7

Telephone: 204-925-5355

Fax: 204-943-4242

Email: bmeronek@darcydeacon.com