

M A N I T O B A

Order No. 153/13

THE PUBLIC UTILITIES BOARD ACT

December 13, 2013

Before: Régis Gosselin, B ès Arts, MBA, CGA, Chair
Larry Soldier, Member
Marilyn Kapitany, BSc Hons., MSc, Member

**CENTRA GAS MANITOBA INC: INTERIM EX PART ORDER RE APPROVAL
OF FRANCHISE AGREEMENT FOR THE RURAL MUNICIPALITY OF HEADINGLEY
PURSUANT TO BOARD ORDER 159/11 AND SECTION 4(1) OF
*THE GREATER WINNIPEG GAS DISTRIBUTION ACT***

TABLE OF CONTENTS

	Page
1.0 SUMMARY.....	3
2.0 APPLICATION.....	3
3.0 BOARD FINDINGS.....	4
4.0 IT IS THEREFORE ORDERED THAT:	6

1.0 SUMMARY

By this Order, the Public Utilities Board (Board) approves on an interim ex parte basis a new franchise agreement between Centra Gas Manitoba Inc. (Centra) and the Rural Municipality (RM) of Headingley. The approval follows Order 159/11, in which the Board contingently approved an application by Centra to have the RM of Headingley deemed part of “Greater Winnipeg” for purposes of gas delivery pursuant to *The Greater Winnipeg Gas Distribution Act*.

2.0 APPLICATION

On August 25, 2011, Centra applied to the Board for, *inter alia*, an Order pursuant to subsection 4(3) of *The Greater Winnipeg Gas Distribution Act* to include the RM of Headingley as a municipality deemed to be part of “Greater Winnipeg” for purposes of *The Greater Winnipeg Gas Distribution Act*. In Board Order 159/11 (Directive 2), the Board ordered that:

Centra’s request for an Order designating the Rural Municipality of Headingley as a municipality forming part of Greater Winnipeg pursuant to subsection 4(3) of the GWGDA BE AND HEREBY IS APPROVED on the condition that the Rural Municipality of Headingley passes a by-law stating that Headingley wishes to (1) be deemed part of Greater Winnipeg pursuant to Section 4(3) of the GWGDA and (2) grants a franchise to Centra in the form of the Negotiated Schedule as set out as Appendix “A” to this Order. Centra is to also advise the RM of Headingley that rather than it becoming expressly included as a municipality forming part of Greater Winnipeg pursuant to the GWGDA, the RM of Headingley has the option to enter into a Revised Generic Franchise Agreement as approved in this Order as Appendix B.

On August 23, 2013, Centra wrote to the Board to confirm that Centra and the RM of Headingley had complied with Directive 2 of Board Order 159/11 and provided the Board with:

- A copy of By-Law 9-2013 of the RM of Headingley, being a by-law to authorize the granting of a franchise to Centra Gas Manitoba Inc. to supply natural gas to the RM of Headingley in the form attached as Schedule “A” to the By-Law, and confirming the RM of Headingley’s desire to be deemed part of “Greater Winnipeg” pursuant to section 4(3) of *The Greater Winnipeg Gas Distribution Act*; and
- A proposed franchise agreement between Centra and the RM of Headingley that forms Schedule “A” to the By-Law.

The By-Law received first reading on July 23, 2013.

3.0 BOARD FINDINGS

The Board treats Centra’s correspondence of August 23, 2013 as an application to approve the proposed franchise agreement.

In Directive 2 of Order 159/13, the Board required the RM of Headingley to pass a by-law stipulating that it wished to enter into a franchise agreement in the form of the Negotiated Schedule to *The Greater Winnipeg Gas Distribution Act*, which formed Appendix “A” to Order 159/13. The franchise agreement appended to By-Law 9-2013 filed by Centra on August 23, 2013 deviates from the Negotiated Schedule. Specifically, clauses 14-18 of the proposed franchise agreement do not form part of the Negotiated Schedule.

These clauses are as follows:

- 14 *The Municipality agrees that it will not, prior to December 31, 2036, 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, under, or along its Highways for the purpose of supplying and distributing natural gas.*
- 15 *The provisions of The Greater Winnipeg Gas Distribution Act, S.M. 1988-89, c. 40, as amended from time to time, shall apply mutatis mutandis to this agreement and to any proposed renewal or renewals thereof, and to any acquisition of the distribution system by the Municipality and any gas distribution system constructed and operated pursuant to this agreement shall be constructed and operated as part of the Company's distribution system of Greater Winnipeg and the franchise area is for such purposes included in the area comprising Greater Winnipeg.*
- 16 *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, 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).*
17. *This Agreement will be binding upon and enure to the benefit of the parties and their successors and assigns.*
18. *This Agreement is subject to the approval of the Board.*

The Board notes that *The Greater Winnipeg Gas Distribution Act* permits deviations from the Schedule/Negotiated Schedule for franchise agreements entered into pursuant to subsection 4(1) of the statute, so long as they are approved by the Board. Specifically, sections 4(1) – 4(3) of the statute provide as follows:

Agreements with other municipalities

4(1) Nothing herein precludes the company from entering into an agreement, subject to the approval of the board, with a city, town, village, or rural municipality, that is not mentioned in the definition "Greater Winnipeg", in section 1, to operate a distribution system, either as an extension of its distribution system operated in Greater Winnipeg under section 2, or as a separate distribution system, and to distribute and sell gas to consumers, within the city, town, village, or rural municipality, or a part thereof.

Application of the Schedule

4(2) Notwithstanding section 5, an agreement mentioned in subsection (1) may or may not be subject to the terms, conditions, and restrictions set out in the Schedule.

Inclusion of new municipality

4(3) Where an agreement mentioned in subsection (1) has been entered into, the board may order that the city, town, village, or rural municipality, or that part thereof that is affected by the agreement, is included in the area comprising Greater Winnipeg; and thereafter the city, town, village, or rural municipality, or that part thereof affected by the order, shall, for the purposes of this Act, be conclusively deemed to be within the area comprising Greater Winnipeg, and to be a municipality in Greater Winnipeg.

The Board does not find clauses 14-18 of the proposed franchise agreement for the RM of Headingley to be objectionable, accepts their inclusion, and approves the franchise agreement pursuant to subsection 4(1) of *The Greater Winnipeg Gas Distribution Act*.

4.0 IT IS THEREFORE ORDERED THAT:

1. The new Franchise Agreement between Centra Gas Manitoba Inc. and the Rural Municipality of Headingley, attached hereto 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 varied by a subsequent Order of the Board.

THE PUBLIC UTILITIES BOARD

"Régis Gosselin, B ès Arts, MBA, CGA, "
Chair

"Hollis Singh"
Secretary

Certified a true copy of Order No. 153/13
issued by The Public Utilities Board

Secretary

SCHEDULE "A"

MEMORANDUM OF AGREEMENT made this ____ day of _____, 20__.

BETWEEN:

THE RURAL MUNICIPALITY OF HEADINGLEY,

(hereinafter called the "Municipality"),

- and -

CENTRA GAS MANITOBA INC.,

(hereinafter called the "Company").

WHEREAS the Company has established franchise rights and obligations to supply and deliver natural gas in the Municipality pursuant to The Greater Winnipeg Gas Distribution Act (the "Act"), S.M. 1959, c. 21 and amended in 1982, S.M. 1988-89, c. 40.

AND WHEREAS the Municipality seceded from the City of Winnipeg in 1992;

AND WHEREAS the definition of Greater Winnipeg in the Act is "the area comprising The City of Winnipeg, The Rural Municipality of East St. Paul and the Rural Municipality of West St. Paul";

AND WHEREAS the Municipality is not presently included in the definition of Greater Winnipeg;

AND WHEREAS pursuant to Sub-section 4(1) of the Act the Company may enter into an agreement, subject to the approval of the Public Utilities Board of Manitoba (the "Board"), with any municipality not mentioned in the definition of Greater Winnipeg to operate a distribution system;

AND WHEREAS the Board in accordance with Subsection 4(3) of the Act may order that the RM of Headingley be included in the definition of Greater Winnipeg for the purposes of the Act;

AND WHEREAS it is agreed between the Municipality and the Company that the Company continue to supply and deliver natural gas to the Municipality and its inhabitants in the Rural Municipality of Headingley, in Manitoba and as set out in the map attached as Appendix 1 hereto 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 Chief Administrative Officer ("CAO") have 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 the terms and conditions contained in this franchise and in the Act, the Company and its successors and assigns have the full power, right, licence and liberty to enter upon property of the Municipality and to break the surface and make the necessary excavations 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, drainage systems and other public places (collectively the "Highways") within the boundaries of the Municipality as the same may from time to time exist for a period ending on December 31, 2036, and during any extension thereof as provided in the Act, as may be necessary for the purpose of transporting, supplying, and delivering natural gas to the consumers thereof.

2(1) Subject to the provisions hereof, the Company agrees that during the term of the franchise, it will install and maintain an adequate natural gas distribution system within the Municipality and will provide such quantities of natural gas as will meet the requirements of the inhabitants, businesses and industries located in the Municipality.

2(2) The Company agrees that with respect to any portion of the Municipality 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 franchise, the Company will work together with the Municipality with a view to developing a viable business model in relation to that portion of the Municipality. All such extensions for service shall be subject to the Company's feasibility test as approved by The Public Utilities Board from time to time. The Company further agrees that if the Company is unable to develop a viable business model with the Municipality, the Company shall relinquish that portion of the Municipality from the franchise previously granted if asked to do so by the Municipality.

2(3) For the purpose of implementing a distribution system expansion for the attachment of new customers pursuant to clause 2(1), the Company shall, whenever a request is made for gas service by any inhabitant or industry of the Municipality in a location not served by the existing system of the Company, comply with the request provided the request meets criteria filed with and approved by the the Board for expansion of the distribution system and does not unduly affect customers on the existing system. Such criteria may include but not be limited to estimates of customers, sales, volumes, revenues, costs, and return on investment, the effect upon existing customers and any customer contribution in aid of construction. The criteria shall be reviewed by the Board from time to time as the Board deems necessary or as may be requested by the Company.

2(4) The Company shall not be bound to construct or extend its mains or provide natural gas or gas service if the Company is for any reason, unable to obtain delivery of natural gas at or near the limits of the Municipality, or an adequate supply thereof to warrant the construction or extension of its mains for the provision of natural gas.

2(5) In the event the amount of natural gas supplied to the Company at or near the limits of the Municipality is insufficient to meet the requirements of connected customers, the Company shall have the right to prescribe reasonable rules and regulations for allocating the available supply of natural gas to domestic, commercial and industrial customers in that order of priority. The allocation of natural gas shall also be subject to the provisions of The Gas Allocation Act and Regulations thereto and any orders made pursuant to The Emergency Measures Act.

2(6) In the event that either of the conditions referred to in subsections (4) and (5) occur or are likely to occur, the Company will advise the Municipality thereof as soon as the conditions become apparent to the Company.

3(1) Prior to the installation of any part of the Gas Distribution System, the Company shall file plans with the Municipal Engineer showing the location, depth and size of all mains, pipes or conduits and any other equipment or structures 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 location of the Gas Distribution System and any changes thereto arising in course of construction within the Municipality which approval shall not be unreasonably withheld or unduly delayed. The Gas Distribution System shall be placed in such locations as agreed by the Municipal Engineer and the Company in boulevards and under other unpaved surfaces rather than in streets when reasonably practicable and where the cost of installation and maintenance will not be unreasonably high.

3(2) The Company shall supply to the Municipality plans showing the location of its Gas Distribution System 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.

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

4 Unless another process is established through municipal bylaw, the Company shall give notice to the Chief Administrative Officer (CAO) or designate of the Municipality, of its intention to open or break up any of the Highways in the Municipality, not less than seven days before the beginning of the 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 franchise, the Company shall not begin any such work unless it has obtained approval therefore in writing from the Municipal Engineer.

5 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 completion of 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 and under the Act, shall construct and locate its gas pipe lines in such a manner as will not endanger the public health or safety;

(e) any pipe line found to be not in accordance with the depth of cover requirements established by the Public Utilities 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 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;

(g) notwithstanding paragraph (f) above, where the removal or relocation of any part of the Gas Distribution System 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 Gas Distribution System 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.

6(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 Act and 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 its distribution system.

6(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.

7(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).

7(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.

8 Natural gas shall be distributed to customers in the Municipality at the rates and on the terms and conditions approved or fixed from time to time by the Board or other regulatory authority having jurisdiction.

9 This franchise 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 within the Municipality.

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

11 All the provisions of this franchise are subject as provided in section 17 of the Act.

12 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 Municipality.

13 Notwithstanding any 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, landslides, lightning, earthquakes, fires, storm, floods, wash-outs, explosions, breakage or accident to

machinery of 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.

14 The Municipality agrees that it will not, prior to December 31, 2036, 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, under, or along its Highways for the purpose of supplying and distributing natural gas.

15 The provisions of The Greater Winnipeg Gas Distribution Act, S.M. 1988-89, c. 40, as amended from time to time, shall apply mutatis mutandis to this agreement and to any proposed renewal or renewals thereof, and to any acquisition of the distribution system by the Municipality and any gas distribution system constructed and operated pursuant to this agreement shall be constructed and operated as part of the Company's distribution system of Greater Winnipeg and the franchise area is for such purposes included in the area comprising Greater Winnipeg.

16 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, 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).

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

18 This Agreement is subject to the approval of the Board.

19(1) Unless the context otherwise requires or as otherwise defined below, words and expressions used in this franchise have the meanings given to them in the Act.

19(2) “*Municipal Engineer*” 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.

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

RURAL MUNICIPALITY OF HEADINGLEY

Per: _____
Reeve

Per: _____
Chief Administrative Officer

CENTRA GAS MANITOBA INC.

Per: _____
Authorized Signing Officer

Per: _____
Authorized Signing Officer

