

Order No. 26/17

**ORDER IN RESPECT OF A MOTION BY TRANSCANADA PIPELINES LIMITED FOR
DISCLOSURE OF A CONFIDENTIAL FILING BY CENTRA GAS MANITOBA INC.**

February 24, 2017

BEFORE: Robert T. Gabor, Q.C., Chair
Carol Hainsworth, C.B.A., Member
Marilyn Kapitany, B.Sc. (Hon), M.Sc., Member
Susan Nemec, FCA, FCPA, Member
Larry Ring, Q.C., Member

TABLE OF CONTENTS

1.0 Summary..... 3

2.0 Background..... 7

 The Board’s Rules for Receipt of Confidential Filings 7

 The Filing of the Report by Centra in Confidence..... 9

 Motion by TCPL..... 11

 Response by Centra..... 13

 Response by CAC..... 15

3.0 Board Findings 16

4.0 IT IS THEREFORE ORDERED THAT: 23

1.0 Summary

By this Order, the Manitoba Public Utilities Board (“Board”) grants TransCanada PipeLines Limited’s (“TCPL”) requested alternate relief by placing on the public record Centra Gas Manitoba Inc.’s (“Centra”) argument for the confidential filing of Centra’s Report on the possible replacement of its Western Canadian gas supply contract. The Board also issues reasons for accepting the filing of Centra’s Report entirely in confidence pursuant to the Board’s Rules of Practice and Procedure.

The Board denies TCPL’s request for disclosure of the Report that was filed by Centra and received in confidence by the Board. The Board also denies the request that it grant TCPL access to Centra’s Report pending the signing of non-disclosure agreements or other mechanisms to protect the information.

Through a Motion in writing, TCPL is seeking disclosure of Centra’s December 2015 Report, which analyzes the possible replacement of Centra’s Western Canadian gas supply contract to include delivery hubs other than AECO and Empress (the “Report”). The Report was filed in accordance with the Board’s Directive 10 in Order 108/15, which instructed Centra as follows:

Centra is directed to, by no later than December 15 2015, file a report with the Board as to the possible benefits or lack thereof of expanding the request for proposals with respect to the replacement of Centra’s current Western Canadian gas supply contract to include delivery at hubs other than AECO or Empress.

Direction 10 of Order 108/15 flowed from the Board’s concern about “changing market conditions and what appears to be an increasing amount of shale natural gas being produced in the United States” and stated that it would consider the Report filed pursuant to Directive 10 ahead of Centra issuing a Request for Proposal (“RFP”) to replace its Western Canadian supply contract.

The Report was filed with the Board by Centra in December of 2015 with a covering letter that requested the Report be accepted in strict confidence as it relates to the entirety of Centra's Gas Supply Portfolio and existing and future contracting strategies. The Report was received in confidence by the Board and was not placed on the public record.

By its Motion, TCPL seeks the following relief:

- (1) That the Board place an un-redacted copy of the Report on the public record;*
- (2) In the alternative, that the Board place Centra's argument for confidential filing on the public record, and that the Board issue reasons for accepting filing of the Report entirely in confidence sufficient to allow for judicial review of application of Rule 13(2);*
- (3) In the further alternative, that the Board grant access to the Report pending the signing of non-disclosure agreements or other mechanisms to protect the information (e.g. precluding access to TransCanada's pricing desk employees).*

Centra opposes TCPL's Motion and requests that the Board refuse to place an unredacted copy of the Report on the public record and also refuse to grant access to the Report to any TCPL employees. Centra does not object to the Consumers' Association of Canada (Manitoba) Inc. ("CAC"), a non-competing party, being granted access to the Report if the Board determines that granting access to the Report to CAC and its legal counsel is in the public interest, and if the appropriate safeguards are firstly put in place by the PUB, to prevent, to the greatest extent possible, any disclosure of the Report, inadvertent or otherwise, by CAC and its legal counsel.

The Board also received submissions from CAC, which was a registered Intervener, during the 2015/16 Cost of Gas hearing that gave rise to Order 108/15. In that hearing, CAC was granted access to documents filed in confidence by Centra during the proceeding upon providing a signed Non-Disclosure Agreement by its consultant and a

signed Solicitor's Undertaking by its legal counsel. On the filing of the Report by Centra, the Board advised CAC that the Report had been filed in confidence and provided a draft NDA and Undertaking for review by CAC's counsel. CAC acknowledges that it was informed by Board counsel about the filing of the Report and of the Board's determination regarding CAC's access to the Report. CAC does not wish to see the Report at this time as the Report does not appear to have immediate relevance to any proceeding, but states that it will want access to the Report at the next Cost of Gas hearing.

Just Energy Manitoba L.P. ("JEML") was also a registered Intervener in the 2015/16 Cost of Gas proceeding and was provided with the materials on this Motion. JEML advised the Board that it did not intend to provide a response to TCPL's Motion.

The Board finds that there are no procedural impediments to TCPL filing its Motion, but that the Motion is moot as the initial reason provided by TCPL for the request was met before the Motion was filed. The information of interest to TCPL, namely Centra's Mainline transportation contracting information from November 1, 2016 to October 31, 2019, has already been provided to TCPL.

In any event, and if the Motion is not moot, the Board grants TransCanada PipeLines Limited's ("TCPL") requested alternate relief by placing on the public record Centra Gas Manitoba Inc.'s ("Centra") argument for the confidential filing of Centra's Report on the possible replacement of its Western Canadian gas supply contract. The Board also issues reasons for accepting the filing of Centra's Report entirely in confidence pursuant to the Board's Rules of Practice and Procedure.

The Board finds that the test for the Board's receipt of information in confidence under Rule 13 of the Board's Rules of Practice and Procedure has been met. The Report is confidential and will not be placed on the public record. However, Centra's arguments for confidential filing, which have already been provided to TCPL in the course of this Motion, together with reasons for decision will be placed on the public record.

The Board denies TCPL's request to grant TCPL access to the Report pending the signing of non-disclosure agreements or other mechanisms to protect the information. At the time the Report was received by the Board in confidence, the Board determined that CAC could access to the Report subject to conditions. However, CAC did not access the Report at that time and has now declined access. The Board therefore makes no order as to CAC's access to the Report.

2.0 Background

The Board's Rules for Receipt of Confidential Filings

The Board may, pursuant to subsection 24(3) of *The Public Utilities Board Act*, make rules of practice governing its proceedings. The Board's Rules of Practice and Procedure, which are publically available and published on the Board's website, provide for the Board's receipt of information in confidence. While Rule 13(1) provides that, where a document is filed with the Board by a party in relation to any proceeding, the Board shall place the document on the public record, the Board may receive a document in confidence in accordance with Rule 13(2):

The Board may receive information in confidence on any terms it considers appropriate in the public interest,

a) if the Board is of the opinion that disclosure of the information could reasonably be expected

(i) to result in undue financial loss or gain to a person directly or indirectly affected by the proceeding; or

(ii) to harm significantly that person's competitive position.

or

b) if

(i) the information is personal, financial, commercial, scientific or technical in nature; or

(ii) the information has been consistently treated as confidential by a person directly affected by the proceeding; and

(iii) the Board considers that the person's interest in confidentiality outweighs the public interest in the disclosure of the information.

Rule 13(3) provides that, where disclosure of any document is refused due to a claim for confidentiality and a claim for public disclosure of such documents has been made, the Board shall hear such claim on a motion made under Rule 22. When hearing a Rule 13(3) motion, the Board may examine the document to ascertain whether the claim for confidentiality or the claim for public disclosure will be sustained.

On hearing the motion, the Board may:

- (a) order the document be placed on the public record, subject to Subsection 13(5);
- (b) order the document not be placed on the public record, with such conditions on access imposed as the Board considers appropriate;
- (c) order an abridged version of the document to be placed on the public record; or
- (d) make any other order the Board finds to be in the public interest.

Rule 13(5) allows the filing party to request that the document be withdrawn prior to being placed on the public record where the Board has determined to place any part of the document on the public record.

The Filing of the Report by Centra in Confidence

The Report was filed by Centra in December of 2015 pursuant to Directive 10 of Order 108/15. At that time, Centra requested that the Board receive the filing in strict confidence, stating:

Centra considers the enclosed report to be commercially sensitive to the entirety of its Gas Supply Portfolio and existing and future contracting strategies. To protect this commercially sensitive information and to reduce the risk that public disclosure may in future prejudice negotiations and impair Centra's ability to ultimately procure a favourable Gas Supply Portfolio on behalf of its customers, Centra respectfully requests that this correspondence and the enclosed report be kept in strict confidence with the PUB.

The Board received the Report in confidence and determined that the contents would not be placed on the public record. However, the Board also determined that interveners who received access to confidential filings during the Cost of Gas proceeding that gave rise to Order 108/15 should also receive access to confidential filings emanating from directives set out in the Order, subject to the signing of a Non-Disclosure Agreement and Undertaking of Confidentiality. This decision was not communicated publicly. However, as acknowledged by CAC in its submissions on this Motion, CAC and Centra were accordingly advised by Board counsel of the Board's determinations and provided with a draft Non-Disclosure Agreement and draft Undertaking of Confidentiality. These documents were not completed by CAC and CAC has not been given access to the Report.

TCPL was not a party to and did not participate in the Cost of Gas proceeding that gave rise to Order 108/15 and Directive 10 therein. On June 23, 2016, TCPL wrote to the Board regarding the Report. Noting that the Report had been filed confidentially, TCPL stated that there was no transparency or ability of third parties to examine the decisions

being made or the information provided. TCPL further asserted that, to the extent portions of the Report were commercially sensitive, review by impacted stakeholders should nonetheless take place, subject to implementing adequate provisions to protect the confidential nature of the information.

On August 22, 2016, the Board responded to TCPL indicating the Report had been filed on a confidential basis and provided information to TCPL on the available processes under the Board's Rules for filing a motion with the Board for public disclosure of confidential documents. The Board explained in its letter that, where a party's access to confidential information would be of benefit to the Board and ratepayers and that the access would not compromise a utility's competitive position or result in financial gain or loss to a party either directly or indirectly, the Board has granted access to confidential material on the signing of non-disclosure agreements or other mechanisms to protect the information. The Board encouraged TCPL to work with Centra to examine options and solutions relevant to Centra's gas supply planning and transportation arrangements.

On October 4, 2016, TCPL wrote to Centra and stated that it wished to explore with Centra a means of providing TCPL with confidential access to the Report while addressing Centra's concern over confidentiality of any commercially sensitive information.

On October 18, 2016, Centra wrote to TCPL and provided information related to its then- recent Mainline FT contract renewals with TCPL through October 31, 2019, as well as its contractual commitments to ANR and Great Lakes storage and related transportation to the end of March 2020. Centra maintained that these contractual commitments demonstrate an ongoing reliance on the Western Canadian Sedimentary Basin, rather than a shift away from Western Canada. Centra also proposed that TCPL

discuss with Centra mutually beneficial gas supply solutions for the post-2020 timeframe.

By email to Centra dated October 20, 2016, TCPL maintained its request to seek mutually agreeable terms for access to the Report. In response on October 27, 2016, Centra advised that the conclusions of the Report had already been acted on by Centra and that disclosure of the Report would prejudice Centra's discussions and negotiations with service providers.

Motion by TCPL

On November 21, 2016, pursuant to Rule 13(3), TCPL brought a Motion in writing for public disclosure of the Report. By its Motion, TCPL seeks the following relief:

- (1) That the Board place an un-redacted copy of the Report on the public record;*
- (2) In the alternative, that the Board place Centra's argument for confidential filing on the public record, and that the Board issue reasons for accepting filing of the Report entirely in confidence sufficient to allow for judicial review of application of Rule 13(2);*
- (3) In the further alternative, that the Board grant access to the Report pending the signing of non-disclosure agreements or other mechanisms to protect the information (e.g. precluding access to TransCanada's pricing desk employees).*

TCPL argues that the default position under the Rules is that filings will be public. Confidential filings are accepted only where the Rule 13(2) test has been met. TCPL submits that, in this case, Centra has not provided a factual basis to the Board for confidential treatment of the report and, in any event, Centra's negotiating position with gas service providers other than TCPL would not be affected by disclosure of the Report to TCPL on a confidential basis. TCPL argues that the type of information contained in the Report – the assessment of available alternatives and their anticipated

cost - is information that should be made public in order for interested parties to test the prudence of the utility's contracting decisions and for the public to have confidence in the Board's process. In order to determine whether Centra has indeed been prudent in incurring costs, sufficient information must be placed in the public domain, or otherwise provided to all interested stakeholders, for stakeholders to have the opportunity to contribute to this assessment, and for the Board to have the best information and analysis in order to make such a determination. TCPL asserts that this kind of information is typically public in Board proceedings, and in proceedings before other regulatory bodies, and only specifics are usually redacted from the public record.

TCPL further submits that there is no longer a basis for maintaining confidentiality in the Report as the gas supply contracts for November 1, 2016 have been awarded and the Report therefore pertains to information supporting a decision that has already been made, so the information is no longer commercially sensitive. TCPL states that, if there are any remaining reasons for confidentiality, there are none in relation to TCPL and the Report can be made available to TCPL on a confidential basis, to specific staff (e.g. exclusive of any personnel associated with TCPL's pricing desk) for a limited purpose (e.g. to provide written analysis to the Board). TCPL also submits that confidential treatment under the Rules applies to other parties. As TCPL was not a party to Centra's 2015/16 Cost of Gas hearing, it argues that no undue prejudice would result from confidential disclosure to TCPL.

TCPL submits that the topic of the Report is important to TCPL and its shippers. There is a potentially significant impact on one of its core businesses. TCPL argues that it is not adverse in interest to Centra, noting that, while its interests are commercial, it can still provide analysis of the Report to the benefit of ratepayers and the Board. Specifically, TCPL asserts that it has expertise in matters central to the Report including market conditions, transportation costs, and gas cost forecasting, in particular in relation to Western Canadian supply contracts. TCPL's analysis of these matters can

reasonably be expected to assist the Board in deliberations for the benefit of Centra's ratepayers. TCPL's analysis of the Report can be expected to increase the circumstances known to the Board regarding Centra's structuring of its portfolio, which will aid the Board's analysis to the benefit of ratepayers. In addition, TCPL argues that there are unsubstantiated allegations of fact in Centra's submissions in response to TCPL's Motion, and states that it is concerned that the Report may contain similar untested allegations which cannot be corrected without TCPL seeing the Report.

Response by Centra

Centra submits that the Report is commercially sensitive to the entirety of its gas supply portfolio and existing and future contracting decisions. Centra states that the Report contains strategic commercial and proprietary information and market insight which informs the negotiation of the gas supply contract and the supporting transportation and storage arrangements now and into the future. Centra is the largest captive shipper on TCPL's Western Mainline.

Centra argues that the Rule 13(2) test for the Report to be accepted by the Board in confidence has been met, on the requirements of both Rule 13(2)(a) and Rule 13(2)(b).

With respect to Rule 13(2)(a), Centra submits that disclosure would significantly harm Centra's competitive position and could reasonably be expected to result in undue financial loss to Centra and an unfair financial gain to parties adverse in interest to Centra, such as TCPL. Centra states that its gas supply contract is its single most important commercial arrangement, and that the supporting transportation and storage arrangements are inextricably linked to, and are significantly impacted by, Centra's gas supply contract. Centra notes the degree to which it is uniquely captive to the TCPL Mainline and that TCPL has virtually unlimited pricing discretion for short-term services on the Mainline, affecting commodity prices at Emerson to a greater extent than at other

hubs. In addition, TCPL's affiliates, including Great Lakes Gas Transmission ("GLGT"), ANR, and NOVA Gas Transmission Ltd. ("NGTL"), are major regional transportation and storage providers with whom Centra may also negotiate for such commercial services.

Centra submits that the requirements of Rule 13(2)(b) are met because the Report is financial, commercial and technical in nature. Centra argues that similar information as contained in the Report has been consistently treated confidentially, as ruled by the Board with respect to details of Centra's supply, storage, and pipeline transportation portfolio, peak demand, and the correlation between weather and demand in the 2015/16 Cost of Gas Proceeding. Centra argues that, since at least 2009, Centra has without exception, treated and filed its gas supply commodity contract and related information as highly confidential due to the significant commercial and public interest harm it would pose if released to any party with a competing or adverse interest to Centra. According to Centra, the Board has acknowledged the need for such confidential treatment of this information to such parties including gas marketers, suppliers and other commercial counterparties. In addition, Centra notes that the National Energy Board ("NEB") also ruled in 2014 to treat similar market information of Centra with respect to its supply plans, market transactions, and load information as confidential in a TCPL proceeding in which Centra intervened. Centra further argues that the public interest favours keeping the report strictly confidential.

Centra argues that there continues to be a basis for maintaining the confidentiality of the Report. It states that information in the Report could be used currently by TCPL's Mainline bid floor personnel to understand and exploit the inherent challenges that exist in economically serving the predominantly heat load for natural gas in Manitoba. The Report contains strategic views and discussion of options and sharing the Report with any service provider, including TCPL's Mainline commercial staff and TCPL's affiliates, would significantly undermine Centra's commercial negotiating position.

Centra also relies on the fact that TCPL is already in possession of Centra's Mainline transportation contracting information to October 31, 2019, and argues that this is more than sufficient to address TCPL's interest in the information contained in the Report. In Centra's view, the NEB consultation and negotiation process, expected to take place in advance of the filing of TCPL's application for Mainline tolls and tariffs post-2020, is the most appropriate venue for Centra to determine what commercially sensitive information it may choose to disclose to TCPL and other competing entities. In addition, Centra maintains there is nothing precluding TCPL from sharing its expressed market expertise and analysis with the Board and stakeholders at this time without having reviewed Centra's Report.

Response by CAC

CAC submits that whether the Report should be confidential needs to be tested in accordance with Rule 13. CAC states that Centra has supplied a strong basis for maintaining confidentiality from TCPL. CAC supports the maintaining of confidence where there is a threat to Centra's competitive position.

CAC asserts that TCPL's prime interest is its own commercial interests and leverage and not the interests of Centra ratepayers. However, CAC accepts that TCPL has expertise in matters central to the Report and that TCPL's analysis of the Report may increase the circumstances known to the Board.

CAC argues that Centra did not meet the requirements of Rule 13 as Centra did not make an application to the Board and the Report was not filed in confidence. CAC submits that, to meet Rule 13, Centra must demonstrate by way of an application that the information if disclosed could reasonably be expected to harm its competitive position. Noting the wording in the confidentiality section of Order 108/15, CAC submits that it appears the Board applied the wrong test when it based its decision on "commercial harm" versus "significant harm to a competitive position".

3.0 Board Findings

Procedural Issues

The Board accepts that there are no procedural impediments to TCPL bringing this Motion. However, the Board finds that the Motion is moot. TCPL's stated position at the time it brought its Motion was that TCPL's interest in the Report arose from Centra's then-pending gas supply contracting decisions for the gas year beginning November 1, 2016. The information of interest to TCPL, namely Centra's Mainline transportation contracting information from November 1, 2016 to October 31, 2019, has now been provided to TCPL. Although TCPL attempted to shift the basis for its interest in the Report in its Reply, TCPL's stated interest in bringing the Motion has now been fulfilled.

However, in the event that the Board is wrong in finding that the Motion is moot, the Board addresses the substantive issues on the Motion below.

The Test for Receipt of Confidential Information

The default position under the Board's Rules is that documents filed with the Board will be placed on the public record. However, the Board may receive information in confidence on any terms it considers appropriate in the public interest where either Rule 13(2)(a) or 13(2)(b) is met. The Board controls its own process and a request that information be received by the Board in confidence is not required to be made by way of motion or formal application. A motion is only required under Rule 13 where there is a disputed claim of confidentiality. Therefore, in this case, a motion was only required once TCPL disputed Centra's claim to confidentiality and made a claim for public disclosure.

A claim to confidentiality is considered at the time the information is filed with the Board. Rule 13 is framed to establish the relevant time period as the time when “a document is filed with the Board” and when the Board receives information. Once information is determined to be confidential, that confidentiality does not change, diminish or cease with the passage of time. Where a motion is brought over a disputed claim of confidentiality, the relevant time period for the Board’s assessment is the time that the information was filed with the Board. Any considerations beyond that time period may be relevant only with respect to the Board’s determination of whether to provide for access to a confidential filing on conditions deemed appropriate by the Board under Rule 13(3).

Centra’s Claim for Confidentiality

The Board finds that the Report is confidential under Rule 13(2) and should be kept confidential in its entirety.

In accordance with the Rules, the Board reviewed Centra’s claim of confidentiality when the Report was filed by Centra in December of 2015. As noted above, this claim of confidentiality was made by Centra in its covering letter to the Report, which provided an explanation for the request that the Board receive the Report in confidence. At the time the Report was received, the Board determined that it should be kept confidential and not filed on the public record under Rule 13. While this determination was not communicated publicly, the Board directly notified Centra and the parties to the hearing who had received confidential information filed in the course of the hearing that the Report had been received as confidential and that those parties would be granted access on the condition that a Non-Disclosure Agreement and Undertaking be signed.

TCPL disputes Centra's claim for confidentiality and seeks disclosure of the Report through this Motion. Pursuant to Rule 13(4), the Board examined the Report to ascertain whether the claim for confidentiality should be sustained. The Board finds that the test for receipt of information in confidence under Rule 13(2) is met in this case.

First, although only one of the 13(2)(a) factors must be met for the Report to be received in confidence, the Board finds that both Rule 13(2)(a)(i) and Rule 13(2)(a)(ii) have been met. Rule 13(2)(a)(i) is met because disclosure of the information could reasonably be expected to result in undue financial loss to Centra and Centra's ratepayers, and undue financial gain to TCPL and other parties with whom Centra must negotiate contracts, including TCPL's affiliates. The Report contains strategic commercial and proprietary information regarding Centra's gas supply contract and related market insight, including requirements, strategies and prospective contracting options regarding Centra's gas supply portfolio and supporting transportation and storage arrangements now and into the future. If the Report were filed on the public record, parties with whom Centra negotiates contracts for commodity, transportation and storage services would have commercial information that would undermine Centra's negotiating position. This could result in Centra having to contract at higher prices, with the burden of the additional cost passed on to Centra's ratepayers, and the corresponding financial gain benefitting TCPL and other entities with whom Centra negotiates.

Rule 13(2)(a)(ii) is met as disclosure could reasonably be expected to harm significantly Centra's competitive position due to the prejudice to Centra's negotiating position that would result from disclosure. The scope of the potential harm is significant due to the fact that Centra's gas supply contract is its single most important commercial arrangement, to which the supporting transportation and storage arrangements are linked and impacted.

Second, although it is enough to sustain Centra's claim of confidentiality for Rule 13(2)(a) to have been met, the Board also finds that Rule 13(2)(b) has been met in this case. Under Rule 13(2)(b), information may be received in confidence where:

- the information is personal, financial, commercial, scientific or technical in nature and the Board considers that the person's interest in confidentiality outweighs the public interest in the disclosure of the information, or
- where the information has been consistently treated as confidential by a person directly affected by the proceeding and the Board considers that the person's interest in confidentiality outweighs the public interest in the disclosure of the information.

Both tests under Rule 13(2)(b) have been met. The Board has reviewed the Report and finds that the information in the Report is commercial and financial in nature within the meaning of Rule 13(2)(b)(i). Even if this were not the case, Rule 13(2)(b)(ii) is met as, since 2009, Centra and the Board have consistently treated the information contained in the Report as confidential. The consistency in Centra's treatment of the information is also demonstrated by the fact that Centra treated information of a similar nature as confidential in a 2014 proceeding before the NEB. That claim to confidentiality was challenged by TCPL and the NEB ruled in NEB Hearing Order RH-001-2014, Ruling #2, that the information held by Centra was commercially sensitive.

The Board finds that the interest in confidentiality outweighs the public interest in disclosure. As held by the Manitoba Court of Appeal:

“public interest” takes into account “the interests of the utility’s ratepayers, and the financial health of the utility. Together, and in the broadest interpretation, these interests represent the general public interest.

*Consumers' Association of Canada (Man)
Inc et al v. Manitoba Hydro, Electric Board,
2005 MBCA 55*

In this case, the public interest is protected by confidentiality, while conversely, it would reasonably be expected that the public interest would be harmed if there was disclosure of the Report. Disclosure could prejudice negotiations and impair Centra’s ability to ultimately procure a favourable Gas Supply Portfolio on behalf of its ratepayers. It is significant that the gas supply contract is Centra’s single most important commercial arrangement and that the transportation and storage arrangements are linked to and impacted by the gas supply contract. Ratepayers stand to pay higher rates if Centra is limited in its ability to negotiate favourable contracts as a result of disclosure of analysis of alternative supply contract options. The Board notes that CAC supports maintaining confidence where Centra’s competitive position is threatened to the detriment of ratepayers, and that CAC’s position in this Motion is that Centra has supplied a strong basis for maintaining confidentiality. As the costs of gas flow through to the ratepayers, the financial health of the utility is also the financial health of the ratepayers. The financial health of the utility and its ratepayers could reasonably be expected to be harmed by disclosure due to the potential prejudice to Centra’s ability to negotiate with commercial entities, such as TCPL and its affiliates.

Request for Relief

As noted above, TCPL seeks the following relief:

- (1) That the Board place an un-redacted copy of the Report on the public record;*
- (2) In the alternative, that the Board place Centra's argument for confidential filing on the public record, and that the Board issue reasons for accepting filing of the Report entirely in confidence sufficient to allow for judicial review of application of Rule 13(2);*
- (3) In the further alternative, that the Board grant access to the Report pending the signing of non-disclosure agreements or other mechanisms to protect the information (e.g. precluding access to TransCanada's pricing desk employees).*

The Board will place Centra's January 17, 2017 argument in support of the confidential filing of the Report on the public record. TCPL is already in receipt of Centra's argument and Centra does not object to its submissions being placed on the public record. Reasons for the Board's decisions to accept the filing of the Report entirely in confidence will also be placed on the public record.

For the foregoing reasons, the Board denies TCPL's request to place an un-redacted copy of the Report on the public record. The Report is confidential and will not be placed on the public record, in full or abridged form.

The Board denies TCPL's request to grant TCPL access to the Report, including access on condition of non-disclosure agreements or other mechanisms to protect the information. The Board finds that there are no conditions that could be imposed on access that would appropriately mitigate these risks. Given the content of the report, harm could result from disclosure to any TCPL or affiliated company personnel. The public interest would not be furthered by granting any form of access to TCPL and that the public interest could be harmed by any such access. TCPL's interest in the report is

acknowledged to be commercial and it is reasonable to expect that any manner of disclosure of the Report to TCPL could reasonably be expected to result in undue financial loss to Centra and to harm significantly Centra's competitive position in negotiating with TCPL or TCPL's affiliated companies, including major regional transportation and storage providers. The Board's denial of this request does not prevent TCPL from assisting the Board. In this regard, the Board notes that Rule 27 of the Board's Rules of Practice and Procedure provides that interested persons or organizations may intervene in respect of proceedings before the Board.

At the time the Report was filed and received by the Board as confidential, CAC was offered access to the Report on the conditions of signing a non-disclosure agreement and undertaking. Centra has agreed that CAC can access the Report on these conditions as CAC is a non-profit with no commercial interest in the contents of the Report. CAC has declined to access the Report at this time. The Board therefore makes no order at this time as to CAC's access to the Report.

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.pub.gov.mb.ca.

