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REPORT OF THE BOARD

January, 1985

In the matter of
applications under the
Ontario Energy Board Act
by
Inter-City Gas Corporation,
ICG Resources Ltd. and
Vigas Propane Ltd.

and
Norcen Energy Resources
Limited

E.B.O. 119

E.B.O. 118



Ontario
Energy
Board

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APPENDIX C

**ORDER-IN-
COUNCIL**

2116/75

The Order-in-Council, filed under Exhibit 18,
reads as follows:

"Copy of an Order-in-Council approved by Her Honour the Lieutenant Governor, dated the 30th day of July, A.D. 1975.

The Committee of Council have had under consideration the report of the Honourable the Minister of Energy, wherein he states that,

WHEREAS Newco Limited applied to the Ontario Energy Board for leave to be granted by the Lieutenant Governor in Council, pursuant to section 26(2) of The Ontario Energy Board Act, to enable Newco Limited to acquire all of the outstanding voting shares of Northern and Central Gas Corporation Limited, and the Ontario Energy Board, after a hearing, in its Report and Opinion, recommending that such leave be granted, subject to the terms and conditions hereinafter mentioned in paragraph A;

AND WHEREAS, after consideration of the said Report and Opinion, the Minister of Energy initiated discussions with Newco Limited pursuant to which Newco Limited agreed, upon the leave applied for being granted, to give the several undertakings hereinafter mentioned in paragraph B;

The Honourable the Minister of Energy recommends that, effective on and after July 31, 1975, leave be granted to Newco Limited, pursuant to section 26(2) of The Ontario Energy Board Act, to acquire all of the outstanding voting shares of Northern and Central Gas Corporation Limited,

Northern and Central Gas Corporation Limited, and so long as the latter Company, itself or through an affiliate or subsidiary, shall carry on the business of distributing natural gas in Ontario, Norcen will,

- (i) review annually with the Minister of Energy, with such detail as he may reasonably require, the present and future gas supply position of Northern and Central Gas Corporation Limited;

by the Lieutenant Governor in Council; and

- (b) made no later than December 31, 1975, or, if the amalgamation is not then completed, by such later date as shall have been consented to by the Lieutenant Governor in Council;

B. And upon Newco Ltd. providing to the Lieutenant Governor in Council the undertakings set out below with an assurance satisfactory to the Lieutenant Governor in Council that such undertaking shall be performed by Newco Ltd., or Norcen Energy Resources Limited ("Norcen"), namely,

- (c) so long as Norcen and its successors have a sufficient number of the outstanding voting shares of Northern and Central Gas Corporation Limited to en-

requirement to obtain approval to issue equity capital under the Alberta Gas Utilities Act similar to that now held by Cigol;

- (iv) cause such portion of the earnings of Northern and Central Gas Corporation Limited to be retained as is appropriate for retention by a gas distribution utility, and to the extent that such retained earnings are not sufficient to maintain the equity of Northern and Central Gas Corporation Limited at a level sufficient to enable Northern and Central Gas Corporation Limited to carry on its business of distributing gas in Ontario, Norcen will provide additional equity capital sufficient for that purpose, on terms at least as favourable as Northern and Central Gas Corporation Limited could have obtained itself directly from the market if the reorganization had not occurred: and, in the event an exemption is not obtained by Norcen from the Public Utilities Board of Alberta, in respect of the requirement, under the Alberta Gas Utilities Act, (mentioned in subclause (iii)

The Committee of Council concur in the recommendation of the Honourable the Minister of Energy and advise that the same be acted on."

(iii) Newco Ltd. will cause Norcen, upon its incorporation, to apply for and use its best efforts to obtain, and if granted to keep current, an exemption from the requirement to obtain approval to issue equity capital under the Alberta Gas Utilities Act similar to that now held by Cigol;

(iv) cause such portion of the earnings of Northern and Central Gas Corporation Limited to be retained as is appropriate for retention by a gas distribution utility, and to the extent that such retained earnings are not sufficient to maintain the equity of Northern and Central Gas Corporation Limited at a level sufficient to enable Northern and Central Gas Corporation Limited to carry on its business of distributing gas in Ontario, Norcen will provide additional equity capital sufficient for that purpose, on terms at least as favourable as Northern and Central Gas Corporation Limited could have obtained itself directly from the market if the reorganization had not occurred; and, in the event an exemption is not obtained by Norcen from the Public Utilities Board of Alberta, in respect of the requirement, under the Alberta Gas Utilities Act, (mentioned in subclause (iii) for prior approval to issue capital, and Norcen is unable to obtain approval under that Act to supply such additional equity to Northern and Central Gas Corporation Limited, and is otherwise unable to supply such equity, Norcen agrees and undertakes to permit Northern

July 30, 1975

The Honorable Dennis Timbrell
Minister of Energy
Province of Ontario
12th Floor, 56 Wellesley Street West
Toronto, Ontario

Dear Mr. Minister:

As discussed yesterday with Robin Scott, it is our understanding that the undertakings contained in items (i) to (iv) inclusive of Section B of the draft of your recommendation to the Cabinet will not be included in the Leave to be granted by the Lieutenant Governor in Council pursuant to Section 26(2) of the Ontario Energy Board Act. The purpose of this letter is to reconfirm our position with respect to these points:

1. The executive offices of Norcen Energy Resources Limited will be located in Toronto, Ontario.
2. & 3. Norcen will apply for, and keep in force, an extra-provincial licence under Part IX of The Corporations Act of Ontario and will file annually the required return under The Corporations Information Act of Ontario.
4. The Board of Directors of Northern and Central Gas Corporation Limited will include two residents of the areas served by Northern and Central Gas Corporation Limited, neither of whom, prior to election
 - had any pecuniary interest in Norcen Energy Resources Limited or any of its subsidiaries or affiliates or in Northern and Central Gas Corporation Limited and its subsidiaries and affiliates,
 - was connected with the business of exploring for developing, producing, transmitting or distributing natural gas.

Yours very truly,

E. G. Battle
President and Chief Operating
Officer

EGB:vm

APPENDIX D

Agreement, that Northern won't demand payment except according to the repayment schedule.

**INTEREST
COVERAGE**

a measure of long-term solvency, specifically the number of times that interest charges are earned or covered in a given period.

**NET TANGIBLE
ASSETS**

those assets, having a physical form, which are available to all bondholders.

NORCEN NOTE

prior to the proposed acquisition, a \$47,300,000 (7.6 percent interest) obligation of Norcen to Northern - a demand note.

PAYOUT RATIO

common share dividends declared for a year divided by net income to common shares for the year.

**PREFERRED
SHARES**

capital stock with a claim to income or assets after bondholders but before common shares.

PRESENT VALUE

value today of an amount or amounts to be paid or received later, discounted at some interest or discount rate.

**RETAINED
EARNINGS**

net income over the life of a company less all income distributions (including stock dividends) - can also be defined as owners' equity less contributed capital.

TRANCHE

a banking term used to describe one part (amount) of a total loan - the total sum of the loan is separated into parts or tranches because each tranche will differ either in repayment terms, interest rate, security pledged or draw down date.

WINNEX SHARES

the 500,000 common shares of Winnex.

Schedule 1
FINANCIAL RATIO ANALYSIS
 (Figures for September 1984 refer to results
 for the 12 months ending September 30, 1984)

Financial Ratio ¹	Twelve Months Ending	Consol- idated NORCEN	Consolidated INTER-CITY GAS	Pro Forma ICG Consolidated with Northern and Central Gas Corporation Limited For the 12 months ending September 30, 1984			
				Prior to Proposed Issue of Convertible Preference Shares		After Completion of Proposed Convertible Preferred Issue	
				MICC Investment		MICC Investment	
				At Book Value	Written Off Fully	At Book Value	Written Off Fully
Times Interest Earned (Before-Tax Basis)	Dec. '82	2.52	1.41				
	Dec. '83	2.83	1.79				
	Sept '84	3.11	1.91	1.45	1.45	1.53	1.53
Times Interest Earned (After-Tax Basis)	Dec. '82	1.87	1.16				
	Dec. '83	1.90	1.38				
	Sept '84	1.95	1.38	1.27	1.27	1.34	1.34
% Total Debt in Capital Structure	Dec. '82	57.4	62.7				
	Dec. '83	53.4	62.5				
	Sept '84	51.6	63.1	75.2	77.7	69.9	72.2
Cash Flow as % of Long-Term Debt	Dec. '82	32.5	10.1				
	Dec. '83	27.2	15.5				
	Sept '84	32.7	14.5	8.2	8.2	9.5	9.5
Cash Flow as % of Current Liabilities	Dec. '82	41.2	11.4				
	Dec. '83	59.0	23.4				
	Sept '84	63.8	25.5	23.5	23.5	24.8	24.8
Asset Coverage	Dec. '82	1.79	1.51				
	Dec. '83	1.89	1.59				
	Sept '84	1.94	1.57	1.26	1.21	1.35	1.31
Net Profit Margin	Dec. '82	7.3	1.5				
	Dec. '83	7.2	2.5				
	Sept '84	7.8	2.5	2.2	2.2	2.5	2.5

¹ The definitional formula for each financial ratio is set out on the following page. These definitions correspond to those used by the Dominion Bond Rating Service (DBRS).

APPENDIX B

IN THE MATTER OF the Ontario Energy Board Act, R.S.O., 1980, Chapter 332, as amended;

AND IN THE MATTER OF an application by Inter-City Gas Corporation, ICG Resources Ltd. and Vigas Propane Ltd. for leave of the Lieutenant Governor in Council of the Province of Ontario to acquire in excess of 20 percent of the issued and outstanding common shares of Northern and Central Gas Corporation Limited;

AND IN THE MATTER OF an application by Norcen Energy Resources Limited for leave of the Lieutenant Governor in Council of the Province of Ontario to acquire in excess of 20 percent of the issued and outstanding First Preference Shares of Inter-City Gas Corporation.

BEFORE: Richard R. Perdue, Q.C.
Presiding Member

Robert W. Macaulay, Q.C.
Chairman

Donald H. Thornton, Q.C.
Member

APPEARANCES

Parties to the Hearing:

Represented By:

1. The Applicants -

(204) 957-1930

a) Inter-City Gas Corporation

J.D. Brett ✓

b) ICG Resources Ltd.

A. Sweatman, Q.C. ✓

c) Vigas Propane Ltd.

d) Norcen Energy Resources Limited

F.A.M. Huycke, Q.C. ✓

362-2111

366-8381

2. Special Counsel

J.A. Campion ✓

3. Intervenors -

360-8600

a) Federation of Northern Ontario Municipalities

J.E. Johnson ✓
see to call cab. Jud. reh.

364-1241

b) The Consumers' Gas Company Ltd.

R.S. Paddon, Q.C. ✓
see to call

352-3100

c) Union Gas Limited

J.B. Jolley, Q.C. ✓

869-2111

d) TransCanada PipeLines Limited

C. Black ✓
B. Hulse ✓

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SHORT FORMS

Act	- Ontario Energy Board Act
Board	- Ontario Energy Board
CBRS	- Canadian Bond Rating Service
CIBC	- Canadian Imperial Bank of Commerce
DBRS	- Dominion Bond Rating Service
EBIT	- Earnings before interest and taxes
FONOM	- Federation of Northern Ontario Municipalities
Gmi	- Gaz Metropolitan, inc.
Greater Winnipeg	- Greater Winnipeg Gas Company
Inter-City	- Inter-City Gas Corporation
Le Gaz	- Le Gaz Provincial du Nord de Quebec
MICC	- Mortgage Insurance Company of Canada
Norcen	- Norcen Energy Resources Limited
Northern	- Northern and Central Gas Corporation Limited
Preference Shares	- Series A First Preference Share of Inter-City
Resources	- ICG Resources Ltd.
Richardson Greenshields	- Richardson Greenshields of Canada Limited
Vigas	- Vigas Propane Ltd.

CHAPTER 1: INTRODUCTION TO THE APPLICATIONS

THE NATURE OF THE APPLICATIONS

The subject matter of this report is an Agreement dated October 30, 1984 (the "Agreement") whereby Inter-City Gas Corporation ("Inter-City"), ICG Resources Ltd. ("Resources"), and Vigas Propane Ltd. ("Vigas") propose to acquire 100 percent of the common shares of Northern and Central Gas Corporation Limited ("Northern"), which are currently owned by Norcen Energy Resources Limited ("Norcen"). The Agreement also proposes a concurrent acquisition by Norcen resulting in Norcen owning 34.7 percent of the voting First Preference Shares of Inter-City.

The Ontario Energy Board (the "Board") is empowered to review this transaction under Section 26 of the Ontario Energy Board Act (the "Act").

The relevant subsections of Section 26 of the Act state:

(2) No person, without first obtaining the leave of the Lieutenant Governor in Council, shall acquire such number of any class of shares of a gas transmitter, gas distributor or storage company that together with shares already held by such person or by such person and an associate or associates of such person will in the aggregate exceed 20 per cent of the shares outstanding of

Although Section 26 does not specifically mention the public interest, the Applicants were asked in the Board's Procedural Order to address their evidence to show how the proposed transactions would affect the public interest defined to include:

1. the present and potential shareholders and customers of Northern;
2. the shareholders and Ontario customers of Inter-City;
3. the Ontario communities served by Northern and by Inter-City;
4. the investors in Northern other than the shareholders;
5. the consumers in the Province of Ontario who would benefit from securing natural gas transmission, storage and distribution at a reasonable cost; and
6. the public interest generally.

In this report, the Board has attempted to recount to His Honour the Lieutenant Governor the thrust of the more significant evidence which came

- Nov. 30, 1984 - Original closing date fixed by Inter-City, Resources, Vigas and Norcen in the Agreement.
- Dec. 3, 1984 - Commencement of the hearing.
- Dec. 6, 1984 - Last day of the hearing.
- Dec. 10, 1984 - Oral Argument.
- Dec. 31, 1984 - Revised closing date verbally agreed to by Inter-City, Vigas, Resources and Norcen.
- Jan. 31, 1985 - Further revised closing date agreed upon between the parties.

**CHAPTER 2: BACKGROUND INFORMATION ON
THE PARTIES TO THE AGREEMENT**

NORTHERN

Northern is presently a wholly-owned subsidiary of Norcen. It was incorporated by Letters Patent in the Province of Ontario on January 1, 1968, and arose out of an amalgamation of three inter-related Ontario gas distributors, namely:

- i) Northern and Central Gas Company Limited (formerly Northern Ontario Natural Gas Company);
- ii) Twin City Gas Company Limited; and
- iii) Lakeland Natural Gas Limited.

Northern presently owns and operates, either directly or through subsidiaries, natural gas distribution facilities in three operating areas: Ontario, Quebec and Manitoba. At December 31, 1983, Northern's total assets amounted to \$711,956,000.

Northern's Ontario operations serve approximately 140,000 customers, in approximately 114 communities in northwestern, northern and eastern Ontario.

The Winnex shares represent approximately 1.06 percent of the total adjusted cost base to Norcen of the Northern shares. The parties to the Agreement have excluded them from the sale of Northern and the details of this part of the transaction are discussed in Chapter 4 of this report.

Northern's natural gas distribution facilities in Quebec are operated through its 100 percent owned subsidiary Le Gaz Provincial du Nord de Quebec ("Le Gaz"). Le Gaz distributes natural gas in the areas of Noranda, Rouyn and Temiskaming.

Between 1967 and 1980 Northern was also involved in the distribution of natural gas in Montreal through its then subsidiary Gaz Metropolitan, inc. ("GMI"). In 1980 and 1981, with the consent of the holders of its first mortgage bonds, Northern issued two series of debentures which are exchangeable into Northern's entire common shareholdings of GMI. The holders of these debentures in the meantime possess the right to vote the GMI common shares held by

shares which are the only other existing voting shares.

It is Norcen's position that since 1975 it has been evolving from primarily a gas utility with resource interests into a major North American resource company. The sale of Northern, Norcen's utility division, is seen by Norcen to be a further step in this evolution.

INTER-CITY

Inter-City is a Manitoba corporation that has been involved directly, and indirectly through its subsidiaries, in various aspects of the energy industry throughout Canada since 1954. The consolidated assets of Inter-City, according to its financial statements as at December 31, 1983, are \$814,491,000. Its operations are divided into four divisions which are described below.

Inter-City's liquid gas division is Canada's leading distributor of propane and industrial gases as well as related home and recreational appliances and commercial and industrial equipment.

operates natural gas processing plants. This division is active in both Canada and the United States.

RESOURCES

Resources, a Canadian corporation, is a wholly-owned subsidiary of Inter-City. Resources is engaged in the exploration, development, and production of petroleum and natural gas in Canada.

VIGAS

Vigas is a British Columbia corporation engaged in the merchandising of propane in British Columbia. Vigas is indirectly a wholly-owned subsidiary of Inter-City.

CHAPTER 3: THE TRANSACTION

INTRODUCTION

The Agreement calls for Inter-City to purchase 48 percent of Northern's common shares, for Resources to purchase a further 48 percent, and for Vigas to purchase the remaining 4 percent. The salient features of the proposed transaction that affect or might affect the public interest are outlined below.

PURCHASE PRICE

The agreed purchase price for the Northern common shares is \$240,000,000. The three proposed purchasers are to pay \$163,000,000 in cash on closing. The remainder of the purchase price is to be paid by the issuance of 110,000 8 percent Series A First Preference Shares of Inter-City which have a redemption value of \$77,000,000. There is an intermediate stage in which Resources and Vigas will actually issue preference shares to Norcen as part of the purchase price. Thereafter Inter-City will exchange its Preference Shares for the preference shares of Resources and Vigas held by Norcen. The end result is that Norcen will

provisions attached to the shares provide that, if Inter-City fails to pay the dividend in any given year, or fails to redeem in accordance with the redemption schedule set out above, Norcen can elect to require immediate redemption of any such shares then outstanding.

**THE NORCEN/
INTER-CITY
NOTE**

As part of the overall transaction it is proposed that an outstanding promissory note held by Northern as an obligation of Norcen (the "Norcen Note") be assigned to Inter-City and that Inter-City issue an identical note to Northern (the "Inter-City Note"). Thus, the Norcen Note would no longer be a debt obligation from Norcen to Northern but would be a debt obligation between Norcen and Inter-City. A further debt obligation from Inter-City to Northern would be created by the second note, the Inter-City Note. The Norcen/Inter-City Notes are each 7.6 percent promissory notes for \$47,300,000.

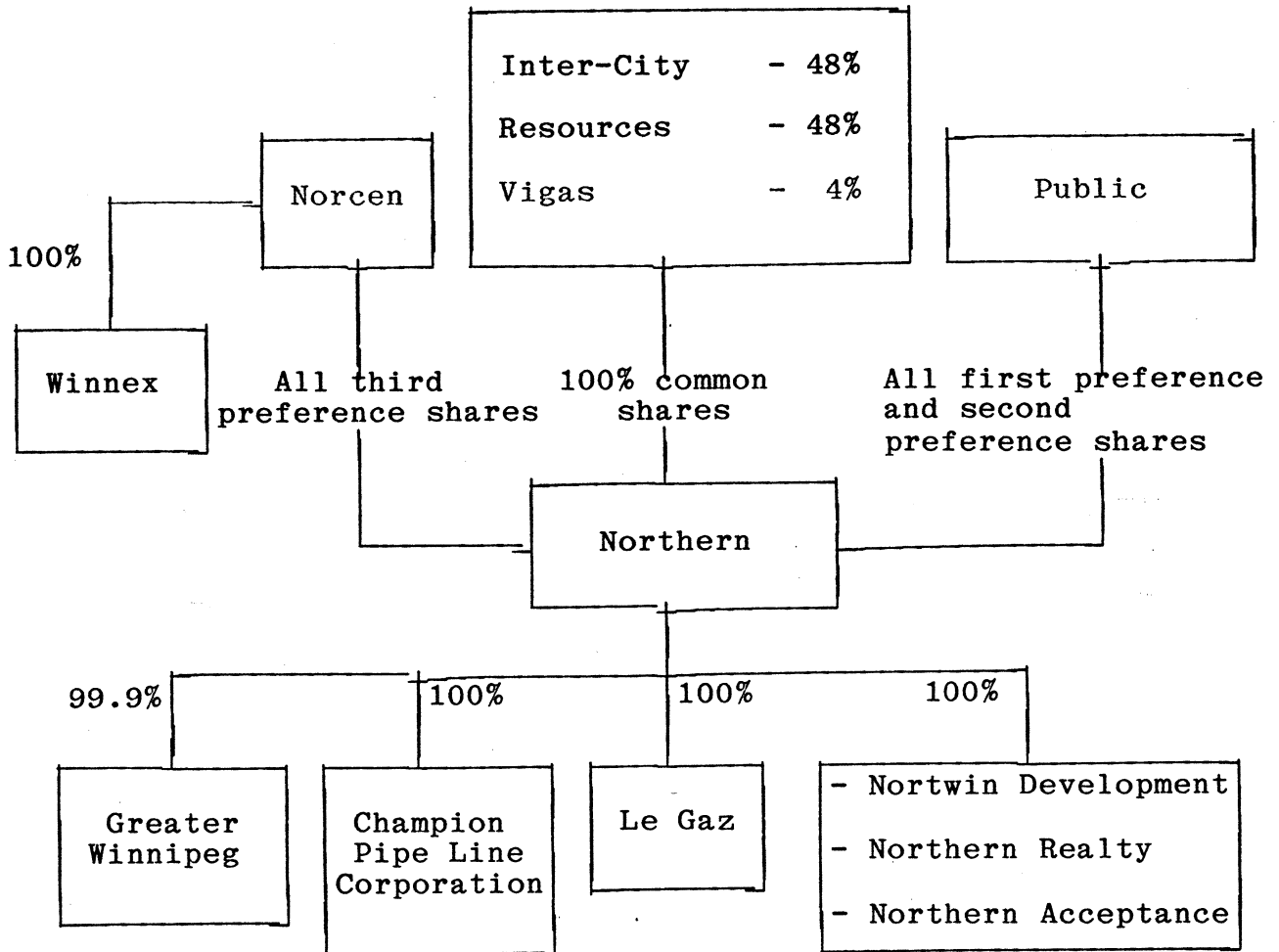
As between Norcen and Inter-City, the Agreement provides that, should Inter-City default on any of its dividend or redemption payments

will retain, as before, all of the first preference and second preference shares of Northern.

With the exception of the Winnex shares (which will no longer be owned by Greater Winnipeg), the evidence showed that the corporate organizational structure of Northern will remain unchanged should the applications be approved.

Pictorial representations of Northern's corporate structure as it currently exists (Figure 1), and as it will exist should the proposed transaction be approved (Figure 2) can be seen as follows:

Figure 2
Corporate Structure of Northern
After the Closing of the Agreement



CHAPTER 4: THE EVIDENCE

THE AGREEMENT Amendments

The Agreement, as summarized in Chapter 3, comprises the whole of the contract existing between the parties with a few minor technical amendments for tax purposes.

Approvals

Mr. Sheeres testified that all the necessary tax rulings pertaining to the Agreement had been obtained as well as the required consent of every bank, trustee and security holder.

Mr. Marriott explained that of Inter-City's preferred shareholders only the holders of series B and C first preference shares have the right to approve or disapprove the proposed issuance of the Series A First Preference Shares. Mr. Marriott assured the Board that the transaction had been put to holders of these shares and that sufficient approvals had been received. He stated that the approvals of series A and B second preference

noted that the closing date was further extended in Argument to January 31, 1985.

**FINANCING
OF THE
PROPOSED
TRANSACTION**

Mr. Marriott testified that Inter-City intends to finance the \$163,000,000 cash portion of the purchase price by a loan from the Canadian Imperial Bank of Commerce ("CIBC"). Insofar as the funds that are due from Resources and Vigas are concerned, Mr. Marriott testified that Inter-City would borrow the full amount, entirely and solely in its own name, and advance the necessary funds to Resources and Vigas for their portions of the purchase price on the same terms and conditions as the CIBC loan to Inter-City.

The pertinent features of the loan are as follows:

Mr. Marriott referred to a study conducted by Inter-City's underwriter Richardson Greenshields of Canada Limited ("Richardson Greenshields") as proof of the feasibility of the financing plan. In that study the underwriter stated it would be prepared to underwrite and distribute the above mentioned convertible preferred securities. In addition, Mr. Marriott related that all three of Inter-City's bankers who had been approached to provide financing for the cash portion of the consideration (\$163,000,000) had been willing to do so on certain conditions.

**FINANCIAL
IMPLICATIONS**

Introduction

This section outlines the financial implications of the proposed transaction, and more specifically, the impact on Northern of the proposed change in parent.

Importance of the Parent Company

Witnesses did not agree on the effect that Inter-City's financial strength would have on Northern's ability to attract capital.

consider the new owner's track record, credibility, stated policies, and undertakings with regard to the utility company, as well as any potential benefits that such an owner may bring to the situation.

He gave examples of the impact, or lack of impact, on the cost of capital and capital attraction felt by other utilities in Canada. He cited the experience of Canadian Utilities Limited ("CUL") which was acquired by a weak parent. The acquisition was said to have had no impact whatsoever on CUL's cost of capital or its ability to attract capital. Mr. Lackenbauer also described the acquisition by Bell Canada Enterprises of approximately 43 percent of TransCanada PipeLines Limited from Dome Petroleum as having had a similar lack of effect on the market's perception of the subsidiary's financial strength. He concluded that a change in parent does not affect market perception.

It was Mr. Lackenbauer's opinion that "the bond rating agencies in Canada will view the change of ownership as a neutral matter". He

While Mr. Marriott agreed in principle that a strong parent could be the source of a short term loan for its subsidiary, he did not feel that this factor would affect Northern's ratings. He stated that it was Inter-City's intention to continue the existing policy of allowing Northern to raise its own debt financing, making the identity of the parent company irrelevant.

As outlined earlier, Northern was unable to obtain approval from the holders of Northern's first mortgage bonds for the proposed change in parent. Norcen had been forced to acquire the Northern bonds from these holders and replace them with Norcen bonds. The new Norcen bonds are in the same principal amount but bear a higher interest rate but Northern will not bear any of these extra costs. Witnesses were unable to agree whether this was a negative market reaction to the proposed change in parent, or whether it was simply an opportunistic move by the first mortgage bondholders to obtain a higher interest rate.

parent organization is not relevant to Northern's cost of equity.

If for some reason Inter-City proved unable to provide Northern with equity capital as required, Mr. Marriott testified that Northern would be expected to act in its own best interests, and, if necessary, raise equity capital through a public offering. However, it was Mr. Marriott's belief that Northern would not have to go to the market for any of its capital requirements in the near future.

Financial Strength of Inter-City vs. Norcen

As well as the two previous issues, consideration of the financial implication of the transaction included evidence on the relative financial strength of Inter-City and Norcen.

Dr. Cannon stated that, in terms of its financial health, Inter-City is currently in a much weaker position than Norcen. He pointed out that Inter-City is approximately half the size of Norcen in terms of total assets, and in terms of sales revenues.

were poorer than Norcen's, Inter-City is a financially weaker company than Norcen.

During cross-examination, Mr. Graham, Mr. Marriott, Mr. Lackenbauer and Mr. Venn all agreed that Inter-City is a financially weaker company than Norcen but did not concede that this affected Northern in any pejorative way.

Inter-City's Ability to Raise Capital

Mr. Graham claimed that Inter-City has no problem in raising debt or equity, and stated that Inter-City intentionally utilizes as much leverage as possible.

Dr. Cannon however questioned Inter-City's ability to raise capital in the future. He cited the testimony of Mr. Venn in the most recent Northern rate hearing (E.B.R.O. 399 at p. 36) in which Mr. Venn stated that:

"perceived credit quality is critical to ensure continuous access to capital as required by a utility. While companies of "BBB" credit quality can finance in the current markets, there have been periods over the last three years when a new debt issue rated "BBB" or even "A" could not have been sold at any reasonable yield. In my opinion, in order to ensure access to capital as required,

These findings were additional proof to Dr. Cannon that Inter-City's access to external capital markets, on reasonable terms, had been impaired.

Mr. Fraser and his associates prepared a study for Inter-City which included a comparison of the ratios of various Ontario utilities and industry ratios for the year 1983.

According to this study, Inter-City's long term debt as a percentage of capitalization is the highest. In general this figure is taken to be an indicator of financial risk, the higher the figure the more risky the investment. Mr. Marriott pointed out, however, that it is difficult to compare Inter-City in this fashion because Inter-City is not a pure utility.

The pre-tax interest coverage ratio (the income before interest and tax compared to the interest charged) is, once again, a measure of risk. Inter-City's pre-tax interest coverage is the lowest of the utilities' mentioned. Mr. Venn gave evidence that, for companies in general, an interest ratio coverage of 3 or more is required by DBRS, but for utilities the required figure is

making a provision against that investment at the year's end. Dr. Cannon claimed that Inter-City would not be able to do otherwise in light of the fact that similar publicly-traded securities of MICC are currently trading in the marketplace at prices which represent only a small fraction of their par values or original issue values.

Mr. Lackenbauer did not view the possible write-down of Inter-City's investment in MICC, which would reduce Inter-City's retained earnings from \$48,800,000 to \$10,100,000, as a factor of any real significance. He indicated that the market had already taken account of this.

During cross-examination it became evident that, when Inter-City invested in MICC, MICC purchased 26 percent of the issued and outstanding Inter-City common shares. This interest effectively allows MICC to control Inter-City. In evidence it was pointed out that, should MICC decide to sell its shares in Inter-City after the proposed transaction was completed, the control of Northern would be sold away as well.

Inter-City's witnesses submitted that the earnings of Northern are required to service its bondholders, preferred shareholders and common shareholders in the form of dividends on the common shares calculated at \$12,500,000 in 1982, \$16,800,000 in 1983, and estimated at \$17,800,000 for 1984. They stated that Inter-City's intention was to continue Northern's present dividend policy following the acquisition. They felt the dividends would be sufficient to fund Inter-City's costs of financing the acquisition. If Northern was not able to maintain its current dividend level, Inter-City stated it had sufficient cash flow from its other operations to meet its obligations.

Mr. Fraser noted that, subsequent to the acquisition and completion of the financing plan as proposed, Inter-City's capital structure on a consolidated basis will reflect an increased debt to equity ratio. His study showed a post-acquisition debt to equity ratio of 63 percent assuming the proposed convertible share issue has taken place and 70 percent, if the ratio was

The Norcen Note came into being as the result of a reorganization of Northern that occurred in 1975. When Norcen became the parent company, some of Northern's investments also moved up into Norcen and the consideration to Northern was the Norcen Note.

The Agreement states that the Norcen Note, a non-utility asset thus not included in rate base, will be transferred from Northern to Inter-City. This will be accomplished by Northern assigning the Norcen Note to Inter-City at book value, in return for which Northern will receive a note from Inter-City (the Inter-City Note) bearing identical terms and conditions to the Norcen Note.

It was also noted that the repayment schedule for Tranche B of Inter-City's loan from the CIBC is almost identical to the repayment schedule of the Norcen Note. Mr. Marriott asserted that no link exists between the proceeds to Inter-City from the Norcen Note and the repayment schedule to the CIBC, and that the loan to the CIBC can be repaid out of any of the funds available to Inter-City.

Dr. Cannon characterized the changes in the Norcen Note as a loan from Northern to Inter-City. It was Inter-City's response that Northern would not be loaning money in the sense of taking cash resources available and advancing them to Inter-City for its use. Inter-City characterized the transaction as merely switching a currently existing note receivable from one company to another.

While Inter-City will accrue long term bank debt specifically as a result of the Applications at hand, Mr. Marriott stressed that the note which Inter-City will issue to Northern will be the only long term note existing on the unconsolidated Inter-City's balance sheet. It was Mr. Marriott's opinion that because of the new ranking of the note on Inter-City's balance sheet, Northern is better off being owed the money by Inter-City than it was before or at least is in no worse a position.

Mr. Lackenbauer asserted that the note was as strong with Inter-City as the promissor as with Norcen. He said that he was not "unduly troubled"

debt of Inter-City's subsidiaries. Secondly, he felt there was a possibility that the value of the note owed by Inter-City to Northern would become impaired and have to be written off against retained earnings. If this were to occur, Northern would require an extra injection of capital to compensate.

A DBRS bond rating letter of May 18, 1984 pointed out that the very existence of the Norcen Note (its term and low interest rate) was depressing the earnings of Northern. Dr. Cannon noted that these negative factors will continue to be a part of the proposed Inter-City Note.

When asked whether his concerns about the note could be alleviated in any way, Dr. Cannon stated that if the Inter-City Note was made an equal or better credit instrument than the Norcen Note, the single most important reason for the conclusion that Northern will be weakened by this transaction would disappear.

**THE
ACQUISITION
PREMIUM**

Mr. Marriott testified that a \$25,000,000 acquisition premium is included in the \$240,000,000 purchase price and in effect, Inter-

Northern. He explained that the premium is being amortized at Northern's overall depreciation rate of 3.5 percent in accordance with generally accepted accounting principles

**POSSIBLE
CONFLICTS
OF INTEREST**

ICG Liquid Gas Ltd., a wholly owned subsidiary of Inter-City, is Inter-City's principal distributor of propane gas. Mr. Graham estimated the annual sales of this subsidiary to be in excess of \$250,000,000, only a small percentage of which are generated in Northern's franchise areas.

Mr. Graham assured the Board that Inter-City would not be placed in a position of conflicting interests due to its dual role as a propane and natural gas supplier. He explained that competition does exist between the two sources of energy, but that it is not of any great magnitude because propane is economical only in very specialized markets which typically do not include residential heating fuel markets.

Inter-City also produces furnaces, and various other energy related products, through a

would result in the shares being transferred to Norcen without any actual value remaining in Northern.

According to Mr. Sheeres, it has been Norcen's intention for quite some time to obtain the ownership of Winnex from Greater Winnipeg. He did not, therefore, feel that this event should be looked upon as one resulting from the proposed transaction and that it should be viewed as an entirely independent event.

**ISSUES OF
CORPORATE
POLICY**

Corporate Reorganization of Northern

The evidence revealed that Norcen had been intending to reorganize Northern before the negotiations began with Inter-City but that the plans had been postponed pending resolution of the proposed sale. The reorganization included the removal of non-utility items from Northern and the formation of a pure Ontario utility. Mr. Graham testified that Inter-City intended to continue these reorganization plans after the closing of the transaction by applying to this Board for the necessary approvals.

of Directors, or alternatively would maintain outside directors on the Northern Board.

Management Policies

Mr. Graham indicated that Inter-City has no plans to move the management of Northern to Winnipeg. He assured the Board that the regulatory personnel of Northern would remain in Ontario. Mr. Graham indicated that the Inter-City Ontario utility interests would be consolidated with Northern's Ontario utility interests if practicable. He did not believe that this would have any effect on Northern's employment practices or on the total wage costs involved.

Inter-Corporate Loans and Guarantees

It was indicated in evidence that Inter-City does not guarantee the debt of any of its subsidiaries. Its policy is to have its subsidiaries directly finance their own operations through both long and short-term debt. However, where a subsidiary finds that it has difficulty financing its activities, or finds the cost in doing so

"it is in the best interests of the public in Ontario that transactions such as the sale of the common shares of Northern and Central from Norcen to Inter-City be permitted to proceed unless, with respect to a particular transaction, it is demonstrated that such transaction would be clearly detrimental to the public interest. There would also be a positive benefit to the public interest in having such a transaction take place after due enquiry because it would confirm that regulation in Ontario is in tune with our economic system."

Dr. Cannon's testimony provided the Board with a different test of the public interest:

"if the costs or disadvantages or detriments outweigh the benefits, then . . . my opinion would be that the transaction should not go through as it is currently structured until something is done, perhaps, to eliminate the detriments."

When asked how the Board should proceed in the hypothetical case where the proposed transaction had not been shown to have any positive or negative effect on the public interest, Dr. Cannon responded that:

"If there's absolute neutrality . . . the transaction should go ahead because I'm certainly a believer in private property rights and that one . . . corporate organization that owns an asset should, unless there is some detriment to the public interest, be able to sell it to some other corporation."

holders. He stated that preferred shareholders would receive no direct benefits as their shares pay a fixed dividend by definition, however, the increased earnings will provide increased coverage for these dividend payments. Mr. Graham also stated that the acquisition would provide Inter-City and its shareholders with greater stability in earnings, which would compensate for the risks associated with financing the acquisition.

Witnesses for Inter-City, Northern, and Norcen stated that they do not believe that the proposed transfer of ownership would have any detrimental impact on Northern's financing capabilities, or on the interests of its creditors and preferred shareholders.

It was Dr. Cannon's opinion, upon weighing the various interests involved, that the proposed transaction would not amount to mere neutrality. He stated that:

"As the proposed acquisition is currently structured its completion would most decidedly weaken Northern and the security of its external bondholders and preferred shareholders and compromise its access to new external funding on

Inter-City that it will reorganize Northern along the lines of Northern's proposed internal reorganization. He concluded that the Ontario utility operations would therefore be a separate legal entity containing only Ontario utility assets and liabilities. He stated that the new Ontario utility should not guarantee the debt of its parent organization or any of the parent's subsidiaries and should not lend money to the parent organization or to any of the subsidiaries of the parent.

Dr. Cannon stated that from a regulatory point of view there are perceived advantages to having a regulated utility as a separate legal entity because a hypothetical capital structure would not be necessary.

**CHAPTER 5: THE SUBMISSIONS OF COUNSEL
AND INTERVENORS**

**SUBMISSION ON
BEHALF OF
INTER-CITY**

The Board's Mandate

Inter-City submitted that:

1. Section 26 directs the Board to hold a hearing and provide its report and opinion on the proposed acquisition to the Cabinet but gives no criteria to be used to measure the merits or otherwise of the proposed transaction. The Board is left on its own to develop the appropriate test to be utilized in coming to its own opinion and it is implied that their report and opinion will also include a recommendation to the Cabinet.
2. The report and opinion of the Board, as in the proposed take-over of Union Gas Ltd. by The Consumers' Gas Company Limited, should be based upon consideration of the implications of the proposed transaction on the public interest.
3. The public interest is appropriately embraced by:
 - a) the present and potential shareholders of the companies involved;
 - b) the present and potential ratepayers, that is, customers of the gas distributor;
 - c) the present and potential employees of the distributor;
 - d) the companies themselves;
 - e) the communities served by their distributors;
 - f) the investors in the companies other than shareholders; and
 - g) the public interest generally.
4. The public interest, generally, is broad enough to embrace the ability of any person, including a corporation, to acquire and dispose of capital property.

the note from Norcen to Inter-City. This should not be of concern.

2. Under Northern's proposed reorganization, which Inter-City intends to carry out, the Norcen/Inter-City Note would be clearly, cleanly and legally removed from the Ontario utility.
3. The proposed reorganization is consistent with what Inter-City has carried out in its existing utility division.

C. With respect to "Northern's Need for Capital", Inter-City submitted that:

1. Northern's capital expenditures will be approximately \$117,000,000 over the next five years.
2. According to the "financial model" for the years 1985 to 1989, no external financing will be required for this growth.
3. Inter-City is willing to provide equity capital to Northern if needed, or alternatively, to allow Northern to go to the public market for equity capital.
4. Northern will be able to attract debt capital on terms as favourable as it could if Norcen remained the parent.

Other Matters of Concern

Inter-City submitted that:

1. There will be no changes as a result of the proposed transaction in Northern's:
 - a) management and operating practices and policies;
 - b) gas supply arrangements;
 - c) cost of gas;

4. This hypothecation would be retracted if and when the proposed reorganization of Northern was completed.
5. Inter-City will have the Inter-City Note rated by one of the bond rating agencies and will advise the Board of the rating.
6. Inter-City will investigate the possibility of rolling its existing Ontario operations into Northern's Ontario utility operations.

Agreement Extension

Inter-City submitted that:

1. The parties have verbally agreed that, should the proposed transaction not be approved by December 31, 1984, the closing date will be extended to "as soon as practicable after November 30, 1984".
2. Inter-City will compensate Norcen for the delay after December 31, 1984 by paying interest at the CIBC prime rate (on the \$163,000,000) on a daily basis for any period from January 1, 1985 to the date of closing.

Conclusions

Inter-City submitted that:

1. With respect to the specific constituents of the public interest, the effect is neutral. There are no direct perceivable benefits and no direct perceivable disadvantages.
2. There may be long term positive results with respect to the inclination to provide equity to Northern if required, and the aggressiveness with which any expansion would be undertaken.
3. It is not reasonable to ask Inter-City to guarantee the Inter-City Note.

4. The fact that certain institutional holders of first mortgage bonds of Northern refused to give necessary consent to the proposed transaction should be viewed as an opportunistic move and not a concern with the change in parent.
 5. Northern, being a regulated company, could not agree to an increase in the interest rate paid on its securities in order to facilitate a transfer of its common shares from one company to another.
- B. With respect to the "Norcen/Inter-City Note", Norcen submitted that:
1. The Inter-City Note is of equal or better quality than the Norcen Note because the Norcen Note is junior to all other existing debt of Norcen.

Other Matters of Concern

Norcen submitted that:

1. The sale of the Winnex shares should not be an issue in the Board's consideration. Not only are the Winnex shares not part of the regulated utility assets of Northern, but this transaction had been planned before Inter-City and Norcen commenced discussions for the sale of the common shares of Northern and will be completed in the near future whether or not the common shares are sold to Inter-City.
2. The perceived conflicts of interest between natural gas and propane have been satisfactorily dealt with and the Board should have no concern in this area.
3. The present management policies and procedures of Northern will not be changed as a result of the change in ownership.

**SUBMISSION ON
BEHALF OF
SPECIAL
COUNSEL**

The Board's Mandate

Special Counsel submitted that:

1. The Board is empowered to review the Applications under Section 26 of the Ontario Energy Board Act.
2. The Board's mandate is to hold a public hearing and submit its report and opinion to the Lieutenant Governor in Council who exercises a discretion to grant or refuse an Applicant the right to conclude a transaction as defined in the Act.
3. The power vested in the Board and the Lieutenant Governor in Council under the Act ought to be exercised in the public interest even if these words are not expressly used in the section of the Act under consideration. The public interest has been defined to mean the general public interest in the broadest possible sense unless the Legislature expressly or by implication narrows its scope.
4. The public interest is agreed to be as defined by the Board's Procedural Order.
5. The Board, in rendering its opinion, ought properly to weigh the various public and private factors and interests led in evidence at the public hearing with a view to accommodating the overall public interest.
6. Further the Board ought to recommend refusing a transaction only if the general public interest is on balance detrimentally affected. Any other view of the Board's mandate would be contrary to the right of persons to acquire and sell property and therefore an unwarranted interference in an open economic system.
7. If the transaction is on balance neutral, the Board ought to recommend that leave to complete the transaction be granted.

4. The parent of a subsidiary corporation is important. The weaker financial condition of Inter-City, as compared to Norcen, will affect the ability of Northern to raise capital continuously on favourable terms.
 5. The only bondholders of Northern who were in law entitled to react to the proposal under the first trust indenture, refused to consent to the transaction. These bondholders preferred Norcen rather than Inter-City as the parent company.
- B. With respect to the "Norcen/Inter-City Note", Special Counsel submitted that:
1. The financial weakness of Inter-City will affect Northern's ability to raise external capital on reasonable terms and hence is detrimental to the public interest. This detriment will be further accentuated by the existence of the Norcen Note.
 2. The Norcen Note, which is essentially a demand note, has a present value of \$47,300,000. The Inter-City Note has a present value of \$24,900,000.
 3. The Inter-City Note is not more secure than the Norcen Note. The evidence shows the opposite. The liabilities and shareholders' equity ranking after the Norcen Note are equal to 49.8 percent of Norcen's total assets. The liabilities and shareholders' equity ranking after the Inter-City Note are equal to 49.7 percent of Inter-City's total assets. Therefore, the positioning on the balance sheet does not really change and the fact that Inter-City is financially weaker makes the Inter-City Note less secure.

- (i.e. the asset side of the balance sheet would not contain the Norcen/ Inter-City Note);
- b) in no way guarantee the obligations of the parent organization or any of the parent's subsidiaries and will not loan money or carry any loans on its balance sheets to any parent organization or to any subsidiaries of the parent;
 - c) be required to raise its own short-term financing along the lines of the proposed line of credit offered to Northern by the CIBC;
 - d) have debt to equity ratio guidelines, with actual common equity capital at each fiscal year's end being required to be no less than 2 percentage points (of long-term debt plus preferred shares plus common equity) below the equity ratio approved at the most recent rate hearing;
 - e) be given the ability, through appropriate amendments to the trust deeds, to raise its own debt and equity funds; and
 - f) have its own Board of Directors, several of whom should be outside Directors and have some regional representation.
3. Prior to the time that this reorganization is effected, Inter-City should provide a chartered bank guarantee for payment of the note to Northern.
 4. The reorganization must have the approval of the Board. One important issue to be considered is whether the proposed reorganization ought to be completed prior to the transactions under review being approved.
 5. The terms of the Order-in-Council imposed upon Northern and Norcen should be continued to the extent that they remain relevant. In particular, Inter-City should not take excessive dividends out of Northern and should be required to supply equity capital as needed.

Counsel's proposed solutions in this chapter) as a condition of any approval;
b) inviting the Applicants to re-apply after the changes outlined have been completed by Norcen, Northern and other related companies, so that Inter-City can re-apply to purchase the Northern common shares without the Norcen Note being in a position to affect the utility assets of Northern and at a time when the Ontario utility would be acting on its own.

6. The Board ought to render its opinion to the Lieutenant Governor in Council so that His Honour requires the Board to review in detail any proposed changes in Norcen and Northern or in Inter-City, Resources, Vigas and Northern depending on whether His Honour exercises his discretion to grant a conditional approval or whether His Honour rejects the Applications with leave to the Applicants to re-apply after the appropriate changes in the companies and transactions have been completed. This requirement arises because the Board has been given only a cursory view of the proposed reorganization of Northern and the acceptability of the reorganization from the perspective of the public interest.

Costs

Special Counsel submitted that:

1. The costs of and incidental to any proceeding before the Board are in the sole and unfettered discretion of the Board. The costs of the Board and Special Counsel ought to be assessed against the Applicants.
2. With respect to the costs of FONOM, their participation was substantial.

**SUBMISSION
ON BEHALF
OF FONOM**

The Board's Mandate

FONOM submitted that:

6. If the answer to both questions is yes, then the Board's opinion should favour the transaction. If the answer is negative, then the Board should oppose the transaction.
7. If the Board arrives at a neutral balance, the Board's opinion should be that the take-over should be allowed; a willing seller should be able to sell to a willing buyer subject to such conditions as the Board might wish to impose.
8. The onus of meeting the test lies with the Applicant who wishes to change the status quo.

Financial Matters

- A. With respect to the "Strong vs. Weak Parent" issue, FONOM submitted that:
 1. The fact that Inter-City is a weaker parent company than Norcen is an important factor to be considered, particularly if it should ever become necessary for Northern to look to its parent for a further infusion of equity.
 2. The fact that the Northern first mortgage bondholders fled to Norcen when they learned that Inter-City was to be the new parent supports the position that the weaker parent is a significant factor.
 3. The fact that the CIBC is willing to fund the debt portion of this transaction does not upset the action by the first mortgage bondholders. CIBC is willing to loan the money to Inter-City because it will have significant collateral security for the loan, namely all of the common shares of Northern.
 4. Norcen itself has taken precautions, in the form of unusual set-off arrange-

interest, will increase Inter-City's financial weakness. That the Board of Directors of Inter-City will play a very active role in managing the affairs of Northern is disturbing, especially considering that six out of eleven members of this Board are Directors of MICC.

Other Matters of Concern

FONOM submitted that:

1. The highly centralized control of subsidiaries at Inter-City's head office in Winnipeg may result in a lack of awareness of the Ontario system's needs.
2. The loss of Northern Ontario representatives on Northern's Board of Directors will be a detriment.
3. It is difficult to assess the potential conflict of interest between Inter-City's gas and propane operations.

The Proposed Alternatives

FONOM submitted that:

1. The ultimate disposition of significant non-utility assets such as the Norcen/Inter-City Note is important and thus the proposed reorganization is not necessarily an appropriate alternative.
2. The institutional investors and the public look to the whole corporate structure to determine the ability to finance unserviced debt and equity. Therefore, the corporate income stream in total is of utmost importance.
3. The following undertakings, outlined in the Order-in-Council of July 30, 1975, should be continued:

1. There are no benefits to the public interest arising from the proposed transaction.
2. The financially weak condition of Inter-City and the presence of the Inter-City Note suggest the potential for a significant change in Northern's access to capital markets and its cost of borrowing.

Costs

FONOM submitted that:

1. The Board has a broad discretion in the awarding of costs to intervenors. This Board has set out four criteria for the granting of costs. An award of costs should be made to respondents who:
 - a) have asked for them;
 - b) have a substantial interest in the outcome of the proceedings;
 - c) have participated in a responsible way; and
 - d) have contributed to a better understanding of the issues by the Board.
2. FONOM has met these four criteria.
3. A further policy of the Board in the past has been to grant costs only in unusual and special circumstances. This hearing constitutes an unusual and special circumstance.
4. The cost of this hearing, including FONOM's costs, should not be borne by the gas consumer but by the shareholders of the applicant company, who, alone, stand to gain from the proposed take-over.

REPLY BY
INTER-CITY

Costs

Inter-City submitted that while it is difficult to object, it does not consent to any awarding of costs. Should costs be awarded,

CHAPTER 6: FINDINGS OF THE BOARD

INTRODUCTION

This chapter contains a description of the Board's mandate in regard to the public interest and its opinion of the Applications based on the evidence outlined in the earlier chapters along with certain findings of fact. Together with this evidence, the Board has taken into account the submissions of the parties, the rights of individuals and companies to make private contracts and the public interest generally.

PUBLIC INTEREST

Although Section 26 of the Act does not refer to the public interest or, for that matter, to any other considerations the Board is to use in arriving at its opinion of this transaction, the Board considers that the public interest is of paramount consideration. The question then arises, "what is the public interest?"

In searching the case law on the point, the Board has found literally hundreds of cases in Canada and the United States in which courts or administrative boards have employed the test of

applications to which the words "public interest" have been applied, there is not a single, simple explanation of sufficient clarity to be particularly helpful.

In its Procedural Order the Board outlined the public interest for the purposes of this hearing to be the benefits and detriments to:

1. present and potential shareholders, investors and Ontario customers of Northern;
2. the shareholders and Ontario customers of Inter-City;
3. the Ontario communities served by Northern and Inter-City;
4. securing natural gas transmission, storage and distribution at reasonable cost to consumers in Ontario; and
5. the public interest generally.

These general parameters have been used in the past by the Board although a specific test of the public interest has never been delineated.

to choose between prejudice to the many and mischief particular to individuals, the individuals must suffer."

The broader social concept of public interest has lurked beneath the Common Law even in its earliest formative period and the Board's duty now is to apply it to the facts of this case.

In the regulatory context of the transaction presently before the Board, the public interest is not served if Northern, following the sale, is unable to serve the public, except at unreasonable prices. Alternatively, it follows that the public interest is served if those who want the utility's services obtain those services at rates which are not adversely impacted by the transaction. While a checklist of value conflicts is impracticable, it is possible to derive specific questions related to the facts of this case, the answers to which are essential to the Board in its consideration of the public interest:

1. Can Northern continue to meet its obligations to serve present and future customers without unreasonable

to allow Northern to maintain its ability to meet its commitments to its customers at a reasonable cost. Necessary equity injections for Northern and the maintenance of an acceptable dividend payout ratio are important factors considered by the Board to be benefits of a strong parent company. As well, the Board is concerned about the potential of unsecured inter-corporate loans between Northern and its proposed parent.

The Board recommends that Inter-City enter into certain suitable undertakings and that the undertakings should contain, as a minimum, provisions whereby:

1. Inter-City will cause such portion of the earnings of Northern to be retained as is appropriate for retention by a gas distribution utility, and to the extent that such retained earnings are not sufficient to maintain the equity of Northern at a level sufficient to enable it to carry on its business of distributing gas in Ontario, Inter-City will provide additional equity capital sufficient for that purpose, on terms

7. Until such time as the proposed restructuring of Northern is approved by this Board and lawfully effected in accordance with the Board's approval, Inter-City will, at its expense, cause the Inter-City Note (which is to replace the Norcen Note presently on Northern's balance sheet) to be guaranteed by a Canadian chartered bank; and
8. Inter-City agrees that it will provide timely prior notification to the Lieutenant Governor in Council of any development or occurrence of which Inter-City has knowledge or information, by which control of Inter-City could be acquired by any other person or corporation.

Provided that the above undertakings are met,
and the sale of the Northern shares to Inter-City is permitted by the Lieutenant Governor in Council, the Board recommends that the issuance of the Inter-City Preference Shares to Norcen be approved by the Lieutenant Governor in Council as it meets the test of the public interest for the following reasons:

Norcen to be financially stronger than Inter-City;

3. Norcen's right of set-off of the \$47,300,000 Norcen note is indicative of Norcen's desire for extra security for the balance of the purchase price paid by way of Inter-City Preference Shares;
4. The material filed in evidence with respect to both Canadian bond rating services has ranked Inter-City's securities issued, from time to time, lower than Norcen's; and
5. Inter-City's investment of \$38,700,000 in MICC may have to be written off Inter-City's books in whole or in part.

The effect of this relative weakness of Inter-City could have a detrimental effect on Northern and the public interest generally for the following reasons:

1. Inter-City's weaker financial strength may prevent it from being able to provide necessary equity to Northern if such is required;

2. Funds available to Inter-City for the payment of its note to Northern will be subject to a right of set-off by Norcen in event of default by Inter-City on the payment of dividends and capital on the Preference Shares held by Norcen and the likelihood is that if that occurs, Inter-City will default on its note to Northern; and
3. By the terms of the loan agreement between the CIBC and Inter-City, it has the right to assign the then present value of the Norcen Note to the bank in satisfaction of part of its indebtedness, thus removing a source of funds for Inter-City to satisfy its note to Northern.

Undertakings

The Board is of the opinion that the undertakings which form part of the Board's opinion and are outlined above are necessary for the following reasons:

"Costs will be awarded to all of the respondents in this proceeding who:

- a) seek them;
- b) have a substantial interest in the outcome of the proceeding;
- c) have participated in a responsible way; and,
- d) have contributed to a better understanding of the issues by the Board."

Mr. Johnson stated that these criteria have been met by FONOM.

He mentioned that there was a "further hurdle" to be met as outlined by the Board in another Northern Decision (E.B.R.O. 364-II, July, 1980). The Board in that case found that in its opinion there must also be unusual or special circumstances to warrant the awarding of costs to any intervenor.

Mr. Johnson submitted that this requirement had been met in this proceeding because the present proposal would have a major impact on the future distribution system of Northern and that this hearing therefore constituted one of unusual and special circumstances. He stated that costs should be borne by the shareholders of the Applicants because they alone stand to gain from the transaction.

The Board therefore concludes that not only has FONOM met the four criteria set out in E.B.R.O. 314-II, but also the test of the Board in E.B.R.O. 364-II. There were unusual and special circumstances arising out of this matter and throughout the hearing counsel for FONOM contributed to a better understanding of the issues by the Board.

The Board will therefore issue a separate Order requiring that the Applicants pay the costs of FONOM set at \$5,500.00, as well as the costs and expenses of the Board. Both sets of costs shall be borne equally by the shareholders of Norcen and Inter-City and not by their respective customers.

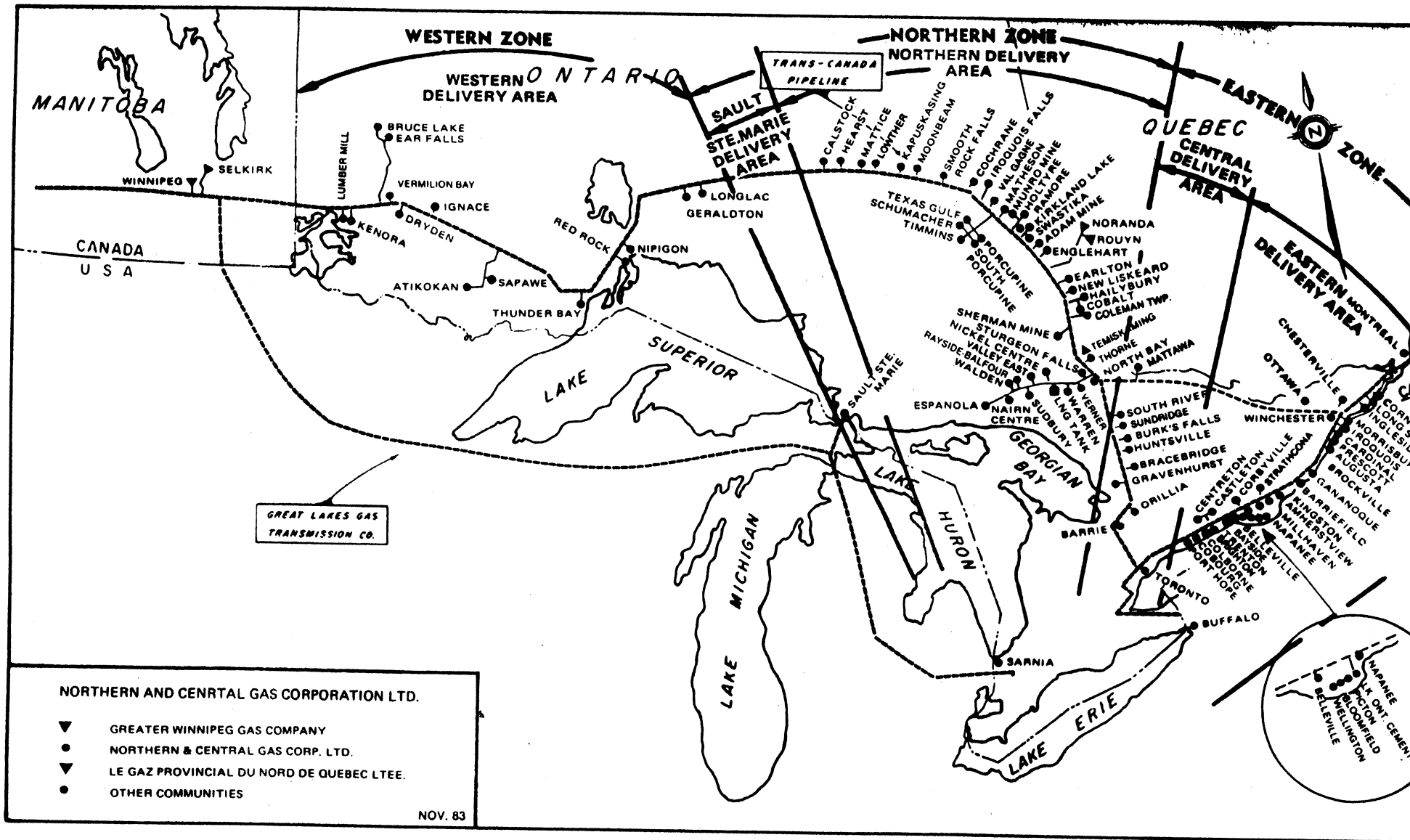
All such costs are to be payable within thirty days of the date of the Order-in-Council that will result from this report as approved by His Honour the Lieutenant Governor.

APPENDIX A

GLOSSARY OF TERMS

ACQUISITION PREMIUM	the amount by which the purchase price exceeds the book value of the asset being purchased.
AGREEMENT	the purchase agreement made the 30th day of October, 1984, among Inter-City Gas Corporation, ICG Resources Ltd. and Vigas Propane Ltd. as Purchasers and Norcen Energy Resources Limited as Vendor for the purchase and sale of the common shares of Northern and Central Gas Corporation Limited.
ASSET COVERAGE	a measure of long term liquidity based on the number of times net tangible assets can cover outstanding short and long term debt.
BOOK VALUE	the amount shown in the books (journals and ledgers) or in the accounts for any asset, liability or owner's equity item.
BOND	a certificate to show evidence of debt.
BRIDGE LOAN	a loan made for a short period of time which is to be paid off at a given time by another form of financing.
CAPITAL STRUCTURE	the classification showing the proportion of the funds provided by lenders and owners to the business. e.g. long term debt, preferred stock, common equity.
CASH FLOW	cash received minus cash disbursed from a specific asset, or group of assets, for a given period.
COMMON SHARES	shares representing the class of owners who have residual claims on the assets and earnings of a company after all debt and preferred shareholders' claims have been met.
CONVERTIBLE PREFERRED SHARES	preferred shares which may be converted, at the holder's option, into a specified number of common shares.

DISTRIBUTION NETWORK



NORTHERN AND CENTRAL GAS CORPORATION LIMITED