

Appendix B

## Proposed Confidentiality Undertaking

[Stakeholder: Consumers’ Coalition of Alberta - CCA]

**Instructions:**

- (1) Please provide the name of your organization in the space provided above.
- (2) For each proposed section, please provide your organization’s viewpoint in the stakeholder comment boxes. If your organization is in favour of the proposed change or does not recommend any changes to that section, please state this for clarity. Blank boxes will be interpreted as support for the section as drafted.
- (3) Unless otherwise indicated, section references in this document refer to sections in the draft standard form of confidentiality undertaking.
- (4) The content of the column entitled “proposed form wording” reflects the wording proposed for the form. A comparison to the previous form of undertaking used by the AUC has not been included as the form has changed significantly and comparison to the previous version is not applicable. The “Statutory declaration of receipt (destruction of confidential information)” has also changed and comments are welcome for this portion of the attachment to Rule 001.
- (5) Please save and email a Word version of the document to [regulatorypolicy@auc.ab.ca](mailto:regulatorypolicy@auc.ab.ca) by 12 p.m. (noon) on Friday, April 15, 2016.
- (6) As set out in the bulletin, all comments received will be posted on the AUC’s website ([www.auc.ab.ca](http://www.auc.ab.ca)) under <http://www.auc.ab.ca/rule-development/rule001/Pages/default.aspx>. The AUC will consolidate the responses received and post this consolidation on the website. All comments received will be discussed in the consultation meeting scheduled for April 26, 2016.

Section	Subsection	Proposed form wording	Stakeholder comment	AUC response
<b>Confidentiality Undertaking</b>				
<b>Whereas</b> (party who obtained the confidentiality order)		Whereas <a href="#">[insert name of party who obtained confidentiality order]</a> (grantee) applied to the Commission under Section 13 of Rule 001: <i>Rules of Practice</i> for confidential treatment of certain records, reports, documents or information in connection with the above-mentioned proceeding;	No position- but not to be taken as support.	
<b>Whereas</b> (date of ruling)		And whereas the Commission in its ruling dated <a href="#">[insert date of ruling]</a> (ruling) granted the grantee confidential treatment of certain records, reports, documents or information, or portions thereof, as	CCA is not sure there are degrees of confidentiality. A major concern is why a regulated utility would enter into agreements or contracts which cannot be publicly disclosed.	

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		specified in the ruling (the confidential information);		
<b>And whereas</b> (name of recipient)		And whereas <u>[insert name of recipient]</u> (recipient), who is a party to, or is acting on behalf of a party, in this proceeding, wishes to be granted access to the confidential information for the purpose of participating in this proceeding;	No position- but not to be taken as support.	
<b>Now therefore</b>		Now Therefore, in consideration of receiving access to the confidential information, the recipient agrees and undertakes as follows:	No position- but not to be taken as support.	
1)		I have read the ruling and agree to observe its terms and conditions as they relate to the access, use and protection of the confidential information.	No position- but not to be taken as support.	
2)		I will only use the confidential information and all evidence, transcripts, notes, working papers, calculations, analysis or other materials based on or using the confidential information that I receive, review or prepare during the course of the proceeding (related materials) for the purpose of participating in Proceeding [insert proceeding no.] and any appeal, review or rehearing from the Commission's decision in this proceeding.	No position- but not to be taken as support.	
3)		I will maintain all of the confidential information and related materials in confidence. I will not disclose the	No position- but not to be taken as support.	

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		confidential information or related materials to any person except to the Commission or to a person who is authorized by the Commission to receive access to the confidential information and who has executed and filed with the Commission an undertaking, unless otherwise required by law, in which case, I will promptly give written notice to the Commission and <u>the grantee</u> that such disclosure has been required		
4)		I will not copy or reproduce the confidential information or related materials except in connection with my participation in Proceeding <u>[insert proceeding no.]</u> .	No position- but not to be taken as support.	
5)		I will use all reasonable and necessary efforts to safeguard the confidential information and related materials from any unauthorized disclosure or use.	No position- but not to be taken as support.	
6)		I shall save harmless and indemnify the Commission from and against all claims, actions, proceedings, demands, losses, damages, costs, and expenses which may be brought against the Commission or which the Commission may suffer, sustain, pay or incur, resulting from, or arising in connection with, the unauthorized use or disclosure by myself of the confidential information or the related materials.	CCA has some concerns with this clause. It is fair to expect the AUC to make a full defense to any claim or action.  This clause, which could result in serious hardship to a participant, lends support to an overarching position for very limited use of confidential material.	
7)		Subject to paragraphs 11 and 12, within 30 days of the expiration of any appeal or review period of the Commission's decision in respect of Proceeding <u>[insert proceeding no.]</u> , unless otherwise directed by the Commission, I will:	For these periods there should be a positive duty on the Grantee to notify parties of an R & V and or Appeal process and the completion of the same.	

Section	Subsection	Proposed form wording	Stakeholder comment	AUC response
	a)	Expunge all electronic copies of the confidential information and related materials from all electronic apparatus and data storage media in my possession and under my direction and control;	No position- but not to be taken as support.	
	b)	Deliver to the <u>grantee</u> or destroy all paper copies of the confidential information and related materials in my possession or under my direction and control; and	No position- but not to be taken as support.	
	c)	Provide an originally executed statutory declaration in the form attached to both the Commission and to the grantee.	Are scanned or faxed copies permissible? They should be given the distance of some consultants.	
8)		I will promptly report a violation of this undertaking to the Commission and to the grantee.	Can only apply to violations the signatory is aware of otherwise no position- but not to be taken as support.	
9)		I acknowledge that a breach of the terms of the ruling or this undertaking may be the subject of contempt proceedings in the Alberta Court of Queen's Bench by the Commission.	There should be an express obligation of a request for compliance with the undertaking prior to any further process.	
10)		I agree that no failure or delay by the Commission in exercising any right or privilege in respect of a breach of this	No position- but not to be taken as support.	

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		undertaking or of the ruling, shall operate as a waiver.		
11)		In the event that any Commission decision in respect of this proceeding is the subject of a review application pursuant to Section 10 of the <i>Alberta Utilities Commission Act</i> and Rule 016: <i>Review of Commission Decisions</i> :	See above comments on notice of termination of R & V or Appeal.	
	a)	I may use the confidential information and related materials for the purpose of my participation in any such review or variance proceeding, subject to the ruling and the terms and conditions of this undertaking related to the access, use and protection of the confidential information;	No position- but not to be taken as support.	
	b)	<p>I will, within 30 days following the release of the Commission's final disposition of any review application:</p> <p>i. Expunge all electronic copies of the confidential information and related materials from all electronic apparatus and data storage media in my possession and under my direction and control;</p> <p>ii. Deliver to the <u>grantee</u> or destroy all paper copies of the confidential information and related materials in my possession or under my</p>	No position- but not to be taken as support.	

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		<p>direction and control; and iii. Provide an originally executed statutory declaration in the form attached to both the Commission and to the grantee.</p>		
12)		<p>In the event that any Commission decision in respect of this proceeding is the subject of a permission to appeal application or appeal:</p>	<p>See above comments on notice of termination of R &amp; V or Appeal.</p>	
	a)	<p>I may use the confidential information and related materials for the purpose of my participation in any such permission to appeal application or appeal except to the extent that a court of competent jurisdiction grants any contrary order with respect to the confidential information or related materials;</p>	<p>No position- but not to be taken as support.</p>	
	b)	<p>I will, unless otherwise directed by a court of competent jurisdiction, within 30 days following the release of a final decision disposing of the appeal (a decision dismissing the application for permission to appeal or</p>	<p>No position- but not to be taken as support.</p>	

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		<p>a final decision on appeal):</p> <p>i. Expunge all electronic copies of the confidential information and related materials from all electronic apparatus and data storage media in my possession and under my direction and control;</p> <p>ii. Deliver to the <u>grantee</u> or destroy all paper copies of the confidential information and related materials in my possession or under my direction and control; and</p> <p>iii. Provide an originally executed statutory declaration in the form attached to both the Commission and to the grantee.</p>		
<b>Made</b> (place and date)		Made at _____,		
Signatures		Recipient signature Witness name Witness signature		
General comments on undertaking			CCA is concerned with growing use of confidential information for a number of reasons. Our substantial concern is the undertaking may limit participation of parties,	

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			consultants and experts.	
<b>STATUTORY DECLARATION OF RECIPIENT (DESTRUCTION OF CONFIDENTIAL INFORMATION)</b>				
Declaration name		I, _____ of _____ in the _____ of _____, do solemnly declare as follows:		
1)		I had within my care and control records, reports, documents or information, or portions thereof, that were granted confidential treatment (confidential information) by the Commission in its ruling dated <u>insert date of ruling</u> (ruling) in Proceeding <u>insert proceeding no.</u> pursuant to Section 13 of Rule 001: <i>Rules of Practice</i> , and had within my care and control evidence, transcripts, notes, working papers, calculations, analysis or other materials based on or using the confidential information that I received, reviewed or prepared during the course of the proceeding (related materials).	No position- but not to be taken as support.	
2)		I executed an undertaking in accordance with the ruling and Section 13 of Rule 001: <i>Rules of Practice</i> (undertaking) to have access to the confidential information and related materials for the purposes of my participation in the above-noted proceeding.	No position- but not to be taken as support.	
3)		I have made no use of the confidential information or related materials except as permitted pursuant to the ruling and undertaking.	No position- but not to be taken as support.	
4)		I have not disclosed the confidential information or related materials in any manner except as permitted by	No position- but not to be taken as support.	



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		the ruling and undertaking.		
5)		I have expunged all electronic copies of the confidential information and related materials from all electronic apparatus and data storage media in my possession or under my direction and control.	No position- but not to be taken as support.	
6)		I have delivered to the grantee or have destroyed, all paper copies of the confidential information and related materials in my possession or under my direction and control.	No position- but not to be taken as support.	
Declaration		And I make this solemn declaration conscientiously believing it to be true and knowing that it is of the same force and effect as if made under oath.	No position- but not to be taken as support.	
Signatures and seal		<p>Recipient signature</p> <p>Declared before me at the _____ of _____</p> <p>in the province of _____</p> <p>this ____ day of _____, 20__.</p> <p>_____</p> <p>A Commissioner for Oaths in and for Alberta or</p> <p>a Notary Public (with seal affixed)</p>		
General comments on Statutory Declaration				

