

**CENTRA GAS MANITOBA INC.
2015/16 COST OF GAS APPLICATION**

**FINAL ARGUMENT OF THE CONSUMERS' ASSOCIATION
OF CANADA (MANITOBA) INC. ("CAC")**

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INDEX

1. Introduction	3
2. The Law	4
(a) Supreme Court of Canada ("SCC") decisions in Ontario (Energy Board) v. Ontario Power Generation Inc., 2015 SCC 44 ("OPG") and ATCO Gas and Pipelines Ltd. v. Alberta (Utilities Commission), 2015 SCC 45 ("ATCO")	4
(b) The Public Utilities Board Act, C.C.S.M. c. P280 ("Act")	7
(c) Analysis	9
3. Relevant Facts	9
4. Actions Taken by Centra	12
5. Mark Stauff Evidence (Ex. CAC 9; PUB 13 and 14)	14
6. Centra's Evidence Concerning the Prudence of its Decisions	17
7. Appropriate Remedy	22
(a) Reducing Centra's retained earnings	22
(b) Disallowance of a Portion of the Supplemental Gas PGVA Deficiency	23
(c) Stauff's Analysis	24
(d) CAC's Recommendations	26
8. Conclusion	29

**Centra Gas Manitoba 2015/16 Cost of Gas Application
Final Argument of the Consumers Association of Canada (Manitoba) Inc.**

1. Introduction

1. The Consumers Association of Canada (Manitoba) Inc. ("CAC") has no submissions on most of the issues presented by Centra Gas Manitoba Inc.'s ("Centra's") 2015/16 Cost of Gas Application ("Application"). Most topics of interest have been addressed in the written evidence of Mark Stauff ("Stauff") (Exhibit CAC 9 @ p. 1-2). CAC's concerns with the Application relate to the prudence of Centra's gas and gas transportation contracting practices prior to and during the winter of 2013/14. During that period Centra accumulated a large total net deficiency in its Non-Primary Gas PGVA's, including in particular its Supplemental Gas PGVA. Centra seeks recovery of that total net deficiency in this proceeding.
2. The main cause of the deficiency in the 2013/14 Supplemental Gas PGVA was the fact that during the 2013/14 winter Centra purchased greater than expected quantities of Supplemental Gas at downstream market points at an average price of over \$8/GJ. That average price was far in excess of the forecast cost of such supplies embedded in rates. Over the 2013/14 winter Centra acquired Supplemental Gas from third parties at the inlets to its facilities in its franchise area¹ via arrangements referred to as "peaking delivered services" ("Delivered Services"), as well as at the TransCanada Pipelines Ltd. ("TransCanada") Mainline System Emerson export delivery point, in Michigan, and in the Chicago area. During the 2013/14 winter high gas commodity prices were observed across eastern North America. Those high prices resulted from a combination of severe winter weather over a considerable period, including late in the winter, and very high interruptible transportation service ("IT") prices that TransCanada was able to charge.
3. The 2013/14 winter was the first winter following the implementation on July 1, 2013 of the National Energy Board's ("NEB") RH-003-2011 Decision. In that Decision the NEB effectively deregulated the prices that TransCanada could charge for IT and STFT [note: Short Term Firm Transportation] services on its Mainline System ("Mainline"). The deregulation of prices for short term pipeline transportation services like IT and STFT is unprecedented in the North American natural gas market, and represented a very significant and fundamental change in the NEB's approach to pipeline regulation. That change also had profound implications for the operation of the integrated gas commodity and gas transportation market in and downstream of geographical areas served by the Mainline.

¹ Referred to in what follows as the "MDA", for "Manitoba Delivery Area".

4. The combination of severe winter weather, storage inventories across the pipeline grid that were depleted early in the winter, and extraordinarily high IT prices that TransCanada charged during that period, especially at the Emerson export point, resulted in extremely high downstream or market-area prices for the Supplemental Gas that Centra purchased.
5. While Centra obviously could not have foreseen or planned specifically for the extreme weather conditions that prevailed during the 2013/14 winter, CAC's position is that Centra's management of its gas supply and transportation assets leading up to and during the 2013/14 winter period failed to properly anticipate, react appropriately to, and protect Centra's customers from, new but foreseeable market pricing risks that were created by the NEB when it deregulated IT and STFT prices in Decision RH-003-2011. Moreover, that failure resulted in Centra incurring gas costs that were significantly higher than necessary. Some portion of those costs were therefore not reasonably incurred, and ought not to be recoverable by Centra from its customers.

2. The Law

(a) Supreme Court of Canada ("SCC") decisions in **Ontario (Energy Board) v. Ontario Power Generation Inc., 2015 SCC 44 ("OPG")** and **ATCO Gas and Pipelines Ltd. v. Alberta (Utilities Commission), 2015 SCC 45 ("ATCO")**

6. Centra has argued in its application; in its rebuttal evidence to the evidence of Stauff; in oral evidence, and no doubt will do so in final argument, that the Board cannot, as a matter of regulatory principle, apply a hindsight review to the actions taken by Centra.
7. Centra cannot be faulted for taking such a position because it would have been unaware of the above-noted ATCO and OPG cases rendered by the SCC on September 25, 2015, which set out a road map of what regulators in regulated utilities must bear in mind when dealing with the approval of rates.
8. These cases have changed or clarified, and in some instances restated, the law on such principles as:
 - Burden of proof in rate making.
 - Presumption of prudence.
 - Use of hindsight.

The following principles can be gleaned from these cases:

- Fair and reasonable rates are rates that are fair to the consumer and which secure to the utility a fair rate of return on the capital invested.

OPG at para. 15

ATCO at para. 7

- A regulator need not accept every cost submitted by a utility, nor is a rate of return guaranteed.

OPG at para. 17

- The burden of proof is on the utility to demonstrate that rates are just and reasonable. A regulator may disallow costs that are not fair and reasonable.

OPG at para. 18

ATCO at para. 36 & 42

- A balance of interest is struck when the regulator allows rates whereby customers pay no greater than the regulator expects to efficiently provide the services rendered, taking into account both operating and capital costs. The customer pays no greater than that which is necessary and the company earns a fair rate of return in providing those services.

OPG at para. 20

- There is a no automatic presumption of prudence in terms of costs. Such a presumption must be found in the legislation. Requiring that rates be 'just and reasonable' is inconsistent with that presumption.

OPG at para. 79

- Forecast costs are costs which have not yet been paid; committed costs are costs which, if disallowed, will be borne by the utility and the shareholder, either because they are spent or because there is a legally binding requirement to pay those costs.

OPG at para. 82

- In not applying a no-hindsight prudence review, a Board's decision is not rendered unreasonable by that fact alone.

OPG at para. 103

- Where the statute requires a regulator to set just and reasonable rates, the regulator may use a variety of analytical tools at its disposal.

OPG at para. 103

- Employing a presumption of prudence test conflicts with the burden of proof required of the applicant unless the statute expressly states otherwise.

OPG at para. 104

- A regulator may evaluate committed costs using a method other than a no-hindsight prudence review. A prudence review of committed costs may in many cases be a sound way of ensuring utilities are treated fairly and remain able to secure required levels of investment capital.

OPG at para. 104

- Use of methodological flexibility by a regulator assumes that a decision need not be "all or nothing".

OPG at para. 112

- Prudence reviews have their origins in the examination of decisions to pursue particular investments; often a one-time decision made in view of a known or assumed set of particular circumstances.

OPG at para. 109

- Prudence reviews are less relevant in the context of ongoing costs where the focus is not solely on compensation for past commitments but on regulating costs in the future as well.

OPG at para. 110

- A regulator must look at the required legislation to determine whether a specific methodology is imposed upon the regulator.

ATCO at para. 32

- One needs to examine relevant statutes to determine whether the approach is reasonable.

ATCO at para. 34

- A prudent cost is one which might be described in the ordinary sense as "wise or sound".

ATCO at para. 34

- Absent a definition of 'prudent' cost or a clear inference that a no-hindsight rule is required, the ordinary use of the word applies.

ATCO at para. 38

- The use of "prudent" in the legislation alone does not make it no-hindsight methodology required to be used.

ATCO at para. 64

(b) The Public Utilities Board Act, C.C.S.M. c. P280 ("Act")

9. The legislation that must be reviewed in order for the Board to determine what its requirements are is found in the following sections:

Elements of rate base

61 Where rate base is a factor in determining just and reasonable rates or tolls, the board shall allow a rate of return based on a rate base that includes, as basic elements,

- (a) the original or historic cost of the assets, used and useful and prudently acquired, less depreciation; and
- (b) a reasonable amount for the working capital required for the operation of the business.

Investigation of excess charges

64(1) Where

- (a) it is made to appear to the board, upon the complaint of an owner of a public utility, or of any municipality or person having an interest, present or contingent, in the matter in respect of which the complaint is made, that there is reason to believe that the tolls or charges demanded by any owner of a public utility exceed what is just and reasonable, having regard to the nature and quality of the service rendered or of the commodity supplied; or
- (b) requested to do so by the minister; or
- (c) in the opinion of the board it is expedient to do so, on its own initiative;

the board may proceed to hold such investigation as it sees fit into all matters relating to the nature and quality of the service or the commodity in question, or to the performance of the service and the tolls or charges demanded therefor.

Increase or decrease of contractual rate

65(1) Where, by any contract between an owner of a public utility and any municipality, other corporation, or person for the supply of any commodity or service by means of the public utility, the rate, toll or charge is agreed upon either as a fixed or variable rate, toll, or charge, or a

maximum or minimum rate, toll, or charge, and whether the rate, toll, or charge is agreed upon with respect to a present or future supply of an existing or non-existing commodity or service, then, notwithstanding any other provision of this Act, upon the application of the owner, municipality, corporation or person, and if, upon the hearing of the application, it is shown that the rate, toll, or charge is insufficient, excessive, unjust, or unreasonable, the board may change the rate, toll or charge to such other greater or lesser rate, toll or charge, as it deems fair and reasonable.

Orders as to utilities

77 The board may, by order in writing after notice to, and hearing of, the parties interested, (a) fix just and reasonable individual rates, joint rates, tolls, charges, or schedules thereof, as well as commutation, mileage, and other special rates that shall be imposed, observed, and followed thereafter, by any owner of a public utility wherever the board determines that any existing individual rate, joint rate, roll, charge or schedule thereof or commutation, mileage, or other special rate is unjust, unreasonable, insufficient, or unjustly discriminatory or preferential;

Discriminatory rates

82(1) No owner of a public utility shall

(a) make, impose, or exact any unjust or unreasonable, unjustly discriminatory, or unduly preferential, individual or joint rate, commutation rate, mileage, or other special rate, toll, fare, charge, or schedule, for any product or service supplied or rendered by it within the province;

Changes in rates to be approved by board

84(1) No change in any existing individual rates, joint rates, tolls, charges, or schedules thereof or any commutation, mileage, or other special rates shall be made by any owner of a public utility, nor shall any new schedule of any such rates, tolls, or charges be established until the changed rates or new rates are approved by the board, when they shall come into force on a date to be fixed by the board; and the board may, either upon written complaint or upon its own initiative, hear and determine whether the proposed increases, changes, or alterations are just and reasonable.

Onus

84(2) The burden of proof to show that any such increases, changes, or alterations are just and reasonable is upon the owner seeking to make the increases, changes, or alterations.

Application of Part

113(1) This Part only applies to the sale, delivery, direct purchase, distribution, storage and transmission of gas within the Province.

Criteria for board orders

126(1) In making any order under this Part, the Board may consider the following factors:

(a) whether the rates, tolls or other charges are excessive, unjust, unreasonable or unjustly discriminatory;

Determination of rates, tolls or charges

127(1) The Board shall determine, from time to time, rates, tolls or other charges to be charged by a public utility or any person for selling, delivering, distributing, storing or transmitting gas within the Province, and in connection therewith shall determine, inter alia, the rate base and the rate of return on shareholder equity.

Rate of return on shareholder equity

127(2) In determining the rate of return on shareholder equity under subsection (1), the Board shall fix a rate of return that it determines to be in compliance with this Act.

(Emphasis added)

(c) Analysis

10. As can be seen from a review of the Act, there is no prudence test which requires a "no-hindsight" review, either directly defined or by necessary implication from the wording of the legislation. As a matter of fact the only reference to prudence is found in s. 61(1) of the Act which applies only to capital acquisitions. The repeated use of phrases like "just and reasonable" is in conflict with a requirement of the Board not to use hindsight. The Board is thereby free to apply whatever methodologies it has at its disposal to determine whether the Supplemental Gas costs applied for (here, the 2013/14 costs captured in the Supplemental Gas PGVA) are just and reasonable.
11. Thus, the Board is entitled to canvass the evidence, including results and make whatever determination it deems appropriate without the constraint of a no-hindsight review. Nevertheless, CAC will argue that no matter the methodology of review the Board employs, Centra's actions or inactions in the 2013/14 gas year were not reasonable in protecting the consumer from the high commodity prices experienced.

3. Relevant Facts

12. What the Board needs to remember is that the gravamen of the decisions of the NEB in TransCanada's various applications, and the resulting paradigm of unregulated short term transportation tolls on the Mainline, was uppermost in the minds of all stakeholders at the 2013/14 GRA held in June of 2013.
13. At that time, the RH-003-2011 Decision had been rendered in which TransCanada was given unfettered discretion to charge whatever it liked for IT and STFT services. The effect was to deregulate short term tolls, with the idea that shippers, including Centra, would be induced to contract for more firm transportation ("FT").

14. At the 2013/14 GRA hearing Centra indicated that the NEB decision had just been rendered and the company was formulating a response to how it was going to shape its transportation portfolio. At or around that time, Centra started to explore certain things, including entering into certain third party transportation and Mainline FT contracts, for both long-haul (Empress-MDA) and short-haul (Emerson-MDA) paths².
15. More importantly, Centra was very nervous about the fact that FT-RAM had been disallowed by the NEB as it took a resource away from Centra in recovering or mitigating its unusual demand charges ("UDC"). Consequently, when TransCanada sought to have the NEB, in a hearing in September in the RH-001-2013 proceeding, eliminate out-of-path diversions, which also was a useful tool used by Centra to recoup UDC in the secondary market, Centra did not wait for an NEB decision to ascertain the results. Rather, Centra contracted for firm transportation and in that way, it made a proactive attempt to ameliorate any detrimental impacts that may have arisen had the NEB approved the application of TransCanada to eliminate out-of-path diversions.
16. Nevertheless, TransCanada had unfettered discretion to effectively eliminate short-term transportation services, which had important implications. Shippers were contracting for substantially more firm transportation, essentially out of fear that TCPL could manipulate the market such that the downstream commodity costs would be excessive. As part of that phenomenon shippers purchased substantially more FT from Empress to Emerson.
17. Centra on the other hand did very little to ameliorate or mitigate this concern; a concern which was real and imminent at the time. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
18. As a result, Centra did not protect its consumers by contracting for sufficiently more firm transportation service. As a matter of fact, Centra had more firm transportation prior to the RH-003-2011 Decision but decided to reduce it because it was going to be more expensive than short-term transportation at that time. One has to wonder why Centra, when it saw the new paradigm of multi-year tolls and the agreement between the Eastern LDCs and TransCanada to keep short-term transportation deregulated up until at least 2020, did not see the risk of excessive commodity costs or, if it saw the risk, did not act sufficiently to compensate for it.
19. Centra was keenly aware that TransCanada would price STFT to Centra's delivery points (because Centra is captive to the Mainline) at a price which would

² Application Tab 3, pages. 20-21; Rebuttal page 4

economically incent Centra back to holding a large block of annual FT with the need to mitigate UDC in the secondary market³.

20.

[REDACTED]

21. From the above, it was, or ought to have been, readily apparent to Centra that:

- (a) Shippers were increasing FT service to Emerson to ameliorate against excessive commodity prices downstream of Empress;
- (b) It required a re-engagement in contract for more FT from Empress;
- (c) The commodity prices of WCSB gas would be "in the money" while the market was adjusting to the new constraints.

22. In that environment Centra should have been concerned about TransCanada's intentions for the following reasons:

- The NEB in RH-003-2011 at p. 2 of 3 indicated in part that TransCanada is encouraged by the new incentive mechanism to make decisions which result in the greatest Mainline net revenue in the long run, which will benefit shippers who require Mainline service⁵.
- The NEB recognized that giving TransCanada the flexibility to increase and decrease bid floors may give it the opportunity to charge very high tolls in certain markets and certain times; eg. **during significant weather events**. However, it is important to provide TCPL with the necessary tools to capture market opportunities if and when they arise⁶.
- Shippers (including Centra) that require Mainline services can cap their exposure to discretionary tolls by opting contract for FT service. In this way FT tolls act as a recourse rate to protect shippers from high tolls for discretionary services⁷.

³ Centra Ex. 18, Attachment 1, p. 1 of 3

⁴ Centra Ex. 18, Attachment 1, p. 1 and 2 of 3

⁵ Ex. PUB-11, Tab 8, p. 133

⁶ Ex. PUB-11, Tab 8, p. 140

⁷ Ex. PUB 11, Tab 8, p. 141

- The Board expressed concerns with aspects of the NEB decision that directly impacted Centra, which is why it requested Centra to file an application to amend its Cost of Gas no later than January 31, 2014⁸.
- Since the issuance of RH-003-2011, shippers were signing up for more firm service, including shippers with low load factors, resulting in a need for shippers to have a reasonable means to mitigate UDCs⁹.
- Centra acknowledged before the NEB that "it values a robust and competitive secondary market, with numerous participants even though it is a long-term and captive shipper on the Mainline and therefore has a strong interest in minimizing its exposure to future cost deferrals¹⁰.
- TCPL noted that it is likely that the amount of capacity and number of transactions in the secondary market will increase since numerous parties are 'firming up' their capacity that can be resold by shippers in the secondary market¹¹.
- The NEB was of the view that by maintaining out-of-path diversions, it allows shippers to freely service markets where there is a demand for natural gas and where the price of natural gas is highest¹².

4. Actions Taken by Centra

23. As already stated above, with a knowledge as to the uncertain, but potentially catastrophic, ability of TransCanada to disrupt the market, Centra did very little. Notwithstanding Centra indicated to its interruptible customers that they should be prepared for costs approaching multiples of the bid floor price, and also bearing in mind that TransCanada never committed to a cap on short-term transportation prices, Centra should have been acutely protective of the need for increasing FT services on the Mainline.
24. Instead, Centra's efforts were either not directly related to the Mainline pricing discretion of TransCanada or, to the extent that they were, their reactions were demonstrably inadequate.
25. As can be seen from Centra's application (Tab 3, Page 20, and its Rebuttal Evidence, Centra Ex. 13, p. 4 of 30), Centra did the following:

(a) [REDACTED]

⁸ Board Order 85/13, p. 40; Ex. PUB-11, p. 148

⁹ NEB – Letter Decision – October 2013; RH-001-2013, p. 5 of 33; Ex. PUB-11, p. 158 & 160 & 162

¹⁰ Ex. PUG-11 Tab 8, p. 160

¹¹ NEB-RH-001-2013, p. 10 of 33; Ex. PUB-11, p. 163

¹² NEB-RH-001-2013, p. 12 of 33; Ex. PUB-11, Tab 8, p. 165

[REDACTED]

(b) [REDACTED]

(c) [REDACTED]

(d) [REDACTED]

26. [REDACTED]

27. Centra should have realized that additional firm transportation, which all along circumstances had indicated it required, needed to be contracted for much earlier. As a matter of fact, as set out in the response to PUB/Centra Int-009(b), Attachment 2, one can discern that there were persistently high and increasing prices of gas at Emerson, Chicago and Michigan in amounts that were substantially in excess of AECO prices.

28. It would be one thing to say that there was an outlier price on a particular day, which should not have motivated Centra to "jump to the pump". It is quite

another thing to look at pricing data over a substantial course of time in the winter in full face of knowing TransCanada's intentions and noting that high prices were proliferating in a sustained manner and not do anything about it until essentially February 26, 2014.

- 29. The ex-post-facto explanation that somehow Centra was on the mark by effectively contracting days before the "roof blew off "prices in March is more a matter of good fortune. However, Centra should have acted earlier at that by increasing its FT supply. The net result of not doing so was to exacerbate the price of gas and the ultimate cost of gas to consumers.
- 30. CAC believes that the facts disclosed by Centra in the Application suggest that there is a reason for the Board to inquire into the prudence of Centra's supply and transportation planning leading up to the 2013/14 winter. The sheer size of the Supplemental Gas PGVA deficiency, and the fact that Centra's under-collection of its gas costs was overwhelmingly associated with just its downstream purchases of Supplemental Gas, should prompt questions about what happened and why.
- 31. Of note is the fact that on the one hand, when faced with uncertainty, in the form of a threat of a loss of out-of-path diversions, Centra acted instead of waiting for the NEB decision; yet when faced with the likelihood of commodity prices being impacted by TransCanada intentions, Centra did not likewise act in a decisive manner.

5. Stauff Evidence (Ex. CAC 9; PUB 13 and 14)

- 32. In addition to the above, Stauff's evidence amply demonstrates that there are serious questions about the adequacy and reasonableness of Centra's response to the RH-003-2011 Decision, and in fact it sets out a *prima facie* case that Centra's response was not reasonable.

33. [REDACTED]

34. [REDACTED]

[REDACTED]

35.

[REDACTED]

36.

Stauft's view, therefore, was that, as a result of the implementation of the RH-003-2011 Decision, Centra should have perceived that it faced a new and largely unknown pricing risk in relation to its firm requirements beyond what it could serve with storage withdrawals, Primary Gas, and Michigan supply. The market evidence that Stauff cited for that risk being apparent to the market was the fact that, following the implementation of RH-003-2011, large quantities of FT service were contracted on the Mainline from Empress to Emerson. At page 27 he characterized that change in the market as market participants protecting themselves from the potential adverse effects of deregulated IT prices.

37.

[REDACTED]

38.

[REDACTED]

[Redacted]

39. [Redacted]

40. [Redacted]

41. [Redacted]

42. Although these inputs were taken from Centra's forecast data for 2015/16 they reflect a conservatively "normal" expectation for any period, including 2013/14. Stauff acknowledged at page 28 that this modeling exercise was not an attempt to "precisely model Centra's gas supply portfolio" and that it included a number of simplifying assumptions, but expressed the view that it "...does illustrate, at a feasible level of detail, how the various costs and benefits compare at a high level, and I believe it highlights the important factors".

43. [Redacted]

[REDACTED]

44. [REDACTED]

45. [REDACTED]

46. Stauff's analysis goes far beyond what could possibly be required in order to overcome any presumption of prudence in Centra's favor. Stauff's evidence does not simply set out his opinion that Centra behaved unreasonably, but instead explains in detail the factual circumstances, market evidence, and numerical analyses that would lead any reasonable observer to that conclusion. In CAC's submission it is clear, as already stated above, that the onus is on Centra to demonstrate that its decisions in relation to meeting the challenges created by the RH-003-2011 Decision were prudent at the time they were made.

6. Centra's Evidence Concerning the Prudence of its Decisions

47. In the Application Centra explained how the large Non-Primary Gas PGVA deficiencies accumulated in the winter of 2013/14 and attributed those deficiencies to the combination of unusually severe weather and the impacts of TransCanada's unfettered pricing discretion for IT service on gas commodity prices in downstream market areas, including Emerson. The Application did not generally discuss Centra's actions prior to the winter of 2013/14 in response to any threat it saw at that time in relation to the potential for RH-003-2011 to disrupt the market and increase downstream gas commodity prices.

48. When Stauff's evidence was filed Centra had notice that the prudence of its decisions in the aftermath of the RH-003-2011 Decision, and leading up to the 2013/14 winter period, was in issue. Its opportunity to meet its onus of showing that its decisions on these matters were prudent was its rebuttal evidence.

¹³ See Stauff evidence, Attachment 2 and discussion at pp. 36-39.

49. Parts of Centra's Rebuttal Evidence and its oral direct testimony were concerned with disputing certain aspects of Stauff's calculations of the estimated loss associated with its failure to account for or mitigate the risks created by RH-003-2011. There are criticisms of Stauff's fuel cost assumptions; the appropriate Empress price to assume for modelling purposes; and Stauff's estimates of capacity management revenue under the alternative scenario. None of these criticisms go to the fundamental question of whether Centra reasonably understood and responded to the risks created by RH-003-2011 in 2013, before the 2013/14 winter. Those criticisms are relevant, however, to any estimate of the loss caused by Centra's failure to do that, and are addressed in more detail below.

50. Other parts of Centra's rebuttal are simply irrelevant to the question of whether it responded appropriately to the new and much more uncertain environment that was created by the RH-003-2011 Decision. In its Application; in its rebuttal evidence; and, in its oral direct presentation, Centra explained at great length that the 2013/14 winter was unusually cold and put unusual stress on the North American pipeline grid. That phenomenon is not relevant to the issue Stauff identified, which is the reasonableness of Centra's decisions prior to the 2013/14 winter.

51. Centra also referred to the experience of the Ontario and Quebec distributors during the 2013/14 winter, noting that they experienced high volumes and significant PGVA deficiencies much as Centra did. It also claimed that those deficiencies led to significant bill impacts for their customers and that, apparently, no issues were raised before their provincial regulators about the prudence of their gas costs. Centra also asked Stauff about the experience of the eastern LDCs in an information request, and again during cross-examination. None of that has anything to do with Stauff's evidence or with the question of whether Centra behaved prudently. As a matter of fact, any innuendo that Eastern LDCs recovered their costs, is not before the Board and cannot be considered. Furthermore, it is trite to say that any decision by other regulators is entirely dependent on separate and discrete facts.

52. [REDACTED]

53. [REDACTED]

[REDACTED]

54. The question, however, is the reasonableness of Centra's capacity decisions in the fall of 2013, long before there was any indication that capacity at Empress might become temporarily constrained under extreme conditions. There is no evidence that Centra would have had difficulty in September or October of 2013, or indeed that it had any actual difficulty during that period, making whatever upstream supply and transportation arrangements were necessary to support incremental firm capacity entitlements on the Mainline from Empress.

55. [REDACTED]

56. [REDACTED]

57. [REDACTED]

- [REDACTED]
- [REDACTED]
58. What is generally missing from Centra's rebuttal evidence is any actual reasoned response to Stauff's analysis and his reasoning in coming to the conclusion that Centra should have been expected to take greater steps to protect its customers from IT pricing-related risks associated with Emerson supply and, derivatively, Delivered Services.
59. A significant part of Stauff's evidence¹⁴ was devoted to describing the background to this issue and the underlying market basis for his conclusion that, as a result of the implementation of the RH-003-2011 Decision, Emerson commodity prices were likely to be both unstable and higher on average than they were under the previous regulated regime. Implicit in Stauff's analysis of these issues as a matter of prudence is his view that Centra should reasonably have been aware of these market factors when it was planning its response to RH-003-2013. In its rebuttal evidence Centra did not comment at all on Stauff's market analysis or on what its understanding of the market was at the time.
60. At the oral hearing Centra appeared to challenge Stauff's qualifications to provide expert testimony on these and other matters. CAC believes that Stauff was shown to be well qualified to comment on these issues, but if Centra had or has a different understanding than Stauff of the market mechanisms that operate in the aftermath of RH-003-2011 it presumably would have explained its own understanding of those market mechanisms, why its understanding is different from Stauff's, and why it believes Stauff's analysis is incorrect, in its rebuttal evidence.
61. Alternatively, if the facts are that, at the time Centra had no opinion at all about how the market would likely react to the deregulation of IT prices and no idea that Emerson prices might be adversely affected by deregulated IT tolls, that would be relevant to the prudence inquiry if Centra could show that its lack of appreciation of those facts was reasonable in the circumstances. In a similar vein, Stauff cited the fact that marketers subscribed for large amounts of Empress-Emerson FT service after the implementation of RH-003-2011 as market evidence that the risk he identified was perceived in the market. If Centra had a different understanding of why that happened, or of whether it was relevant, it should have explained that in its rebuttal.

62. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

¹⁴ s.III - 2, pp 9-21.

63. In the absence of any contrary or competing analysis from Centra, CAC believes that Stauff's account should be accepted. In any event, Centra did nothing in its rebuttal in relation to these issues to advance the cause of meeting its onus to demonstrate that it understood the situation it was in and acted reasonably in response to it.

64. [REDACTED]

65. [REDACTED]

66. [REDACTED]

67. Centra did not address that claim in its rebuttal, or give any indication that it had even considered the merits of that alternative in any systematic way either before or after the implementation of RH-003-2011. Again, if Centra disagrees with Stauff on that point, and if it wanted to demonstrate that in fact it had addressed its mind to the issue of how best to respond to the risks created by RH-003-2011, it should have acknowledged Stauff's analysis and explained in detail why it

reasonably believed at the time that the approach it actually adopted made sense and reasonably took into account all of the relevant factors and risks.

68. In summary, CAC's position is that Centra failed to meet its onus to demonstrate that it understood the situation that existed in the aftermath of the implementation of RH-003-2011, and that it responded reasonably and rationally to that situation.
69. In fact Centra's attempt to meet that onus, in its rebuttal evidence and oral direct presentation, involves little more than appeals to various irrelevant considerations, a description of its activities that essentially repeats the information provided in the Application, and a general assertion that its decisions were prudent and reasonable. In CAC's submission that cannot be sufficient, and the most reasonable conclusion is that Centra's decisions in response to RH-003-2011 were not prudent.
70. Lastly, given the tenor of questioning of Stauff by Centra's counsel, it would appear that Centra will argue that it knows best, in terms of how to manage its portfolio and that an outsider such as Stauff could not possibly replicate or even contemplate the intricacies of its operations. Stauff conceded as much; but that fact is not relevant to the issue before the Board; nor is it persuasive in critiquing Stauff's evidence.
71. Stauff is experienced, and was active in the regulatory environment at the relevant time and his recitation of the regulatory environment is supported by the overall evidence. If Centra's argument carries the day, that only its experienced team can determine whether its actions or inactions were reasonable, then there would be no point in having a hearing, because Centra's position would prevail by default.
72. Most importantly, the thrust of Stauff's evidence is not diminished by Centra's attempts to minimize his credentials, because the Board must determine Centra's actions objectively, not based on Centra's subjective assessment of its own abilities and experience.

7. Appropriate Remedy

(a) Reducing Centra's retained earnings.

73. There was some pre-hearing indication by the Board, and indeed extensive discussion at the hearing, as to whether, because Centra made about \$19 million from the unusually cold winter of 2013/14, thereby increasing its retained earnings substantially, that some of that money should be refunded to the consumer to ameliorate the approximate \$46 million in Supplemental Gas costs added to the PGVA.

74. Centra strenuously argued against that proposition and stated through Darren Rainke that, under the present regulatory construct, such a move by the Board would be inappropriate and inconsistent with the way regulation has been conducted in this jurisdiction and in other jurisdictions in North America. Centra further argued that these costs were pass-through costs and should be treated as such, and that, unless there were costs which were imprudently incurred, any cost increase should not be borne by Centra in whole or in part.
75. In response, CAC concedes that the cost of gas is a pass-through, whereby the utility earns no profit and incurs no losses. This is an appropriate and well-recognized regulatory principle. Nevertheless, as noted above, this principle is predicated upon the use of the word "prudent" cost. In that regard, CAC has argued that the costs incurred were not reasonable, they were not prudent, and they should be disallowed to a certain extent.
76. While Centra has almost doubled its retained earnings since 2011/12 (see PUB/Centra 28(a)-(e), Attachment 1) from approximately \$34.3 million to \$72.1 million for 2014/15, because the rates were approved, the Board Order was final and cannot be countermanded unless by a review and variance of that application, which never took place. All of the above is to say that it would not be proper for the Board to refund the customers of Centra part of the retained earnings as a result of the cost of gas debacle. Nevertheless, because the retained earnings are have doubled recently, and because Centra's net income increased by some \$19 million, the Board should direct Centra to file a GRA for 2015/16 so that the Board can review the whole issue of Centra's financial status and the financial implications to the consumer as a result of these past two years.
77. Centra has indicated that, unless an IFF scheduled for the Fall of 2015 demonstrates forecasts to the contrary, Centra will not be applying for a GRA until 2017/18. Under the circumstances however, it is important that Centra comes in much earlier in order to determine whether its retained earnings should be adjusted.

(b) Disallowance of a Portion of the Supplemental Gas PGVA Deficiency

78. One thing that is important to bear in mind is the suggestion by Centra that disallowing recovery of any portion of the remaining \$22 million prior period supplemental gas PGVA balance is detrimental the Centra's financial position and ultimately increases the risk of significant customer rate impacts in the future (see PUB/Centra (i) – 29(c), page 2 of 13). The Board must keep in mind that it cannot consider the impacts of the financial position of Centra without regard to what Centra needs to recover to efficiently provide gas to the consumer. CAC is not asking for a 50% reduction, but there should be a balance between some refund to the consumer and Centra's financial integrity as a result of any kind of refund. The response to the PUB/Centra (i) – 29(a) – (c) is somewhat hyperbolic and there should be a happy medium somewhere in between. As the Supreme

Court of Canada has stated in the **ATCO** case, the costs (here the costs in issue has been \$46 million spent) is a consideration as to whether or not the costs are reasonable. In this case CAC says that they were not reasonable and should not have been incurred to that extent.

- 79. If the Board concludes that Centra has failed to meet its onus of demonstrating that its decisions in response to RH-003-2011 were prudent, the question becomes one of what remedy is appropriate.
- 80. Conceptually this involves two questions. First, if Centra's decisions were not reasonable, what should it have done instead? Second, if Centra had taken a prudent approach, what benefit would that have generated for customers? To put it another way, what was the cost to customers of Centra's failure to act prudently?
- 81. CAC believes that Centra should have done more to insulate its customers from the market risks that were created by the RH-003-2011 Decision, and that its failure to do so resulted in excessive costs that should not be recoverable in utility rates. Nevertheless, in his oral testimony Stauff acknowledged the difficulty of answering these questions with any precision, and offered the opinion that ultimately it must be a matter of judgment for the Board. CAC agrees. In order to inform that judgment, however, it is useful to consider Stauff's analysis of this issue.

(c) Stauff's Analysis

82. [REDACTED]

83. [REDACTED]

¹⁵ Stauff evidence, page 40, line 19

[REDACTED]

84.

[REDACTED]

85.

[REDACTED]

86.

[REDACTED]

87.

[REDACTED]

[REDACTED]

88.

[REDACTED]

(d) CAC's Recommendations

89. For the reasons set out below, and having regard to the need to maintain Centra's financial integrity, CAC's position is that the Board should order a modest disallowance of 2013/14 Supplemental Gas costs in the range of \$5 million to \$8 million. Although CAC accepts Stauff's analysis, it recognizes that

[REDACTED]

[REDACTED]. CAC is prepared to be conservative in its analysis in order to recognize that Centra could reasonably have adopted various strategies.

90.

[REDACTED]

[Redacted]

91.

[Redacted]

92.

[Redacted]

93.

[Redacted]

94.

[Redacted]

95.

[Redacted]

¹⁶ Stauff evidence pages 18-20

[REDACTED]

96.

[REDACTED]

97.

[REDACTED]

98.

[REDACTED]

99.

[REDACTED]

¹⁷ see response to PUB-CAC-1.

100.

101. Obviously higher assumed volumes, or higher assumed gas cost savings or secondary market recoveries, will generate different and higher estimates, but for these purposes CAC believes that a range of \$5 million to \$8 million is reasonable.

8. Conclusion

102. For the reasons set out above, CAC believes that Centra behaved unreasonably and imprudently in the aftermath of the RH-003-2011 Decision. [REDACTED]
[REDACTED]
[REDACTED] As a result, some portion of Centra's claimed gas costs should be disallowed, and in CAC's view a \$5 million-\$8 million disallowance would be appropriate, without jeopardizing Centra's financial position.
103. CAC also believes that any suggestion that \$46 million in supplemental gas costs, is not exorbitant in relation to Centra's overall gas costs or that historically there were worse events (viz: 2001/02), is misconceived. The fact is that the consumer should not pay \$1 more than necessary. Also, smoothing out the pain, only masks the problem. Recognizing that there has been a substantial recovery of the approximately \$46 million to date; and assuming the Board is receptive to some kind of disallowance; the Board should also consider a rate rider covering 12 months to recognize that the cost of gas at issue was consumed approximately 18 months ago.
104. CAC also urges the Board to consider ordering Centra to file a 2015/16 GRA to be heard next year.
105. Finally, it must be remembered that Centra demurred from bringing its updated Cost of Gas Application to the Board by January 31, 2014 as directed. If Centra had done so, all stakeholders no doubt would have had a more current picture of unfolding events. Whether some ameliorating measures could have been taken will never be known. CAC believes that Centra should have been more circumspect about not coming forward as required; notwithstanding the small PGVA balance forecast by Centra, if for no other reason than the uncertainty and

volatility surrounding events unfolding from the decisions made by the NEB in 2013.

RESPECTFULLY SUBMITTED this 5th day of October, 2015



Brian J. Meronek, Q.C,
on behalf of CAC