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VIA EMAIL & ORIGINAL TO FOLLOW

Public Utilities Board of Manitoba
400 - 330 Portage Avenue
Winnipeg MB R3C 0C4

Attention: Mr. Darren Christle, MPA, B.A., CCLP, P. Log., MCIT
Secretary/Executive Director

Dears Sirs/Mesdames:

Re: Procedural matters
Our Matter No. 0163483 AFH

We acknowledge receipt of Centra's letter to you dated July 8, 2019. We have brief comments which we wish to bring to the Public Utilities Board's attention with respect to Centra's submission.

1. The IR process is a discovery process. In the PUB rules, it is defined as: "INFORMATION REQUEST" means any request made in writing by a party for information or particulars directed to a party in a proceeding. Rule 14(1) provides IR's are "for the purpose of a satisfactory understanding of the matters to be considered". The IR process is part of what streamlines and shortens an oral hearing but is not a process which is intended to replace an oral hearing or cross-examinations. If the purpose of IR's will change, parties need to know in advance.
2. Centra incorrectly suggests, without legal authority, that "parties should be reminded that the purpose of cross-examination is to test or challenge evidence on the record". As confirmed by the leading text Sopinka, *The Law of Evidence in Canada*, 3rd ed. at para. 16.112: "Three purposes are generally attributed to cross-examination: (1) to weaken, qualify or destroy the opponent's case; (2) to support the party's own case through the testimony of the opponent's witnesses; (3) to discredit the witness. To accomplish these ends, counsel is given wide latitude and there are, accordingly, very few restrictions placed on the questions that may be asked or the manner in which they may be put".



3. IGU disagrees with Centra's statement that "there are very few facts in dispute". Centra has indicated it intends to file rebuttal evidence on 8 issues. It is therefore disputing the evidence filed by others on those 8 issues. There are therefore factual disputes on those 8 issues. Centra has also noted factual disputes on the Cost of Service issues. All of these will require the weighing of evidence and determinations of fact and of mixed fact and law after an oral hearing.
4. At pages 2 and 3 of its letter, Centra makes a submission on procedural fairness and "sur-rebuttal evidence" and suggests that parties can file a motion to deal with any improper rebuttal evidence by Centra. If Centra intends to file rebuttal evidence on 8 issues, as it has indicated it will, Centra should, to be fair to the witnesses and parties, confront that witness with this "rebuttal" evidence in cross-examination while he or she is in the witness box. This is the recognized and usual process for giving intervener witnesses, at an oral hearing, an opportunity to explain their view and opinion to the Centra evidence which was filed after their evidence. This rule applies not only to the contradictory evidence, but to closing argument as well. For this fairness to occur, there needs to be an opportunity of the intervener witnesses to respond to the contradictory "rebuttal" evidence of Centra (see Sopinka, *The Law of Evidence in Canada*, 3rd ed. at paras. 16.179 to 16.182 - known as the rule in *Browne v. Dunn*).

Thank you for considering these comments.

Yours truly,

THOMPSON DORFMAN SWEATMAN LLP

Per:

Antoine F. Hacault*

AFH
cc

Bob Peters, Board Counsel
Dayna Steinfeld, Board Counsel
Brent Czarnecki, Centra Gas Counsel
All Intervenors of Record

*Services provided through A. F. Hacault Law Corporation