The Public Utilities Board

2nd Floor
280 Smith Street
Winnipeg, Manitoba
R3C 1K2

MANITOBA	)	Order No. 109/94
	)	
THE PUBLIC UTILITIES BOARD ACT	)	August 2, 1994

Before: G.D. Forrest, Chairman
Catherine Milner, Member
W.C. Pearson, Q.C., Member
D.L. Barrett-Hrominchuk, Member

AN APPLICATION BY CENTRA GAS MANITOBA INC. FOR AN ORDER OF THE MANITOBA PUBLIC UTILITIES BOARD APPROVING:

1. A REVISED FEASIBILITY TEST TO BE UTILIZED IN ASSESSING THE EXPANSION OF NATURAL GAS SERVICE TO CURRENTLY UNSERVED AREAS OF MANITOBA.

2. THE FRANCHISE AGREEMENT WHICH CENTRA PROPOSES TO USE WITH THE INITIAL GROUP OF EXPANSION COMMUNITIES.

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OVERVIEW

In November, 1992 the Manitoba Government stated its interest in expanding natural gas service to rural areas of Manitoba currently unserved. Centra and the government of Manitoba began working towards the common goal of delivering natural gas service to communities in rural Manitoba.

Centra examined the feasibility of expanding to numerous communities presently not served with natural gas. Centra concluded that without substantial cross-subsidy by existing customers or external funding assistance, expansion to rural areas is not feasible.

An opportunity presented itself in January 1994 when the Federal and Provincial governments announced that the Canada-Manitoba Infrastructure Works Program made funding available. Centra applied and received approval in principle on April 6, 1994 to expand its transmission and distribution system to 23 rural communities at a total cost of approximately $32.7 Million.

Based on preliminary estimates, the expansion initiatives will be cost shared approximately $9.3 million by Centra, $7.2 Million each by the Federal government, Provincial government, and local municipalities and $1.8 million by new customers.

On June 3, 1994 Centra applied to the Public Utilities Board requesting approval of a revised feasibility test to be utilized in assessing the expansion of natural gas service to currently unserved areas of Manitoba. The revised feasibility test will take into account the five sources of funding contributions and add a net present value approach to measure the difference between projected revenues and revenues required to determine the amount of contribution required. In addition, Centra also requested approval of the form of Franchise Agreement which it proposes to use in expanding its service.

The Board held public hearings in respect of this application in Swan River, Souris, and Winnipeg. While there are a number of outstanding steps prior to Centra proceeding with this expansion, the Board has approved in principle the feasibility test and the form of Franchise Agreement subject to certain alterations as contained in this order.

The Board has continued this application and will review each final Franchise Agreement, as supported by its final feasibility test when filed by Centra. As a result of that review, the Board will determine whether final approval will be granted to the Franchise Agreement for expansion to each of the various Manitoba communities.

1.0 Appearances

R.F. Peters K.L. Kalinowsky	Counsel for the Public Utilities Board of Manitoba (the "Board")
D. Young	Counsel for Centra Gas Manitoba Inc. ("Centra")
B.J. Meronek	Counsel for the Consumers' Association of Canada (Manitoba Chapter) and the Manitoba Society of Seniors ("CAC/MSOS")
J. Carstairs	Counsel for the Municipal Gas Company ("Municipal Gas")

2.0 Witnesses for Centra

Hon. O.E. Lang	President and Chief Executive Officer
J.D. Brett	Vice-President, Gas Supply and Corporate Secretary
W.W. West	Manager, Administration and New Markets, Marketing and Sales
T.E.J. Bell	Vice-President, Marketing and Sales
G.B. Whitehill	Controller

3.0 Intervenors

CAC/MSOS	Represented by B.J. Meronek
Municipal Gas	Represented by J. Carstairs

Communication, Energy and Paper Workers Union	Represented by G. Wilcox
Manitoba Energy and Mines	Represented by R. Pritchard and M. Beck
Gerald Finkle	
Simplot Canada Limited	
Stittco. Utilities Man Ltd.	
TransCanada Pipelines Ltd. (TCPL)	

4.0 Witness for CAC/MSOS

J. Todd	Econalysis Consulting Services Inc.

5.0 Presenters

Harry Showdra	Town Administrator, Swan River
Brent Fowler	Municipal Administrator for the Village of Minitonas and Rural Municipality of Minitonas
Rosann Wowchuk	M.L.A., Swan River
Kelly Neely	Economic Development Board, Swan River
Jack Buhler	Deputy Reeve, Rural Municipality of Swan River

Jack Boake	Councillor, Rural Municipality of Riverside
Murray Jackson	Administrator, Rural Municipality of Glenwood
Ray Smith	Town of Killarney
Alvin Jones	Rural Municipality of Turtle Mountain
Brenda McKinny	Western Manitoba Economic Development Association
Cory Petkau	Community of Mather
Art Friesen	Unincorporated Village District of Rosenort
M. Maksymyk	Mayor, Village of Teulon
Richard Locke	Secretary-Treasurer, Rural Municipality of Portage la Prairie
Garth Mitchell	Secretary-Treasurer, Village of Elkhorn

6.0 Background

The Board, in Board Order 118/91 dated August 16, 1991, ordered Centra to

> "file a policy with respect to the assessment of future franchise applications for the Board's review and subsequent approval concurrently with the information filed for the 1991 General Rate Application hearing, including the following:
>
> a) specific criteria to assess the economic viability of future franchise applications;
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> b) recommendations on various means of harmonizing the new franchise revenue/cost ratios with the system revenue/cost ratios; and
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> c) progress towards a marketing plan on an integrated area basis."

Subsequently, Centra requested and was allowed by the Board to defer filing the policy at the 1991 GRA. Centra did, however, provide information on its current expansion policy for both new and existing franchise areas.

In Order 10/93 dated January 22, 1993, the Board stated that it

> "will require the Company to file the expansion policy with the Board when completed. The policy should at least include criteria to assess the economic feasibility on the expansion and any other methods that the Company has investigated to move the new franchise revenue to cost ratios closer to the system revenue to cost ratios."

Subsequent to Board Order 10/93, Centra continued its review of the policy through the spring and summer of 1993, and filed a report with the Board entitled *Manitoba Rural Expansion Policy Review* dated November 2, 1993.

The *Rural Expansion Policy Review* included information on the background and history of gas distribution in Manitoba, a review of gas system expansion in Manitoba, a discussion on Centra's feasibility process, a review of natural gas expansion policies in other jurisdictions, policy issues discussion and funding/contribution alternatives.

The Policy Review conclusions set out in the report are:

1. The current expansion policy as previously filed with the Board on September 14, 1992 is the most appropriate for the current circumstance in Manitoba. This expansion policy includes a requirement that a new community must achieve a revenue to cost ratio of 100% by the end of the fifth year to be considered feasible.

2. The various means to reduce the cross subsidization between new franchise customers and existing customers and moving the new franchise revenue/cost ratios closer to existing revenue/cost ratios include Customer Contributions, Separate Rates for each Franchise Area, Rate Riders for New Franchised Areas, Government and Private Grants, and Real Property Tax Relief. The report includes the Company's position on each of these funding alternatives.

3. Centra recommends a modified area approach or a "take off" approach to analyze the feasibility of serving all towns which can reasonably be served from a specific take-off point from the existing gas supply source.

Further conclusions in the Rural Expansion Policy Review that relate to this application include:

1. With a potential cost in excess of $100 million required to expand to the 60 towns reviewed, Centra must be concerned about the possible impact of any proposed expansion program on its financial operating parameters.

2. Modification of the feasibility test may artificially introduce cross subsidy into the process. Utilization of a different test does not address the basic fact that without substantial cross subsidy or funding assistance, expansion to rural areas is not feasible.

In the November 16, 1992 Throne Speech, the Manitoba Government stated its interest in expanding natural gas service to rural areas of Manitoba. Centra began sharing information and working with the Government of Manitoba towards a common goal of delivering natural gas service to communities in rural Manitoba. Three basic assumptions were adopted:

1. the price paid for natural gas service by consumers across the Province should be the same;

2. the service provided by Centra throughout the Province should be the same; and

3. the amount of cross subsidization by existing customers should be kept to a minimum.

The biggest issue in the natural gas expansion program was to determine who would pay what share of the very substantial subsidies required to make rural expansion feasible. An opportunity presented itself in January of 1994 when the Federal and Provincial governments announced that the Canada-Manitoba Infrastructure Works Program made funding available on a cost sharing basis. Centra made an application and received approval in principle of its application on April 6, 1994 to expand its transmission and distribution system to 23 rural communities at a total cost of approximately $32.7 million.

Based on preliminary estimates, the expansion initiatives will be cost shared approximately $9.3 million by Centra, $7.2 million each by the Federal Government, Provincial Government and local municipalities, and $1.8 million by new customers. The 23 communities included under the agreement were proposed because they were the most economically viable as shown by feasibility studies carried out by the Company and by the Province of Manitoba.

7.0 Application

On June 3, 1994, Centra applied to the Board requesting approval of a revised feasibility test to be utilized in assessing the expansion of natural gas service to currently unserved areas of Manitoba. In addition, Centra, on its own behalf and on behalf of various communities, requested approval of the Franchise Agreement which it proposes to use with the initial group of expansion communities.

After a review of more than 60 communities, Centra has determined the 23 communities that are the most economically viable for natural gas service expansion. Centra has applied for, and received approval in principle for support funding through the Canada-Manitoba Infrastructure Works Program. Of the 23 communities selected the following 12 are scheduled to receive natural gas service in 1994: Dufrost, Elkhorn, La Broquerie, Neubergthal, Oakville, Rosenfeld, Rosenort, St. Malo, Schanzenfeld, Sommerfeld, Starbuck and Teulon. Following expansion to these communities, Centra plans to extend natural gas service to these remaining 11 communities in 1995: Benito, Boissevain, Bowsman, Deloraine, Hartney, Killarney, Melita, Minitonas, Souris, Swan River and Wawanesa.

The Board held public hearings in respect of this application in Swan River on June 27 and 28, Souris on June 29, and Winnipeg on July 5, 6 and 7.

During the course of the public hearings, Centra made it clear at this time that they were seeking approval in principle of the feasibility test methodology and the franchise agreement. The specific feasibility test and franchise agreement for each community will be reviewed and approved by the community itself and then by the Board.

Centra also made it clear that a number of steps remain to be completed before Centra will proceed with its 1994 expansion to a particular community including:

1. A final agreement must be signed between Centra and the Federal and Provincial Governments setting out the details of the contractual arrangements between the parties. Centra expects that this will be completed before the end of July, 1994.

2. Centra must sign an agreement with each Municipality detailing the amount of funding required and method of payment. Centra expects that this will be completed by mid August, 1994.

3. Each community must achieve a 60% sign-up rate for residential and commercial customers, with commercial customer sign-ups representing a minimum of 60% of the available volume. Centra expects that this will be substantially completed by the end of July, 1994.

4. Municipalities involved must give second and third readings to the franchise expansion by-law and must sign the franchise agreement. Centra expects this to be completed by mid August, 1994.

5. Centra Executive Group approval must be given for each new franchise natural gas expansion. Centra expects this to be completed by mid August, 1994.

6. The Board must approve all final franchise agreements.

8.0 Motion by Centra

On June 23, 1994, CAC/MSOS filed evidence by its witness, Mr. John Todd of Econalysis Consulting Services Inc. In his evidence, Mr. Todd made and expanded on four recommendations to the Board. Two of the recommendations were that:

> "3. The primary test of feasibility should be the Extended Total Resource Cost test which includes both the impact on electricity rates and the cost of subsidies to Manitoba taxpayers as relevant costs.
>
> 4. A test reflecting the societal perspective should be adopted which identifies:
>
> - the total resource cost to society, exclusive of explicit government subsidies; and
> - the benefits to society that reflect the objectives of the subsidy program."

By way of letter Centra requested that Mr. Todd's evidence on the above two recommendations be excluded.

The Board scheduled submissions on this Motion for Tuesday July 5, 1994. On that date, counsel for Centra advanced its submission that the above referenced evidence was irrelevant to the proposed expansion of natural gas service to rural Manitoba.

Counsel for CAC/MSOS responded to the motion maintaining that the evidence was relevant and merited consideration by the Board.

Counsel for Municipal Gas supported the position of CAC/MSOS that Mr. Todd be permitted to give his full testimony as prefiled.

The Board considered the submissions by Centra, CAC/MSOS and Municipal Gas and dismissed the motion by Centra to exclude certain of the evidence by Mr. John Todd on the issues of total resource costs and societal costs.

The Board found Mr. Todd's evidence to relate to a matter in issue before the Board, and, therefore, his evidence on the issues of total resource costs and societal costs was relevant. However, having determined that Mr. Todd's evidence is relevant to the issue before the Board, the Board also made it clear that it has discretion to determine what, if any, weight should be given to Mr. Todd's evidence.

9.0 Feasibility Test

9.1 Centra's Position

Centra has requested approval of a revised feasibility test to be utilized in assessing the expansion of natural gas service to currently unserved areas of Manitoba. Centra's current feasibility test requires that the feasibility of any expansion shall be calculated by a determination of the revenues available from expansion divided by the cost to serve the new community. This is known as the revenue to cost ratio. In order for a new community to achieve feasibility, this revenue to cost ratio must equal 100% by the end of the fifth year. That is, at the end of the fifth year, the revenues from expansion must equal the costs to serve the expansion. If such is not the case, then a contribution in aid of construction and/or a cross-subsidization would be required.

The revised feasibility test proposed by Centra measures the difference between the projected revenues and the revenues required, and using a net present value approach, determines the contribution that will be required . Financial feasibility is achieved when the net present value of the revenues required to earn the Company's allowed rate of return and recover all of the operating costs match the net present value of the projected revenues over the life of the project. The life of the expansion project is assumed to be 30 years which is the term of the franchise agreement, and approximately equal to the expected useful life of the plant. The net present value is calculated using the Company's before tax cost of capital with debt cost equal to the expected cost of borrowing and equity equal to the currently allowed return on equity.

Centra believes that the proposed feasibility test will provide greater assurance that no undue impact on existing customers will result from expansion. Centra believes that the proposed feasibility test is superior to the existing test because it:

1. recognizes the time value of money;

2. does not rely on a cutoff point of five years where revenues must equal expenses;

3. looks at the total expected life of the project and allows for changes such as customer growth, costs and other factors; and

4. makes it easier to do "what if" scenarios since the total expected life of the project is considered.

9.2 Intervenors' Positions

9.2.1 CAC/MSOS

CAC/MSOS stated that, with respect to the feasibility study, the net present value concept is acceptable subject to two concerns. One is that, in the opinion of CAC/MSOS, there are certain refinements that are required in the feasibility study to provide a "buffer". The concern is that if the financial projections turn out to be too optimistic, there will be cross-subsidization. Therefore, an appropriate buffer should be incorporated into the model "to reflect, with more certainty, the feasibility of the projects to reduce the degree of risk associated with coming up with a net present value of zero. Some of the buffer options suggested are a hurdle rate, assumed lower revenues with respect to the small general service customers, lower consumption per customer, and a forecast period shorter than the suggested thirty years. It was also suggested that all upstream costs be included in the study.

The second concern of CAC/MSOS on the proposed feasibility study is that it does not go far enough, that it is too narrow in scope, and confines itself to the communities involved, to Centra, and to the existing ratepayers of Centra. CAC/MSOS argued that any prudent economic study should reflect the total benefits and total costs to the public directly effected by any decision. CAC/MSOS stated in closing argument;

> "Accordingly, we feel that what should be taken into account are the total energy costs of the Manitoba resources that are being spent on expansion versus what economic benefits are being received, and that could be expressed in terms of the total electrical revenue loss, the total gas savings, the Manitoba portion of the tax subsidies, the contributors from the private sector, and the conversion costs. If the results of these factors is negative, then we say that the regulator can take into account the social considerations which might otherwise justify proceeding, notwithstanding the negative results." (transcript p. 651)

Mr. John Todd, on behalf of CAC/MSOS, presented evidence intended to identify elements that should be considered in Centra's rural expansion feasibility test and to make recommendations regarding ways to extend the proposed test so that it will better reflect all of the system expansion benefits and costs that are relevant

to the people of Manitoba. In his evidence, Mr. Todd recommended the following:

1. The Company's proposal to replace the current fifth year revenue to cost ratio test with a methodology based on a net present value calculation should be accepted.

2. The Company's upstream costs should be included in the Company's proposed rural expansion feasibility model, either by using case by case estimates of long-run upstream costs, or by including system average long run incremental costs .

3. The primary test of feasibility should be the Extended Total Resource Cost test which includes both the impact on electricity rates and the cost of subsidies to Manitoba taxpayers as relevant costs.

4. A test reflecting the societal perspective should be adopted which identifies the total resource cost to society, exclusive of explicit government subsidies and the benefits to society that reflect the objectives of the subsidy program.

9.2.2 Municipal Gas and Communications Energy & Paper Workers Union

Both Municipal Gas and the Communications Energy & Paper Workers Union made no specific comments regarding the proposed feasibility test.

9.3 Board Findings

The Board will approve in principle the net present value feasibility test proposed by Centra, subject to a review of the specific calculations when the actual franchise expansion applications are filed for approval by the Board. In approving the net present value feasibility test, the Board accepts the arguments put forward by CAC/MSOS that the projections should be prepared on a conservative basis to reduce the degree of risk associated with coming up with a net present value of revenue deficiency after contribution of zero. Some of the estimates to be addressed by Centra include revenue projections, demographics of the communities, conservation trends, and consumption per customer.

The Board notes that the net present value test is used in several other jurisdictions in Canada in determining system expansion feasibility.

The Board finds that rather than a hurdle rate being used for discounting purposes, Centra should use the cost of capital approved by this Board from time to time. The Board also accepts that a 30 year discount period should be used, since that time coincides with the approximate expected useful life of the plant and the term of the franchise agreement.

The Board finds that all upstream costs reasonably identifiable should be included in the projections. The Board expects that all upstream costs will be identified and included in the minimum filing requirements that Centra will subsequently submit with each final feasibility study.

The Board finds that while the factors related to total energy costs and societal costs may be useful these should not be included in this system expansion feasibility test.

10.0 Franchise Agreement

10.1 Legislation and Application

Under section 89 of *The Public Utilities Board Act* R.S.M. 1987, c. P280, any franchise granted to a public utility by any municipality must be approved by the Board unless the franchise is granted under an Act of the Legislature. Approval of a franchise application is to be given after a public hearing in which the Board hears those concerns raised by interested parties. In approving a franchise the Board is to consider whether the franchise is necessary and proper for the public convenience and properly conserves the interests of the public.

In compliance with the provisions of *The Public Utilities Board Act*, in addition to relevant provisions of the *Municipal Act*, R.S.M. 1988 c. M225, Centra applied to the Board on its own behalf and on behalf of the rural municipalities for an Order of the Board approving the typical form of a Franchise Agreement (or amendment to certain existing Franchise Agreements) included in the material filed with the application.

Centra will be seeking Board approval to hold the sole and exclusive franchise to supply natural gas and operate a gas distribution system in each of the 23 communities. The Board has been asked to approve this Franchise Agreement on a generic basis. The typical Franchise Agreement submitted by Centra in the

application is to be the model for all Franchise Agreements for those communities that meet the feasibility test as set out by the Board.

The Board, Centra, intervenors, and those municipalities whose representatives made presentations at the hearing recognized that the typical Franchise Agreement submitted by Centra and given first reading in each of the municipalities is a generic model of the Franchise Agreement. It was further recognized that some of the terms and conditions may be varied prior to execution. Each of the executed Franchise Agreements will be submitted to the Board for final approval, and any changes in its terms and conditions reviewed at that time by the Board.

Concerns relative to the Franchise Agreement expressed during the public hearings include the length of the term, renewal provisions, provision of service, indemnification or lack thereof in some franchise agreements for incidents of negligence or wilful misconduct, option to purchase and the number of days notice provided by Centra to the municipality prior to commencing construction work. Each of these is dealt with separately below.

10.2 Term of the Franchise

At the public hearings, representatives of various rural communities raised concerns about the terms of the Franchise Agreement. The typical Franchise Agreement contains a term of thirty years, which is the maximum length of a franchise permitted under the *Municipal Act*. Thirty years is also the approximate useful life of the physical asset. The Rural Municipality of Swan River requested that the term of the franchise be reduced to ten years. Centra expressed its desire to keep the term to thirty years, arguing that thirty years corresponds to both the existing life of the physical asset and the maximum permitted under the *Municipal Act*.

Board Findings

The Board accepts the thirty year term of the franchise for the reasons that Centra put forth.

10.3 Renewal Provisions

Under the terms of the typical Franchise Agreement the rural community may, after giving one year's notice prior to the date of the termination of the Franchise Agreement, or any renewal, elect to purchase part of the gas distribution system. Should the rural community fail to notify Centra of its intention to purchase, then the Franchise Agreement will be deemed to be renewed automatically for a term of ten years. This puts the onus on the community to inform Centra that it may not wish to renew the Franchise Agreement. Failure to notify will have the effect of continuing the franchise for a further ten years, and in theory the franchise could renew itself in perpetuity, without either the municipality or Centra taking any action.

Concerns were raised that because of the lack of resources and the administrative structure of municipalities, the onus on the municipality to inform Centra that it wished to exercise its rights upon termination of the Franchise Agreement could perhaps be an undue burden. Failure to be aware of the impending termination could preclude a debate within the municipality of the rights that it might exercise upon termination. Both parties would be bound under the terms of the existing Franchise Agreement, thus missing an opportunity to renegotiate any of the provisions of the Franchise Agreement.

Centra preferred that the onus for renewal or termination of the Franchise Agreement remain with the municipality, arguing that this is a conscious option that should be exercised by a municipality. As exercising the option to purchase would require a substantial capital expenditure, Centra argued that the municipality would be aware of the deadline and that the matter would be dealt with on a appropriate basis by the municipality.

In final argument Centra conceded that it would be prepared to provide notice to the municipalities two years prior to the expiration of the term of the Franchise Agreement. Such notice would indicate that the expiration date was forthcoming and would also indicate the rights that the municipality had under the Franchise Agreement upon its termination and the consequences of not exercising such rights.

Board Findings

The Board will order Centra to include a provision that Centra, two years prior to the expiration of the Franchise Agreement, notify the municipality that the term is due to expire and that the municipality has options that may be exercised. The notification should also inform the municipality of the consequences of failing to exercise such options.

10.4 Exclusivity of Franchise

The exclusivity clause in the Franchise Agreement (clause 10) prohibits the municipality from granting to any other person, firm or corporation the right to deliver natural gas or to erect or maintain a gas distribution system in the area to which the franchise applies.

Centra is also bound by clause 2(a) of the Franchise Agreement to establish an adequate natural gas distribution system within the franchise territory and to provide such quantities of natural gas as required. However, clause 2(b) of the Franchise Agreement does not require Centra to extend its gas distribution system to those areas of the franchise territory where it would be unreasonable to do so and would not provide sufficient volumes to justify such expansion expanses.

The terms of the Franchise Agreement could thus permit a situation whereby Centra holds the exclusive franchise, but does not provide gas to all within the franchise territory, and yet those who are not provided with natural gas would be precluded from obtaining gas service elsewhere.

Centra acknowledges that it would not stand in the way of a community that it was not servicing if that community were seeking the expansion of gas service from other than Centra. Centra further acknowledged that it would not be adverse to accepting a provision in the Franchise Agreement that would permit part or all of the rural community to which Centra holds an exclusive franchise from opting out of the Franchise Agreement if Centra did not provide gas service to that area of the franchise territory.

Board Findings

The Board will order Centra to amend clause 10 of the typical Franchise Agreement by which Centra will relinquish its exclusive franchise to that area not provided with natural gas service if reasonably requested to do so by the municipality. Centra will retain its right of first refusal to service that area with natural gas.

10.5 Indemnification of Negligent Acts

Liability of the municipality and Centra for negligent acts and wilful misconduct by those performing work for the municipality differs between different Franchise Agreements to which Centra is a party.

Clause 5 of the proposed Franchise Agreement requires Centra to protect and indemnify the municipality for damages to the municipality in relation to the gas distribution system except for those damages caused by the negligent acts or wilful misconduct of the municipality or those working for the municipality. It further provides such an indemnification for those damages caused by third persons. In contrast, the indemnification clause in the City of Winnipeg Franchise Agreement does not provide the exemption for damages caused by negligent acts or wilful misconduct of the municipality or those working for the municipality.

Evidence submitted by Centra at the hearing demonstrated that the franchises throughout Manitoba are split between the two models of the municipal liability provision. Those Franchise Agreements originally entered into by Inter-City Gas exempt the municipality from liability for negligent acts or wilful misconduct; whereas those Franchise Agreements originally granted to Plains Western Gas impose liability upon the municipality for damage caused by the municipality or those working for the municipality for their negligent acts or wilful misconduct. The more recent franchise agreements granted to Centra make municipalities liable for their negligent acts or wilful misconduct.

The preference of Centra is that the municipalities be liable for negligent acts or wilful misconduct caused by the municipality or those employed by it which result in damages to the gas distribution system. Centra indicated that it carries insurance to cover any indemnification it may be liable for in these instances where there is no exemption for negligent acts or wilful misconduct.

Board Findings

The concerns of the Board are twofold: first, the Franchise Agreements are not standard throughout the province, despite Centra's attempts to standardize these terms. Second, the exemption of the liability for damages due to negligent acts or wilful misconduct can lead to preferential treatment to these municipalities if there should be such damages. At the very least, should some municipalities be required to purchase insurance coverage because they do not have such an exemption, then the cost of gas service is greater to those municipalities requiring the insurance. Those municipalities are not receiving natural gas service on the same terms as those municipalities which, by the nature of origin of the Franchise Agreement, are exempt from such liability.

The Board notes that the City of Winnipeg Franchise Agreement is contained as a Schedule to the *Greater Winnipeg Gas Distribution Act* S.M. 1988-89, c.40.

The Board finds that the public convenience and interest requires the communities to be protected with the indemnity clause and exemption which is provided to the City of Winnipeg area.

The Board recognizes that whosoever bears the liability will seek insurance coverage. Indeed, Centra has insurance to cover its liability for those instances in those franchise areas should such a negligent act or wilful misconduct result in damage. The Board notes that the cost to Centra of extending their insurance coverage and its terms in these instances to the communities serviced under this typical Franchise Agreement would likely be more favourable than could be obtained by each community.

Accordingly, the Board will order that clause 5 of the typical Franchise Agreement be amended so as to conform with the indemnity clause and exemption of the Schedule attached to the *Greater Winnipeg Gas Distribution Act*. The Board will also order that clause 5 of the typical Franchise Agreement also be amended to include provisions similar to the Schedule to the *Greater Winnipeg Gas Distribution Act* which requires that Centra has in place sufficient liability insurance to satisfy any potential claim that could result.

The Board will also order that the cost of obtaining such insurance be included as a cost of the project in the feasibility test of each community.

10.6 Notice Prior to Construction

Prior to engaging in any work or alteration to the gas distribution system that would break up any streets or lanes, Centra is required to provide notice to the municipality. The typical Franchise Agreement proposes a three day notice period prior to construction; in the Schedule attached to the *Greater Winnipeg Gas Distribution Act* the City of Winnipeg is provided with no less than seven days notice.

In response to questioning by the Board as to whether Centra would accept seven days rather that three days notice prior to engaging in any such work, Centra responded in an undertaking that the three days notice period would be adequate in the rural areas as construction activity is lower there than in Winnipeg and Centra desired the flexibility in organizing its work crews.

Board Findings

Unlike the City of Winnipeg, most rural municipalities do not have their own engineering staff but rather contract engineering and planning duties to private firms.

The Board is concerned that a three days notice period is not sufficient in any municipality to prepare for the disruption to its streets and lanes by such construction. The municipality may wish to inform other utilities that share the same utility corridor of such impending construction so as to arrange similar construction and cost sharing at the same period. Similarly, the municipality may wish to take advantage of such cost savings and plan to undertake some work to that area at that time. To facilitate such planning, and the benefits that could accrue therefrom, a notice period in excess of three days would beneficial.

Accordingly, the Board will order that a seven day notice period be inserted in clause 4 of the typical Franchise Agreement.

10.7 Intervenors' Positions

10.7.1 CAC/MSOS

CAC/MSOS in closing argument submitted that they did not have much concern about the generic franchise agreement because they believe "it's more within the bailiwick of the municipalities of the parties signing the agreements to speak to these matters." The only concern of CAC/MSOS with the franchise agreement had to do with the provisions for approval of any sale, particularly in light of the significant contributions. CAC/MSOS suggested that the price be fixed by the parties for the sale of part or all of the distribution system should require Board approval.

10.7.2 Municipal Gas

Municipal Gas supported the application of Centra but sought an amendment to the typical Franchise Agreement so as to include an appointment clause whereby the municipality would be appointed by the gas consumers as agent with a power to appoint a sub-agent to purchase natural gas on their behalf. Any difference in cost between the Centra price and the price paid by the municipality would be shared between the municipality and the gas users. Under the appointment clause, the revenue generated through a lower priced natural gas would be used by the municipality to offset the contribution made by gas users to defray the cost of the contribution and conversion costs.

Centra was adamantly opposed to including this proposed appointment clause in the typical Franchise Agreement, arguing that Centra would not be the marketer of Municipal Gas nor any other gas broker in the Franchise Agreement. Centra maintained that municipalities currently have the choice as to whether to purchase the gas from Centra or a gas broker, and this will not be altered by the typical Franchise Agreement as proposed.

10.7.3 Communications & Paper Workers Union

The union supported rural gas expansion and stated its belief that "the terms and conditions which Centra operates under and that our existing customers value should be extended to all new customers to ensure the safe installation and services of all gas appliances." (transcript. p.668)

10.8 Board Findings

The Board does not find it necessary to include in the typical Franchise Agreement a requirement for the price fixed by the parties for the sale of part or all of the distribution system as this is to be approved by the Board as required by s.81 of the *Public Utilities Board Act*. The operations of Centra, including the disposition of assets are reviewed as part of general rate applications.

The Board does not find it necessary to include in the typical Franchise Agreement such an appointment clause as suggested by Municipal Gas. At present, no other Franchise Agreement contains such a clause. In addition, nothing in this typical Franchise Agreement precludes Municipal Gas nor any other gas broker from selling gas to a municipality if it so desired. As this option is open to Municipal Gas or any gas broker to pursue, then its inclusion in the typical Franchise Agreement is not necessary.

The Board agrees with the comments made by Centra that "there may be a tremendous number of people out there who have no desire to appoint the municipality as their buying agent. There also may be some municipalities who have no desire to enter into the kind of arrangement you have described." (transcript p. 305)

The Board will approve in principle the form of the typical Franchise Agreement as filed by Centra in this application and given first reading by all of the communities, subject to those specific changes to the Franchise Agreement as set out in this Order.

The Board emphasizes that this approval of the typical Franchise Agreement is granted in principle only. As the municipalities negotiate the Franchise Agreement with Centra, the Board is aware that some terms may be slightly varied. The Board will, of course, examine each Franchise Agreement as it is submitted to the Board for final approval. The Board further urges each municipality to examine carefully the terms of the Franchise Agreement prior to execution.

Any variations to the Franchise Agreement should be minimal to ensure that all rural communities receive natural gas service on the same terms. Accordingly, Centra should attempt to ensure that any variations in the terms of the Franchise Agreements negotiated with the municipalities are implemented throughout all Franchise Agreements. Variations will have to be identified to the Board and must be rationalized satisfactorily prior to receiving final Board approval.

11. Rural Meetings and Presentations

11.1 Introduction

The Board held public hearings in the towns of Swan River and Souris, in addition to Winnipeg, to listen to the concerns of Manitobans.

All presenters expressed their support and enthusiasm for the expansion of natural gas service to their municipalities. Each stated that with the introduction of natural gas service the decreased heating costs would be welcomed by both residential and commercial customers. The possibility of attracting new industry and promoting economic development within the rural municipalities was stressed by all presenters.

Communities such as Swan River and Rosenort had applied in the past for natural gas service but had been denied because of lack of feasibility. Swan River had even retained a private firm to conduct its own feasibility study to determine whether natural gas could be brought in by a natural gas cooperative or municipally owned utility. These communities thus welcomed this application for natural gas expansion as a long-awaited service to enhance their competitiveness for industry and improve the standard of living of their residents.

Support was also given for Centra by Mr. Brent Fowler of the Village and Rural Municipality of Minitonas because of its expertise and knowledge in operating and providing natural gas service. Although the Swan River Valley communities had investigated other alternatives for natural gas service, the best alternative was this current application of Centra.

Letters of support for Centra's application were also sent in by the Village of Teulon, the Rural Municipality of Portage la Prairie, and Village of Elkhorn.

11.2 60% Customer Sign-up Requirement

Most presenters expressed concern and possible doubts about achieving the 60% customer sign-up requirement for the residential customers as a condition prior to expansion. Impediments to the sign-up were the $300 capital contribution required by all customers upon sign-up and the conversion costs. Since the overwhelming majority of residential homes in Swan River have baseboard electric heating, the conversion costs would be significant for the residential consumer. Ms. Wowchuk, the M.L.A. for Swan River, supported the adoption of a scheme whereby the conversion costs could be financed by Centra and then paid off in

monthly instalments from the savings in heating costs. She further impressed upon Centra to propose alternative methods of funding conversion costs and suggested phasing in of the residential customers requirement over a longer period of time.

Mr. Art Friesen of the Unincorporated Village District of Rosenort attributed the difficulty in achieving the 60% sign-up for residential customers to the fact that residents switched over to electric heat a number of years ago and did not wish to incur the costs of conversion once again.

Mr. Showdra of Swan River suggested that the 60% requirement may be achievable over the three to five year period, proposing that a five year requirement period be adopted.

Minitonas, like many rural communities, has a high proportion of senior citizens, and the contribution and conversion amounts might be too steep an investment for many. Mr. Fowler suggested that the 60% requirement for residential customers be altered to a 60% volumetric requirement for the entire community.

The Economic Development Board of Swan River, by way of Mr. Kelly Neely, suggested a five year target for the achievement of the 60% residential sign-up target, or alternatively, a 60% volumetric requirement for the franchise territory. He urged the Board to move quickly in its decision so as to ensure the provision of natural gas service by the proposed start-up date of the Louisiana-Pacific mill.

Mr. Neely also suggested that customers in Swan River would be prepared to pay a higher rate for natural gas service than the rest of the province and urged the Board to consider moving away from a postage stamp rate if this would ensure natural gas service.

11.3 Municipal Funding Requirements

Several communities were anxious to obtain information from Centra about the funding requirement required to be put forth by the municipality. For instance, Minitonas was equally anxious that Centra provide the amount of the funding required to be put forth by the municipality. This information is required before the Council has second and third readings of the by-law and executes the Franchise Agreement. Concern was expressed about the size of this requirement and the inability of the municipality to commit such money.

Rosenort had been informed by Centra that their contribution was to be approximately $315,000 which it recognised could be a substantial burden for a community of 560 people if not shared by the entire Rural Municipality. Rosenort

is currently trying to arrange with the municipality its share of the funding. Similar concerns were expressed by Minitonas.

The Town of Swan River wished to be informed at an early date as to whether or not their town had passed the feasibility test, for if Centra were not planning to expand into the area, then the town could apply to the Canada-Manitoba Infrastructure Works Program to seek its own funding.

11.4 Alternative Routing of Pipeline

Mr. Jack Boake, a councillor from the Rural Municipality of Riverside presented a request to Centra that it investigate the feasibility of servicing Wawanesa and Killarney from Shilo. The pipeline in such an expansion would run through the Rural Municipality of Riverside and directly through the Town of Ninette which is within the Rural Municipality of Riverside. Centra responded that providing the gas from Saskatchewan through Melita was the most cost-effective supply so far, but the Shilo take-off was being considered as an alternate supply and would be evaluated in the detailed design phase, before a final decision by Centra.

11.5 Franchise Agreement

Although each community had given first reading to a by-law whereby the community granted the exclusive franchise to provide natural gas service by way of a Franchise Agreement, it became evident during the hearings that very few communities had examined the Franchise Agreement nor had the Franchise Agreement reviewed by their solicitors. When questioned by Board counsel as to whether council members had reviewed the Franchise Agreement, Mr. Brent Fowler of Minitonas, stated that council was relying on legal counsel and the Board to review the Franchise Agreement.

Presenters from the Swan River Valley indicated that at various different council meetings concerns had been raised as to the nature of the exclusivity of the franchise. In particular, they were concerned what the consequences of the exclusivity clause would be if Centra were not providing natural gas service and whether or not the community could be released from the Franchise Agreement should Centra not be providing natural gas service. A request was made that such an opt-out clause be inserted in the Franchise Agreement.

12.0 Minimum Filing Requirements

As discussed previously in this Order, there are still a number of crucial steps to be completed before expansion of natural gas service to new communities in Manitoba becomes a reality. The Board was advised that Centra is actively pursuing all outstanding matters and expects to bring the completed feasibility studies and franchise agreements to the Board for final approval after mid-August 1994.

In preparation for the Board's review of all final franchise agreements, as supported by the feasibility test, the Board will require Centra to meet with the Board advisors and any interested intervenors to develop Minimum Filing Requirements (MFR) that should be included in Centra's requests for final franchise agreement approval. The MFR will facilitate, and may expedite, the Board's review of each new franchise agreement.

To enable all interested parties to review the final franchise agreements and feasibility tests in an expeditious manner, Centra will be required to submit such documentation as is agreed to be included in the MFR to the Board and intervenors prior to the continuation of this process seeking final Board approval of new franchise agreements.

13.0 It is Therefore Ordered That:

1. the proposed feasibility test is approved in principle subject to:

   a. projections included in the feasibility test be prepared on a conservative basis to reduce the degree of risk associated with coming up with a net present value of a revenue deficiency, after contribution, of zero;

   b. inclusion of all upstream costs that can be reasonably identifiable;

   c. final review of the specific calculation when the detailed franchise expansion application is filed for approval with the Board.

2. the proposed typical Franchise Agreement is approved in principle, subject to:

   a. Centra revising the Franchise Agreement in accordance with the Board findings in section 10.3, 10.4, 10.5, and 10.6 of this Order;

   b. final review of the specific Franchise Agreements when filed for final approval by the Board.

3. Centra, in conjunction with Board Advisors and interested intervenors, is to develop Minimum Filing Requirements that should be used with all final franchise applications.

THE PUBLIC UTILITIES BOARD

"G. D. FORREST"
Chairman

"B. BALL"
Acting Secretary

Certified a true copy of Order No. 109/94 issued by The Public Utilities Board

Bruce Ball
Acting Secretary

APPENDIX A

Centra Gas Manitoba Inc.
1994 Rural Expansion Hearing

Rural Expansion Feasibility Model

1 *Method: Net Present Value of Revenue Deficiency*

2 Town: Sample Town

3	YEAR 0	YEAR 1	YEAR 2	YEAR 3	YEAR 4	YEAR 5	YEAR 6	YEAR 7	YEAR 8	YEAR 9	YEAR 10
4 **OPERATING ASSUMPTIONS**											
5 Number Of Customers		105	108	111	114	117	120	123	125	126	128
6 Annual Volume (Mcf)		13,722	14,371	15,019	15,668	16,316	16,773	17,231	17,523	17,816	18,108
7 Projected Revenues		$83,882	$87,501	$91,120	$94,739	$98,358	$101,062	$103,766	$105,423	$107,080	$108,737
8 **RATE BASE**											
9 Gross Fixed Assets		$586,787	$589,787	$592,787	$595,787	$598,787	$601,787	$604,787	$606,287	$607,787	$609,287
10 Accumulated Depreciation		$18,190	$36,474	$54,850	$73,320	$91,882	$110,537	$129,286	$148,081	$166,922	$185,810
11 Contributions	$490,222	$475,025	$459,828	$444,631	$429,434	$414,238	$399,041	$383,844	$368,647	$353,450	$338,253
12 Working Capital Allowance		$1,313	$1,350	$1,388	$1,425	$1,463	$1,500	$1,538	$1,563	$1,575	$1,600
13 **REVENUE DEFICIENCY CALCULATION**											
14 Revenue Requirement											
15 Cost of Gas		$44,926	$47,049	$49,172	$51,295	$53,419	$54,916	$56,414	$57,371	$58,328	$59,286
16 Operating & Maintenance Expenses		$10,500	$10,800	$11,100	$11,400	$11,700	$12,000	$12,300	$12,500	$12,600	$12,800
17 Depreciation Expense		$18,190	$18,283	$18,376	$18,469	$18,562	$18,655	$18,748	$18,795	$18,841	$18,888
18 Amortization Of Contribution		($15,197)	($15,197)	($15,197)	($15,197)	($15,197)	($15,197)	($15,197)	($15,197)	($15,197)	($15,197)
19 Municipal Tax & Corp.Cap. Tax		$17,604	$17,694	$17,784	$17,874	$17,964	$18,054	$18,144	$18,189	$18,234	$18,279
20 Income Tax		$4,347	$2,856	$2,954	$3,048	$3,138	$3,223	$3,304	$3,313	$3,342	$3,368
21 Overall Return		$9,648	$9,643	$9,629	$9,605	$9,572	$9,529	$9,477	$9,266	$9,049	$8,829
22 Total Revenue Requirement		$90,019	$91,128	$93,818	$96,495	$99,157	$101,180	$103,189	$104,236	$105,196	$106,252
23 Projected Revenues		$83,882	$87,501	$91,120	$94,739	$98,358	$101,062	$103,766	$105,423	$107,080	$108,737
24 Revenue Deficiency (Annual)		($6,137)	($3,627)	($2,699)	($1,756)	($799)	($118)	$577	$1,187	$1,882	$2,485
25 Revenue to Cost Ratio		93.2%	96.0%	97.1%	98.2%	99.2%	99.9%	100.6%	101.1%	101.8%	102.3%
26 **CONTRIBUTION REQUIREMENT**											
27 Contribution Required to bring NPV of	$490,222										
28 Revenue Deficiency to $0 over 30 years											

APPENDIX B

MEMORANDUM OF FRANCHISE AGREEMENT

made this ____ day of _____, 1994.

BETWEEN:

THE VILLAGE OF _____,

(hereinafter called "the Village"),

- and -

CENTRA GAS MANITOBA INC.

(hereinafter called "the Company").

WHEREAS the Village is desirous of obtaining a supply of natural gas for the Village and the inhabitants thereof not currently receiving natural gas;

AND WHEREAS it is agreed between the Village and the Company that the Company supply natural gas to the Village and its inhabitants in the Village of _____ _____, in Manitoba and as set out in the map attached as Appendix 1 hereto (the "Territory"), upon the terms and conditions set out herein:

AND WHEREAS by by-law duly passed by the Council of the Village (the "By-law"), the Mayor and the Secretary/Treasurer having been authorized and directed to execute this Agreement on behalf of the Village;

NOW THEREFORE pursuant to the premises and in consideration of the sum of TEN DOLLARS ($10.00) now paid by the Company to the Village (the receipt of which is hereby acknowledged), and in further consideration of the mutual covenants hereinafter set forth it is mutually covenanted and agreed by the parties as follows:

1. Subject to compliance with the provisions of The Municipal Act (Manitoba), The Public Utilities Board Act (Manitoba) and The Gas Pipe Line Act (Manitoba), the Village hereby grants to the Company, its successors and assigns, subject to the terms, conditions and provisions herein contained, the sole and exclusive franchise to supply natural gas to the Village and its inhabitants in the Territory, for a term of thirty (30) years from the date hereof. The Village further grants to the Company the full power, right, licence and liberty to enter upon property of the Village and to lay down, take up, relay, connect, disconnect, repair, remove, maintain, replace and operate a gas distribution system and any and all necessary or convenient mains, pipes, services, and all other equipment and appliances as the Company may deem desirable for the supply transmission and distribution of gas (collectively the "Gas Distribution System") in, upon, over, across, under and along the public highways, streets, roads, bridges, walkways, sidewalks, road allowances,

squares, lanes, alleys, ditches and other public places (collectively the "Highways") within the boundaries of the Village as the same may from time to time exist, as may be necessary or convenient for the purpose of transporting and supplying natural gas to the consumers thereof. The Company is hereby authorized for the purposes aforesaid to enter upon any or all of the said Highways and to break the surface and make the necessary excavations therein and, without limiting the generality of all of the foregoing, to do all things reasonably necessary or convenient for the supplying of natural gas and for laying down, taking up, relaying, connecting, disconnecting, repairing, removing, maintaining, replacing and operating the Gas Distribution System.

2. (a) Subject to the provisions hereof, Centra agrees that during the term of this Agreement, it will install and maintain an adequate natural gas distribution system within the Territory and will provide such quantities of natural gas as will meet the requirements of the inhabitants, businesses and industries located in the Territory;

(b) Centra shall not be bound to construct or extend its mains or provide natural gas or gas service if Centra is, for any reason, unable to obtain delivery of natural gas at or near the limits of the Territory, or an adequate supply thereof to warrant the construction or extension of its mains for the provision of natural gas, or, in connection with extension of its mains, if such extension

is not reasonable and would not furnish sufficient business to justify the construction and maintenance thereof; any such extension, including contributions toward the cost of construction which may be required from inhabitants, businesses and industries located in the Territory, shall be in accordance with policies approved from time to time by the Board;

(c) In the event the amount of natural gas supplied to Centra at or near the limits of the Territory is insufficient to meet the requirements of connected consumers, Centra shall have the right to prescribe reasonable rules and regulations for allocating the available supply of natural gas to domestic, commercial and industrial consumers in that order of priority. The allocation of natural gas shall also be subject to the provisions of The Gas Storage and Allocation Act and Regulations thereto;

(d) In the event that either of the conditions referred to in subsections (b) and (c) occur or are likely to occur, Centra will advise the Village thereof as soon as the conditions become apparent to Centra.

3. The Company agrees:

(a) in the execution of the rights and powers granted hereby and in the performance of the work in connection therewith, it shall do as little damage as possible and shall keep passage of the Highways as far as may be practicable free and uninterrupted;

(b) it shall not interfere with, disturb or damage any existing pipes or lines of other utilities, unless the express consent of such other utilities is first had and received;

(c) it shall, within a reasonable time after any construction work, restore the Highways to a state of repair as nearly as possible equal to their former state to the satisfaction of the Village acting reasonably, where such restoration is required by reason of the Company having installed or constructed the Gas Distribution System or part thereof;

(d) in the execution of the rights and powers granted hereby it shall construct, locate and operate its Gas Distribution System in such manner as will not endanger the public health or safety.

4. Prior to the installation of any part of the Gas Distribution System, the Company shall file with the Village plans showing the location, depth and size of all mains, pipes or conduits and any other equipment or structures (but not including geodetic information) intended to be installed or constructed and shall comply with all by-laws of the Village relating to the construction of such works. The Village shall have the right to designate to the Company the location of the Gas Distribution System in the Highways within the Village and the Gas Distribution System shall be located in alleys, lanes and boulevards rather than in streets when reasonably practicable and where the cost of so doing will not be unreasonably high; and the Company shall give notice in writing to the Village of its intention to break up any streets or lanes not less than three (3) clear days before the beginning of such work except in cases of emergency when immediate notice shall suffice. The Company shall supply complete plans of its Gas Distribution System to the Village on as as-built basis and will from time to time keep such plans up to date as and when alterations are made.

5. The Company further agrees that it will protect and indemnify the Village against any damage, loss or expense sustained or incurred by the Village in connection with the execution of the powers hereby granted or by reason of any operations of the Company in relation to the Gas Distribution System except such damage, loss or expense as may be caused by negligence or wilful misconduct of the Village or its employees, servants, agents or contractors. The Company further

agrees that it will protect and indemnify the Village from and against all claims, demands and actions by third persons in respect of damages or injuries sustained by reason of any operations of the Company in connection with the execution of the powers hereby granted or by reason of any operations of the Company in relation to the Gas Distribution System except such claims, demands, actions, damages or injuries as may be caused by negligence or wilful misconduct of the Village or its employees, servants, agents or contractors.

6. (a) The Village agrees that before doing any work on, or making any repairs or alterations to, any Highways or other public places, or to any of its utilities, which work, repair or alteration may in any way affect the whole or any part of the Gas Distribution System, it shall give the Company not less than seven (7) days' notice in writing specifying the location of such work, repairs or alterations, except in cases where the work, repairs or alterations are required to be done immediately when any prior notice shall suffice.

(b) The Village shall have regard to the reasonable directions of the Company concerning such work, repairs or alterations but in any event the Village shall be free of liability to the Company in connection with any

injury, death or property damage done by reason of any such work, repairs or alterations, except such injury, death or damage as may be caused by negligence or wilful misconduct of the Village or its employees, servants, agents or contractors.

7. (a) All costs in connection with the removal or relocation of any part of the Gas Distribution System, including the cost of repairs to any Highways, shall be the Company's responsibility except where such removal or relocation is required by the Village.

(b) Where the Village requests the removal or relocation of any part of the Gas Distribution System and, in the opinion of the Company it is practicable and convenient to do so, the Company shall effect such removal or relocation as soon as is reasonably possible after such request is made; provided that all costs in connection with such removal or relocation shall be paid by the Village including, without limiting the generality of the foregoing:

(i) the cost of repairs to any Highway; and

(ii) the net book value plus the cost of replacement, less salvage value, of any part of the removed or relocated Gas Distribution System that is rendered unusable by virtue of such removal or relocation.

8. Natural gas shall be supplied to consumers in the Territory at the rates and on the terms and conditions approved or fixed from time to time by the Public Utilities Board of Manitoba or other regulatory authority having jurisdiction (the "Board").

9. The Company shall maintain in force during the currency hereof a policy of insurance provided by an insurance company licensed to do business in the Province of Manitoba, insuring against public liability and property damage in connection with the operations of the Gas Distribution System within the Territory.

10. The Village agrees that it will not, for a period of thirty (30) years or longer, if this Agreement is renewed in accordance with the provision of paragraph 11 hereof, grant to any other person, firm or corporation the right to deliver natural gas within the Village or to erect or maintain a Gas Distribution System in, upon, over, across, or along its Highways for the purpose of supplying natural gas; provided however that this paragraph shall not prevent the sale or delivery within the Village by any other person, firm or corporation of liquified petroleum gas, propane or other product delivered in tanks or containers and not transmitted by pipeline.

11. It is further agreed that at the expiration of the term hereof and at the expiration of each renewal hereof, the Village may, after giving one (1) year's written notice prior to the date of the termination of this Agreement or of any renewal

hereof, at its option (to be expressed by by-law of the Village), elect to purchase that portion of the Gas Distribution System with respect to its operations within the Village that is used exclusively for the distribution of natural gas in the Territory, pursuant to this Agreement, but not any portion of the Gas Distribution System that is used for transmission of natural gas through the Village, for such price and on such terms as may be agreed upon between the parties hereto, or failing such agreement then at such price and on such terms including that portion of the Gas Distribution System the Village is entitled to purchase as may be fixed and settled by the Manitoba Public Utilities Board ("the Board"), or if the Board shall refuse to so fix and settle the price then the said price and terms shall be such as may be fixed and determined by arbitration under the provision of The Arbitration Act (Manitoba) and each of the parties shall appoint an arbitrator and the arbitrators so appointed shall appoint a third arbitrator to act as chairman who shall be versed in this special branch of engineering economics, and in the event the arbitrators appointed by each party are unable to appoint a third arbitrator the third arbitrator shall be appointed by the Chief Justice of the Court of Queen's Bench of the Province of Manitoba. The decision of the Board or of a majority of the said arbitrators shall be binding upon the parties in arriving at the price. The Board or the said arbitrators shall make allowance for severance of the property and operation from other properties and operations of the Company in Manitoba. In the event of such purchase, the Company and the Village will enter into an agreement respecting the use of and payment for such use by the Village of Company-owned facilities which are not being

purchased hereunder and for the sale of natural gas to the Village for resale by the Village to the inhabitants of the Village at such rates as may be agreed upon between the Company and the Village and approved by the Board. If the Village does not notify the Company in writing of its intention to purchase the property of the Company as aforesaid at least one (1) year before the expiration of this Agreement or any renewal thereof, this Agreement will be deemed to be automatically renewed for an additional term of ten (10) years, and at the end of the said ten (10) year renewal term the said Agreement will be further automatically extended in absence of notice aforesaid for additional terms of ten (10) years from time to time. Provided further that at the time of any such renewal, changes in the terms of this Agreement may be made at the request of either party with the approval of the other, and in the absence of such approval such changes may be made by reference to and under the authority of and with the approval of the Board. Notwithstanding anything contained elsewhere in this Agreement, it is understood and agreed that if the Village exercises its option to purchase the property of the Company with respect to its distribution operations within the area designated in this Agreement, such exercise shall not affect the right of the Company to continue to operate its transmission facilities in such area for so long as the same may be required by the Company.

12. Notwithstanding any other term or condition contained herein, neither party shall be liable to the other for failure to carry out its obligations hereunder when such failure is caused by force majeure as hereinafter defined. The term force majeure means civil disturbances, industrial disturbances (including strikes and lock-outs), interruptions by government or Court orders, present or future valid orders of any regulatory body having proper jurisdiction, acts of the public enemy, wars, riots, blockades, insurrections, failure or inability to secure materials, permits or labourers by reason of priority regulations or orders of government, land slides, lightning, earth quakes, fires, storm, floods, wash-outs, explosions, breakage or accident to machinery or the Gas Distribution System, temporary or permanent failure of gas supply, an act or omission (including failure to deliver gas) reducing supply of gas to the Company's supplier, or any other causes or circumstances to the extent such cause or circumstances was beyond the control of the party prevented from carrying out its obligations by the act of force majeure.

13. Subject to the provisions of The Public Utilities Board Act, the Company shall not without the consent of the Village, such consent not to be unreasonably withheld, assign this Agreement or the rights, franchises, powers and privileges granted hereby or any of them; provided however the Company may assign this Agreement to any corporation with which the Company may then be associated or affiliated, as those terms are used in The Corporations Act (Manitoba) and The Income Tax Act (Canada).

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

15. This Agreement is subject to the approval of the Manitoba Public Utilities Board.

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

Village of _____

Per: _____
Mayor

Per: _____
Secretary-Treasurer

CENTRA GAS MANITOBA INC.

Per: _____
President

Per: _____
Secretary