

The Public Utilities Board

2nd Floor
280 Smith Street
Winnipeg, Manitoba
R3C 1K2

MANITOBA

)

Order No. 124/96

)

THE PUBLIC UTILITIES BOARD ACT

)

December 20, 1996

BEFORE: G. D. Forrest, Chairman
D. L. Barrett-Hrominchuk, Member
W. E. Chiswell, Member
J. Hillard, Member

AN APPLICATION BY CENTRA GAS MANITOBA INC. FOR A FINAL ORDER APPROVING:

- (A) A FRANCHISE AGREEMENT BETWEEN THE RURAL MUNICIPALITY OF PIPESTONE AND CENTRA GAS MANITOBA INC. FOR DISTRIBUTION OF NATURAL GAS WITHIN THE RURAL MUNICIPALITY;
- (B) A FINANCIAL FEASIBILITY TEST FOR THE EXTENSION OF NATURAL GAS SERVICE TO INTERPROVINCIAL PIPE LINE INC.; AND
- (C) AN AGREEMENT MADE THE 9TH DAY OF OCTOBER, 1996 BETWEEN CENTRA GAS MANITOBA INC. AND INTERPROVINCIAL PIPE LINE INC.

1.0 Appearances

R. F. Peters
B. Regehr

Counsel for the Public Utilities Board of Manitoba
(the Board)

J. Foran, Q.C.

Counsel for Centra Gas Manitoba Inc. ("Centra")

2.0 Witnesses

2.1 Centra Gas Manitoba Inc.

J. D. Brett

Vice-President, Gas Supply and Corporate Secretary

G. Barnlund

Manager, Industrial Large Commercial Markets

G. Whitehill

Controller

3.0 Intervenors

3.1 Communication Energy & Paperworkers Union

G. Wilcox

Representative

J. Hayden

Representative

3.2 Consumers' Association of Canada (Manitoba) Inc./Manitoba Society of Seniors ("CAC/MSOS")

B. Graham

Counsel

3.3 Direct Energy Marketing Ltd.

P. Budd

Counsel

3.4 Heating Ventilating and Air Conditioning Coalition

D. Foreman

Representative

3.5 Midwest Food Products

V. Funk

Representative

3.6 Municipal Gas Inc. ("Municipal")

John Carstairs

Counsel

3.7 Simplot Canada Limited

G. Collis

Representative

3.8 TransCanada Gas Services

M. Stauff

Counsel

4.0 Background

On October 30, 1996 Centra Gas Manitoba Inc. ("Centra"), on its own behalf and also on behalf of the Rural Municipality of Pipestone ("Pipestone") applied to the Public Utilities Board ("Board") pursuant to the provisions of the *Public Utilities Board Act* and the *Municipal Act* for an order approving and authorizing a franchise agreement between Pipestone and Centra for the distribution of natural gas within the municipality. Included in the Application was a financial feasibility study calculated on the basis of a 30 year net present value test.

By letter dated November 7, 1996, the Board directed this franchise extension Application be heard in conjunction with Centra's General Rate Application in November of 1996.

On November 20, 1996 Centra amended its Application by requesting Board approval of the Agreement, made the 9th day of October, 1996 between Centra and Interprovincial Pipe Line Inc. ("IPL") as a "special contract", as the agreement contains provision for a minimum annual charge to IPL.

5.0 Application

Pipestone gave first reading to its by-law no. 27/96, authorizing Pipestone to grant a franchise to Centra for the supply of natural gas to all or part of the municipality.

During the hearing, Centra filed a copy of a resolution by Pipestone on November 14, 1996, clarifying its request that the franchise be granted for the entire municipality. For the purposes of Pipestone's and Centra's Application, the only customer proposed is IPL. IPL applied to the National Energy Board for authorization to construct additional facilities on IPL's system for the purpose of increasing delivery capability. Included in IPL's facilities proposal to the NEB was the installation of a line heater to be installed at IPL's pumping station just north of Cromer, Manitoba. Natural gas is proposed as the primary fuel for operation of the line heater, which led to a subsequent agreement between IPL and Centra guaranteeing that the heater will be operated by natural gas.

Centra and IPL are in discussion as to the preferred route along which to construct the three inch steel line from the Virден town border station. Of the two alternative routes being discussed, the cost of construction, together with the scheduling and environmental approvals is the same.

In addition to the new transmission line to the IPL facilities, there is also a requirement to upgrade Centra's existing system north of Virден. In order to meet IPL's line heater peak demand, an eight mile "loop" of four inch steel will be required at the north end of, and along side, the existing three inch steel Miniota-Virден line.

The total capital cost to serve IPL is \$1,869,680. Of this amount, the capital cost of the loop portion of the project is estimated to be \$430,170. Centra has proposed rolled-in treatment of the looped portion of this project such that all system customers will pay for it. Centra submits to do otherwise, would confer an advantage, or disadvantage, to certain users based

on their proximity to transmission facilities and based on the time their load is attached to the system. Centra also submitted that rolled-in treatment was consistent with customer entitlement to service and the utility's obligation to serve.

Assuming that the capital cost of the loop portion is cost-shared by Centra's system customers, a 30 year net present value ("NPV") feasibility test based on construction costs of \$1,439,510 was calculated, yielding a required customer contribution by IPL of \$473,180.

IPL's line heater is estimated to consume approximately 200,000 Mcf per year. In the October 9, 1996 Agreement, IPL has agreed to pay a minimum annual charge which when calculated will produce a gross margin (revenue - cost of gas) for Centra in the amount equivalent to \$163,200 plus applicable taxes for each 12 month period beginning April 1, 1997 for a five year term. Because of the minimum annual charge included in the Agreement, Centra has requested approval of the agreement as a special contract but with IPL considered an LGS 1 customer.

6.0 Interveners' Positions

6.1 CAC/MSOS

CAC/MSOS raised four issues relative to the proposed franchise with Pipestone. CAC/MSOS disagreed with the 30 year NPV test utilized by Centra on the basis that this particular franchise extension is quite different from the franchise extensions done to provide natural gas to other unserved areas of rural Manitoba. CAC/MSOS suggested this franchise extension to Pipestone is analogous to adding one customer within an existing franchise area and therefore the five year revenue to cost ratio test should be used.

The second issue raised by CAC/MSOS dealt with the looping costs. Because it was beyond dispute that these costs would not be incurred but for extension of service to IPL, CAC/MSOS submitted that the looping costs should be included as part of any feasibility test.

As a third issue, CAC/MSOS was concerned about the risks that the residential consumers face in the event that IPL does not renew its five year agreement with Centra. CAC/MSOS suggested that if IPL was not prepared to commit to a longer term agreement, then there should be a requirement for IPL to pay the balance of any unrecovered capital costs of the project or alternatively pay a risk premium.

As a final issue, CAC/MSOS was not opposed to the costs of the project being rolled-into Centra's system costs, but did want the looping costs included in the appropriate feasibility test and also sought a consistent approach to all system expansions, including rural expansions.

6.2 Municipal Gas

Municipal submitted that the expansion to IPL facilities should have been applied for on the basis of the five year revenue to cost projections which should include the upstream looping costs identified in the Application. Municipal raised the five year term of the Agreement as a potential risk should IPL not extend its Agreement with Centra. Municipal also raised issues in respect of the load factor if this customer was added to the system and what implications that may have for the overall gas portfolio of Centra.

7.0 Board Findings

- Franchise Agreement

The Board finds the content of the Franchise Agreement with Pipestone to be consistent with the content of the generic form of a Franchise Agreement previously approved by the Board in Order 109/94. The Board will therefore approve the Franchise Agreement with Pipestone and will also accept Centra's and Pipestone's request for the franchise to extend to the entire municipality.

- Special Contract

The October 9, 1996 Agreement between Centra and IPL was filed as an exhibit in the proceedings. IPL will be considered a class 1, large general service, firm sales customer but will have to pay a minimum annual charge which, when calculated, will produce a gross margin for Centra in an amount of \$163,200 plus applicable taxes for each 12 month period beginning April 1, 1997.

The inclusion of the minimum annual charge in the Agreement requires approval of the Board as such a charge is not presently in Centra's approved tariff of rates and charges.

Considering the terms of the Agreement, the magnitude of costs expected for this project, together with the forecast volumes, the Board finds the minimum annual charge, which when calculated will produce a gross margin for Centra of \$163,200 plus applicable taxes, to be reasonable and appropriate. The Board will approve the provision of the October 9, 1996 Agreement that contains the minimum annual charge to IPL.

- Rolled-in vs. Incremental

The evidence is clear that IPL is the only customer presently planned to receive service from the expansion. The construction costs are \$1,439,510. The upstream looping costs of \$430,170 are to enable Centra to meet IPL's increased peak demand after May 1, 1997. Despite Centra's submission to the contrary, the Board is not, at this time, prepared to "roll-in" the \$430,170.00 of looping costs into overall system costs. The evidence also indicates that Centra is undertaking a study of the rolled-in vs. incremental issue and may advance that issue at some future date. If requested, the Board would be prepared to further examine the treatment of the IPL costs in conjunction with such a further proceeding.

For the present application, Centra's agreement with IPL is structured in such a way that IPL will provide the necessary contribution, regardless of whether the Board ultimately determines rolled-in or incremental treatment for upstream costs. Because the Board has not accepted rolled-in treatment of the looping costs, the \$430,170 is to be paid by IPL as part of the customer contribution.

- Feasibility Test

This application has also raised the issue of the appropriate feasibility test to be utilized when expanding Centra's system. Prior to Order 110/94, Centra utilized an expansion policy that required a new community to achieve a revenue to cost ratio of 1.0 by the end of the fifth

year to be considered feasible. For system expansions under the Canada-Manitoba Infrastructure Works Program, the Board utilized a 30 year NPV based feasibility test. In the present Application Centra advocates the 30 year NPV test be used to assess the feasibility of, and customer contribution required for, expansion to IPL.

Because this expansion is currently for the addition of one customer the Board finds that the revised 5 year revenue to cost ratio test, as filed in Centra Exhibit #57, is appropriate. The five year time frame is a reasonable period of time by which the customer should no longer be subsidized by existing system customers. This time frame also corresponds with the term of IPL's Agreement with Centra. Based on the revised 5 year revenue to cost ratio test utilizing costs of \$1,439,510, a customer contribution of \$519,156 is required to produce a revenue to cost ratio of 1.0 in the fifth year of operation.

8.0 IT IS THEREFORE ORDERED THAT:

1. The Franchise Agreement between Pipestone and Centra attached hereto, BE AND IS HEREBY APPROVED.
2. The provision of the October 9, 1996 Agreement between Centra and IPL that requires IPL to pay a minimum annual charge, which, when calculated will produce a gross annual margin of \$163,200, plus applicable taxes, BE AND IS HEREBY APPROVED.
3. The financial feasibility test for extension of services to IPL be revised such that the revenue-to cost ratio achieved by the end of the fifth year of operation be 1.0 with a consequence that the customer contribution required is \$519,156 exclusive of looping costs, BE AND IS HEREBY APPROVED.
4. The request by Centra to roll-in-the looping costs of \$430,170 into system costs, BE AND IS HEREBY DENIED, and the \$430,170 of looping costs be added to the customer contribution of \$519,156.

THE PUBLIC UTILITIES BOARD

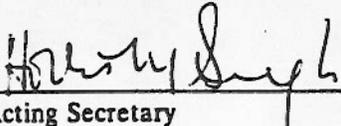
"G. D. FORREST"

Chairman

"H. M. SINGH"

Acting Secretary

Certified a true copy of Order No. 124/96 issued by
The Public Utilities Board


Acting Secretary

AGREEMENT

made this day of 1996.

BETWEEN:

THE RURAL MUNICIPALITY OF PIPESTONE
(hereinafter called "the Municipality")

- and -

CENTRA GAS MANITOBA INC.
(hereinafter called "the Company")

WHEREAS the Municipality is desirous of obtaining a supply of natural gas for the Municipality and the inhabitants thereof not currently receiving natural gas;

AND WHEREAS it is agreed between the Municipality and the Company that the Company supply natural gas to the Municipality and the Interprovincial Pipeline facility at Cromer, in Manitoba and as set out in the map attached as Appendix 1 hereto (the Territory"), upon the terms and conditions set out herein:

AND WHEREAS by by-law duly passed by the Council of the Municipality (the "By-Law"), the Reeve and the Administrator having been authorized and directed to execute this Agreement on behalf of the Municipality;

NOW THEREFORE pursuant to the premises and in consideration of the sum of Ten Dollars (\$10.00) now paid by the Company to the Municipality (the receipt of which is hereby acknowledged), and in further consideration of the mutual covenants hereinafter set forth it is mutually covenanted and agreed by the parties as follows:

1. Subject to compliance with the provisions of The Municipal Act (Manitoba), The Public Utilities Board Act (Manitoba) and The Gas Pipe Line Act (Manitoba), the Municipality hereby grants to the Company, its successors and assigns, subject to the terms, conditions and provisions herein contained, the sole and exclusive franchise to supply natural gas to the Municipality and its inhabitants in the Territory, for a term of thirty (30) years from the date hereof. Provided always however, the Company agrees that with respect to all those portions of the Territory which the Company does not supply natural gas to, in the event the Municipality acting reasonably, requests the Company to supply natural gas upon the same terms and conditions as provided in this Agreement, and the Company refuses to do so, the Company shall relinquish that portion of the Territory from the franchise hereinbefore granted. The Municipality further grants to the Company the full power, right, license and liberty to enter upon property of the Municipality and to lay down, take up, relay, connect, disconnect, repair, remove, maintain, replace and operate a gas distribution system and any and all necessary or convenient mains, pipes, services, and all other equipment and appliances as the Company may deem desirable for the supply transmission and distribution of gas (collectively the "Gas Distribution System") in, upon, over, across, under and along the public highways, streets, roads, bridges, walkways, sidewalks, road allowances, squares, lanes, alleys, ditches and other public places (collectively the "Highways") within the boundaries of the Municipality as the same may from time to

time exist, as may be necessary or convenient for the purpose of transporting and supplying natural gas to the consumers thereof. The Company is hereby authorized for the purposes aforesaid to enter upon any or all of the said Highways and to break the surface and make the necessary excavations therein and, without limiting the generality of all of the foregoing, to do all things reasonably necessary or convenient for the supplying of natural gas and for laying down, taking up, relaying, connecting, disconnecting, repairing, removing, maintaining, replacing and operating the Gas Distribution System.

2. (a) Subject to the provisions hereof, Centra agrees that during the term of this Agreement, it will install and maintain an adequate natural gas distribution system within the Territory and will provide such quantities of natural gas as will meet the requirements of the inhabitants, businesses and industries located in the Territory;

(b) Centra shall not be bound to construct or extend its mains or provide natural gas or gas service if Centra is, for any reason, unable to obtain delivery of natural gas at or near the limits of the Territory, or an adequate supply thereof to warrant the construction or extension of its mains for the provision of natural gas, or, in connection or extension of its mains, if such extension is not reasonable and would not furnish sufficient business to justify the construction and maintenance thereof; any such extension, including contributions toward the cost of construction which may be required from inhabitants, businesses and industries located in the Territory, shall be in accordance with policies approved from time to time by the Board;

(c) In the event the amount of natural gas supplied to Centra at or near the limits of the Territory is insufficient to meet the requirements of connected consumers, Centra shall have the right to prescribe reasonable rules and regulations for allocating the available supply of natural gas to domestic, commercial and industrial consumers in that order of priority. The allocation of natural gas shall also be subject to the provisions of The Gas Storage and Allocation Act and Regulations thereto;

(d) In the event that either of the conditions referred to in subsections (b) and (c) occur or are likely to occur, Centra will advise the Municipality thereof as soon as the conditions become apparent to Centra.

3. The Company agrees:

(a) In the execution of the rights and powers granted hereby and in the performance of the work in connection therewith, it shall do as little damage as possible and shall keep passage of the Highways as far as may be practicable free and uninterrupted;

(b) It shall not interfere with, disturb or damage any existing pipes or lines of other utilities, unless the express consent of such other utilities is first had and received;

(c) It shall, within a reasonable time after any construction work, restore the Highways to a state of repair as nearly as possible equal to their former state to the satisfaction of the Municipality acting reasonably, where such restoration is required by reason of the Company having installed or constructed the Gas Distribution System or part thereof.

(d) In the execution of the rights and powers granted hereby it shall construct, locate and operate its Gas Distribution System in such manner as will not endanger the public health or safety.

4. Prior to the installation of any part of the Gas Distribution System, the Company shall file with the Municipality plans showing the location, depth and size of all mains, pipes or conduits and any other equipment or structures (but not including geodetic information) intended to be installed or constructed and shall comply with all by-laws of the Municipality relating to the construction of such works. The Municipality shall have the right to designate to the Company the location of the Gas Distribution System in the Highways within the Municipality and the Gas Distribution system shall be located in alleys, lanes and boulevards rather than in streets when reasonably practicable and where the cost of so doing will not be unreasonably high; and the Company shall give notice in writing to the Municipality of its intention to break up any streets or lanes not less than seven (7) days before the beginning of such work except in cases of emergency when immediate notice shall suffice. The Company shall supply complete plans of its Gas Distribution System to the Municipality on as-built basis and will from time to time keep such plans up to date as and when alterations are made.

5. (a) The Company shall protect and indemnify the Municipality against any damages or expenses in connection with the execution of the powers granted hereby and under the Act, and from and against all claims, demands, and actions by third persons in respect of damages sustained by reason of any operations of the Company and in relation to its distribution system.

(b) The Company shall satisfy the Board that it has in place at all times liability insurance coverage sufficient to satisfy any potential claim, demand or action against the Company or the Municipality for such damages.

6. (a) Before the Municipality makes any repairs of, or alterations to, any of its public services which will involve excavations or which may in any way affect any of the Company's lines plant or equipment, the Municipality shall give notice as set forth in the regulations in effect at that time and made pursuant to The Gas Pipe Line Act.

(b) Where practicable, the Municipality, shall have regard to the reasonable directions of the Company concerning any such repairs and alterations, but, in any event, the Municipality is free of all liability in connection with any damage done by reason of any such repairs or alterations.

7. (a) All costs in connection with the removal or relocation of any part of the Gas Distribution System, including the cost of repairs to any Highways, shall be the Company's responsibility except where such removal or relocation is required by the Municipality.

(b) Where the Municipality requests the removal or relocation of any part of the Gas Distribution System and, in the opinion of the Company it is practicable and convenient to do so, the Company shall effect such removal or relocation as soon as is reasonably possible after such request is made; provided that all costs in connection with such removal or relocation shall be paid by the Municipality including, without limiting the generality of the foregoing;

- (i) the cost of repairs to any Highway; and
- (ii) the net book value plus the cost of replacement, less salvage value, of any part of the removed or relocated Gas Distribution System that is rendered unusable by virtue of such removal or relocation.

8. Natural gas shall be supplied to consumers in the Territory at the rates and on the terms and conditions approved or fixed from time to time by the Public Utilities Board of Manitoba or other regulatory authority having jurisdiction (the "Board").

9. The Company shall maintain in force during the currency hereof a policy of insurance provided by an insurance company licensed to do business in the Province of Manitoba, insuring against public liability and property damage in connection with the operations of the Gas Distribution System within the Territory.

10. The Municipality agrees that it will not, for a period of thirty (30) years or longer, if this Agreement is renewed in accordance with the provision of paragraph 11 hereof, grant to any other person, firm or corporation the right to deliver natural gas within the Municipality or to erect or maintain a Gas Distribution System in, upon, over, across, or along its Highways for the purpose of supplying natural gas; provided however that this paragraph shall not prevent the sale or delivery within the Municipality by any other person, firm or corporation of liquefied petroleum gas, propane or other product delivered in tanks or containers and not transmitted by pipeline.

11. (a) It is further agreed that at the expiration of the term hereof and at the expiration of each renewal hereof, the Municipality may, after giving one (1) year's written notice prior to the date of the termination of the Agreement or of any renewal hereof, at its option (to be expressed by by-law of the Municipality), elect to purchase that portion of the Gas Distribution System with respect to its operations within the Municipality that is used exclusively for the distribution of natural gas in the Territory, pursuant to this Agreement, but not any portion of the Gas Distribution System that is used for transmission of natural gas through the Municipality, for such price and on such terms as may be agreed upon between the parties hereto, or failing such agreement then at such price and on such terms including that portion of the Gas Distribution System the Municipality is entitled to purchase as may be fixed and settled by the Manitoba Public Utilities Board (the "Board"), or if the Board shall refuse to so fix and settle the price then the said price and terms shall be such as may be fixed and determined by arbitration under the provision of The Arbitration Act (Manitoba) and each of the parties shall appoint an arbitrator and the arbitrators so appointed shall appoint a third arbitrator to act as chairman who shall be versed in this special branch of engineering economics, and in the event the arbitrators appointed by each party are unable to appoint a third arbitrator the third arbitrator shall be appointed by the Chief Justice of the Court of Queen's Bench of the Province of Manitoba. The decision of the Board or of a majority of the said arbitrators shall be binding upon the parties in arriving at the price. The Board or the said arbitrators shall make allowance for severance of the property and operation from other properties and operations of the Company in Manitoba. In the event of such purchase, the Company and the Municipality will enter into an agreement

respecting the use of and payment for such use by the Municipality of Company-owned facilities which are not being purchased hereunder and for the sale of natural gas to the Municipality for resale by the Municipality to the inhabitants of the Municipality at such rates as may be agreed upon between the Company and the Municipality and approved by the Board. If the Municipality does not notify the Company in writing of its intention to purchase the property of the Company as aforesaid at least one (1) year before the expiration of this Agreement or any renewal thereof, this Agreement will be ^{REQUIRED TO BE} automatically renewed for an additional term of ten (10) years, and at the end of the said ten (10) year renewal term the said Agreement will be further automatically extended in absence of notice aforesaid for additional terms of ten (10) years from time to time. Provided further that at the time of any such renewal, changes in the terms of this Agreement may be ^{MADE} at the request of either party with the approval of the other, and in the absence of such approval such changes may be made by reference to and under the authority of and with the approval of the Board. Notwithstanding anything contained elsewhere in this Agreement, it is understood and agreed that if the Municipality exercises its option to purchase the property of the Company with respect to its distribution operations with the area designated in this Agreement, such exercise shall not affect the right of the Company to continue to operate its transmission facilities in such area for so long as the same may be required by the Company.

(b) The Company agrees that it shall provide written notice to the Municipality at least 2 years prior to the expiration of the term hereof and of each renewal hereof, of the Municipality's election as set forth in paragraph 11(a) hereof.

12. Notwithstanding an other term or condition contained herein, neither party shall be liable to the other for failure to carry out its obligations hereunder when such failure is caused by force majeure as hereinafter defined. The term force majeure means civil disturbances, industrial disturbances (including strikes and lock-outs), interruptions by government or Court orders, present or future valid orders of any regulatory body having proper jurisdiction, acts of the public enemy, wars, riots, blockades, insurrections, failure or inability to secure materials, permits or labourers by reason of priority regulations or orders of government, land slides, lightning, earth quakes, fires, storm, floods, wash-outs, explosions, breakage or accident to machinery or the Gas Distribution System, temporary or permanent failure of gas supply, an act or omission (including failure to deliver gas) reducing supply of gas to the Company's supplier, or any other causes or circumstances to the extent such cause or circumstances was beyond the control of the party prevented from carrying out its obligations by the act of force majeure.

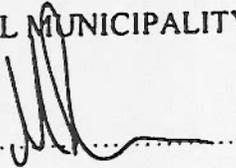
13. Subject to the provisions of The Public Utilities Board Act, the Company shall not without the consent of the Municipality, such consent not to be unreasonably withheld, assign this Agreement or the rights, franchises, powers and privileges granted hereby or any of them, provided however the Company may assign this Agreement to any corporation with which the Company may then be associated or affiliated, as those terms are used in The Corporations Act (Manitoba) and The Income Tax Act (Canada).

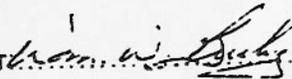
14. This Agreement will be binding upon and enure to the benefit of the parties and their successors and assigns

15. This Agreement is subject to the approval of the Manitoba Public Utilities Board.

IN WITNESS WHEREOF the parties have duly executed this Agreement as of the day and year first above written.

RURAL MUNICIPALITY OF PIPESTONE

Per:  Reeve

Per:  Administrator

CENTRA GAS MANITOBA INC.

Per:President

Per:Secretary