

## Reply of IGU

### Motion for relief including response to Information Request

1. We acknowledge receipt of the May 24, 2022 Response Letter from Centra Gas Manitoba Inc. (“Centra”) to the IGU Motion for Relief.

#### **IGU**

2. Koch Fertilizer Canada, ULC (“Koch”) is a member of IGU. Centra has objected to disclosure to TDS LLP and to Intergroup of the type of information disclosed with respect to all classes of customers except Koch and the Power Stations by asserting that a separate motion needs to be filed by Koch for it to see its information.

3. This technical position is without merit. TDS LLP acts for Koch both in its capacity as a member of IGU and in its capacity as a distinct intervener.

4. Understandably so, in the 2019 GRA, Koch had received its confidential information without the necessity of signing a confidentiality agreement. While Koch appreciates Centra keeping its information confidential from other parties, no basis has been provided by Centra to refuse to automatically disclose to Koch, its confidential information. It is Koch’s information. It should be the one to decide who has access to its information.

#### **Request for Confidential Information and non-confidential information**

5. IGU wasn’t expecting an assertion by Centra that IGU failed to raise issues and deal with them in a timely manner.

Centra June 15, 2021 filing and IGU June 15, 2021 request

6. Centra notes that it filed its COSMR Submission on June 15, 2021 and asserts IGU should have sought to review the PUB order on confidentiality. It also notes PUB Order 80/21 dated July 26, 2021 by which the PUB ordered that certain portions of the filing by Centra would be treated as CSI. The proposed redactions were consistent with redactions in previous proceedings (page 7 of Order).
7. Centra has asserted at pages 10 and 11 of its Response that IGU did not act in a timely manner in advising Centra of its need for access to CSI.
8. Centra fails to disclose that on June 15, 2021, within 26 minutes of Centra distributing its filing, TDS LLP sent a request to Centra with a copy to CAC counsel, Koch and the PUB asking how access to CSI would be arranged. (See attached email)
9. Having dealt with the issue of CSI in the 2019 GRA, there was no reason to believe that the same process would not be applicable.
10. Pursuant to PUB Order 80/21 (see p. 8) parties were expected to communicate to attempt to resolve the issue of access to CSI.
11. Notwithstanding this Order, Centra chose not to respond. A follow up request to Centra was sent on April 13, 2022.
12. We notified the PUB of the unresolved issue on April 14, 2022 by email sent at 11:35 a.m.. Centra provided its preliminary submissions by email April 14, 2022 at 11:30 a.m. on refusing to share CSI even if Confidentiality

agreements were signed by the writer and Intergroup Consultants. We had not seen the 11:30 a.m. response at the time of sending the 11:35 email. (see attached emails)

13. We advised Centra of the specific request for Appendix 4 and supporting work papers in Excel format.

14. We also advised that we were also awaiting receipt of the first round of IRs from the PUB which could also be relevant to determining what confidential information might be required in order to for Interveners to assist the Board in adjudicating the COSS review.

15. Further without prejudice exchanges between Centra and TDS LLP and attempts to explain and resolve the issue – with and without access to CSI ensued.

16. In a with prejudice email dated April 19, 2022 (see attached) Centra advised, *inter alia*, that:

In your email, you indicated that IGU and Koch's request for confidential information may be influenced by whether the PUB asks any IRs which require confidential information. From the initial review, **my client does not believe any confidential information is required to provide fulsome responses to any of the PUB IRs**, which Centra believes were purposely crafted to focus exclusively on the in-scope issues and to avoid Centra having to provide any additional confidential information for this proceeding. If in the process of drafting responses Centra determines that confidential information is required I expect Centra will file the response in confidence with the Board and make a motion pursuant to Rule 13(2). In all cases, the minimal amount of information possible will be redacted and Centra will make as much information public as is reasonably possible. (emphasis added)

...

If you receive additional information or instructions, including relating to IGU's specific need for the redactions, please let me know. My client is open to

reconsidering its position if new information is provided.

17. Centra's April 19, 2022 belief that it could and would provide fulsome responses to PUB IRs without redactions proved to be incorrect. Presumably the PUB asked relevant IRs which required relevant information to be provided.

18. If Centra was of the view that the PUB IRs were irrelevant and out of scope, Centra should have objected to the relevance and the scope of the IRs. From IGU's perspective Centra takes inconsistent positions on relevance depending on whether it is the PUB's IRs or Intervener IRs.

19. Also, as of April 19, 2022, Centra was indicating it was prepared to reconsider its position if new information was provided. Centra being unable to provide fully unredacted responses to relevant PUB IRs is new information.

- (a) PUB IR I-8 asked for information on allocators. Fully redacted attachments were provided by Centra in response.
- (b) PUB IR I-9 b) requested "Please explain in more detail the process for determining the class peak based on the three years of historical data". The Centra response to this IR referred to the non-redacted response in I-8 a) **and to the redacted response in I-8 b)**. Therefore, seeing the redacted information in I-8 b) is required to understand the detailed process for determining the class peak.

- (c) PUB IR I-19 deals with Issue 10 being the interim measure for Koch. Again, there is extensive redacted information in response to this relevant PUB IR.

20. Issue 10 directly impacts Special Contract and the proposed interim relief for that class. However, there are several instances where the relevant information is provided in response to PUB IR I-19 for all other classes except for the classes which are directly affected by Issue 10 – the Special Contract class and the Power Stations class.

21. This is manifestly unfair because Koch is precluded from seeing its own CSI.

#### **Continuing communications after April 19, 2022**

22. Having received the PUB IRs, Interveners focused on getting their IRs filed. They did so on April 22, 2022.

23. By April 28, 2022, communications were still progressing with a view of having Mr. Bowman meet Centra’s regulatory team to attempt to find a solution. (See attached emails)

24. The communications between TDS LLP and Centra continued including during the May 1 to May 4 CAMPUT conference held in Vancouver as well as after that conference.

25. By email dated May 3, 2022, TDS LLP provided to Centra examples of non-confidential COSS models provided in Alberta and provided further reasons for requesting the information. It also requested that Mr. Bowman have the opportunity to meet the Centra regulatory team. By email dated Thursday May 5,

2022, Centra finally agreed to allow Mr. Bowman to speak with Marnie van Hussen of Centra with a view of attempting to find a solution. (See attached email exchange.)

26. No fulsome solution was arrived at. On Thursday May 12, 2022, Centra advised it would not provide a response to IGU/Centra I-1 and Centra did not propose any solutions to deal with IGU concerns on lack of information.

27. Centra's IR responses were provided on Monday, May 16, 2022.

28. After review of the IR responses, IGU filed its May 19, 2022 motion.

29. We submit that IGU acted promptly on the day of the June 15, 2021 filing in notifying Centra of its request and thereafter, in accordance with the PUB's Order 80/21 made numerous attempts to resolve the issues without resorting to filing a Motion.

30. Given that attempts at finding a solution continued to May 6, 2022 and Centra advising on May 12 that no proposed solution was acceptable, it was reasonable to wait to see what public information would be filed by Centra on May 16 and whether any responses to relevant, in scope PUB IRs required redaction.

#### **Access to Confidential Information**

31. IGU is not seeking confidential information in and of itself. IGU provided Centra many options for how to avoid the need for confidential information in this proceeding. Centra has rejected those options, so the sharing of confidential information may be the only way to achieve a full and fair proceeding.

32. The importance of the information at a “discovery” stage should be obvious. If it was relevant and in scope for the PUB IRs to receive CSI why would it not be useful for Intervenor experts?

### **Approach to relevance at a discovery stage**

33. At page 5 of its Response, Centra refers to PUB Orders decided more than 10 years ago – Orders 95/10 and 95/11.

34. The following sections of *The Public Utilities Board Act*, C.C.S.M. are relevant to this issue:

#### **Procedure governed by rules**

24(1) All hearings and investigations conducted by the board shall be governed by rules adopted by the board.

#### **Rules of evidence not binding on board**

24(2) The board is not bound by the technical rules of legal evidence.

#### **Rules of practice, their publication**

24(3) The board may make rules of practice, not inconsistent with this Act, regulating its procedure and the times of its sittings, but the rules do not come into force until they are published on the board's website.

#### **Board to have powers of Court of Queen's Bench in certain matters**

24(4) The board, except as herein otherwise provided, as respects the attendance and examination of witnesses, the amendment of proceedings, the production and inspection of documents, the enforcement of its orders, the payment of costs, and all other matters necessary or proper for the due exercise of its powers, or otherwise for carrying any of its powers into effect, **has all such powers, rights, and privileges as are vested in the Court of Queen's Bench or a judge thereof.**

#### **Orders involving expense to parties to be after notice and hearing**

48 The board shall not make an order involving any outlay, loss, or deprivation to any owner of a public utility, or any person without due notice and **full opportunity to all parties concerned, to produce evidence and be**

**heard at a public hearing of the board**, except in case of urgency; and in that case, as soon as practicable thereafter, the board shall, on the application of any party affected by the order, re-hear and reconsider the matter and make such order as to the board seems just.

35. From the statutory framework we can see that the PUB is not bound by the rules of evidence. This has been interpreted as meaning that administrative tribunals should not be bound by the strict rules of hearsay, relevance, etc. There is not statutory reason to apply a strict rule of relevance at a discovery stage.

36. Second, the statutory framework provides the PUB with the same procedural powers at those of a Queen's Bench judge. This is an expression of legislative intention that the PUB can be guided by civil proceedings in procedural matters.

37. Lastly, as is obvious from issue 10 being the proposed interim relief of some \$838,000, this is a hearing involving possible significant financial impacts. COSS will be used as an important tool in allocation costs and the setting of rates.

38. Having been recognized as having Intervener status, Interveners have a protected statutory right to a **"full opportunity to all parties concerned, to produce evidence and be heard at a public hearing of the board"**.

39. The reasons provided by the PUB in Orders 95/10 and 95 11 cited by Centra were issued prior to the Supreme Court of Canada's decision in *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 (CanLII).

40. In *Vavilov* the SCC changed the previous approach to reviews of administrative board decisions. It also re-emphasized the need for boards to respect the statutory intent of the framework in which they operate. It held, *inter alia*,

[34] Any framework rooted in legislative intent must, to the extent possible, respect clear statutory language that prescribes the



applicable standard of review. This Court has consistently affirmed that legislated standards of review should be given effect:

[111] It is evident that both statutory and common law will impose constraints on how and what an administrative decision maker can lawfully decide: see *Dunsmuir*, at paras. [47 and 74](#). For example, an administrative decision maker interpreting the scope of its regulation-making authority in order to exercise that authority cannot adopt an interpretation that is inconsistent with applicable common law principles regarding the nature of statutory powers.

[133] It is well established that individuals are entitled to greater procedural protection when the decision in question involves the potential for significant personal impact or harm: *Baker*, at para. [25](#).

41. We respectfully submit that, the circumstances of this case, when read with the legislative intent of providing affected parties with “a full opportunity to produce evidence and be heard” supports IGU’s position on disclosure.

42. To the extent that the previous reasons of the PUB suggest a lesser procedural right and protection, with submit those reasons should be revisited in light of the approach outlined in *Vavilov*.

### **Reasonable effort**

43. Ms. van Hussen gave a description of what she thought needed to be done to provide the information Mr. Bowman required. She uses subjective qualifiers such as “significant work effort” (para. 14), “not a simple undertaking” (para. 14) but provides no details on the number of hours required.

44. For example, putting a dummy value in a cell with a (+/- 50% value) should take less than 1 minute per cell for 300 cells. That would be 5 hours of work plus some hours of verification. An alternative is to provide the confidential model without any additional work.

45. We don't know how much effort was put in providing responses to PUB IRs and how that effort compared with providing an answer to the IGU IR.

46. Mr. Bowman's point in providing alternatives based on dummy values or previously published data such as the data from 2013/14 was so he could do his work while maintaining confidentiality.

47. Centra's evidence falls short of proving its onus that the alternatives or some variation of them can't be provided with "reasonable effort".

### **Other jurisdictions**

48. Mr. Bowman's evidence on the issue of the type of information regularly provided for COSS reviews is entitled to significant weight. He has done the Hyrdo COSS hearing and is therefore in a position to inform the PUB of what and why similar information in Gas hearings is helpful. Centra's witness does not have this cross-Canada knowledge or expertise.

49. IGU has reviewed Centra's reply and sees no new information that changes the IGU motion. Centra continues to provide no information to indicate why it feels it can avoid providing industry standard and best practice information for a Cost of Service Methodology review.

50. Centra's allegation that preparing working models is a lot of work, in part because the model contains "30 working tabs", is fully outside of utility practice in Canada. IGU notes that Nelson Hydro, with less than \$20 million in revenues, provides a full electronic cost of service model, as required by the BCUC:

[https://docs.bcuc.com/Documents/Proceedings/2021/DOC\\_60712\\_A-3-Request-for-COSA-Spreadsheet-Model.pdf](https://docs.bcuc.com/Documents/Proceedings/2021/DOC_60712_A-3-Request-for-COSA-Spreadsheet-Model.pdf)

51. Northwest Territories Power Corporation also provides a full working cost of service model, comprising 17 tabs, and they have less than 10,000 customers:

<https://www.nwtpublicutilitiesboard.ca/sites/nwtpub/files/supporting/2018%2003%2016%20NTPC%202016-19%20General%20Rate%20Application%20Phase%20II%20Compliance%20Filing.pdf>

### **Disclosure to CAC**

52. If CAC is provided with any of the information it requests, we respectfully request that IGU and its counsel and advisors receive the same information.

### **When will a full transparent review of the COSS methodology occur?**

53. Centra seems to suggest, without much precision, that an electronic cost of service model was not required for this review (page 12) and that this hearing is only to be a “conceptual review of cost of service methodologies”.

54. If that is correct, why was there illustrative modeling? When do the parties receive and review the subjective analysis and subjective implementation of the concepts? When do parties see if the subjective allocation of cost according to a concept was properly done?

55. Will Centra provide a fully updated and fully functional model at the next GRA? Will it be in scope to test that model?

56. Trying to dissect the COSS review into segments is neither cost effective nor efficient.

All of which is respectfully submitted May 26, 2022.