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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
October 26th, 2007
Vol XV
Pages 3149 to 3279

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

2

3 THE CHAIRPERSON: Good morning, everyone.
4 Today we have Mr. Eric Hoaken.

5

6 CLOSING SUBMISSIONS BY DEML/ESMLP:

7 MR. ERIC HOAKEN: Yes, thank you. Good
8 morning, Mr. Chair. Good morning to the Board Members.
9 Good morning to fellow counsel.

10 By way of introduction I would just
11 indicate, Mr. Chair, that I distributed to all counsel
12 and to the Board Secretary this morning, two (2)
13 documents. The first is the big brief that you're
14 holding in your left hand, Mr. Chair, that I've styled as
15 a compendium. That is a brief that excerpts some of the
16 evidence to which I will refer in the course of my
17 submission this morning.

18 I've also handed out a shorter document, a
19 nine (9) page summary, which is intended to be an
20 overview or roadmap if you will, of the things that I'm
21 going to say in the order in which I'm going to address
22 them.

23 I'll start just by saying that I'm going
24 to continue my practice of referring to Direct Energy and
25 Energy Savings collectively as "the retailers." And I

1 want to start by saying that the retailers greatly
2 appreciate the opportunity to participate in this Hearing
3 and to have the opportunity to present their views on
4 natural gas choices in Manitoba.

5 The -- the retailers believe that the
6 Board was correct in supporting the development of a
7 competitive market in its Order 15/98 and timely of its
8 review of the current market.

9 The appropriateness of the approach that
10 the Board has taken to the competitive landscape in
11 Manitoba has been confirmed by the resulting transition
12 in regulatory framework such as the Code of Conduct and
13 the affiliate transactions and appeal mechanisms, and by
14 the creation of an active market, an active competitive
15 market in Manitoba, that provides choice and supply
16 options that currently 20 percent of Manitoba natural gas
17 consumers are availing themselves of.

18 The -- the continuation of the competitive
19 market in this province is important for the commercial
20 interest of the retailers, but much more importantly it
21 is crucial for the interests of consumers and the public,
22 at large, in this province.

23 The retailers will submit that this can be
24 accomplished. The encouragement and further development
25 of the competitive market can be accomplished by

1 directing Centra to implement the market and operational
2 changes that we will be recommending this morning and by
3 requiring that Centra continue to provide the default
4 supply option only.

5 Now at the start of this Hearing, Mr.
6 Chair, you listed the issues that had been identified in
7 the Notice of Hearing and identified those as being the
8 issues the Board wished to consider in its assessment of
9 the structure of the natural gas market and as part of
10 its determination of the optimal way to serve consumers.

11 I will, in the course of my submissions,
12 address those points, and for the convenience of the
13 Board what I thought I would do was to summarize the
14 position of the retailers on those points. And I would
15 ask you all to refer to the outline and you'll see that I
16 have, for convenience, just excerpted those points on the
17 first page of the outline.

18 And then let me just orient you all to
19 where I'm going to go in my submission this morning. I'm
20 going to start with the submission on the history of the
21 efforts to -- to -- excuse me, promote competition in the
22 natural gas retail market in Manitoba.

23 Over to the second page, I'm going to
24 discuss the diagnosis of market failure, and there's a
25 couple of subheadings there. And I should just pause to

1 say you'll see what I've done in the outline is I have
2 outlined the headings I'm going to address and for the
3 convenience of the Board, I have put the excerpts in the
4 compendium that I will refer to under each of those
5 headings.

6 I'll then go to the retailers' assessment
7 of the market, that's Item 3 on page 3. I will then
8 address, and this is a key part of our submission, the
9 question of what needs to happen to ensure the further
10 development of the competitive market in Manitoba.

11 And there are six (6) items I will be
12 addressing in some detail. I will then go on page 6,
13 you'll see Item 5, Centra's proposal for a fixed price
14 offering. And that has four (4) subheadings, I believe.

15 And then over to page 9, I will deal with
16 retailer marketing practices and the equal payment plan
17 and then some concluding comments.

18 So let me -- just before I get into my
19 substantive submission, let me just quickly summarize the
20 position of the retailers on those eleven (11) issues.

21 With respect to Issue A, the potential
22 abandonment of hedging, the retailers support the
23 elimination of this program for the reasons that I will
24 be describing in my submission under Item 4(ii).

25 The second issue, Issue B, deals with

1 whether the equal payment plan should be the default for
2 System Gas Supply custom -- sorry, System Gas customers,
3 and as I will be outlining under Item 7, the retailers
4 conclude that there's no justification for this change
5 and that customers should not be switched to a billing
6 service that they've not elected to take.

7 The question of whether Centra should be
8 allowed to offer fixed price supply in direct competition
9 with the retailers is one of the key issues -- this is
10 Issue C -- it's one of the key issues that has been
11 considered in this proceeding. The retailers strongly
12 oppose -- strongly oppose this proposal for the reasons
13 that I will be outlining under Item 5 of the submission.

14 The second critical question is Item D and
15 this is the need for Centra to amend its supply
16 arrangements to improve broker service. In Section 4 of
17 the submission I will be making, Mr. Chair, we will be
18 contending that the changes to the way in which Manitoba
19 Hydro and Centra interact with marketers is all that is
20 required to ensure a more vibrant competitive market.

21 The main problem, we will be contending,
22 is that Centra cannot be an effective or fair facilitator
23 if it continues to treat the retailers as competitors.

24 Now turning to Issue E, it deals with the
25 allocation of Centra costs to brokers. The retailers

1 have serious concerns about the cost sharing proposed by
2 Centra and the unilateral manner in which Hydro has
3 negotiated and imposed business changes.

4 And as described in Item 4(6) of the
5 submission, we will be recommending that the Board reject
6 Centra's proposal and allocate these costs across all
7 customers as the changes or charges will benefit all
8 customers.

9 Issue F deals with the implications of
10 proposed changes. And these will be sprinkled throughout
11 the submission I will be making this morning but the main
12 concern of the retailers is the significant and adverse
13 impact of allowing Centra to compete unfairly using its
14 monopoly assets and resources to shift risk and costs to
15 customers in an attempt to undercut competitive market
16 prices.

17 The nature and extent of natural gas
18 competition Issue G is addressed in Item 3 of the
19 submission. The retailers believe that although the
20 direct purchase market here is currently workably
21 functional, serving over 20 percent of Manitoba's natural
22 gas customers, the market could be more competitive with
23 Manitoba Hydro's cooperation. There is simply no
24 evidence of the market failure that is hypothesized by
25 some of the witnesses you heard from.

1 The terms and conditions of fixed-price
2 contracts is Item H and these were not discussed broadly
3 during the proceeding and unless the Board has any
4 concerns, the retailers do not see a change -- or see a
5 need to change what appears to be working effectively.

6 Now, in Item 4(5) of the submission we
7 will be requesting two (2) changes related to contracts
8 in order to enhance competition, namely the elimination
9 of the requirement to file all contracts with the Utility
10 and the reinstatement of contract -- contract renewals.

11 The -- the practices in marketing model of
12 retailers is Item I, and specifically door-to-door sales
13 were hypothetically criticized by some of the witnesses
14 who appeared before this Board. And we will be
15 contending there's simply no firm evidence to support
16 this hypothesis.

17 In Section 6 of our submission we will
18 confirm that most direct purchases customers based on the
19 evidence that this Board heard from were signed up
20 through door-to-door sales and are very satisfied. Any
21 problems with marketing practices can be dealt with quite
22 appropriately through the existing channels.

23 Now, apart from changes that are required
24 to expand sales channels and make the prevailing market
25 rules less restrictive which I will list in my submission

1 under Item 4(5), the retailers do not see the need for
2 significant changes to rules and practises governing
3 supply change transactions; that's Issue J, and the code
4 of conduct for gas brokers which is Issue K.

5 Accordingly, the retailers are
6 recommending that any concerns the parties have in this
7 regard be dealt with in the technical conference that the
8 retailers will be proposing in the course of this
9 submission that I'll make this morning.

10 The issues on this list, Mr. Chair, are
11 all important but two (2) stand out at the heart -- as
12 being at the heart of the pivotal question that this
13 Board must answer in its decision in this proceeding and
14 that is: Should Centra be allowed to offer fixed price
15 supply options in competition with retailers or should
16 Centra be directed to improve its operating and supply
17 arrangements to facilitate competition?

18 The retailers' position is that by
19 allowing Centra to compete in the fixed-price market the
20 Board would be risking the gas market being reduced to a
21 single regulated supplier. And if this Board as other
22 energy regulators in this country are is interested in
23 encouraging the further development of a competitive gas
24 market in Manitoba and fostering customer choice, the
25 retailers respectfully recommend that this Board should

1 take the same approach it did in 1998, which was to
2 recognize that while there were imperfections in the
3 market, these could be addressed through remediation
4 rather than through drastic structural change.

5 I will now start the substantive
6 submission starting with Item 1 on the outline, the
7 history of efforts to promote competition in the natural
8 gas market in Manitoba.

9 As I believe I said on the first day of
10 the Hearing, Mr. Chair, this Hearing represents the next
11 step in the efforts of this Board, to the extent
12 possible, to promote and ensure competition in the
13 natural gas market in Manitoba.

14 And you heard Ms. Murphy yesterday suggest
15 that the absence of a specific statutory provision in the
16 PUB Act is of some significance. And I say that hasn't
17 appeared in the history of this Board's deliberations on
18 the competitive market, to have been a fact that the
19 Board appears to appreciate quite appropriately, I
20 submit, that the existence and fostering of a competitive
21 market is of concern to the Board and something that the
22 Board should be concerning itself with in its decisions.

23 The issues in this proceeding, as I said
24 earlier, while important to the retailers in the context
25 of their commercial operations, are crucially important

1 to consumers. And this is the perspective from which we
2 will endeavour to offer our submissions this morning.

3 The place to start -- the logical place to
4 start in considering the approach that this Board should
5 take to competition in this marketplace, in my respectful
6 submission, is the Board's previous order, Order 15/98.

7 The premise of 15/98 was that competition
8 in this market would produce benefits for consumers
9 including those who chose not to avail themselves on the
10 competitive offerings that were available. That was
11 expressly confirmed by the Board in its decision, and
12 I've excerpted the relevant portion of the decision at
13 Tab 1 of the compendium.

14 The -- the Board expressly recognized, in
15 its order, that the development and maintenance of a
16 competitive market would be impaired by Centra being
17 permitted a variety of product offerings. And it's
18 important for us to reflect on the policy rationale for
19 the restriction that was imposed at that time. And that
20 was the specific reason that Centra was restricted to one
21 (1) variable rate offering.

22 And again, that is contained at page 67 of
23 the decision which is also a part of the excerpt at Tab 1
24 of the compendium. The Board heard evidence in this
25 proceeding from a regulatory economist, Dr. Cyrenne, to

1 the effect that Order 15/98 was a reasonable and very
2 appropriate balancing of the interests at stake.

3 And the excerpt of Professor Cyrenne's
4 evidence is at Tab 2 of the compendium and it starts at
5 line 7. This is page 2545 of the transcript. He says:

6 "I think the Board got it right last
7 time."

8 He's referring to 15/98, Mr. Chair. He
9 says:

10 "I think it was an effective balancing
11 of the benefits of regulation and the
12 benefits of competition."

13 And then he goes on to say:

14 "Given that you had the situation where
15 you have a large dominant firm, Centra,
16 being aware that it had a role as
17 default supplier, it seems to me that
18 restricting them to the short term
19 market was appropriate, but also then
20 allowing competitors in the market
21 which expanded the choice."

22 The evidence also establishes that the
23 approach of the PUB in Order 15/98 was consistent with
24 the approaches taken by regulators in other Canadian
25 jurisdictions. And I've excerpted at Tab 3, the portions

1 of the pre-filed evidence that make reference to those
2 decisions, and I'm not going to take you specifically to
3 those this morning.

4 Now there was a suggestion made throughout
5 the proceeding and, indeed, into yesterday, the closing
6 submissions, that this province is sufficiently
7 differently or features about this market are
8 sufficiently different to justify a different approach.

9 And that is a proposition that we have to,
10 in my respectful submission, examine very critically.
11 And the best way to do it is to look at the evidence. I
12 think Mr. Newcombe gave a very insightful analysis about
13 that argument which is of some assistance and should be
14 of some assistance to the Board. That is contained at
15 Tab 4 of the compendium, and it starts at page 1947, line
16 15. And he says -- he starts at line 15 and says:

17 "You know, all of these markets --
18 these jurisdictions, I should say, are
19 at different stages in this transition
20 or evolution and they're all moving at
21 different speeds."

22 And then he goes on to say:

23 "In all of these jurisdictions, though,
24 there are a number of commonalities and
25 some jurisdictions have all the

1 commonalities; I would say all of them
2 have some. Every jurisdiction believes
3 they're unique. I think I heard there
4 was an exchange this morning about the
5 uniqueness of the Manitoba market."

6 Over the next page he says:

7 "Every jurisdiction believes that it
8 has a unique size, unique weather
9 patterns, customer mix, geography,
10 pipeline access, whatever there is."

11 Then he says:

12 "One (1) thing that's interesting is, I
13 believe, that this uniqueness makes
14 them all common or certainly the
15 uniqueness is common to all of them."

16 Then:

17 "Most of the markets in the initial
18 phases at least have faced resistance
19 from incumbent utilities."

20 And we certainly see that here and
21 certainly in Alberta -- in Alberta when I was at the
22 incumbent utility, we were as guilty of it as anyone.
23 And we were actually pretty darned good at it if you look
24 at the fact that their competition was allowed since
25 1995, but it didn't really happen until the rules got

1 changed in 2003. And that eight (8) year interval that
2 he makes reference to, I think, is significant and I'll
3 come back to that later.

4 Then he finishes. He says:

5 "I mean, letting go for utilities and
6 for regulators both is difficult and
7 it's uncomfortable. You typically --
8 utilities don't typically embrace
9 competition. I mean, they spend their
10 lives working in an insulated,
11 regulated environment."

12 And quite simply, the retailers say that
13 there was no evidence presented to the Board, in the
14 course of this hearing, to warrant diverging from the
15 accepted regulatory approaches of preventing the
16 regulated Utility from competing with other market
17 participants.

18 The other parties in this proceeding,
19 notably Centra, are effectively asking this Board to
20 ignore the regulatory approaches and decisions from other
21 jurisdictions, and the retailers say that doing so would
22 do a great disservice to Manitoba and its consumers.

23 Turning to Item 2, the diagnosis of market
24 failure. Now, one (1) of the experts called by CAC/MSOS,
25 Mr. Stauff, has stated that the competitive market in

1 Manitoba for natural gas is not functioning appropriately
2 and that dramatic -- a dramatic change in approach is
3 required by the Board. However, both of the factors that
4 were ostensibly relied upon by Mr. Stauff for this
5 proposition, firstly, excessive broker margins, and
6 secondly, the door-to-door sales model, are highly
7 debatable and simply are not capable of proof on the
8 evidence that is before this Board.

9 Let me start with Mr. Stauff's hypothesis
10 about excessive broker margins. And there are three (3)
11 points that I want to make on this and these are outlined
12 or, at least, listed on the outline.

13 The first point I'd say is that the so-
14 called analysis is flawed and of limited use. In his
15 pre-filed evidence Mr. Stauff stated:

16 "It appears that the gross margin that
17 is imbedded in current broker prices is
18 higher than one might expect simply on
19 the basis of cost differences."

20 And that's at Tab 5 of the compendium.
21 I'm not going to take you to it but the reference is
22 there, Mr. Chair.

23 In cross-examination, however, he softened
24 his view on this. In response to Board counsel, rather
25 than stating definitively as he had in his pre-filed

1 evidence that broker margins are excessive, he simply
2 stated, quote:

3 "There is some reason to be concerned
4 about that."

5 That's at Tab 6 of the compendium.

6 In further cross-examination, Mr. Stauff
7 acknowledged that, to the extent he relies upon a
8 comparison of the Centra price to the price being charged
9 by retailers for his conclusion about excessive margins,
10 this is simply not a correct analysis. And I urge you to
11 look carefully at the exchange that is at Tab 7 of the
12 compendium.

13 Now, he -- he further acknowledged that
14 his, quote/unquote, "analysis" on broker margins was
15 effectively a back-of-the-envelope calculation. And
16 that's in the transcript. I'd ask you to note it. It's
17 not in the outline, I don't believe. It's page 411 of
18 the transcript, lines 6 to 23.

19 And he also acknowledged that his analysis
20 would be further limited if it was demonstrated that
21 there were categories of costs the brokers incur in
22 providing their products that have not been accounted
23 for, or that if the costs he had accounted for had been
24 understated. And that exchange, Mr. Chair, is at Tab 8
25 of the compendium.

1 Now, I say that the most obvious flaw in
2 that analysis is the assumption that Mr. Stauff made
3 about customer acquisition costs, which was quite
4 incredibly actually, based on his experience some ten
5 (10) years hence in another market.

6 And he assumed, based on that experience,
7 a customer acquisition cost of fifty (\$50) dollars. And
8 even Centra acknowledged that the costs are substantially
9 higher than that. Centra, I believe, accepted that the
10 costs would be in the range of a hundred and eighty
11 dollars (\$180) per customer, based on the information in
12 the Energy Savings financial filing.

13 And in fact, it was the evidence of the
14 retailers panel that the costs, at least in Manitoba, are
15 even higher than this. And in fact, Mr. Roeder
16 specifically stated, that Direct Energy's cost to acquire
17 is 75 percent higher in Manitoba than in other
18 jurisdictions. And again, I've excerpted that evidence
19 at Tab 10 of the compendium.

20 The -- the bottom line, I say, is we can
21 put no meaningful reliance on Mr. Stauff's so-called
22 analysis of -- of excessive broker margins.

23 Now, I should pause to comment on Mr.
24 Holloway's submission yesterday about the so-called
25 concession he believes he extracted in cross-examination;

1 that there's a risk premium embedded in the price that
2 brokers charge. I'm not sure why he thinks that's a
3 concession, given that they said it in examination-in-
4 chief.

5 But in -- in any event, it is true, that
6 there is a risk premium embedded in the price. But, the
7 point is that depending on market conditions, that risk
8 premium may be insufficient. And if it is insufficient -
9 - because it has to be determined prospectively, and if
10 it is insufficient, the retailers, or more appropriately
11 their shareholders, are exposed to that risk. That is
12 the point.

13 Now, carrying on to the second point about
14 Mr. Stauff's analysis. His hypothesis is contrary to
15 economic theory. Even Dr. Van Audenrode, albeit
16 grudgingly, acknowledged that it is possible that you
17 would expect to see a flood of new entrants to the market
18 if, as Mr. Stauff had hypothesized, the margins being
19 earned by retailers are inappropriately high.

20 Now, Dr. Cyrenne also testified to this
21 effect when he discussed the efficient market hypothesis.
22 He was specifically asked, by Board Counsel, if he could
23 tell the Board if the current market for natural gas in
24 Manitoba was an efficient market. And he stated that if
25 there were lots of competitors lining up to jump into the

1 market, this would tell you that there were lots of
2 profits to be made, which would, in turn, mean that the
3 existing price structure is less than perfectly
4 competitive.

5 He then noted that there is, in fact, not
6 an expanding number of firms entering the market which
7 supports the conclusion that the profits being earned by
8 present market participants are not excessive. And that
9 portion of Dr. Cyrenne's evidence in cross-examination
10 from Board Counsel is contained at Tab 12 of the
11 compendium.

12 Now the third point about Mr. Stauff's
13 analysis or hypothesis is that there is some evidence in
14 the record about broker margins. Now, the retailers, for
15 reasons that I submit are quite understandable given
16 their commercial interests and the degree of competition
17 between them, were reluctant to tender any detailed
18 financial information about their margins or earnings.
19 But they have stated consistently -- or excuse me, they
20 have stated that they are not consistently profitable in
21 this market, and I would ask you to note the evidence
22 that is at Tab 13 of the compendium.

23 Now the chart that was filed by the
24 retailers, actually filed by Direct Energy, I suppose,
25 but marked as DEML/ESMLP Exhibit 21, supports the

1 contention that any margins that had been earned by
2 retailers in this market had been modest at best, and I
3 would ask you to turn up Tab 14 of the compendium.

4 And so what we see here, if you look, Mr.
5 Chair, at the figures for the year 2004, we see that the
6 -- the cost of the gas being incurred by Direct Energy is
7 six dollars and seventy-five (\$6.75) cents per GJ. And
8 if my math is correct, and I can assure you, it's been
9 verified by an independent source this time, then we
10 would see that would translate to twenty-five point three
11 (25.3) cents per cubic metre.

12 And we can see then, if you turn over the
13 tab to Tab 15, Mr. Chair, we can see that for this same
14 period, 2004 -- and I'm referring to the column at the
15 bottom, or at least the line at the bottom of the column,
16 February 1, 2004 -- we can see that contracts were being
17 sold commencing February 1, 2004 for a price of twenty-
18 six point three (26.3) cents per cubic metre.

19 So based on those figures, the retailers
20 would be earning a gross margin of 3.8 percent, which
21 would include their marketing costs, their cost to
22 acquire and the risk premium that everyone seems to
23 acknowledge they're entitled to.

24 On that basis, I submit, we can see that
25 Mr. Stauff's premise, apart from being speculative, is

1 just plain wrong. Now, we must also take into account or
2 remember that based on Centra Exhibit 12, almost 50
3 percent of customers in Manitoba who have completed
4 contracts with retailers have spent less on primary gas
5 over the life of their contract than if they had stayed
6 on system supply.

7 And that is the chart that is at Exhibit -
8 - or excuse me, Tab 16 of the Compendium. I believe it's
9 also in My Friend's materials.

10 And this is further evidence of Mr.
11 Stauff's premise being incorrect and is also clear
12 evidence of some of the benefits that are being produced
13 in this market by competition.

14 The other factor that Mr. Stauff
15 apparently relies upon for his conclusion that the market
16 is not functioning appropriately is the use of the door-
17 to-door sales model. And it is frankly not at all clear
18 how or why he could point to this as evidence of market
19 dysfunction.

20 He appears to be suggesting that if the
21 market was working appropriately, retailers would be
22 using other channels other than the door-to-door sales
23 channel. But this misses, of course, the obvious point
24 that as the market rules presently stand it is not
25 possible or feasible for the retailers to do so.

1 So as such, the concerns that Mr. Stauff
2 states about the door-to-door sales model are leaving
3 aside the fact that he has no particular expertise which
4 would permit or entitle him to express an informed
5 opinion on the subject. In any event, it's not evidence
6 of market failure.

7 Now similarly, Centra's reasons for
8 concluding that the market is not functioning and that a
9 dramatic change in approach is required are unconvincing.
10 And you will recall that I cross-examined the Centra
11 panel at some length about Centra's diagnosis of market
12 function, and the factors primarily relied upon were the
13 small market size, the limited degree of market
14 penetration and limited product offerings.

15 The hypothesis about market size being an
16 impediment to the retail natural gas market in Manitoba
17 ever becoming more robust is disproven by the experience
18 in the large commercial market in this province, where
19 this is a far more limited volume of customers. But not
20 withstanding that smaller volume, there are seven
21 retailers or participants in that market.

22 Now, Centra has attempted in its argument,
23 somewhat unconvincingly in my submission, to offer an
24 explanation. And I say that if the market size was
25 really the problem, all of those features of the

1 commercial market wouldn't make any difference; the size
2 of the market would still be such that there could not be
3 viable competition.

4 So even accepting that there are some
5 differences in the features of the market, the fact that
6 the large commercial market can function appropriately, I
7 think convincingly debunks the theory about market size.

8 Now Professor Cyrenne also spoke about
9 market size, and he said, and I quote, he said:

10 "No one's put forth any convincing
11 arguments regarding the fact that the
12 size of the market's the problem."

13 And that reference, just for the record,
14 is page 2541 in the transcript, lines 13 to 15.

15 There is also no basis for saying that the
16 broker penetration rate of approximately 21 percent is
17 evidence of market dysfunction. Now, while this figure
18 may be somewhat lower than in other jurisdictions, the
19 evidence establishes that this is approximately the same
20 degree of market penetration as brokers in Alberta.

21 Now furthermore, the retailers contend
22 that if the administrative marketing and operational
23 barriers were removed and Centra was directed to
24 cooperate with the retailers rather than compete against
25 them, the penetration rate would likely increase to a

1 level resembling that of other markets of similar
2 maturity. As such, this market penetration rate, in and
3 of itself, is not and cannot be evidence of irretrievable
4 failure of the market.

5 And I think Ms. Murphy, I'm sure
6 unintentionally, took some liberties when she quoted Mr.
7 Roeder's evidence yesterday. Yes, it is true that he did
8 say that he considered 40 percent a successful market,
9 but I don't believe he was asked, and he certainly didn't
10 say that the corollary was that anything less than 40
11 percent was an unsuccessful or dysfunctional market.

12 There are certainly degrees of success.
13 And 20 percent, as I've already said, represents a
14 workably functional market. Could it be better? Yes, it
15 could.

16 Now, Centra's panel also, in its
17 discussion about its diagnosis of market failure, talked
18 about another indicator of how well the market functioned
19 being the range of product offerings.

20 The -- the panel also acknowledged that
21 the range of product offerings in Manitoba is certainly
22 broader today than it was in 2000. And I -- I just pause
23 to remind the Board that that really, when we're talking
24 about how the competitive market has functioned, that is
25 the period we have to be looking at, is April 2000 when

1 the WTS came on, to today. And so it is that period of
2 just over seven (7) years that we should be examining and
3 so when we talk about the degree of progress, we should
4 be considering that period of time.

5 The retailers acknowledged that there
6 have, in fact, been recent new offerings in the market in
7 the last twelve (12) months. And similarly, if the
8 restrictions on marketing channels and the supply
9 flexibility were removed, then the consumers in Manitoba
10 would have access to a wider range of products from a
11 larger group of competitors. And this is, in my
12 respectful submission, a crucial point.

13 And I'm going to ask the Board to turn up
14 the compendium at Tab 17. And I've got a couple of
15 transcript excerpts here but what I'd ask you to do is go
16 to the second batch, just behind the yellow paper, and
17 it's page 1925.

18 And the -- the context -- I'm going to
19 start at the bottom of the page, but the context of this
20 question was the previous statement by Direct Energy
21 witnesses that Direct Energy offers a one (1) year
22 product in every other Canadian market in which it
23 participates.

24 So starting at line 22 the question is:

25 "If there was a change in the market

1 rules, would a one (1) year product be
2 something Direct Energy would
3 investigate and launch in this market?"

4 So Ms. Melnychuk then starts, she says:

5 "As I mentioned earlier [over the page
6 she said] we look at it every time
7 we're setting our new products for the
8 next month or the next quarter."

9 Then she says that:

10 "Mr. Roeder has the final say and I'll
11 defer to him but if those market
12 barriers are removed, we will offer a
13 fixed-price contract, subject to Mr.
14 Roeder."

15 So then I go to Mr. Roeder, starting at

16 line 17:

17 "So let me just put the onus on you
18 then. Are you saying that if there's a
19 change in the market rules, Direct
20 Energy will launch a one (1) year
21 product in this market?"

22 His answer starts at line 21. He says:

23 "The only hesitation I have in all
24 that, in that question, is we've gone
25 through a number of market rules that

1 [I think it should say "are
2 prohibitive"] that add cost to the
3 structure.

4 And what we're talking about is
5 offering a product of one (1) year
6 where you have twelve (12) months to
7 recover the cost. In addition to that,
8 currently, if you take the market rules
9 where we potentially are going to have
10 to wait three (3) months for a customer
11 to come onflow. So if the question
12 being asked is: If there was a change
13 in all of the market rules that we've
14 referenced, then would we be offering a
15 one (1) year product today? The answer
16 is yes."

17 And in light of that evidence, I say it is
18 simply incredible, and I use that word in the sense of
19 being incapable of belief, that Ms. Murphy would describe
20 the changes that the retailers are seeking as "tweaks"
21 that would perpetuate the status quo and not lead to any
22 meaningful change in the market.

23 You could not have clearer evidence before
24 you of what specific changes and increased product
25 offerings will be made available to you, if the changes

1 in the rules being advocated by the retailers are made.
2 We don't need to speculate it -- about -- it's there in
3 black and white.

4 Now, yet another factor that Centra has
5 relied upon, in support of its diagnosis of market
6 failure, is some of the economic tests; the four (4) firm
7 concentration tests which I'm not going to spend much
8 time on, given what Professor Cyrenne said about it; but
9 also the HHI.

10 And the -- the irony really of the
11 solution that Ms. Murphy seeks on behalf of her client,
12 that is for Centra to be permitted to enter the fixed
13 price market -- and really what we're talking about is
14 she's seeking an expanded role for the already dominant
15 player in the market -- the irony is that that will only
16 make the problem worse. So if we have a high HHI as a
17 result of the market share of almost 80 percent that
18 Centra has, that problem is only going to get worse.

19 That market is only going to get more
20 concentrated if Centra is permitted to expand its product
21 offerings. The way to decrease the concent --
22 concentration is to have new market entrants. And if for
23 some reason that proves to be impossible, then the second
24 best alternative would be for the existing market
25 participants to expand their market share. That clearly

1 is not going to happen if Centra is permitted to expand
2 its product offerings.

3 I turn now to Item 3 on my outline which
4 is the retailers' assessment of the market. The
5 retailers are of the view that benefits in retail natural
6 gas -- or in the retail natural gas market in Manitoba
7 are currently being produced, realized and perceived by
8 customers.

9 Approximately 21 percent of Manitoba's
10 natural gas consumers are currently availing themselves
11 of products that are made available by the competitive
12 sector. Furthermore, the findings from the Customer
13 Research Report confirm that 65 percent of residential
14 hydro customers who have by definition not currently
15 availed themselves of the choices availed -- sorry,
16 offered by competitors, still perceive there to be
17 advantages or benefits from competition.

18 Now, I was a little surprised I must
19 confess, by the indifference of CAC/MSOS to the existence
20 of competition in this market as reflected by some of the
21 comments their counsel made yesterday. And I would point
22 out that the indifference is particularly surprising,
23 given that it's contrary to the market research showing
24 that consumers do in fact perceive there to be a benefit
25 from competition.

1 evidence that Manitoba Hydro has had some involvement in
2 the Chicago climate exchange, and you might ask yourself
3 why those products had not been available by Manitoba
4 Hydro. Why was it that it was the competitive sector
5 that had to bring these to the market?

6 And also I think we have to be careful
7 when we talk about benefits of competition, because as
8 I've already said, yes, it is true that almost 50 percent
9 of consumers who have an expired contract have paid less
10 for their primary gas than would have been the case
11 otherwise. But that figure's less important than the
12 figure of 100 percent, because that is the proportion of
13 customers who have been able to avail themselves of a
14 product not otherwise available in the market that gives
15 them security and peace of mind.

16 And so that is the benefit. Cost savings
17 are secondary but the primary benefit is that customers
18 who feel they want protection from volatility, any degree
19 of volatility and rates, can obtain it in the
20 marketplace.

21 Now, as I said earlier this morning, the
22 retailers believe that while the natural gas market in
23 Manitoba is a functioning competitive market, they also
24 believe that it is functioning suboptimally such that
25 changes to the market rules and conditions are required

1 in order to maximize the benefits that are being produced
2 for Manitoba consumers.

3 And to the extent that the market is
4 functioning suboptimally and, particularly, to the extent
5 that there are fewer market participants than might be
6 desirable, the evidence establishes clearly that the
7 retailers are not to blame for this. And I say this only
8 because you might think otherwise listening to some of
9 the submissions in this room.

10 The -- the retailers contend that the
11 market rules and, what I might describe as the utility-
12 centric dynamic in this province, are responsible for the
13 underdevelopment of the competitive market.

14 And this contention is substantiated by
15 the evidence of Professor Cyrenne. And you will recall
16 that he said in effect, When you deregulate a little, you
17 get a little competition, and when you deregulate a lot,
18 you get a lot of competition.

19 And that just for the record is at page 24
20 -- or excuse me, 2545 of the transcript, and it's
21 included in the batch of transcript references from
22 Professor Cyrenne that's at Tab 2 of the compendium.

23 It is also important to consider Professor
24 Cyrenne's evidence that as a matter of economic theory
25 and as a matter of empirical study in economics, there's

1 the compendium for the exchange. I've excerpted -- I've
2 excerpted several pages of the transcript, but I'd ask
3 you to turn to page 359 which is the third page in.

4 And starting at line 15, I ask the
5 question, I say:

6 "And my point is simply that even
7 though you knew about the small size of
8 the market and even though you knew
9 about some of those features, you still
10 thought it was reasonable to expect
11 that there would be more participants
12 attracted to this marketplace?"

13 His answer:

14 "Sure. Given the facts that I had at
15 the time, sure it was reasonable.

16 Q: And you said as well that your
17 expectation at that time was..."

18 And then over the page to 360:

19 "...was that competition would lead to
20 a squeezing out of the Utility sales
21 service, isn't that right?

22 A: Potentially, yes. Yes.

23 Q: And that, to your knowledge,
24 hasn't happened in any jurisdiction in
25 Canada, has it?

1 A: No it hasn't.

2 Q: Right. So in fairness, not being
3 critical, that perhaps may not have
4 been a realistic expectation. Is that
5 fair?

6 A: I think that's fair. Certainly,
7 in retrospect, it was completely wrong.

8 Q: Right. And my point simply, Mr.
9 Stauff, is we can't conclude [and this
10 is the critical point] we can't
11 conclude from the failure of that to
12 happen that this market is not
13 functioning appropriately.

14 Fair enough, sure."

15 The retailers submit that, it is therefore
16 premature to conclude that, the promise of a more robust
17 competitive market cannot be achieved in Manitoba. And
18 again, keep in mind that the period we're assessing is
19 from April 2000 to the present.

20 And the retailers state that the
21 explanation for the fact that the competitive market is
22 not developed as fully or has not developed as fully as
23 desired, lies more in factors that are capable of change
24 than in structural factors that are immutable or
25 unchangeable.

1 If Manitoba Hydro was required to
2 facilitate competition and was prohibited -- Centra was
3 prohibited from offering fixed-price products in
4 competition with the retailers, market change could be
5 accomplished and will be accomplished, and specifically
6 there will be a transition to a more competitive market
7 without forcing more costs on consumers.

8 That then takes me to the rhetorical
9 question that I've asked in Item 4, which is:

10 "What needs to happen to ensure the
11 further development of the competitive
12 market in Manitoba?"

13 And there are essentially six (6) changes
14 or initiatives that, if implemented in Manitoba, would
15 foreseeably expand and improve the retail market for
16 natural gas in Manitoba.

17 And I'm now going to go through them so
18 you may wish to turn up the outline just so you can
19 follow me as I go along. We are now on page 3, under
20 Item 4(1).

21 And the first thing that we say needs to
22 happen is that Centra needs to stop seeing itself as a
23 competitor of the retailers.

24 In cross-examination, the Centra Panel
25 acknowledged the unusual dynamic whereby participants in

1 the competitive market, such as Direct Energy and Energy
2 Savings, are dependent on Cent -- Centra for many of the
3 essential elements of their business, but on the other
4 hand, the very party on whom they are dependent sees
5 itself as a direct competitor. And that exchange is
6 found in the compendium, Mr. Chair, at Tab 21.

7 There was also some evidence to establish
8 that the relationship between Centra as market
9 facilitator and the retailers as market participants is
10 not exactly a relationship of equals. You heard the
11 evidence from the Direct Energy/Energy Savings Panel
12 about their perception of Centra as secretive, non-
13 consultative, and dictatorial. You also, I submit,
14 sought concrete examples of that and perhaps the best
15 examples are, with respect to, the EPP adjustment problem
16 and the design in conduct of the market research. Let me
17 just comment briefly on each of those.

18 As far as the EPP adjustment issue is
19 concerned, you heard Mr. Kuczek acknowledge that it had
20 arisen as a result of a failure by Centra to follow its
21 procedures, a failure to do what it was supposed to do.
22 And that acknowledgement is found in the transcript at
23 page 1560 and we've excerpted it for you at Tab 22 of the
24 compendium.

25 We also heard that retailer customers

1 were, as you would expect having regard to the nature of
2 the problem and how it arose, were disproportionately
3 affected. And I would ask you to turn up Tab 22 of the
4 compendium -- excuse me, Tab 23, and this is the
5 Undertaking response that, I believe, was filed as Centra
6 Exhibit 33, if I'm not mistaken.

7 And here there's a confirmation that of
8 the ten thousand five hundred (10,500) gas customers
9 affected by high EPP variances, just shy of five thousand
10 (5,000) are broker customers.

11 By my mathematics, I haven't checked this
12 with anyone but I'm comfortable with this calculation; it
13 was 46.6 percent. So that is more than double the market
14 share or proportion of customers being served by
15 retailers.

16 So it confirms that this is a problem that
17 disproportionately affected the customers of retailers.
18 Now, despite that and despite the fact that the retailers
19 had been seeking an explanation from Centra at least
20 since August 27th, 2007, when Ms. Yarmie of Direct Energy
21 sent her email and that is in the record or, at least, in
22 the compendium at Tab 24.

23 The first time that the retailers got any
24 explanation and, specifically the first time that they
25 received an acknowledgement that this problem had arisen

1 as a result of Centra's failure to follow its established
2 processes, was when it heard Mr. Kuczek's evidence in
3 this proceeding.

4 And we say it is simply unacceptable that
5 the retailers should be in the position of being
6 dependent upon Centra to this extent, and being
7 vulnerable in a reputational sense if Centra commits an
8 error of this nature, but to have such a limited ability
9 to obtain a meaningful response from Centra to its
10 inquiries.

11 The second example I gave was the so-
12 called consultations around the design and conduct of the
13 customer research. And this also demonstrates the
14 dismissive and non-facilitative approach that Centra
15 takes to the retailers and their customers.

16 And although the Board's Order in -- in,
17 sorry, 175/06 contemplated specifically that there would
18 be consultation with the retailers about the customer
19 research, Centra's efforts at consultation were, I
20 submit, nothing more than a charade. And I thank Mr.
21 Czarnecki for furnishing the dictionary definition of the
22 word "consult" because the essential element, if you look
23 at it, is the notion that you take into account the input
24 you get. It doesn't mean you just listen. You take into
25 account. And there is no evidence at all that Centra

1 consulted in the meaning that's contemplated by that
2 dictionary definition.

3 The Board heard that there were six (6)
4 drafts of the customer survey and that the only draft
5 that the retailers saw was draft 3. The Board also heard
6 that not only were there significant deletions and
7 additions to the survey in the subsequent three (3)
8 drafts, which obviously the retailers had no
9 opportunity to comment on, even the most seemingly benign
10 or innocuous suggestion by retailers about changes that
11 should be made to the survey were not accepted.

12 And you'll recall that Ms. Ruzycki sent
13 back her markup of the survey and she suggested changing
14 the formulation of one (1) question from a statement in
15 the negative to a statement in the positive.

16 And turn up Tab 25 of the compendium and
17 you'll see second page in -- this is the page of the
18 draft survey to which I refer, and it's the question now
19 which is numbered 43 and it previously was formulated:

20 "I felt pressured to sign up by the
21 natural gas marketer's sales
22 representative."

23 And we heard from the expert about how the
24 way the question is asked can influence the answer. And
25 you'll note that this is the only question in this

1 sequence that is phrased in the negative, and it's
2 clearly planting an idea or negative proposition in the
3 mind of the respondent.

4 So Ms. Ruzycki suggested, Well, why don't
5 you turn it around so it's consistent with the other
6 questions and ask it in the positive so it reads: I did
7 not feel pressured to sign up by the negative -- by the
8 natural gas marketer's sales representative?

9 Now, when I questioned Mr. Enns, Centra's
10 consultant, about this he -- he simply had no credible
11 reason for not accepting the suggested change. And
12 there's a rather tedious exchange in the transcript which
13 I've excerpted at Tab 26.

14 But the bottom line is, he essentially
15 said he didn't accept Ms. Ruzyki's change, even though
16 there was nothing objectionable about it, simply because
17 he didn't think there was anything wrong with the way he
18 framed the question.

19 Now, that was obviously not the same
20 standard he applied when he was considering suggestions
21 that were made to him about the survey designed by
22 Centra. We know from the evidence that Mr. Enns included
23 in one of the earlier drafts of the survey several
24 questions that were designed specifically to address the
25 Board's directive in Order 175/06, and that was the

1 directive about ascertaining customer preferences for
2 competition.

3 We also know that when Centra personnel
4 decreed that these be sliced out of the survey, Mr. Enns
5 simply acquiesced. And I've excerpted the relevant
6 portions of the evidence at Tab 15; that is the email
7 with the draft questions and it shows what those
8 questions were, Mr. Chair. And perhaps -- or, excuse me --
9 - I'm sorry, Tab 27 of the compendium.

10 And it's, perhaps, worth just looking at
11 those questions. You'll see on the last page of this tab
12 -- these are the questions that got deleted by Centra's
13 Mr. Meder -- and look at the last question, and ask
14 yourself if this wouldn't have been helpful information
15 to have in this proceeding?

16 "Currently there are two (2) companies
17 other than Manitoba Hydro that supply
18 residential customers with natural gas.
19 Do you feel this is enough competition
20 or do you feel there should be more
21 competition?"

22 Might have been nice to know the answer to
23 that question, but Centra, for its own reasons, decided
24 to take that out. And when it decided to do it, Mr.
25 Enns, even though he was concerned that this question

1 might be necessary to address the Board's directive, of
2 which he was aware, acquiesced; he went along with them.

3 Now this is, perhaps, an appropriate time
4 for me to just take a quick detour and talk about the
5 customer research. And I want to make the position of
6 the retailers very clear about this. The process was
7 highly flawed and we say, deliberately, manipulated by
8 Centra, who then tried to present the Customer Research
9 Report as the work of an independent third party.

10 But quite apart from the process concerns,
11 I can say this about the content:

12 The first thing is that despite the flawed
13 process, there are some parts that are probably valid.
14 And the questions about the benefits of competition, we
15 can't take any issue with the way that that question was
16 asked, or those questions were asked early on in the
17 survey. We still think there are other questions that
18 should have been asked, the questions that Mr. Enns was
19 proposing to ask, but as far as the questions that were
20 asked, we believe that the questions and the answers are
21 appropriate and probably do reflect the views of
22 Manitobans.

23 The second thing I would say is with
24 respect to the questions that deal with retailers. These
25 questions reflect an obvious bias, an anti-broker bias.

1 And they embed, as I pointed out in the previous
2 question, embed negative assumptions and statements about
3 the practices and motives of retailers.

4 And while these questions -- the
5 interesting thing is that while these questions, and
6 particularly the answers to the questions generally show
7 strong support for the retailers, our position is the
8 support would have been even stronger had the questions
9 been asked in a more neutral fashion, and specifically,
10 in the neutral fashion that was advocated both by Ms.
11 Gibbs of Direct Energy and Ms. Ruzycki of Energy Savings.

12 And then the third category are the
13 questions that touch on what customers purportedly want
14 Centra to do. So these touch on hedging and on the
15 offering of other products.

16 And these questions are -- and I don't
17 mean to sound disrespectful -- these questions are
18 laughably flawed. I think the average seventh grader
19 could tell you what is wrong with the formulation of
20 these questions.

21 The hedging questions, for example, we
22 established that the vast majority -- I think it was, in
23 the order of, 99 percent, knew nothing about hedging and
24 therefore had to be educated. This is nothing more than
25 a reading comprehension test. They were fed a

1 prepackaged script and then their answers simply tell you
2 how well they understood what they were told. And it's
3 clear if you look at the script.

4 Now, Mr. Czarnecki says, Well, it's fair
5 and it's reasonable, but we know that in the process of
6 so-called consultation, there were specific suggestions
7 made that the description of the hedging program needed
8 to be expanded to include reference to factors that
9 would, foreseeably, be relevant to respondents; such as,
10 for example, the fact that in any given year there can be
11 substantial additions or subtraction from gas costs.
12 That was a critical ingredient that was missing, and
13 foreseeably would have changed the results.

14 On customer preferences again, the
15 questions are of no value and the answers are of no
16 value, because if you look at the questions -- and I made
17 some reference to this in my cross-examination of Mr.
18 Enns -- but if you look at the questions, the average
19 respondent would think that Manitoba Hydro, gee shucks,
20 had just decided up to this point not to offer these
21 products, and would have no idea of the policy reasons
22 that the Board had specifically restricted Centra from
23 entering this market, and would have no appreciation of
24 the potential market impacts if that restriction was
25 lifted.

1 So when you ask questions, the blue -- or
2 at least when you ask the motherhood or blue sky
3 question: Do you think more choice is good, what do you
4 think consumers are going to say? And there wasn't even
5 any attempt to educate consumers in asking those
6 questions about the market dynamics and the policy
7 reasons that up to this point, Centra had not been
8 permitted into this market.

9 So I heard Mr. Czarnecki say yesterday
10 that this Board should draw an adverse inference from the
11 failure of the retailers to lead their own evidence in
12 customer research.

13 And I guess a couple of things I would say
14 about that. I'm not sure in a proceeding of this nature
15 -- and having regard to the fact that the rules of
16 evidence don't strictly apply in these proceedings that
17 you could as a matter-of-law draw an adverse inference.
18 But leaving that aside, just being practical about it,
19 you don't even get to the point of an adverse inference
20 given the utter lack of quality of the evidence that
21 Centra has put in the record.

22 In other words, there's nothing that needs
23 to be rebutted. And the suggestion that the retailers
24 ought to have done their own customer research, well,
25 think about that. How, or why I guess is a better

1 question, would the retailers have gone and done research
2 to determine what consumers want Manitoba Hydro to do?

3 We, I think quite appropriately, felt that
4 Manitoba Hydro would and could do that process or
5 undertake that process fairly and objectively. And we
6 are disappointed that they did not, but that certainly
7 explains the fact that we would not wade into the fray to
8 test their customers and what their customers want.

9 Now on -- on a third point Mr. Czarnecki
10 made about the advantage that the retailers have obtained
11 by having the SPSS data, Centra has not asked for it
12 back, and I can tell you right now that if they did, we
13 would be only too delighted to give it back. It was
14 necessary, given the errors on the face of the report and
15 calculating some of the tables, it was essential to have
16 that to double-check to make sure that the frequencies
17 and percentages were appropriate.

18 And we certainly have no desire to benefit
19 in anyway. We, frankly, don't believe we could benefit
20 from that data but we're happy to give it back if that's
21 what Centra would like.

22 On the focus group transcripts, I think I
23 understood Mr. Czarnecki to say that this had been a
24 fruitless exercise to have the transcripts. Well, I'm
25 going to have to leave it in the Board's judgment after

1 emphasize that Centra's role in the merchant function is
2 simply as a neutral default supplier, or supplier of last
3 resort, and that given that Centra -- excuse me, given
4 that Centra charges no markup or earns no profit on
5 primary gas molecules, it should be indifferent to the
6 proportion of the market that is served by the retailers.

7 And up to this point, one might conclude
8 from Centra's conduct, vis-a-vis the retailers, that is
9 jealously guarding its market share in primary gas. And
10 our respectful submission is that this Board should
11 direct Centra that this is an inappropriate approach
12 which unduly restricts market participants in the
13 competitive sector and ultimately the development of the
14 competitive market.

15 The second item on our list of steps or
16 initiatives that need to be taken is the elimination of
17 hedging. And this is an issue upon which the expert
18 economists agree; hedging activities by Centra are
19 inappropriate, they distort -- they distort the market
20 and should be discontinued.

21 Both Dr. Van Audenrode and Mr. Stauff
22 addressed hedging in their evidence and, essentially,
23 said that it was a risky financial activity and should be
24 left to the private sector. I believe Mr. Stauff also
25 pointed out that hedging by the Utility imposes on all

1 consumers what only some of them want, namely, the
2 management of volatility.

3 And I would just note for the record, Mr.
4 Chair, that the excerpts of evidence that support that
5 proposition are found at Tab 30 of the compendium.

6 Dr. Cyrenne expressed a similar view, and
7 that is found at Tab 31 of the compendium and I am going
8 to ask you to turn to that. At page 2535 of the
9 transcript, starting at line 21, he's asked:

10 What is your view about the
11 appropriateness of the regulated
12 utility hedging in connection with its
13 primary gas purchases?

14 A: Well, my view is really [sorry] My
15 view is really that I think risk
16 management strategies belong in the
17 private sector. The -- the usual
18 argument for hedging is to protect
19 against variable prices for the buyers.
20 What's interesting here is that both
21 the retailers and Centra are acting as
22 agents for the buyers and if you force
23 hedging, a universal hedging program,
24 on people, then you are asking people
25 to purchase contracts that are hedged

1 when they may not wish to do so.
2 The other thing is that if hedging
3 involves profits or loss, and there's
4 been some evidence of losses on hedging
5 activities, then the private sector
6 firms, their shareholders, will bear
7 the consequences of those losses,
8 whereas under a regulated environment
9 consumers, in general, will bear those
10 losses, even those consumers who may
11 not have wished the regulated firm
12 hedge in the first place."

13 On this basis, the retailers state that
14 Centra should be directed, in the Board's Order in this
15 proceeding, to discontinue its hedging program and to
16 offer a product that is based on a monthly price of a
17 commodity.

18 A monthly indexed price was supported, as
19 well, by CAC/MSOS witnesses as the most cost effective
20 long term supply option for low volume consumers who were
21 comfortable with a variable price option. The retailers
22 have noted that there are monthly pricing models used in
23 other jurisdictions which can be reviewed and analysed to
24 determine an appropriate Manitoba solution.

25 In her submission yesterday, Ms. Murphy

1 cautioned the Board against mandating a design that will
2 cause too much volatility and she characterizes it as a
3 matter of consumer protection. But that submission, in
4 my respectful view, ignores Centra's own market research
5 finding that volatility is not a significant concern for
6 many consumers.

7 The views of the CAC/MSOS witnesses and of
8 Dr. Cyrenne, on hedging, are consistent with the
9 regulatory approaches that have been taken in other
10 jurisdictions, and we cited some of these in our prefiled
11 evidence and I'm taking the liberty of excerpting those
12 at Tab 32 of the compendium.

13 But I want to comment on what Mr.
14 Czarnecki said yesterday. In purporting to describe the
15 Ontario regulatory approach, he -- he quoted the union
16 decision of the OEB. Now the union decision, to my
17 knowledge, is not in the record here but in any case, it
18 is not the most current state of play in Ontario.

19 The most current and recent pronouncement
20 by the OEB on hedging by utilities is the Enbridge
21 Decision and that was made an exhibit, that is DEML/ESMLP
22 Exhibit 8.

23 And I've excerpted it at Tab 33 of the
24 compendium, and I'd just quickly like to take the Board
25 to the relevant portions, because to the extent, as Mr.

1 Czarnecki appears to agree, that there's some relevance
2 in looking at the Ontario regulatory approach, we have to
3 look at the most current approach.

4 And if you look at page 45, starting on
5 page 45, the third full paragraph:

6 "The Board notes the Company's concern
7 that the value of risk management not
8 be confused with the impact of the
9 budget billing plan on the monthly
10 amounts payable by customers that
11 subscribe to the plan."

12 But the conclusion cannot be any other
13 than there is little if any value for customers on the
14 budget plan.

15 There's no offset to bill volatility for
16 these customers and we understand from the record that
17 approximately -- I believe the evidence was approximately
18 half of customers are on the EPP.

19 The Board then goes on and says:

20 "These customers make equal payments
21 for ten (10) months of the year and
22 they eventually pay the actual costs.
23 Adjustments prior to true-up may be
24 required from time to time but these
25 can also be because of factors other

1 than commodity price changes.
2 The existence [and this is the key] the
3 existence of a risk management program
4 is not really that relevant or of value
5 for those customers."

6 And then down at the bottom of the page,
7 the final paragraph after reviewing some of the recent
8 hedging results of the Utility, in the third last line
9 the Board then starts, and they say:

10 "Clearly in the most recent five (5)
11 years at least, the program was not an
12 effective enterprise. It came at a
13 high cost to the consumer."

14 And I pause to observe that in describing
15 the costs, what the Board was considering there was not
16 only the hard costs, the broker margins for example, and
17 not only the administrative costs, but they were also
18 including in the basket of costs, the additions to gas
19 costs.

20 And that is what was of concern to them in
21 this paragraph. And they say:

22 "It is possible that the losses may be
23 reversed in the future. It is however
24 questionable whether this is
25 necessarily a zero sum game."

1 And this is important because you'll
2 remember Centra's slavish line -- their mantra if you
3 will, is that, Oh well, you know, over time it's always
4 going to balance out and be about the same. The OEB is
5 expressly questioning that notion and they say to have a
6 zero sum result from the current position as a starting
7 point, gas prices going forward have to be assumed as
8 trending upward, not just gyrating around their current
9 level, and that there is no cost in engaging in hedging.

10 And then they go on in the next paragraph,
11 they say:

12 "Further losses or gains as a result of
13 the program do have intergenerational
14 impacts.

15 These impacts could be significant at
16 times. The \$110 million loss in 2006,
17 for example, is the cost that will need
18 to be recovered by customers who may
19 not have been customers during the time
20 the loss had occurred.

21 And although intergenerational impacts
22 cannot be avoided in every circumstance
23 [and I had some discussion with Mr.
24 Barnlund in the record about that] they
25 should be mitigated or avoided whenever

1 it is possible and reasonable to do
2 so."

3 And I say it is both reasonable and
4 possible to do so by eliminating the hedging program
5 which has no appreciable benefit to approximately 50
6 percent of the customers who are on the EPP.

7 The third item on our list of steps or
8 initiatives -- I'm now at item 4(iii) or 4(3) -- is to
9 continue the current restrictions on Centra's product
10 offerings.

11 And as I have already stated and as we
12 know, the Board imposed a restriction in Order 15/98 on
13 Centra's product offering, stating that it should be
14 confined to one (1) variable rate product.

15 And I will specifically address the
16 details of Centra's fixed price offering a bit later in
17 my submissions but I want to at this time just comment
18 briefly on the policy rationale behind the restriction
19 and the need for it to be continued.

20 It is interesting to note that even Mr.
21 Stauff who was of the view that the restriction on the
22 Utility's product offering should be lifted has described
23 this as a quote/unquote, "Second best alternative."

24 So in other words it appears to be the
25 view of Mr. Stauff that this is an option that should be

1 pursued only when it is clear that competitive forces are
2 unable to produce the results that customers desire.

3 And that reference, just so you have it,
4 is Tab 34 of the compendium. There is also ample
5 evidence I submit available from regulatory decisions in
6 other jurisdictions, establishing that permitting the
7 Utility to enter the competitive fray can have
8 significant detrimental effects on competition in the
9 marketplace.

10 And we say, for example, and certainly not
11 meaning to be exhaustive, that the approach taken by the
12 Ontario Energy Board in this regard is instructive, and
13 we have referenced this in our pre-filed evidence which
14 we've excerpted at Tab 35 of the compendium.

15 The fourth item that the retailers say --
16 or fourth step or initiative that the retailers are
17 asking for, is a technical conference dealing with
18 operational issues that impede the retailers'
19 participation in the market.

20 And let me give you a bit of context for
21 this suggestion, Mr. Chair. The Board heard evidence
22 about how, in the retailers' view, the approach Centra
23 takes to nominations and until very recently volumetric
24 requirements, among other issues, caused difficulties and
25 extra expense for them.

1 On volumetric requirements, although
2 Centra acknowledged in its evidence that it was
3 considering changes to these, it had not -- as of the
4 time that the evidence in this hearing concluded on
5 September 28th -- it had not made any specific
6 commitments about the timeframe in which and the terms on
7 which such changes were going to be made. And you may
8 recall the efforts that I expended with Mr. Stephens in
9 cross-examination to try to procure such a commitment.

10 All parties have now received notice from
11 the Board that will -- it will accept the proposal that
12 Centra made in its correspondence of October 10 to waive
13 the minium annual --- annual volume requirements for each
14 individual WTS agreement on a trial basis for the
15 2007/2008 gas year beginning November 1, 2007. And
16 Centra will, under this proposal, continue to require
17 that each broker maintain a minimum annual customer load
18 totalling 310,000 metres cubed per year for all of their
19 customers in aggregate.

20 Now, similarly, the retailers' witness
21 panel and particularly Ms. Ruzycki, gave detailed
22 evidence about the retailers' concern about Centra's
23 nominations procedure and the extent to which it imposes
24 an unreasonable burden and cost on the retailers. And
25 there was some quantification of that as you will

1 require, Mr. Chair, on the exhibit marked as DEML/ESMLP-
2 21, which is in the compendium at Tab 14. I previously
3 made reference to it.

4 And that shows the extent to which Direct
5 Energy at least incurs what it describes as a daily
6 balancing premium as a consequence of Centra's
7 nominations, tactics, or at least methodology.

8 The retailers submit that on the evidence
9 there's clearly a need for Centra to provide retailers
10 with more detailed information on nomination changes and
11 contract-specific information on revised MDQs.

12 In the course of his answers to Centra's
13 counsel in cross-examination you heard Mr. Newcombe make
14 some very compelling statements about the nature and
15 source of the disagreements the retailers and Centra are
16 having about these issues and the way that they should be
17 resolved.

18 And I would ask you to turn to Tab 37 of
19 the compendium. And this is an excerpt of Mr.
20 Czarnecki's cross-examination of Mr. Newcombe. And it's
21 page 2823 of the transcript and I'm going to start at
22 line 6.

23 The context was quite a lengthy and
24 detailed discussion that was going on between Mr.
25 Newcombe and Mr. Czarnecki about nominations. And Mr.

1 Newcombe starts at line 6:

2 "Well, I was just going to say, you
3 know [he says] I've lived through this,
4 you know, the process when I was at
5 ATCO on the other side. I was on the
6 Utility's side and, you know, we said
7 all the same things. We said our
8 market's too volatile. The weather's
9 too volatile in Alberta to ever do
10 this. Our systems are too complex.
11 Our purchasing procedures and
12 everything else is way too complex.
13 None of this will work.
14 But, you know -- but eventually we came
15 to the realization that that was
16 policy, that the retail market was not
17 a natural monopoly, distribution was.
18 And when we were talking about highly
19 technical complex operational things
20 like we've been talking about here for
21 the last hour, you know, this isn't the
22 forum to do that, sir."

23 And then he says:

24 "I think what Mr. Roeder said earlier
25 is that we are all looking [or sorry]

1 is that all we are looking for is an
2 opportunity to sit down with the
3 distributor that's recognized that what
4 they should be is a willing facilitator
5 of the retail market [over the page]
6 and that they've got a necessary role
7 to play and that we can sort out what's
8 in the best interests of all the
9 consumers in this province."

10 And that I suggest is a reasonable
11 approach. Now, Mr. Czarnecki in his submissions
12 yesterday repeated the Centra party line and it's not
13 productive, frankly, for me to repeat the retailers'
14 party line. You heard it and you know what it is. And
15 we simply say it's not realistic to expect the Board in
16 this process to settle the issue.

17 So on that basis the retailers are
18 suggesting that the Board should, as part of its order,
19 direct a technical conference to be conducted to address
20 and resolve any outstanding issues relating to volumetric
21 requirements and nominations and any other issues for
22 that matter that the Board finds would usefully be the
23 subject of further discussion.

24 The retailers also submit that any such
25 order should contain a mechanism that puts a limited

1 timeframe on this process and which permits the parties,
2 following the technical conference, to make submissions
3 to the Board and seek adjudication should they be unable
4 to resolve the issues in the course of the technical
5 conference.

6 And as was stated by Mr. Newcombe, a
7 process such as this Hearing is simply not the ideal
8 forum for resolution of issues such as this, and it is
9 the sincere hope of the retailers that a more
10 consultative process, which unfortunately has not
11 happened to date and which appears now to require Board
12 direction in order to occur, but it's our hope that such
13 a consultative process will lead to a resolution.

14 The fifth item on the list of steps and
15 initiatives is expansion of sales channels and revisions
16 to existing market rules. The members of the retailers'
17 witness panel clearly stated in their view there is no
18 justification for the restrictions that exist on sales
19 channels in Manitoba.

20 The evidence does demonstrate that the
21 sales channels in this province are more restrictive than
22 in other provinces. And Mr. Stauff did concede in cross-
23 examination that it is a plausible theory that the more
24 restrictive sales channels in Manitoba are responsible
25 for the failure of the competitive market to develop more

1 fully. And that portion of his transcript is excerpted,
2 Mr. Chair, at Tab 38 of the compendium.

3 The evidence of Mr. Newcombe is again
4 instructive. And if you look at what he said, this is at
5 Tab 39 of the compendium, and start at page 1957, which
6 is the second page in and it's starting a line 8, he
7 says:

8 "I think what most jurisdictions find
9 is typically regulators are very, very
10 cautious when they deal with this. And
11 one of the big questions, as I said, is
12 what level of consumer protection is
13 required with respect to retail
14 markets? And as I said, regulators
15 have moved slowly but ultimately I
16 believe they come to the realization
17 that there's nothing inherently unique
18 or special about retail natural gas and
19 at the end of the day standard consumer
20 protection laws should be adequate."

21 And I thought I heard Ms. Murphy say
22 yesterday that Mr. Newcombe had said that he didn't think
23 consumer protection was important. That's not what he's
24 saying. What he is saying is it's hard to justify,
25 having regard to the nature of the transaction, a

1 different standard or approach to consumer protection
2 than for other similarly or maybe even more important
3 financial transactions, such as purchasing vehicles, for
4 example.

5 He -- he then goes on in the transcript,
6 line 19, he says:

7 "As I said earlier, letting go is a
8 difficult process, both for utilities
9 and regulators, but I think at the end
10 of the day you have to realize that
11 consumers are sophisticated, they are
12 smart, and there's a lot of consumer
13 protection laws out there, and retail
14 natural gas market doesn't require
15 anything over and above the standard
16 consumer protection laws."

17 So we say that given the length of time
18 that there's been a competitive market for retail natural
19 gas in Manitoba it is reasonable for the market rules,
20 and particularly those governing sales channels, to be
21 less restrictive.

22 So the specific changes that the retailers
23 propose are firstly revisions to the code of conduct to
24 permit the concluding of contracts over the telephone.
25 And I would just observe that Centra's opposition to this

1 change doesn't appear to be terribly well informed
2 because remember that the Centra Panel didn't even
3 initially seem to know that this is in fact permitted in
4 Ontario and has been for some time. And in any case, one
5 would have expected that Centra, if it was going oppose
6 this initiative, would point to something in the Ontario
7 experience that suggest it's problematic, and they have
8 not done so.

9 The retailers also seek similar revisions
10 to the code of conduct to permit the concluding of
11 transactions via the internet; and again, what we mean
12 is, in a manner that doesn't involve the present
13 cumbersome process of someone having to print off the
14 form, sign it, copy it, send it in. And it's -- it's
15 really, I think, quite logical that that has not been an
16 attractive process to consumers, and something needs to
17 be done to facilitate e-transactions, or internet
18 transactions, as is done in so many other areas of
19 commerce.

20 The retailers also seek the implementation
21 of evergreen provisions for the purposes of renewals.
22 And contrary to what Ms. Murphy said yesterday about
23 energy savings, which I would remind everybody only had
24 one (1) customer that was in a renewal situation, the two
25 (2) retailers have exactly the same position on this

1 point. They are both seeking this change.

2 Next we seek the elimination of the
3 requirement that retailers send copies or images of their
4 contracts to the Utility; in the introduction of a
5 procedure by which retailers are only required to produce
6 the contracts for inspection on request and a procedure
7 which permits retailers to represent and warrant that
8 they have authority to act as agent.

9 Now on EBT, we concede that at this point
10 it may well be that this is too costly to implement. But
11 there may be ways to revise the current process to make
12 the transactions more cost effective and consumer
13 friendly. And this is something that we would certainly
14 hope that Centra would continually be assessing and
15 evaluating.

16 I'm going to move on to the last item on
17 this list, but before I do perhaps that's an appropriate
18 place to break, Mr. Chair.

19 THE CHAIRPERSON: Yes, that will be fine,
20 Mr. Hoaken. We'll be back in fifteen (15) minutes, thank
21 you.

22

23 --- Upon recessing at 10:31 a.m.

24 --- Upon resuming at 10:50 a.m.

25

1 THE CHAIRPERSON: Okay, Mr. Hoaken, we
2 have no problem if you go into the lunch hour, by the
3 way.

4 MR. ERIC HOAKEN: All right, thank you.
5 I'm going to endeavour not to do that but thank you.

6 Just two (2) quick points. I was alerted
7 by some of my colleagues that I may have given the wrong
8 tab reference when I made reference to the evidence of
9 Mr. Stauff. This is the second best alternative point.
10 My Friends told me that I gave you all the wrong tab
11 numbers, so I apologize for that. It should have been
12 Tab 34.

13 And just so we're all clear, I was
14 referring to the evidence that appears on page 127 of the
15 transcript, starting at line 3 to line 9. And it's not
16 abundantly clear unfortunately from the way I've
17 excerpted the transcript but that is, indeed, the
18 evidence of Mr. Stauff.

19 I should also just say that in a short
20 while both Mr. Matthews and Ms. Ruzycki are going to slip
21 out the door and I'm assured that's no -- no indication
22 of a lack of confidence on their part in the job that I'm
23 doing, but is rather a reflection of the tight supply of
24 flights leaving Winnipeg today.

25 THE CHAIRPERSON: It's all the Bomber

1 fans going out to Toronto.

2 MR. ERIC HOAKEN: I'm sure that's exactly
3 right, Mr. Chair. So they will be leaving and I just
4 wanted to convey their appreciation to the Board for this
5 process and their apologies for any disruption that their
6 exit will cause.

7 THE CHAIRPERSON: Thank you. Have a good
8 flight.

9 MR. ERIC HOAKEN: I will now pick up
10 where I was which is -- I guess I should get oriented for
11 us all on the outline. I am now on page 5 of the outline
12 under the main heading number 4. This is my rhetorical
13 question and it's now item 6; equal sharing of costs
14 involved in supporting a competitive market.

15 And there's been discussion in this
16 proceeding about the cost that Centra incurs
17 quote/unquote "for the benefit of retailers."

18 And we say that is an inaccurate
19 description of this category of costs as these are costs
20 that are required in order to support the existence of a
21 competitive market and to provide increased flexibility
22 to primary gas customers to switch to direct purchase
23 supply if they choose to do so.

24 And as previously outlined, Centra's own
25 customer research demonstrates that a significant

1 proportion of Utility customers believe that despite the
2 fact that they do not currently buy their gas from a
3 competitive retailer, they nonetheless benefit from the
4 presence of competition in this marketplace.

5 Now, Centra has proposed for example that
6 WTS quote/unquote "administration costs" should be borne
7 by the retailers. And in cross-examination I asked the
8 Centra panel if in a scenario where only retailer
9 customers were paying costs that relate to WTS, if system
10 supply customers would be getting a benefit for which
11 they're not paying. And this question was based on the
12 evidence showing that system supply customers believe
13 that they benefit from competition.

14 And not to be critical, but the Centra
15 witnesses, as hard as they tried to disagree with that
16 seemingly innocuous proposition were unable to do so, or
17 at least not credibly. And that exchange is at Tab 40 --
18 4-0, of the compendium.

19 In answering the question the Centra
20 witnesses, or at least in -- in the course of that
21 exchange there was reference to the question of whether
22 consumers are willing to pay for competition. And that
23 question was raised in the customer research.

24 But again I say that's a bit of a trick
25 question in terms of how it was formulated in the survey

1 and I've excerpted it at Tab 41. But I think, as was
2 observed in the course of the cross-examination,
3 typically when you frame a question asking someone if
4 they want to pay more, especially for a service they're
5 not currently using, it's pretty axiomatic that their gut
6 reaction is going to be, No, I don't want to pay more.

7 So that particular question I say, just on
8 a commonsense reading, really yields very little sensible
9 or reliable information but even if it did, I say
10 notwithstanding the slanted presentation of that issue
11 and the question, an even 50 percent of system supply
12 customers said they would be willing to pay at least
13 something to ensure that there is choice in the market.

14 And as was confirmed by the Centra panel,
15 if the seven hundred and fifty thousand dollar (\$750,000)
16 WST administration fee was charged to all customers, the
17 monthly addition to each bill would be significantly less
18 than the one dollar (\$1) threshold that is referenced in
19 the relevant question in the survey. And again I would
20 just give you -- I -- I would just point out that that
21 exchange in the transcript is at Tab 42 of the
22 compendium.

23 Now, in 1999 Centra thought all customers
24 should pay these costs and there's simply no sensible
25 justification for changing the approach. They point to

1 the fact that there is what they say only 20 percent or
2 at least only a 20 percent market penetration --
3 penetration rate by the retailers. But we don't know
4 that that is the same 20 percent that has purchased these
5 products and indeed it must be -- it might be a much
6 broader swath of the population that have at some point
7 over the course of this competitive market availed
8 themselves of these products.

9 But also, think about the logic of that
10 for a minute. Centra has a call centre and all of its
11 customers pay for that call centre but only a relatively
12 small proportion of its customers, I would hazard a
13 guess, ever use that call centre. And so their argument
14 would really be tantamount to saying, Well, gee, only
15 customers who ever use the call centre should have to pay
16 for it. Well, that just doesn't make any sense in that
17 context, just as it doesn't make any sense in this
18 context.

19 The call centre, like the competitive
20 market, is a benefit that everybody enjoys regardless of
21 whether they actually have to use it. There's a comfort
22 and a protection, I submit, in knowing that it's there to
23 be used if they so choose.

24 Now, quite apart from the policy in
25 fairness reasons that any costs attributable to the WTS

1 should be borne by customers, the seven hundred and fifty
2 thousand (750,000) figure that Centra -- sorry, seven
3 hundred and fifty thousand dollar (\$750,000) figure that
4 Centra has presented is a bit of an eyebrow raiser to say
5 the least.

6 In its evidence the Centra panel stated
7 that this figure incorporated the cost of the four (4)
8 employees who are working in gas supply and who are
9 responsible for carrying out the enrollment of customers
10 in maintaining these records. And I believe Mr.
11 Czarnecki said yesterday that these costs were calculated
12 using incremental costing and not fully distributed
13 costing.

14 And as a matter of first impression, I
15 must say that it is difficult to understand how this
16 number can be so high, particularly when one considers
17 that Centra's corporate cost allocation to primary gas --
18 and keep in mind that we're talking about two hundred
19 thousand (200,000) customers who are on system supply as
20 opposed to the roughly fifty thousand (50,000) on direct
21 purchase -- that their corporate cost allocation is in
22 the order of \$1.8 million a year. And that reference is
23 at Tab 43 of the compendium.

24 Now the seven hundred and fifty-thousand
25 dollar (\$750,000) figure becomes all the more

1 unbelievable when one reviews the information that Centra
2 has provided in Centra Exhibit 29, which was a response
3 to an undertaking. And that I've included at Tab 44 of
4 the compendium, Mr. Chair.

5 And I am certainly -- I think I've made it
6 clear to everybody over the past few weeks, I am no
7 accountant, but judging from this response, there is some
8 serious double counting going on here. And rather than
9 simply providing the gross salaries, which frankly was
10 the way I had understood the undertaking but maybe I
11 wasn't clear enough, so instead of simply providing the
12 gross salaries, perhaps with a percentage addition to
13 reflect benefits for the four (4) employees that are
14 involved, Centra has provided a calculation that is based
15 on a so-called activity rate of seventy-two dollars (\$72)
16 per hour, which we know, just by looking at it, does not
17 reflect the amount that is actually being paid to these
18 employees. Because if you did the math -- if you
19 figured it out on a thirty seven point five (37.5) hour
20 work week, they'd be making one hundred and forty
21 thousand dollars (\$140,000) each, which sounds like
22 pretty rich for the work that we're talking about here.

23 This activity rate, according to this
24 exhibit, includes salary and benefits, office supplies
25 and a full range of expenses that would be expected to

1 fall into the category of overhead. But then, if you
2 look at the calculation, at the bottom of the first page
3 of this tab, what has been done is that Centra has then
4 applied to that amount a 29 percent addition on account
5 of overhead. And I say that is quite simply a
6 preposterous calculation.

7 And if Centra cannot provide
8 administration services of that nature any cheaper than
9 seven hundred and fifty thousand dollars (\$750,000), they
10 should be outsourcing their administration functions to
11 somebody who certainly could do it cheaper.

12 And so I say when you look at this
13 exhibit, Mr. Chair, it is clear that this was a reverse
14 calculation, although not a very credible or persuasive
15 one in my submission to justify the seven hundred and
16 fifty thousand dollar (\$750,000) figure that had
17 previously been put in the record.

18 And quite apart from all the policy
19 reasons that I've raised about why the pol -- why the
20 retailers should not be asked to pay these costs, it
21 would be unfair and punitive to require the retailers to
22 pay such an arbitrarily and artificially determined
23 amount.

24 And keep in mind that the retailers cannot
25 pass any of these costs onto their existing customers.

1 They will have to build them into the next generation of
2 contracts, and there's an inherent inequity there.

3 The analysis concerning the additional
4 cost that is ostensibly being charged by Nexen to Centra
5 on account of the new capability to enroll customers on a
6 monthly basis is similar. As Mr. Stephens conceded in
7 his evidence, he raised in the negotiations with Nexen
8 about the new supply contract, the requirement for
9 monthly enrollments. And he obtained this term, although
10 at a cost of half a cent per GJ based on the baseload.

11 And also, you heard Centra's witness panel
12 acknowledge that this change is of no benefit to the
13 existing fifty thousand (50,000) direct purchase
14 customers who have already enrolled. And I would just
15 pause to note that the transcript references are found at
16 Tab 45 of our compendium.

17 However, prior to concluding the contract,
18 Mr. Stephens did not canvas the retailers to get their
19 views on the fairness of the price. In other words, he
20 negotiated a price, which he not surprisingly now
21 characterizes as a fair price, with no input from the
22 retailers while all the while expecting to pass on 100
23 percent of the costs to the retailers.

24 The cost is also based on the retailers
25 paying this amount based on 100 percent of the baseload

1 volume, even though their volumes only represent about
2 one-fifth (1/5th) of that. And I would just note the
3 transcript reference, or references are found at Tab 46
4 of the compendium.

5 And I would say, can you think of a more
6 perverse commercial situation? A party who admittedly
7 sees itself as your competitor goes and negotiates a
8 commercial commitment on your behalf and agrees to a
9 price without even consulting you and then tries to stick
10 you with the price.

11 The unfairness to the retailers of this
12 sequence of events is manifest, but, all the more so when
13 one considers that in the same set of negotiations that
14 Centra had with Nexen, there were discussions about
15 Centra's desire for quote unquote "Flexibility" in the
16 contract to accommodate the possibility that Centra would
17 in the future offer a fixed price product.

18 Now Mr. Czarnecki said yesterday that the
19 retailers having expressed an interest in monthly
20 enrolments shouldn't have expected that flexibility to
21 materialize out of thin air for nothing.

22 But that's exactly what Centra was able to
23 do when it came to getting the flexibility that it
24 wanted. You heard Mr. Stephens tell us he was
25 miraculously, that's my characterization, miraculously

1 able to secure the concession and the contractual
2 language that he wanted without spending, as he put, it
3 not a nickel.

4 So -- and -- and that transcript
5 reference, Mr. Chair, is at Tab 47 of the compendium. So
6 in other words, if a concession is perceived to be for
7 the benefit of the retailer, some price tag is attached.
8 And if it's for the benefit of Centra or serves Centra's
9 purposes, no cost is involved and the inequity and lack
10 of logic of that is just obvious.

11 So the retailers, therefore, are
12 respectfully recommending that this Board expressly
13 recognize in its decision that given the evidence that
14 all consumers benefit, and actually a large proportion of
15 them perceive that benefit, that these costs are
16 appropriately borne by all customers.

17 I turn now to item 5 on the outline which
18 is Centra's proposal for a fixed price offering. And
19 this is page 6 of the outline and there are a number of
20 subheadings I'm going to address on this topic.

21 The first of them is Centra's premise for
22 being permitted to offer such a product. Now Centra's
23 witnesses admitted that even if the competitive market in
24 Manitoba was functioning appropriately, Centra would
25 still be seeking approval to offer a fixed price product

1 because quote "Our customers want us to."

2 And that was the evidence of Mr. Warden
3 that you heard and we've got the excerpt of that at Tab
4 48 of the compendium. And we say the evidence that
5 Centra relies upon for that conclusion is flawed,
6 anecdotal and largely self serving.

7 The questions and answers in the 2007
8 Customer Research Report should be completely
9 disregarded; that is, the questions and answers on
10 consumer preferences for having Manitoba Hydro offer
11 other products should be completely disregarded for the
12 reasons that I've already stated.

13 And you should remember that the purported
14 conclusion reached by eNRG and the Customer Research
15 Report based on table 21(b) that the desire to have
16 Centra offer such products quote, unquote "Transcends the
17 interest of consumers in competition."

18 That that finding has been discredited
19 contrary to the conclusions reached and expressed by eNRG
20 in its report a quote, unquote "Strong majority of
21 respondents did not state a willingness" to have Manitoba
22 Hydro offer these products even if it meant there would
23 be quote, unquote "less competition."

24 The premise of the question was also
25 flawed - quite apart from the flaw that eNRG now

1 acknowledges - was also flawed because on the evidence it
2 is highly likely.

3 And I will be submitting this, that if
4 Manitoba Hydro is permitted to offer these products, that
5 there will be no competition in the market. And
6 consumers were not asked their views in this particular
7 context.

8 Now I would say that the Hydro panel
9 made a fairly half-hearted attempt to justify the
10 conclusions about customers wanting fixed price products
11 from Manitoba Hydro based on the 2004 work that was done,
12 The Western Opinion Research Study.

13 But after a somewhat tedious exchange I
14 had with Mr. Kuczek in cross-examination he, I think,
15 acknowledged that there was no specific question in the
16 2004 study that addressed that issue and he then
17 purported to explain at least his interpretation of how
18 you might read that report as supporting an interest in
19 other Hydro offered products.

20 And I'm going to leave you to evaluate
21 what, if any, weight you can place on Mr. Kuczek's
22 interpretation of that report. The portion of the
23 transcript is at Tab 50 of the compendium.

24 But quite apart from the retailers'
25 challenge to Centra about the extent to which the 2004

1 what they perceive as being revealed by
2 customer surveys on the company's risk
3 management activities."

4 They then say:

5 "Results of customer surveys cannot and
6 should not be determinative of
7 disposing of a matter."

8 And I say that approach is especially
9 reasonable and appropriate, whereas here there are
10 specific reasons to be concerned about the quality and
11 independent -- independence of the research.

12 Now the second item I want to address
13 under this heading is the design of a Centra fixed-price
14 product. The Centra Panel stated in evidence that it
15 does not yet know exactly what products it would offer if
16 it was permitted to do so, it has not designed the
17 products, it does not know what the costing is going to
18 be, and it does not know what the price of any such
19 products in the market would be. And that evidence is
20 contained at the excerpt, Mr. Chair, at Tab 53 of the
21 compendium.

22 So, therefore, having regard to that lack
23 of knowledge on that range of issues, Centra does not
24 know and cannot know what the uptake or customer demand
25 would be for any fixed-price product that it offered to

1 the market.

2 And we say given this complete lack of
3 detail about what Centra is proposing to do and how it is
4 proposing to do it, it is impossible to reach any
5 reliable conclusions about the degree to which there will
6 be risk involved in such products, although the Centra
7 panel did acknowledge that there will be some risk.

8 But more importantly it is also impossible
9 to reach any reliable conclusion as to who will bear the
10 risk and about what the mechanism for risk allocation
11 will ultimately look like.

12 And in his evidence, Mr. Stauff addressed
13 at some length the design of a Utility-offered fixed-
14 price product, and on the issue of risk allocation he
15 concluded there were three (3) possible parties who could
16 bear the risk: The Utility, upstream suppliers, and
17 customers. And that, I would just give you the
18 reference, Mr. Chair, is Tab 54 of the compendium.

19 In his evidence then, Mr. Stauff
20 acknowledged that of these three (3) candidates to bear
21 the risk, he would immediately exclude Centra, on the
22 basis that it should not be the bearer of risk associated
23 with offering a fixed-price product. That being the
24 case, we're left with the two (2) candidates, upstream
25 suppliers and customers.

1 And Mr. Stauff acknowledges that it is
2 unlikely that upstream suppliers are going to be willing
3 to assume this risk or at least that they will do it at a
4 price that will make a Utility-offered product
5 uncompetitive or not feasible. And that is also at
6 Tab 54, that excerpt I just made reference to.

7 That then left Mr. Stauff to conclude that
8 the most likely constituency to bear the risk would be
9 consumers themselves. And given that the exposure or
10 risk associated with a fixed-price product will only be
11 known after the contract has run its course, then Mr.
12 Stauff acknowledged that a possible outcome is that --
13 and, sorry, a possible outcome in view of the practical
14 impossibility of going back to fixed-price customers and
15 asking them after the fact to pay more, is that variable
16 rate customers would have to bear the costs. He
17 acknowledged that if this were to happen, this would be a
18 clear example of cross-subsidization which both he and
19 Dr. Van Audenrode had described as an undesirable
20 outcome.

21 And again I just pause to note that all of
22 the references supporting the statements I've just made
23 can be found at Tab 54 of the compendium.

24 Now, leaving aside for a moment the policy
25 reasons that a utility should not be permitted to offer a

1 fixed-price product, and even without knowing the
2 specific design of any product Centra would propose there
3 is inevitably, in our submission, going to be an
4 essential design flaw in any such product and it has to
5 do with the allocation of risk.

6 All witnesses acknowledge that there is,
7 at least a minimum, a volumetric risk associated with the
8 Utility offering a fixed-price product, and that this
9 risk is such that the Utility would be unable to recover
10 its costs -- or costs it had incurred from customers to
11 whom it had sold a tranche of fixed-price products.

12 Now, this is also true of retailers who
13 have to absorb this risk. So if Centra were to attempt
14 to recover those costs from a subsequent tranche or
15 generation of fixed-price customers, doing so would or
16 could make the price of the products higher such that
17 they would be unattractive to consumers, which of course
18 would then compound the problem of being unable to
19 recover the costs.

20 If Centra seeks to recover the costs
21 associated with the fixed-price product from variable
22 rate customers, that gives Centra an advantage that the
23 competitive retailers do not have and clearly constitutes
24 cross-subsidization. And Dr. Van Audenrode acknowledged
25 that cross-subsidization is a way that the Utility could

1 in an environment where if you're in a
2 fixed-rate market and you're competing
3 with retailers who don't have the same
4 access to have those losses covered,
5 then that could cause a potential
6 problem. That could cause potential
7 competitive effects."

8 The position of Centra appears to be, Mr.
9 Chair, that this Board should grant approval to entering
10 the fixed-price product market even without knowing what
11 the product design will be and even without knowing what
12 the risk allocation mechanism will be, and that Centra
13 will then come back and demonstrate how it can design a
14 product that is quote/unquote "virtually risk free." And
15 that's the evidence that was given by the Centra panel as
16 excerpted at Tab 57 of the compendium. And we say that's
17 simply not reality. That's not our reality that we deal
18 with every day.

19 The Centra panel did acknowledge though,
20 and I think this is important, that while it would try to
21 structure the product in a way that would minimize the
22 risk, there would still be a risk that costs could not be
23 recovered and that there would ultimately be a
24 quote/unquote "bottom line type writeoff."

25 And we say a writeoff of this nature would

1 result in Centra's fixed price service being subsidized
2 by Manitoba taxpayers rather than by primary gas
3 consumers and neither outcome should be considered
4 acceptable or in the public interest.

5 And I would just commend to you that
6 portion of the transcript that I have cited. It's found
7 at Tab 57 of the compendium.

8 It is instructive to note as well that the
9 response Centra has provided to Undertaking 20, which was
10 the Board's request that it file the current AECO pricing
11 for three (3), four (4) and five (5) year fixed term and
12 fixed price gas, now appears to acknowledge that there is
13 significant risk associated with these products.

14 Turn if you will to Tab 58 of the
15 compendium. And you'll see the caveat that's been
16 inserted at the bottom of the undertaking response, it
17 says:

18 "The information is the approximate
19 fixed natural gas prices available to a
20 forward purchaser on a predetermined
21 fixed volume of natural gas.

22 Please note that due to the significant
23 risk associated with the highly
24 variable and uncertain customer
25 consumption, these prices should not be

1 interpreted as those at which Centra
2 would be able to offer long term fixed
3 price natural gas products to retail
4 customers."

5 And that's the point, is that they would
6 have to embed some risk premium in their product to cover
7 off that risk and they might get it wrong. And if they
8 get it wrong, who ends up paying for it? That is the
9 essential design flaw that I've made reference to.

10 But the upside of that information that
11 I've just read is that I think Centra, albeit belatedly,
12 is now developing a more realistic appreciation of the
13 degree of risk that is involved in these products. But
14 we say that is a risk that the regulated Utility should
15 not be engaging in or exposing itself or more correctly
16 its ratepayers to.

17 And the 3rd subheading I want to address
18 under this issue of the Centra fixed price product is the
19 Centra advantage and I've referenced this, Mr. Chair, on
20 page 8 of the outline.

21 And it's important to note that the
22 advantage Centra has in the marketplace was expressly
23 acknowledged by this Board in Order 15/98. And I would
24 just ask you to quickly turn to Tab 59 of the compendium
25 and look at the passage in question. It's on page 68 and

1 it's the second paragraph on the page.

2 The Board said, and I quote, you say:

3 "Many interested parties expressed
4 concern that Centra's dominance in the
5 distribution function might unduly
6 advantage it in other markets or
7 functions, in particular the merchant
8 function."

9 And I pause to note that to the extent
10 that Centra was dominant in distribution in '96, it still
11 is in 2007. They go on and say:

12 "The Board agrees that there are
13 advantages for Centra in the merchant
14 function by virtue of its monopoly
15 distribution function."

16 And then you go down and you see in the
17 end of that paragraph they say:

18 "With the restriction to Centra
19 offering one (1) regulated commodity
20 service offering, the competitive ABMs,
21 the brokers, have flexibility not
22 available to Centra."

23 Now how can we understand that sentence?

24 We can understand it, I submit, as the regulatory
25 allowance or to use a lawyer's term, a quid pro quo, to

1 address Centra's identified advantage.

2 So that was the mechanism the Board used
3 to compensate or allow for the built-in structural
4 advantage that the Utility had. And I say, there is no
5 compelling reason why this Board would or should depart
6 from that.

7 Now in his evidence, Mr. Warden
8 acknowledged that offering a fixed price product through
9 an affiliate would not be feasible from a cost point of
10 view. And we say that clearly demonstrates that Centra
11 wants an unlevel playing field.

12 And Mr. Warden said that although a level
13 playing field is an important consideration, he can
14 envision a circumstance where it would be acceptable for
15 Centra in offering a fixed price product to have an
16 unfair competitive advantage.

17 And I'd ask you to look at that; it's at
18 Tab 61 of the compendium when I was cross-examining Mr.
19 Warden. And on page 1609 of the transcript, line 4, I
20 asked the question:

21 "And it certainly wouldn't be in the
22 best interest of customers for Centra
23 to have some unfair competitive
24 advantage over other market
25 participants, right?"

1 A: Don't know, it might be."

2 So then I say:

3 All right. That's an interesting
4 point. So you can envision the
5 circumstance where if Centra is
6 offering a fixed-price product, that if
7 it has an unfair competitive advantage
8 over existing market participants that
9 would be an acceptable outcome?

10 A: If it's in the best interests of
11 our customers [our customers] it could
12 be an acceptable outcome."

13 And that evidence is important because
14 Centra has acknowledged that not only does it want to be
15 permitted by the Board to offer fixed-price products
16 directly, i.e. not through an affiliate, it wants to be
17 able to use the assets, employees, resources, and brand
18 advantage that it has achieved, as paid for by the
19 ratepayers, to compete in this market.

20 And Centra's position, unvarnished as it
21 is, is that it should have, quote/unquote:

22 "unrestricted access to the assets,
23 database and information that it has in
24 its possession." Closed quote.

25 And all of the references for what I have

1 just said are found at Tab 62 of the compendium, Mr.
2 Chair.

3 The -- the panel also acknowledged -- the
4 Centra panel also acknowledged another important
5 advantage that Centra would have in offering a fixed-
6 price product, and namely, the potential to use its
7 primary gas supply to balance the commitments being
8 raised to fixed-rate customers -- excuse me, being made
9 to fixed-rate customers.

10 And I'd ask you to turn up Tab 63 of the
11 compendium and this is in exchange that Mr. Stephens and
12 I had in cross-examination on page 1707 of the
13 transcript, starting on line 15, and I say:

14 "But -- [excuse me] But would there not
15 be some potential for the gas supply
16 that's required to fulfill the
17 commitment to variable-rate customers
18 to be used to balance the commitments
19 that are being made to fixed-rate
20 customers?"

21 Mr. Stephens says:

22 "In order to maximize the benefits to
23 consumers there may be some -- well I
24 hate to use the word..."

25 I then interrupt him and say:

1 "You were going to say cross-
2 subsidization, weren't you, Mr.
3 Stephens?"

4 And he says:

5 "Yeah, I'm trying to -- I'm trying to
6 avoid the word."

7 And then he goes on and he says:

8 "It's out there now."

9 And then he says:

10 "There may be, I mean, circumstances
11 where it would be beneficial for the
12 customer for us to take gas to balance
13 off a day under the existing contract
14 with the intention that we would have
15 to try and reconcile that at the end of
16 the period so that the overall balances
17 were correct."

18 So, we say that the evidence compellingly
19 demonstrates the astonishing advantage that Centra would
20 have to the detriment of the competitive sector and to
21 the detriment of its own primary gas customers, if it was
22 permitted to cross-subsidize the service and use the
23 information in its possession. And I point out that it's
24 only become privy to some of that information by virtue
25 of its role as a market facilitator, to compete in the

1 same market that the retailers are participating in.

2 It is hard, again, to think of a more
3 anomalous commercial situation than one in which Centra
4 is proposing. It would have the ability to set up
5 administrative and operational rules that would
6 disadvantage its retail competitors and have access to
7 information about the identity of its competitors'
8 customers, such as the price and the term, the
9 consumption patterns and so on, and then on the other
10 hand be at liberty to use that information in any way it
11 wanted, unrestricted access, in order to attempt to
12 secure those customers when their contracts with
13 retailers expire.

14 It is important to note that Centra
15 instructs retailers when and how much it will nominate,
16 and it would know this information prior to communicating
17 it onto the retailer.

18 A further aspect of the advantage is that
19 Centra has indicated that it would use the billing
20 envelope to advertise a fixed-price product, or it could
21 use it, and that retailers would not have access to the
22 bill or the bill envelope. And I say it is simply
23 astonishing that Centra is not prepared to give any
24 undertaking or comfort to the retailers that it would
25 not, in a scenario where it was permitted to offer a

1 fixed-price product, use this commercially sensitive
2 information in an inappropriate way to gain a competitive
3 advantage in the market. Instead, Centra is seeking
4 unrestricted access and wants to make whatever use it
5 wants of the information.

6 There is also the evidence that the Board
7 has heard about Centra's undisputed brand advantage. And
8 in fact to be honest -- or sorry, to be accurate about
9 it, it's actually the brand advantage that Manitoba Hydro
10 enjoys. And this may be why we appear to be seeing a
11 progressive phasing out of the name "Centra" in the
12 dealings with customers.

13 And while we heard from Mr. Warden about
14 the results of the JD Power study, it was clear that to
15 the extent that consumers have a positive impression of
16 Manitoba Hydro, that positive impression has been gained
17 as a result of Manitoba Hydro's presence in and
18 performance in markets other than -- in addition -- and
19 in addition to natural gas.

20 Such as, for example, its role as an
21 exporter of electricity to other markets that produces a
22 net benefit for Manitoba consumers; unrelated completely
23 to its performance in the natural gas segment.

24 So to the extent that customers have a
25 positive impression of Manitoba Hydro, this impression

1 may have nothing to do with its performance in the
2 natural gas market, and more importantly, is the positive
3 impression that has been gained by Manitoba Hydro in its
4 capacity as the incumbent utility.

5 In other words, other market participants,
6 be it the existing retailers or new market entrants,
7 would have to build brand awareness in consumers and make
8 significant expenditures in order to do so. But Manitoba
9 Hydro already has this brand awareness as a result of its
10 activities as the regulated utility and has not had to
11 expand its own capital to build this brand.

12 And it is the inappropriateness of the
13 Utility entering the competitive market with all of these
14 advantages that has caused regulators in other
15 jurisdictions to insist on operational and functional
16 separation. In other words, the establishment of an
17 affiliate, which is subject to a code, if the Utility is
18 allowed to compete.

19 The BCUC, among other regulators, has
20 expressly recognized the extent to which use of this
21 brand advantage can create an unlevel playing field.

22 There's one (1) other aspect of the Centra
23 brand that I should discuss, and this arises, I think,
24 out of something Mr. Czarnecki said in his submission
25 yesterday where he commented on the customer research

1 findings suggesting that some retailer customers are
2 unaware that they purchase gas from a retailer. And I
3 would suggest there's a couple of clear reasons in the
4 record for this.

5 The first thing is as was stated by --
6 excuse me, by My Friend, Mr. Czarnecki, he said natural
7 gas -- I like his use of the term actually -- he said
8 it's a low involvement product. And that means -- I take
9 him to mean that while people may know the brand of the
10 suit they're wearing and the kind of car that they have
11 in their driveway, they may pay less attention to natural
12 gas.

13 The point that's also important is that
14 although the competitive retailers are in the market, the
15 link with the Utility that even the customers of the
16 retailers have, has not been severed and, in fact, is
17 quite a strong link. They receive a communication every
18 month from the Utility. And this, may over time -- this
19 may blur for them the question of from whom they are
20 receiving their gas.

21 This ties in, I suggest as well, to some
22 of the ambiguity in the questions that Mr. Czarnecki is
23 making reference to because the questions make reference
24 to who supplies your gas. And there may be a question of
25 degree there for consumers. Who does supply their gas?

1 compendium. And this is an excerpt from Centra's
2 response to DEML/ESMLP/CENTRA-14, and turn over, if you
3 will, to the third page in the tab, which is an excerpt
4 from Attachment 1, and this is some of the customer
5 satisfaction research that Centra had done. And if you
6 look at Question 37, the question is:

7 "If both Manitoba Hydro and the natural
8 gas marketers offered the same primary
9 gas products, from who would you prefer
10 to purchase your natural prim -- your
11 primary natural gas?"

12 So ceteris paribus to use Mr. Wien's
13 expression, all other things being equal, who would you
14 buy your gas from? And an overwhelming proportion of
15 respondents say from Manitoba Hydro.

16 And we say there can be no clearer
17 evidence of the market dominance that Centra would, quite
18 apart from the other structural and competitive
19 advantages I've detailed, that it would enjoy in exercise
20 if it was permitted to enter this market.

21 This evidence taken together with Dr.
22 Cyrenne's opinion strongly demonstrates, in our
23 respectful submission, that permitting Centra to enter
24 this market will cause the demise of the competitive
25 sector in Manitoba.

1 And the reference, if I could just give it
2 to you, for Professor Cyrenne's evidence which is not in
3 the compendium, is page 2541 of the transcript, lines 21
4 to 25. I believe that was when he was in
5 cross-examination with Ms. Murphy.

6 It is also worth considering Dr. Cyrenne's
7 evidence, that I might paraphrase, as stating that the
8 presence of a competitive sector helps to moderate the
9 prices and conduct of a dominant firm. And that
10 evidence, that is pre-filed evidence, is in the
11 compendium at Tab 65.

12 And we would say that a very good example
13 of this premise about the benefits that a competitive
14 fringe -- and that's his expression -- a competitive
15 fringe of firms can bring to a market, arises from the
16 evidence as it related to the Focus Group Report and the
17 Customer Research Report.

18 Absent the presence of the retailers in
19 this market, and absent their participation in this
20 process, the Board might have received the eNRG reports
21 and concluded that the research approaches had been
22 actually developed in consultation with interested
23 stakeholders as has been represented, and that the
24 results, therefore, represented a fair and balanced
25 approach to ascertaining the views of Manitobans.

1 In fact, it's notable that Centra
2 vigorously resisted the efforts by the retailers to
3 explore and probe the process by which the research was
4 developed and ultimately conducted and reported, and
5 resisted production of certain items that were requested
6 by the retailers. You will recall that there was a
7 motion on this point.

8 And if you turn up Tab 66 of the
9 compendium, there's several items that illustrate that
10 point. I'm not going to take you to all of them, but I
11 would ask you to turn to the very last one in the tab,
12 which is -- it's the last page in the tab, and it's
13 correspondence from Manitoba Hydro's counsel to the
14 retailer's counsel on August 29, less than a week before
15 the hearing was to begin, and it dealt with the fact
16 that, as of that date, the answer to IR60,
17 DEML/ESMLP/CENTRA-60, was still outstanding.

18 And counsel stated:

19 "Centra remains of the view that this
20 information is not germane to the
21 matters at hand in the Hearing.
22 However, given your insistence upon
23 testing the communication between
24 Centra and eNRG, the requested
25 exchanges are being compiled, copied,

1 and scanned for distribution. This has
2 required a significant amount of time
3 on the part of customer service,
4 regulatory legal, and IT -- and IT
5 departments."

6 And then she says:

7 "A supplemental response to DEML-60 --
8 DEML/CENTRA-60 will be provided to you
9 as soon as this exercise is complete."

10 And here's the kicker:

11 "Centra will take the position that the
12 significant time and resources expended
13 in compiling, preparing, and reviewing
14 this material were not necessary for
15 this process, and that the costs of the
16 exercise ought to be borne by your
17 clients."

18 And I say, knowing what we now know from
19 our review of and cross-examination on the voluminous
20 materials that Centra provided in response to DEML/ESMLP-
21 60, in which are now excerpted or at least a large
22 collection of them are contained in DEML/ESMLP/Exhibit 7,
23 it is simply incredible -- and again, I use that word in
24 the sense of incapable of belief -- that these materials
25 -- or at least that Centra could take the position that

1 these materials were not relevant or necessary to
2 understand the process by which the research was
3 conducted.

4 Had these items not been produced, we
5 would never have been in the position we were in this
6 hearing of learning a number of key, and I submit, very
7 disappointing things about the process by which the
8 process was designed, conducted and carried out.

9 And those facts include, as I've already
10 said, a lack of any meaningful consultation with external
11 stakeholders; the deletion, again as I've already said,
12 of key questions that had been drafted by the expert to
13 comply with this Board's direction; the significant and
14 controlling role played by Centra in the survey design;
15 and the very significant editorial involvement in control
16 by Centra in the process of drafting the reports.

17 And in case this evidence is not still
18 fresh in the born -- the Board's mind, let me just cite a
19 couple of examples quickly. If one looks at the Customer
20 Research Report -- and the executive summary starts at
21 page 3. I'm now going to Tab 67 of the compendium.

22 On page 3 -- this is the Executive Summary
23 -- the key discoveries and conclusions, which is
24 obviously designed to highlight the things that the
25 researchers felt were important. And we now know that

1 Item 7, which is a very self-serving statement about the
2 Hedging Program and consumer's perceptions of it, we now
3 know that that was drafted entirely by Manitoba Hydro
4 staff.

5 Turn over the page -- actually two (2)
6 pages -- and you now see the draft markup, and you see
7 that was, as acknowledged by Mr. Enns in his
8 cross-examination, drafted entirely by Manitoba Hydro.
9 And it shows up in the final draft.

10 So the expert didn't think it was a key
11 finding or a conclusion, or at least he didn't until he
12 was told by Centra that he did. And the only conclusion
13 you can draw is that Centra was pulling the strings and
14 Mr. Enns was the puppet.

15 There are even more egregious examples
16 available in the case of the Focus Group Report, where it
17 is clear, abundantly clear, now by virtue of having had
18 production of the materials that the retailers asked for,
19 that very significant portions of the Focus Group Report
20 executive summary were drafted in their entirety by
21 Centra employees, then adopted by the author of the
22 report as being his own, so that anyone reading this
23 would have assumed, logically, that it was the
24 independent, quote/unquote, "expert" who had formulated
25 these opinions.

1 And although it had been indicated by
2 Centra in its IR responses that there was only one (1)
3 draft of the Focus Group Report prior to the final draft;
4 this was demonstrated not to be the case.

5 As the so-called topline summary that Mr.
6 Enns sent to Mr. Meder on June 14 formed the basis of the
7 executive summary that showed up in the first draft of
8 the report, and had significant changes made to it by Mr.
9 Meder even before the so-called first draft the report
10 was issued and circulated.

11 And you see in the evidence -- turn over
12 the tab -- you see this is the topline summary. I'm now
13 at Tab 68 of the compendium. This is the topline
14 summary. And turn in just a couple pages, you'll be on
15 page 3 of the draft Focus Group Report.

16 And you see on this page, a large swath of
17 what ends up in the final report is drafted by Mr. Meder.
18 And so these statements had not been felt by the expert
19 to be significant or noteworthy, or at least not until he
20 was told by Mr. Meder that they were significant and
21 noteworthy.

22 So just to ask another rhetorical
23 question: Why do I raise the customer research in the
24 context of a discussion about the market impact of Centra
25 offering a fixed-price product? And the reason, I say,

1 is that the experience with the customer research
2 demonstrates the mindset and approach that the Utility,
3 if left unchecked by the presence of competitors in the
4 market, could work to the detriment of Manitoba
5 consumers.

6 It is also necessary to consider the
7 regulatory impact of Centra being permitted to offer a
8 fixed-price product. As Professor Cyrenne stated -- or
9 excuse me, as Professor Cyrenne stated, life can be more
10 difficult for regulators if they try to regulate
11 activities which are inherently competitive.

12 And as this Board has previously
13 identified there are no nat -- natural monopoly
14 characteristics to the merchant function. And just so
15 you have it, that reference is page 2546 of the
16 transcript, line 13, and then ending at page 2547, line
17 4.

18 On all of the evidence, we submit, there
19 is no compelling justification for Centra being permitted
20 to offer a fixed-price product, and there is no
21 compelling justification for this Board departing from
22 its premise in Order 15/98, which by the way, is
23 consistent with that applied by regulators in other
24 jurisdictions, that Centra be restricted to one product
25 offering in order to promote competition in the market.

1 And I put it even more strongly, and say
2 how could the Board, on the face of the evidence before
3 it in this proceeding, grant any approval, whatsoever, to
4 Centra to pursue fixed-price products, even if it was
5 persuaded that there were sound policy reasons to do so?

6 Centra provided -- has provided no
7 evidence or clarity about how it would design such
8 products or even what products it is seeking approval on.
9 Mr. Czarnecki said yesterday, in effect, that it's a
10 blanket approval that's being sought, not specific to
11 particular products.

12 And it also has not, as I've already said,
13 explained how it would allocate the risk that inevitably
14 arises from these products, to the extent that there are
15 imperfections in this competitive market permitting
16 Centra to offer a fixed-price product is only going to
17 solidify and increase those market imperfections. The
18 more appropriate approach, I respectfully submit, is for
19 this Board to pursue and implement the previously
20 outlined steps designed to liberalize the competitive
21 market.

22 If a benchmark competitor is required and
23 the retailers strongly contend that there is no evidence,
24 whatsoever, to suggest that one is, that benchmark should
25 be set fairly, and in a manner that does not undermine

1 the current market and result in detrimental impacts that
2 would not be in the best interests of the consumer or the
3 public. And this can only be done through an affiliate.
4 Although that brings with it added regulatory cost to
5 ensure proper separation in cost allocation being borne
6 by Manitoba Hydro.

7 But we know from Mr. Warden's evidence
8 that an affiliate benchmark price is very likely to end
9 up at or above the level of the competitive retail
10 officers -- offers of Direct Energy and Energy Savings.

11 Now, just before I leave this subject, I
12 feel compelled to address Ms. Murphy's suggestion
13 yesterday in submissions that the retailers are,
14 quote/unquote, "public utilities" for the purposes of the
15 Public Utilities Board Act. I wouldn't have wanted to
16 disappoint anyone by not addressing that.

17 And I think, in fairness to Ms. Murphy, I
18 don't want to spend too much time on this because it was,
19 I think, a somewhat halfhearted comment or suggestion
20 that she made to illustrate another point that she was
21 getting to.

22 And I think the strength of conviction
23 that Centra has in this interpretation, or perhaps the
24 lack of strength of conviction, is evidenced by the fact
25 that the first time we even heard about this

1 interpretation was in closing submissions. And you
2 certainly would have thought that if this reflected the
3 considered view of Centra, we might have heard about it a
4 bit sooner than that.

5 But it is too bad that Ms. Murphy didn't
6 borrow the dictionary from Mr. Czarnecki, because when
7 you look at the section that she made reference to -- and
8 she hangs her hat on the word furnish -- the word furnish
9 -- there's a number of definitions, but the current or at
10 least the theme that runs through them is to supply. And
11 that's not what the retailers do.

12 The retailers provide a financial
13 transaction, that's effectively what it is, by which --
14 it sets the terms by which consumers receive their gas.
15 But the supplying still happens in the old fashioned way
16 by virtue of the distribution function that the monopoly
17 enjoys.

18 And so I don't want to put too much
19 emphasis on this, but I think simply it is a comment that
20 was intended, I think, to illustrate another point, and I
21 would suggest that we just disregard it. And I expect
22 that if Centra really has any strength in its conviction,
23 we'll hear from them in some other suitable proceeding
24 where they can raise it at the appropriate time and in
25 the appropriate way so that we can all consider it in an

1 appropriate way.

2 Now I'm going to move on to Item 6 on the
3 outline, Retail Marketing Practices. And is clear on the
4 evidence, the retailers use the door-to-door method as
5 the predominant means through which they enroll
6 customers, as this channel has proven to be the most
7 effective way of explaining the benefits of fixed price
8 options, but also has been one of a very limited number
9 of options that have actually been opened to the
10 retailers.

11 And it is important to note that the
12 retailers, if other channels were made available would
13 use those other channels but would also, where
14 appropriate, continue to use door-to-door sales. And
15 they say that if the alternatives, that is the
16 alternative sales channels that are available and other
17 jurisdictions were available here, other products or new
18 competitors could be made available to serve the
19 consumers of Manitoba.

20 And there was a great deal of innuendo and
21 speculation about problems with the sales channel but
22 this is not borne out by the information that is
23 available in this proceeding.

24 And for example, the customer research
25 conducted by Centra shows a high level of satisfaction

1 among the customers of retailers. And that is at Tab 69,
2 and perhaps we should just look at it, Mr. Chair.

3 It's table 28 and you'll see that a total
4 of 82 percent of retailer customers are either -- are
5 either very satisfied or somewhat satisfied.

6 And the Centra panel though took the
7 position that this information didn't really tell us
8 anything about the level of satisfaction with the door-
9 to-door sign up method, specifically.

10 And what is curious about that I say, is
11 that although table 30 -- so turn over a page in the tab
12 -- that although table 30 establishes that the vast
13 majority of the customers surveyed had signed up via
14 door-to-door contact, these customers were excluded from
15 the followup question that was asked -- and look at table
16 31 -- the followup question that was asked which asked
17 customers to rate their level of satisfaction with the
18 initial signing up experience.

19 It is curious to the point I say of being
20 perverse that Centra would come to this proceeding to
21 assert that there are deficiencies in the door-to-door
22 method while for reasons it is not satisfactorily
23 explained, declined to ask the very question that would
24 have tested that hypothesis.

25 And as far as the questions referenced in

1 table 33 are concerned, we have to be very careful, as
2 I've already said, about the reliance we place on those.

3 You will remember Mr. Enns' explanation in
4 his evidence about how it can be not terribly helpful to
5 ask survey respondents questions about events they may
6 not specifically recall. It seems sort of common sense
7 but he acknowledge it nonetheless.

8 This was his stated justification for not
9 including in the survey questions about a cust -- sorry,
10 for not including in the survey questions about a
11 customer communication that had occurred in the fall of
12 2006. However, these questions in table 33 are questions
13 that were being asked of respondents who simply said that
14 they had at some indeterminate point in the past had a
15 door-to-door contact with a retailer.

16 And even though Mr. Enns would not
17 acknowledge this, it is simply, I say, commonsense that
18 unless there's some reasonable temporal period about
19 which customers are being asked, the value of the
20 recollections they can offer about encounters that may
21 have happened as many as five (5) years previously is
22 highly limited.

23 Now similarly the evidence of Mr. Stauff
24 about the door-to-door model and the problems he
25 perceives is really I submit, of no value. First of all,

1 remember that Mr. Stauff acknowledged when I cross-
2 examined him on his qualifications on the first day of
3 the Hearing -- boy that seems like a long time ago --
4 that his experience is predominantly in the wholesale
5 market in the transportation sector and that he has
6 limited experience in and knowledge of the retail sector.

7 And he was very fair about that. He -- he
8 didn't pretend otherwise.

9 He -- he also acknowledged that he is not
10 and doesn't purport to be an expert in consumer trends or
11 behaviour. And I say that being the case, the bald and
12 unsubstantiated opinions he offers about the door-to-door
13 method and the problems he perceived, are based not on
14 any demonstrated expertise on his part but rather on the
15 basis of his subjectively held beliefs as a layperson
16 hired to speak in an expert -- in -- in an area where he
17 has no demonstrated expertise.

18 The present reality is that the retailers
19 -- and you heard evidence of this -- currently expends
20 significant resources in training and overseeing the
21 conduct of door-to-door agents. You heard both Ms.
22 Melnychuk and Ms. Ruzycki testify about third-party
23 verification procedures and reaffirmation procedures that
24 their respective companies have in place, and the zero
25 tolerance approach to inappropriate conduct. And it

1 bears emphasis that these are wholly voluntary measures
2 that the companies take to ensure quality and high
3 satisfaction among customers.

4 Furthermore, this Board -- this Board
5 provides a means or channel by which parties, having
6 concerns about the conduct of door-to-door agents, can
7 communicate those to the Board, which in turn passes them
8 on to retailers with an expectation, indeed a
9 requirement, that there will be a prompt resolution. And
10 so in these circumstances no compelling case can be made
11 that there is a gap in the statutory or regulatory regime
12 that leaves customers needlessly exposed to abuse or
13 exploitation.

14 Now, there's another aspect of the
15 discussion about marketing practices I should comment on,
16 and that has to do with the advertising materials used by
17 retailers.

18 Now, Ms. Murphy spent a considerable
19 amount of time in cross-examination reviewing these but
20 she did not, in my submission, she did not succeed in
21 establishing that these materials were inappropriate or
22 misleading.

23 And Centra's suggestion, the implication
24 that was certainly part of many of her questions, has to
25 be taken with at least a grain of salt having regard to

1 its approach to advertising -- and you will recall the
2 various advertising materials of Centra that are in
3 evidence and the opinion of members of the focus groups
4 that some of the materials that were being put forward by
5 Centra were biased, that is, biased against retailers.

6 And specifically, keep in mind that Mr.
7 Warden said that in expending efforts to promote Centra's
8 products, Centra was not -- was not, in fact, trying to
9 persuade customers to opt for its product instead of the
10 product being offered by the competitive retailers. And
11 according to Mr. Warden, the sole objective is to ensure
12 that there is information in the hands of consumers so
13 that they make informed choices.

14 And I invite you to take a tour through
15 Tab 71 of the compendium which includes a number of the
16 advertising materials that Mr. Warden was being referred
17 to in the course of giving that evidence. And I should
18 tell, you as well, his evidence is at Tab 70 of the
19 compendium.

20 But now we see the now-famous fairytale,
21 or Goldilocks ad, and we see others, and it is simply not
22 -- is not a feasible or common sense explanation that
23 these materials were not intended, or at least were not
24 foreseen by Centra that they could have the impact of
25 recommending its product over the product being offered

1 by the competitive sector.

2 Now in some ways that's really just
3 background noise. The bottom line really is that all the
4 evidence establishes is that Manitoba Hydro thinks the
5 retailers' materials are misleading and the retailers
6 think precisely the same about Manitoba Hydro's
7 materials.

8 The retailers also say though, that
9 Manitoba Hydro, for the policy reasons that I've already
10 addressed, should not be promoting its product and should
11 be acting as a neutral supplier of natural gas. The role
12 of Manitoba Hydro in collaboration with the PUB and
13 interested parties should be providing customers with
14 fair and unbiased educational information only.

15 And clearly the materials that are at
16 Tab 71 of the compendium, by anybody's definition, do not
17 fall into that category.

18 Now it was interesting, Mr. Holloway said
19 yesterday, in commenting on the marketing materials, he
20 says he perceives a, quote/unquote, "logical problem."
21 And he says that the retailers' materials say that the
22 price of the commodity may go up and he says, Well,
23 that's just not logical because if that is truly going to
24 happen or if that truly reflects what the retailers
25 think, then they're marketing products that they're going

1 to lose money on.

2 And I say that submission, unfortunately,
3 reflects a lack of understanding of the market, but
4 particularly of the risk-mitigation strategies that
5 retailers employ -- hedging, for example; we heard many
6 witnesses talk about the need for hedging as part of
7 offering a fixed-price product -- and so, there is no
8 logical problem.

9 It -- it can be the case that the
10 commodity can be rising over time and that the retailers
11 can still be in a position to offer a product that will
12 save money or at least protect the customer from
13 volatility and, at the same time, will not lead or not
14 necessarily lead to the retailer losing money.

15 So there is no logical problem. But
16 perhaps the more important point, apart from all of that,
17 is that there are mechanisms that already exist for
18 consumers if they believe that these materials are
19 misleading to do something about it.

20 And as Professor Cyrenne testified, a
21 large part of the Competition Bureau's mandate relates to
22 dealing with complaints about misleading advertising and
23 I would remind you of the evidence that he gave which
24 we've excerpted at Tab 72 of the compendium. I will not
25 take you to it.

1 But, I think it's important there is
2 already a regulatory mechanism to deal with the potential
3 mischief that has been discussed. The retailers' panel
4 clearly acknowledged a commitment to providing consumers
5 with appropriate, complete and accurate information.

6 But they'd stated their concern that
7 comparisons have to be made on an apples-to-apples basis.
8 Now on the subject of a website, I think I heard Ms.
9 Murphy say yesterday that the retailers did not support a
10 website.

11 But that's not what the evidence is
12 because the panel clearly acknowledged that having
13 comparative information available to consumers on a
14 website would be more than acceptable to them with two
15 (2) provisos.

16 That being firstly, that the information
17 was kept up to date, and secondly, that the website was
18 operated and maintained by an independent agency and not
19 by the Utility.

20 And I say -- I say that the retailers'
21 concern about the Utility operating the website is more
22 than justified given the evidence you've heard about how
23 the Utility has conducted itself vis-a-vis the retailers.

24 And that evidence, in case there's any
25 question at all, is at Tab 73 and if you look -- I'll

1 take you to it because it's quite clear.

2 Tab 73, page 2184, Mr. Roeder's testimony,
3 Tab -- or excuse me, line 20:

4 "We don't have a problem with a website
5 showing retailer prices in comparative.
6 The concern we have is websites that
7 aren't maintained properly.

8 And so you've heard in some of the
9 evidence previously in terms of the
10 concern in some of the markets to where
11 it's not updated on a regular basis."

12 So you've just heard some of the comments
13 here and there were questions about what is or what is
14 not showing up on the website. That's the concern.

15 And then over to page 2186, which is the
16 last page in the tab, Mr. Newcombe at the top of the page
17 says:

18 "Mr. Peters, there's a website in
19 Alberta -- sorry, that's maintained by
20 a Government entity called Utility
21 Consumers Advocate and they post
22 current regulated pricing and pricing
23 available from all the retailers. And I
24 wouldn't want to suggest though that
25 everything on the website is just the

1 way we'd like to see it. But, you
2 know, it's a good start."

3 And then Ms. Melnychuk jumps in and says:

4 "If I can add, Mr. Peters, BC also has
5 a website. At first it was not
6 mandatory that participants post their
7 prices. The BCUC did put a letter to
8 marketers early on in May advising all
9 marketers that they had that it was now
10 mandatory.

11 We still don't believe that's the
12 perfect forum for our prices to be
13 listed because it's a website that is
14 administered by the Utility and there
15 is some conflict there."

16 And we say that when discussing sales
17 channels and marketing practices and applicable market
18 rules, we should all be guided by what Mr. Newcombe said
19 about the need to put natural gas purchases that
20 consumers make into context and to compare them to other
21 financial transactions and to question whether greater or
22 more specific consumer protections are, in fact, needed
23 in the context other than in the context of those other
24 transactions.

25 And again I would say I think Ms. Murphy

1 did a disservice to Mr. Newcombe's evidence and I would
2 commend it to you, I excerpted it. And he is simply
3 saying that a customer can purchase their standard twelve
4 hundred dollars (\$1,200) of natural gas a year from the
5 Utility without there being any consumer protection
6 measures.

7 And so assuming that the price of the
8 commodity offered by the retailers is going to be more
9 and he says assume it's, you know, three hundred dollars
10 (\$300) more, so that what we're now talking is fifteen
11 hundred dollars (\$1,500), where is the public policy
12 justification to regulate that extra three hundred
13 dollars (\$300) in a way that goes above and beyond the
14 consumer protections that are available in the context of
15 other transactions such as purchasing cars and vacuum
16 cleaners and so on?

17 That is the importance of this evidence.
18 It makes perfect sense, I suggest. So I commend it to
19 you for reading.

20 Now, Item 7, the Equal Payment Plan, let
21 me just, very briefly, say that the retailers support the
22 current billing approach where -- where -- excuse me,
23 customers choose to be enrolled in the EPP. There is no
24 justification for forcing the EPP on customers as the
25 default billing option. Such a change, we say, would

1 cause customer confusion and, possibly, a backlash which
2 would result in increased calls to the Utility and the
3 retailers.

4 If the Board decides to make the EPP the
5 default billing option, customers will need to be
6 informed about how the switch would occur and how to opt
7 out further increasing costs for a change that we believe
8 to unnecessary.

9 The current system is working except for
10 the recalculation of the EPP when a customer moves from
11 or to a retail supply, and that problem can be easily
12 fixed in a cost effective manner by insuring that when a
13 customer who has opted for EPP switches suppliers, the
14 EPP amount is recalculated to reflect the price change.

15 So, let me now just offer, by way of
16 conclusion, a few additional comments. As I said at the
17 outset, but I do want to reiterate, the retailers greatly
18 appreciate the opportunity to present their views to the
19 Board on natural gas supply choices in Manitoba. It is
20 the retailer's belief that the Board was correct to
21 support the development of this market.

22 And as we have seen throughout this
23 process, there are areas that need further refinement to
24 improve market conditions, with the main concern being
25 the need to clarify the role of the incumbent Utility.

1 But there has been no evidence, we say, to
2 suggest that expanding the merchant function of the
3 Utility, which we say would inevitably lead to the return
4 of a single regulated supply, is warranted.

5 And in fact, just the opposite; as the
6 evidence clearly suggests that the best course of action
7 would be to continue the transition to a more open and
8 efficient competitive market with Manitoba Hydro and
9 Centra facilitating customer choice, not competing
10 against the retailers who are attempting to provide it.

11 It is important to review the learnings
12 from other jurisdictions respecting the functional
13 separation and relative roles of the distribution system
14 and default supply. The retailers' evidence is that the
15 distribution function serves an important role as the
16 necessary network infrastructure to enable a competitive
17 retail market much like the public road system.

18 The default supply option offered by a
19 regulated entity serves a similar purpose to that of a
20 public -- a public transportation. It's a basic, no
21 frills service available to all and not structured as
22 competition to competitive retail products and services.

23 The retailers are also of the view that it
24 has become apparent, through the course of this
25 proceeding, that most, if not all the fees and charges

1 and increased oversight to ensure that there's no cross-
2 subsidization, unfair preferential access or misuse of
3 the Manitoba Hydro brand. And a review and modification
4 of the exiting affiliate relationship code would also be
5 required if that was the route the Board or Centra chose
6 to go.

7 And if in fact Centra is not able to
8 compete cost effectively through an affiliate, as it's
9 own panel has confirmed, the public interest would best
10 be served by Manitoba Hydro working with the competitive
11 retail sector rather than against it to provide a broader
12 range of competitively priced supply options to natural
13 gas consumers in Manitoba.

14 In the submission of the retailers, based
15 on the evidence that has been presented to the Board,
16 there is no viable business case that can be made for
17 Manitoba Hydro entering the fixed price market either
18 through the Utility or through an affiliate.
19 Accordingly, the retailers recommend respectfully that
20 the Board deny Manitoba Hydro's suggestion that it be
21 allowed to offer fixed price supply, and instead the
22 Board direct Manitoba Hydro and Centra to make the
23 changes proposed by the retailers.

24 We say that once the Board provides this
25 direction, the details of the services, fees and

1 operational changes can be developed through a
2 consultative process and submitted to the Board for final
3 approval.

4 And with that, I'd like to conclude and I
5 would like to thank the Board and all other counsel for
6 their courtesy during this process. Thank you.

7 THE CHAIRPERSON: Thank you, Mr. Hoaken.
8 This brings to a close the public phase of the
9 proceeding. The panel will now proceed to the
10 deliberative and decision-making phase.

11 The Board would be remiss not to properly
12 thank all parties for the quality and breadth of the
13 evidence and discourse. We particularly want to note and
14 recognize the strength, range and skill represented in
15 the closing statements.

16 Rarely has this Board heard a case where
17 the parties evidenced such significant differences in
18 both perceptions and views; that is with two (2) marked
19 exceptions.

20 All parties suggested that this review of
21 the natural gas landscape was due and necessary coming
22 almost a decade after 15/98 and all parties evidenced a
23 sincere interest in the interest of consumers.

24 The Board assures all parties that the
25 importance of the decision to be subsequently reached and

1 communicated and experienced is well understood.

2 Again, thank you for your participation
3 and in this we include not only the parties and their
4 witnesses but also our very able counsel, advisors and
5 staff. Without all your contributions and assistance,
6 the task before us would be beyond daunting.

7 An order may be anticipated to come by
8 January the 31st, 2008. At least that is our goal.
9 Thank you.

10

11 --- Upon adjourning at 12:10 p.m.

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14 Certified correct,

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20 Rolanda Lokey, Ms.

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