

Order No. 56/18

**CENTRA GAS MANITOBA INC.:
APPROVAL OF A NEW CROSSING AGREEMENT WITH THE
RURAL MUNICIPALITY OF ST. FRANCOIS XAVIER**

April 26, 2018

BEFORE: Larry Ring, Q.C., Panel Chair
Marilyn Kapitany, B.Sc.(Hon), M.Sc., Vice Chair
Carol Hainsworth, C.B.A., Member
Susan Nemec, FCPA, FCA, Member
Michael Watson, Member

Table of Contents

1.0 Executive Summary 3

2.0 The Application..... 4

3.0 Board Findings 4

4.0 IT IS THEREFORE ORDERED THAT: 5

Crossing Agreement Between Centra and the RM of St. Francois Xavier –Schedule “A”

1.0 Executive Summary

By this Order, the Manitoba Public Utilities Board (“Board”) approves, on an interim ex-parte basis, Centra Gas Manitoba Inc.’s (“Centra”) application for a new crossing agreement with the Rural Municipality of St. Francois Xavier.

The new crossing agreement is required to address planned construction of a new distribution main through the Rural Municipality of St. Francois Xavier, but outside of an existing crossing agreement previously approved in Order 32/13, to serve a new customer located in the existing franchise area of the Rural Municipality of Rosser.

2.0 The Application

On April 16, 2018, Centra on its own behalf and on behalf of the Rural Municipality of St. Francois Xavier (“RM of St. Francois Xavier”), applied to the Board for interim ex parte approval of a new crossing agreement.

The crossing agreement is required to address planned construction of a new distribution main through the RM of St. Francois Xavier to serve a large agricultural customer located in the existing franchise area of the Rural Municipality of Rosser. The planned construction area falls outside of an existing crossing agreement between Centra and the RM of St. Francois Xavier, which was previously approved in Order 32/13.

The RM of St. Francois Xavier gave first reading to By-law No. 27-2018 on March 20, 2018, which authorized the RM of St. Francois Xavier to enter into the crossing agreement subject to approval of the Board.

3.0 Board Findings

The Board considers the information filed by Centra on April 16, 2018, and certified by Centra as accurate and correct, to be Centra’s evidence in support of its interim ex parte application.

The Board notes that the application was filed in a manner consistent with the Board’s requirements and is reflective of the relevant terms of the generic form of franchise agreement approved by the Board in Order 159/11. The proposed crossing agreement is also consistent with the terms of the existing crossing agreement between Centra and the RM of St. Francois Xavier, which was approved on an interim ex parte basis in Order 32/13 and finalized in Order 85/13. The Board will therefore approve the application on an interim ex parte basis. The approved crossing agreement is attached as Schedule “A” to this Order.

4.0 IT IS THEREFORE ORDERED THAT:

1. The new Crossing Agreement between Centra Gas Manitoba Inc. and the Rural Municipality St. Francois Xavier attached as Schedule "A" to this Order, BE AND IS HEREBY APPROVED, on an interim ex-parte basis.
2. This interim Order will remain in full effect until confirmed or otherwise by a subsequent Order of the Board.

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.pubmanitoba.ca.

THE PUBLIC UTILITIES BOARD

"Larry Ring, Q.C."
Panel Chair

"Kurt Simonsen"
Associate Secretary

Certified a true copy of Order No. 56/18
issued by The Public Utilities Board



Acting Secretary

NOW THIS AGREEMENT WITNESSETH that in consideration of the premises and the mutual covenants and conditions contained herein, the Company and the Municipality hereby mutually covenant and agree as follows:

1. The Company will duly construct, lay and maintain the Pipe Line for the Purpose across all those portions of the highways or lands in River Lots 182 through 199 in the Parish of St. François Xavier (the "Territory") as shown coloured yellow on a plan hereto annexed and marked as Appendix 1.

2.(1) Prior to the installation of any part of the Pipe Line, the Company shall file plans with the municipal engineer, which shall mean a professional engineer employed directly or indirectly by the Municipality or such other person as may be designated by the council of the Municipality to carry out the functions and duties of the Municipal Engineer as herein described ("Municipal Engineer"), 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, by its Municipal Engineer, shall approve the plans as to the location of the Pipe Line and any changes thereto arising in course of construction within the Municipality, which approval shall not be unreasonably withheld or unduly delayed. The Pipe Line shall be placed in such locations as agreed by the Municipal Engineer and the Company.

2.(2) The Company shall supply to the Municipality plans showing the location of the Pipe Line within the Municipality on an as-built basis, as requested by the Municipality, but in no event shall such plans be provided more than twice in any 12-month period. Such plans shall be provided either on paper or in a mutually agreeable format. All of the conditions for the supply of as-builts are to be mutually agreed upon.

2.(3) The pipe, materials and other equipment to be used in the Pipe Line shall be of the kinds and qualities satisfactory to the Public Utilities Board of Manitoba (the "Board"), and shall be in compliance with *The Gas Pipe Line Act* (Manitoba) and the regulations thereunder.

3. Unless another process is established through municipal bylaw, the Company shall give notice to the CAO or designate of the Municipality, of its intention to open or break up any of the Highways of the Municipality not less than seven (7) days before the beginning of such work, except in cases of emergency arising from defects or breaking of the pipe or other works, when immediate notice shall suffice; and, subject to the same exception and as otherwise provided in this Agreement, the Company shall not begin any such work unless it has obtained approval therefore in writing from the Municipal Engineer.

4. 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 and other areas where construction has occurred to a state of repair as nearly as possible equal to their former state, unless another process is established by municipal bylaw. Within thirty (30) days of completion of the restoration work the Company shall give notice in writing to the Municipal Engineer that the work and restoration have been completed

and inspected. The Municipal Engineer acting reasonably shall advise the Company in writing of any deficiencies in connection with the construction work or restoration. If the Municipality fails to provide such advice within six (6) months of the Company's notice to the Municipality and unless an extension of time has been mutually agreed, the Municipality will be deemed to have accepted the restoration work;

- (d) in the execution of the power granted hereby, it shall construct, locate and operate the Pipe Line in such manner as will not endanger the public health or safety;
- (e) any part of the Pipe Line found not in accordance with the depth of cover requirements established by the Board pursuant to *The Gas Pipe Line Act* (Manitoba) as a result of improper installation shall be lowered, relocated or suitably protected by, and at the expense of the Company;
- (f) all costs in connection with the removal or relocation of any part of the Pipe Line, 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; and,
- (g) notwithstanding paragraph (f) above, where the removal or relocation of any part of the Pipe Line is required by the Municipality, the costs and expenses incurred in the removal and replacement or the relocation shall be as follows:
 - (i) the Municipality shall pay to the Company an amount equal to the cost of labour and material required in the original construction of that part of the Pipe Line that the Municipality requests to be relocated, less depreciation and the value of any material salvaged; and

(ii) the Company shall bear the entire cost of constructing the required Gas Distribution System infrastructure in the new location.

5.(1) 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 Gas Pipe Line Act* (Manitoba), 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 the Pipe Line.

5.(2) 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.(1) 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* (Manitoba).

6.(2) 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. Subject to any applicable legislation now or hereafter enacted in that regard, the Company shall pay to the Municipality any taxes that may be legally and properly levied by the Municipality against the Company.

8. 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 Pipe Line within the Territory.

9. The term of this Agreement shall be for thirty (30) years and thereafter shall be deemed to be automatically renewed for an additional term of ten (10) years, and at the end of the said ten (10) year renewal term, this Agreement will be further automatically renewed and extended for additional terms of ten (10) years from time to time. Provided always that either party may, at the time of any such renewal and with the consent of the other party in writing, change or amend the terms of this Agreement.

10. The Company agrees that it shall provide written notice to the Municipality at least two (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 9 hereof.

11. Subject to the provisions of *The Public Utilities Board Act* (Manitoba), the Company shall not without the consent of the Municipality, such consent not to be unreasonably withheld, assign this Agreement or the rights, 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).

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

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

IN WITNESS WHEREOF the Company and the Municipality have caused this agreement to be executed as of the day and year first above written.

RURAL MUNICIPALITY OF ST. FRANCOIS XAVIER

Per: _____
Reeve

Per: _____
Chief Administrative Officer

CENTRA GAS MANITOBA INC.

Per: _____
Authorized Signing Officer

Per: _____
Authorized Signing Officer

MUN. OF ST. FRANCOIS XAVIER

APPENDIX 1

PROVINCE OF MANITOBA
HIGHWAYS DEPARTMENT
DESIGN OFFICE
WINNIPEG, JANUARY 1970

REVISED - OCT. 1978
MAY 1966
JAN 1992
DEC. 1992

SCALE 1 INCH = 3 MILES

