

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

MANITOBA PUBLIC UTILITIES BOARD

Re: CENTRA GAS MANITOBA INC.
 2007 COMPETITIVE LANDSCAPE PROCEEDING

Before Board Panel:

- Graham Lane - Board Chairman
- Len Evans - Board Member
- Eric Jorgensen - Board Member

HELD AT:

Public Utilities Board
400, 330 Portage Avenue
Winnipeg, Manitoba
September 26th, 2007
Vol XI
Pages 2267 to 2512

1 APPEARANCES

2 R.F. Peters)Board Counsel

3

4 Marla Murphy)Centra Gas

5 Brent Czarnecki

6

7 Paul Kerr (np))Coral Energy

8

9 Sandy Boyd (np))Communications, Energy

10)and Paper Workers

11)Local 681

12

13 Kris Saxberg (np))CAC/MSOS

14 Ivan Holloway)

15

16 Eric Hoaken)Direct Energy

17 Nola Ruzycki)Marketing Limited

18 Karen Melnychuk)& Energy Savings

19) (Manitoba) L.P.

20

21 Dave Hill (np))Koch Fertilizer

22

23 Nick Gretner (np))J.R. Simplot

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

APPEARANCES (CONT)

William Gange (np))TREE and Resource
)Conservation Manitoba

	TABLE OF CONTENTS	
		Page No.
1		
2		
3	Exhibit List	2271
4	List of Undertakings	2273
5	DEML/ESMLP PANEL, Resumed:	
6	CLINTON ROEDER, Resumed	
7	KAREN MELNYCHUK, Resumed	
8	GARY NEWCOMBE, Resumed	
9	NOLA RUZYCKI, Resumed	
10	Continued Cross-Examination by Mr. Ivan Holloway	2382
11		
12	Motion by CAC/MSOS	2317
13	Submissions by Mr. Eric Hoaken	2328
14	Submissions by Ms. Marla Murphy	2331
15		
16	Continued Cross-Examination of DEML/ESMLP Panel	
17	by Mr. Ivan Holloway	2342
18		
19	Decision on Motion	2375
20		
21	Continued Cross-Examination of DEML/ESMLP Panel	
22	by Mr. Ivan Holloway	2378
23	Cross-Examination by Ms. Marla Murphy	2383
24		
25	Certificate of Transcript	2512

1	LIST OF EXHIBITS		
2	EXHIBIT NO.	DESCRIPTION	PAGE NO.
3	CENTRA-21	Response to undertaking concerning	
4		BC confirmation letter	2277
5	CENTRA-22	Response to undertaking concerning	
6		EPP adjustment process	2278
7	CENTRA-23	Response to undertaking concerning	
8		information relating to the	
9		confirmation process, with respect	
10		to notification regarding the EPP	
11		adjustment issue	2278
12	CENTRA-24	Response to undertaking concerning	
13		TCPL and the change in the volumetric	
14		calculation	2279
15	DEML/ESMLP-10	Response to undertaking concerning	
16		the clarification of corporate	
17		structures in Alberta	2279
18	DEML/ESMLP-11	Response to undertaking: Alberta	
19		code of conduct	2280
20	DEML/ESMLP-12	Glossy brochure outlining the most	
21		current marketing material used by	
22		Direct Energy	2372
23	DEML/ESMLP-13	Direct Energy branded document	
24		showing a family on the front	2372
25			

1	LIST OF EXHIBITS (Con't)		
2	EXHIBIT NO.	DESCRIPTION	PAGE NO.
3	DEML/ESMLP-14	Two (2) page brochure that says,	
4		"Energy Savings Manitoba LP" on	
5		the cover	2373
6	DEML/ESMLP-15	One (1) page Energy Savings document	2373
7	DEML/ESMLP-16	Updated registration form/contract	
8		for Energy Savings	2374
9	CENTRA-25	Copy of correspondence from the	
10		Board to the then-solicitor for	
11		some of the brokers, with respect	
12		to the code of conduct	2382
13	DEML/ESMLP-17	Direct Energy document entitled	
14		Product Update, June 2007	2452
15			
16			
17			
18			
19			
20			
21			
22			
23			
24			
25			

	UNDERTAKINGS		
	NO.	DESCRIPTION	PAGE NO.
1			
2			
3	22	DEML/ESMLP to provide CAC/MSOS a	
4		copy of all the current promotional	
5		material that is used by Direct	
6		Energy and Energy Savings	2363
7	23	DEML/ESMLP to provide CAC/MSOS with	
8		an updated copy of customer	
9		registration form/contract	2370
10	24	DEML/ESMLP to provide CAC/MSOS with the	
11		customer contract that has already been	
12		provided, including the line that is	
13		currently missing	2371
14	25	DEML/ESMLP to advise if Municipal Gas	
15		is a wholly subsidiary of Direct Energy,	
16		and where it fits on Exhibit 10, the	
17		Org. Structure	2384
18	26	DEML/ESMLP to determine for Centra who	
19		audits carbon-neutral products	2388
20	27	DEML/ESMLP to submit to Board	
21		information about the credits for audit	
22		of carbon-neutral, before offers made	
23		available in Manitoba	2390
24			
25			

1		UNDERTAKINGS (Con't)	
2	NO.	DESCRIPTION	PAGE NO.
3	28	DEML/ESMLP to provide Centra with	
4		salespeople training material	2497
5	29	DEML/ESMLP to indicate for Centra	
6		which brokers in Canada recognize that	
7		the Manitoba market environment has a	
8		number of impediments that make it	
9		difficult to achieve a truly open	
10		and competitive market	2424
11	30	DEM/ESMLP to determine for Centra what	
12		the turnover rate is for the door-to-	
13		door sales people are independent	
14		contractors	2427
15	31	DEML/ESMLP to determine for Centra how	
16		contractors within Manitoba have been	
17		dismissed for failing to comply with	
18		the rules	2428
19	32	DEML/ESMLP to file with Centra a copy	
20		of the material provided to salespeople	
21		with respect to Centra's product	2433
22	33	DEML/ESMLP to indicate for Centra if	
23		third party vendors who sell Direct,	
24		is restricted from selling other	
25		products	2436

1		UNDERTAKINGS (Con't)	
2	NO.	DESCRIPTION	PAGE NO.
3	34	DEML/ESMLP to advise Centra if the	
4		call verification process is what	
5		starts the enrollment process	2450
6	35	DEML/ESMLP to file for Centra the	
7		material that goes in the renewal	
8		notice that are provided to customers	
9		whose contracts are about to expire	2454
10	36	DEML/ESMLP to file for Centra the	
11		material that is provided to	
12		customers whose contracts are about	
13		to expire	2455
14	37	DEML/ESMLP To advise Centra as to the	
15		number of customers who exercised their	
16		right not to renew the contract or took	
17		steps not to renew the contract	
18		during the ninety (90) days	2460
19			
20			
21			
22			
23			
24			
25			

1	UNDERTAKINGS (Con't)		
2	NO.	DESCRIPTION	PAGE NO.
3	38	DEML/ESMLP to respond to Centra about the statement: The suggestion that customers would be made aware of the renewal provisions in the renewal letter that was sent, but the very purpose of a ninety (90) day automatic renewal is to address the issues that arise when a customer either doesn't read or doesn't respond to the renewal information that is sent. (Taken under advisement)	2475
14			
15			
16			
17			
18			
19			
20			
21			
22			
23			
24			
25			

1 --- Upon commencing at 9:04 a.m.

2

3 THE CHAIRPERSON: Good morning everyone.
4 Mr. Peters...?

5 MR. BOB PETERS: Yes. Good morning, Mr.
6 Chairman, Board members, ladies and gentlemen. At the
7 start of the proceedings this morning, the Board will
8 have available to it, I believe four (4) undertakings
9 provided by Centra, and there are two (2) from Direct
10 Energy and Energy Savings.

11 And I suggest the Board turn to perhaps
12 Ms. Murphy and we can mark and file the Centra responses
13 to undertakings, and then the Board could turn to Mr.
14 Hoaken and deal with the two (2) that he has prepared for
15 the Board at -- this morning.

16 THE CHAIRPERSON: Okay. Ms. Murphy...?

17 MS. MARLA MURPHY: Thank you, Mr.
18 Chairman. Good morning.

19 We filed the responses this morning to
20 Undertaking number 12, which was related to the BC
21 confirmation letter. I believe that should be filed as
22 Centra Exhibit Number 21.

23

24 --- EXHIBIT NO. CENTRA-21: Response to undertaking
25 concerning BC confirmation

1 letter

2

3 MS. MARLA MURPHY: Immediately behind it
4 is the response to Undertaking number 15, which related
5 to the EPP adjustment process, and I believe that should
6 be Centra Exhibit Number 22.

7

8 --- EXHIBIT NO. CENTRA-22: Response to undertaking
9 concerning EPP adjustment
10 process

11

12 MS. MARLA MURPHY: Following that is
13 Undertaking number 16, which was information relating to
14 the confirmation process, with respect to notification
15 regarding the EPP adjustment issue. That would be Centra
16 Exhibit Number 23.

17

18 --- EXHIBIT NO. CENTRA-23: Response to undertaking
19 concerning information
20 relating to the confirmation
21 process, with respect to
22 notification regarding the
23 EPP adjustment issue

24

25 MS. MARLA MURPHY: And finally the

1 Response to Undertaking number 19, which related to TCPL
2 and the change in the volumetric calculation, which I
3 believe should be Centra Exhibit Number 24.

4

5 --- EXHIBIT NO. CENTRA-24: Response to undertaking
6 concerning TCPL and the
7 change in the volumetric
8 calculation

9

10 THE CHAIRPERSON: Thank you, Ms. Murphy.

11 MS. MARLA MURPHY: Thank you.

12 THE CHAIRPERSON: Mr. Hoaken...?

13 MR. ERIC HOAKEN: Yes, thank you, Mr.

14 Chair. Good morning. We have two (2) undertakings we
15 can speak to this morning.

16 The first was an undertaking to clarify
17 the corporate structures in Alberta. This arises from
18 questioning of, I think, by Mr. Peters of Mr. Newcombe.
19 We have a document I've given to Board counsel. I should
20 distribute copies for the Board, and then perhaps I'll
21 ask Mr. Newcombe to speak to it briefly.

22 This -- this document I think we've agreed
23 is gonna be marked as DEML/ESMLP Exhibit 10.

24

25 --- EXHIBIT NO. DEML/ESMLP-10: Response to undertaking

1 DEML/ESMLP PANEL, Resumed:

2

3 CLINTON ROEDER, Resumed

4 KAREN MELNYCHUK, Resumed

5 GARY NEWCOMBE, Resumed

6 NOLA RUZYCKI, Resumed

7

8 MR. GARY NEWCOMBE: Sure. Thank you.

9 Just first of all I would just advise the parties to
10 ignore the heading on the document that says:

11 "Response to undertaking, transcript
12 volume 12, page 135, line 12."

13 That's a reference -- this document was
14 previously filed in a proceeding in another jurisdiction,
15 and that's what that refers to, so.

16 What this document does show is the
17 corporate structure that we have in Alberta, under the
18 overall Centrica Canada limited umbrella. If you notice
19 the sort of wide box to the ri -- on the right side of
20 the page there, "Direct Energy Marketing Ltd." which is
21 the sort of active corporation in Alberta. And
22 underneath there you'll see a, "DERS(Alberta)." That is
23 Direct Energy regulated services, so it is a business
24 unit of the corporation Direct Energy Marketing Ltd.

25 And the box at the bottom of the page

1 explain that position?

2 MR. GARY NEWCOMBE: Mr. Holloway, it's
3 our belief that the appropriate role for a default supply
4 function is to provide short term market base price
5 signals to consumers, so that they are in a position to
6 make an informed decision about whether to stay on the
7 short term market pricing, or to move to some other
8 product that may have some appeal to them.

9 MR. IVAN HOLLOWAY: If you look at your
10 evidence at page 2, if I can direct you there please.

11

12 (BRIEF PAUSE)

13

14 MR. IVAN HOLLOWAY: And in particular
15 paragraph 6(c). This is referring to -- I mean,
16 generally this paragraph's referring to some of the
17 themes, I think, that market regulators -- or that
18 utility regulators throughout North America have -- have
19 pronounced, and this part is about price signals.

20 And it -- it -- it states, second line in:

21 "From a public policy perspective,
22 these price signals are important
23 because:

24 1. They lead consumers to make the most
25 efficient use of resources. Example:

1 When market prices of natural gas
2 increase, consumers receive a signal to
3 conserve."

4 I just want to stop there for a moment.
5 Is one of your reasons for wanting the default supplier
6 to provide market based prices, because of your concern
7 about the efficient use of resources, and consumers
8 getting a price signal of when to concern -- conserve
9 rather?

10 MR. GARY NEWCOMBE: Yes, in a high level
11 holistic sense, that's -- that's correct.

12 MR. IVAN HOLLOWAY: Okay. But if -- you
13 -- you would agree with me that a -- a fixed price
14 offering, almost by definition, doesn't provide a
15 consumer with -- with price signals on a relatively
16 frequent basis? Is that correct?

17 MR. GARY NEWCOMBE: It does not provide a
18 price signal that's reflective of short term market
19 conditions, that's correct. It's a -- the market view of
20 -- sort of the sum of all of the short term market
21 signals, and markets expecting over the term of the fixed
22 price product.

23 MR. IVAN HOLLOWAY: Okay. So and the --
24 the long term market price -- what the actual market
25 price turns out for five (5) years for example, is likely

1 going to be different from what the long term market
2 price is at the beginning of the term. Is that fair to
3 say?

4 MR. GARY NEWCOMBE: Yes, sir.

5 MR. IVAN HOLLOWAY: So a long term, let's
6 say a five (5) year, for example, fixed price is -- is
7 not going to be really reflective of the -- I mean almost
8 by definition, it's not reflective of the -- the price
9 changes that are happening in the market over that five
10 (5) years, right?

11 MR. GARY NEWCOMBE: No, it's reflective
12 of the anticipated price changes at the time the product
13 was purchased. And by definition though, the intent of a
14 fixed price product is to shield the consumer, those that
15 value that shielding from the vagaries and -- and the
16 variations in price over the term of the contract.

17 MR. IVAN HOLLOWAY: Right. Understood.
18 But by -- also by definition, that's not going to be
19 really useful for providing frequent price signals to
20 consumers so that they know, you know, During this month
21 I'm going to conserve or during this winter I'm going to,
22 you know, install insulation, because they're insulated
23 from those frequent price changes as a result of your
24 fixed price offering, right?

25 MR. GARY NEWCOMBE: Well there's --

1 there's two (2) parts to the bill that the consumers will
2 receive: one (1) is the price and one (1) is the
3 consumption. So to the extent that you can reduce your
4 overall bill by reducing your consumption, I don't
5 believe the impetus to lower your consumption is any way
6 distorted.

7 MR. IVAN HOLLOWAY: Right. But I mean,
8 we're not really talking about consumption, we're talking
9 about the price, right? I mean, you can always -- a
10 consumer can always adjust consumption because they can
11 see what their -- what volumes they're using from month
12 to month, but they can't always appreciate what a price
13 signal is, if it's a fixed price.

14 That's fair to say, right?

15

16 (BRIEF PAUSE)

17

18 MR. IVAN HOLLOWAY: Am I looking for a
19 simple answer to a confusing and convoluted question?

20 MR. GARY NEWCOMBE: Yeah. Maybe if you
21 could just run that one by us again, please.

22 MR. IVAN HOLLOWAY: Well I mean, isn't it
23 -- isn't -- isn't your comment about the -- being able to
24 conserve based upon volumes you use. I mean, that --
25 that's -- I mean that's self evident, right?

1 You know, every -- every consumer no
2 matter what product you have unless you're on EPP can
3 appreciate from month to month, or from season to season,
4 that they can conserve by simply using less energy, by
5 insulating their house, by doing any number of things,
6 right?

7 MR. GARY NEWCOMBE: Yes.

8 MR. IVAN HOLLOWAY: But the point is that
9 a fixed price by definition, over let's say five (5)
10 years, doesn't allow a consumer to be able to see that
11 effect on a month-to-month basis, right?

12 MR. GARY NEWCOMBE: No. I think, Mr.
13 Holloway too, it's important that, you know, you look at
14 all of the different points in -- in paragraph 6, in
15 total. You know, I think the -- the comments made in this
16 paragraph were -- were larger than just looking at any
17 one (1) individual consumer.

18 I -- I'll agree with what you're saying
19 with respect to any one (1) consumer. Once they have a
20 price that's fixed for five (5) years, that prices is
21 fixed for five (5) years. But I think you have to take
22 the -- the comments in -- in paragraph 6 in a broader
23 context.

24

25

(BRIEF PAUSE)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

MR. IVAN HOLLOWAY: I want to talk about
-- actually just give me one (1) moment, if you may.

(BRIEF PAUSE)

MR. IVAN HOLLOWAY: Okay. I want to
revisit the conversation we had yesterday about
distinguishing your product in the marketplace. And I
think the panel agreed with me that the more that you can
distinguish your product from a competitor's product, all
things being equal, the better off you are in terms of
selling your product and being competitive.

Is that fair to say?

MS. KAREN MELNYCHUK: Yes, that's fair.

MR. IVAN HOLLOWAY: And the
distinguishing factor -- the primary distinguishing
factor that I think is -- you've admitted before, for
your product -- and I'm saying "your," I'm saying both
Direct and Energy Saving -- versus the current default
product, is that you're selling certainty and stability
of rates, right?

MS. KAREN MELNYCHUK: Yes. With our
current products that's what we offer.

MR. IVAN HOLLOWAY: Now, isn't it kind of

1 implicit in that notion, that the more volatility that --
2 that may be present in the default supply option, the
3 more that you can distinguish your product and the easier
4 it is for you to sell your product in the marketplace?

5 Is that fair to say?

6

7 (BRIEF PAUSE)

8

9 MR. CLINTON ROEDER: In terms of the more
10 volatility that's in the marketplace; can you just repeat
11 that question?

12 MR. IVAN HOLLOWAY: Let me go by way of
13 example.

14 Let's say that -- let's say that we have a
15 year where the Utility is supplying a default product
16 that's not hedged and the prices spike in the course of a
17 month or two (2) by 50 percent; the rates -- the primary
18 gas rate.

19 Doesn't that make you -- would that not
20 make it easier for you to sell your product to consumers,
21 based upon the fact that your prices are going to be
22 fixed and they don't have to worry about such an extreme
23 price spike? Is that fair to say?

24 MS. KAREN MELNYCHUK: What that indicates
25 to customers is the volatility in the market, and it is a

1 comparison to what we're selling which is the rate
2 stability. But that's no different than the prices at
3 the pump for gasoline. One (1) day you drive by it's
4 less than a dollar a litre, the next day you drive by
5 it's a dollar nineteen (\$1.19) a litre. And, you know,
6 station to station it's different prices.

7 So what it does is, it does bring
8 awareness to con -- customers and allowing them an
9 opportunity to at least have it in their face and so they
10 -- they can -- are aware and if they so choose they can
11 elect for a certainty in price that we offer.

12 MR. IVAN HOLLOWAY: Right. But, you
13 know, if -- if some miracle happened and rates -- the
14 market rates for primary natural gas just stayed steady
15 for a couple of years -- hypothetically, by some miracle;
16 confluence of factors in the market stayed steady --
17 wouldn't you agree that that would be a lot harder to
18 sell your fixed price certain product, if that occurred?
19 Isn't that self-evident?

20 MR. CLINTON ROEDER: I think
21 hypothetically, that's correct. But also hypothetically,
22 let's just say the Utility rate reflected the true cost
23 and they didn't have a variance account to true-up. Or
24 let's say hypothetically, consumers were actually told
25 that there's a variance account.

1 And the question had been asked in the
2 survey -- it would have been quite interesting to see the
3 answer -- to consumers in terms of do they know that; do
4 they know that the Utility has this backstop, and would
5 it be easier for us to sell if that was truly reflective
6 and indicated in the market; the answer to that would be
7 yes, as well.

8 MR. IVAN HOLLOWAY: Okay. But I think
9 you answered my question, which is essentially yes,
10 right?

11 MR. CLINTON ROEDER: If we want to
12 discuss hypothetical situations, yes. I'm sure you can
13 phrase the question anyway you want and get a "yes"
14 answer, so...

15 MR. IVAN HOLLOWAY: Well, I mean you
16 know, we had a situation not too long ago where we had
17 problems off the -- the Gulf Coast which caused --
18 hurricanes off the Gulf Coast, which caused prices to --
19 to spike at dramatic levels.

20 I mean, it would seem to me fairly obvious
21 that those set of circumstances would make it a lot
22 easier for retailers to sell a fixed-price product when
23 there's such an extreme reaction in the market.

24 MR. CLINTON ROEDER: There are a lot of
25 factors that impact how much we sell on a monthly basis.

1 MR. IVAN HOLLOWAY: Right. But all
2 things being equal --

3 MR. CLINTON ROEDER: Volatility is one
4 (1) factor. So I mean the -- the caution and the
5 pushback you're getting is do you want to limit this to
6 one (1) parameter and one (1) question, which is what
7 you're trying to do? You're continuously making the
8 comment, "all things being equal."

9 All things are not equal here. And that's
10 -- if you take one (1) paragraph out of here to Gary's
11 point and just focus on that, assuming all the other
12 market rules change and we're down to that, and that's
13 the only factor, is volatility; then, yes, in terms of
14 the answer to your question. But that's not reality.

15 MR. IVAN HOLLOWAY: Yeah, but -- thank
16 you for that answer, although the reality is, is that I
17 can't just talk about every single factor all at the
18 same time because it becomes a pointless exercise. I
19 mean, we need to narrow them down in order to have, in my
20 view, a rational discussion.

21 In any event, so -- but doesn't that --
22 wouldn't that mean then that it's in the retailers'
23 economic interest, aside from the other arguments put
24 forward, it's in the retailers' economic interest to not
25 allow Centra to provide a fixed-price offering...

1 On the basis that it would be more
2 difficult, if not impossible, to distinguish a product?

3

4 (BRIEF PAUSE)

5

6 MR. GARY NEWCOMBE: Mr. Holloway, I
7 believe it's our view that -- I mean we can't deny yes,
8 there's some benefit to ourselves, but really it's in
9 customers' best interests. And I -- you know, again
10 prefacing my remarks on the basis of what we said earlier
11 about our belief in the voracity of the customer research
12 survey, that, you know, in there customers clearly
13 indicated that they believed there was a benefit to a
14 competitive market.

15 So to the extent that the market rules and
16 conditions are such that there is healthy, robust
17 competition for retail natural gas in the province,
18 consumers believe they will see some benefit from that.
19 And that benefit may be just from the concept of
20 competition or the fact that they have choice, whether
21 they exercise it or not. The research indicated that
22 consumers believe there's a benefit to them, so you can't
23 overlook that piece of it either.

24

25 (BRIEF PAUSE)

1 MR. IVAN HOLLOWAY: I want to talk about
2 the -- the Evergreen contractual term issue, and I think
3 you spoke to Mr. Peters about it yesterday.

4 MS. KAREN MELNYCHUK: Sorry, can you
5 repeat the question?

6 MR. IVAN HOLLOWAY: Absolutely. It's not
7 -- it's not a question yet actually. I --

8 MS. KAREN MELNYCHUK: My apologies.

9 MR. IVAN HOLLOWAY: That's okay. I
10 haven't got there yet.

11 I just was prefacing by saying that I want
12 to talk about the Evergreen contractual term that I
13 believe the panel spoke with Mr. Peters about yesterday.

14 And I just want to confirm my
15 understanding of -- of the evidence that you provided, in
16 that as I understanding -- as a result of removing or
17 changing that provision in 2004, that there was a drop-
18 off of -- of renewals of your contracts. Did I get that
19 right, or am I wrong on that?

20 MS. KAREN MELNYCHUK: Yes, we experienced
21 a higher drop-off on those renewals. Yes.

22 MR. IVAN HOLLOWAY: And -- and what was
23 the -- did you quantify that in some way; some percentage
24 drop off?

25 MS. KAREN MELNYCHUK: Yeah, we

1 experienced an increase of 17 percent over what our --
2 our normal drop would have been.

3 MR. IVAN HOLLOWAY: An increase of 17
4 percent?

5 MS. KAREN MELNYCHUK: Yes, sir.

6 MR. IVAN HOLLOWAY: Now I realize, and
7 here's a classic example of what Mr. Roeder would catch
8 me on, on a -- multiple factors coming into play, but if
9 we look at, and I'm gonna direct you to the IR answer in
10 PUB/Direct-23, please.

11 No, I'm not. Sorry, bear with me.

12

13 (BRIEF PAUSE)

14

15 MR. IVAN HOLLOWAY: There's a table in
16 the materials, and I have the wrong -- obviously I have
17 the wrong citation in my notes, but -- and perhaps when I
18 describe it, someone will know exactly where it is.

19 But it's a -- it's -- it was provided in
20 an IR Response by the retailers, and it has a listing of
21 the total number of retailer customers, and I believe the
22 total number of utility customers over a time period, and
23 percentage of market share over a time period.

24 MS. KAREN MELNYCHUK: I believe that was
25 a Centra response to an Undertaking. CENTRA-12. Or 15.

1 (BRIEF PAUSE)

2

3 MS. KAREN MELNYCHUK: It's CENTRA Exhibit
4 15.

5 MR. BOB PETERS: Okay. Thank you for
6 that. And just to confuse you more, Mr. Holloway, from
7 across the room, in the book of documents that I
8 circulated at Tab -- at Tab 2 was a response to PUB-13.
9 And if my memory serves and the transcript bears me out,
10 the Centra panel was able to revise that information and
11 that was filed as Centra Exhibit 15 in response to
12 Undertaking number 3.

13

14 (BRIEF PAUSE)

15

16 MR. BOB PETERS: Mr. Holloway, I'm only
17 trying to be helpful. We were able to locate CAC/MSOS
18 question of the mark -- of the retailers, number 18,
19 which also had a chart with information concerning the
20 retailers small volume market shares in various
21 provinces.

22

23 CONTINUED BY MR. IVAN HOLLOWAY:

24 MR. IVAN HOLLOWAY: Thank you, Mr.
25 Peters. That's actually the one I was -- I was thinking

1 of. But I understand that this one that we're referring
2 to is an updated version. Have I got that right?

3

4 (BRIEF PAUSE)

5

6 MR. ERIC HOAKEN: So, are we all looking
7 at CENTRA Exhibit 15, or what are we looking at here?

8 MS. KAREN MELNYCHUK: We kind of have
9 both in front of us, just in case.

10

11 CONTINUED BY MR. IVAN HOLLOWAY:

12 MR. IVAN HOLLOWAY: Okay. Well, I'm --
13 I'm looking at -- I'm actually looking at both of those,
14 but I'm looking at, in particular, Centra Exhibit 15,
15 which I understand to be the most updated version.

16 And in particular I'm looking at the --
17 starting at 2003/2004, and I'm looking at the WTS
18 Service, residential -- SGS residential.

19 Now I see from this, assuming that it's
20 accurate, that the -- the total number of customers is
21 generally increasing from each year -- retail customers
22 is increasing each year, from 2003/2004 to 2004/2005 to
23 2005/2006 and then a little bit in 2006/2007.

24 It doesn't seem and I understand and I'm
25 going to hear Mr. Roeder loud and clear that there's

1 multiple factors that go into here, but it doesn't appear
2 that the -- that the change in the Evergreen provision
3 has had in effect -- an overall effect, in terms of
4 reducing your -- your absolute numbers. Is that fair to
5 say?

6 I mean you're still -- you're -- you're
7 still increasing your sales despite this change in the
8 Evergreen contract provision.

9 MS. KAREN MELNYCHUK: I'm going to watch
10 how I answer this, Mr. Holloway, because some of this
11 information I'm going to get kicked because it's
12 commercially sensitive.

13 Energy Savings has not gone through
14 renewals as of this time. This aggregation is a
15 combination of new acquisitions, renewals, a new market
16 or entry into the market in 2003, so it's a combination
17 of many different factors.

18 MR. IVAN HOLLOWAY: Okay. Thank you for
19 that.

20

21 (BRIEF PAUSE)

22

23 MR. IVAN HOLLOWAY: I want to direct your
24 attention to IR Response in PUB/Direct number 7 please.

25

1 (BRIEF PAUSE)

2

3 MR. IVAN HOLLOWAY: And in particular I'm
4 drawing your attention to the middle of the page, under
5 Response sub (a), the second paragraph there, where it
6 talks -- we're talking about the code of conduct, and if
7 there were to be -- shall I say interim penalties -- not
8 interim, that's not the correct word I'm looking for --
9 but intermediary penalties if I may, for lack of a better
10 word. It seems -- it looks -- it appears as though that
11 the retailers are suggesting that the -- that the
12 standard of proof be the criminal standard. Is that fair
13 to say?

14 This may be something that Mr. Hoaken
15 might want to be involved in.

16

17 (BRIEF PAUSE)

18

19 MS. KAREN MELNYCHUK: Yes.

20 MR. IVAN HOLLOWAY: Are you -- are you
21 aware of any other jurisdiction that has a code of
22 conduct in which the standard of proof for imposing a
23 penalty is on the criminal standard?

24 MR. GARY NEWCOMBE: I'm not aware one way
25 or the other, sir, if any jurisdictions do or do not --

1 sorry, I'm not aware of any jurisdictions that may, I
2 should say.

3 MR. IVAN HOLLOWAY: So this is being
4 provided I guess as -- as a -- it's not something so much
5 based upon a precedent, but simply something that, from
6 the retailer's perspective would be preferable. Is that
7 fair to say?

8 MS. NOLA RUZYCKI: That's fair to say.

9 MR. IVAN HOLLOWAY: And, you know, Mr.
10 Hoaken can jump in any time he chooses, because this may
11 tread into legal areas more than factual, but you
12 appreciate that the -- the criminal standard is -- is a
13 standard of proof beyond a reasonable doubt?

14 MR. GARY NEWCOMBE: Okay, I can accept
15 that, yes.

16 MR. IVAN HOLLOWAY: And that the standard
17 of proof for most non-criminal proceedings, including
18 this Public Utilities Board, would be the balance of
19 probabilities?

20 MR. ERIC HOAKEN: Well, I -- I am going
21 to intervene, only because I don't know that the panel is
22 going to be in a position to answer that, and frankly, I
23 don't know if you are or if I am. I think it's a more
24 complicated question.

25 MR. IVAN HOLLOWAY: Okay, but you'd agree

1 with me that the standard proof for this proceeding is
2 the balance of probabilities, right?

3 MR. ERIC HOAKEN: I'll answer that as a
4 yes, on behalf of the panel.

5

6 CONTINUED BY MR. ERIC HOAKEN:

7 MR. IVAN HOLLOWAY: Okay, thank you. Is
8 there any reason why we would need such an onerous
9 standard as beyond a reasonable doubt, for -- for -- in
10 order to prove a contravention of a code of conduct?

11

12 (BRIEF PAUSE)

13

14 MR. GARY NEWCOMBE: Well, it would just
15 seem to me, as a non-lawyer, that when you're talking
16 about instituting financial penalties, that you want to
17 be very certain of the -- the facts before you do
18 financially burden someone with a penalty.

19 MR. IVAN HOLLOWAY: Okay. But you'd
20 also, I guess, appreciate at the same time, that with the
21 -- the more certain you want to be, the -- the obverse of
22 that is that you're less likely to convict.

23 That's self evident, right?

24 The higher the standard of proof, the
25 harder it is to prove an infraction of a penalty? Maybe

1 Mr. Hoaken would like to answer that, although I'm not
2 sure it's entirely fair.

3 MR. ERIC HOAKEN: I'm going to let the
4 panel be the judge of whether they think they can answer
5 that.

6 MR. IVAN HOLLOWAY: Okay, sure.

7 MR. ERIC HOAKEN: If they can, that's
8 fine. If they can't, I think we'll leave it at that.

9 MR. GARY NEWCOMBE: I don't personally
10 feel comfortable answering that question, because I don't
11 know -- have any idea what the answer might be.

12

13 CONTINUED BY MR. IVAN HOLLOWAY:

14 MR. IVAN HOLLOWAY: Okay. Well, you --
15 but you do appreciate that the -- and I'm going to try
16 to, I guess, explain this, and Mr. Hoaken can correct me
17 if he thinks my legal explanation's wrong -- but a
18 balance of probabilities is essentially having to prove
19 on a standard of about 50 percent plus one (1)? It's
20 more likely than not than -- that something's occurred.

21 Whereas beyond a reasonable doubt is
22 something significantly higher than that. It's up for
23 debate as to what that might be, but it may be as high as
24 I got to be 90 percent certain, 80 percent certain; it's
25 a high level of certainty.

1 MR. ERIC HOAKEN: Yeah, I -- I do take
2 exception to the use of percentages. I -- I think that
3 we accept that the standard of proof that's been proposed
4 in this IR Response, is a more onerous standard than the
5 balance of probability standard. No issue about that. I
6 think where we get into trouble is editorializing about
7 it.

8

9 CONTINUED BY MR. IVAN HOLLOWAY:

10 MR. IVAN HOLLOWAY: Thank you, Mr.
11 Hoaken. And based upon the fact that it is a more
12 onerous standard, clearly one can infer from that that
13 it's more difficult to obtain a conviction. It seems
14 fairly reasonable, don't you think?

15 MS. NOLA RUZYCKI: It is definitely not
16 an area of my expertise, so I can make no comment on it.

17 MR. IVAN HOLLOWAY: Okay, that's fine.
18 You know what, don't worry about it, I'll move on.

19 Now the panel spoke with Mr. Peters about
20 the EBT idea yesterday, and as I understand the nature
21 and purpose of this idea or program, would be that it
22 would provide a better method of communicating between
23 the retailers and the Utility; more efficient, more
24 secure method of -- of inter -- of basically
25 communicating. Is that fair to say?

1 MS. NOLA RUZYCKI: That's fair to say.

2 MR. IVAN HOLLOWAY: And that sounds like,
3 you know, by itself a good idea. However, it appears as
4 though that in other jurisdictions the price tag for
5 implementing this has been in the millions of dollars, if
6 not in the tens of millions of dollars, right?

7 MS. NOLA RUZYCKI: That's correct.

8 MR. IVAN HOLLOWAY: Now it seems to me
9 that we can only get a sense of whether such an
10 investment is justified if we have some sense of what the
11 savings in a quantifiable sense, or the benefits in a
12 quantifiable sense would be.

13 And I'm wondering if the Panel has any --
14 any authority or any information or evidence as to what
15 likely the savings would be on long term basis for
16 implementing such a program.

17 MS. NOLA RUZYCKI: Definitely not without
18 looking it over, looking at the merits of the program
19 based on -- we have no idea of what Centra's system can
20 accommodate today so we have no idea of how much change
21 it would require, what type of costs it would require.

22 So I think we're suggesting that we would
23 look at the merits. And other jurisdictions have done it
24 and obviously have found it to be beneficial. You know,
25 we're -- we're suggesting that it would be definitely

1 something we would like to explore.

2 MR. IVAN HOLLOWAY: Okay. So this is
3 more or less in the exploratory type phase basically, is
4 basically what you're proposing here?

5 MS. NOLA RUZYCKI: Well, I would suggest
6 in other jurisdictions it doesn't happen overnight, so it
7 is something that we could go down the path and see if
8 there is a benefit.

9 MR. IVAN HOLLOWAY: Okay.

10 MS. NOLA RUZYCKI: Cost analysis would
11 have to be done, obviously.

12 MR. IVAN HOLLOWAY: Okay. But you don't
13 have any knowledge or sense from the other jurisdictions,
14 as to what their experience has been in terms of savings,
15 man person -- manpower savings, efficiencies? Any kind
16 of sense that you can provide us, just on a very basic
17 level?

18 MR. ERIC HOAKEN: You're talking about a
19 sense in a financial way? Because I think qualitatively
20 that answer has been given.

21 Are you asking for the Panel to give you
22 some dollar range that they're aware of, or not aware of,
23 from another place?

24

25 CONTINUED BY MR. IVAN HOLLOWAY:

1 MR. IVAN HOLLOWAY: Yes, I am.

2 MR. GARY NEWCOMBE: I'm not aware, Mr.
3 Holloway, of any cost benefit studies that have been done
4 around this. It's something that's -- jurisdictions have
5 recognized, that in order to facilitate their policy
6 objectives of -- and enabling the competitive market and
7 in enhancing customer choice, that one (1) of the things
8 they have to do is to provide a common platform, a
9 seamless platform, a very efficient platform, for the
10 movement of customer information between -- as between
11 distributors, regulated retailers, competitive retailers.

12 Again, the provision of an electronic --
13 whatever "EBT" stands for -- is simply part of the
14 network architecture, like the distribution system that's
15 required, in order to facilitate a market.

16 So, you know, there's -- the benefits go,
17 I think, far beyond anything that you can actually
18 quantify on a dollars and cents basis.

19 MR. IVAN HOLLOWAY: Okay. Thanks.

20 MS. NOLA RUZYCKI: I think -- just the
21 other thing, it does establish a public standard where
22 all parties are held to the same standard, and it is
23 documented. So if there's any dispute with respect to
24 the -- the requirements between the distributor and the
25 retailer, it is documented.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

(BRIEF PAUSE)

MR. IVAN HOLLOWAY: I want to refer the panel to the IR Response in CAC/MSOS/Direct-22, please.

(BRIEF PAUSE)

MR. IVAN HOLLOWAY: This is the -- in response to a question in which it was -- CAC/MSOS requested radio, television and print media advertisements, I understand. Or it appears as though, that the retailers have provided copies of such materials in this response. Is that fair to say?

MS. NOLA RUZYCKI: That's correct.

MR. IVAN HOLLOWAY: And I want to -- if you turn over the page, from the cover page...

(BRIEF PAUSE)

MR. IVAN HOLLOWAY: And then if you can go fifteen (15) pages in -- and I believe they're not numbered so it's kind of difficult to...

MS. NOLA RUZYCKI: I think our front page looks different than what --

1 MR. IVAN HOLLOWAY: Okay, well this is --

2 MS. NOLA RUZYCKI: -- you have, so maybe
3 you can just show us what -- thank you.

4

5 (BRIEF PAUSE)

6

7 MR. ERIC HOAKEN: Okay, got it. Thank
8 you, Mr. Holloway.

9

10 CONTINUED BY MR. IVAN HOLLOWAY:

11 MR. IVAN HOLLOWAY: Can you -- can you
12 please tell us what exactly this document is. First of
13 all, let's make sure that we're on the same page.

14 I'm looking at a document that -- that
15 looks to be, I'm not sure, a cover of a brochure perhaps.
16 The question on the top is, "Who is Municipal Gas?" And
17 in smaller print it says:

18 "You can now choose your natural gas
19 supplier. Choose Municipal Gas."

20 Are we all on the same page?

21 MS. KAREN MELNYCHUK: Yes.

22 MR. IVAN HOLLOWAY: Can you tell my what
23 -- what this document is?

24 MS. KAREN MELNYCHUK: This is actually
25 what we call our sales collateral, for our agents who go

1 around door-to-door.

2 MR. IVAN HOLLOWAY: Sales collateral.
3 I'm not familiar with that terminology, but I -- I take
4 it that's a -- it's like a brochure or something that
5 would be provided to people when the door-to-door
6 salesmen go around, is that right?

7 MS. KAREN MELNYCHUK: It -- it is
8 information that the -- our -- our agents have with them
9 when they're going door-to-door. It's in a presentation
10 binder.

11 MR. IVAN HOLLOWAY: Okay. So they don't
12 actually provide this to the customers for them to keep;
13 they just simply show it to them?

14 MS. KAREN MELNYCHUK: If the customer
15 wants a copy, they do provide it.

16 MR. IVAN HOLLOWAY: Okay. And if the
17 customer wanted a copy of this particular document, they
18 would give them that particular document?

19 MS. KAREN MELNYCHUK: Yes.

20 MR. IVAN HOLLOWAY: This one we're
21 talking about. Yes?

22 MS. KAREN MELNYCHUK: Yes.

23 MR. IVAN HOLLOWAY: Is this a current
24 document?

25 MS. KAREN MELNYCHUK: No, I believe this

1 is from 2005.

2 MR. IVAN HOLLOWAY: Okay. And if I keep
3 on reading, the -- the line in the middle of the page
4 says:

5 "Manitoba's largest natural gas
6 retailer with over thirty-five thousand
7 (35,000) customers."

8 Do you see that?

9 MS. KAREN MELNYCHUK: Yes.

10 MR. IVAN HOLLOWAY: That's the number of
11 customers you had in 2005, is that fair to say?

12 MS. KAREN MELNYCHUK: Yes.

13 MR. IVAN HOLLOWAY: I'd like to refer you
14 to answer to Undertake -- or in IR/CAC/MSOS-15, please.

15

16 (BRIEF PAUSE)

17

18 MR. ERIC HOAKEN: Yeah, we've got it.
19 We're waiting for the next question.

20

21 CONTINUED BY MR. IVAN HOLLOWAY:

22 MR. IVAN HOLLOWAY: Thank you, Mr.
23 Hoaken. The question that was asked in an IR by CAC/MSOS
24 was:

25 "Please indicate for each company the

1 number of Manitoba residential/small
2 volume customers and the approximate
3 annual volumes."

4 And the response that was received was:

5 "The number of customers and
6 approximate annual volumes constitute
7 confidential, proprietary, competitive,
8 and commercially sensitive information
9 that DEML and ESMLP, and their parents
10 and affiliates, do not publically
11 disclose."

12 Do you see that?

13 MS. KAREN MELNYCHUK: Yes, we do.

14 MR. IVAN HOLLOWAY: I'm just wondering
15 how you square that response with having a brochure or
16 customer material that's provided to customers, which has
17 your number of customers on it?

18 MS. KAREN MELNYCHUK: There's several
19 different factors involved in the brochure that we went
20 through earlier. The number referenced in there is all
21 our different rate classes for Manitoba. It's not
22 specific to any rate class, so it's a grouping; it's an
23 aggregate of all numbers.

24 MR. IVAN HOLLOWAY: Right. But the IR
25 Request is seeking an aggregate of all numbers, right?

1 (BRIEF PAUSE)

2

3 MS. KAREN MELNYCHUK: Again, that
4 material was dated 2005 and -- and many factors have
5 changed in this marketplace since then. The response to
6 this IR-15, the IR was asking for volume, customer
7 numbers. And the material that was -- we talked about
8 earlier was in regards -- like I said, that number in
9 there indicated an aggregate of all our customers in all
10 our rate classes, so there wasn't a breakdown. It was
11 just in -- in total.

12 MR. IVAN HOLLOWAY: Right. But -- but as
13 -- as I stated before, I mean the question is asking for
14 an aggregate. It's asking for each company, the number
15 of Manitoba residential small volume customers.

16 MR. ERIC HOAKEN: Well, I'm just gonna
17 weight in, because Ms. Melnychuk has said it twice, but
18 this question is asking for something different.

19 It is, as I read it in any case, asking
20 for a breakdown of a particular customer class, and in
21 addition seeking not only numbers, but it's seeking
22 volumes.

23 And what Ms. Melnychuk has said now, at
24 least twice, is that in the collateral that was
25 referenced in the IR Response number 22, it is a total

1 number that is given for all customer classes, so there's
2 no breakdown among or between the various customer
3 classes, and there's certainly no information about
4 volume.

5 So if you're suggesting it's the same
6 information, I think Ms. Melnychuk has now spoken to that
7 twice in her answer.

8

9 CONTINUED BY MR. IVAN HOLLOWAY:

10 MR. IVAN HOLLOWAY: Well, you would agree
11 with me though, Ms. Melnychuk, that the vast majority of
12 your customers are residential small volume customers,
13 right?

14 MS. KAREN MELNYCHUK: In percentage of
15 customer numbers, yes, based on -- that's the market here
16 in Manitoba, but not in regards to volumes.

17 MR. IVAN HOLLOWAY: So -- although
18 technically the thirty-five thousand (35,000) customer
19 number may have all customer classes essentially, as you
20 said, the vast majority of those are small gas
21 residential customers.

22 MS. KAREN MELNYCHUK: I believe also,
23 Centra's put on the record Exhibit 15, which shows a
24 breakdown of what is marketer and what is system, based
25 by rate class. So the majority of the customers here in

1 Manitoba, yes, fall within the small commercial and
2 residential.

3

4 (BRIEF PAUSE)

5

6 MR. IVAN HOLLOWAY: Do you have a copy of
7 Centra Exhibit number 15?

8 MS. KAREN MELNYCHUK: Yes, I do.

9

10 (BRIEF PAUSE)

11

12 MR. IVAN HOLLOWAY: And you'd agree with
13 me that by taking this document -- well, first of all,
14 the maximum number -- let's look at 2005, because you
15 said that the -- the information in the brochure was
16 2005, right?

17 MS. KAREN MELNYCHUK: Yes.

18 MR. IVAN HOLLOWAY: Is that 2005/2006 or
19 2004/2005, or would it not be -- would that not be...

20 MS. KAREN MELNYCHUK: It would have been
21 calender year 2005, so depending on when -- which month,
22 it could have been gas year '04/'05 or '05/'06.

23 MR. IVAN HOLLOWAY: Okay. So -- but if I
24 look at either year, '04/'05 or '05/'06, the maximum
25 number of -- of non-small gas residential customers is in

1 the range of -- and I'm doing quick math off the top of
2 my head -- is approximately two thousand (2,000) to
3 twenty-two hundred (2,200), in that range. Is that fair
4 to say?

5 MS. KAREN MELNYCHUK: I'm sorry, can you
6 repeat?

7 MR. GARY NEWCOMBE: Sorry, are you
8 setting the -- that's the sum of lines 19 through 23 on -
9 - on this attachment? Just the non-residential --

10 MR. IVAN HOLLOWAY: Yes.

11 MR. GARY NEWCOMBE: -- WTS customers?

12 MR. IVAN HOLLOWAY: Yes.

13 MR. GARY NEWCOMBE: You're suggesting
14 it's in the order of two thousand (2,000), give or take?

15 MR. IVAN HOLLOWAY: In the order of two
16 thousand (2,000).

17 MR. GARY NEWCOMBE: Yeah, that's close.

18 MR. IVAN HOLLOWAY: And when we compare
19 that with thirty-nine thousand (39,000), close to forty
20 thousand (40,000), or forty-seven thousand (47,000),
21 we're looking at around 5 percent?

22 MR. GARY NEWCOMBE: Yes.

23 MR. IVAN HOLLOWAY: I'm not going to keep
24 on going down this road, but it seems to me that we can
25 come up with a fairly accurate estimate of what the --

1 the numbers of customers are in the various classes that
2 -- that Direct Energy would have.

3 OBJ MR. ERIC HOAKEN: Sorry, I have to
4 object. The witness deliberately, on at least two (2)
5 occasions, stressed that to the extent there was a number
6 in the 2005 material, it was a 2005 number.

7 And so, if you're now, and it sounds to me
8 that you are, suggesting that this somehow permits us
9 today to reach a conclusion about the numbers of
10 customers, I'd have to object because I think you're not
11 putting it fairly to the witness.

12 MR. IVAN HOLLOWAY: Well, I -- I guess
13 what my concern is, Mr. Hoaken, is that a question was
14 asked in IRs, and it was objected to on the basis that it
15 was proprietary, confidential, competitive and
16 commercially sensitive information.

17 And yet, essentially that information has
18 been provided through at least one (1) source publically
19 to customers, and through -- if you look at other sources
20 you can easily make the computations and get a fairly
21 accurate number. And I'm trying to follow why something
22 would be proprietary, confidential and commercially
23 sensitive in 2007, and not in 2005.

24 MR. ERIC HOAKEN: Well I guess -- again,
25 I have to strenuously object, because I don't think

1 you're being fair. I think the information that was
2 characterized by the retailers as being confidential and
3 proprietary, is significantly different in nature and
4 character than what you're now making reference to in the
5 collateral.

6 And also I think, and I'm sure you're not
7 doing it deliberately, but by switching back between the
8 time frame of now, which is the information that was
9 requested, that we took exception to, and this time frame
10 in 2005, it's -- it's not an accurate or fair comparison.

11

12 MOTION BY CAC/MSOS:

13 MR. IVAN HOLLOWAY: Well, Mr. Chair, I --
14 I think that there's an issue here. And I think it --
15 the ruling of the Board was that the motion for
16 disclosure of CAC/MSOS was to be adjourned, and we were
17 to deal with these matters in a cross-examination, if
18 possible, but that it -- as I understood the Order, that
19 it -- the motion could be resurrected at that time.

20 And I'd like to, with the indulgence of
21 the Board, resurrect that motion and perhaps have
22 argument on it, because I think that number 1 these facts
23 are material. I'm not entirely convinced that -- that
24 they are proprietary, competitive, and commercially
25 sensitive information, and I think that they're probative

1 and helpful to the Board understanding and coming to a --
2 a decision on the matters at hand.

3 THE CHAIRPERSON: Well, at one time --
4 Mr. Holloway, if you could let us bring this up-to-date
5 sort of in a summary position, what information are you
6 looking for from the witnesses, specifically?

7 MR. IVAN HOLLOWAY: Yes. I'm glad you
8 asked that, Mr. Chair.

9 I mean, if we're talking about the subject
10 matter at hand right now, with the line of questioning
11 I'm going on right now, we're talking about -- we're
12 looking for the various percentages of market share
13 between the marketers in the retail marketplace, and
14 number 1, I think that's inherently relevant because
15 we're looking at the competitive landscape.

16 But more -- more to the point if -- if it
17 discloses that one (1) retailer has, you know, 80 percent
18 of the market share and the other retailer has 20, or
19 90/10, or something like that, I think it calls into
20 question -- maybe not that by itself -- but how
21 competitive the -- the retail market is right now.

22 And I think that it's just -- it's -- it's
23 basic contextual material that is essential in order to
24 understand what exactly is happening in the competitive
25 market, so we can have a better sense of -- of what needs

1 to be done on a go-forward basis. That's just with
2 respect to what the line of questioning was right now.

3 There's -- there's some things in our
4 motion I think that -- events and -- and evidence that
5 has come out -- supercedes them and is no longer
6 necessary for us to seek disclosure on. But there are
7 other things -- and if you bear with me for a moment, Mr.
8 Chair, I'll just refer back to my -- my letter which has
9 -- my letter of September 12th, 2007 which sets out each
10 question and answer and how the answer was -- was
11 answered, that we were looking for disclosure on.

12

13 (BRIEF PAUSE)

14

15 MR. IVAN HOLLOWAY: We would still be
16 looking for the supporting information on Energy Savings'
17 website, that stated:

18 "Canadian customers of fixed-price
19 natural gas programs have saved over
20 \$100,000,000 dollars in the past five
21 (5) years."

22 Now, I understand that the evidence that
23 Ms. Ruzycki provided was that it's no longer on the
24 website and it's been changed, but I believe that only
25 happened three (3) months ago. And I think it's -- it's

1 number of complaints made to each
2 Company relating to the sale of its
3 products and the nature and subject
4 matter of the complaints. Include a
5 column indicating the number of
6 complaints that were resolved in the
7 customer's favour, i.e., customers that
8 were released from the contractual
9 obligations."

10 I -- I still would submit, Mr. Chair, that
11 that's exceedingly relevant and probative as to the
12 nature of the interaction between retailers and
13 consumers; the extent to which the spirit of the Code is
14 being followed; the extent to which, you know, we need to
15 address interim penalties in the Code; and the extent to
16 which retailers are providing a benefit to the
17 marketplace, as opposed to anything else. For consumers
18 that may not be a benefit; it may be the opposite of a
19 benefit.

20 So, for those reasons, I still think
21 that's relevant and hasn't been addressed yet.

22 And then the last one (1) that I still
23 seek disclosure on would be a Information Request in
24 CAC/MSOS/Direct-25(c), which -- which is a -- is a
25 follow-up to the previous question which request:

1 "Please create a graph or chart showing
2 transient complaint levels received by
3 the companies since 2000."

4 And I think that's probative, Mr. Chair,
5 assuming it's -- it's weighted in accordance with the --
6 with the volume of customers, that to give us an
7 indication whether retailers are interacting with their
8 consumers in a -- in a manner that is improving or -- or
9 non-improving.

10 And -- and, you know, I guess, without
11 wanting to repeat myself, that's probative for the same
12 reasons that I've spoken to before. And -- sorry.

13 THE CHAIRPERSON: Those are the four (4)
14 items?

15 MR. IVAN HOLLOWAY: Those are the four
16 (4) items, Mr. Chair.

17 THE CHAIRPERSON: Okay. Just by way of
18 background, so we understand each other, with respect to
19 the first point in market share, you'd acknowledge that
20 we have testimony that Energy Savings entered the market
21 in 2003? I believe that was correct, was that not?

22 MS. NOLA RUZYCKI: That's correct.

23 THE CHAIRPERSON: We have CENTRA Exhibit
24 number 15, I believe, that sets out the WTS customer
25 levels by SGS residential, et cetera, which, given that

1 we are also aware that there are only two (2) retailers
2 in the market, presumably represent the aggregate share
3 of that market for each one (1) of that customer classes
4 that's held by both of them, just by way of background.

5 That's your understanding as well --

6 MR. IVAN HOLLOWAY: Yes.

7 THE CHAIRPERSON: -- correct?

8 MR. IVAN HOLLOWAY: Yes, Mr. Chair.

9 THE CHAIRPERSON: With respect to your
10 second point on Energy Savings in this marketing claim,
11 just by way of background, we have another Centra exhibit
12 that's been filed. I think it was number --

13 MR. IVAN HOLLOWAY: Sorry.

14 THE CHAIRPERSON: -- 14 that was the
15 first quarter report by Energy Savings, which I think
16 you'll find there, and it provides a fair bit of detail
17 on the size of Energy Savings' markets in Canada.

18 And I believe the quote that you were
19 giving was that this advertising claim indicated that
20 Canadian customers -- it wasn't Manitoba customers, it
21 was Canadian customers; that's correct wasn't it?

22 MS. NOLA RUZYCKI: Yes, that's correct.

23 THE CHAIRPERSON: And what time frame did
24 this particular ad take place?

25 MS. NOLA RUZYCKI: The ad is -- it was

1 recently taken off the web site, so it was for the year
2 2000 through 2005, and it was taken off earlier this
3 year.

4 THE CHAIRPERSON: But it pertained to a
5 period of time in which, for two (2) or three (3) years,
6 you weren't even in the Manitoba market, is that not
7 correct?

8 MS. NOLA RUZYCKI: That's correct.

9 THE CHAIRPERSON: So, it was
10 representing, and it sent information related to your
11 total Canadian operations?

12 MS. NOLA RUZYCKI: It -- the quote was
13 representing. It did not specifically say, Energy
14 Savings. It said, "All Canadian customers of fixed price
15 products."

16 So that would include all Canadian
17 customers, including our competitors' products of fixed
18 price offerings.

19 THE CHAIRPERSON: And every year in
20 Canada -- for example, in Manitoba -- the primary gas
21 purchases say in Manitoba now that the spike is gone, is
22 about, say, \$500 million a year, so we represent, what, 3
23 percent of the thing?

24 In other words, the total purchases of
25 primary gas in Canada for a period of five (5) years

1 would be in the billions, would it not?

2 MR. ERIC HOAKEN: Yes, that's right. One
3 (1) other point, perhaps, that is not clear on the
4 evidence, is that that analysis that Ms. Ruzycki is
5 making reference to was an ex-post facto analysis of
6 completed contracts.

7 And I believe I'm correct in saying that
8 there were no completed Manitoba contracts that were
9 analysed for the purposes of that statement.

10 MS. NOLA RUZYCKI: That's correct.

11 THE CHAIRPERSON: The experience in the
12 markets that the brokers are in across Canada with their
13 fixed-price fixed-term markets, is it fair to say it's a
14 significant percentage?

15 MS. NOLA RUZYCKI: Yes.

16 THE CHAIRPERSON: Just by way of
17 background so that we can consider these matters
18 properly; okay, so we have your four (4) points, Mr.
19 Holloway. And with your indulgence, I think we'll take
20 our break and consider them now.

21 MR. IVAN HOLLOWAY: Okay.

22 THE CHAIRPERSON: Okay? We'll be back
23 at, say, 10:30, hopefully.

24 MR. IVAN HOLLOWAY: Thank you, Mr. Chair.

25 THE CHAIRPERSON: One last question if we

1 may, Ms. Ruzycki: You withdrew this particular ad?

2 MS. NOLA RUZYCKI: Yes, we did.

3 THE CHAIRPERSON: May I ask why?

4 MS. NOLA RUZYCKI: We -- after the gas
5 year is done, we re-evaluate our -- our contracts that
6 have completed for the next year, so we are currently
7 evaluating the contracts that would finish now for the
8 2006 year.

9 So that information is updated on web
10 sites. We've also, as I recently mentioned, changed our
11 web site design and we're going with more a simple basic
12 design, and that information was removed for both of
13 those purposes.

14 THE CHAIRPERSON: Okay, thank you. We'll
15 be back at 10:30.

16

17 --- Upon recessing at 10:15 a.m.

18 --- Upon resuming at 10:40 a.m.

19

20 THE CHAIRPERSON: It took us a little bit
21 longer than we thought. It's the nature of the beast, I
22 guess.

23 The Board has refamiliarized ourselves
24 with the genesis of the motion and the details, along
25 with the responses -- initial responses from the brokers

1 and from Centra.

2 We note that CAC/MSOS' request has been
3 reduced to four (4) particular matters, and perhaps we
4 will manage to consolidate it down to three (3). We'll
5 try here.

6 The first was that CAC/MSOS seeks to
7 disaggregate market share by customer number and volumes
8 for each of the two (2) retailers in the small-volume
9 market. And, again, on that front, we've been told that
10 Energy Savings has been in that market only since 2003.

11 So, we're assuming that what Mr. Holloway
12 wants here is, say, for example, the disaggregated share
13 as of '06/'07. I'll ask Mr. Holloway in a minute.

14 The second was that CAC/MSOS wants support
15 for Energy Savings' prior claim, since remove from its
16 web site, that Canadian fixed-price fixed-term broker
17 customers have saved \$100 million over default supply
18 over the past five (5) years.

19 The third matter was broken down into two
20 (2) parts. In CAC/MSOS/Direct/DSM-25(a), CAC/MSOS
21 sought, for each year from 2000, the number of
22 complaints, the nature and the subject matter, along with
23 the number resolved in the customer's favour and, by way
24 of 25(c), the graph or chart showing the trend in
25 complaint levels since 2000 by broker.

1 So, just so we understand yourselves
2 exactly: Mr. Holloway, is this a fair representation of
3 what you're seeking for your client?

4 MR. IVAN HOLLOWAY: Yes, Mr. Chair. And
5 with respect to Energy Savings, obviously since they came
6 into the market in 2003, it would be -- you know,
7 whatever their numbers are when they started operating,
8 whether that be, you know, '03/'04, something in that
9 range -- for the first issues, disaggregation by customer
10 numbers and volumes.

11 THE CHAIRPERSON: You want the
12 disaggregation then, by year, not just the current?

13 MR. IVAN HOLLOWAY: I guess we were
14 specifically looking for current, and that's -- that's
15 the most -- that's probably the most probative for -- for
16 our purposes here.

17 But, I -- I guess I -- I assumed that
18 there would be a bit of a historical context to it. In --
19 - in fairness and in honesty, whatever we asked for in
20 our original question is what I'm prepared to abide by.
21 So, if it is the current year, then yes, we'd be looking
22 for current year.

23 THE CHAIRPERSON: Okay, thank you, Mr.
24 Holloway.

25 Ms. Murphy, do you have any other thoughts

1 on this? We note your letter of September 14th in the
2 support of CAC/MSOS.

3

4 SUBMISSIONS BY MS. MARLA MURPHY:

5 MS. MARLA MURPHY: I -- if I might just
6 speak to it briefly, Mr. Chairman. Sir, following along
7 the three (3) issues as you've outlined them; with
8 respect to the request for disaggregated information, we
9 certainly don't disagree with Mr. Holloway that that
10 information is certainly relevant to this proceeding.

11 We appreciate that there is commercial
12 sensitivity in that Information. However, to the extent
13 that issues such as market concentration and market power
14 are important in this discussion -- and I think it's
15 important for the Board to be aware of the potential for
16 market power and market concentration -- we would
17 certainly support seeing that information filed in
18 confidence with the Board.

19 It does not necessarily need to be made
20 available on the public record, but I do think it would
21 be information that would be germane and helpful to the
22 Board.

23 With respect to the request for the
24 support of the claim of Energy Savings Manitoba, I
25 understood some additional information from Ms. Ruzycki

1 this morning, including the fact that that information
2 wasn't specific to Energy Savings Manitoba -- Energy
3 Savings customers; that in fact it represented customers
4 of all different fixed-price products from various
5 marketers. In which case, I find it very difficult to
6 accept that that information is commercially sensitive.

7 That calculation cannot have been made on
8 a retrospective basis without those marketers sharing
9 that information among themselves. And if that's the
10 case, and that's how that number was arrived at, then I
11 think it's certainly fair that it be put on the record
12 here, and that we be given an opportunity to explore it.

13 I also think that the fact that it's been
14 withdrawn from the web site quite recently shouldn't have
15 any bearing on the Board's view there. What's important
16 here is what customers have been told. And customers are
17 entering a five (5) year contract; the fact that that
18 information was on the web site for some period of time,
19 certainly may have incited customers to enter those
20 contracts.

21 And in that matter, it's important for the
22 Board to be mindful of that and to consider that. And
23 if, as Mr. Holloway has suggested, it's not supported,
24 then certainly the Board should be aware that those kinds
25 of mis-representations have potentially been made out in

1 the public.

2 With respect to the complaints, we
3 certainly would support that those complaints should be
4 made available to the Board. I -- I question how those
5 could be commercially sensitive. In particular, we've
6 had additional information put on the record by the
7 brokers in this hearing already, as to complaints they've
8 received about Centra from Centra customers; complaints
9 about the equal payment program.

10 And I think it's -- it's unfair to suggest
11 that they're going to put that information of the record,
12 and then not be prepared to provide the logs to support
13 that evidence, as well as to give us an opportunity to
14 explore other complaints.

15 In terms of the trends since 2000, I think
16 probably I'll leave that to the Board's discretion.
17 Certainly you should be mindful that these are long-term
18 contracts, and customers who might have complained about
19 an issue raised in 2003, may have the same issue still on
20 a contract that's current and ongoing; in fact, even back
21 to 2002, that would be the case. So, there's certainly,
22 I think, some benefit to historical information in that
23 regard. Thank you.

24 THE CHAIRPERSON: Thank you.

25 Mr. Hoaken...?

1 SUBMISSIONS BY MR. ERIC HOAKEN:

2 MR. ERIC HOAKEN: Yes, thank you, Mr.
3 Chair. Let me address the three (3) issues as they've
4 been consolidated by the Board.

5 The first comment I would make, I think,
6 applies to all three (3) issues. And that is the
7 position of the retailers is that they have come forward
8 to voluntarily participate in this proceeding.

9 And it is not, in my respectful
10 submission, a reasonable inference for anyone, including
11 the Board, to draw that that constitutes a waiver of
12 confidentiality over information that is confidential or
13 proprietary.

14 And so, to the extent that the Board is
15 considering asking the retailers to make available
16 information in this proceeding, that is not otherwise in
17 the public record, serious consideration, in my
18 respectful submission, has to be given to whether or not
19 that information is important or necessary for the
20 purposes of this proceeding.

21 And we've heard blanket suggestions about
22 the relevance of this material, but those suggestions do
23 not stand up to scrutiny. If we look carefully at what
24 the issues are -- this Board is considering and what
25 information is being sought, and in at least a few of the

1 cases there is a disconnect between the two (2).

2 So, that is a general submission that
3 really applies to all three (3) points. Let me now go
4 through the three (3) points.

5 The first one (1) is the disaggregated
6 customer information. And this issue was addressed by
7 the Board and indeed by you, Mr. Chair, at the opening of
8 proceedings on the 18th of September, where you did give
9 some guidance to the parties about the Board's view of
10 the necessity of the disaggregated customer information.

11 And, as I read the things that you said at
12 that time, Mr. Chair, you and the Board were not
13 persuaded that disaggregated customer information was
14 necessary for the purpose of this proceeding.

15 And, in my respectful submission,
16 absolutely nothing has changed since that time to make
17 this information relevant or necessary for this Hearing.

18 This information is clearly held in
19 confidence by the retailers; it is not otherwise
20 available. If it was, I suppose we wouldn't even be
21 having this discussion. But they do treat it as
22 confidential and proprietary.

23 You've heard about how competitive this
24 marketplace is, and, indeed, there have been significant
25 shifts in the market since the time of the very general

1 on by Mr. Holloway in his cross-examination. And my
2 understanding of what we talked about on the 18th of
3 September was that we would revisit these issues if and
4 when necessary.

5 So in other words, if cross-examiners
6 sought to explore these issues with the panel and were
7 unable to get some explanation, at that time the Board
8 would consider the appropriateness and necessity of going
9 beyond and giving extra information.

10 You heard Mr. Peters ask Ms. Ruzycki about
11 this issue. She provided, I think, very clear and candid
12 answers, and I have no reason to think that she is going
13 to do otherwise if other counsel cross-examine her on
14 this. They will then be at liberty to tell the Board
15 anything they want in terms of the inferences that should
16 be drawn from that statement and the information that's
17 on the record about that statement.

18 And it is -- in my view, it's
19 inappropriate for Mr. Holloway to suggest that this is an
20 issue that has to be examined because the Board may
21 conclude that there are sanctions. That is not what this
22 proceeding is about. We are not here to talk about
23 sanctions. We're here to talk about the marketplace and
24 the eleven (11) general issues that have been framed by
25 the Board.

1 Point number 3; complaints.

2 This issue -- again, I'm puzzled by the
3 timing of Mr. Holloway's motion -- or at least the
4 revival of the motion -- because, certainly, he -- he is
5 quite at liberty to pursue the issue of complaints with
6 this panel. And to the extent that they are able to
7 answer his questions that -- in a way that does not
8 involve disclosing confidential information, they will do
9 so.

10 If he gets to the point where he feels
11 that there is information that's crucially important for
12 this Board to have, he would be at liberty to then come
13 to the Board and make the suggestion that some sort of
14 ruling should be made.

15 But at this point, he has not even
16 explored this issue and we're not in a position,
17 collectively, to conclude, in my view, that there is
18 something more that this panel should do beyond what it
19 has already done.

20 And just to deal with the point Ms. Murphy
21 made about complaints; as I understood her submission --
22 and I may not have understood it correctly -- but as I
23 understood her, she suggested that this information about
24 complaints should be made available because there's
25 information on the record about complaints about Centra.

1 I'd like to address what Mr. Hoaken has -- has brought up
2 in his argument. And I'll -- I'll try to address them in
3 -- in order of the one (1), two (2), and three (3)
4 consolidated issues.

5 With respect to the voluntary
6 participation of the retailers at this proceeding -- and
7 -- and that voluntary participation does not constitute
8 any sort of waiver on confidential information --
9 clearly, the retailers see a benefit and have an interest
10 in being at this proceeding.

11 I don't think that they can simply absolve
12 themselves of responsibilities under this proceeding
13 simply because it's -- it's voluntary for them to come.
14 I think there is a set of obligations as well as -- as
15 rights that accrue to a party that chooses to
16 participate.

17 With respect to the relevance of the -- of
18 -- of the -- the percentage of market share by customer
19 and by volume; is there a particular point in which I can
20 point to which connects the relevancy in the sense of the
21 points that were listed at the -- the Notice of Hearing?
22 I may or may not, but this is the -- the -- from a --
23 from a broader high-level perspective, we're talking
24 about the competitive landscape, and the competitive
25 landscape being the re --tailers in the competitive

1 marketplace and Centra Gas.

2 I can't see how we can have a meaningful
3 conversation about a lot of these -- about the -- the --
4 what the competitive landscape is if we don't even know
5 what it is. And part of knowing what it is -- seems to
6 me a very basic fact -- is what -- what part of the pie
7 do each of these -- each of these entities have?

8

9 (BRIEF PAUSE)

10

11 MR. IVAN HOLLOWAY: With respect to issue
12 number 2, in terms of the timing of the motion, I -- I
13 have -- I have apologized to Mr. Hoaken by a letter for
14 bringing the motion as late as we did; whenever it was;
15 two (2) weeks ago or thereabouts. I've conceded already
16 that -- that it should have been and could have been
17 brought earlier.

18 I don't have a good explanation other
19 than, you know, we, as lawyers, obviously are not perfect
20 -- probably not perfect by a long stretch and -- and
21 that's just how things worked out.

22 However, the -- the question -- the
23 original question that was asked was asked a number of
24 months ago. And the -- despite that procedural -- I
25 don't want say irregularity, but maybe it is an

1 irregularity -- I think that fundamentally the -- the --
2 what's being sought is of significant importance.

3 And for Mr. Hoaken to say that, in my
4 respectful view, to say that -- that I can cross-examine
5 on the -- the facts, the numbers, the background, the
6 statistics that went into creating the \$100 million
7 assertion, is just not accurate.

8 This is a cross-examination, this is not a
9 direct examination. Without having some -- something in
10 paper that I can follow, that I can prepare for, that I
11 can digest, and that I can have some ability to -- to pin
12 a witness down on, it -- it's -- it's almost an
13 impossible task.

14 It's akin to asking an auditor to do an
15 audit without seeing any papers in the office. It --
16 it's very difficult, and it doesn't -- I don't think it
17 serves the interests of obtaining the facts and
18 information that this Board seeks to achieve in order to
19 render a decision.

20 With respect to the issue of sanctions,
21 either I misspoke myself or -- or Mr. Hoaken
22 misinterpreted me, because I'm certainly not seeking this
23 information to suggest in any way that this Board should
24 be penalizing the retailers, based upon what they have or
25 have not put on their website and how they represented

1 it. That's not the issue at hand.

2 The issue at hand, and squarely within the
3 Board's mandate, as stated by the -- the Chair -- and I'm
4 just repeating what I had in my letter of September 12 --
5 is that -- that marketing model and practices of gas
6 brokers is squarely at issue.

7 If they're putting information on their
8 website that's not accurate, it's misleading, and that is
9 pretty -- pretty extreme bald statements, I think that's
10 a practice that -- that the Board would want to know
11 about. And we can't determine that without having a
12 certain amount of ground material to be able to -- to
13 probe that.

14 And Mr. Hoaken's correct, that the -- the
15 -- only the first issue was the one that I started to
16 cross on, until I -- I sought to -- to resurrect the
17 motion. However, the only reason I did that is to simply
18 to consolidate everything and have it all heard at the
19 same time. There was no other reason for that, because I
20 anticipated that perhaps when I get to the -- the next
21 areas that we're going to have another motion and then
22 another motion.

23 And -- and the only reason for -- for
24 consolidating is just to streamline the process. That's
25 all I have to say. Thank you, Mr. Chair.

1 THE CHAIRPERSON: Thank you, Mr.
2 Holloway. Would it be possible for you to move on with
3 your cross-examination? We'll consider this over the
4 lunch break and then we'll come back?

5 MR. IVAN HOLLOWAY: Yes, Mr. Chair.

6 THE CHAIRPERSON: Thank you.

7

8 (BRIEF PAUSE)

9

10 CONTINUED CROSS-EXAMINATION BY MR. IVAN HOLLOWAY:

11 MR. IVAN HOLLOWAY: Is it my
12 understanding correct, that Direct Energy is providing a
13 three (3) year fixed price offering?

14 MS. KAREN MELNYCHUK: Yes, we are.

15 MR. IVAN HOLLOWAY: And that was, if I
16 understand correctly, the three (3) year fixed price
17 offering was offered at one (1) time and -- a few years
18 ago and was taken away and is now offered again. Do I
19 have that right?

20 MS. KAREN MELNYCHUK: That's correct.

21 MR. IVAN HOLLOWAY: Okay. And is my
22 understanding correct that it's only Direct in -- in this
23 jurisdiction that's offering a three (3) year fixed price
24 product?

25 MS. NOLA RUZYCKI: That's my

1 understanding.

2 MR. IVAN HOLLOWAY: Okay. So since we
3 all know that the Utility's not offering a three (3) year
4 fixed price offering, it's fair to infer from all that
5 information that Direct has 100 percent of the market in
6 Manitoba for a three (3) year fixed price offering,
7 right?

8 MS. KAREN MELNYCHUK: If Direct is the
9 only one offering that product, I would have to agree
10 with you, yes.

11 MR. IVAN HOLLOWAY: Okay. And my
12 understanding is, is that Energy Savings is providing a
13 four (4) year fixed price offering, is that correct?

14 MS. NOLA RUZYCKI: That's correct.

15 MR. IVAN HOLLOWAY: And is my
16 understanding correct, that Direct Energy's not offering
17 a four (4) year fixed price product?

18 MS. KAREN MELNYCHUK: No, we do not offer
19 a four (4) year.

20 MR. IVAN HOLLOWAY: Okay. So I assume
21 that the answer to my question, as to whether Energy
22 Savings has 100 percent of the four (4) year fixed price
23 market would be the same as Direct's answer for the three
24 (3) year?

25 MS. NOLA RUZYCKI: That would be correct.

1 MR. IVAN HOLLOWAY: Okay.

2 MS. KAREN MELNYCHUK: Can I just make a
3 caveat, Mr. Holloway, that in regards to your -- you're
4 talking about the market in general, we don't know what's
5 being offered to all the commercial and industrial
6 customers, and there are other players in that market.

7 What they have with -- in terms with their
8 -- their customers, there may be some three (3) or four
9 (4) years offered there. So it depends which market, but
10 yes, residential, Direct Energy would be the only one.

11 MR. IVAN HOLLOWAY: Understood. Thank
12 you for that qualification. And of course that wouldn't
13 apply to you, Ms. Ruz -- Ms. Ruzycki. I'm sorry.

14 MS. NOLA RUZYCKI: That's correct. I'll
15 save you the trouble.

16 MR. IVAN HOLLOWAY: Okay. Because you're
17 not in the commercial market?

18 MS. NOLA RUZYCKI: That's correct.

19 MR. IVAN HOLLOWAY: Okay.

20 MS. KAREN MELNYCHUK: But that doesn't
21 mean that on the commercial side, another marketer may be
22 offering a four (4) year, other than Energy Savings.

23 MR. IVAN HOLLOWAY: Right. But I mean --
24 I'm just directing my questions towards the residential.
25 So we're still on the same page when it comes to

1 residential?

2 MS. KAREN MELNYCHUK: You betcha.

3 MR. IVAN HOLLOWAY: Thanks.

4

5 (BRIEF PAUSE)

6

7 MR. IVAN HOLLOWAY: I'd like to direct
8 you once again to some -- an IR, CAC/MSOS-22, please.

9

10 (BRIEF PAUSE)

11

12 MR. IVAN HOLLOWAY: I have -- are we all
13 there? It's the -- it's the attachments are a number of,
14 I believe, Ms. Melnychuk said, "collateral information".

15 MS. KAREN MELNYCHUK: Yes. I'm at
16 twenty-two (22).

17 MR. IVAN HOLLOWAY: Yes. Now, I'm gonna
18 ask you to turn over the cover page, and then turn one
19 (1) -- two (2) pages, to a page that looks something like
20 this: the largest words say:

21 "Natural Gas Prices, do you think
22 they'll go up or down?"

23 MS. NOLA RUZYCKI: Yeah, our page --

24 MR. IVAN HOLLOWAY: So four (4) pages in.

25 MS. NOLA RUZYCKI: -- our pages appear to

1 be in different order than yours, so.

2 MR. IVAN HOLLOWAY: Oh, really.

3 MS. NOLA RUZYCKI: Sorry, that's why it's
4 taking us a bit of time here to find them.

5

6 (BRIEF PAUSE)

7

8 MR. GARY NEWCOMBE: Mr. Holloway, is that
9 a Energy Savings or a Direct Energy piece you're looking
10 at?

11 MR. IVAN HOLLOWAY: It's Direct Energy.
12 Municipal Gas/Direct Energy's. Yeah.

13

14 (BRIEF PAUSE)

15

16 MS. KAREN MELNYCHUK: We have it now.

17 MR. IVAN HOLLOWAY: Okay. Now just to
18 make sure we're all on the same page here, I'm looking at
19 a document that says:

20 "Natural Gas Prices, do you think
21 they'll go up or down."

22 And then on the far left hand side of the
23 page is a chart, and the title of the chart is, "Here's
24 how the numbers compare and add up."

25 And the totals at the bottom are six

1 thousand three hundred and fifty-nine (6,359) and five
2 thousand three hundred and ninety (5,390), respectively.

3 Are we on the same page, just to make
4 sure?

5 MS. KAREN MELNYCHUK: Yes, we're on the
6 same page.

7 MR. IVAN HOLLOWAY: Okay. Now what is
8 this document? Is this another one of these documents
9 that a marketer would take to -- a salesman, or
10 salesperson would take to a door in a binder and show it
11 to a customer, and if the customer wanted a copy the
12 customer would be provided with a copy?

13 Is that what this document is?

14 MS. KAREN MELNYCHUK: No, this -- this
15 one (1) is different. This is a three-fold brochure, so
16 this the -- our marketing company's -- what do you call
17 it -- PDF of it. So it's a three-fold brochure.

18 It -- I believe was used in some mailouts
19 at that time.

20 MR. IVAN HOLLOWAY: Okay. So it was
21 provided to customers to keep at some point, either
22 through mailing or some other channel?

23 MS. KAREN MELNYCHUK: That's correct.

24 MR. IVAN HOLLOWAY: Okay. And do you
25 know the dates -- or the date, approximately, in which

1 this was used? I don't mean an exact date, but I mean
2 like a year.

3 MS. KAREN MELNYCHUK: This, as you can
4 see from the top corner, top left corner, there is a date
5 on there and it's listed April 19th, '05.

6 MR. IVAN HOLLOWAY: Okay. Now does that
7 date mean that's the date on which it was created? Or
8 what does that mean?

9 MS. KAREN MELNYCHUK: Approximately, yes,
10 the date -- it's -- it's a foot, or a header from the
11 marketing firm we use. So I'm not sure if that's the
12 last time a change was made to it, precisely. It would
13 be around that time.

14 MR. IVAN HOLLOWAY: So --

15 MS. KAREN MELNYCHUK: There is -- in the
16 middle section, under our -- our phone numbers -- I
17 realize the print is quite small here -- but it does say:

18 "Offer valid between May 2nd, 2005 and
19 May 29th, 2005."

20 So this would have been prepared in
21 advance of that, to meet, you know, deadlines going to
22 Canada Post and whatnot. Printing time.

23 MR. IVAN HOLLOWAY: Okay. So let's go
24 back to that chart that's on the left-hand side of the
25 page.

1 I see that there's a column which has the
2 year, one (1), two (2), three (3), four (4) and five
3 (5). Do you see that?

4 MS. KAREN MELNYCHUK: Yes.

5 MR. IVAN HOLLOWAY: And the next column
6 over has -- well, it's a larger column, which is broken
7 down into sub-columns. But the title of the larger
8 column next to the year column says:

9 "Based on -- based on average annual
10 historical increase of 13 percent."

11 What's this column referring to?

12 MS. KAREN MELNYCHUK: That is based on
13 exactly what it says. It's based on an -- the price at
14 that time in year 1, of twenty-eight point nine (28.9)
15 cents a cubic metre.

16 Historically, there had been an average of
17 13 percent increase in natural gas prices, so if you take
18 that and average -- what we did was we averaged a 13
19 percent increase for the next five (5) years, because
20 that was an average from a previous period of time.

21 MR. IVAN HOLLOWAY: Okay. And just so
22 that we're all clear. We're talking about the -- are we
23 talking about the AECO price? Is that what we're talking
24 about?

25 MS. KAREN MELNYCHUK: Sorry, could you

1 repeat that?

2 MR. IVAN HOLLOWAY: I'm just wondering
3 what price we're talking about. Are we talking about the
4 AECO primary gas price? Is that what you were referring
5 to there? Or were you referring to a Utility offered
6 default price, or what price were you talking about?

7 MS. KAREN MELNYCHUK: I believe it was
8 the Utility billed rate.

9 MR. IVAN HOLLOWAY: Okay. And so when
10 you say increase of 13 percent each year, I take it that
11 that 13 percent was taken from some five (5) year stretch
12 of utility rates and it averaged out to be 13 percent
13 each year. Is that right?

14 MS. KAREN MELNYCHUK: Yes. If you look
15 at the middle section again, under the phone numbers, it
16 then goes on to say:

17 "Manitoba natural gas price increase
18 figure, based on Centra Gas/Manitoba
19 Hydro price comparison, from August
20 2000 to May 2005."

21 So that was based on that five (5) year
22 range and it worked out to an average of 13 percent. I
23 believe it was actually a little bit higher, but we kept
24 it at the 13 percent. So that's what we use as the
25 average to go forward.

1 MR. IVAN HOLLOWAY: Okay. So -- but when
2 I look at the -- the column of years, it says, "Year 1,
3 Year 2, Year 3, Year 4, Year 5," and then I look at the
4 unit prices for each of those years, there's no -- these
5 aren't actual prices for actual years, right?

6 MS. KAREN MELNYCHUK: No, sir. As the --
7 the column is headed, it says:

8 "Based on average annual historical
9 increase of 13 percent."

10 MR. IVAN HOLLOWAY: Right. Why didn't
11 you just put in 2000, 2001, 2002, 2003, 2005 and say this
12 is what the average price was for that year, and then
13 this is your comparison.

14 MS. KAREN MELNYCHUK: It's a wrong per --
15 a different period of time, sir. The 13 percent was
16 drawn from the time period 2000-2005. So this was giving
17 a customer -- if that continued, that trend continued, of
18 13 percent, each year for the next five (5) years, what
19 that 13 percent would mean to the Utility rate at that
20 time, and comparison to a flat price from Municipal Gas.

21 MR. IVAN HOLLOWAY: Oh, okay, so -- I'm
22 sorry, so you're projecting out in the future, basically?

23 MS. KAREN MELNYCHUK: Based on
24 historical's, yes.

25 MR. IVAN HOLLOWAY: Okay. Based upon

1 that one historical?

2 MS. KAREN MELNYCHUK: Based on that
3 previous five (5) year period, yes.

4 MR. IVAN HOLLOWAY: Okay. And I take it
5 that -- that the twenty-eight point nine (28.9) cents,
6 which is in year 1, is probably the -- more or less, the
7 actual average price -- or actual price used for the year
8 in which this brochure was sent out? The price that
9 Centra would have been offering.

10 MS. KAREN MELNYCHUK: I'd have to go back
11 and check the records, but I believe it would be.

12 MR. IVAN HOLLOWAY: And I see that -- and
13 then if we move over to the next column, which is just
14 right at the last column that we were talking about, it
15 says:

16 "Municipal Gas Natural Gas Price
17 Protection Program."

18 See that?

19 MS. KAREN MELNYCHUK: Yes, sir.

20 MR. IVAN HOLLOWAY: And it has -- now
21 this would be the -- the offering that's being put
22 forward by Direct at the time of this brochure?

23 MS. KAREN MELNYCHUK: That's correct.

24 MR. IVAN HOLLOWAY: And it indicates that
25 the price, which makes sense, is fixed for the next five

1 (5) years, right?

2 MS. KAREN MELNYCHUK: That's correct.

3 MR. IVAN HOLLOWAY: And if we go to the
4 bottom of that column, it has THE total of what you're
5 going to pay on your fixed price, presumably on an
6 average or typical residential volume --

7 MS. KAREN MELNYCHUK: Yes, there's a --

8 MR. IVAN HOLLOWAY: -- for five (5)
9 years?

10 MS. KAREN MELNYCHUK: Yes, there's a note
11 there that it's -- it says:

12 "Based on average annual natural gas
13 consumption over the five (5) year
14 period."

15 MR. IVAN HOLLOWAY: Right, okay. And the
16 number down there is five thousand three hundred and
17 ninety dollars (\$5,390), right?

18 MS. KAREN MELNYCHUK: Yes.

19 MR. IVAN HOLLOWAY: And that's being
20 compared to the projected number that the Utility would
21 offer for a typical residential consumer, if the rates
22 increased by 13 percent, per year, right?

23 MS. KAREN MELNYCHUK: Yes. Based on the
24 historical five (5) years previously, yes.

25 MR. IVAN HOLLOWAY: Right. And that

1 number is six thousand three hundred fifty-nine dollars
2 (\$6,359), right?

3 MS. KAREN MELNYCHUK: Yes, based on the
4 13 percent historical average.

5 MR. IVAN HOLLOWAY: Right. And -- an
6 obvious question, but that's approximately a little under
7 one thousand dollars (\$1,000) higher over the five (5)
8 years than the -- the fixed rate offering by Municipal
9 Gas, right?

10 MS. KAREN MELNYCHUK: Give or take a few
11 dollars, yeah.

12 MR. IVAN HOLLOWAY: Okay.

13

14 (BRIEF PAUSE)

15

16 MR. IVAN HOLLOWAY: I don't see any --
17 any qualifier in this brochure, and -- and maybe you can
18 direct me to it, or maybe it's on another page -- which
19 indicates that the projected increase of 13 percent, per
20 year, for the next five (5) years, may or may not happen?

21 MS. KAREN MELNYCHUK: If you'd turn the
22 page over, it's got again, the back of the three-fold or
23 -- it's -- it starts with:

24 "Thank you for taking a minute to think
25 about natural gas prices. Natural gas

1 prices have a tendency to fluctuate;
2 one month they're up, the next they're
3 down. However, over time, the general
4 trend has been upward."

5 MR. IVAN HOLLOWAY: Okay. So when I flip
6 over the page, that would be the reverse side of your
7 brochure that we were just talking about, or the other
8 side of the brochure that we were just talking about?

9 MS. KAREN MELNYCHUK: It's a tri-fold so
10 the cover is the natural gas, with the Municipal Gas
11 logo. So it depends on -- on which way it folds. I'm
12 not -- unless I had one in my hand --

13 MR. IVAN HOLLOWAY: I'm -- I'm not trying
14 to trick you. I'm just wanting to make sure that it's
15 part of the same document.

16 MS. KAREN MELNYCHUK: We can check by
17 looking at the numbers the marketing firm has on it.
18 It's got the same dates and it says "page 2", so I would
19 assume that it's the inside of the same document.

20 MR. IVAN HOLLOWAY: Okay. Well, let's
21 flip over the document and look in the second page.

22 In particular I want to look at the -- the
23 centre bubble, shall I say, in the middle of the page.
24 You have a -- some type of graphical representation
25 there?

1 MS. KAREN MELNYCHUK: Yes. Did you say
2 Centra?

3 MR. IVAN HOLLOWAY: Did I say Centra?

4 MS. KAREN MELNYCHUK: I don't know.

5 MR. IVAN HOLLOWAY: Centre.

6 MS. KAREN MELNYCHUK: Centre, sorry, not
7 enough coffee yet.

8

9 (BRIEF PAUSE)

10

11 MR. IVAN HOLLOWAY: And this -- as I
12 understand it this graph is -- is basically a graphical
13 representation, or similar anyway, to what's being stated
14 in the chart on the previous page?

15 MS. KAREN MELNYCHUK: Yes, sir.

16 MR. IVAN HOLLOWAY: So now -- and I
17 appreciate that there's some qualifiers here in the sense
18 that there's been notations that have a tendency
19 fluctuate; one (1) month they're up; next they're down.

20 But you would agree with me that the --
21 the impression that you're trying to put in the mind of
22 the consumer is that, Gee, prices have gone up in the
23 past. You know, they may very well go up in the future,
24 and you want to lock yourself in otherwise you could,
25 potentially, wind up paying a lot more, is that fair to

1 say?

2 MS. KAREN MELNYCHUK: This is a marketing
3 piece that was used in a specific period of time in '05.
4 At that point in time we had seen dramatic increases in
5 natural gas prices, so what we were illustrating was a
6 comparison at that time, based on historicals, and just
7 with, I believe, you know, the -- the centre graph there
8 has a trend line.

9 This is no different than what other
10 third-party companies like energystore.com would have
11 been providing at that time as well. It's a marketing
12 piece. It was a volatile time in -- in gas prices as
13 well.

14 MR. IVAN HOLLOWAY: Okay.

15 MR. GARY NEWCOMBE: I think, Mr.
16 Holloway, if I can jump in. I mean, just listening to
17 the -- I think the trend in your questions here, I mean,
18 everything in this brochure, other than the pieces that
19 are very, very carefully qualified as factual -- I mean,
20 it says gas prices tend to fluctuate; one (1) month
21 they're up; one (1) month they're down,

22 However, over time, the general trend has
23 been upward. That's been substantiated. You know, if
24 you look at the extrapolation -- the dotted part of this
25 line here -- it says:

1 "Potential savings for customers who
2 secure their price for five (5) years
3 if the current trend continues."

4 And I think it's very, very clear that,
5 you know, this is as much an education piece as it is a
6 intent to try and convince a customer to sign something
7 by scaring them, if that's the inference behind your
8 questions.

9 MR. IVAN HOLLOWAY: No. No, that wasn't
10 really what -- I wasn't inferring that you were trying to
11 scare customers.

12 What I was -- what I'm looking -- getting
13 at is it appears as though -- and I'm not suggesting
14 anything's not factual here -- but it appears as though
15 that at least a significant portion of your brochure is
16 focussing on price as opposed to, what I understand --
17 and -- and given this may have changed because it's 2005
18 and now we're in 2007 -- but given my understanding that
19 your primary focus for advertising and -- and for
20 differentiating your product is not price, but rather
21 stability.

22 Did I confuse you as much as I confused
23 myself with that question?

24 MR. IVAN HOLLOWAY: There's -- can I say
25 -- would you agree with me that on the first page, about

1 a third of the page is dedicated to the issue of price?

2 Is that fair to say?

3 MS. KAREN MELNYCHUK: I'd say one-sixth
4 (1/6th) or one-fifth (1/5th). It's not quite the full --
5 but then again, I'm not -- I don't want to do math in
6 public.

7 MR. IVAN HOLLOWAY: Do you -- do you have
8 a measuring tape we could figure it out? Okay, let's say
9 it's one-sixth (1/6th) --

10 MS. KAREN MELNYCHUK: Okay.

11 MR. IVAN HOLLOWAY: -- and then if we
12 flip the page, would you agree that the -- the portion
13 dealing with price is about one-third (1/3rd) of the
14 page?

15 MS. KAREN MELNYCHUK: Yes, on the inside,
16 yes.

17 MR. IVAN HOLLOWAY: Okay. So what it
18 appears -- at least at this point in time -- is that
19 price was an element of -- of your marketing practice,
20 not just price stability, right?

21 MS. KAREN MELNYCHUK: Again, I made
22 reference earlier to the time that this marketing piece
23 was used -- this educational piece.

24 Gas prices were very volatile at that
25 time. And I'm just going to reference back into

1 PUB/CENTRA-21 which has a listing of Centra's quarterly
2 rate build prices for that period.

3 And, even if you look at the first page
4 with the table, we actually understated Centra's price
5 for that period. This was -- we state twenty-eight point
6 nine (28.9) cents a cubic metre.

7 In 2005, around -- sorry, we didn't
8 understate that specific one, but for year 1, the -- it
9 was on average twenty-eight eight six (28.86), twenty-
10 nine point one six (29.16); November 1st, '05, thirty-
11 two-o-seven (32.07); February 1st, '06 thirty-two-o-five
12 (32.05).

13 So those are very close to, you know, for
14 the first couple of years that this was out there, though
15 that 13 percent did materialize to customers. Again, we
16 used historical information on Centra prices, at that
17 time, for five (5) years and extrapolated that forward.

18 And we do have the caveats in there as Mr.
19 Newcombe pointed out on -- on the backside in the middle
20 section of potential savings if that trend would
21 continue.

22 MR. IVAN HOLLOWAY: Okay, thank you for
23 that.

24 MR. GARY NEWCOMBE: Mr. Holloway, I mean
25 there's -- there's quite a few numbers on those pages and

1 yes, they are comparing prices, but I think this brochure
2 is as much or more about choice and stability as it is
3 about price.

4 I think if you were to go through the same
5 sort of measuring tape exercise that you just did with
6 price, you know, in the centre piece on the front page
7 there's several references to stability, no more
8 fluctuation, steady, reliable.

9 The same on the next page. There's
10 references again to price guarantees, stability, your
11 price will never go up, stable financial planning. So
12 it's as much about all of the things that we offer, and
13 that Mr. Roeder and Ms. Melnychuk have talked about
14 before, as it is about a straight price comparison.

15 MR. IVAN HOLLOWAY: Ms. Melnychuk, is --
16 is my understanding correct, that -- that the focus of
17 the -- of the marketers, in terms of marketing their
18 product, has changed from 2005 to present; in a sense
19 that, perhaps, price was -- price comparison was
20 something that was more prominent, and now the -- the
21 price stability is something that's more focussed on in
22 terms of marketing efforts? Has the rate been changed
23 between 2005 and present?

24 MS. KAREN MELNYCHUK: I don't believe so.
25 As Mr. Newcombe just pointed out, we have price stability

1 all over this brochure. It's not just about price. We
2 also prominently display our price on all our current
3 material.

4 It's a balance between both. We bring
5 forward new innovative products whenever -- to be honest,
6 we get the light -- the bulb on top of our heads. We're
7 always looking at our market and to see what works in
8 other markets versus what we've tried here.

9 So it all also depends on -- on whose, you
10 know, doodling that day or whatnot. But it's never been
11 specific price stability. It's always been, I believe, a
12 balance of both. Stability is the main one and that's
13 all over this brochure as well.

14 MR. IVAN HOLLOWAY: And -- and I'm not
15 trying to mis-characterize it and I -- I understand that
16 price stability is all over it. Can you point to me a
17 brochure that would be a current brochure of Direct
18 Energy in these materials?

19 MS. KAREN MELNYCHUK: We'll look
20 together. It'll be one that says "Direct Energy." Hang
21 on, when did we file the IR's?

22

23 (BRIEF PAUSE)

24

25 MS. KAREN MELNYCHUK: I'm sorry, Mr.

1 Holloway. This may take longer. I don't see one (1)
2 that's -- we rebranded to Direct Energy in -- in
3 approximately March, and that's the one (1) I'm -- I'm
4 trying to find right now; is one (1) that's branded
5 Direct Energy.

6 I can't seem to find it in the copies that
7 I have here.

8 MR. IVAN HOLLOWAY: Could I ask for an
9 Undertaking to provide us with a copy of -- of all the
10 current promotional material that's used by Direct
11 Energy, and I guess also Energy Savings?

12 MS. KAREN MELNYCHUK: Yes.

13 MR. IVAN HOLLOWAY: Thanks.

14

15 --- UNDERTAKING NO. 22: DEML/ESMLP to provide
16 CAC/MSOS a copy of all the
17 current promotional material
18 that is used by Direct Energy
19 and Energy Savings

20

21 MR. ERIC HOAKEN: And I'm sorry. Just to
22 be clear, I assume you mean in this market?

23 MR. IVAN HOLLOWAY: Yes.

24

25

(BRIEF PAUSE)

1 CONTINUED BY MR. IVAN HOLLOWAY:

2 MR. IVAN HOLLOWAY: Now, Ms. Ruzycki, I
3 think these questions are gonna be more focussed to you.
4 At the end of my materials in CAC/MSOS number 22, I have,
5 what appears to be, Energy Savings' promotional material.

6 MS. NOLA RUZYCKI: I -- I believe I have
7 it. I have mine separate, so I -- sorry. Can I just see
8 again what --

9 MR. IVAN HOLLOWAY: For the record, I'm -
10 - I'm looking at a document which --

11 MS. NOLA RUZYCKI: I believe I have it.
12 It's this one?

13 MR. IVAN HOLLOWAY: Yes. Energy Savings
14 Manitoba LP. It has a picture of -- it has a large
15 picture of a money bag on the front --

16 MS. NOLA RUZYCKI: Mm-hm.

17 MR. IVAN HOLLOWAY: -- as well as a
18 number of smaller pictures of families, some gas flames,
19 and some individuals. It says:

20 "Natural Gas fixed-price program for
21 your energy for your piece of mind."

22 MS. NOLA RUZYCKI: Yes.

23 MR. IVAN HOLLOWAY: Can you explain what
24 -- what this document is?

25 MS. NOLA RUZYCKI: This document is

1 basically sales collateral that we leave with a customer.

2 MR. IVAN HOLLOWAY: So it's -- first of
3 all, how many pages is -- is --

4 MS. NOLA RUZYCKI: It's two (2) pages.

5 MR. IVAN HOLLOWAY: So if I flip over the
6 page, is that part of the same document?

7 MS. NOLA RUZYCKI: Yes. The second --
8 the second document that says, "Energy Savings Manitoba
9 LP offers four (4) and five (5) year" is page 2 of it.

10 MR. IVAN HOLLOWAY: "Protecting half a
11 million Canadian customers" at the top?

12 MS. NOLA RUZYCKI: Yes.

13 MR. IVAN HOLLOWAY: Okay, and so this
14 would be something that the door-to-door sales people
15 would provide to potential customers?

16 MS. NOLA RUZYCKI: Yes.

17 MR. IVAN HOLLOWAY: And is this a current
18 document?

19 MS. NOLA RUZYCKI: No, it's been updated
20 since then. It's been updated just recently, along with
21 our web redesign, so. You've already asked, though, Mr.
22 Hoaken for that, and we will provide it.

23 MR. IVAN HOLLOWAY: Okay. And so when
24 you say that there's a -- a newer version that's out,
25 when was the last time that this version would have been

1 used? Do you have some sense? I don't need an exact
2 date, but month, year?

3 MS. NOLA RUZYCKI: Three (3) months.

4 MR. IVAN HOLLOWAY: Ago?

5 MS. NOLA RUZYCKI: Maybe -- well, maybe
6 August, I think is the -- it -- it -- because Manitoba
7 was one (1) of the -- our roll-out of the Web started
8 with Ontario and then it would have moved to other
9 jurisdictions, so I would guess August timeframe.

10 MR. IVAN HOLLOWAY: Okay. And then if we
11 could just flip over the page, which was identified
12 previously as having "Energy Savings Manitoba LP,
13 protecting over half a million Canadian customers" at the
14 top of the page.

15 MS. NOLA RUZYCKI: Yes.

16 MR. IVAN HOLLOWAY: And in particular,
17 I'm looking at a graph -- well, it's the only graph on
18 the page -- do you see that?

19 MS. NOLA RUZYCKI: Yes, I do.

20 MR. IVAN HOLLOWAY: And the title of the
21 graph is "The benefits of a fixed price"?

22 MS. NOLA RUZYCKI: Yes.

23 MR. IVAN HOLLOWAY: Now this is a
24 representation of what a typical household would consume
25 -- would pay for five (5) years, from 2000 to 2005, on a

1 and through this program we are paying
2 substantially less for natural gas."

3 MS. NOLA RUZYCKI: Yes.

4 MR. IVAN HOLLOWAY: And the inference
5 from that, as well, is that -- is that a customer could
6 infer that -- that they can potentially save money if
7 they go on a fixed rate with Energy Savings.

8 Is that fair to say?

9 MS. NOLA RUZYCKI: Well, I believe I've
10 already said that. Yes, there's a potential to save
11 money and this is one (1) customer that we're quoting;
12 it's not we're saying -- we're quoting all our customers.
13 This is a quote from one (1) customer, it says.

14 MR. IVAN HOLLOWAY: Now, if I go to my
15 next page -- I don't know if it's going to be your next
16 page or not, but --

17 MS. NOLA RUZYCKI: Yes, it is.

18 MR. IVAN HOLLOWAY: -- it's -- it's a
19 document entitled "Natural Gas Fixed Price Program,
20 Energy Savings Manitoba Corp."

21 MS. NOLA RUZYCKI: Yes.

22 MR. IVAN HOLLOWAY: Now what's this
23 document?

24 MS. NOLA RUZYCKI: This document is a
25 copy of the customer registration, or a contract.

1 MR. IVAN HOLLOWAY: And is this a current
2 document?

3 MS. NOLA RUZYCKI: No, it isn't.

4 MR. IVAN HOLLOWAY: How -- how recent
5 would it have been used?

6 MS. NOLA RUZYCKI: This likely is a
7 couple years old, since the name has been changed since
8 to LP in -- from Corp. And this document would appear to
9 be old because it has our old address on it, as well, on
10 page 2.

11 MR. IVAN HOLLOWAY: Okay. Could you
12 please undertake to provide us with a copy of the same
13 document in its current form?

14 MS. NOLA RUZYCKI: Yes, I can.

15
16 --- UNDERTAKING NO. 23: DEML/ESMLP to provide
17 CAC/MSOS with an updated copy
18 of customer registration
19 form/contract

20

21 CONTINUED BY MR. IVAN HOLLOWAY:

22 MR. IVAN HOLLOWAY: And I also noticed
23 that this document, probably through no fault of anyone,
24 but the way that gremlins in photocopies work, is that
25 the bottom of the page is -- appears to be cut off.

1 MS. NOLA RUZYCKI: Yes. I see that as
2 well in my copy. No intention to cut the bottom line
3 off.

4 MR. IVAN HOLLOWAY: Right. No, I'm sure.
5 Could you please undertake to provide a copy of this same
6 document with the full page, please?

7 MS. NOLA RUZYCKI: Yes, I can.

8

9 --- UNDERTAKING NO. 24: DEML/ESMLP to provide
10 CAC/MSOS with the customer
11 contract that has already
12 been provided, including the
13 line that is currently
14 missing

15

16 MR. IVAN HOLLOWAY: Mr. Chair, subject to
17 information provided on undertakings, and I guess subject
18 to the results of -- of CAC/MSOS' motion, I have no
19 further questions for this panel at this time.

20 THE CHAIRPERSON: Okay. Thank you, Mr.
21 Holloway.

22 We'll take an early lunch then, to deal
23 with this matter. Take a few extra minutes. So let's
24 assume we'll be back at one o'clock, and at that point in
25 time, after we deal with Mr. Holloway's motion, it'll be

1 cross-examination by Centra. Thank you.

2

3 --- Upon recessing at 11:41 a.m.

4 --- Upon resuming at 1:05 p.m.

5

6 THE CHAIRPERSON: Mr. Hoaken, you have
7 some new exhibits here?

8 MR. ERIC HOAKEN: I do, thank you, Mr.
9 Chair. This -- this comes out of the undertaking given
10 to Mr. Holloway just before the lunch break. They're
11 five (5) separate items, so dealing with first with the
12 glossy brochure that says, "Direct Energy," this is being
13 provided in answer to the undertaking to give an update,
14 or at least give the most current marketing materials
15 that are being used by Direct Energy, so I would ask that
16 that be entered as Exhibit 12, Mr. Chair?

17 THE CHAIRPERSON: Very good.

18

19 --- EXHIBIT NO. DEML/ESMLP-12: Glossy brochure
20 outlining the most current marketing
21 material used by Direct Energy

22

23 MR. ERIC HOAKEN: And then also, as part
24 of the answer to that very same undertaking, I've got a
25 document that is also branded Direct Energy. It shows a

1 family on the front of it and I'm proposing that be
2 Exhibit 13.

3 And that undertaking was also given in
4 respect of Energy Savings.

5

6 --- EXHIBIT NO. DEML/ESMLP-13: Direct Energy branded
7 document showing a family on the front

8

9 MR. ERIC HOAKEN: So the next item is an
10 Energy Savings brochure. It says "Energy Savings
11 Manitoba LP", which Ms. Ruzycki has told us is the new
12 name of the Company, and I'm proposing that that be
13 Exhibit 14.

14 And that is a two (2) page document, Mr.
15 Chair with a somewhat curiously placed staple. I'll let
16 Mr. Peters speak to that, if he feels it's necessary.

17

18 --- EXHIBIT NO. DEML/ESMLP-14: Two (2) page brochure
19 that says, "Energy Savings Manitoba LP"
20 on the cover

21

22 MR. ERIC HOAKEN: And then the next item
23 is also in answer to that same undertaking. It's a one
24 (1) page document, also an Energy Savings document; that
25 would be, I believe, Exhibit 15.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

--- EXHIBIT NO. DEML/ESMLP-15: One (1) page Energy Savings document

MR. ERIC HOAKEN: The next item is the updated registration form for Energy Savings, which I think Ms. Ruzycki said this morning is the contract. It's a three (3) page document, Mr. Chair, and I would ask that that be Exhibit 16.

--- EXHIBIT NO. DEML/ESMLP-16: Updated registration form/contract for Energy Savings

THE CHAIRPERSON: Very good, thank you, sir

MR. ERIC HOAKEN: And -- and actually, I think, if I haven't lost track of myself, there may be -- in fact, be one (1) more. It is a one (1) page document -- oh, no, I'm being told by Mr. Peters I've already put them all in.

THE CHAIRPERSON: I think you have them all.

MR. ERIC HOAKEN: Sorry, I was on a roll there, Mr. Chair.

MS. MARLA MURPHY: Mr. Hoaken, maybe you

1 can help me, I seemed to have confused the numbers
2 somewhere along the way.

3 MR. ERIC HOAKEN: Well, I think I helped
4 you.

5 MS. MARLA MURPHY: Energy Savings natural
6 gas fixed price program, yes enroll me in the natural gas
7 fix -- fixed price program; is that number fifteen (15),
8 or is that -sixteen (16)? So what was fifteen (15)?

9 MR. ERIC HOAKEN: Number sixteen (16),
10 yes.

11 MS. MARLA MURPHY: Thank you, I have it.

12 MR. ERIC HOAKEN: All right, thank you.

13

14 DECISION ON MOTION:

15 THE CHAIRPERSON: Okay. With respect to
16 the matter that we were addressing just before we broke
17 for lunch.

18 CAS/MSOS requests that retailers provide
19 better and complete answers to:

20 1. CAC/MSOS/Direct/ESM-15(a), concerning
21 disaggregated retail market share in the low volume
22 Manitoba customer market and;

23 2. CAC/MOS/Direct/ESM number 22, seeking
24 data to support the statement that Canadian customers of
25 fixed price natural gas programs have saved over 100

1 million in the past five (5) years. And;

2 3. CAC/MSOS/Direct/ESM-25(a), 25(c),
3 seeking the number and trend of complaints made to each
4 retailer relating to the sale of products.

5 The Board is not convinced that
6 disaggregated retailer market shares by number and
7 volume of small volume consumers need to be disclosed in
8 these proceedings. The Board will leave it to CAC/MSOS
9 to make inferences from the existing evidence and data,
10 should it so choose, in it's closing submission.

11 DEML/ESMLP can also attempt to rebut such
12 inferences, should it feel necessary, in it's closing
13 submission.

14 As to Energy Savings statement that fixed
15 price customers have saved more than 100 million over
16 default supply costs in a five (5) year period, 2000 to
17 2005, such a statement for these proceedings needs no
18 further backup data.

19 The Board has heard and seen some fixed
20 price customers pay more than system supply costs over a
21 given three (3) or five (5) year term. And some fixed
22 price customers pay less than system supply costs over a
23 given term.

24 As the \$100 million dollar claim does not
25 relate to or include Manitobans, and it includes other

1 retailers in other jurisdictions, the Board will
2 determine what weight, if any, should be given to such a
3 statement.

4 And as well, the Board may consider the
5 propriety of broad claims without stated support in the
6 context of the Code of Conduct. CAC/MSOS can ask
7 questions related to this matter, and how the 100 million
8 claim was developed, and the nature of support for the
9 claim.

10 On the issue of the number content and
11 trend of complaints received by the retailers, this
12 information is of interest to the Board, as it may relate
13 to the marketing practices in Manitoba. The Board will
14 require the retailers to file, by either calendar or
15 fiscal year from 2004, the number of complaints received;
16 and if coded, the content and subject matter of the
17 complaints.

18 We are mindful of the regulatory costs of
19 this procedure proceeding.

20 Also if available, the retailers should
21 provide the number of complaints received about Centra;
22 if coded, the nature of the complaints. This excluding
23 the EPP affair.

24 Mr. Holloway, in light of the Board's
25 ruling, do you have any additional questions of this

1 panel respecting:

2 1. Energy Savings claim of \$100 million
3 dollars savings, or;

4 B. The issue of complaints, in general
5 terms?
6

7 CONTINUED CROSS-EXAMINATION BY MR. IVAN HOLLOWAY:

8 MR. IVAN HOLLOWAY: Yes, Mr. Chair.

9 THE CHAIRPERSON: Please proceed.

10 MR. IVAN HOLLOWAY: Thanks. Ms. Ruzycki,
11 can you explain the background of the \$100 million dollar
12 statement? How was derived?

13 MS. NOLA RUZYCKI: I will walk you
14 through the steps. I am going to refer to my information
15 here so I don't miss anything.

16 As -- you have some of the information. I
17 am going to go over all the information and how it was
18 determined. So the quote is for the period of 2000 till
19 2005. It refers to all Canadian customers of fixed price
20 product. So again, that is not just Energy Savings
21 customers. That would be all our competitors customers
22 as well.

23 And it refers to the amount that fixed
24 price purchase customers have saved when compared to what
25 they would have paid under LDC pricing.

1 So, if I could use the Ontario market as
2 the -- during that time period, the number of customers
3 that were available in the market were 3 million. The
4 share that the direct purchase customers had was
5 approximately 28 percent.

6 And some of this requires retrospective
7 analysis on our part. And we would -- we've gleaned
8 information from commodity pricing information. We've
9 gleaned information from our competitors web sites, where
10 a number of them do have pricing information, as to how
11 much money their customers have saved on products as
12 well.

13 And we have -- what we have done, is we
14 have calculated our actual number, and knowing our market
15 share we've taken into account what we believe to be an
16 estimate of our competitor's market share. We have no
17 real idea that those numbers are correct, and I believe
18 Ms. Murphy this morning mentioned that we must discuss
19 amongst each other, we did not.

20 This was information that we have gleaned
21 from pricing and, as I mentioned, the savings that have
22 been achieved by other marketers on their websites.

23 So I think -- I think just what I want to
24 make clear here is that the appropriate context here is
25 that the large number was not generated, obviously, in

1 one (1) day; it was generated by -- it wasn't generated
2 by one (1) company. It's indicative of the savings that
3 had been realised by customers that have service provided
4 to them in a jurisdiction other than Manitoba.

5 MR. IVAN HOLLOWAY: Just to be clear, the
6 -- although the facts and figures came from another
7 jurisdiction, this advertisement was seen by people in
8 Manitoba, is that fair?

9 MS. NOLA RUZYCKI: Yes, that's correct.
10 We, as Energy Savings, have not had any contracts
11 complete in Manitoba, so we have not had the benefit of
12 having those contracts and being to able to compare the
13 numbers in Manitoba. So we were publishing information
14 that was -- as it said, it was Canadian, it was general -
15 - it was information, sorry, that was related to all
16 customers in the marketplace.

17 And maybe one (1) other think I can note
18 is that you will note it wasn't on any of our sales
19 collateral information that we left with the customers.
20 Also, we have not once had a call from any individual
21 asking about the claim.

22 We also have not a call from the
23 regulators. And I would assure you that any of the
24 regulators in the jurisdictions that we deal with do not
25 hesitate to pick up the phone and call us if they have

1 any concerns.

2 MR. IVAN HOLLOWAY: That's good to know.

3 Okay, thanks a lot.

4 I have no further questions, Mr. Chair.

5 THE CHAIRPERSON: Thank you, Mr.

6 Holloway.

7 Ms. Murphy...?

8 MS. MARLA MURPHY: Yes, thank you, Mr.
9 Chair. I just might take a minute. I have a book of
10 documents that I hope will make this go a little
11 smoother.

12 THE CHAIRPERSON: Very good.

13 MS. MARLA MURPHY: And could maybe have
14 that distributed.

15

16 (BRIEF PAUSE)

17

18 MS. MARLA MURPHY: While that's being
19 circulated, I might indicate for the record that this a
20 book of documents which is comprised of material taken
21 from material already filed in this application, with the
22 exception of the material at Tab number 2.

23 THE CHAIRPERSON: Mr. Singh is not as
24 young as he once was, so it takes him longer...

25

1 (BRIEF PAUSE)

2

3 MS. MARLA MURPHY: Now that you have --
4 have it in front of you, Tab Number 2 is a copy of
5 correspondence from the Board to the then-solicitor for
6 some of the brokers, with respect to the code of conduct.

7 The reason I've put it in there is just to
8 be clear on what was included in the code of conduct with
9 respect to renewals before what's been called the
10 reversal decision was there. So that's -- that's the
11 reason it's there, just for information.

12 I think it might be appropriate to have
13 that marked as an exhibit.

14 THE CHAIRPERSON: That sounds fair to us.
15 CENTRA-25?

16 MS. MARLA MURPHY: I hope Mr. Singh is
17 young enough to know my number.

18

19 (BRIEF PAUSE)

20

21 THE CHAIRPERSON: 25, he says.

22

23 --- EXHIBIT NO. CENTRA-25: Copy of correspondence from
24 the Board to the then-
25 solicitor for some of the

1 but to -- to leave Municipal and to market under Direct,
2 is that right?

3 MS. KAREN MELNYCHUK: No, we re-branded
4 to Direct Energy in March.

5 MS. MARLA MURPHY: And is Municipal Gas a
6 wholly unsubsidiary (sic) of Direct Energy?

7 MS. KAREN MELNYCHUK: I will confirm
8 that, I'm not sure at the moment.

9 MS. MARLA MURPHY: Okay. Maybe when you
10 do that you could let us know where it fits on the
11 exhibit you filed today, I believe is Number 10, which
12 was the Org. Structure.

13 MR. ERIC HOAKEN: Yes, we'll do that.

14

15 --- UNDERTAKING NO. 25: DEML/ESMLP to advise if
16 Municipal Gas is a wholly
17 subsidiary of Direct Energy,
18 and where it fits on Exhibit
19 10, the Org. Structure

20

21 CONTINUED BY MS. MARLA MURPHY:

22 MS. MARLA MURPHY: I understand Direct
23 Energy to be a subsidiary of Centrica, which is a large
24 British corporation, is that right?

25 MR. CLINTON ROEDER: That's correct.

1 MS. MARLA MURPHY: And your website
2 describes you as North America's largest energy retailer.
3 I take it you support that characterization?

4 MR. CLINTON ROEDER: That's correct.

5 MS. MARLA MURPHY: And the goal when you
6 last appeared, Ms. Melnychuk, before the Public Utilities
7 Board with other representatives of Centrica, was to gain
8 ten million customers in the US and Canada, before 2003.
9 Do you recall that?

10 MS. KAREN MELNYCHUK: I believe I recall
11 those comments that were made, yes.

12 MS. MARLA MURPHY: Did you achieve that
13 goal?

14

15 (BRIEF PAUSE)

16

17 MR. CLINTON ROEDER: No.

18 MS. MARLA MURPHY: Do you have a new
19 stated objective?

20 MR. CLINTON ROEDER: To be the leader --
21 leading provider of energy and related services across
22 North America as well as on all markets that we're in.

23 MS. MARLA MURPHY: So you haven't
24 restated that with a new number; you -- you've changed
25 the -- the method in which you state your goal?

1 MR. CLINTON ROEDER: That's correct.

2 MS. MARLA MURPHY: Ms. Ruzycki, with
3 respect to Energy Savings, Energy Savings Manitoba is
4 part of the energy savings group as I understand it,
5 correct?

6 MS. NOLA RUZYCKI: That's correct.

7 MS. MARLA MURPHY: And you're also
8 considered one of North America's largest retailers?

9 MS. NOLA RUZYCKI: Yes, that's correct.

10 MS. MARLA MURPHY: And when we look at
11 the quarterly report that's been filed as an exhibit in
12 this proceeding, I understand that Energy Savings has
13 committed to purchase \$3.9 billion of natural gas
14 purchases this year. Is that right?

15 MS. NOLA RUZYCKI: I'll take it to be
16 true, yes.

17 MS. MARLA MURPHY: Subject to check,
18 sure.

19 In terms of the products that are
20 currently available, I understood your evidence, Ms.
21 Melnychuk, to be that Direct Energy offers carbon-neutral
22 rates.

23 MS. KAREN MELNYCHUK: We offer a carbon-
24 neutral product, yes.

25 MS. MARLA MURPHY: And did I also

1 understand you correctly, that since June 1st of this
2 year it's only carbon-neutral products that are available
3 in Manitoba?

4

5 (BRIEF PAUSE)

6

7 MS. MARLA MURPHY: Too much carbon in the
8 air?

9 MS. KAREN MELNYCHUK: I think I've got a
10 frog in my throat.

11 We don't just offer carbon-neutral
12 products. On the residential we do but not in our other
13 segments of our market.

14 MS. MARLA MURPHY: Okay. Focussing on
15 the residential products that are available, are they all
16 carbon-neutral products now?

17 MS. KAREN MELNYCHUK: Yes.

18 MS. MARLA MURPHY: And the rates that
19 you've stated are inclusive of the carbon-neutral
20 premium, or charge?

21 MS. KAREN MELNYCHUK: Yes, it includes
22 that carbon-neutral offsetting, yes.

23 MS. MARLA MURPHY: There's no additional
24 charge added on for that?

25 MS. KAREN MELNYCHUK: No.

1 MS. MARLA MURPHY: And it's fair to say
2 then, the customers can't elect not to purchase a carbon-
3 neutral product?

4 MS. KAREN MELNYCHUK: Not in the province
5 of Manitoba, no.

6 MS. MARLA MURPHY: Mr. Roeder, when you
7 were discussing the subject of carbon-neutral products,
8 you referred to them as "auditable." I'm wondering who
9 would audit that?

10

11 (BRIEF PAUSE)

12

13 MR. CLINTON ROEDER: We don't have the
14 specific name, we can get that. But I think, you know,
15 it's common out there in the industry, in terms of these
16 parties that are available to audit. And as mentioned in
17 the document, I think it actually touches on -- if I can
18 refer to, I think it was Exhibit 9 yesterday, and if you
19 look in there, it kind of outlines in terms of at the
20 Exchange as well in terms of what is provided.

21 But if you'd like further detail in terms
22 of the specific names, I'll go back and check with the
23 individuals of Energy Management. As long as it's not
24 confidential, we'll provide it.

25

1 --- UNDERTAKING NO. 26: DEML/ESMLP to determine for
2 Centra who audits carbon-
3 neutral products
4

5 CONTINUED BY MS. MARLA MURPHY:

6 MS. MARLA MURPHY: As long as it's not
7 confidential.

8 I take it you're not referring to any kind
9 of a public audit process then?

10 MR. CLINTON ROEDER: I can't speak to the
11 specifics. I mean, as we lay down here, the Chicago
12 Exchange is audited by independent third parties. So I'm
13 assuming in their reports for the Exchange that it will
14 provide the detail.

15 MS. MARLA MURPHY: I take it you haven't
16 submitted to an audit as of yet?

17 MR. CLINTON ROEDER: Just to remind
18 everyone, we just started off -- off on the product in
19 May.

20 MS. MARLA MURPHY: Right.

21 MR. CLINTON ROEDER: And so we've yet to
22 have to have any customer come on flow with this product.

23 MS. MARLA MURPHY: Would you agree to
24 submit those credits -- or information about those
25 credits for audit, to the Public Utilities Board, before

1 you made those offers available in Manitoba?

2 MR. CLINTON ROEDER: Once again, whatever
3 is public information, they provide -- we'll provide as
4 -- as we do with any offer our product we offer when
5 we're requested for information.

6

7 --- UNDERTAKING NO. 27: DEML/ESMLP to submit to Board
8 information about the credits
9 for audit of carbon-neutral,
10 before offers made available
11 in Manitoba

12

13 CONTINUED BY MS. MARLA MURPHY:

14 MS. MARLA MURPHY: In marketing carbon
15 neutral natural gas to Manitoba consumers, what do you
16 assume about the average emissions of CO2 equivalent from
17 a cubic metre of natural gas?

18 MR. CLINTON ROEDER: I'll just refer back
19 to Exhibit 9 at the beginning. It outlines, in terms of
20 the carbon nature of the product, in terms of how it
21 works, as well as how the estimate and how much is
22 estimated in terms of for emissions.

23 MS. MARLA MURPHY: So -- can you point me
24 to the number, please?

25

1 (BRIEF PAUSE)

2

3 MR. GARY NEWCOMBE: Ms. Murphy, just with
4 respect to the last exchange you had with Mr. Clinton
5 about us providing the details to the PUB; I can tell you
6 that we have met with PUB staff here in Manitoba and
7 we've also met with individuals from the Ministry of
8 Science, Technology, Energy and Mines.

9 And in both those occasions we did discuss
10 in pretty much the same detail as what's in the Exhibit
11 9, but we did talk about the product with those
12 individuals; the carbon neutral product.

13 MS. MARLA MURPHY: Thank you for that.
14 Are you able to help me with the -- the number that you
15 assume as the CO2 equivalent?

16 MR. CLINTON ROEDER: Okay. I'll just
17 read from Exhibit 9.

18 "Direct Energy calculates the average
19 annual natural gas consumption of a
20 residential customer. In Manitoba,
21 that is 113 gigajoules. This gigajoule
22 figure is converted in MMBTU, using an
23 accepted conversion factor of point
24 nine four eight (.948). This results
25 in an average annual gas consumption of

1 107.12 MMBTU for a Manitoban. The
2 amount of carbon dioxide released by
3 burning 1 MMBTU of natural gas is 117
4 pounds. Therefore, 107.12 MMBTUs
5 releases 12,533 pounds of CO2, or
6 approximately 5.68 metric tons. An
7 average Manitoba, therefore, releases
8 approximately 5.68 metric tons of CO2
9 into the air every year."

10

11 (BRIEF PAUSE)

12

13 MS. MARLA MURPHY: How do you acquire
14 your carbon offsets for Manitoba?

15 MR. CLINTON ROEDER: I'll refer to
16 Exhibit 9, under the area that's got the heading "Direct
17 Energy portfolio information."

18 "The offsets that Direct Energy
19 acquires to supply the carbon-neutral
20 product are from a number of domestic
21 and international sources. Direct
22 Energy continues to build and diversify
23 its portfolio in terms of amount,
24 sources and types of offset."

25 MS. MARLA MURPHY: Sorry. I don't need

1 you to actually read it me; I just want to understand if
2 -- does this apply to Manitoba specifically, or is this a
3 general document?

4 MR. CLINTON ROEDER: This is across all
5 of our locations where we offer it.

6 MS. MARLA MURPHY: And you -- you obtain
7 your carbon credits from Manitoba in conjunction with
8 these other areas?

9 MR. CLINTON ROEDER: That's correct.

10 MS. MARLA MURPHY: You don't isolate
11 Manitoba in -- and contain -- obtain them from Manitoba
12 alone?

13 MR. CLINTON ROEDER: We acquire carbon
14 offsets for each individual customer.

15 MS. MARLA MURPHY: Do you do a
16 calculation, then, for Manitoba and acquire them
17 specifically for Manitoba, or you do it on a customer-by-
18 customer basis?

19 MR. CLINTON ROEDER: We go to the market.
20 We are going to the market in terms of what we need in
21 terms of for customers that have signed up for a carbon-
22 neutral product.

23 Whether it's in the case of markets where
24 it's a specific carbon-neutral add-on or, in the case of
25 Manitoba, to where it's part of the base product. So all

1 residential customers are taken into account. It's a
2 separate calculation for residential customers in
3 different provinces, in different states versus Manitoba.

4

5 (BRIEF PAUSE)

6

7 MS. MARLA MURPHY: Do you have indication
8 of the range of value for the carbon-neutral credits that
9 you're obtaining from Manitoba?

10

11 (BRIEF PAUSE)

12

13 MR. CLINTON ROEDER: Just to clarify the
14 question; are you asking how much we pay for the carbon
15 offset?

16 MS. MARLA MURPHY: Yes.

17 MR. CLINTON ROEDER: It's a commercially
18 sensitive topic, so.

19 MS. MARLA MURPHY: I understand, I'm
20 looking for a range. I'll give you a bit of a framework.
21 In -- in this arena, we have used a value of between ten
22 (\$10) and twenty (\$20) dollars.

23 I'm wondering if that range would bracket
24 the range that you pay for carbon neutral credits?

25 MR. ERIC HOAKEN: I guess I'm at a loss

1 somewhat to understand why we need that information in
2 the record for this proceeding.

3 MS. MARLA MURPHY: Well, it -- it goes to
4 the current offering in the market.

5 MR. ERIC HOAKEN: You have to do better
6 than that. I mean, I don't think any representation is
7 being made to anybody about the price that's being paid
8 for the carbon offsets. It is a cost of doing business.
9 It would be subsumed in the price of the product. I -- I
10 just fail to see why it has any bearing on what we're
11 talking about.

12 MS. MARLA MURPHY: I think, Mr. Chairman,
13 that your Notice had quite clearly indicated that the
14 products that were available on the market were important
15 and I -- I don't think it's unreasonable to explore what
16 that product is and the understanding of the people here
17 with respect to it.

18 MR. ERIC HOAKEN: Well, it's -- I have no
19 problem with that, absolutely not. And that's, I think,
20 what Ms. Murphy's been doing for the last few minutes.
21 But now she's going beyond that. She's not really
22 exploring the product; she's now trying to go behind the
23 product and understand what some of the factor costs are
24 and, as the witness said, that's confidential
25 information.

1 And so now to attack it and to say, Well,
2 I just want the range -- it's still confidential.

3 THE CHAIRPERSON: I think it is a fair
4 question to determine exactly what the program is; if it
5 is planting trees or taking some other action, that is
6 important to know. With the respect to the cost, it
7 costs Direct to be able to have these ten (10) or twenty
8 (20) or whatever number of trees planted. I agree; we
9 are not asking you to give us the overhead costs of the
10 marketing department in Toronto or some other location.

11 MR. ERIC HOAKEN: All right, thank you.
12 We're certainly quite prepared to answer any and all
13 questions about how the program works and what the
14 offsets consist of and all of that; it was really just
15 the pricing information. Thank you, Mr. Chair.

16
17 CONTINUED BY MS. MARLA MURPHY:

18 MS. MARLA MURPHY: I noted, Mr. Roeder,
19 that you refer very -- very heavily to the response to
20 DEM Number 9 -- Exhibit Number 9 in discussing this
21 program, and I think it's fair to say that both you and
22 Ms. Melnychuk struggle to explain this program when it
23 was first raised in this forum.

24 Are you confident that your salespeople
25 are able to communicate this to your customers?

1 MR. CLINTON ROEDER: Yes.

2 MS. MARLA MURPHY: And on what basis to
3 you provide that information given that the people here
4 are unable to explain it?

5

6 (BRIEF PAUSE)

7

8 MR. CLINTON ROEDER: We can provide our
9 training materials, if you'd like to look at those?

10 MS. MARLA MURPHY: That would be helpful,
11 thank you.

12

13 --- UNDERTAKING NO. 28: DEML/ESMLP to provide Centra
14 with salespeople training
15 material

16

17 CONTINUED BY MS. MARLA MURPHY:

18 MS. MARLA MURPHY: I want to turn to the
19 question of whether or not the brokers are prepared to
20 offer short-term products in Manitoba. I'm thinking of
21 one (1) year fixed priced products when I describe short
22 term. And I understood your evidence so far to be that
23 in order to do that, you think that the rules here need
24 to be changed. Do I have that right?

25 MS. KAREN MELNYCHUK: Yes.

1 MS. MARLA MURPHY: Can you list for me
2 specifically the rules that would be required to change
3 in order to be able -- for brokers to be able to offer
4 that product in Manitoba?

5 MS. KAREN MELNYCHUK: I believe we put it
6 on the record that there's a few different rules. Some
7 of them are -- are rules within the Code for the
8 marketers and others are contractual -- contractual
9 barriers. The sales channels of being allowed to do
10 telesales and web sign-ups is under the Code of Conduct.

11 If those were allowed, we would be able to
12 acquire customers in a greater geographical diversity of
13 -- I'm going to get that wrong again -- of Manitoba, and
14 at a lower costs and a -- a -- be able to provide a
15 better rate on the one (1) year.

16 The contractual barriers, Ms. Murphy, are
17 the minimum volume requirements and the monthly
18 enrollments, which we've now for -- November 1st is --
19 we've got the monthly enrollments. The minimum volume
20 requirements is the big one (1). Another one (1) is, the
21 swings in our daily nominations with -- just to be able
22 to have a better understanding of all those, and they're
23 all in combination.

24 MR. GARY NEWCOMBE: I think it might be
25 fair, as well, Ms. Murphy, to say that there's one (1)

1 market rule we would be looking to, to ensure that it
2 doesn't change, and that would be the entry of Centra Gas
3 into the fixed short-term -- short term. By short-term;
4 one (1) to two (2) year fixed-price market.

5 MS. MARLA MURPHY: That's a new one (1),
6 isn't it. We hadn't heard that one before.

7 MR. GARY NEWCOMBE: No, I think that's
8 been a pretty consistent theme throughout all of our
9 evidence and IR Responses on the subject; that we would
10 - - one (1) of the key themes, I think, and the whole
11 reason why we're here, is to insure that the Board thinks
12 long and hard about the ramifications before they do
13 allow Centra into the fixed price market.

14 MS. MARLA MURPHY: What level of customer
15 participation is required in order for you to consider a
16 product feasible to be offered?

17 MS. KAREN MELNYCHUK: With the existing
18 minimum volume requirements -- Mr. Stephens put on the
19 record the other day one hundred and forty (140) to
20 maintain that minimum, so we need to acquire more than
21 that, because we have to maintain that minimum.

22 MS. MARLA MURPHY: Assuming that that
23 minimum changes, is there a minimum number of customers
24 that makes it feasible, from your perspective -- from
25 your company's perspective -- to offer a product?

1 MS. KAREN MELNYCHUK: There is no
2 absolute number -- like, minimum?

3 MS. MARLA MURPHY: I take it you incur
4 administrative costs and -- and other gas supply costs in
5 terms of managing a variety of products?

6 MS. KAREN MELNYCHUK: Yes, we do.

7 MS. MARLA MURPHY: And I would expect
8 that you would require a certain number of customers to
9 be interested in a product in order to make that
10 feasible?

11 MS. KAREN MELNYCHUK: Yes, we would.

12 MS. MARLA MURPHY: And can you give us a
13 sense of whether that number might be four (4) or fifty
14 (50) or a hundred (100) or a thousand (1,000)?

15 MR. CLINTON ROEDER: It varies by
16 product. There are a number of factors that go into
17 that. For example; when we came out with a carbon-
18 neutral product, if we got zero, if we got a hundred
19 (100), we still would have offered it because we thought
20 it was the right thing in terms of innovation.

21 Part of that is, we -- in terms of your
22 question was in terms of our understanding of customers,
23 part of our ability in terms of to continue to learn is
24 we do customer research, we do focus groups on the side;
25 but part of it is, also introducing new products in

1 various markets to see what kind of uptake and also
2 feedback we get from the customers.

3 So there are not a lot of benefits. So to
4 Karen's point, it's not an absolute in all cases in terms
5 of a number that's going to be needed for us to launch a
6 product.

7 MS. MARLA MURPHY: In the case of a
8 short-term one (1) year fixed-price product, can you
9 give us an indication of what that number might be?

10 MR. CLINTON ROEDER: Once again, there's
11 a wide range depending on what the product is and where
12 it's being offered. You know, it could be --

13 MS. MARLA MURPHY: Okay, well if we've --

14 MR. CLINTON ROEDER: -- if we get an
15 uptake of one (1) --

16 MS. MARLA MURPHY: -- got a one (1) year
17 product in Manitoba, so within that descriptor, is there
18 a range?

19 MR. CLINTON ROEDER: We could go out with
20 a one (1) year product in Manitoba today, if we were
21 going to charge in terms of to cover the fact that we
22 have the risk, in terms of not signing up to one hundred
23 and forty (140). If there was no minimum volume
24 requirement to where we could just sign up one (1), we
25 could offer -- we could offer a product and structure it

1 in terms of final price perspective today.

2 MS. MARLA MURPHY: Okay. And as I set
3 out at the beginning of my question, assuming that there
4 is no minimum volume requirement, are you suggesting that
5 you would offer a one (1) year fixed-price product in
6 Manitoba if you had one (1) customer interested?

7 MR. CLINTON ROEDER: Your original
8 question was, How many customers would it take for us to
9 launch a product. Now ,if I'm interpreting your question
10 correctly, you're saying, If we knew we were only going
11 to have one (1) customer interested. Am I interpreting
12 that correctly?

13 MS. MARLA MURPHY: No, you're not. You
14 suggested that you could do it for one (1). I'm
15 suggesting to you that it's not reasonable to expect that
16 you would offer a product that only had one (1) customer
17 interested?

18 MR. CLINTON ROEDER: Just to clarify, I'm
19 not suggestion -- suggesting that we could do it for one
20 (1). What I am suggesting, there are a number of factors
21 that go into it. If the comment you're trying to make --
22 what I'm trying to clarify, there are a number of value
23 points that come into that -- into play.

24 It's not just the number of customers that
25 sign up. Part of it's also in terms of what we bring to

1 the product -- bring to the various provinces in terms of
2 alternative. You look at a carbon neutral. That's a
3 product that we're offering across all of Canada.

4 There's benefit if only one (1) customer
5 would uptake, if we could sell it as a separate, because
6 we'd be able to leverage in terms of what we're offering
7 elsewhere across the other provinces and states. I think
8 your question was specific to Manitoba.

9 MS. MARLA MURPHY: Yes. My question was
10 specific to Manitoba, and specific to a short-term
11 product. And I'm simply trying to establish a range in
12 terms of the number of customers that it would make it
13 feasible for you to offer that product.

14 I think we've established it's more than
15 one (1), but I'm not even sure about that.

16 MR. CLINTON ROEDER: I mean, I guess the
17 struggle with this is you're asking a question, and there
18 are a number of factors that come into that. Some of the
19 factors you touch on -- administrative costs -- not all
20 products are going to add incremental costs in terms of
21 diminished.

22 MS. MARLA MURPHY: I appreciated that,
23 but I've focussed your attention, I hope, to one (1)
24 particular product. A short-term one (1) year fixed-
25 price product, in Manitoba.

1 MR. CLINTON ROEDER: Assuming all the
2 other market rules change that we referenced -- so when
3 Karen went through -- and in her explanation earlier, we
4 referenced a number of items in the market. It wasn't
5 just minimum volume requirements, it was how data's
6 exchanged, enrollments. We went through a number of
7 factors.

8 Assuming all of those are in place, if we
9 have a one (1) year fixed-rate product and termed it an
10 offer in there, in terms of the range, the range in terms
11 of value for us to launch that product is quite large.

12 Would we launch a product if we knew with
13 certainty that there would only be one (1) customer that
14 would take that; more than like not, because that would
15 tell us the customers are not interested in it.

16 If you're looking for the specifics around
17 all of our costs assumptions that go into factoring in,
18 in terms of how many products, we're not going to provide
19 that because that's confidential information.

20 MS. MARLA MURPHY: I'm not looking for
21 that. All I asked you for was what's the kind of minimum
22 range that you expect? When you go out -- you've just
23 finished saying you do mar -- you mar -- you do market
24 research; you have an idea in mind that people are going
25 to sign up for a product.

1 What's the minimum number of customers
2 that you need to reasonably expect are going to sign up
3 for a short-term fixed-priced product to make it worth
4 you while?

5 MR. ERIC HOAKEN: Sorry, are you speaking
6 of other markets now?

7 MS. MARLA MURPHY: No, let's just stick
8 to Manitoba.

9 MS. NOLA RUZYCKI: Perhaps maybe -- maybe
10 I can just speak for Energy Savings here.

11

12 CONTINUED BY MS. MARLA MURPHY:

13 MS. MARLA MURPHY: Certainly.

14 MS. NOLA RUZYCKI: I -- I would believe,
15 given the current market conditions, our minimum number
16 of customers would likely be two hundred (200). And if
17 the requirement was reduced to four (4) customers -- I
18 believe is what has been suggested -- that we would
19 likely still look at a minimum of a hundred (100).

20 MS. MARLA MURPHY: Thank you. Mr.
21 Roeder, do you care to comment on behalf of Direct with
22 respect to that?

23 MR. CLINTON ROEDER: I'll stick with my
24 comment, which is there is no certainty in terms of
25 around the minimum number. And what I'm sharing with you

1 is there is not a minimum requirement in our Company
2 before we launch a product.

3 MS. MARLA MURPHY: I take it from your
4 response that you don't manage your administrative costs
5 for offering products on a standalone basis -- not
6 specific to Manitoba. You would lump those costs in with
7 other jurisdictions?

8 MR. CLINTON ROEDER: There are certain
9 costs, I think Karen had shared in her explanation, that
10 are specific to Manitoba, and Karen can go into more
11 detail. The majority of costs are spread across all of
12 our operations. Karen, I don't know if you want --

13 MS. KAREN MELNYCHUK: I think the
14 difference there, Ms. Murphy, is when we're launching a
15 brand new product, research is done across Canada and we
16 evaluate how it's performing in other markets. So, some
17 of those costs are spread out between different
18 departments within the -- the Company. But the
19 administration costs and the costs of the staff here
20 within Winnipeg or Manitoba would be kept in Manitoba.

21 MS. MARLA MURPHY: Thank you. Mr.
22 Roeder, you made an interesting assertion on Monday; and
23 if you want to turn it up, it's at page 1994 of the
24 transcript. You said that if your Company hadn't already
25 invested in Manitoba, at this point you would have to

1 seriously question whether or not you would enter the
2 market. Do you recall that?

3 MR. CLINTON ROEDER: That's correct.

4 MS. MARLA MURPHY: I'm interested in
5 knowing the timeframe of your comparison. When you look
6 at the original investment that was made, are you
7 referring to the investment at the commencement of the
8 WTS in 2000?

9

10 (BRIEF PAUSE)

11

12 MR. CLINTON ROEDER: Yeah, just to
13 clarify. In terms of when I referred to in terms of the
14 investment that companies made, it's not just the initial
15 purchase on the energy side in terms of when we purchased
16 the overall customer base; we also look at our further
17 investment and we talk about the services side of the
18 business.

19 And then the other aspect is just the
20 ongoing investment that we make every day as we're making
21 acquisitions in the marketplace.

22 MS. MARLA MURPHY: So what is it, in the
23 rules today, that would cause you to reconsider?

24

25 (BRIEF PAUSE)

1 MS. KAREN MELNYCHUK: Sorry, Ms. Murphy,
2 I'm just going to add a couple comments --

3 MS. MARLA MURPHY: Sure.

4 MS. KAREN MELNYCHUK: -- to what Mr.
5 Roeder indicated. I believe his comment on -- on Monday
6 in reference to when the investment was made in this
7 market referred to when Centrica purchased Direct Energy.

8 At that time, it was in the year 2000
9 which was the implementation of the WTS Service. At that
10 time, as well, we had just gone through the stakeholder
11 meetings and the hearings in regards to WTS. And it was
12 the understanding, at that time, of Direct Energy that
13 there would be a review of the WTS sooner than what has
14 transpired going from 2000 -- to a review in 2007.

15 MS. MARLA MURPHY: Are you suggesting
16 that it's the length of time between tho -- those reviews
17 that would be what would cause you to reconsider your
18 investment?

19 MS. KAREN MELNYCHUK: No, we were under
20 the -- the understanding back in 2000, Direct Energy,
21 with the WTS implementation and just coming out of the
22 hearings, that there -- there was things that were
23 conceded in those stakeholder meetings and at the
24 Hearings, and that they would be reviewed sooner than
25 2007.

1 So that we've been advancing our position
2 on monthly enrollments since, I believe, 1999, when the
3 WTS Hearings took place.

4 The implementation in 2000: we brought it
5 up at the stakeholder meetings. We brought it up
6 subsequent to that and on a regular basis since -- at
7 regulatory proceedings -- since about 2003/2004. So
8 there's always been an understanding on Direct Energy's
9 part that another review was coming and those barriers
10 that we conceded at the hearing would be advanced sooner
11 than what they have been.

12 MS. MARLA MURPHY: And the barriers
13 you've indicated are the monthly enrollments?

14 MS. KAREN MELNYCHUK: Monthly
15 enrollments, minimum volume requirements; all the same
16 ones that we've listed earlier.

17 MS. MARLA MURPHY: Well, it seems to me
18 you're making pretty good headway. With respect to those
19 monthly enrollments -- as you know begin in November.

20 MS. KAREN MELNYCHUK: Yes.

21 MS. MARLA MURPHY: Minimum volumes seem
22 to be coming along quite nicely. Is there other areas?

23 MS. KAREN MELNYCHUK: The others are the
24 sales channels. Yes.

25 Until this Board puts out an Order, we --

1 I don't -- I don't have a crystal ball and -- and I'm --
2 I'm not a mind reader, so I don't know what the Board's
3 going to be deciding on that.

4 MR. CLINTON ROEDER: If I can just
5 clarify and just add on to Karen's comment.

6 One (1) of the other big items we're here
7 talking about is whether there's a level playing field
8 going forward -- and as we talk about that and some of
9 these items that inhibit our ability in terms of to
10 operate on a level playing field.

11 And if we review the Manitoba market and
12 -- and the risk in terms of should there be, in terms of
13 our view, an unlevel playing field -- and we compare that
14 against other markets, and other markets have advanced
15 over the last number of years.

16 And so when we look at it, it's strictly
17 looking at where do we make our investment as we look
18 across North America. And so there's more opportunities
19 that have opened up and so that's what it's being
20 compared to. That's been a big change over the last few
21 years.

22 MS. MARLA MURPHY: Is the crux of that
23 really that it's -- it's this Hearing and the suggestion
24 that there's a consideration about whether or not the
25 Utility ought to be permitted to offer alternative

1 products?

2 MR. CLINTON ROEDER: As I think the
3 statement was made by a number of us in our opening
4 remarks, there are a number of factors that all -- all
5 add up and provide barriers in terms of -- that limit in
6 terms of really having a true, level playing field.

7 MS. MARLA MURPHY: And those are all the
8 little things, I think you called them, that add up. Are
9 you suggesting that had you known those were in place in
10 2000, you wouldn't have invested in Manitoba?

11 MR. CLINTON ROEDER: Just to clarify. If
12 we had known all those were in place in 2000, and
13 Manitoba Hydro was offering a fixed-rate product, and
14 with the brand advantage that has been highlighted in the
15 customer research and the overall, in terms of our view,
16 of an unlevel playing field, we would have seriously
17 questioned that; whether we'd make any further
18 investment in the Province.

19 MS. MARLA MURPHY: Okay. And the only
20 thing that's really different between then and now is the
21 suggestion that Manitoba Hydro -- Hydro might enter that
22 market, correct?

23

24

(BRIEF PAUSE)

25

1 MR. CLINTON ROEDER: That is the only
2 thing that's different in Manitoba. The other factor
3 that I did mention though, is that you have other
4 markets. BC opened up just this year. The advancement
5 in Alberta. I touched on in terms of we're going into
6 the Connecticut market. You have an advancement
7 elsewhere in North America that's offering other
8 opportunities.

9 MS. MARLA MURPHY: Given those comments,
10 why do you think it's reasonable to expect that other
11 competitors might be interested in Manitoba?

12 MR. CLINTON ROEDER: I'd reference BC as
13 an example. That's a market that opened up with a level
14 playing field and -- is it thirteen (13)? -- twelve (12)
15 or thirteen (13) competitors that entered. If you have
16 the ability to leverage in terms of across multiple
17 markets, competitors have shown they will do that.

18 MS. MARLA MURPHY: Isn't BC a bit of an
19 unfair comparison to Manitoba? There's nobody
20 established in BC in a competitive market, is there?
21 It's -- it's a -- what they call a green field.

22 The field is open to everybody and
23 everybody is marketing pretty rapidly to try and
24 establish themselves as the first player, correct?

25 MR. CLINTON ROEDER: I think if you go

1 and look at the data in BC and all the filings -- and
2 Gary can talk in more detail -- but there was risk that
3 Terasen would offer a fixed-rate product.

4 And I would challenge that comment, in
5 terms of how many players would be in that market had
6 Terasen offered a fixed rate.

7 MS. MARLA MURPHY: Terasen withdrew their
8 application, correct?

9 MR. CLINTON ROEDER: Due to objections on
10 -- and Gary, you might want to provide more detail -- on
11 behalf of the -- all retailers in the market.

12 MR. GARY NEWCOMBE: Yeah, there was two
13 (2) things. I mean, one (1) was the stable-rate option
14 offered through Terasen Gas Inc. as a regulated product.
15 And in that case, the BCUC ordered them to discontinue it
16 because of their fears that it would have a dampening
17 effect on the establishment of the competitive market.

18 And then the second piece was an
19 application by Terasen Marketing Inc. to establish and
20 get a licence as a competitive retailer which -- you're
21 absolutely right -- they did withdraw on -- you know,
22 following submissions by competitive marketers.

23 MS. MARLA MURPHY: Mr. Newcombe, do you
24 think it's reasonable to expect that other competitors
25 will enter the Manitoba market given the -- the

1 circumstances today that we have two (2) established
2 competitors here already?

3 MR. GARY NEWCOMBE: In -- in my view,
4 it's not the fact that there are two (2) established
5 competitors in the Manitoba market that may preclude
6 other competitors -- and I don't know if other
7 competitors will enter or not.

8 I would suggest that if they haven't
9 entered -- my belief is on the basis of, if they're not
10 already here, the existing market rules, now the threat
11 that Centra Mani -- or Centra Gas is applying to enter
12 into direct competition for those same products would
13 likely preclude them.

14 I don't think it's necessarily the
15 existence of the two (2) established competitors.

16 MS. MARLA MURPHY: In terms of the
17 markets where Direct is active, you'd agree with me that
18 Manitoba is the smallest?

19 MR. GARY NEWCOMBE: Would that be -- just
20 for clarification, would that be the smallest in terms of
21 the number of customers that we have, or the smallest in
22 terms of the available universe of customers?

23 MS. MARLA MURPHY: No, I was talking
24 about the available universe of residential natural gas
25 customers.

1 MR. CLINTON ROEDER: Is the question
2 being asked across all North America or just across
3 Canada?

4 MS. MARLA MURPHY: Well, you can take it
5 on either, if you like.

6 MR. CLINTON ROEDER: We can answer it in
7 terms of across all of Canada. In terms of the US, we'd
8 have to get the specific data because if you take certain
9 markets, such as Ohio, not 100 percent of the market is
10 open. But if you look across Canada and the Provinces
11 that we are active in, yes, it is the smallest in terms
12 of number of residential gas households.

13 MS. MARLA MURPHY: According to the
14 Department of Energy, Ohio has over 3 million customers,
15 isn't that right?

16 MR. CLINTON ROEDER: Once again, I can't
17 clarify in terms of the total base that's out there. I
18 use that as an example because not 100 percent of the
19 residential customer base is -- is open to comp --
20 competitive products.

21 MS. MARLA MURPHY: Mr. Ruzycki, you also
22 agreed that one (1) of the factors that Energy Savings
23 considers in determining whether to enter a new market is
24 the population, correct?

25 MS. NOLA RUZYCKI: Yes, that's correct.

1 MS. MARLA MURPHY: I also understood the
2 evidence earlier this week wa -- to be that you didn't
3 view that the Manitoba market was at its saturation
4 point? I'm wondering what you consider -- what the panel
5 considers to be the available customer base for fixed
6 price offerings?

7 MR. CLINTON ROEDER: If you look at most
8 competitive markets, the assumption that's generally made
9 is that when you get a 40 percent switching rate, it's
10 been a successful market. As we discussed, in Ontario
11 the range in terms of number of switchers is currently
12 forty (40), but it has been as high as almost 60 percent
13 at one point in time.

14 So all we can -- you know, basically share
15 is the general consensus, which is how a successful
16 market is determined, which is at a 40 percent level.

17 MS. MARLA MURPHY: You'd agree with me
18 that the obligation of a private company is to earn a
19 return for its shareholders, wouldn't you?

20 MR. CLINTON ROEDER: Yes.

21 MS. MARLA MURPHY: Simply put,
22 shareholders are entitled to and are entitled to expect
23 to re -- to earn a reasonable return on their investment?

24 MR. CLINTON ROEDER: Yes.

25 MS. MARLA MURPHY: So I'm curious about

1 your statement, Mr. Roeder, that if you were strictly
2 based on profit, you would've already exited this market?

3 MR. CLINTON ROEDER: Just to clarify.
4 The question that was asked, and I believe Mr. Peters had
5 asked the question, is the -- I think the way it was
6 phrased was, he -- he had the assumption that we had been
7 profitable every year, and what I clarified was we have
8 not been profitable every year we've been in the Manitoba
9 market.

10 And my comment was if it was strictly
11 about ensuring that we were profitable every year, then
12 we would have exited the market, yes.

13 MS. MARLA MURPHY: When you make the
14 suggestion you hadn't been profitable ever -- every year,
15 that's restricted to Manitoba?

16 MR. CLINTON ROEDER: The question that
17 was being answered was in reference to Manitoba, yes.

18 MS. MARLA MURPHY: So how many -- in how
19 many years since 2000, when WTS was implemented, have you
20 experienced a loss?

21 MR. CLINTON ROEDER: Once again,
22 that's confidential information, so I'm not going to
23 share that. All -- all I can, you know, give the
24 indication it has not been every year.

25 MS. MARLA MURPHY: Is it more than one

1 (1)?

2 MR. CLINTON ROEDER: I -- I would have to
3 go back and take a look at every year since 2000. I
4 can't comment, at this point.

5 MS. MARLA MURPHY: Ms. Ruzycki, you also
6 suggested that Energy Savings Manitoba experiences a
7 thinner margin in Manitoba than other areas?

8 MS. NOLA RUZYCKI: Yes, that's correct.

9 MS. MARLA MURPHY: And it's fair to say
10 that your two (2) organizations are two (2) of the
11 largest natural gas marketing companies for residential
12 customers in Canada?

13 MS. NOLA RUZYCKI: I think that's fair to
14 say.

15 MS. MARLA MURPHY: So, given that we
16 already have the Coke and the Pepsi of the natural gas
17 industry here, and by your evidence you're just scraping
18 by, is it realistic for the Board to expect that there'll
19 be additional participants enter this market?

20 MR. CLINTON ROEDER: If -- if I can
21 clarify, and I apologize for opening up my Blackberry,
22 but I anticipated this question and I had requested some
23 information on Ontario, so if I can just call it up, and
24 I once again, apologize for calling up the Blackberry.

25 MS. MARLA MURPHY: I'm not quite sure

1 what Ontario has to do with the question I just asked
2 you?

3 MR. CLINTON ROEDER: Well, the question
4 is in regards to market share, and I think it is very
5 relevant to touch base on Ontario. Because the point is
6 the number of players that have come into that market, in
7 an environment where you had major players that had the
8 majority of market share, and over the last five (5)
9 years, in terms of the activity and how they've
10 increased.

11 And part of the reason you've seen an
12 increase in number of retailers is due to market roles
13 that have taken place, which has increased the
14 opportunity for multiple players to compete. For
15 example, we have players like Right Rate, we touched on
16 it yesterday. All they do is operate in terms of over
17 the Web.

18 You have players like Bullfrog on the
19 power side. All they do is operate in terms that they do
20 not knock door-to-door but to sell green power.

21 So I would -- I would argue that it is
22 relevant and one (1) -- let me just find it here. For
23 example, in 2002 Superior entered the Ontario market;
24 2003, Select Power and ENMAX Energy; 2004, RiteRate;
25 2005, Universal, Firefly, Glowworm; 2006, Summit, Canada

1 Energy; 2007, Energy One.

2 All these are players that have come in,
3 in the interim market that, to your earlier question,
4 some would assume that a 40 percent switch rate hadn't
5 been saturated in terms of available market. But they've
6 entered there and been very competitive and very
7 successful.

8 MS. MARLA MURPHY: Was that list you just
9 gave me both natural gas and electric?

10 MR. CLINTON ROEDER: All of them do not -
11 - some can be heat -- I would have to confirm in terms of
12 how many are both gas and power.

13 Yeah, I mean, I guess just to clarify in
14 terms of as that list that I went through, the majority -
15 - actually, with the exception of the question on one
16 (1), are all in the gas market. The question I've got is
17 how man -- I have to confirm is how many are in the power
18 market.

19 MS. MARLA MURPHY: And the customer based
20 in Ontario is 3 million, is that right?

21 MS. NOLA RUZYCKI: I would -- I believe
22 it's now up to three point two (3.2).

23 MS. MARLA MURPHY: Thank you.

24 MS. NOLA RUZYCKI: And maybe -- maybe I
25 can give you some information from a July media -- it

1 might have been August -- a July or August media report
2 that the OEB did with members of the media. And they
3 stated that they now have eleven (11) active licensed
4 natural-gas marketers and nine (9) licensed electricity
5 retailers in the Province.

6 MS. MARLA MURPHY: So do I take from
7 those answers that you suggest that it is reasonable for
8 the Board to expect that additional retailers would enter
9 the Manitoba market?

10 MR. CLINTON ROEDER: Assuming the various
11 items that have been highlighted as "barriers to entry"
12 are addressed to create a level playing field, yes.

13 MS. MARLA MURPHY: Could I ask you to
14 turn up Tab number 5 of the book of documents that I
15 circulated?

16 The second document in is the response to
17 Direct Energy Centra 17 and I'm looking, in particular,
18 at the first line of that response:

19 "Brokers that are active in Canada
20 recognize that the Manitoba market
21 environment has a number of impediments
22 that make it difficult to achieve a
23 truly open and competitive market."

24 And I take it that that doesn't refer to
25 either of you when it talks about the brokers that are

1 active in Canada? It's referring to other parties, is
2 that right?

3 MS. NOLA RUZYCKI: Sorry, can you just
4 tell me, I'm obviously not at the right part -- page.

5 MS. MARLA MURPHY: Tab number 5, second
6 document in.

7 So the reference in the first line is to
8 brokers that are active in Canada. Who is that referring
9 to?

10 MS. NOLA RUZYCKI: In this case we are
11 referring to brokers that are active in the Ontario
12 market, and -- and it could be other markets as well, but
13 mainly the Ontario market, which would also be
14 knowledgeable about the Manitoba market.

15 MS. MARLA MURPHY: And how do you know
16 their views on the Manitoba market?

17 MS. NOLA RUZYCKI: We -- we do have
18 discussions with other retailers on markets; general
19 market information.

20 MS. MARLA MURPHY: And who specifically
21 did you discuss this issue in order to -- to give that
22 evidence?

23 MS. NOLA RUZYCKI: I -- I couldn't say
24 who I've discussed with, but I know people in our company
25 have discussions with other companies.

1 MS. MARLA MURPHY: Were you responsible
2 for drafting this Information Request?

3 MS. NOLA RUZYCKI: No, I don't believe I
4 was.

5 MS. MARLA MURPHY: Is the drafter of the
6 Information Request on the Panel?

7 MR. GARY NEWCOMBE: Well, it would -- if
8 anyone, I guess, I'd probably have to take
9 responsibility.

10 MS. MARLA MURPHY: So maybe you can tell
11 us who the brokers that are active in Canada are.

12

13 (BRIEF PAUSE)

14

15 MR. CLINTON ROEDER: We'd have to go back
16 in check with our spec -- if you're asking for specific
17 names of we talk to and our competitors, what I can share
18 is this, is part of the discussion that took place when
19 we were working with the other retailers on the BC
20 market, and talking about specific examples in terms of
21 what is successful and what are some of the barriers.
22 But we'd have to go back and look, if you're asking for
23 specific names -- you know, you can look at the various
24 retailers that were part of the BC discussions.

25 MS. MARLA MURPHY: I would like you to go

1 back and give me the names of the brokers that you're
2 referring to when you indicate that there are brokers in
3 Canada active that recognise that.

4 MR. CLINTON ROEDER: Okay.

5 MS. MARLA MURPHY: Thank you.

6

7 --- UNDERTAKING NO. 29: DEML/ESMLP to indicate for
8 Centra which brokers in
9 Canada recognize that the
10 Manitoba market environment
11 has a number of impediments
12 that make it difficult to
13 achieve a truly open and
14 competitive market

15

16 CONTINUED BY MS. MARLA MURPHY:

17 MS. MARLA MURPHY: Now with respect to
18 the items that you list there in terms of the barriers,
19 specifically quarterly enrollments, quarterly price
20 changes with the deferral mechanism, nomination swings
21 and the lead time of the nomination swings, are those
22 particular details that you got from those brokers that
23 you were talking to?

24

25

(BRIEF PAUSE)

1 MR. GARY NEWCOMBE: No, I think, Ms.
2 Murphy, that the -- the list of barriers is the same list
3 that we've talked about for the last two (2) days here.
4 I mean it's --

5 MS. MARLA MURPHY: Yeah, I understand
6 that, but my question is: Is it your list or is it the
7 list of those other brokers?

8 MR. GARY NEWCOMBE: Well, it's our
9 Information response, it would be our list. But there's
10 no reason to expect that other competitive marketers
11 working in the same market would have any different
12 concerns than we do.

13 MS. MARLA MURPHY: But this is not their
14 concerns, it's your list of concerns.

15 MR. GARY NEWCOMBE: Well, they may or may
16 not be their concerns, but they certainly are ours.

17 MS. MARLA MURPHY: And what they really
18 are is refinements that existing brokers are looking for,
19 rather than enticements to new people to enter the
20 market, isn't that fair?

21 MR. GARY NEWCOMBE: They could be both.
22 I mean they certainly are refinements that we're looking
23 for, but it's our firm belief, and we've said this, that
24 if those things are changed, we believe other competitive
25 retailers would enter the market; so barriers are down,

1 there's no reason to expect they wouldn't.

2 MS. MARLA MURPHY: These particular
3 barriers need to be removed for other marketers to enter?

4 MR. GARY NEWCOMBE: I -- I think that's
5 fairly consistent with what we've been saying, yes; these
6 barriers and not erecting others.

7 MS. MARLA MURPHY: I want to turn to the
8 question of your -- your sales representatives. Your
9 evidence suggests that the -- the door-to-door sales
10 people are independent contractors who approach customers
11 at the door, correct?

12 MS. KAREN MELNYCHUK: Yes, that's
13 correct.

14 MS. MARLA MURPHY: Can you give the Board
15 an indication of what the turnover rate is for those
16 contractors?

17 MS. KAREN MELNYCHUK: I believe we had
18 that discussion yesterday and I'm just trying to recall
19 what that was. We did -- our -- depending on weather and
20 -- and other factors, we don't -- our number of agents
21 does fluctuate.

22 Turnover, to be honest, I don't know what
23 our rate is on turnover.

24 MS. MARLA MURPHY: Is that something you
25 could find out?

1 MS. KAREN MELNYCHUK: We should be able
2 to.

3 MS. MARLA MURPHY: Could I ask you to
4 undertake to -- to do that and to advise?

5
6 --- UNDERTAKING NO. 30: DEM/ESMLP to determine for
7 Centra what the turnover rate
8 is for the door-to-door sales
9 people are independent
10 contractors

11
12 CONTINUED BY MS. MARLA MURPHY:

13 MS. MARLA MURPHY: I'm wondering where
14 you find your sales people. so you -- does Direct hire
15 them or are they hired by a -- a third party organisation
16 that you contract with?

17 MS. KAREN MELNYCHUK: Ms. Murphy, as I've
18 responded earlier, they are independent agents, so they
19 don't work for Direct Energy. We may recruit and assist
20 in placing adds, but it would be our third party vendors
21 that hire them.

22 MS. MARLA MURPHY: Okay. So there is a
23 third party in between?

24 MS. KAREN MELNYCHUK: Yes.

25 MS. MARLA MURPHY: And your contract is

1 with the third party vendor who then supplies you with
2 sales people?

3 MS. KAREN MELNYCHUK: That is correct.

4 MS. MARLA MURPHY: You indicated that you
5 had a zero tolerance policy for breeches of the rules.

6 MS. KAREN MELNYCHUK: Yes, that's
7 correct.

8 MS. MARLA MURPHY: Are -- are you able to
9 give an indication of how many contractors have dismissed
10 for failing to comply with the rules?

11 MS. KAREN MELNYCHUK: I would have to
12 look into that and get back to you on that, if I can do
13 that.

14 MS. MARLA MURPHY: Thank you.

15 MS. KAREN MELNYCHUK: You are referring
16 to Manitoba --

17 MS. MARLA MURPHY: Yes.

18 MS. KAREN MELNYCHUK: -- just for
19 clarification? Thank you.

20

21 --- UNDERTAKING NO. 31: DEML/ESMLP to determine for
22 Centra how contractors within
23 Manitoba have been dismissed
24 for failing to comply with
25 the rules

1 CONTINUED BY MS. MARLA MURPHY:

2 MS. MARLA MURPHY: You indicated you have
3 a training program that you put the -- the market
4 representative through. How long is that program?

5 MS. KAREN MELNYCHUK: The online training
6 program varies, based on the internet speed and -- and
7 the computer being used. So on average, I believe, it's
8 the -- the online part is six (6) to eight (8) hours.
9 It's interactive as well, so that's six (6) to eight (8)
10 hours online. And they're in classroom for probably a
11 day.

12 They're doing job shadowing. And the job
13 shadowing lasts as long as required, so there's no
14 definitive time as to -- some agents take a week, some
15 agents take two (2) weeks, some agent take three (3)
16 weeks, that they're job shadowing.

17 MS. MARLA MURPHY: And who decides when
18 they're ready to no longer job shadow?

19 MS. KAREN MELNYCHUK: The supervisor.

20 MS. MARLA MURPHY: So they shadow a
21 supervisor, not necessarily another agent?

22 MS. KAREN MELNYCHUK: They do both. It
23 depends on, you know, the crew out at the time, but it's
24 always with an experienced agent.

25 MS. MARLA MURPHY: And are they paid to -

1 - to participate in those training sessions?

2 MS. KAREN MELNYCHUK: That I could not
3 tell you.

4 MS. MARLA MURPHY: Mr. Ruzycki, would you
5 care to comment and with -- with respect to your training
6 program is the -- the time of the program essentially the
7 same?

8 MS. NOLA RUZYCKI: The -- we don't have
9 an internet component to our training. The time period
10 may be a bit longer in the classroom. And our shadowing
11 is similar in that there's no set time, it's the amount
12 of time that the particular independent contractor would
13 take to be fully up to speed on all areas. And the -- in
14 this case, the experienced person they're shadowing with
15 would make that determination.

16 We also have another check-in, that we
17 have the verification call that comes in right while the
18 agent is there, so we may find some information that
19 perhaps we can work with the agent to modify their
20 presentation.

21 MS. MARLA MURPHY: And is your hiring
22 process the same, that you have a third party supplier,
23 if you will, of -- of salespeople?

24 MS. NOLA RUZYCKI: Yes.

25 MS. MARLA MURPHY: I'm not sure on the

1 pay, I'd have to check on that. The pay may come
2 directly from us. Although it is the third party that's
3 hiring, their pay cheques may come directly from us.

4 MS. MARLA MURPHY: And they're paid
5 strictly on the basis of commission, there's no base
6 salary?

7 MS. NOLA RUZYCKI: There's no base
8 salary, that's correct.

9 MS. MARLA MURPHY: I -- I think I read
10 it, either in the materials or in the IR, that -- that
11 you submit people to a test before they pass the
12 classroom training session?

13 MS. NOLA RUZYCKI: They are tested by the
14 regional manager to ensure that they --

15 MS. MARLA MURPHY: Of Energy Savings?

16 MS. NOLA RUZYCKI: There's regional
17 managers in each of the areas, so the Manitoba regional
18 manager would be the person that would do that for
19 Manitoba.

20 MS. MARLA MURPHY: Is that a written test
21 then or do they just --

22 MS. NOLA RUZYCKI: No, it's a -- it's a
23 verbal test.

24 MS. MARLA MURPHY: Okay. Does Direct
25 have a similar testing process?

1 MS. KAREN MELNYCHUK: We have different
2 tests that the agent goes through on the online training,
3 and then there is -- no, there isn't another one, it's
4 the one -- different ones on the online training; the
5 rest is all verbal.

6 MS. MARLA MURPHY: What information are
7 your salespeople given about Centra's product?

8 MS. KAREN MELNYCHUK: I believe the
9 information we give is information on -- on the current
10 rate, that it's a variable three (3) month. They may
11 have some historical charts of what the -- the rate has
12 been over the last, you know, few years or whatnot. Any
13 recent press releases; if we've received a permission
14 from the newspaper to copy them, we include those in
15 their kits.

16 We have the guide to direct purchase,
17 which is approved by this Board, which we must give to
18 all customer that sign a contract. So in general that's
19 what we give or -- or the agents have.

20 MS. NOLA RUZYCKI: Ours would be very
21 similar to that.

22 MS. MARLA MURPHY: Could I ask you to
23 undertake to file a copy of the material provided to your
24 salespeople with respect to Centra's product, please?

25 MS. KAREN MELNYCHUK: The -- I believe

1 the majority has been filed already today, which was one
2 (1) of the handout -- or the exhibits at lunch. But I --
3 I'll check and make sure that that's complete.

4 MS. MARLA MURPHY: Okay. And if -- if
5 it's already on the record, perhaps you could just give
6 me a list of what it is that they get.

7 MS. KAREN MELNYCHUK: I can followup on
8 that, yes.

9

10 --- UNDERTAKING NO. 32: DEML/ESMLP to file with
11 Centra a copy of the material
12 provided to salespeople with
13 respect to Centra's product

14

15 CONTINUED BY MS. MARLA MURPHY:

16 MS. MARLA MURPHY: Thank you. You
17 indicated that sales agents were provided with a
18 historical chart. Is that the only pricing information
19 that's provided to them?

20

21 (BRIEF PAUSE)

22

23 MS. KAREN MELNYCHUK: I don't have the
24 exhibit number on what we filed earlier. Number 13, I'm
25 told.

1 On the second page there is a bar graph
2 that indicates on the bottom:

3 "Direct Energy natural gas average
4 price increase figure, based on Centra
5 Gas/Manitoba Hydro price comparison
6 from 2002 to 2007."

7 So we do have some pricing on that sheet.

8 On the one page with the pie chart there
9 is a breakdown of the gas components of the bill, and I
10 believe we've taken those percentages off Manitoba
11 Hydro's website. I'd have to confirm that, but I believe
12 that's where that came from.

13 And I believe the rest speaks for itself.
14 We've got a page, "How does the utility price work;" not
15 so much the definitive prices, but, you know, the
16 workings of it.

17 MS. MARLA MURPHY: Do you provide your
18 sales people with any price forecasts?

19 MS. KAREN MELNYCHUK: No, I believe not.
20 We just -- historicals.

21 MS. MARLA MURPHY: I was curious about
22 the position that you put on the record in response to
23 Mr. Peters, that people who sell your products aren't
24 permitted to sell any other products. Did I have that
25 right?

1 MS. KAREN MELNYCHUK: I believe I said
2 that they also may sell products on our HVAC. I believe
3 my understanding -- or my understanding is that they are
4 representing us only, at the door; the agents that we
5 have at present.

6 MS. MARLA MURPHY: Do you mean that when
7 they go to the door they only sell one (1) product or
8 that that's the only product that they sell?

9 MS. KAREN MELNYCHUK: That we're the only
10 company they're representing, yeah.

11 MS. MARLA MURPHY: So I'm wondering what
12 happens to them when they're not marketing for you? Are
13 they then permitted to sell other products?

14 MS. KAREN MELNYCHUK: I believe so. That
15 would be if they needed -- were changing jobs or -- or
16 whatnot, they would be -- you know, I -- I think I'm
17 maybe not quite understanding.

18 Are -- are you asking that if they're
19 selling, let's say in the morning, Munic -- or Direct
20 Energy in the afternoon, another product?

21 MS. MARLA MURPHY: Right.

22 MS. KAREN MELNYCHUK: Not that I know of.
23 They better not be.

24 MS. MARLA MURPHY: Well, that's my
25 question is: Do you have a restriction on their ability

1 to sell other products?

2 MS. KAREN MELNYCHUK: I would have to go
3 back and look into the agreements we have with the third
4 party vendor, but my understanding is that it's a -- a --
5 like an exclusivity with Direct Energy.

6 MS. MARLA MURPHY: All right. If you
7 would that and let us know, please, I'd appreciate it.

8

9 --- UNDERTAKING NO. 33: DEML/ESMLP to indicate for
10 Centra if third party vendors
11 who sell direct, is
12 restricted from selling other
13 products

14

15 CONTINUED BY MS. MARLA MURPHY:

16 MS. MARLA MURPHY: Is it fair to say that
17 there's no areas in Winnipeg that haven't been canvassed
18 by one or both marketers at some time?

19 MS. KAREN MELNYCHUK: I'm sure they've
20 been to every door a few times within the city.

21 MS. MARLA MURPHY: And do you conduct
22 door-to-door sales outside of the city of Winnipeg?

23 MS. KAREN MELNYCHUK: Direct Energy does,
24 yes.

25 MS. NOLA RUZYCKI: We do as well.

1 MS. MARLA MURPHY: Can you give me an
2 indication, and I'm not looking for any kind of sensitive
3 information, but I'm -- I'm looking to get a sense of, in
4 a given year, and I was going to ask you about the last
5 year, What percentage of your contracts would be new
6 versus renewals?

7 MS. NOLA RUZYCKI: Well, all ours would
8 be new.

9 MS. MARLA MURPHY: Fair enough.
10

11 (BRIEF PAUSE)

12

13 MS. MARLA MURPHY: Ms. Derksen informs me
14 there's two (2) contacts that expired, so there might be
15 some renewals?

16 MS. NOLA RUZYCKI: At the time of the
17 filing I believe we stated that there was one (1)
18 contract and it had gone back to system supply, so I'm
19 not aware of the other one. It would have been after the
20 evidence was filed.

21 MS. MARLA MURPHY: The vast majority of
22 your customers will be new, fair to say?

23 MS. NOLA RUZYCKI: Fair to say.

24 MS. KAREN MELNYCHUK: Sorry, Ms. Murphy.
25 Over the last couple of years we've had several renewals,

1 acquisitions; I don't have a breakdown, but that
2 breakdown would be commercially sensitive.

3 MS. MARLA MURPHY: Is it fair to say that
4 you have very few contracts that result from contact with
5 your internet sites?

6 MS. NOLA RUZYCKI: In our case, yes. I
7 bel -- sorry, I believe there was IR that we responded to
8 that said it was approximately 1 percent.

9 MS. KAREN MELNYCHUK: Yes. Same for
10 Direct Energy.

11 MS. MARLA MURPHY: And I also understood
12 from the evidence that there's been, what I understood to
13 be, at least, a relatively new practice of calling
14 prospective customers on the phone before visiting the
15 door, and I'm wondering how long that's been in effect.

16 MS. KAREN MELNYCHUK: Yes. Our telehop.

17 MS. MARLA MURPHY: Right.

18 MS. KAREN MELNYCHUK: We did telehop last
19 summer for a few months, and we began that campaign again
20 a month ago.

21 MS. MARLA MURPHY: Are you able to
22 provide an indication of what percentage of customers
23 that are reached by telephone, agree to have an agent
24 visit their home?

25

1 (BRIEF PAUSE)

2

3 MS. KAREN MELNYCHUK: No, we use a -- a
4 third party vendor to do the outbound calling, and I do
5 not have any indication as to the number of calls that it
6 takes for them to -- to generate leads for us.

7 MS. MARLA MURPHY: And you indicated that
8 this practice doesn't help reduce your costs because you
9 still have to send an agent out to the door. Is that
10 right?

11 MS. KAREN MELNYCHUK: Yes. Plus tell --
12 pay for the services of a telemarketing company.

13 MS. MARLA MURPHY: What would stop you
14 from mailing those customers that agreed on the phone, a
15 copy of the contract.

16 MS. KAREN MELNYCHUK: It comes down to
17 the interaction with the customer, Ms. Murphy. The
18 longer that you leave that -- that first contact that
19 we've made over the phone and -- to the time that the
20 agent arrives at the door, we do set schedules, but the
21 majority of these are the customers requesting a door-to-
22 door.

23 It's an appointment that they're
24 scheduling, so it's a visit that they want. They don't
25 want it in the mail. If they want it in the mail, we

1 send it in the mail. The telehop program is a house -- a
2 face-to-face visit, a scheduled face-to-face visit.

3 MS. MARLA MURPHY: And that's a choice
4 that you make in terms of your marketing practice,
5 correct?

6 MS. KAREN MELNYCHUK: Yes.

7 MS. NORA RUZYCKI: Perhaps I can just --

8 MS. MARLA MURPHY: Sure.

9 MS. NORA RUZYCKI: -- Energy Savings does
10 not have the telehop. We -- we will, however, if a
11 customer calls us we will send a contract out to them to
12 be signed and returned.

13 MS. MARLA MURPHY: In the mail?

14 MS. NORA RUZYCKI: In the mail, yes.

15 MS. KAREN MELNYCHUK: May I just add the
16 telehop is my name, that I refer.

17 MS. MARLA MURPHY: I thought it was a new
18 industry term.

19 MS. KAREN MELNYCHUK: It was -- it was
20 like a little nickname I provided, otherwise it was
21 telemarketing/yada, (phonetic) and it was too long to
22 type, so I just nickname it telehop.

23 MS. MARLA MURPHY: Thanks for that.

24 MR. ERIC HOAKEN: We'll be seeking the
25 appropriate trademark protection.

1 MS. MARLA MURPHY: I won't touch it, I
2 promise.

3 MS. KAREN MELNYCHUK: Can we patent it?
4

5 CONTINUED BY MS. MARLA MURPHY:

6 MS. MARLA MURPHY: I think I understood
7 your evidence to be that if you had the addition of
8 telemarketing and the internet contracting that you'd be
9 perhaps in a position to provide a 5 percent reduction in
10 your rates. Is that right, Mr. Roeder?

11 MR. CLINTON ROEDER: Yeah, I think what I
12 had indicated was that the difference in the acquisition
13 cost equates to amount of 5 percent.

14 MS. MARLA MURPHY: I'm wondering how the
15 Board would be able to satisfy itself that that kind of
16 reduction had been passed on to consumers.
17

18 (BRIEF PAUSE)

19
20 MR. GARY NEWCOMBE: Ms. Murphy, it's
21 really not clear to us why the Board would concern itself
22 with the cost of goods imbedded in a competitive product.

23 MS. MARLA MURPHY: Does that mean that
24 you don't think the Board could do that, or that the
25 Board ought not to do that?

1 MR. GARY NEWCOMBE: Sounds like a legal
2 jurisdiction question to me.

3 MS. MARLA MURPHY: Well, I didn't mean it
4 to be. I'm not asking for a legal opinion, just trying
5 to clarify what your -- your answer was.

6 MR. GARY NEWCOMBE: I mean, we're selling
7 a competitive product, so it's not clear to me either
8 what interest or what jurisdiction the Board might have,
9 with respect to our cost of goods and -- and the profit
10 margin that's imbedded in there, or not.

11 MS. MARLA MURPHY: You don't agree that
12 the Board and others might be interested in whether or
13 not the benefit that you achieve of those kind of sales
14 channels might be passed on to consumers rather than
15 shareholders?

16 MR. GARY NEWCOMBE: They may be
17 interested, but again, I'm not sure, you know, what
18 relevance it would have.

19 MS. MARLA MURPHY: I think the short
20 answer is, there's no way for anybody but Direct to know,
21 isn't it?

22 MR. GARY NEWCOMBE: Well, I mean I -- I
23 don't think that's true. If in -- you could be -- you
24 could infer something by the relative competitiveness, I
25 think, of our prices. And if you saw a sustained

1 decrease in our price relative to other products that
2 were out there, you could infer that there was something
3 -- either we had elected to take a smaller margin, or
4 offer the price at a loss, or maybe our cost of goods had
5 gone down, but...

6 MS. MARLA MURPHY: Okay, thanks. You
7 discussed your cost to acquire customers -- and I learned
8 a new acronym, CTA, in the process of that -- as being 75
9 percent higher in Manitoba. And I'm wondering what
10 you're comparing that to in making that assertion.

11 MR. CLINTON ROEDER: And just to clarify
12 -- I think we had touched on it -- we said, when you're
13 limited to the door-to-door channel, the door-to-door
14 channel is as much as 75 percent higher than other
15 channels. And what that's being compared to are the
16 other channels that we sell under in other -- other
17 jurisdictions.

18 MS. MARLA MURPHY: So, I'm -- I
19 misunderstood you then when you said that your cost to
20 acquire a customer in Manitoba was 75 percent higher than
21 other jurisdictions?

22 MR. CLINTON ROEDER: I mean, if we go
23 back and look at it, I think we -- the comment was -- was
24 "up to" and the comment was in reference to the door-to-
25 door channel. And whe -- I think this was in context, if

1 I can recall, to the discussion on some of the other
2 products we offer in other jurisdictions.

3 For example, I think the reference we had
4 made was to the one (1) year product being offered that's
5 limited to a particular channel in Ontario where we do
6 have the benefit of the lower acquisition cost.

7 MS. MARLA MURPHY: And is that what you
8 were comparing that cost to when you made that assertion?

9 MR. CLINTON ROEDER: The comparison was
10 the door-to-door versus other acquisition and other sales
11 channels, whether that's telesales channel or via the
12 web. There's our -- there's various channels which you
13 can leverage.

14 MS. MARLA MURPHY: And which one (1) were
15 you referring to?

16 MR. CLINTON ROEDER: The specific example
17 I was referring to was the one (1) in Ontario where --

18 MS. MARLA MURPHY: The web --

19 MR. CLINTON ROEDER: -- we leveraged
20 telesales.

21 MS. MARLA MURPHY: Telesales?

22 MR. CLINTON ROEDER: Telesales.

23 MS. MARLA MURPHY: There's information on
24 the record before the Board here that the cost to acquire
25 customer ranges anywhere between fifty (\$50) and a

1 hundred and eighty dollars (\$180).

2 Are you able to indicate where on that
3 spectrum your costs fall?

4 MR. CLINTON ROEDER: I can't recall
5 specifically if I had made the comment, which was that,
6 actually, if we look across North America, in terms of
7 the range, in terms of the spectrum of cost to acquire,
8 that the range is actually from thirty dollars (\$30), but
9 it can actually be as high, in excess of three hundred
10 dollars (\$300).

11 MS. MARLA MURPHY: And are -- are you
12 suggesting that you experience the -- all of the varying
13 spots in that range when you acquire customers?

14 MR. CLINTON ROEDER: Across North
15 America, yes.

16 MS. MARLA MURPHY: What elements do
17 include when you calculate the cost to acquire a
18 customer?

19 MR. CLINTON ROEDER: When -- I -- I can
20 speak for Direct Energy, I'll let Nola speak for Energy
21 Savings. When I'm referencing the acquisition cost, what
22 I'm referencing is the cost for the sales personnel or
23 the agent. Or if it's in the case of telesales, it would
24 be the individual on the phone, as well as our internal
25 sales team that manages that; as well as any cost that we

1 have, for example, if it's over the web to -- for a
2 customer to enroll on the web.

3 MS. MARLA MURPHY: I thought I hear in
4 the evidence, and I -- I didn't pull out the transcript,
5 so I haven't got a -- a reference for you, but I
6 understood that the suggestion was that the nomination
7 process in Manitoba contributed to the increase in the
8 cost to acquire a customer. Did I get that right?

9 MR. CLINTON ROEDER: No, the -- was the -
10 - nomination process in Manitoba -- Manitoba impacts the
11 price with which we go to the market; it does not impact
12 the acquisition cost.

13 MS. MARLA MURPHY: Okay. I just want to
14 spend a minute with your call verification processes.
15 And did I understand the evidence correctly that that
16 process is used differently by the two (2) companies?

17 And specifically, I guess I'll start with
18 Direct. Did I understand you to say that you make that
19 call in order to confirm whether or not customers are
20 satisfied with the sales call they had at the door?

21 MS. KAREN MELNYCHUK: Yes, it's a sales
22 quality call with the customer.

23 MS. MARLA MURPHY: So, do you ask the
24 customers in the course of that conversation, that they
25 under -- if they understood that they had entered into a

1 long term fixed price contract?

2 MS. KAREN MELNYCHUK: That they've
3 entered into a contract, yes.

4 MS. MARLA MURPHY: Do you review the term
5 -- the term of the contract or the price?

6 MS. KAREN MELNYCHUK: I believe the price
7 is reviewed, yes.

8 MS. MARLA MURPHY: Not the term?

9 MS. KAREN MELNYCHUK: On top of mind, I
10 cannot say at the moment.

11 MS. MARLA MURPHY: And do you make those
12 calls before the cooling off period has expired?

13 MS. KAREN MELNYCHUK: Yes, we do.

14 MS. MARLA MURPHY: And I understood you
15 to say that you -- you tried five (5) times, is that
16 right?

17 MS. KAREN MELNYCHUK: Yes, every customer
18 that we sign up through our door-to-door agents, we send
19 a list off to a third party vendor who attempts to call
20 them -- or -- or makes five (5) attempts to call each
21 customer, depending on the time of day -- contact isn't
22 made, but we're -- we've been able to reach approximately
23 30 percent of the customers

24 MS. MARLA MURPHY: And presumably you
25 have rules that define that they don't call five (5)

1 times in a row or that they call at different times
2 during the day or --

3 MS. KAREN MELNYCHUK: It's got to be
4 different times of the day or different days. Yes, they
5 can't call speed dial five (5) times, no, right.

6 MS. MARLA MURPHY: Ms. Ruzycki, I
7 understood your process to be a little bit different and
8 that is that you were -- were obtaining on an inbound
9 basis a digitally recorded confirmation of the term of
10 the contract?

11 MS. NOLA RUZYCKI: That's correct and in
12 that call it actually identifies that we are an
13 independent marketer; that we are not part of the
14 Utility; that it indicates the price, it indicates the
15 terms of the contract and it -- it's like a reaffirmation
16 call.

17 And that -- that information is
18 maintained for the duration and, I believe, some time af
19 -- I'm not sure if it's, like, two (2) years after or
20 something like that, but it is maintained after, so it's
21 not the day the contract ends that information goes away.

22 MS. MARLA MURPHY: Oh, so even beyond the
23 end of the contract term it's maintained?

24 MS. NOLA RUZYCKI: Yes. I'm not sure for
25 how long. In some jurisdictions we actually have a set

1 amount of time, but I'm not sure how long it is
2 maintained, but it is at least maintained until,
3 obviously, the customers gives their final bill. If
4 there's any discrepancy on that, we would still like to
5 have the call.

6 MS. MARLA MURPHY: Thank you. And that
7 call was made on an inbound basis, the customer calls
8 you?

9 MS. NOLA RUZYCKI: That's correct. The
10 customer phones from their home phone line.

11 MS. MARLA MURPHY: And do they get a
12 recording?

13 MS. NOLA RUZYCKI: Initially they do,
14 yes.

15 MS. MARLA MURPHY: Okay.

16 MS. NOLA RUZYCKI: And then they --

17 MS. MARLA MURPHY: And a person,
18 ultimately.

19 MS. NOLA RUZYCKI: Then they get a
20 person, ultimately, --

21 MS. MARLA MURPHY: Yeah.

22 MS. NOLA RUZYCKI: -- and -- yeah, I'm
23 not sure if they get a fixed priced reservation code or
24 something like that, but we would definitely have the
25 call, if they wish to listen to it at a later date.

1 MS. MARLA MURPHY: And what happens if
2 the person doesn't call?

3 MS. NOLA RUZYCKI: Then the -- it's not
4 basically reaffirmed and -- I'll -- I'll have to check on
5 that because I'm not posit -- my understanding was that
6 the majority -- well, all of them -- my understanding was
7 that all of them would've been done like that, but I can
8 check for you, if you'd like?

9 MS. MARLA MURPHY: Sure. I just wondered
10 if -- if the verification process was the start of when
11 you enrolled your customers or -- or whether they were
12 enrolled whether or not they had made the call?

13 MS. NOLA RUZYCKI: Well, whether or not
14 the call has been made, they still have the ten (10) day
15 cooling off period in which after the call has been made,
16 they still have that ten (10) day cooling off period in
17 which they can still call in and cancel without any
18 charges.

19 MS. MARLA MURPHY: Okay. But you don't -
20 - the call confirmation or the call verification process
21 isn't what starts your enrollment process, is it, or is
22 that what you're going to check for me?

23 MS. NOLA RUZYCKI: That's what I'm going
24 to check for you, yes.

25 MS. MARLA MURPHY: Okay. Thank you.

1 --- UNDERTAKING NO. 34: DEML/ESMLP to advise Centra
2 if the call verification
3 process is what starts the
4 enrollment process
5

6 MS. KAREN MELNYCHUK: Ms. Murphy, if I
7 could just add that the -- the follow-up phone calls that
8 we make to our customer in Manitoba is on a sales quality
9 perspective, it's not mandatory. We're doing such, you
10 know, to keep in touch with our customers to ensure that
11 they're satisfied with the experience of our agents at
12 their door. It's not mandatory.
13

14 CONTINUED BY MS. MARLA MURPHY:

15 MS. MARLA MURPHY: It's not mandatory in
16 Manitoba?

17 MS. KAREN MELNYCHUK: That's correct.

18 MS. MARLA MURPHY: I understand some
19 other jurisdictions do use that?

20 MS. KAREN MELNYCHUK: Yes, they do.

21 MS. MARLA MURPHY: Mr. Chairman, I'm
22 about to leave this area and start a new one. I don't
23 know if you'd like your afternoon break, at this point or
24 if you'd like me to carry on?

25 THE CHAIRPERSON: I would like my break,

1 how about you?

2 MS. MARLA MURPHY: Sure, that's good,
3 thanks.

4

5 --- Upon recessing at 2:27 p.m.

6 --- Upon resuming at 2:47 p.m.

7

8 THE CHAIRPERSON: Okay, welcome back.
9 Ms. Murphy, any time you are ready.

10 MR. ERIC HOAKEN: And I'm sorry, could I
11 just jump in and just tell the Board I passed around, I
12 think everyone now has, a copy of a document on Direct
13 Energy, it's got the brand or logo on the top, and it
14 says, "Product Update, June 2007."

15 This is in answer to the undertaking that
16 Ms. Murphy asked for in respect of the training materials
17 that relate to the green product. So I think this is
18 going to be DEML-17, if I'm not mistaken? Thank you.

19

20 --- EXHIBIT NO. DEML/ESMLP-17: Direct Energy document
21 entitled Product Update, June 2007

22

23 MR. ERIC HOAKEN: And she had also asked
24 Mr. Roeder just to confirm in respect of that list that
25 he read of companies in Ontario, what markets they're in,

1 and I think he's in a position to do that, having made
2 some inquiries over the break.

3 THE CHAIRPERSON: Mr. Roeder...?

4 MR. CLINTON ROEDER: Yeah, with the --
5 the list I read out, what I'll do is just speak toward
6 those that are not in both the gas and power market,
7 rather than going through the entire list of marketers,
8 if that's okay?

9 The -- in terms of the marketers -- the
10 brokers that are only in the gas market, it includes MX
11 (phonetic) Energy, Right Rate, Glowworm, and Active
12 Energy.

13 And in terms of the brokers that are only
14 in the power market, it includes Bothal (phonetic) Power.
15 All of the other marketers are in both gas and power.

16 THE CHAIRPERSON: Thank you, sir.

17 Ms. Murphy...?

18

19 CONTINUED BY MS. MARLA MURPHY:

20 MS. MARLA MURPHY: Thank you. I wanted
21 to turn to the issue of automatic renewal of contracts.
22 Currently, what information is provided to customers
23 whose contracts are about to expire?

24 MS. KAREN MELNYCHUK: I guess I'll take
25 that one. In advance of a contract expiring we send them

1 out a renewal notice, a renewal package, that would
2 include a letter with the -- the proposed new price, the
3 contract which they would have to sign and send back one
4 (1) copy, the guide and a pre-paid postage envelope.

5 MS. MARLA MURPHY: Is that material in
6 the record anywhere here, do you know?

7 MS. KAREN MELNYCHUK: I would have to go
8 back through that one response to IR-22 but I -- I don't
9 believe it's in there.

10 MS. MARLA MURPHY: I didn't think so
11 either. I'm wondering if I could ask you to undertake to
12 file it?

13 MS. KAREN MELNYCHUK: Yes, we can do
14 that.

15 MS. MARLA MURPHY: Thank you.

16

17 --- UNDERTAKING NO. 35: DEML/ESMLP to file for Centra
18 the material that goes in the
19 renewal notice that are
20 provided to customers whose
21 contracts are about to expire

22

23 CONTINUED BY MS. MARLA MURPHY:

24 MS. MARLA MURPHY: And do you follow that
25 letter up with a phone call or a door-to-door visit?

1 MS. KAREN MELNYCHUK: For those customers
2 who don't respond immediately, yes, we do follow-up with
3 a phone call.

4 On occasion, we also follow-up with a
5 door-to-door visit if the customer so asks, or we also,
6 you know, if we're nearing a deadline we will give a
7 certain list to a -- a crew of agents to go and do a home
8 visit.

9 MS. MARLA MURPHY: Ms. Ruzycki, did you
10 want to comment with respect to Energy Savings, is their
11 renewal practice the same?

12 MS. NOLA RUZYCKI: As far as I know right
13 now we've only sent out one or two renewal letters and my
14 understanding is that we send a renewal letter out with
15 the new contract terms.

16 MS. MARLA MURPHY: And would you be
17 prepared to file those in this proceeding as well?

18 MS. NOLA RUZYCKI: I believe we could do
19 that, yes.

20 MS. MARLA MURPHY: Thank you.

21

22 --- UNDERTAKING NO. 36: DEML/ESMLP to file for Centra
23 the material that is provided
24 to customers whose contracts
25 are about to expire

1 CONTINUED BY MS. MARLA MURPHY

2 MS. MARLA MURPHY: The evidence suggests,
3 at page 18, that there have been significant implications
4 to the customer base, since what you described as the
5 reversal decision was issued.

6 I take it that that suggestion only
7 relates to Direct Energy not to Energy Savings
8 (Manitoba)?

9 MS. KAREN MELNYCHUK: I would agree with
10 that comment.

11 MS. MARLA MURPHY: And just for ease of
12 reference, I have included at Tab 1 of the book of
13 documents that's been marked as Centra Exhibit 25, a copy
14 of the Board Order with the decision and the revised code
15 of conduct and at Tab 2, a copy of what was removed in
16 terms of the former paragraph 8.2.

17 So if you'd just turn up that second one
18 (1), you'll see -- I'm having that trouble, too.

19 MR. ERIC HOAKEN: Oh, I'm glad to hear
20 your copy fell apart, too; I thought it was just a trick
21 and it was only mine.

22 MS. MARLA MURPHY: No. My apologise,
23 apparently the ring is not fat enough to ho -- to hold it
24 all together, but...

25

1 CONTINUED BY MS. MARLA MURPHY:

2 MS. MARLA MURPHY: I wanted to have a
3 look at paragraph 8.2 of -- at Tab 2.

4 It indicates that if a broker does not
5 receive a renewal notice from a consumer prior to the
6 date of renewal, the consumer will be renewed for a
7 period not to exceed ninety (90) days and at the default
8 price; is that right?

9 MS. KAREN MELNYCHUK: Yes, that's what it
10 states at 8.2.

11 MS. MARLA MURPHY: And that's the piece
12 that was removed in what you call the reversal decision?

13 MS. KAREN MELNYCHUK: Yes.

14 MS. MARLA MURPHY: And what did you
15 understand, just if you can maybe help me, the default
16 price, is that the price in the renewal notice or is that
17 the price of the existing contract?

18 MS. KAREN MELNYCHUK: The renewal notice.

19 MS. MARLA MURPHY: Okay. And at the time
20 of that -- this decision in 2004 it would have been three
21 (3) year contracts that were expiring or -- or coming up
22 for renewal, correct?

23 MS. KAREN MELNYCHUK: If you do the math
24 from 2002 or, you know, 2001 to 2004, yes, they would
25 have been three (3) years.

1 MS. MARLA MURPHY: And prior to this
2 decision being issued, what happened to the customers
3 after the ninety (90) days?

4 MS. KAREN MELNYCHUK: After the ninety
5 (90) days they would have been returned to system supply.

6 MS. MARLA MURPHY: Are you aware of how
7 customers took the steps necessary to end contracts that
8 contained the ninety (90) day automatic renewal
9 provisions?

10 MS. KAREN MELNYCHUK: No, I don't; not at
11 the moment.

12 MS. MARLA MURPHY: I'm wondering how you
13 concluded that there were -- I'm sorry, go ahead.

14

15 (BRIEF PAUSE)

16

17 MS. KAREN MELNYCHUK: I believe in a --
18 in the IR resp -- we responded to earlier, we'd seen an
19 increase of 17 percent in the drop.

20 MS. MARLA MURPHY: That's -- that's the -
21 - the number since 2004, correct?

22 MS. KAREN MELNYCHUK: Yes. The last time
23 that we tracked, yes.

24 MS. MARLA MURPHY: And my question to you
25 was: Are you aware of the number of customers who took

1 steps to end their contract when the ninety (90) day
2 renewal was in place? I thought I understood you to say
3 you didn't know.

4 MS. KAREN MELNYCHUK: Not at the moment,
5 no.

6
7 (BRIEF PAUSE)

8
9 MS. KAREN MELNYCHUK: Sorry about that.

10 MS. MARLA MURPHY: That's okay. You
11 indicated in your evidence that there were significant
12 implications to your customer base?

13 MS. KAREN MELNYCHUK: Yes, that increased
14 our -- our drop by 17 percent, as earlier indicated.

15 MS. MARLA MURPHY: And -- and what is
16 that in terms of a number for the customer base?
17 Seventeen percent doesn't tell me much if it's an
18 indication of something that I don't know the other
19 number.

20 MS. KAREN MELNYCHUK: Again, as earlier
21 indicated, those numbers are commercially sensitive. I
22 would prefer not to reveal those numbers.

23 MS. MARLA MURPHY: I appreciate you don't
24 want to reveal your customer base. Are you -- are
25 prepare -- are you prepared or able to give us the number

1 of customers who took steps to end their contract with
2 the ninety (90) day provision?

3 MR. ERIC HOAKEN: So it's the drop rate
4 itself you're looking for?

5 MS. MARLA MURPHY: The number of
6 customers who exercised their right not to renew the
7 contract or took steps to -- to not renew the contract
8 during the ninety (90) days. It's probably pretty old
9 information at this point, too, in terms of sensitivity.

10 MR. ERIC HOAKEN: I'm sorry, if you just
11 give us a second.

12 MS. MARLA MURPHY: Sure.

13

14 (BRIEF PAUSE)

15

16 MS. KAREN MELNYCHUK: I will attempt to
17 get those numbers for you, Ms. Murphy. I was just asking
18 for some clarification.

19 MS. MARLA MURPHY: Sure. Thank you.

20

21 --- UNDERTAKING NO. 37: DEML/ESMLP To advise Centra
22 as to the number of customers
23 who exercised their right not
24 to renew the contract or took
25 steps not to renew the

1 contract during the ninety
2 (90) days
3

4 CONTINUED BY MS. MARLA MURPHY:

5 MS. MARLA MURPHY: How do you know that
6 the outcome would have been different without that
7 automatic renewal? In other words, how can you attribute
8 that 17 percent to the lack of -- of a ninety (90) day
9 clause?

10 MS. KAREN MELNYCHUK: I believe we
11 compared that to our experiences in other markets.

12 MS. MARLA MURPHY: And in other markets,
13 the renewal isn't ninety (90) days, is it?

14 MS. KAREN MELNYCHUK: No, the renewal is
15 different in each market. I believe the one in Ontario
16 is the one (1) year Evergreen.

17 MS. MARLA MURPHY: I'm going from memory,
18 but is it not also the same in Alberta?

19 MR. GARY NEWCOMBE: Yes, I believe it is.
20 We're not at the point yet in Alberta where we would be
21 renewing five (5) year contracts.

22 MS. MARLA MURPHY: Customers take steps
23 each year to renew things like their driver's licence or
24 their car insurance and I'm wondering why it's the view
25 of the panel that gas contracts should be treated

1 differently?

2 MS. NOLA RUZYCKI: Per -- perhaps I can
3 just speak for -- in Ontario your driver's lic -- or your
4 -- sorry, not driver's licence but your insurance, home
5 insurance, is automatically renewed unless you get back
6 to them and tell them you don't want it. It continues to
7 come out of -- if you have it set up on payment plan,
8 continues to come out at the new rate.

9 MS. KAREN MELNYCHUK: I'll add my
10 comments. We actually we had this discussion, I believe
11 it was at lunch yesterday. Our -- our view is -- and we
12 specifically talked about driver's licence. In other
13 provinces you don't have to renew it every year and there
14 were -- the rest of the panel was quite surprised that we
15 do here in Manitoba on an annual basis.

16 And the consensus was that those are
17 regulated services by this Board or MPI in -- in regards
18 to our driver's licence, those are regulated services.
19 Whereas the offer we have with our customers is not
20 regulated, the price we have is not regulated and we
21 compare it more with, like, house insurance, things that
22 are not regulated.

23 You get a renewal in the mail, like I -- I
24 think I made that analogy yesterday.

25 MS. MARLA MURPHY: You did.

1 MS. KAREN MELNYCHUK: Yeah, so those are
2 the things that we compare our product with. We're not a
3 regula -- regulated entity and we don't believe that this
4 should be any different.

5 MS. MARLA MURPHY: And just to follow
6 through with your analogy yesterday with respect to the
7 house insurance, what you said is, it -- it just renews
8 automatically and I send in my cheque.

9 So you actually take some action to renew
10 that by paying, don't you?

11 MS. KAREN MELNYCHUK: Yes.

12 MS. NOLA RUZYCKI: I think where I
13 mentioned though if you are on instant payment or
14 automatic payment plan, it continues to come out of your
15 account unless you take actions to have it stopped.

16 MS. MARLA MURPHY: Thank you.

17 MR. GARY NEWCOMBE: Yeah, there's --
18 there's other examples of that too, Ms. Murphy. American
19 Express credit cards, for instance, once a year they put
20 fifty dollars (\$50) on there for the annual renewal fee
21 and you could, I guess, write them a letter or refuse to
22 pay it but, otherwise, you know, you've just been renewed
23 for another year. It's pretty seamless.

24 MS. MARLA MURPHY: Do you agree that the
25 act of having to renew a contract forces a customer to

1 turn their mind to the issue?

2 MS. KAREN MELNYCHUK: Yes, and that's why
3 we send them those renewal packages that we do.

4 MS. MARLA MURPHY: And they need to make
5 a decision as to the term of the product and the type of
6 the product that they want?

7 MS. KAREN MELNYCHUK: Yes. When we offer
8 different product options in that.

9 MS. MARLA MURPHY: Many of the contracts
10 that you enter are for long terms, five (5) years and the
11 like.

12 Would you not agree that there's a
13 considerable concern that the market will have changed
14 over the time?

15 MS. KAREN MELNYCHUK: We offer three (3)
16 and five (5) years and, yes, market conditions change
17 from, you know, one (1) to two (2) years to three (3)
18 years to four (4) years to five (5).

19 MS. MARLA MURPHY: And certainly a
20 customer's personal circumstances could have changed over
21 that time, as well?

22 MS. KAREN MELNYCHUK: Yes.

23 MS. MARLA MURPHY: So isn't it,
24 therefore, appropriate to ensure that their renewal is an
25 informed decision?

1 MS. KAREN MELNYCHUK: Yes, and as I said,
2 that's why we send out the whole renewal package with
3 them -- to them, sorry.

4 MS. MARLA MURPHY: And isn't the concern
5 with an automatic renewal that if a customer doesn't look
6 at that, they'll be renewed into a contract without
7 perhaps their awareness?

8 MS. KAREN MELNYCHUK: If that would
9 happen, Ms. Murphy, there are means of -- I don't want to
10 say ending the contract, but there is a dispute
11 resolution process that is set up with this Board. And
12 if a customer felt that they did not make an informed
13 choice or was renewed without an -- an informed decision,
14 they could take to -- through the dispute resolution
15 process.

16 MS. MARLA MURPHY: You would also have
17 the ability to rely, perhaps, on your contract and the
18 penalty provisions that are in there as well, would you
19 not?

20 MS. KAREN MELNYCHUK: Yes, we can.

21 MS. MARLA MURPHY: So customers may, in
22 fact, be facing a financial penalty at that point?

23 MS. KAREN MELNYCHUK: If they go through
24 that means, yes.

25 MS. MARLA MURPHY: I don't think from my

1 review of the material that I have a clear understanding
2 of what the broker's recommendation is to the Board in
3 respect of this issue.

4 You've indicated that -- some displeasure
5 with the reversal decision, as I believe you call it.
6 But I don't know that I've seen a recommendation to the
7 Board in terms of what the brokers suggest would be
8 appropriate for an automatic renewal.

9 Are you able to comment?

10 MS. KAREN MELNYCHUK: For Direct Energy
11 reversal, in our evidence, we meant being able to do the
12 three (3) month rollover again.

13 MS. NORA RUZYCKI: That would be the same
14 for us.

15 MS. MARLA MURPHY: And if the Board were
16 to permit those types of automatic renewals, what would
17 happen to a customer who signed with a different broker
18 during that renewal period?

19 MS. KAREN MELNYCHUK: Can you just lead
20 me through your question?

21 MS. MARLA MURPHY: Sure, yeah. I'll give
22 you an example. Broker A has a contract with a customer.
23 The term of the contract ends and the ninety (90) day
24 renewal period begins to run, without any action on the
25 part of the customer.

1 During that ninety (90) days, Broker B
2 comes to the door, and the customer signs with Broker B.
3 Who is entitled to maintain that customer?

4 MS. KAREN MELNYCHUK: Well, during -- in
5 our past experiences with the ninety (90) day rollover -
6 and we did actually experience this - that customer was
7 deemed to be with the first marketer A in the rollover
8 until the end of that rollover period.

9 And then marketer B -- it would have been
10 -- that enrollment would have been rejected when they
11 submit it, and then it would have been up to the customer
12 or marketer B to follow up with that rejection.

13 MS. MARLA MURPHY: You'd certainly agree
14 with me that that will impede customer mobility, won't
15 it?

16 MS. KAREN MELNYCHUK: I believe that's up
17 to the marketer to -- to ensure that their customer
18 service is -- is dealing with that issue. If it's
19 rejected -- I -- I know with Direct Energy we follow up
20 on every reject -- or rejected contract that we do
21 submit.

22 I'm not sure of what Energy Savings does,
23 but we follow up. If a contract's rejected, we call the
24 customer, we pull the contract to see if we've, you know,
25 erron -- erroneously typed their name -- the account

1 number wrong. So we always follow up on our rejections.

2 MR. GARY NEWCOMBE: I'm not sure, Ms.
3 Murphy, that having an extra three (3) month rollover
4 portion at the end of, say, a five (5) year contract is
5 going to realistically impede customer mobility.

6 It would be no different than if at any
7 time during that five (5) year term with retailer A,
8 retailer B had come to that customer's door and the
9 customer had signed up. It would still be rejected when
10 they went to the enrollment, because the customer has a
11 valid contract with another entity so.

12 MS. MARLA MURPHY: I think there is,
13 perhaps, a distinction in terms of whether or not it's
14 during the term of the contract or whether it's during
15 the term of the subsequent renewal period that the
16 customer may or may not have been aware of.

17 I think you would agree with me that most
18 customers, when they sign a three (3) year term, expect
19 that they're free to recontact at the end of that three
20 (3) year term.

21 MS. KAREN MELNYCHUK: Yes, but in regards
22 to the ninety (90) day rollover, that renewal for the
23 ninety (90) days would be spelled out in writing in the
24 terms and conditions of the contract originally signed.

25 MS. MARLA MURPHY: And is it brought to

1 the customer's attention specifically?

2 MS. KAREN MELNYCHUK: It's included in
3 everything that we give to the customer. So, you know,
4 it's listed, the renewal clause, everything on there.

5 MS. MARLA MURPHY: I appreciate that, but
6 it isn't raised explicitly with the customer at the door
7 when they sign the contract?

8 MS. KAREN MELNYCHUK: It's part of the
9 overall terms and conditions. It's in the contract that
10 they sign. I can't, you know, make the assumption that
11 it's gone through word by word, but that's why we do have
12 the ten (10) day cooling-off clause in there. It ensures
13 the customer has the time to go through it.

14 MS. MARLA MURPHY: So you don't know
15 whether customers have read that or not.

16 MS. KAREN MELNYCHUK: No, I'm not there
17 when every single contract that Direct Energy has signed
18 to ensure that the customers have -- have read every word
19 in the contract, no.

20 MS. MARLA MURPHY: And you did mention
21 that -- I'm sorry, did I --

22 MR. GARY NEWCOMBE: Sorry, I was just
23 going to say, Ms. Murphy, in the -- in the code of
24 conduct for brokers, though, section 3.4 does list all of
25 the material that has to be made very explicit in the

1 offer, and one is the time period for which the contract
2 is in effect and any terms and conditions for renewal,
3 so.

4 MS. MARLA MURPHY: So are you suggesting
5 that it is brought to a customer's attention at the door?

6 MR. GARY NEWCOMBE: Well, I'm suggesting
7 it's in the materials that's provided to the cus -- to
8 the customer, yes. As -- as it states here, it has to
9 be.

10 MS. MARLA MURPHY: I don't think you're
11 answering my question. Is it brought to the attention of
12 the customer at the door?

13 MR. GARY NEWCOMBE: Well I think Ms.
14 Melnychuk answered that question.

15 MS. MARLA MURPHY: And it was that you
16 don't know?

17 MS. KAREN MELNYCHUK: No as -- no, as I
18 said, I'm not physically there at the door when every one
19 (1) of our contracts is signed, so I cannot say that it
20 is gone through word by word.

21 MS. MARLA MURPHY: I just want to have a
22 look at your current contracts and I -- I can refer you
23 to the -- the exhibit that was filed this afternoon as
24 DEML-16, I believe, which is a copy of the Energy Savings
25 contract.

1 I don't have a quick reference to the
2 Direct Energy one (1), but I think the wording is
3 essentially the same. And I want to look in particular
4 at the renewal provisions, which are on the second page
5 of Exhibit 16, paragraph 4. I hope I've got the number
6 right.

7 The wording of the current contract
8 contemplates that the rules may change in regard to
9 automatic renewal, is that right?

10 MS. NOLA RUZYCKI: I'm sorry, are you
11 looking at our contract?

12 MS. MARLA MURPHY: Yes, I am.

13 MS. NOLA RUZYCKI: I believe, yes, that's
14 what it says.

15 MS. MARLA MURPHY: And I'm looking at
16 paragraph 4 on page 2 that says:

17 "Currently ESM is not permitted to
18 renew the agreement simply by providing
19 notice of renewal to the customer.
20 Should ESM be permitted to do so at any
21 time, the agreement is available for
22 renewa -- renewal, the customer and ESM
23 agree that, notwithstanding the
24 foregoing, the agreement will be deemed
25 to incorporate the minimum renewal

1 provisions set out by law."

2 MS. NOLA RUZYCKI: Yes.

3 MS. MARLA MURPHY: And can you confirm
4 for me, Ms. Melnychuk, that Direct has a similar
5 provision in their contract?

6 MS. KAREN MELNYCHUK: I believe it's
7 similar, yes.

8 MS. MARLA MURPHY: And when did that
9 wording get added to your contracts?

10 MS. NOLA RUZYCKI: My understanding is it
11 was after the decision of the Board -- yeah, sorry, in
12 '04.

13 MS. MARLA MURPHY: So, it's your
14 understanding that's been in your contract since 2004?

15 MS. NOLA RUZYCKI: I'm not sure what
16 point in time, but yes.

17 MS. MARLA MURPHY: Perhaps maybe you
18 could just undertake to -- to check back with your
19 contracts and advise me when that wording was added for
20 each of the Energy Savings and Direct contracts, unless
21 you want to speak to it, Ms. Melnychuk?

22 MS. KAREN MELNYCHUK: I believe the
23 change was made to the Direct Energy contract some time
24 in 2006.

25 MS. MARLA MURPHY: Now, customers who

1 flowed gas, certainly after that date, wouldn't be aware
2 of what the automatic renewal provisions might be, would
3 they?

4 MS. KAREN MELNYCHUK: They would be
5 outlined, I believe, in the renewal package that would we
6 -- then would send to them. We always send out updated
7 Ts and Cs with our renewal package, and those would
8 supersede the terms and cond -- or terms and conditions
9 that were in place, so they're --

10 MS. MARLA MURPHY: So this --

11 MS. KAREN MELNYCHUK: Sorry

12 MS. MARLA MURPHY: Go ahead.

13 MS. KAREN MELNYCHUK: So they're provided
14 through -- to them through the renewal package.

15 MS. MARLA MURPHY: But this provision is
16 specifically aimed at customers who either don't read
17 that material or choose not to respond, correct?

18

19 (BRIEF PAUSE)

20

21 MS. KAREN MELNYCHUK: I'm going to need
22 you to clarify your question again, Ms. Murphy. I
23 apologise for that.

24 MS. MARLA MURPHY: Can I use everybody
25 else's answers; that it was brilliant the first time?

1 What I was -- what I was getting at is that you've
2 suggested that customers would be made aware of the
3 renewal provisions in the renewal letter that was sent,
4 but the very purpose of a ninety (90) day automatic
5 renewal is to address the issues that arise when a
6 customer either doesn't read or doesn't respond to the
7 renewal information that you've sent.

8 MS. KAREN MELNYCHUK: I am going to have
9 to refer that to our legal department. Unfortunate -- I
10 don't have a distinct answer on this.

11

12 (BRIEF PAUSE)

13

14 MR. ERIC HOAKEN: Sorry, we're just
15 trying to clarify this. We're just taking a look at the
16 contract; give us a moment.

17

18 (BRIEF PAUSE)

19

20 THE CHAIRPERSON: If you would like more
21 time, you could take it under advisement and respond
22 later.

23 MR. ERIC HOAKEN: I think we'll do that.
24 Thank you, Mr. Chair.

25 THE CHAIRPERSON: Okay.

1 MR. ERIC HOAKEN: Thank you.

2

3 --- UNDERTAKING NO. 38: DEML/ESMLP to respond to
4 Centra about the statement:
5 The suggestion that customers
6 would be made aware of the
7 renewal provisions in the
8 renewal letter that was sent,
9 but the very purpose of a
10 ninety (90) day automatic
11 renewal is to address the
12 issues that arise when a
13 customer either doesn't read
14 or doesn't respond to the
15 renewal information that is
16 sent. (Taken under
17 advisement)

18

19 CONTINUED BY MS. MARLA MURPHY:

20 MS. MARLA MURPHY: I guess I'll wait to
21 hear back from you on that one (1).

22 If Evergreening is permitted, what notice
23 would customers receive? Would it be the same as what
24 you provide them now, in your renewal package?

25 MS. KAREN MELNYCHUK: Yes, and then

1 anything else that the Board would -- would direct us to.
2 I believe, prior when we did had -- have the ninety (90)
3 day rollover, we had to include a bold statement in the
4 letter.

5 MS. MARLA MURPHY: And what steps would
6 be required of a customer if they didn't wish to renew?

7 MS. KAREN MELNYCHUK: They would have to
8 send in a cancellation letter to Direct Energy.

9 MS. MARLA MURPHY: Do you provide them
10 with a form, or is that something they have to create on
11 their own?

12 MS. KAREN MELNYCHUK: On occasion we let
13 them fax in the -- our renewal with a slash across --
14 with the word "cancel" on. Hopefully with a fax cover,
15 but it has their account number and all the information,
16 so it makes it easier for the customer.

17 MS. MARLA MURPHY: And I understood your
18 evidence to be that if automatic renewal of a contract
19 was permitted, the customers would be given an
20 opportunity to cancel that after they had received the
21 first bill with that new information on it. Is that
22 right?

23

24

(BRIEF PAUSE)

25

1 MS. MARLA MURPHY: I'm sorry, I don't
2 have a reference but...

3 MR. CLINTON ROEDER: Ms. Murphy, can --
4 can we just clarify maybe part of the confusion, and I
5 can explain part of the confusion on our part.

6 When you're asking the question in terms
7 of the automatic renewal on Evergreen -- when you had
8 asked earlier, the question was in terms of what the
9 recommendation is, and it was to continue with the ninety
10 (90) day Evergreen.

11 Is that what you're referring to when you
12 say "automatic renewal"?

13 MS. MARLA MURPHY: Yes.

14 MR. CLINTON ROEDER: So, in -- are you
15 asking in terms of -- in terms of if a customer wants to
16 cancel outside of that ninety (90) day window, or if they
17 do not even want to go on to that ninety (90) day?

18 MS. MARLA MURPHY: No, I was asking you,
19 if a customer takes no action and is rolled onto a ninety
20 (90) day renewal contract at the new price, what
21 opportunity are they given to cancel that?

22

23 (BRIEF PAUSE)

24

25 MS. NOLA RUZYCKI: My understanding in

1 our response we did say that -- like, I'm not sure which
2 IR it was, but we did say that, yes, that would be the
3 case; that the customer could cancel when, I believe, --
4 after receiving their first bill.

5 MS. MARLA MURPHY: Thank you.

6 MS. NOLA RUZYCKI: That would be though
7 in -- within that ninety (90) day window.

8 MS. MARLA MURPHY: Within the ninety (90)
9 days, yes. Thanks. Just with the respect to the issue
10 of telemarketing, do you suggest that there's any changes
11 to the current confirmation practices that would be
12 required?

13 MS. NOLA RUZYCKI: No.

14 MS. MARLA MURPHY: Are you aware that the
15 BCUC has determined that it -- it would not allow the
16 voice signatures as the only means to enter into a gas
17 contract?

18 MS. KAREN MELNYCHUK: At the current
19 time; That is up for review in 2008. There were
20 discussions this summer in regards to BC when some other
21 rules changed in BC and we had raised the question as to
22 allowing telemarketing earlier than 2008. And the BCUC
23 had -- had advised us that telemarketing was up for
24 review in 2008, so.

25 MS. MARLA MURPHY: Mr. Newcombe, can you

1 confirm my understanding that in Alberta, with respect to
2 the regulations relating to telemarketing of energy, that
3 the cooling-off period is extended to sixty (60) days?

4 MR. GARY NEWCOMBE: Yes, in -- in
5 Alberta, at the present time, the -- the customer has a
6 right to cancel up to sixty (60) days after receipt of
7 their first bill under the contract, if they've entered
8 into that contract by way of a telemarketing voice
9 signature.

10 MS. MARLA MURPHY: And it's the position
11 of the Panel that there's no need to change the current
12 ten (10) day cooling-off period in Manitoba?

13 MR. GARY NEWCOMBE: That -- that's
14 correct. I think the standard consumer protection rules
15 would be more than adequate.

16 MR. CLINTON ROEDER: And -- and Gary --
17 Gary has more detail, but one (1) thing I will clarify is
18 that part of what we're doing in Alberta is actually --
19 we're doing pilots in -- in to -- order with the plans to
20 go back and revisit that length, in term of the cooling-
21 off period.

22 MS. MARLA MURPHY: With respect to
23 Internet offerings, you indicated in the response to
24 CAC/DEML-21 that the primary marketing channel is through
25 door-to-door sales and, Ms. Ruzycki, I believe this is

1 the IR you referred to earlier? You described that as
2 the best method to effectively explain the product to
3 potential customers?

4 MS. NOLA RUZYCKI: Yes.

5 MS. MARLA MURPHY: Given that, why do you
6 want the PUB to permit telemarketing and Internet
7 contracts?

8 MS. NOLA RUZYCKI: There's some
9 individuals, due to their working hours, may not be able
10 to communicate with an agent during the working hours.
11 And we also want to have choice available to our
12 customers. So, if a customer feels more comfortable in
13 contracting through telemarketing, we would like that
14 means to be allowed.

15 MS. MARLA MURPHY: You currently give
16 customers the opportunity, in Direct's case, to sign up
17 now, I think is what the -- the link says and through
18 Energy Savings to -- also to obtain -- I might be wrong
19 about that. Do -- do you permit customers to sign up on
20 the Internet?

21 MS. NOLA RUZYCKI: As I mentioned
22 earlier, we have -- we will send them out a contract, but
23 we do not allow them currently to sign up on the
24 Internet.

25 MS. MARLA MURPHY: And in the case of

1 Direct, my understanding is correct that they can click
2 on a signup now link and print a contract and -- and
3 return it to you?

4 MS. KAREN MELNYCHUK: Yes, they have to
5 print it off and sign it, complete it and return it to
6 us.

7 MS. MARLA MURPHY: And I understood from
8 the response to that IR CAC-21 that less than 1 percent
9 of all new customers avail themselves of that method?

10 MS. KAREN MELNYCHUK: At the moment, yes.

11 MS. MARLA MURPHY: And do you expect that
12 that would change if the PUB was to permit Internet
13 contracting?

14 MS. KAREN MELNYCHUK: Yes, we do.

15 MS. MARLA MURPHY: Do you have any
16 experience that would support that conclusion?

17 MS. KAREN MELNYCHUK: Our experience in
18 other markets.

19 MS. MARLA MURPHY: So how do you get
20 customer's attention on the Internet? Presumably they
21 could be visiting your web site today and -- and
22 apparently very few of them do. I'm wondering what will
23 change that will -- will up those numbers?

24 MS. KAREN MELNYCHUK: I would say very
25 few enroll via the Internet. I -- I think the hits on

1 our web site may be higher than our enrollments that --
2 that come through that web -- web site. Now, that I've
3 said that, I can't recall your question, I'm sorry.

4 MS. MARLA MURPHY: Well, my question was,
5 what's going to be different? If customers have the
6 ability today to sign up on the Internet, but have to
7 print the contract, is it going to be that much different
8 that you expect that it will become a significant source
9 of customer contacts for you in the future?

10 MS. KAREN MELNYCHUK: It avails us to a
11 different marketing channel. We communicate with
12 customers via email; we get emails on a daily basis from
13 -- from customers. You can -- the -- marketing
14 department knows the lingo and everything, but you can
15 put the name out there when it's Googled, so your name
16 comes up.

17 You can put out smaller pieces of direct
18 mail that are less costly that direct people to a web
19 site, special offers; different things like that that,
20 you know, are less costly and direct people to the web
21 site.

22 MS. MARLA MURPHY: And all of that is
23 available today, the only difference is, that you have to
24 sign the contract, rather than click on the contract on
25 the screen, correct?

1 MR. CLINTON ROEDER: If I -- I if I can
2 just add on. You know, as we've stated a number of times
3 throughout these Hearings, it's not a matter of just
4 changing one (1) item and being able to increase volume
5 in any one (1) particular channel.

6 As we touch on some of the changes that
7 will occur in the market, whether it's -- you look at
8 something like being able to offer more of a monthly
9 variable rate product; we've talked about the minimum
10 volume requirements, various items.

11 What Karen's talking about is, you can
12 take a lot of approaches to drive activity to the Web;
13 you can do direct marketing, you can do media campaigns.
14 There's a lot of options you have.

15 So part of it is having the flexibility of
16 a product that we think will -- will drive that uptake
17 and will push. So if you look at other markets -- for
18 example, in Ontario, we don't have a 10 or 20 percent
19 uptake every month in enrollments on the Web.

20 We drive the -- the activity there based
21 on the products we have to develop. If you take Alberta,
22 as an example, and you look at how some of the
23 competitors in terms of what they offer on the Internet,
24 it's different products that appeal to customers.

25 So I just want to caution in terms of the

1 question in terms of if it's being asked if this was the
2 only change that was made of the recommendations that
3 were put forward, would we expect to see an uptake
4 similar to the other markets -- the answer would be no.

5 MS. MARLA MURPHY: Well, and -- that
6 wasn't my question. My question was, what's going to be
7 different? Given that you have all of those available
8 now, the only difference will be the difference between
9 signing the contract and clicking on the screen?

10 MS. KAREN MELNYCHUK: It would eliminate
11 several steps in the process. The interaction can be
12 done right there between the customer and the web site.
13 It's complete, it's emailed to us, so it -- it eliminates
14 several steps in the process of having to print it,
15 having to mail it, drop it off at a -- in a mailbox, and
16 so forth.

17 And it ensures -- how we do it in other
18 markets is, you know, there's a -- a receipt that's sent
19 back to the customer that's it acknowledge receipt, a PDF
20 of the contract is sent back; it's all instantaneous.

21 MS. MARLA MURPHY: And that will lead to
22 a reduction in your costs?

23 MS. KAREN MELNYCHUK: Yes, that would.
24 The biggest driver there, too, is just the customer
25 satisfaction and being -- being able to complete that

1 interaction right there and then.

2 MS. MARLA MURPHY: You discussed with Mr.
3 Peters yesterday the cooling off period and, in
4 particular, the cooling-off period in BC. And I think I
5 understood your evidence to be that an extended cooling-
6 off period such as that would be a regressive step, is
7 that fair?

8 MS. KAREN MELNYCHUK: Yes.

9 MS. MARLA MURPHY: Do Direct and Energy
10 Savings monitor the number of customers in Manitoba who
11 exercise their right to cancel their contracts during the
12 cooling-off period?

13 MS. KAREN MELNYCHUK: In some form, yes,
14 we do.

15 MS. MARLA MURPHY: And are you able to
16 give an indication of what percentage or number of
17 customers might avail themselves of that opportunity?

18

19 (BRIEF PAUSE)

20

21 MR. CLINTON ROEDER: The -- the only
22 hesitation on the part of the answer to this has to do
23 with just, it is sensitive in terms of what kind of drop
24 rates and there is a wide range.

25 So our -- our caution, and the way I will

1 answer it is in terms of just the range of what we see
2 across the markets in Canada and it can range from a
3 drop-off during a cooling-off from 10 to 40 percent.

4 MS. MARLA MURPHY: I'm not sure that
5 helps given that the cooling-off periods are different
6 from jurisdiction to jurisdiction. With respect to
7 Manitoba, I'm not sure how it can be sensitive. It's the
8 number of people that ultimately choose not to contract.

9 MR. CLINTON ROEDER: Let me try to
10 explain why it's sensitive on the part of everyone since
11 that just needs to be getting challenged.

12 MS. MARLA MURPHY: Well, I prefer that
13 you just answered the question.

14 MR. CLINTON ROEDER: Well, but -- but
15 what you're hearing, it's confidential and what I'm
16 trying to explain is why we're concerned about answering
17 that, so everyone understands why it is confidential. If
18 you don't -- do not want to hear that, then I would just
19 say the response, it's confidential.

20 MS. MARLA MURPHY: I -- I fail to see,
21 Mr. Chairman, how that can be confidential information.

22 MR. ERIC HOAKEN: Well, the witness
23 was --

24 THE CHAIRPERSON: Well, let's hear Mr.
25 Roeder's --

1 are looking for who they're going to go work for, they
2 want to understand that. And they're going to go work
3 for those companies that are the most successful in terms
4 of the taking a signed contracts and getting it on flow.
5 So that's why it's confidential.

6 MS. MARLA MURPHY: Are you suggesting
7 when you say the agents are interested in that, that
8 you're talking about the salespeople that go from door-
9 to-door?

10 MR. CLINTON ROEDER: Yes.

11 MS. MARLA MURPHY: And you're suggesting
12 that those people move from province to province?

13 MR. CLINTON ROEDER: No.

14 MS. MARLA MURPHY: So I'm not sure how
15 that assists you in your objection?

16 MR. ERIC HOAKEN: Well, I just add. I
17 think it does assist, because what Mr. Roeder is saying
18 is that the market for these agents is a competitive one,
19 and that the movement of agents from one company to
20 another would be influenced by their appreciation of the
21 relative drop rates. Is that fair?

22 MS. MARLA MURPHY: And I take it, that's
23 because it affects their commission? All right, so
24 you've given us a range of 10 to 40 percent. I take it
25 you'd agree with me that when you extend the cooling-off

1 period that the number would increase?

2 MR. CLINTON ROEDER: No, I would not.
3 We have not seen that in Alberta. For example, on the --
4 we touched on the telesales where we've actually seen a
5 drop rate that, in that market, is actually less than
6 what we experienced in Ontario.

7 MS. MARLA MURPHY: So then why do you
8 object to an extended cooling-off period?

9
10 (BRIEF PAUSE)

11
12 MR. GARY NEWCOMBE: I think, as we've
13 said a few times, Ms. Murphy, it's really got to do with
14 regression, as a market rules in totality, and there
15 really doesn't seem to be a clear reason why retail
16 natural gas sales would require any higher level of
17 consumer protection than any other business or
18 enterprise.

19 You know, there doesn't seem to be any
20 real reason for it needing an extended cooling-off
21 period. And if you looked at sort of extending a
22 cooling-off period, in the totality of the way the market
23 rules are here today, it's just going to be, as we said,
24 a regressive step. I don't see anything that's been
25 demonstrated that says consumers need a longer cooling-

1 off period.

2 MS. MARLA MURPHY: I was asking you why
3 you opposed one. And you've told me it's regressive, but
4 you haven't really told me why you think it's regressive,
5 particularly if it doesn't affect your drop rates, as you
6 call them?

7 MR. GARY NEWCOMBE: I think, as Mr.
8 Roeder has said a few times, you have to look at the
9 totality of all the market rules and, you know, it's just
10 one (1) more thing being loaded on the market for no
11 apparent reason. It doesn't seem to be a good reason. I
12 mean, you could extend the cooling-off period to five (5)
13 years, you know, through the whole length of the
14 contract, and what would that accomplish?

15 MS. MARLA MURPHY: Well, it might
16 accomplish a measure of customer protection, wouldn't it?

17 MR. GARY NEWCOMBE: Well, you know, we're
18 talking about customers who are going to be buying
19 natural gas from somebody, so they're going to be paying
20 somewhere in the order of fifteen hundred dollars
21 (\$1,500), let's say, on default supply versus -- I don't
22 know, pretend it's always more expensive -- eighteen
23 hundred dollars (\$1,800) on a fixed -price contract.

24 So we're talking about a differential here
25 of three hundred dollars (\$300) to five hundred dollars

1 (\$500), whatever it is, in a typical year, and it could
2 be either way. I mean, just how much consumer protection
3 and time and effort do we need to throw at a decision
4 like that?

5 I mean, I don't know what the cooling-off
6 period is for a five (5) year term on a mortgage or to
7 buy a forty thousand dollar (\$40,000) car, but it's
8 probably not five (5) years, it's probably not sixty (60)
9 days. It's probably a standard ten (10) days.

10 So I'm not sure why a financial
11 transaction involving a relatively small amount of money
12 -- like, probably less than what people spend on lattes
13 in a year -- needs this huge level of consumer protection
14 and all this fuss.

15 MS. MARLA MURPHY: Thank you.

16 I'm going to turn a -- a different topic.

17 And particularly on page 13 of your
18 evidence you start with the presumption that the PUB
19 must, in your words, Balance the need for continued
20 operation and development of a truly competitive gas
21 market in Manitoba. And I'd like to know your view of
22 what truly competitive gas market requires.

23 What's the test?

24

25 (BRIEF PAUSE)

1 MR. GARY NEWCOMBE: Well, I think there's
2 a whole bunch of components and we -- we tried our best
3 to -- to list a bunch of them in response to Centra
4 DEML/ESMLP-2. I means, some fundamentally sound and
5 reasonable rules at relatively educated level or, sorry,
6 a relatively sophisticated level of consumer education; a
7 reasonable default supply mechanism in the case of this
8 particular market; ease of customer mobility; ease of
9 contracting.

10 I -- you know, as we said, it's probably
11 not dependent on the number of brokers, but it's more
12 dependent on load barriers of entry to potential new
13 competitors.

14 Probably an unbiased and facilitative
15 default supplier; reasonable separation of default supply
16 and the distribution function.

17 You know, good consumer protection with
18 respect to protection of customer information by the
19 distributor; equal treatment of retailers; equality of
20 treatment for customers.

21 MS. MARLA MURPHY: Is there a required
22 number of products?

23 MR. GARY NEWCOMBE: Required number of
24 products? You can probably canvass that with Dr.
25 Cyrenne. I -- I don't think there is.

1 MS. MARLA MURPHY: If there are more
2 participants in the Manitoba market, would your companies
3 reduce their prices?

4 MR. GARY NEWCOMBE: I think our evidence
5 is that, you know, robust competition brings on downward
6 pressure on prices. Certainly to the extent that the
7 more competitors were attracted to the Manitoba market
8 because of a rationalization of some of the rules in
9 Manitoba, I think Mr. Roeder has testified that we
10 probably could lower our prices, yes.

11 MS. MARLA MURPHY: Your response to
12 PUB/DEML-1 suggests that the objective of a competitive
13 market has been achieved in Manitoba, that correct?

14

15 (BRIEF PAUSE)

16

17

18 MS. MARLA MURPHY: It's at Tab 5 of the
19 book, if that helps you.

20

21 (BRIEF PAUSE)

22

23 MS. MARLA MURPHY: You suggest in that
24 response that the benefit is not necessarily saving money
25 but having choice. Is that fair?

1 MR. GARY NEWCOMBE: Yes. And I think
2 that was backed up by the Consumer Research Report.

3 MS. MARLA MURPHY: That choice relates to
4 varying products?

5 MR. GARY NEWCOMBE: The -- it's having
6 the ability to choose different products that would be of
7 some value to customers, yes.

8 MS. MARLA MURPHY: Does it also relate to
9 choice among suppliers?

10 MR. GARY NEWCOMBE: Yes, I -- I -- well,
11 in my layman's opinion, it's probably difficult to have a
12 competitive market with one (1) supplier but again,
13 that's probably something you could canvass with Dr.
14 Cyrenne.

15 MS. MARLA MURPHY: I'm pretty sure he'll
16 agree with you on that one (1).

17 Given that customers currently essentially
18 have only the choice between long-term fixed-price
19 offerings or the utility rate, does that constitute
20 meaningful choice?

21 MR. GARY NEWCOMBE: It probably depends
22 on what people interpret the word "meaningful" to mean,
23 but yes, I -- I believe it does.

24 MS. MARLA MURPHY: And I take it you
25 wouldn't dispute the notion that from a customer's

1 perspective, more choice is better?

2 MR. GARY NEWCOMBE: That's probably fair
3 as a general statement and there probably comes a point
4 in time where it becomes overwhelming, but I don't know
5 when that happens.

6 MS. MARLA MURPHY: On page 2 of your
7 evidence, you indicated that direct note of the Board's
8 interest in the recent cost to gas Hearing that resulted
9 in Order 175/06, that there would be more competitive
10 products available to consumers. Do you remember that?

11 MR. GARY NEWCOMBE: Yes, that's at
12 paragraph 5, page 2. I think it goes on to say that in
13 response to that we introduced the two (2) additional
14 products from Direct Energy.

15 MS. MARLA MURPHY: And my question is,
16 given that Mr. Roeder has made the statement, more than
17 once, that Direct's all about choice, why were those
18 products not offered until the Board issued that
19 statement?

20 MS. KAREN MELNYCHUK: Actually, we had
21 introduced products earlier as well. In 2001 we added
22 the declining. The seasonal product is something that
23 just was envisioned this year, within the company, so it
24 was not offered anywhere prior to this years. So that
25 was a new product. Their three (3) year was an introduc

1 -- a reintroduction of the three (3) year.

2 And then the green product -- our carbon
3 neutral product, that was -- came about due to our entry
4 into the BC market, and Mr. Roeder thought it was so
5 great that he launched it across Canada.

6 MS. MARLA MURPHY: So there -- there
7 weren't any other potential offerings prior to the Board
8 issuing Order 175/06, other than the declining one (1)
9 you talked about?

10 MS. KAREN MELNYCHUK: We always look, as
11 I indicated earlier, that we've priced out the one (1)
12 year on several different occasions that happened prior
13 to 2006. We price out different options at, you know,
14 three (3) years, four (4) year. What we found is the --
15 the customer -- what's the word -- I don't want to use --
16 the customer uptake on -- on the -- the products we have
17 right now -- the three (3) year and the five (5) year --
18 were the highest.

19 MS. MARLA MURPHY: Did the possibility of
20 this competitive landscape Hearing also factor into your
21 decision to introduce those products?

22 MR. CLINTON ROEDER: No. And I think a
23 reflection of that is -- if you like, we can -- you know,
24 it's pretty public knowledge in terms of how many new
25 products we've launched across Canada, in all provinces,

1 throughout the course of this year, and there are not
2 hearings taking place in those areas.

3 MS. MARLA MURPHY: Mr. Newcombe, from
4 your years of experience in the regulated utility
5 environment, and now as -- as a member Direct Energy, are
6 you able to share your view as to which, for Manitoba, is
7 more efficient -- market competition or rate regulation?

8 MR. GARY NEWCOMBE: So my own personal
9 views would be that with respect to distribution system,
10 the rate regulation would be the most efficient. With
11 respect to upstream pipeline transportation to Manitoba
12 and to the Centra Gate Station's delivery points, that's
13 probably a toss-up in my mind. With respect to wholesale
14 purchases, that's best served by competitive market.

15 The retail is probably at this stage in
16 transition in Manitoba best served by a combination or a
17 coexistence of competitive markets and competitive
18 marketers and default supply.

19 MS. MARLA MURPHY: Would it be fair to
20 say that the regulator's primary obligation is to provide
21 for the best interest of customers, whereas the broker's
22 primary obligation is to its shareholders?

23 MR. GARY NEWCOMBE: I would suspect that
24 for most competitive -- successful competitive entities,
25 it probably gets down to being one (1) and the same; you

1 won't be competitive -- or won't be profitable without
2 customers. So if you don't offer products and services
3 that customers see value in, if you don't service those
4 customers appropriately, they won't stick around and you
5 won't be profitable.

6 MS. MARLA MURPHY: And you won't have met
7 your obligation to the shareholders?

8 MR. GARY NEWCOMBE: Sure, I mean that
9 goes without saying, I think.

10 MS. MARLA MURPHY: Thank you. Ms.
11 Ruzycki, could you just remind me, please, I've forgotten
12 how many employees ESML has in Manitoba?

13 MS. NOLA RUZYCKI: Actual employees, two
14 (2).

15 MS. MARLA MURPHY: And who provides the
16 services such as payroll and human resources and
17 information systems, call centre support, sales and
18 marketing?

19 MS. NOLA RUZYCKI: The call centre
20 support is out of Toronto and payroll, et cetera, is a
21 payroll provider or -- a payroll provider.

22 MS. MARLA MURPHY: Are you able to
23 indicate how many employees within Energy Savings support
24 the operations in Manitoba?

25 MS. NOLA RUZYCKI: No, I'm not.

1 MS. MARLA MURPHY: Is it fair to say that
2 you're able to leverage your shared services across
3 several jurisdictions?

4 MS. NOLA RUZYCKI: Sorry, yes. Some of
5 them, yes.

6 MS. MARLA MURPHY: And the shared
7 services that a Manitoba broker receives from a parent
8 company aren't regulated by this Board or any other
9 Board, are they?

10 MS. NOLA RUZYCKI: No, they aren't.

11 MS. MARLA MURPHY: So there isn't any way
12 for this Board to assure itself that the transfer pricing
13 for those shared services are incorporated in -- in a way
14 that's fair across each market, is it?

15

16 (BRIEF PAUSE)

17

18 MR. GARY NEWCOMBE: I'm sorry, Ms.
19 Murphy, could we get that one more time in as perfect a
20 form as the first time?

21 MS. MARLA MURPHY: I'll do my best. My
22 question was: There's no way that this Board can be
23 assured that the transfer pricing for services or costs
24 that are incorporated into a Manitoba product offering on
25 part of the -- on the part of the unregulated marketers

1 are fair?

2 MR. GARY NEWCOMBE: It would seem to me
3 that one (1) test of that is, do any customers take the
4 products and do they see value. If they see value in it,
5 they must -- I don't know if a fairness consideration
6 comes into a customer's purchasing decision or not.

7 Sort of go back to the earlier exchange we
8 had, I'm not sure of what even concern it would be to the
9 Board, you know, as to the cost of goods that are
10 imbedded in the price.

11 It's -- the Board should be concerned
12 with, are they facilitating public policy, are they
13 ensuring that customers are not taken advantage of in any
14 way, and those kinds of things, but to the extent that
15 they get involved in the cost structure of competitive
16 businesses, I'm not sure they want to or -- particularly
17 do that.

18 I'm not sure that they know that whether
19 the -- all the costs that go into making a pair of Nikes
20 are fair, but people buy them. I -- there doesn't seem
21 to be any concern of the Board there, either, so I'm not
22 sure why this would be a concern of the Board.

23 MS. MARLA MURPHY: I haven't seen running
24 shoes in your legislation, but you -- you speak the --

25 MR. GARY NEWCOMBE: Okay. Well, we could

1 -- we could talk about taxi cabs, for instance, and is
2 the price of cars in Manitoba fair? I -- I don't know.

3 MS. MARLA MURPHY: You speak the
4 regulatory lingo; my point is that there's nobody that
5 tests your cost allocation, correct?

6 MR. GARY NEWCOMBE: Only customers, at
7 the end of the day, test our cost allocation that's
8 embedded in our pricing.

9 MS. MARLA MURPHY: You also made mention
10 the other day, and I think you've now filed, the
11 affiliate code of conduct and described some of the
12 compliance procedures that are required in Alberta. Do
13 you recall that?

14 MR. GARY NEWCOMBE: Yeah, actually I
15 realized that we filed it twice; once in response to an
16 Undertaking and once in response to an Information
17 Request.

18 MS. MARLA MURPHY: Thank you.

19 MR. GARY NEWCOMBE: PUB/Direct/ESM-6.

20 MS. MARLA MURPHY: You indicated that
21 your regulatory -- or your regulated utility is required
22 to file a compliance plan, and I think the words you used
23 were, That it went into great gory detail?

24 MR. GARY NEWCOMBE: Yes, it does.

25 MS. MARLA MURPHY: Can you give an

1 indication to the Board of what the cost of preparing and
2 maintaining those types of filing are?

3 MR. GARY NEWCOMBE: Well, it was internal
4 cost; it was prepared in-house, so I -- I wouldn't be
5 able to give you any idea of what cost to prepare that.
6 You know, it took one (1) individual some months of not
7 necessarily full time work and a lot of back and forth
8 between the regulator on drafts and everything else, but.

9 MS. MARLA MURPHY: And there would be a
10 necessity for a regulatory hearing to establish the
11 procedures in Manitoba if we were to venture down that
12 road, wouldn't there?

13 MR. GARY NEWCOMBE: I would suspect that
14 the best way to do that would be through some open
15 process, yes.

16 MS. MARLA MURPHY: You would expect there
17 would also be a cost associated with that process?

18 MR. GARY NEWCOMBE: Yes.

19 MS. MARLA MURPHY: Does your experience
20 in Alberta give you the ability to comment on what that
21 cost might be?

22

23

(BRIEF PAUSE)

24

25

1 MR. GARY NEWCOMBE: The Natural Gas Code
2 of Conduct in Alberta was approved through a written
3 process, so there was no formal sit-down oral hearing.
4 It was the Board distributed the proposed compliance
5 plan, parties commented on it, the Board took those
6 comments, issued a decision; so the cost wouldn't have
7 been huge.

8 MS. MARLA MURPHY: And we would've seen a
9 similar experience -- not to the outcome you're
10 describing, but a similar experience in terms of -- of
11 compliance plans in the case of Terasen in BC, correct?

12 MR. GARY NEWCOMBE: Well, we would've
13 hoped so, yes.

14 MS. MARLA MURPHY: And -- and, in fact,
15 they ultimately with -- withdrew their application as a
16 result of those requirements?

17 MR. GARY NEWCOMBE: I don't know why the
18 Terasen Marketing Inc, withdrew their -- I can only --
19 you know, I read their letter of withdrawal, but I don't
20 what was behind it. Whether it was fear of having to
21 comply with the Code of Conduct or not, I don't know.

22 MS. MARLA MURPHY: Would you agree with
23 me there were some fairly onerous disclosure requirements
24 imposed upon them?

25 MR. GARY NEWCOMBE: You mean through the

1 Code of Conduct?

2 MS. MARLA MURPHY: Through that process,
3 the licencing process.

4 MR. GARY NEWCOMBE: Fairly onerous? No,
5 I don't think they'd be fair -- would describe them as or
6 characterize them as fairly onerous.

7 MS. MARLA MURPHY: Thank you. I want to
8 turn to your marketing efforts and as -- as I understand
9 your marketing, one (1) of the economic benefits that you
10 advertise is peace of mind, is that fair?

11 MS. KAREN MELNYCHUK: Yes, we've used
12 that term.

13 MS. MARLA MURPHY: You consider that to
14 be an economic benefit?

15 MS. KAREN MELNYCHUK: Peace of mind that
16 the price they pay for the next five (5) years will not
17 change, yes.

18 MS. MARLA MURPHY: And, of course, it's -
19 - I suppose it's trite to say that that means that they
20 won't get the benefit of any potential price reductions
21 either?

22 MS. KAREN MELNYCHUK: Their price will
23 not change for their term of the contract, so --

24 MSS. MARLA MURPHY: Either up or down.

25 MS. KAREN MELNYCHUK: -- it is a flat

1 price.

2 MS. MARLA MURPHY: The rate at which the
3 long -term contract is offered is not generally the same
4 as the current monthly price or Centra's primary system
5 supply gas price, is it?

6 MR. GARY NEWCOMBE: I think at any
7 particular time, if that were to happen, it would just be
8 coincidental.

9 MS. MARLA MURPHY: And would you agree
10 that at least part of the reason for that is that there's
11 a premium, or at least a notional premium, paid to shed
12 the risk of prices increasing over the term of the
13 contract?

14 MR. GARY NEWCOMBE: It's got to do with a
15 number of things at any particular point in time. It's
16 got to do with the volatility inherent in a monthly rate,
17 as much as anything else. So it could be higher, it
18 could be lower.

19 If you're talking about looking at the
20 cost of a monthly product today, versus the cost of
21 acquiring a five (5) year product today, then the chances
22 are, yes, depending on the shape of the forward curve.
23 If it's flat or going up then, yes, there will be a risk
24 premium built into the five (5) year product.

25 MS. MARLA MURPHY: Is part of that

1 difference also the profit margin for your companies?

2 MR. GARY NEWCOMBE: Well, again, there's
3 a risk compensation and a profit margin built and costs
4 of acquisition and cost to serve and a whole number of
5 items built into our pricing. Again, at any particular
6 point in time that may be higher or lower than the
7 prevailing monthly prices.

8 So I don't think you could say, Profit is
9 the reason your prices are always higher than the
10 utilities offer.

11 MS. MARLA MURPHY: But it is built in?

12 MR. GARY NEWCOMBE: Yes, it's built in.

13 MS. MARLA MURPHY: If I could ask --

14 MR. GARY NEWCOMBE: As it would have to
15 be built into any fixed-price product.

16 MS. MARLA MURPHY: Yes. If I could ask
17 you to turn to tab 6 of the book of documents. I have
18 excerpted some of the information that was respon --
19 filed in response to CAC/MSOS/DEML-20. And you'll be
20 happy to see, Ms. Melnychuk, that I want to refer to an
21 ad that's, I think, dated April 19, 2005 at the top.

22 MS. KAREN MELNYCHUK: The first page of
23 Tab 5?

24 MS. MARLA MURPHY: Yes.

25 MS. KAREN MELNYCHUK: Yes, that's the one

1 -- the same one that Mr. Holloway and I went through this
2 -- earlier today.

3 MS. MARLA MURPHY: That's right. Turning
4 over to the second page of that, I've numbered it as page
5 2. It contains the statement in the centre fold.

6 "If you'd already signed up with
7 Municipal Gas in 2000, you would have
8 already saved \$320."

9 Do you see that?

10 MS. KAREN MELNYCHUK: Yes, it's the
11 second bullet.

12 MS. MARLA MURPHY: That's contemplating a
13 five (5) year contract?

14 MS. KAREN MELNYCHUK: I would have to go
15 back and look, but I believe it was based on our three
16 (3) year because in 2000 we only had three (3) year.

17 MS. MARLA MURPHY: And it indicates in
18 the -- the bullet above that and in the one below it that
19 gas prices have risen over the past five (5) years.

20 And if you sign up now you can ser --
21 secure your price for the next five (5) years, is that
22 right?

23 MS. KAREN MELNYCHUK: That's correct.

24 MS. MARLA MURPHY: The graph shows a
25 potential savings if the current trend continues. Do I

1 have that right? In the centre there.

2 MS. KAREN MELNYCHUK: Sorry, repeat that.

3 MS. MARLA MURPHY: The graph is showing a
4 potential savings?

5 MS. KAREN MELNYCHUK: Yes, as the notes
6 say,

7 "Potential savings for customers who
8 secure their price for five (5) years
9 at the -- if the current trend
10 continues."

11 MS. MARLA MURPHY: And that trend isn't
12 based on a market forecast? I think you've already told
13 us it's based on the historical information that you had?

14 MS. KAREN MELNYCHUK: Yes, it was based
15 on the previous five (5) year average increase, which was
16 13 percent per year.

17 MS. MARLA MURPHY: And it also shows your
18 fixed price at the same point on the scale as the current
19 market price, correct?

20 MS. KAREN MELNYCHUK: Yes.

21 MS. MARLA MURPHY: And I think you've
22 already agreed with me that, generally, that's not the
23 case?

24 MS. KAREN MELNYCHUK: Sorry, repeat that.

25 MS. MARLA MURPHY: I think Mr. Newcombe

1 has already agreed with me that, generally, your fixed-
2 price product offering is not the same as the current
3 market rate at the time that it starts.

4 In other words, those two shouldn't be
5 meeting at the bottom on the left?

6 THE CHAIRPERSON: While they're checking,
7 Ms. Murphy, I'll just bring you up to date. The Board
8 has another commitment immediately after 4:00, so if you
9 could find a spot that you're more comfortable with.

10 And just before we shut down I'm going to
11 turn over to Mr. Peters to give us an idea about
12 tomorrow.

13 MS. MARLA MURPHY: I may be some time
14 with these materials, so perhaps if you wanted to adjourn
15 for the day at this point, we could do that.

16 THE CHAIRPERSON: Okay, then. Mr.
17 Peters, do you want to give us an update on potential
18 plans for tomorrow?

19 MR. BOB PETERS: Yes. As the Board is
20 aware, Centra has further questions for the retailers'
21 panel and I might ask Ms. Murphy to commit the public sin
22 of giving an estimate of her time requirements before we
23 adjourn today, Mr. Chairman.

24 But there are two factors that affect the
25 timing of the completion of the evidence of this panel,

1 and those factors were not built into the yellow outline
2 of procedures that I circulated on day one (1) or the
3 blue calendar that I circulated on day one (1) of this
4 Hearing.

5 It was anticipated this panel would be --
6 would be finished at the end of business today and that
7 obviously isn't going to transpire. So the concerns are,
8 first, this panel and the full panel is not available as
9 a full panel tomorrow morning, but the full panel will be
10 available tomorrow afternoon.

11 And the second factor is that the Board,
12 again due to another prior commitment, is available to
13 start tomorrow morning only at ten o'clock.

14 So with those two (2) matters in mind,
15 there were a few options to consider but having done that
16 myself, I haven't shared those with Counsel opposite for
17 Centra or CAC/MSOS.

18 I'm suggesting that rather than have the
19 retailer panel proceeding in the absence of one of its
20 Panel Members tomorrow morning, I'm suggesting to the
21 Board that we reconvene at 10:00 a.m. and ask Mr. Hoaken
22 at that time to introduce and provide the direct
23 testimony of Dr. Cyrenne and allow me to cross-examine
24 Dr. Cyrenne in the balance of the morning, to utilize the
25 time that we have before the Board.

1 After I'm finished cross-examining Dr.
2 Cyrenne, it may be appropriate to stand him down and
3 complete with this Panel, rather than proceeding with the
4 other cross-examinations of him.

5 And that would be my suggestion, and I
6 would invite, certainly, the Board to canvass Ms. Murphy,
7 Mr. Holloway and Mr. Hoaken as to whether they find
8 favour with that suggestion.

9 THE CHAIRPERSON: Ms. Murphy...? While
10 she is consulting, Mr. Holloway...?

11 MR. IVAN HOLLOWAY: I'm agreeable to it,
12 thank you.

13 THE CHAIRPERSON: Mr. Hoaken...?

14 MR. ERIC HOAKEN: Yes, that's fine, Mr.
15 Chair. Thank you very much.

16

17 (BRIEF PAUSE)

18

19 MS. MARLA MURPHY: I've already committed
20 the private sin, Mr. Chairman, of under estimating the
21 amount of time I would be with this panel but I hopefully
22 won't make too many more public sins in the process of
23 this.

24 I will be some time with this Panel and I
25 would prefer that they all be present. I think Ms.

1 Melnychuk has valuable contributions to make and -- and
2 so, on that basis, I have no objection to Mr. Cyrenne
3 appearing tomorrow morning. I won't be in a position to
4 cross-examine him until I'm completed with this Panel.

5 But on that understanding, I would not be
6 opposed to Mr. Peters carrying out whatever cross he
7 likes, having this Panel back to conclude and then having
8 Mr. Cyrenne back after that time.

9 THE CHAIRPERSON: Sounds like we have an
10 agreement. Okay. We will see you all tomorrow morning
11 at ten. Thank you.

12

13 (PANEL RETIRES)

14

15 --- Upon adjourning at 3:59 p.m.

16

17 Certified correct,

18

19

20

21

22 Wendy Warnock, Ms.

23

24

25