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By electronic filing

August 15, 2011

Kirsten Walli
Board Secretary
Ontario Energy Board
2300 Yonge Street
27th floor
Toronto, ON M4P 1E4

Dear Ms Walli,

Union Gas Limited ("Union")
2010 Earnings Sharing & Deferral Accounts and Other Balances
Board File No.: EB-2011-0038
Our File No.: 339583-000104

We are enclosing a Motion Record pertaining to the request by our client, Canadian Manufacturers & Exporters ("CME"), for an order requiring Union to provide answers to certain interrogatories and follow-up questions that its witnesses declined to answer during the course of the Technical Conference held on July 26, 2011.

We contend that the responses to these unanswered questions relate to the Board's determination of the 2010 balances in Deferral Accounts 179-70 and 179-72 to be cleared to ratepayers.

Please call me if you have any questions pertaining to the enclosed material.

Yours very truly,

A handwritten signature in blue ink, appearing to read 'Peter Thompson', is written over a horizontal line.

Peter C.P. Thompson, Q.C.

PCT\slc
enclosure

c. Chris Ripley (Union)
Intervenors in EB-2011-0038
Kristi Sebalj (OEB)
Nancy Coulas (CME)

OTT01\4645792\1

ONTARIO ENERGY BOARD

IN THE MATTER OF the *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15, (Schedule B);

AND IN THE MATTER OF an Application by Union Gas Limited for an order or orders amending or varying the rate or rates charged to customers as of October 1, 2011.

**MOTION RECORD OF
CANADIAN MANUFACTURERS & EXPORTERS (“CME”)
August 15, 2011**

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TAB A

ONTARIO ENERGY BOARD

IN THE MATTER OF the *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15, (Schedule B);

AND IN THE MATTER OF an Application by Union Gas Limited for an order or orders amending or varying the rate or rates charged to customers as of October 1, 2011.

NOTICE OF MOTION

The Canadian Manufacturers & Exporters ("CME") will make a motion to the Ontario Energy Board (the "Board") on a date and time to be fixed by the Board, and to be heard at the Board's offices at 2300 Yonge Street, Toronto, Ontario.

PROPOSED METHOD OF HEARING:

CME proposes that the motion be dealt with orally.

THE MOTION IS FOR:

1. An Order requiring Union Gas Limited ("Union") to provide the amount of a one time adjustment to the balance of Deferral Account No. 179-72 Long-Term Peak Storage Services to reflect corrections for Union's use, in its calculations of deferral account balances for 2008, 2009 and 2010, of the following unauthorized items that, without prior Board approval, do not constitute "costs" of providing unregulated storage services:
 - (a) The return amount on incremental storage assets in excess of the Board approved return allowance;
 - (b) The return amount on purchased assets that Union does not pay to third party storage providers; and
 - (c) Income taxes on items (a) and (b).
2. An Order requiring Union to provide calculations of the Return on Equity ("ROE") it earned from its unregulated storage assets for the years ending December 31, 2008,

and December 31, 2010, in the same format as the ROE calculation provided by Union in the EB-2010-0039 proceedings at Attachment 1.2, Exhibit B3.41 for the year ending December 31, 2009.

3. Such further and other relief as CME may request and the Board may grant.

THE GROUNDS FOR THE MOTION ARE:

1. In calculating storage margins, Union is obliged to adhere to the margin calculation methodology that applied when the Board rendered its EB-2005-0551 Natural Gas Electricity Interface Review ("NGEIR") Decision with Reasons dated November 7, 2006 (the "NGEIR Decision").
2. Pursuant to the NGEIR Decision, the return Union's shareholder earns from its participation in unregulated storage activities is limited to the amount related to the gradual elimination, over four (4) years, of the ratepayer's share of Long-Term Storage premiums calculated in accordance with the methodology that applied when the Board rendered its NGEIR Decision.
3. The return of unregulated storage assets that the gradual elimination of the ratepayers' share of Long-Term Storage margins provides to Union's shareholder is generous and more than sufficient to satisfy the hurdle rate of return that Union's owner uses to measure whether proposed incremental investments in storage assets are economically feasible.
4. The Board's rejection in its EB-2008-0034 Decision and Order dated June 3, 2008, and its EB-2008-0154 Decision on Motion dated October 23, 2008 of Union's attempts to depart from the storage services margin calculation methodology that was applied in the NGEIR proceeding.
5. Union's contravention of the Board's prior decisions by including the items described in paragraph 1 as deductions from revenues when calculating Long-Term Storage margins

for the fiscal years ending December 31, 2008, December 31, 2009, and December 31, 2010.

6. Union's evidence in the EB-2009-0052 proceeding at Exhibit B5.5 incorrectly confirming that the proposed methodology for allocating balances in Deferral Accounts No. 179-170 and 179-72 was consistent with that used by Union and approved by the Board in the past.
7. Union's evidence in the EB-2010-0039 proceeding at Exhibit B7.2 incorrectly indicating that no changes had been made in the methods used to determine the amount of storage premiums allocated to ratepayers.
8. The evidence in this proceeding revealing that Union has deducted the following items from Long-Term Storage revenues in its storage margin calculation:
 - (a) An unapproved "return" amount on incremental storage assets in excess of the Board approved return;
 - (b) An unapproved "return" amount on purchased assets that Union does not pay to third party storage service providers, and
 - (c) Unapproved income taxes on each of the above items.
9. Amounts derived from the "hurdle rate" Union uses to determine whether its proposed incremental investments in unregulated storage assets are economically feasible are not deductible from Long-Term Storage revenues when calculating the margins to be shared with ratepayers.
10. Without prior Board approval, the incremental return amounts that Union has deducted from Long-Term Storage revenues with respect to incremental storage investments by Union and its purchase of storage from third party service providers and imputed income taxes related thereto are not "costs" that Union incurs to provide unregulated services.

11. The unauthorized items Union has incorrectly deducted from Long-Term Storage revenues in the years 2008, 2009 and 2010 are substantial being estimated amounts of \$4.175M for 2008, \$10.265M for 2009, and \$13.836M for 2010, for a total of \$28.276M.
12. The reductions in the ratepayers' share of storage margins and the corresponding enrichment of Union's shareholder at the expense of its ratepayers that Union's actions have produced are estimated to be about \$3.131M in 2008, \$5.132M in 2009, and \$3.459M in 2010, for a total of \$11.722M, before adjusting for a reversal of the unauthorized cost shift of \$1.662M from the Long-Term to the Short-Term margin amounts recorded in Deferral Account No. 179-70.
13. Union's breach of its obligation to make timely, transparent and complete disclosure to the Board of all deviations it made from the storage margin calculation methodology applied in the NGEIR proceeding.
14. Union's failure to obtain Board approval for adding unapproved return items as deductions from Long-Term Storage revenues for the purpose of determining the amounts to be allocated to Deferral Account No. 179-72.
15. Through its deduction of unauthorized amounts for "return" on incremental storage assets and related taxes, Union has, without prior Board approval, guaranteed and paid its owner a return at the "hurdle rate" that it uses for economic feasibility analysis and has thereby deprived its ratepayers of a portion of the share of margins to which they are entitled pursuant to the NGEIR Decision.
16. Deferral accounts are "true-up" or "tracking" accounts so that the Board's prior approval and clearance of global deferral account balance amounts does not preclude it from making a one-time adjustment to the current total balance of a deferral account to remedy incorrect calculations of deferral account balances in prior years.
17. Union's acknowledgement in this proceeding of the Board's power to make one-time adjustments to remedy incorrect deferral account balances in prior years having regard

to its one-time credit adjustment to the 2010 Unabsorbed Demand Charge ("UDC") variance account of \$1.93M to remedy Union's incorrect calculations of balances in that account dating back to June 2007 being amounts that were then approved by the Board and cleared to ratepayers.

18. Union's refusal to provide the information requested.
19. The requested calculation from Union of the one-time adjustment amount described in paragraph 1 of this motion relates to the Board's determination of the balance in Account No. 179-72 to be cleared to ratepayers.
20. The requested calculations from Union pertaining to the ROE it earned from unregulated storage assets for the years ending December 31, 2008, and December 31, 2010, are relevant to establishing that the return Union's shareholder earns on its unregulated storage activities pursuant to the NGEIR Decision is more than sufficient to satisfy the "hurdle rate" that Union's owner uses to measure whether proposed incremental investments and storage assets are economically feasible.
21. Rules 8 and 29 of the Board's *Rules of Practice and Procedure*; and
22. Such further and other grounds as counsel may advise and the Board permits.

The following documentary material and evidence will be relied upon at the hearing of the motion:

1. Excerpts from NGEIR Decision in EB-2005-0551 dated November 7, 2006;
2. EB-2008-0034 Decision and Order dated June 3, 2008;
3. EB-2008-0154 Decision on Motion dated October 23, 2008;
4. Excerpts from Union's Pre-filed Evidence in EB-2009-0052 pertaining to storage deferral accounts;
5. Excerpts from Union's Interrogatory Responses in EB-2009-0052 proceeding;
6. EB-2009-0052 Decision and Order dated August 6, 2009;

7. Excerpts from Union's Pre-filed Evidence in EB-2010-0039 pertaining to storage deferral accounts;
8. Excerpts from Union's Interrogatory Responses in EB-2010-0039 proceeding;
9. EB-2010-0039 Settlement Agreement dated July 30, 2010;
10. EB-2010-0039 Decision and Order dated August 10, 2010;
11. Excerpts from Union's Pre-filed Evidence in EB-2011-0038 pertaining to storage deferral accounts;
12. Excerpts from Union's Interrogatory Responses in EB-2011-0038 proceeding;
13. Excerpts from evidence of John A. Rosenkranz dated July 6, 2011 in EB-2011-0038;
14. Excerpts from Transcript of Technical Conference dated July 26, 2011, in EB-2011-0038;
15. An estimate of Union's incorrect deductions from long-term storage account balances for 2008, 2009, and 2010, and the amount of the consequential enrichment of Union's shareholder at the expense of its ratepayers; and
16. Such further and other material as counsel may advise and the Board permits.

August 15, 2011

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AND TO: All Parties of Record in EB-2011-0038

TAB 1

**Ontario Energy
Board**

**Commission de l'Énergie
de l'Ontario**



EB-2005-0551

NATURAL GAS ELECTRICITY INTERFACE REVIEW

DECISION WITH REASONS

November 7, 2006

EB-2005-0551

IN THE MATTER OF a proceeding initiated by the Ontario Energy Board to determine whether it should order new rates for the provision of natural gas, transmission, distribution and storage services to gas-fired generators (and other qualified customers) and whether the Board should refrain from regulating the rates for storage of gas.

BEFORE: Gordon Kaiser
Presiding Member and Vice Chair

Cynthia Chaplin
Member

Bill Rupert
Member

DECISION WITH REASONS

November 7, 2006

EXECUTIVE SUMMARY

INTRODUCTION

This proceeding was initiated by the Ontario Energy Board in late 2005 in response to issues first raised in the Board's *Natural Gas Forum Report* and more fully explored in the OEB staff report, *Natural Gas Electricity Interface Review*. The key issues addressed in this proceeding were:

- Rates and services for gas-fired generators
- Storage regulation.

The hearing participants, which included gas-fired generators and consumer groups, reached settlements with Union Gas Limited (Union) and Enbridge Gas Distribution Inc. (Enbridge) on most of the issues related to services for gas-fired generators, and the Board has approved those settlements. The oral hearing and this Decision addressed the issues which were not settled and the issue of storage regulation.

SERVICES FOR GAS-FIRED GENERATORS

The need to examine new services for gas-fired generators arises because of the increasing number of so-called "dispatchable" gas-fired power generation plants that are planned or in operation. These plants operate in response to five-minute dispatch instructions from the Independent Electricity System Operator (IESO), and, as a result, their gas consumption profiles are more volatile and difficult to forecast than the relatively stable profiles of residential, commercial and industrial gas consumers. Flexible and responsive gas services, including high-deliverability gas storage, can ensure the reliable operation of these plants and allow the plant operators to manage the financial risk of the business.

Based on the settlements, the Board has approved a number of new services aimed at the needs of the gas-fired generators, including:

- new distribution rate structures for high-volume gas consumers
- more frequent nomination windows for the distribution, storage and transportation of gas
- the inter-franchise movement of gas
- redirection of gas to different delivery points on short notice
- simpler processes for title transfers of gas in storage
- high-deliverability storage services.

There was no agreement on the price at which high-deliverability storage services should be offered. The generators argued for a regulated framework, while the utilities argued for a competitive framework. The key consideration is to ensure that new innovative services are developed. The Board concludes that the public interest is best met by refraining from regulating these services. This will stimulate the development of these services, by utilities and other providers. The Board will accordingly refrain from regulating the rates for high-deliverability storage services.

The Board has a duty to protect the interests of consumers using these services with respect to price and reliability and quality of service. The crucial factor is the availability of the service itself – namely its reliability and quality. The Board expects Enbridge and Union to fulfill their commitments respecting the offering of these services. Pricing considerations are relevant, but competitive options will provide appropriate price protection. The Board will also be developing a reporting mechanism and complaint process to deal with any issues which arise.

NATURAL GAS STORAGE REGULATION

Union and Enbridge operate large underground gas storage facilities in southwestern Ontario. Those facilities, which are connected to multiple gas transmission pipelines,

are part of what is known as the Dawn Hub, one of the more important natural gas market centres in North America.

The issue in this hearing was whether the Board should refrain from regulating the prices charged for storage services. Section 29 (1) of the *Ontario Energy Board Act, 1998* states:

On an application or in a proceeding, the Board shall make a determination to refrain, in whole or in part, from exercising any power or duty under this Act if it finds as a question of fact that a licensee, person, product, class of products, service or class of services is, or will be, subject to competition sufficient to protect the public interest.

Competition in Storage

The Board has concluded that Ontario storage operators compete in a geographic market that includes Michigan and parts of Illinois, Indiana, New York and Pennsylvania. The Board finds that the market is competitive and that neither Union nor Enbridge have market power.

Price Regulation

The Board will cease regulating the prices charged for the following storage services:

- all storage services offered by Union and Enbridge to customers outside their franchise areas;
- new storage services offered by Union and Enbridge to their in-franchise customers; and,
- all storage services offered by other storage operators, including storage operators affiliated with Union and Enbridge.

Rates for storage services provided to Union's and Enbridge's distribution customers will continue to be regulated by the Board on a cost-of-service basis.

Union's existing storage capacity is well in excess of the current needs of its in-franchise customers and has been for many years. The Board has decided that Union will reserve approximately two-thirds of its existing capacity for in-franchise needs. At current rates of growth, that amount limit will satisfy in-franchise needs for several decades. Enbridge currently purchases storage from Union for a portion of its requirements. The Board has decided that Union will continue to provide these services at cost through a transition period ending in 2010.

Sharing the Premium on Ex-Franchise Sales

The sale of storage services by Union and Enbridge at market-based rates to ex-franchise customers has generated revenues well in excess of the cost of providing those services. Until now, the Board has required that most of the profits be used to reduce distribution rates. The Board has concluded that this sharing should continue for short-term storage deals. These are storage transactions that use storage space that is temporarily surplus to in-franchise needs. All of the profits on these transactions, less small incentive payments to the utilities, will be for the benefit of ratepayers.

The Board finds, however, that Union will not be required to share the profits on long-term storage transactions that use storage space not needed to serve in-franchise needs because that capacity now constitutes a "non-utility" asset for which the shareholders appropriately bear the risk. The sharing of these profits will remain unchanged for 2007 and then be phased out over the period to 2011.

Impact on Consumers

The Board's decisions are expected to have virtually no effect on consumers' bills in 2007. The impact after that cannot be precisely quantified because it will depend on future storage prices, the profit on ex-franchise storage sales, and the amount of gas consumed. While a precise forecast is not possible, bills are likely to increase by a small amount – perhaps around 1% for the typical residential consumer.

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in the January and February 2006 open seasons for winter 2006/2007 storage are presented below in Table 1.

**Table 1: Union Storage Prices
Open Seasons for Winter 2006/2007**

	Volume	High Price	Low Price	Weighted Average
US\$/MMBtu	7,800,000	US\$2.90	US\$1.55	US\$2.09
CDN\$/GJ	8,229,437	\$3.43	\$1.84	\$2.48

2.3 RATE TREATMENT OF MARGINS ON STORAGE SERVICES

The market-based prices that are realized on sales of storage services to ex-franchise customers generally have been higher (sometimes, much higher) than the cost-based rates charged to in-franchise customers. In setting distribution rates for Union and Enbridge, the Board has directed that most of this premium over cost be credited against distribution rates.

This section reviews the amount of the margins realized by Union and Enbridge and the manner in which the margins are currently shared by distribution customers and the utilities.

2.3.1 Gross Margins

Figure 4 shows the actual margins on Union's ex-franchise storage sales for 1997-2005, estimates for 2006 and 2007.¹⁴ The estimate for 2007 is included in the settlement

¹⁴ Union information extracted from Exhibit K2.3, and the settlement agreement for Union's 2007 distribution rates.

agreement approved by the Board in its decision on Union's 2007 distribution rates.¹⁵ The amounts are net of an allocation of some of Union's costs of its storage assets. Figure 5 shows the actual margins on Enbridge's Transactional Storage Services for 1997-2005 and the estimate for 2006.¹⁶ The amounts for Enbridge do not reflect any costs of its Tecumseh storage operations because all such costs are currently included in Enbridge's distribution rates.

Figure 4: Union Ex-Franchise Storage Margins

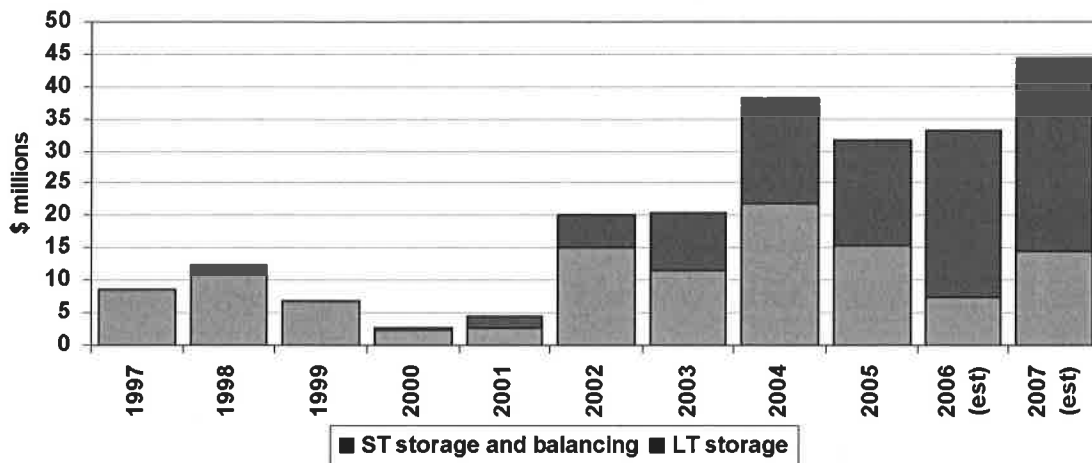
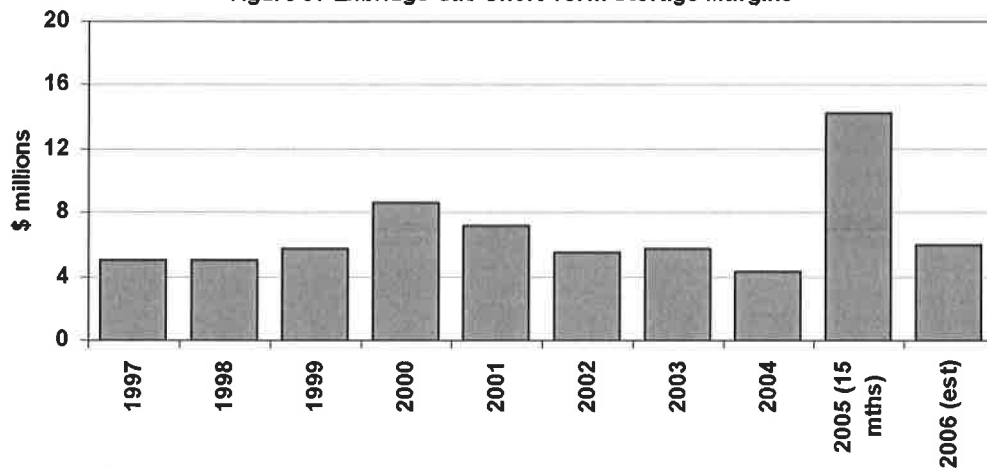


Figure 5: Enbridge Gas Short Term Storage Margins



¹⁵ RP-2005-0520 dated June 29, 2006

¹⁶ Enbridge information extracted from Exhibit K6.1 and, for the 2006 estimate, Transcript Day 7, page 20.

The growth in Union's margins on long-term storage business (long-term means contracts with terms of two years or longer) in recent years appears to have been caused primarily by two factors. First, starting in 2001, long-term contracts with ex-franchise customers that previously were at cost-based rates have been renegotiated at higher market-based rates as they come up for renewal. Second, the market value of storage for seasonal balancing – which is largely a function of the difference between forward gas prices for the injection and withdrawal seasons – has been increasing.

2.3.2 Sharing Mechanisms

The bulk of storage margins for Union and Enbridge have not accrued to those utilities. Instead, the Board has required that most of the margins be credited against distribution rates. The manner in which those margins are shared between in-franchise ratepayers and the utilities has varied to some extent in the past. The current approaches to sharing the margins are described below.

Union

Union forecasts the amount of short- and long-term storage margins for the rate year in question as part of the rates case. Of the Board approved forecast amount, 90% is included as a credit against distribution rates for the year. To the extent that actual margins vary from the forecast built into rates, Union books the difference in deferral accounts (account 179-70 for short-term transactions and account 179-72 for long-term transactions). When cleared, these deferral account balances are shared 75:25 in favour of distribution ratepayers.

Enbridge

In its decision on Enbridge's 2006 distribution rates, the Board determined that a forecast margin of \$10.7 million for 2006 Transactional Services (storage and transmission) was appropriate.¹⁷ The first \$8 million of that amount, less \$800,000 to cover Enbridge's incremental costs of providing Transactional Services, is for the

¹⁷ EB2005-0001/EB-2005-0437 *Decision with Reasons*, February 9, 2006

account of ratepayers and is included as a reduction in 2006 distribution rates. To the extent that Enbridge is able to realize more than \$10.7 million in margin in 2006, the excess will be booked to a deferral account and ultimately shared 75:25 in favour of distribution ratepayers.

7. TREATMENT OF THE PREMIUM ON MARKET-BASED STORAGE TRANSACTIONS

Union and Enbridge ratepayers have received a significant portion of the premium over cost-based rates that results from the sale of storage services to ex-franchise customers at market-based rates. Chapter 2 provided information on the magnitude of the margins in recent years and the basis on which these margins are shared between the utilities and ratepayers. Union's ratepayers have received 90% of the forecast margins related to both long-term ex-franchise sales (contract terms of two years or more) and short-term transactions (contract terms of less than two years). Ratepayers also receive 75% of any margins that are greater than forecast amounts. Enbridge ratepayers have received approximately 75% of Enbridge's Transactional Services margins.

Union proposed to end the sharing of long-term and short-term margins with ratepayers. Specifically, Union proposed that the Board adjust distribution rates effective January 1, 2007, to exclude all storage costs and revenues associated with ex-franchise sales from 2007 rates and to eliminate five existing storage and transportation deferral accounts that currently capture market-based margins in excess of amounts incorporated into rates. Union has forecast 2007 margins at \$29.9 million (long-term) and \$14.6 million (short-term).

Enbridge also proposed to end margin sharing with ratepayers. It is seeking approval to exclude revenues and expenses associated with Transactional Storage Services from its distribution rates commencing in 2007. All Transactional Storage Service revenues, forecast to be \$5 to \$6 million in 2007, would accrue to Enbridge. The costs to be excluded from distribution rates in 2007 would be some portion of the approximately

\$800,000 of O&M costs of Enbridge's Transactional Services business. Enbridge proposed to continue to include the entire net book value of its storage facilities in rate base.

The Board Hearing Team and Energy Probe supported the Union and Enbridge proposals. LPMA/WPSPG, Consumers Council, LIEN, VECC, IGUA/AMPCO, and Schools generally objected to any change in how margins are shared.

7.1 MARGINS ON SHORT-TERM STORAGE TRANSACTIONS

During the hearing, most parties presented views on the rationale for requiring the utilities to credit most of their storage margins to ratepayers. Several parties opposing the Union and Enbridge proposal to cease margin sharing referred to earlier Board decisions that they believed supported margin sharing.

The Board first dealt with margin sharing in the context of Union's short-term storage services, which Union started to sell at market-based rates in 1989. In 1996, the Board considered essentially the same issue when Enbridge proposed to start marketing its Transactional Services more aggressively and retain some of the margin. The Board has expressed a consistent view that Union's short-term storage transactions and Enbridge's Transactional Services involve sales at market-based rates of services derived from utility assets that are temporarily surplus.

In its decision in EBRO 492, dated September 10, 1996, the Board stated:

The Company [Enbridge] stated that the objective of offering transactional services is to make additional use in off-peak periods of the Company's physical and contractual storage and transportation assets acquired in the first place to serve the in-franchise customers. [Paragraph 3.3.2, emphasis added]

The Board does not agree that an incentive to provide these services should be necessary, and notes that the Company has offered both peak and off-peak services, along with assignments and exchanges in prior years without

the need for an incentive. However, the Board acknowledges that the Company does incur some risk associated with its participation in these activities, and finds that a 10 percent incentive will be adequate to address these modest risks. [Paragraph 3.3.30]

In 1997, the Board for the first time approved Union entering long-term storage contracts at market-based rates with ex-franchise customers. In its decision in EBRO 494-03 dated September 26, 1997, the Board described the basis for allowing Union's short-term transactions as follows:

Short-term storage for ex-franchise customers has been marketed on the basis that it is space required to provide in-franchise service. Due to weather and other variables part of the space is temporarily surplus to in-franchise needs. Customers already pay the costs of this storage in rates. Any revenue from short-term sales of storage services that is beyond the direct marginal cost to provide the service is a benefit to in-franchise consumers. [Paragraph 2.3.19, emphasis added]

Board Findings

The Board concludes that its decision to refrain in part from regulating rates for storage services does not invalidate the basis for sharing margins with ratepayers on short-term deals. Union's short-term storage transactions and Enbridge's Transactional Services storage sales are sales of services derived from utility assets that are temporarily surplus to in-franchise needs. The Board concurs with VECC's final argument on this point:

In Union's case, the assets underpinning the short-term storage and balancing services sold in the ex-franchise market are presently included in rate base. In the case of Enbridge, all of the assets underpinning their transactional services sold in the ex-franchise market are included in rate base. As stated earlier, VECC views it as highly inappropriate for the utilities to seek the entire margin associated with these assets given that they have been "substantiated" by captive ratepayers who have paid in rates for the full opportunity cost of the associated capital investment (including a fair return on equity) along with overhead costs and direct operational costs associated with providing the services. In VECC's view, the utilities should be required to provide a rationale for receiving any of the associated margins given their earlier mentioned obligation to optimize the use of utility assets. [Page 16]

Requiring the utilities to share these margins with ratepayers is not in any way inconsistent with a finding that the storage market is competitive. The basis for sharing these margins is the nature of the assets that underpin the transactions, not the prices at which the transactions occur.

The Board finds that the entire margin on storage transactions that are underpinned by “utility asset” storage space, less an appropriate incentive payment to the utilities, should accrue to ratepayers. Ratepayers bear the cost of that space through the regulated storage rates and should benefit from transactions that utilize temporarily surplus space. The Board finds that shareholders will retain all of the margin on short-term transactions arising from the “non-utility” storage space.

Short-term margins derived from “utility assets”

The decision to require Union to notionally divide its existing storage into two pieces – a “utility asset” (maximum of 100 PJ) and a “non-utility asset” (the balance of Union’s capacity) is set out in Chapter 6. Union’s storage facilities will not be physically split into two pieces and Union is likely to continue operating its storage assets in much the same way as it does today. Union presumably will determine its ability to execute short-term deals based on the amount of temporarily surplus space in the entire storage facility. As long as the utility and non-utility storage is operated as an integrated asset, it will not be possible to determine that any particular short-term transaction physically utilizes space from either the “utility asset” or the “non-utility asset.”

Given the impossibility of physically linking a short-term transaction to a specific slice of storage space, the Board considered other methods of determining the amount of storage margins that should accrue to Union’s ratepayers. The Board has decided that the calculation should be based on how the costs of the storage facilities are split between the utility and non-utility businesses. Specifically, Union’s revenues in any year from short-term storage transactions, less any incremental costs incurred by Union to

earn those revenues, should be shared by Union and ratepayers in proportion to Union's allocation of rate base between utility and non-utility assets.

As indicated in Chapter 5, the allocation is currently 79/21 utility/non-utility. Union's existing policy on what constitutes a short-term storage transaction will continue to apply. As and when Union requires more capacity for in-franchise needs (up to the 100 PJ cap) or adds storage capacity or enhances deliverability of its storage facilities, the cost allocation will presumably change. Once a revised cost allocation has been approved in a Union rates case, the basis on which margins on short-term storage transactions are shared will also change.

All of Enbridge's current storage assets (storage facilities and contracts) are required to serve its in-franchise customers. Thus, all of Enbridge's storage-related transactional services revenues today are derived from "utility assets." If and when Enbridge increases the capacity of its Tecumseh storage facilities, it will be necessary for the company to adopt a method of allocating storage-related Transactional Services revenues between utility and non-utility assets.

Incentive payments to utilities for short-term transactions

The Board has considered whether to continue allocating a portion of the margins from short-term transactions to the utilities as an incentive to optimize the use of the "utility assets" of each company.

The Board has decided that Enbridge should continue to share in margins on Transactional Services storage deals. Eliminating any sharing would leave Enbridge with no financial incentive to market temporarily surplus storage space. An incentive mechanism aligns Enbridge's interest with the interest of ratepayers. The size of the incentive is a matter of judgement and that issue has been debated in several past rates cases. The Board finds that the current 25% incentive is excessive given that ratepayers bear all of the costs of the existing storage assets. The Board believes a

10% incentive is sufficient. In the future, 10% of the storage component of Enbridge's Transactional Services revenue, less any incremental costs incurred by Enbridge to earn those revenues, will be for the account of Enbridge. The remainder will be for the benefit of ratepayers. As a result, Enbridge will not be required to separate its revenues and costs for Transactional Storage Services.

With respect to Union, an argument might be made that an incentive is not necessary. Union will receive margins from short-term storage deals that are deemed to arise from the "non-utility" portion of its storage facilities. Thus, Union will already be motivated to maximize the revenues on all short-term transactions. The Board has decided, however, that it would be appropriate for Union and Enbridge to be treated consistently and to each receive 10% of the net revenues deemed to arise from the "utility asset" portion of storage.

The Board is currently undertaking a process to determine a multi-year incentive ratemaking framework for Union and Enbridge. That process will address how best to implement the Board's findings on the sharing of short-term storage transaction margins within an incentive ratemaking framework. Enbridge's 2007 rates case is in progress; the Board's finding with respect to short-term margin sharing will be implemented through that proceeding.

7.2 MARGINS ON UNION'S LONG-TERM TRANSACTIONS

Margins on both Union's short-term storage transactions and its long-term deals historically have been shared with ratepayers in essentially the same way. Although the Board has devoted considerable time to long-term contracting issues in past Union cases, it has not determined that margins on the two types of transactions should be shared on fundamentally different bases. In its decision on Union's 2000 rates (RP-1999-0017), the Board described the rationale for sharing the margins on all of Union's storage sales:

The Board recognizes that the assets necessary to provide both transactional services and long-term storage services have been paid for by Union's customers. Providing that the Company has a financial incentive to maximize revenues for these services should increase the benefits to both the customer and the shareholder. Consequently the Board authorizes a sharing of net revenues for transactional services and market premium for a long-term storage services in the ratio of 75:25 between ratepayer and shareholder as an incentive to maximize the revenue associated with both these services. [Paragraph 2.505]

Union's rationale for the sharing of storage margins has changed over time. In 1996, when it was unsuccessful in obtaining Board approval for long-term storage sales at market-based rates, Union had submitted that all of the margins would be credited to ratepayers "since in-franchise customers had paid for the development of the storage." In Union's 2000 rates case (RP-1999-0017), the Board noted that "Union's position was that ratepayers have paid for the services from the assets, not for the assets themselves." This is the position that Union advanced in this proceeding.

IGUA/APMCO claimed Union is estopped from changing its position on margin sharing. The argument is that the Board was persuaded to allow market-based rates on the condition that the bulk of the proceeds would go to the ratepayer. Accordingly, IGUA/AMPCO argued that it is now improper for Union to change its mind and to argue that these proceeds now need to go to the shareholder in order to promote the development of new storage.

Board Findings

The Board has determined that storage space in excess of the amount made available at cost-based rates (which is to be capped at 100 PJ – see Chapter 6) can be considered a "non-utility" asset. This is the space that will support Union's long-term storage sales. The Board finds that profits from new long-term transactions should accrue entirely to Union, not to ratepayers.

In comparing this decision with the past Board decisions on the sharing of margins on long-term storage sales, it is important to remember the context in which the Board made its earlier decisions. Until this proceeding, the Board had never reviewed the state of competition in storage and had not considered whether to refrain, in whole or in part, from regulating storage prices. Thus, there was little basis for the Board to treat the margins on short-term and long-term sales differently. Further, the Board's decision in RP-1999-0017 to allow all then existing cost-based contracts with ex-franchise customers to be renewed at market rates has resulted in a substantial growth in long-term margins, margins that have been largely for the benefit of ratepayers. It is certainly not possible today to assert that ratepayers have "paid for" the space that underpins Union's long-term storage contracts.

The Board does not accept IGUA/AMPCO's estoppel argument. Estoppel as a principle of contract law is sometimes called "detrimental reliance". IGUA/AMPCO's theory seems to be that when the Board made its decision on the sharing of long-term margins it relied upon an undertaking by Union to continue the sharing. Perhaps that might have been part of the Board's rationale at the time but the Board itself has now questioned the continuing need for the practice and whether the rationale developed at that time continues to exist.

This after all, is the purpose of section 29. Section 29 requires the Board to re-examine the need for regulation or the degree of regulation where market structures have changed. This Board in the Natural Gas Forum Report recognized that market conditions in energy markets have in fact changed. When such changes occur, regulators, particularly those such as the Board and the CRTC with statutory forbearance mandates in their governing legislation, must re-examine the regulatory construct in light of the current market conditions. That is what this proceeding seeks to accomplish. The concept of estoppel has no meaning in such a framework.

7.3 TRANSITION RELATED TO LONG-TERM MARGINS

IGUA/AMPCO and LPMA/WGSPG argued that in the event the Board decides to eliminate the sharing of any margins with ratepayers there should be some mitigation. As a precedent, LPMA/WGSPG referred to the 2003 decision by the Board on the phase-out of the Delivery Commitment Credit (DCC). There the Board recommended a five-year period based on a cost increase of 11.3 cents per GJ on a specific class of customers. LPMA/WGSPG argued that the phase-in period in the current case should be eight years, because the cost impact is a greater impact of 17.5 cents per GJ across all customer classes.

Board Findings

The Board recognizes that, particularly in recent years, Union's ratepayers have had a significant benefit due to sharing the bulk of the margins on long-term deals. The Board would prefer to have a smooth transition away from the status quo rather than an abrupt change in rates.

The Board finds, however, that there is no basis for retaining a requirement that Union share the margins on new long-term storage transactions, that is, long-term deals executed after the Board's forbearance decision. To continue sharing those margins with ratepayers would conflict with the Board's decisions (a) to recognize that part of Union's storage capacity constitutes a non-utility asset, and (b) to forbear from regulating the prices of ex-franchise transactions. Union should reap the benefits and bear the risks of those new transactions.

The margins that will be recorded in future years in respect of existing long-term deals are different. Those margins flow from long-term contracts that were negotiated and priced prior to the Board's forbearance decision and prior to the Board's decision that there is a non-utility part of Union's storage facilities. When those contracts were signed, Union had no reason to expect that it would receive anything more than 10% of

the margin. The Board has concluded that ratepayers should continue to receive some of the margin on those existing contracts.

The Board considered whether to require Union to record the margins on existing long-term contracts separately from the margins on new long-term contracts. Under this approach, ratepayers would be credited with 90% of the margins on existing contracts for the remaining terms of those contracts. This approach conceptually has appeal but could give rise to ongoing implementation questions. For example, the Board might have to consider how contract re-negotiations or defaults by customers are to be treated. This level of complexity and potential ongoing review is unwarranted.

The Board has concluded that it should adopt a simpler phase-out mechanism that is a rough sort of “proxy” for the conceptual approach described above. The phase-out of the sharing of margins on Union’s long-term storage transactions will take place over four years. The share accruing to Union will increase over that period to recognize that contracts will mature and a larger part of Union’s total long-term margins will be generated by new transactions. For 2007, forecast margins (on long-term and short-term transactions) now included in the determination of Union’s rates will remain unchanged. After 2007, Union’s share of long-term margins will be as follows: 2008 – 25%, 2009 – 50%, 2010 – 75%, 2011 and thereafter – 100%.

The Board is currently undertaking a process to determine a multi-year incentive ratemaking framework for Union and Enbridge. That process will address how best to implement the Board’s findings on the transition for long-term storage transaction margins within an incentive ratemaking framework.

7.4 ATCO DECISION

During the oral hearing and in final argument, several parties referred to the recent Supreme Court of Canada decision on the proceeds of an asset sale by ATCO Gas and Pipelines Ltd. Some parties claimed the case supported a cessation of margin sharing

by the utilities, while other parties questioned whether the facts of that case were relevant to the Ontario storage market.

ATCO, a public utility in Alberta, applied to the Alberta Energy and Utilities Board (AEUB) as required by the *Alberta Gas Utilities Act*⁴⁰, for the approval of the sale of buildings and land located in the City of Calgary. The utility argued that the property was no longer useful and the sale caused no harm to ratepayers. The AEUB agreed that the customers would not be harmed and approved the sale.

In a second decision, the AEUB determined that it would allocate the net profits from the proceeds of the sale between the utility and ratepayers. The AEUB held that it had jurisdiction to order this allocation because it had authority to attach conditions to the order approving the sale to protect the public interest.

The Alberta Court of Appeal set aside the AEUB's decision⁴¹ referring the matter back to the AEUB to allocate the entire proceeds from the sale to ATCO. The City of Calgary, representing the customers' interest, appealed to the Supreme Court of Canada, which upheld the Court of Appeal finding that the AEUB did not have the requisite jurisdiction. On February 9, 2006 the Supreme Court of Canada released its decision in the ATCO case.⁴²

Board Findings

The Supreme Court of Canada found as follows:

The customers pay an amount for the regulated service that equals the cost of the service and the necessary resources...The payment does not incorporate acquiring ownership or control of the utility's assets.⁴³

⁴⁰ R.S.A. 2000, c. G-5, s.26

⁴¹ ATCO Gas & Pipelines Ltd. v. Alberta (Energy & Utilities Board), [2004] 24 Alta. L.R. (4th) 205 (C.A.)

⁴² ATCO Gas & Pipelines Ltd. v. Alberta (Energy & Utilities Board), [2006] S.C.J. No. 4, 2006 SSC 4.

⁴³ Ibid, par. 68

There are differences between the ATCO case and the present case. The ATCO case involved the sale of a capital asset (land), while this case involves providing a service (storage).

The Alberta case related to section 26 of the *Gas Utilities Act* in Alberta, which required ATCO to apply to the AEUB for approval to sell any asset. The sharing of the premium from the sale of storage services to ex-franchise customers at market-based rates has been decided in the context of rates cases.

The findings of fact in this case indicate that there are certain storage assets in rate base that are used to provide storage service to in-franchise ratepayers. This decision also finds that those services should be provided at cost-based rates as they have been in the past.

The utility also uses these assets to generate profits from sales to ex-franchise customers. The bulk of the revenues have historically flowed to ratepayers and a small share has gone to the utility. That share represents a “fee” that provides an incentive to the utility to generate these sales and profits from what at certain times of the year is excess capacity. This does not give rise to any claim by the utility under the ATCO principles. The ratepayers are receiving service relating to assets in rate base. No sale of assets is involved. The utility is being compensated for certain services.

At the same time, this decision finds that there are certain storage assets that are not part of the utility rate base and finds that the return from those assets, in terms of profit on sales to ex-franchise customers, should accrue entirely to the utility and its shareholders. Again, no claim arises under the ATCO principles. There is no appropriation to the benefit of the ratepayer of any utility assets or for that matter any proceeds from that asset. Accordingly, the Board finds that ATCO decision has no application to this decision.

7.5 STORAGE AND TRANSPORTATION SERVICE DEFERRAL ACCOUNTS

The deferral accounts at issue in this proceeding are the following:

- Short-Term Storage and Other Balancing Services Account (179-70)
- Long-Term Peak Storage Services Account (179-72)
- Transportation Exchange Services Account (179-69)
- Other S&T Services Account (179-73)
- Other Direct Purchase Services Account (174-74)

On March 15, 2006, the Board notified Union and the intervenors that Union's proposal to eliminate the five deferral accounts, made as part of the rate application EB-2005-0520, had been moved to this proceeding. The relevant evidence from EB-2005-0520 was re-filed in this proceeding.

Union explained that of the five accounts in question, the storage accounts (179-70 and 179-72) are directly related to the storage forbearance issue, while the remaining three transmission accounts (179-69, 179-73 and 174-74) are not directly related to the storage forbearance issue.

Union proposed to eliminate the Short-Term Storage and Other Balancing Services Account (179-70) and Long-Term Peak Storage Services Account (179-72) on the basis that these accounts would no longer be necessary if the Board decides to forbear from regulating ex-franchise storage service sales.

Union also proposed to eliminate the other three transmission-related deferral accounts (179-69, 179-73 and 179-74). Union advanced two reasons for this proposal. First, Union stated that the forecast of S&T revenue should not be treated any differently than the forecast of any other source of revenue. Second, Union submitted that its proposal is consistent with the Board's policy direction, as outlined in its Natural Gas Forum Report, that in an incentive regulation framework there should be no earnings sharing

and transactional services revenues should not receive special treatment. Union also expressed concern that there may not be another opportunity or forum to deal with this issue prior to the beginning of the proposed incentive regulation framework.

Most intervenors took the position that the storage related accounts (179-70 and 179-72) should continue if the Board determines that it will not refrain from regulating the prices of ex-franchise storage sales services. However, intervenors also acknowledged that if the Board were to forbear from regulating the prices of ex-franchise storage services, then these accounts would no longer be needed and under those specific circumstances should be eliminated. For example, the Board Hearing Team argued that under forbearance, gas utilities' shareholders will be bearing the risk associated with storage transactions in the ex-franchise market and any premium or shortfalls should accrue to the shareholder.

With respect to the transmission-related deferral accounts (179-69, 179-73 and 179-74), most intervenors were of the view that these accounts should not be eliminated because transmission will remain a regulated service. LPMA/WGSPG supported the objective of reducing the number of variance and deferral accounts but took the position that a comprehensive review of all such accounts should be undertaken as part of the incentive regulation mechanism that is still to be determined. Many intervenors adopted the LPMA/WGSPG position.

The Board Hearing Team supported Union's proposal. It argued that because transactional transportation services are part of the gas utility's monopoly service, these revenues should be treated no differently than any other regulated revenue.

Board Findings

With respect to the storage related accounts (179-70 and 179-72), most intervenors were of the view that the resolution of this issue depends on whether the Board refrains from regulating ex-franchise storage. The Board has determined that it will refrain from

regulating rates in this area. However, we have also concluded that there should continue to be a sharing of the premium arising from short-term storage transactions, for both Union and Enbridge, and that there should be a phase-out of the sharing of the premium arising from Union's long-term storage transactions. Accordingly, the Board concludes that the accounts should be maintained for now. As outlined in sections 7.1 and 7.3, we have determined that the gas incentive ratemaking process is the best place in which to determine the precise implementation of these findings.

With respect to the transmission-related accounts, there was general acknowledgement that the issue related to the structure of the incentive regulation framework and not the issue of storage regulation. Union was concerned that this proceeding would be the only opportunity to deal with its proposal before the introduction of incentive regulation. The Board does not agree. On September 11, 2006, the Board issued a letter indicating its intent to establish a consultation process to use in relation to the development of the gas incentive regulation framework. This process is specifically designed to address issues about the framework prior to the commencement of incentive regulation for natural gas utilities. The Board finds that the proposed elimination of these three transmission-related accounts should be considered as part of a comprehensive review that includes all deferral accounts under an incentive regulation mechanism.

The Board therefore concludes that all of the accounts will be maintained and will be reviewed as part of the process for setting the incentive regulation mechanism for natural gas utilities.

8. OUTSTANDING ENBRIDGE RATES ISSUES (RATES 125 AND 300)

The unresolved issues arising from the Enbridge Settlement Proposal relate specifically to the allocation of implementation costs and migration revenue deficiencies attributable to changes in Rates 125 and 300, and the Rate 125 eligibility criteria.

Early in the proceedings, there were two threshold issues. The first issue was whether the allocation of implementation costs and migration revenue deficiencies should be addressed in this proceeding or Enbridge's next rates proceeding. The Board determined that the issue should be addressed in this proceeding, and that decision was rendered orally on June 27, 2006. The second issue was whether residential customers should be allocated any of the implementation costs or migration revenue deficiencies. The Board rendered its decision orally on July 14, 2006, in which it stated that both the implementation costs and the migration related revenue deficiencies should be recovered from large volume customers as they are the main beneficiaries of these services. (The transcript of the Board's oral decisions on these issues is included at Appendix C.)

The remaining issues before the Board are the following:

- Smoothing of Migration-Related Impacts:
- Rate 125 Eligibility Criteria

8.1 SMOOTHING OF RATE MIGRATION IMPACTS

Enbridge stated that the offering of new services, such as Rate 125 and Rate 300, typically leads to the migration of customers from the existing rates to the new rates, if there is an economic advantage or a reduction in rates, for these customers. This

TAB 2



EB-2008-0034

IN THE MATTER OF the *Ontario Energy Board Act 1998*,
S.O.1998, c.15, (Schedule B);

AND IN THE MATTER OF an Application by Union Gas
Limited for an order or orders amending or varying the rate
or rates charged to customers as of July 1, 2008.

BEFORE: Paul Vlahos
Presiding Member

Bill Rupert
Member

DECISION AND ORDER

The Proceeding

Union Gas Limited ("Union") filed an application on March 4, 2008 with the Ontario Energy Board (the "Board") seeking approval for final disposition and recovery of certain 2007 year-end deferral account balances including approval and disposition of the market transformation incentive and capital tax deferral amounts. The Board assigned docket number EB-2008-0034 to the application.

Union originally proposed that the resulting impacts from the disposition be implemented on April 1, 2008 to align with other rate changes expected to result from the Quarterly Rate Adjustment Mechanism ("QRAM") process. Union subsequently revised the proposed timing to align with the July 1, 2008 QRAM.

The Board issued a Notice of Written Hearing and Procedural Order No. 1, dated March 31, 2008, which was served on a list of intervenors involved in certain related hearings. The Procedural Order set the dates for filing interrogatories and submissions on Union's evidence and other procedural matters.

Interrogatories were submitted by the Industrial Gas Users Association ("IGUA"), London Property Management Association ("LPMA"), City of Timmins ("Timmins") and Board staff. Green Energy Coalition ("GEC") requested and was granted late intervenor status. IGUA, LPMA, Timmins and Board staff filed arguments and Union filed reply argument. The argument phase was completed on May 7, 2008.

The Board has summarized the record of the proceeding only to the extent necessary to provide context to its findings.

Deferral Accounts

Union has classified the deferral accounts into four groups:

- a) Five Gas Supply accounts that are cleared through the QRAM process.
- b) Two Gas Supply accounts that are not cleared quarterly in the QRAM process.
- c) Five Storage and Transportation accounts.
- d) Nine Other accounts.

The account balances, which are presented below, include interest at the applicable short-term interest rate approved by the Board in the EB-2006-0117 proceeding. The deferral accounts in category a) above are already being cleared through the QRAM process. The net balance of accounts in categories b), c), and d) above at December 31, 2007 is a \$6.618 million credit payable to Union's ratepayers.

In addition to the above, Union sought to reflect in rates a Market Transformation allowance (\$0.5 million debit) and the new capital tax rates (\$1.813 million credit).

Therefore the total disposition amount is a \$7.931 million credit. Union provided specifics regarding the disposition and allocation of this amount to its rate classes.

Gas Supply Accounts – Cleared in the QRAM Process

A credit balance (in parentheses) is money owed to ratepayers while a debit balance is money recoverable from ratepayers.

Under the Board-approved QRAM process, Union establishes reference prices for prospective recovery, or refund, of the projected balances (with interest) over the following 12-month period. Variances between the forecast and actual prospective

recovery amounts for these five accounts are tracked and included in the amounts prospectively recovered in future QRAM proceedings.

The net balance of the five accounts has been cleared through four QRAM decisions in 2007. In this proceeding, Union is seeking the Board's "final approval" with respect to these balances.

Account No.	Name	Balance (Dec 31, 2007, \$ millions)
179-105	Northern and Eastern Purchased Gas Variance Account	\$ (14.760)
179-100	TCPL Tolls and Fuel – Northern and Eastern Area	1.357
179-106	South Purchased Gas Variance Account	(98.140)
179-109	Inventory Revaluation Account	19.940
179-107	Spot Gas Variance Account	(1.716)
Total		\$ (93.319)

Gas Supply Accounts – Not Cleared in the QRAM Process

The balances of the two accounts below are not cleared in the QRAM process. Union is requesting disposition of the total credit balance of \$3.57 million.

Account No.	Name	Balance (Dec 31, 2007, \$ millions)
179-89	Heating Value Deferral Account	\$ (1.539)
179-108	Unabsorbed Demand Costs	(2.031)
Total		\$ (3.570)

Storage and Transportation Accounts

Union defers the difference between actual net revenues from storage and transportation services and forecast revenues included in Union's rates. The differences are currently shared on a 75/25 basis between ratepayers and Union. The net credit balance of \$7.482 million represents the ratepayer portion in these accounts.

Account No.	Name	Balance (Dec 31, 2007, \$ millions)
179-69	Transportation and Exchange Services Deferral Account	\$ (4.589)
179-70	Short Term Storage and Balancing Services	(1.351)
179-72	Long Term Peak Storage Services Deferral Account	(2.196)
179-73	Other S&T Services Deferral Account	(0.146)
179-74	Other Direct Purchase Services Deferral Account	0.799
Total		\$ (7.482)

Other Accounts

The nine other accounts have a net balance recoverable from ratepayers of \$4.434 million.

Account No.	Name	Balance (Dec 31, 2007, \$ millions)
179-26	Deferred Customer Rebates/Charges Account	\$ -
179-75	Lost Revenue Adjustment Mechanism Deferral Account	(0.268)
179-102	Intra-period WACOG Changes Deferral Account	(0.779)
179-103	Unbundled Services Unauthorized Storage Overrun	-
179-111	Demand Side Management Variance Account	(0.863)
179-112	Gas Distribution Access Rule Costs	(0.557)
179-113	Late Payment Litigation Deferral Account	0.147
179-115	Shared Savings Mechanism Variance Account	6.754
179-117	Carbon Dioxide Offset Credits	-
Total		\$ 4.434

Other Adjustments

In addition to the above named deferral accounts, Union claimed amounts for Market Transformation and Capital Tax Deferral.

Union claimed a \$500,000 incentive for a Market Transformation program (drain water heater recovery program). The amount was linked to Union meeting or exceeding the performance goals as outlined by the Market Transformation “scorecard” filed and approved by the Board in Union’s 2007-2009 DSM Plan.

In accordance with the Board’s EB-2005-0520 Decision, enacted tax legislation changes that would result in tax rates different than those used to establish 2007 rates were subject to deferral account treatment for 2007. In 2007, enacted legislation reduced the capital tax rate from 0.285% to 0.225%. Consequently, Union recorded a credit of \$1.813 million which represents the cost difference between the two capital tax rates.

The Issues

Intervenors and Board staff addressed issues in the following areas:

- 2007 Capital Cost Allowance Amendments
- Commodity Costs – Northern and Eastern Customers
- Interest on Deferral Account Balances
- Long Term Peak Storage Services Margin
- Gas Supply Related Deferral Accounts

The specific matters raised and the Board’s findings are set out below.

2007 Capital Cost Allowance Amendments

LPMA argued that the approximately \$1 million credit impact resulting from a change in capital cost allowance (CCA) rates, although not yet enacted, should be disposed of now rather than waiting for 2009 as suggested by Union.

In its reply submission, Union confirmed that it is industry practice to include the CCA amendments in tax filings for 2007 and that the Canada Revenue Agency would be accepting the CCA amendments even though they have not been enacted. Accordingly, Union agreed to dispose of the additional credit to customers of \$1 million associated with amendments to CCA rates for 2007.

The Board accepts Union’s amended request to dispose of the additional \$1.0 million.

Commodity Costs – Northern and Eastern Customers

Timmins asserted that residential customers in the Northern and Eastern areas pay \$50 million more per year in gas supply commodity charges than do residential customers in the South.

Union refuted Timmins' claim citing the April 2008 QRAM data (EB-2008-0033). Using data from its EB-2008-0033 filing¹, Union calculated the annual commodity and fuel cost for typical residential customers consuming 2,600 m³ per year to be identical for Rate 01 Eastern Zone and Rate M1 Southern customers.

The Board accepts Union's calculations that, indeed, Timmins' claims are not substantiated.

Interest on Deferral Account Balances

Timmins noted that while Union earned an overall rate of return that exceeded 8% on its rate base that included inventory, Union was paying 4.59% or 5.14% in connection with the same inventory.

Union argued that the two matters were not related, indicating that it accrues interest on Board-approved deferral account balances in accordance with Board-approved accounting orders.

The Board agrees with Union. The interest rate applicable to balances in deferral accounts has been viewed by the Board to be a different matter than the overall cost of capital authorized by the Board for setting rates. The interest rates applicable to both the gas and electricity sectors are prescribed by the Board quarterly, pursuant to the EB-2006-0117 proceeding, and are posted on the Board's website. The interest rates used by Union are those prescribed by the Board for the applicable period.

Long-Term Peak Storage Services Margin

In Union rates cases for 2007 and earlier periods, the Board has approved a forecast of net revenue (total revenue less allocated costs) from long-term storage transactions for the period in question and has required Union to credit 90% of that forecast amount to customers. The Long-Term Peak Storage Services deferral account (No. 179-72) is intended to capture 75% of the difference between (i) Union's actual net revenue from

¹ EB-2008-0033 Pre-filed Evidence Tab 2, Schedule 4, Page 2, Line 24, Column (k)

long-term peak storage services, and (ii) the forecast revenue approved by the Board in the Union rates case.

In its application in this proceeding, Union indicated that actual net revenues for 2007 were \$18.934 million and forecast revenues were \$16.006 million. The December 31, 2007 deferral account balance of \$2.196 million credit is 75% of the difference in those amounts.

In response to an interrogatory from Board staff, Union noted that in the EB-2005-0520 rate order, the Board approved net long-term storage revenues for 2007 of \$21.405 million, not \$16.006 million as shown in Union's application.

In its reply submission, Union stated that it decided not to calculate the deferral account balance using the Board-approved forecast of 2007 net revenues and actual long-term net revenues for that year. Union stated that it departed from that approach based on its interpretation of the Board's November 2006 decision on the Natural Gas Electricity Interface Review ("NGEIR").² As Union interprets the NGEIR decision, account 179-72 is to be used only to track differences in actual and forecast net revenues in respect of storage contracts entered into before November 7, 2006. In support of that interpretation, Union noted that page 106 of the NGEIR decision states: "The Board finds there is no basis for retaining a requirement that Union share the margins on new long-term storage transactions, that is, long-term deals executed after the Board's forbearance decision." The actual (\$18.934 million) and forecast (\$16.006 million) net revenues that Union used to calculate the balance in account 179-72 relate only to long-term storage contracts entered into prior to the NGEIR decision.

Union also indicated that, in future years, contracts executed prior to the NGEIR decision will form the basis for calculating the balance in account 179-72.

The Board does not agree with Union's interpretation of the NGEIR decision. The sentence on page 106 of that decision that is quoted by Union in its reply submission is not the conclusion reached by the Board on how the transition provisions of that decision should be applied. The Board did not find that Union should separately track its margins on pre- and post-NGEIR decision transactions. This is quite clear from the following sentences on page 107 of the NGEIR decision:

² EB-2005-0551 Decision with Reasons, November 7, 2006.

The Board considered whether to require Union to record the margins on existing [pre-November 7, 2006] long-term contracts separately from the margins on new long-term contracts. Under this approach, ratepayers would be credited with 90% of the margins on existing contracts for the remaining term of those contracts. This approach conceptually has appeal but could give rise to ongoing implementation questions. For example, the Board might have to consider how contract re-negotiations or defaults by customers are to be treated. This level of complexity and potential ongoing review is unwarranted.

The Board has concluded that it should adopt a simpler phase-out mechanism that is a rough sort of "proxy" for the conceptual approach described above. The phase-out of the sharing of margins on Union's long-term storage transactions will, take place over four years. The share accruing to Union will increase over that period to recognize that contracts will mature and a larger part of Union's total long-term margins will be generated by new transactions. For 2007, forecast margins (on long-term and short-term transactions) now included in the determination of rates will remain unchanged. After 2007, Union's share of long-term margins will be as follows: 2008 – 25%, 2009 – 50%, 2010 – 75%, 2011 and thereafter – 100%.

The Board finds that the NGEIR decision does not require or permit Union to modify the method of calculating the balance in account 179-72 for 2007. The balance should equal 75% of the excess of (i) actual net revenues (on all long-term storage transactions, that is, transactions that occurred both before and after the publication of the NGEIR decision) for 2007, less (ii) the Board-approved forecast net revenue \$21.405 million.

In the interest of not delaying the July 1, 2008 date of implementing the disposition of other accounts, the Board will accept for now disposing of the \$2.196 million included in Union's application. However, the Board directs Union to recalculate the 2007 balance in account 179-72 in accordance with the Board's finding. The difference shall be carried forward for disposition at a later time.

Gas Supply Related Deferral Accounts

Under the QRAM process, the Board approves a gas supply charge for Union for the next three-month period. That process also provides for recovery, or refund, of the projected balances in the five gas supply deferral accounts, including interest, over the following 12-month period.

In its application in this proceeding, Union states: "Under the QRAM process, the actual year-end deferral account balances are subject to the Board's final approval."

Timmins disputed Union's position that the examination of its gas purchase and sale activities in each of the 2007 QRAMs was qualitative and involved an assessment of prudence of that activity. Timmins submitted that in order to conduct a prudence review, the Board would require detailed evidence of Union's gas purchase activities and transportation alternatives. It claimed that whenever it or FONOM (Federation of Northern Ontario Municipalities) sought to question Union's gas purchase activities in past QRAM proceedings, it has faced opposition from Union, which has contended that such matters could not be addressed since the format of the QRAM was determined in RP-2003-0063 and that examination of QRAMs simply involved compliance with that format. Timmins submitted that based on the above understanding, QRAMs were indeed formulaistic and mechanical once the basic format had been investigated and set.

Timmins noted that the question before the Board was whether to approve the final disposition of Union's 2007 purchase gas cost deferral accounts. Timmins posed the question whether the Board should look at how those balances came to exist. It submitted that if the balances were approved, Union would be able to argue that since the dollar amounts had been approved, all of its gas buying and selling activities for 2007 were prudent and in the public interest.

In reply argument, Union argued that it filed four QRAMs in 2007 and all applications included evidence related to Union's actual and forecasted cost of gas and the actual and forecasted gas purchases for a 24-month period. Union stated that it did not receive any submissions with respect to its past or forecasted gas purchases for 2007. Accordingly, Union requested the Board to approve the final disposition of its 2007 gas supply related deferral accounts.

The Board concludes it is not necessary to provide the "final approval" sought by Union with respect to the balances in the five gas supply deferral accounts listed in the first table on page 3. The Board issues decisions and orders on Union's QRAM filings each quarter. Those orders, which include approval of the prospective disposition of deferral account balances, are issued as final orders (unless an interim status is required to accommodate other rate setting processes that are running in a parallel time frame). For example, the decision and order with respect to the period beginning October 1, 2007 (EB-2007-0720) stated: "The Board has considered the evidence and finds that it is

appropriate to adjust Union's rates effective October 1, 2007 to reflect the projected changes in gas costs and the prospective recovery of the projected twelve-month balances of the gas supply deferral accounts for the period ending September 30, 2008."

Even if there were some purpose to be served by the Board granting the "final approval" that Union seeks, there has been no evidence filed in this proceeding that would permit this panel to reach any conclusion about the balances in those accounts.

The Board notes the concerns of Timmins. As Timmins indicates, the Board will undertake a review of the QRAM processes of both Union and Enbridge. However, the Notice of Proceeding issued on May 29, 2008 in this regard states that it is not intended that this proceeding will deal with transportation and gas supply contract issues. These issues, according to the Notice, are deferred to the establishment of guidelines through consultation at a later time and Timmins may wish to participate in that process.

Order and Cost Awards

The Board orders that the amounts Union seeks to dispose of in this proceeding, as adjusted or otherwise directed by the Board, shall be recovered from Union's ratepayers in accordance with the methodologies included in Union's application. The impacts which result from these adjustments shall be implemented on July 1, 2008 to align with other rate changes resulting from Union's QRAM application.

A decision regarding cost awards will be issued at a later date. Eligible parties shall submit their cost claims by June 18, 2008. Union may respond to such claims by June 25, 2008 and intervenors may respond to objections by July 4, 2008. The cost claims must be filed in accordance with the Board's *Practice Direction on Cost Awards*.

ISSUED at Toronto, June 3, 2008.

ONTARIO ENERGY BOARD

Original signed by

Kirsten Walli
Board Secretary

TAB 3



EB-2008-0154

IN THE MATTER OF the *Ontario Energy Board Act*, 1998, S.O. 1998, c.15, (Schedule B);

AND IN THE MATTER OF an Application by Union Gas Limited for an order or orders amending or varying the rate or rates charged to customers as of July 1, 2008.

AND IN THE MATTER OF an Application by Union Gas Limited for an order or orders amending or varying the rate or rates charged to customers as of July 1, 2007.

AND IN THE MATTER OF Rules 7, 42, 44.01 and 45.01 of the Board's *Rules of Practice and Procedure*.

BEFORE: Cynthia Chaplin
Presiding Member

Paul Vlahos
Member

Paul Sommerville
Member

DECISION ON MOTION

October 23, 2008

Background

Union Gas Limited ("Union") filed an application on March 4, 2008 with the Ontario Energy Board (the "Board") seeking approval for final disposition and recovery of certain 2007 year-end deferral account balances (EB-2008-0034). In that proceeding Union requested, among other matters, disposal of the Long Term Peak Storage Services Deferral Account ("Account 179-72"). Union indicated that, based on its interpretation of the Board's November 7, 2006 Natural Gas Electricity Interface Review Decision ("NGEIR Decision"), it did not record net revenues from long-term storage contracts in Account 179-72 entered into after the NGEIR Decision. On June 3, 2008, the Board issued its decision on the application (the "2007 Deferral Account Decision"). In its decision, the Board rejected Union's interpretation of the NGEIR Decision and ordered Union to include all long-term storage transactions in calculating the balance in Account 179-72, that is, transactions that occurred both before and after the release of the NGEIR Decision.

In its 2006 deferral account application (EB-2007-0598), Union asked the Board to approve a debit charge to Account 179-72. Union claimed that it was required to record a deferred income tax expense of \$10.524 million as a result of the change in the regulatory treatment of storage services provided to Union's ex-franchise customers. Union asserted that the change in accounting treatment resulted from the Board's NGEIR Decision. The Board in its decision on that application (the "2006 Deferral Account Decision") determined that the deregulation of Union's storage assets was notionally equivalent to a divestiture, and that any liabilities associated with these assets should properly be associated with Union's newly formed ex-franchise storage service business. The Board ordered Union to eliminate any and all deferred income tax expense from Account 179-72. The tax expense in question related to the years 1997-2006, the period before the Board's NGEIR Decision.

The Motion

On June 23, 2008, Union filed a Motion to review the Board's 2007 Deferral Account Decision with respect to Account 179-72. In its motion, Union requested a review of the 2007 Deferral Account Decision, on the basis that it is, in Union's view, inconsistent with the NGEIR Decision and the 2006 Deferral Account Decision. Union also requested that if the Board finds that the 2007 Deferral

Account Decision is not inconsistent with the NGEIR Decision, there be a review of the 2006 Deferral Account Decision, on the basis that it is, in Union's view, inconsistent with the 2007 Deferral Account Decision.

Union claimed that the inconsistency between the two deferral account decisions leaves Union with contradictory directions from the Board as to how it is to calculate the margins that are to be shared with ratepayers during the phase-out period. Union claimed that it would be unfair to require Union to share with ratepayers the margins earned from its unregulated Post-NGEIR Long-Term Storage Contracts while at the same time prohibiting Union from deducting from Account 179-72 all the costs of providing that unregulated service.

The Board issued a Notice of Hearing and Procedural Order No. 1 on July 14, 2008, setting out the timelines for intervenor submissions and Union's reply submission on both the threshold question and the substantive issues. In addition to Board staff, the following intervenors filed submissions:

- Canadian Manufacturers & Exporters ("CME")
- School Energy Coalition ("SEC")
- City of Kitchener
- London Property Management Association ("LPMA")
- Industrial Gas Users Association ("IGUA")

Intervenors and Board staff submitted that the Board should reject Union's motion.

For the reasons set out below, the Board rejects Union's motion.

The Threshold Question

Part VII (sections 42 to 45) of the Board's Rules of Practice and Procedure deals with the review of decisions of the Board. Rule 42.01 provides that "any person may bring a motion requesting the Board to review all of or part of a final order or decision, and to vary, suspend or cancel the order or decision". Rule 42.03 requires that the notice of motion under Rule 42.01 shall include the information required under Rule 44. Rule 44.01 provides as follows:

44.01 Every notice of motion made under Rule 42.01, in addition to the requirements under Rule 8.02, shall:

- (a) set out the grounds for the motion that raise a question as to the correctness of the order or decision, which grounds may include:
 - (i) error in fact;
 - (ii) change in circumstances;
 - (iii) new facts that have arisen;
 - (iv) facts that were not previously placed in evidence in the proceeding and could not have been discovered by reasonable diligence at the time; and
- (b) if required, and subject to Rule 42, request a stay of the implementation of the order or decision or any part pending the determination of the motion.

Under Rule 45.01 the Board may determine whether the motion properly supports a request for review and variance of the Board's decision. Rule 45.01 allows the Board to dismiss a motion without holding a hearing if the Board determines that a motion does not meet the threshold.

The threshold test for a motion to review was recently articulated in the Board's May 22, 2007 decision respecting a motion to review the NGEIR Decision.¹ In that motion decision the Board stated:

In determining the appropriate threshold test pursuant to Rule 45.01, it is useful to look at the wording of Rule 44. Rule 44.01(a) provides that:

Every notice of motion... shall set out the grounds for the motion that raise a question as to the correctness of the order or decision...

Therefore, the grounds must "raise a question as to the correctness of the order or decision". In the panel's view, the purpose of the threshold test is to determine whether the grounds raise such a question. This panel must also decide whether there is enough substance to the issues raised such that a review based on those issues could result in the Board deciding that the decision should be varied, cancelled or suspended.

With respect to the question of the correctness of the decision, the Board agrees with the parties who argued that there must be an identifiable error in the decision and that a review is not an opportunity for a party to reargue the case. In demonstrating that there is an error, the applicant must be able to show that the findings are contrary to the evidence that was before the panel,

¹ NGEIR (EB-2006-0322, EB-2006-0338, EB-2006-0340) Motions to Review, the Natural Gas Electricity Interface Review Decision, Decision with Reasons, May 22, 2007, pp. 17-18.

that the panel failed to address a material issue, that the panel made inconsistent findings, or something of a similar nature. It is not enough to argue that conflicting evidence should have been interpreted differently.

The applicant must also be able to demonstrate that the alleged error is material and relevant to the outcome of the decision, and that if the error is corrected, the reviewing panel would change the outcome of the decision.

In the Board's view, a motion to review cannot succeed in varying the outcome of the decision if the moving party cannot satisfy these tests, and in that case, there would be no useful purpose in proceeding with the motion to review.

In demonstrating that there are grounds for questioning the correctness of the 2006 and 2007 Deferral Account Decisions, it is the Board's view that Union must be able to show that the findings are contrary to the evidence that was before the panel, that the panel failed to address a material issue, that the panel made inconsistent findings, or something of a similar nature.

The 2007 Deferral Account Decision and the NGEIR Decision

As noted by intervenors and Board staff, the 2007 Deferral Account Decision essentially reiterates the NGEIR Decision. The Board's findings on page 106 and 107 of the NGEIR Decision clearly outline the Board's approach to the sharing of long-term margins. After initially describing a conceptual approach of sharing margins on existing long-term contracts separately from margins on post-NGEIR long-term contracts, the Board decided against implementing the conceptual approach in favour of a simpler approach. The Board cited complexity and the requirement for an ongoing review as the primary reasons for not selecting the conceptual approach.

The Board determined that it would adopt a simpler phase-out mechanism as "a rough sort of 'proxy'". This "proxy" approach is the four-year phase out of the margin sharing. The Board stated,

The Board considered whether to require Union to record the margins on existing long-term contracts separately from the margins on new long-term contracts. Under this approach, ratepayers would be credited with 90% of the margins on existing contracts for the remaining term of those contracts. This approach conceptually has appeal but could give rise to ongoing implementation questions. For example, the Board might have to consider how contract re-negotiations or defaults by customers are to be treated. This level of complexity and potential ongoing review is unwarranted.

The Board has concluded that it should adopt a simpler phase-out mechanism that is a rough sort of “proxy” for the conceptual approach described above. The phase-out of the sharing of margins on Union’s long-term storage transactions will take place over four years. The share accruing to Union will increase over that period to recognize that contracts will mature and a larger part of Union’s total long-term margins will be generated by new transactions. For 2007, forecast margins (on long-term and short-term transactions) now included in the determination of rates will remain unchanged. After 2007, Union’s share of long-term margins will be as follows: 2008 – 25%, 2009 – 50%, 2010 – 75%, 2011 and thereafter – 100%.

Union’s interpretation of the NGEIR Decision is that, during the phase-out period, it is only required to share with ratepayers the long-term margins arising from the pre-NGEIR long-term storage contracts, and that it can retain all of the margins earned from all post-NGEIR long-term storage contracts. In the NGEIR Decision the Board clearly explained the way in which the “proxy” approach is roughly equivalent to the conceptual approach. The Board stated: “The share accruing to Union will increase over that period to recognize that contracts will mature and a larger part of Union’s total long-term margins will be generated by new transactions.” Therefore it is clear that Union’s interpretation of the NGEIR Decision is incorrect; the Board clearly contemplated a transition during which Union’s share of the storage margins would increase in recognition that more of the total storage margins would be attributable to new contracts.

For these reasons the Board finds that the 2007 Deferral Account Decision was correct and there is no inconsistency between the 2007 Deferral Account Decision and the NGEIR Decision.

The 2007 Deferral Account Decision and the 2006 Deferral Account Decision

Union claimed that the finding in the 2006 Deferral Account Decision that all costs associated with Union’s unregulated storage business should not be applied to Deferral Account 179-72 is inconsistent with the finding in the 2007 Deferral Decision that “net revenues” from the unregulated storage business should be applied to Deferral Account 179-72 during the four year phase-out period. Union argued that in order to calculate “net revenues” from the unregulated storage business Union must be able to deduct the costs associated with the unregulated storage business, but the 2006 Deferral Account Decision prohibits Union from doing so.

In the 2006 Deferral Account Decision, the Board stated at page 8:

The Board notes that while accounting treatment can be an important consideration in the regulatory treatment of matters, it is not always predictive of the regulatory outcome. The fact that Union may have to change its accounting treatment of the deferred tax account as a result of the NGEIR decision, does not automatically lead to the conclusion that the accounting tax liability associated with it should come into rates now, or at all. In the absence of a near certain revenue stream that matches future costs, a company must book the future liability. Regulated entities have the assurance that prudently incurred costs will be offset by regulated revenues and therefore they need not book the future liability. In these circumstances, this rule has limited relevance for how the change may be reflected from a regulatory point of view.

The respective accounting treatments for regulated and non-regulated entities reflect the distinction of one entity having a predictable revenue stream where as the other does not. Furthermore, the CICA handbook does not consider the disposition of the historic costs or who bears them in a regulatory context. This remains the purview of the regulator.

The Board finds that the deregulation of Union's storage assets is notionally equivalent to a divestiture, and that any liabilities associated with these assets should properly be associated with Union's newly formed ex-franchise storage service business.

The Board in the 2006 Deferral Account Decision determined that deferred taxes for the period 1997 to 2006 were not recoverable from ratepayers regardless of the accounting implications of the deregulation of the ex-franchise storage business. Union had recorded a deferred tax liability of \$10.524 million related to the unregulated storage operations related to the period 1997-2006, which preceded the NGEIR Decision. This liability represented the portion of Union's unrecorded future income taxes from 1997 to 2006 related to the ex-franchise storage operations using the percentage of unregulated storage established in the NGEIR Decision. In denying the recovery of the deferred tax expense, the Board determined that all liabilities associated with Union's unregulated portion of storage assets should be associated with those assets. This was a distinct issue that dealt with historical deferred taxes and the recovery of that liability by Union. This is the only aspect of deferred taxes addressed by the Board in that decision.

Union's argument that net storage contract revenues cannot be determined without reference to deferred tax costs to provide the services associated with those revenues is, from a regulatory perspective, incorrect. It is within the purview of the regulator to determine whether such costs can be recovered or included in rates notwithstanding potential accounting requirements. The 2006 Deferral Account Decision determined that the deferred tax liability related to 1997-2006 should not be recoverable from a regulatory perspective.

Notably, in the 2007 Deferral Account proceeding, Union did not indicate that it was not recording post-NGEIR long-term storage transactions in Account 179-72. This was despite the fact that this was a significant change in how the balances were calculated. This change was revealed in Union's reply argument in response to Board staff's submission on this issue. Union's reply argument in that proceeding makes no mention of deferred taxes or the 2006 Deferral Account Decision. If the 2006 Deferral Account Decision had relevance to the position Union was advancing, then Union should have raised that argument in the 2007 Deferral Account proceeding. As a result, the 2007 Deferral Account Decision does not address in any way the impact of deferred taxes on the 2007 net revenues from ex-franchise storage transactions.

Union's argument that it is unable to comply with both the 2006 Deferral Account Decision and the 2007 Deferral Account Decision at the same time is not convincing.

Union can include ongoing costs associated with the unregulated storage business to calculate net revenues with the exception of deferred taxes for the period 1997-2006, the liability which was at issue in the 2006 Deferral Account Decision and for which the Board denied recovery. The 2006 Deferral Account Decision makes no finding as to the appropriate recognition of taxes in the determination of net revenues from storage transactions for the period 2007 and beyond; the decision deals specifically and exclusively with the 1997-2006 deferred tax expense. And, as indicated above, the issue of deferred taxes was not raised at all in the 2007 proceeding, and therefore the 2007 Deferral Account Decision also does not address the treatment of taxes for purposes of determining "net revenues" from ex-franchise storage services. The 2007 Deferral Account Decision accepted the \$2.196 million that was included in

Union's application but directed Union to recalculate the 2007 balance in account 179-72 in accordance with the Board's finding, for later disposition. There is nothing in that decision to prevent Union from including current and deferred tax expenses related directly to the 2007 revenues as a cost for purposes of determining net revenues.

Therefore, there is no basis upon which to conclude that the 2006 Deferral Account Decision is inconsistent with the 2007 Deferral Account Decision or the NGEIR Decision.

Conclusion

In conclusion, Union has failed to demonstrate that the findings made by the panels in the 2006 and 2007 Deferral Account Decisions are contrary to the evidence that was before the panels, or that the panels failed to address a material issue or that the panels made inconsistent findings.

The Board therefore dismisses Union's motion for review on the grounds that it fails to pass the threshold test for review. Even if the Board found that the threshold test had been met, and determined that it was appropriate to review the 2006 and 2007 Deferral Account Decisions, the Board would find that the 2006 and 2007 Deferral Account Decisions were correct for the reasons set out throughout this decision.

In light of the decision the Board has made on the threshold question, it is unnecessary to address the issue of the timeliness of Union's request for a review of the 2006 Deferral Account Decision.

A cost awards decision will be issued after the steps set out below are completed. The Board notes that if Union had been successful in these reviews, only its shareholder would have benefited. Accordingly, and because the review failed at the threshold test, the Board asks parties when submitting their respective costs claims to address the question as to how the costs associated with these reviews should be accounted for. Union can respond to any proposals on this question, when it responds to the costs claims.

1. Intervenors eligible for cost awards shall file with the Board and forward to Union their respective cost claims within 15 days from the date of this Decision.
2. Union may file with the Board and forward these intervenors any objections to the claimed costs within 30 days from the date of this Decision.
3. Intervenors, whose cost claims have been objected to, may file with the Board and forward to Union any responses to any objections for cost claims within 45 days of the date of this Decision.

Union shall pay any Board costs of, and incidental to, this proceeding upon receipt of the Board's invoice.

DATED at Toronto, October 23, 2008

ONTARIO ENERGY BOARD

Original Signed By

Cynthia Chaplin
Presiding Member

Original Signed By

Paul Vlahos
Member

Original Signed By

Paul Sommerville
Member

TAB 4

1 **1. 2008 YEAR-END DEFERRAL ACCOUNT BALANCES**

2
3 At the end of December 2008, the balances accumulated in Union's Board-approved
4 deferral accounts total a credit of \$30.707 million. This amount consists of \$10.996
5 million in credits in gas supply-related deferral accounts [the majority of which is
6 managed through the Quarterly Rate Adjustment Mechanism ("QRAM")], \$28.101
7 million in credits in Storage and Transportation related deferral accounts, and \$8.390
8 million in debits in the Other deferral accounts. Individual account balances are shown at
9 Tab 1, Schedule 1. Each account balance includes interest up to December 31, 2008.
10 Interest is computed monthly on the opening balance of each account. The applicable
11 short term interest rates used were 5.14% for the months of January through March,
12 4.08% for the months of April through June, and 3.35% for the months of July through
13 December as prescribed by the Board in accordance with EB-2006-0117.

14
15 Deferral account balances have been categorized into three types: Gas Supply deferral
16 accounts, S&T deferral accounts and Other deferral accounts. The balances for each
17 account are discussed below.

18
19 **GAS SUPPLY DEFERRAL ACCOUNTS**

20 The balances recorded in the following gas supply related deferral accounts were
21 examined in each of Union's four QRAM applications in 2008.

1 Working Papers, Schedule 25, page 3). For 2008, Union actually recovered
2 \$3.142 million in the North and \$0.126 million in the South.

3
4 3. Interest

5 Interest associated with UDC amounted to a credit of \$0.060 million for the
6 Northern and Eastern Operations area and a credit of \$0.002 million for the
7 Southern Operations area for a net amount of \$0.062 million.

8
9 4. (Credit)/Debit to Operations areas

10 The UDC deferral account has a net total credit balance of \$3.318 million. The
11 balance applicable to customers in the Northern and Eastern Operations area is a
12 credit of \$3.202 million. The balance applicable to customers in the Southern
13 Operations area is a credit of \$0.116 million.

14
15 **STORAGE AND TRANSPORTATION DEFERRAL ACCOUNTS**

16 Actual net revenues from storage and transportation services are deferred against the net
17 revenues included in the rates approved by the Board. The credit balance of \$28.101
18 million represents the ratepayer portion in the following S&T deferral accounts.

19
20 **Account No. 179-70 Short-Term Storage and Other Balancing Services**

21 The Short-Term Storage and Other Balancing Services deferral account includes
22 revenues from C1 Off-Peak Storage, Gas Loans, Enbridge LBA, Supplemental Balancing

1 Services, C1 Short-Term Firm Peak Storage, C1 Firm Short-Term Deliverability and
2 M12 Interruptible Deliverability.

3

4 The debit balance in the Short-Term Storage and Other Balancing Services deferral
5 account is \$0.360 million. The balance is calculated by comparing the actual 2008 net
6 revenue sufficiency for Short Term Storage Services of \$14.858 million to the net
7 revenue sufficiency approved by the Board of \$15.829 million in the EB-2007-0606 Rate
8 Order. The result is a net deferral debit of \$0.971 million. The net deferral margin is
9 adjusted to reflect the 79% Utility portion (EB-2005-0551) and is to equal \$0.767 million,
10 of which 90% or \$0.690 million is the ratepayer portion. In addition, the total deferred
11 amount showing a debit balance of \$0.360 million includes a 2007 true up credit of
12 \$0.330 million.

13

14 Account No. 179-72 Long-Term Peak Storage Services

15 The balance in the Long-Term Peak Storage Service deferral account reflects the rate
16 payer portion of the deferred margin or 75% of the difference between actual revenue in
17 excess of the costs to provide Long-Term Peak Storage Services and the revenue forecast
18 in excess of the cost to provide these services as approved by the Board in the EB-2005-
19 0520 Rate Order.

20

21 The credit balance in the Long Term Peak Storage Services deferral account of \$28.461
22 million is 75% of the variance between the forecast of \$21.405 million and the actual net

1 revenues of \$51.478 plus a true-up of \$5.906 million for 2007 based on the Board's
2 Decision in EB-2008-0034.

3

4 **OTHER DEFERRAL ACCOUNTS**

5 The other deferral account balances are discussed below.

6

7 Account No. 179-26 Deferred Customer Rebates/Charges

8 The Deferred Customer Rebates/Charges account has no balance. This account captures
9 unclaimed cheques related to amounts refunded to customers that arose from the
10 disposition of deferral balances as approved by the Board.

11

12 Account No. 179-75 Lost Revenue Adjustment Mechanism

13 The Lost Revenue Adjustment Mechanism ("LRAM") deferral account has a credit
14 balance of \$0.421 million which represents the difference between actual margin
15 reductions related to Union's DSM activities and the margin reduction included in gas
16 delivery rates as approved by the Board. This balance includes volume variances related
17 to 2007 and 2008 DSM activities. Union proposes to dispose of the credit balance in the
18 account of \$0.421 million.

19

20 Tab 1, Schedule 2, page 1 provides the breakdown of the LRAM deferral account balance
21 for 2007 and 2008. Tab 1, Schedule 2, pages 2 and 3 provide the LRAM volumes and the
22 corresponding revenue impacts related to 2007 and 2008 DSM activities respectively.

UNION GAS LIMITED
Deferral Account Balances and Market Transformation Incentive
Year Ending December 31, 2008

Line No.	Account Number	Account Name	Balance (\$000's)	(1)
<u>Gas Supply Accounts:</u>				
<u>Joint Accounts:</u>				
	179-107	Spot Gas Variance Account		
1		Spot Gas Purchases	(0)	
2		Load Balancing	245	
3	179-108	Unabsorbed Demand Costs	(3,318)	(2)
4	179-109	Inventory revaluations	13,993	
5		(Lines 1 through 4)	10,919	
<u>Southern Operations Area:</u>				
6	179-106	PGVA	(14,919)	
<u>Northern and Eastern Operations Area:</u>				
	179-100	TCPL Tolls and Fuel		
7		Tolls, LBA, Capacity Assignments	281	
8		Fuel	2,432	
9	179-105	PGVA	(9,710)	
10		(Lines 7 through 9)	(6,996)	
11	Total Gas Supply Accounts (Lines 5 + 6 + 10)		(10,996)	
<u>Storage and Transportation Accounts:</u>				
12	179-70	Short-Term Storage and Other Balancing Services	360	
13	179-72	Long-Term Peak Storage Services	(28,461)	
14	Total Storage and Transportation Accounts (Lines 12 + 13)		(28,101)	
<u>Other:</u>				
15	179-26	Deferred Customer Rebates/Charges	-	
16	179-75	Lost Revenue Adjustment Mechanism	(421)	
17	179-102	Intra-period WACOG Changes	5	
18	179-103	Unbundled Services Unauthorized Storage Overrun	-	
19	179-111	Demand Side Management Variance Account	1,559	
20	179-112	Gas Distribution Access Rule (GDAR) Costs	-	
21	179-113	Late Payment Penalty Litigation	593	
22	179-115	Shared Savings Mechanism	7,943	
23	179-117	Carbon Dioxide Offset Credits	-	
24	179-118	Average Use Per Customer	(5,390)	
25	179-119	2008 Federal and Provincial Tax Changes	4,102	
26	Total Other Accounts (Lines 15 through 25)		8,390	
27	Total Deferral Account Balances (Lines 11 + 14 + 26)		(30,707)	
28	Market Transformation Incentive		500	
29	Total Deferral Account Balances and Market Transformation Incentive (Lines 27 + 28)		(30,207)	
Less: Total Gas Supply-related balances recovered through the QRAM process				
30	Total Gas Supply-related balances (Line 11)		(10,996)	(2)
31	Less: Balance of Unabsorbed Demand Costs Account (No. 179-108) (Line 3)		(3,318)	(7,678)
32	Amount for Recovery/(Refund) (Line 29 less 31)		(22,528)	

Notes:

(1) Account balances include interest to December 31, 2008.

(2) With the exception of UDC (No. 179-108), all gas supply-related deferral account balances are disposed through the QRAM

TAB 5

UNION GAS LIMITED

Answer to Interrogatory from
Federation of Rental-housing Providers of Ontario ("FRPO")

Ref: Exhibit A, Tab 1, page 5-7

In providing a summary of the balances in the Storage and Transportation Deferral Accounts, Union refers to net revenues. For greater clarity, please provide:

- a) A schedule or summary table detailing the gross revenues while detailing and quantifying the components of expenses that result in net revenues. Please include all asset expense costs and define the nature of those costs as demand or commodity.
- b) For storage or transportation capacity that was designated in the Gas Supply Plan at the start of the gas of 2007-08 or 2008-09 to serve in-franchise utility needs and was subsequently shifted to transactional services in the period, please provide a description and a representative calculation that demonstrates how gross revenues and converted to the bottom line taking into account of all costs associated with asset usage.
- c) Please provide the rate case and evidentiary reference that articulates the methodology that Union Gas relies on for this derivation. Please attach that content.

Response:

The following responses relate to account No. 179-70 Short-Term Storage and Other Balancing Services and account No. 179-72 Long-Term Peak Storage Services. As part of the IR settlement agreement (EB-2007-0606) Account No. 179-69 Transportation and Exchanges was eliminated.

- a) Please see Attachment 1 for Long-Term Peak Storage Services and Attachment 2 for Short-Term Storage and Other Balancing Services.
- b) All transactional storage revenues are found in the Short-Term Storage and Other Balancing Services Account No.179-70. Please see Attachment 2 for the calculation of net revenues.
- c) The Board's EB-2005-0551 Decision (NGEIR), pp. 98 – 105 defines how Union attributes net revenues to deferral accounts 179-70 and 179-72 and to the Company. Please see Attachment 3.

2007 Board Approved vs. 2008 Actual
Long-Term Peak Storage Services

Line No.	Particulars (\$000's)	2007 Board Approved	2008 Actual	Variance
1	Revenue			
2	Long-Term Peak Storage	42,058	81,540	39,482
3	High Deliverability Storage	-	5,554	5,554
4	Total Revenue	42,058	87,093	45,035
5	Costs			
6	Demand	(19,382)	(15,686)	3,696
7	Commodity	(955)	(1,696)	(741)
8	Asset Related	(316)	(18,233)	(17,917)
9	Total Costs	(20,653)	(35,615)	(14,962)
10	Net Revenue	21,405	51,478	30,073

Filed: 2009-05-08

EB-2009-0052

Exhibit B3.1

Attachment 2

2007 Board Approved vs. 2008 Actual
Short-Term Storage and Other Balancing Services

Line		2007	2008	
No.	Particulars (\$000's)	Board	Actual	Variance
		Approved		
1	Revenue			
2	C1 Off-Peak Storage	1,000	2,040	1,040
3	Supplemental Balancing Services	2,000	3,122	1,122
4	Gas Loans	1,000	2,177	1,177
5	Enbridge LBA	75	211	136
6	C1 ST Firm Peak Storage	13,794	15,777	1,983
7	C1 Firm ST Deliverability	92	-	(92)
8	M12 Interruptible Deliverability	-	-	-
9	Total Revenue	17,961	23,327	5,366
10	Costs			
11	Demand	(600)	(2,261)	(1,661)
12	Commodity	(1,532)	(6,208)	(4,676)
13	Total Costs	(2,132)	(8,468)	(6,336)
14	Net Revenue	15,829	14,858	(971)

UNION GAS LIMITED

Answer to Interrogatory from
Federation of Rental-housing Providers of Ontario ("FRPO")

Provide descriptions of the costs included in the Short-Term and Long-Term Peak storage deferral accounts, including an explanation for cost variances from Board Approved.

Response:

Short-Term Storage and Other Balancing Services

The short-term commodity costs are comprised of unaccounted for gas ("UFG") and compressor fuel.

The short-term demand costs are comprised of operating and maintenance ("O&M"), depreciation, property & capital tax, interest, income taxes, deferred tax drawdown and return.

The 2007 Board approved costs (EB-2005-0520) for the Short-Term Storage and Other Balancing Services deferral account were based on 2 PJs of Short-Term Peak storage. As part of the EB-2007-0520 Settlement Agreement, the Board imputed \$12 million in margin, revenue net of costs, which was embedded in in-franchise rates. The costs were not changed and there was no indication of the costs associated with the higher imputed revenues. The 2008 deferral balance is calculated using total revenues and total costs. Comparing the 2008 actual costs with the 2007 Board Approved costs is not an accurate comparison, since the 2007 Board Approved costs did not identify the incremental costs to achieve the incremental imputed margin.

Long-Term Peak Storage Services

The long-term commodity costs are comprised of UFG and compressor fuel, net of customer supplied fuel.

The long-term demand costs are comprised of O&M, depreciation, and property and capital tax.

The long term asset costs are comprised of interest, return and income tax for unregulated assets. These costs were not forecasted as part of EB-2005-0520 resulting in a variance from the 2007 Board Approved costs.

UNION GAS LIMITED

Answer to Interrogatory from
London Property Management Association ("LPMA")

Ref: Exhibit A, Tab 2, page 3

Please confirm that the proposed method for allocating the balances in accounts 179-70 and 179-72 is consistent with that used by Union and approved by the Board in the past.

Response:

Confirmed.

TAB 6



EB-2009-0052

IN THE MATTER OF the *Ontario Energy Board Act, 1998*,
S.O. 1998, c.15 (Schedule B);

AND IN THE MATTER OF an Application by Union Gas
Limited for an order or orders amending or varying the rate
or rates charged to customers as of July 1, 2009.

BEFORE: Gordon Kaiser
Presiding Member

Paul Sommerville
Member

Paul Vlahos
Member

DECISION AND ORDER

The Proceeding

Union Gas Limited ("Union") filed an application on March 31, 2009 with the Ontario Energy Board (the "Board") seeking approval for final disposition and recovery of certain 2008 year-end deferral account balances including approval and disposition of the market transformation incentive. Union proposed that the resulting impacts from the disposition be implemented on July 1, 2009 to align with other rate changes expected to result from the Quarterly Rate Adjustment Mechanism ("QRAM") process. The Board assigned docket number EB-2009-0052 to the application.

The Board issued its Notice of Written Hearing and Procedural Order No.1 on April 22, 2009, which was served on a list of intervenors involved in Union's 2008 rates proceeding (EB-2008-0220). The Board received one intervention request from an

interested party not included on the previous intervention list. The Federation of Rental-housing Providers of Ontario ("FRPO") requested and was granted intervenor status.

Interrogatories were submitted by the London Property Management Association ("LPMA"), FRPO, The City of Kitchener ("Kitchener"), the School Energy Coalition ("SEC"), and Board staff.

LPMA, FRPO, Kitchener, SEC, the Canadian Manufacturers and Exporters ("CME"), the Vulnerable Energy Consumers Coalition ("VECC"), Energy Probe, and Board staff filed submissions. A number of these submissions supported LPMA's expressed concerns with the revenues and costs recorded in the Short-Term Storage and Balancing Services Deferral Account (Account 179-70) and the Long-term Peak Storage Services Deferral Account (Account 179-72) (the "Storage Revenue Issue").

On May 21, 2009, the Board issued Procedural Order No.2 allowing for further discovery and submissions on the Storage Revenue Issue. To expedite matters, intervenors were permitted to ask questions of the applicant at a technical conference on May 25, 2009. The Board maintained the date of May 22, 2009 for Union's filing of Reply Argument to provide further information that might help to clarify parties' concerns regarding the Storage Revenue Issue in advance of the technical conference.

After the technical conference, the Board received supplemental submissions on the Storage Revenue Issue from LPMA, FRPO, CME, Kitchener, and SEC. Union filed its supplemental reply submissions on June 1, 2009.

The Board has summarized the record of the proceeding only to the extent necessary to provide context to its findings.

Deferral Accounts

Union has classified the deferral accounts into four groups:

- a) five Gas Supply accounts that are cleared through the QRAM process.
- b) one Gas Supply account that is not cleared through the QRAM process.
- c) two Storage and Transportation accounts.
- d) eleven other accounts.

The account balances, which are presented below, include interest at the applicable short-term interest rate approved by the Board in the EB-2006-0117 proceeding through December 31, 2008. The deferral accounts in category a) above are being cleared through the QRAM process.

The net balance of accounts in categories b), c), and d) above at December 31, 2008 is a \$23.028 million credit payable to Union's ratepayers. In addition, Union sought to reflect in rates a Market Transformation incentive of \$0.5 million. Therefore the total disposition amount requested was a \$22.528 million credit to customers.

Union provided specifics regarding the allocation of this amount to its rate classes.

(a) Gas Supply Accounts – Cleared in the QRAM process

Under the Board-approved QRAM process, Union establishes reference prices for prospective recovery, or refund, of the projected balances (with interest) over the following 12-month period. Variances between the forecast and actual prospective recovery amounts for these five accounts are tracked and included in the amounts prospectively recovered in future QRAM proceedings.

The net balance of the five accounts has been cleared through four QRAM decisions in 2008.

Account No.	Name	Balance¹ (Dec. 31, 2008, \$ millions)
179-107	Spot Gas Variance Account	\$ 0.245
179-109	Inventory Revaluation Account	13.993
179-106	South Purchased Gas Variance Account	(14.919)
179-100	TCPL Tolls and Fuel – Northern and Eastern Area	2.713
179-105	North Purchased Gas Variance Account	(9.710)
Total		\$ (7.678)

In this proceeding, Union is seeking the Board's "final approval" with respect to these balances.

¹ Throughout the tables, positive amounts denote monies recoverable from ratepayers and amounts in brackets denote monies owed to ratepayers.

(b) Gas Supply Accounts – Not Cleared in the QRAM Process

The balance in the account below is not cleared in the QRAM process. Union is requesting disposition of the total credit balance of \$3.318 million.

Account No.	Name	Balance (Dec. 31, 2008, \$ millions)
179-108	Unabsorbed Demand Cost Deferral Account	\$ (3.318)
Total		\$ (3.318)

(c) Storage and Transportation Accounts

Union defers the difference between actual net revenues from storage and transportation services and forecast revenues included in Union's rates. The differences are currently shared on a 50/50 basis between ratepayers and Union. The net credit balance of \$28.101 million represents the ratepayer portion in these accounts.

Account No.	Name	Balance (Dec. 31, 2008, \$ millions)
179-70	Short-Term Storage and Balancing Services Deferral Account	\$ 0.360
179-72	Long-term Peak Storage Services Deferral Account	(28.461)
Total		\$ (28.101)

(d) Other Deferral Accounts

The eleven other accounts have a net balance recoverable from ratepayers of \$8.390 million.

Account No.	Name	Balance (Dec. 31, 2008, \$ millions)
179-26	Deferred Customer Rebates / Charges Account	\$ -
179-75	Lost Revenue Adjustment Mechanism Deferral Account	(0.421)
179-102	Intra-period WACOG Changes Deferral Account	0.005

179-103	Unbundled Services Unauthorized Storage Overrun Account	-
179-111	Demand Side Management Variance Account	1.559
179-112	Gas Distribution Access Rule Costs	-
179-113	Late Payment Litigation Deferral Account	0.593
179-115	Shared Savings Mechanism Variance Account	7.943
179-117	Carbon Dioxide Offset Credits	-
179-118	Average Use Per Customer Deferral Account	(5.390)
179-119	2008 Federal and Provincial Tax Changes Deferral Account	4.102
Total		\$ 8.390

Market Transformation Incentive

In addition to the deferral accounts in categories b), c), and d), Union claimed a Market Transformation incentive of \$0.5 million for a drain water heater recovery program. The amount was linked to Union meeting or exceeding the performance goals as outlined by the Market Transformation “scorecard” filed and approved by the Board in Union’s 2007-2009 DSM Plan.

Board Findings

With respect to category a) accounts, in the last proceeding dealing with the disposition of the 2007 account balances (EB-2008-0034), Union had made the same request for “final approval”. The Board had stated as follows:

The Board concludes it is not necessary to provide the “final approval” sought by Union with respect to the balances in the five gas supply deferral accounts listed in the first table on page 3. The Board issues decisions and orders on Union’s QRAM filings each quarter. Those orders, which include approval of the prospective disposition of deferral account balances, are issued as final orders (unless an interim status is required to accommodate other rate setting processes that are running in a parallel time frame). For example, the decision and order with respect to the period beginning October 1, 2007 (EB-2007-0720) stated: “The Board has

considered the evidence and finds that it is appropriate to adjust Union's rates effective October 1, 2007 to reflect the projected changes in gas costs and the prospective recovery of the projected twelve-month balances of the gas supply deferral accounts for the period ending September 30, 2008."

This Panel adopts the findings of the Panel in the EB-2008-0034 proceeding in that it is not necessary to provide "final approval". Future proceedings would be less cumbersome if Union discontinued from repeating the same request.

No objections were raised to Union's allocation proposals to the various rate classes. The Board accepts Union's allocation proposals.

Below the Board deals with the issues raised by parties that the Board felt needed to be specifically addressed. In the result, the Board concludes that Union's proposals are acceptable. However, given the timing of this decision, implementation cannot be July 1, 2009 to December 31, 2009 as originally proposed by Union. Implementation will be October 1, 2009 to April 30, 2010.

Intervenors and Board staff raised the following issues:

- Timing of Disposition with *Green Energy Act* ("GEA") assessments
- Forecast used to determine volumes for calculation of rate riders
- The Storage Revenue Issue

Timing of Disposition with GEA assessments

Board staff submitted that Union should consider aligning the disposition of any credit in this proceeding with assessments which will ultimately flow from the recently passed GEA. Board staff cited rate stability and minimization of rate shock as its main reasons for its submissions.

Union replied that there is no rationale for aligning the disposition of the deferral accounts with assessments contemplated in the GEA. Union submitted that the amount, timing, and cost allocation methodology for the GEA assessments are unknown at this time. Union argued that the deferral and variance account balances in this proceeding are known, and should be disposed of in a timely manner.

The Board agrees with Union. The panel sees no reason why this should delay the disposition of the credit to ratepayers as proposed by Union. The two matters are completely unrelated.

Forecast used to determine volumes for calculation of rate riders

Union and ratepayers would be exposed to over/under-recovery depending on the accuracy of the volume forecast used for the calculation of rate riders. LPMA requested that the Board direct Union to provide in the next proceeding the difference between the actual recovery/refund amounts and amounts approved by the Board to allow the Board to determine whether or not a true-up is necessary.

Union indicated in its reply that it over-refunded amounts to ratepayers in both 2007 and 2008, and did not seek a true-up in either year.

The Board sees no harm in Union addressing the merits of a true-up mechanism going forward. The Board expects Union to address this matter at the time it files for disposition of its 2009 accounts.

The Storage Revenue Issue

In the first phase of submissions intervenors indicated that the balances were reasonable in all accounts with the noted exceptions of:

- Account 179-70: Short-Term Storage and Balancing Services Deferral Account (the "ST" account)
- Account 179-72: Long-Term Peak Storage Services Deferral Account (the "LT" account)

On May 15, 2009, LPMA submitted that there were significant changes in the level of both revenues and costs used in the calculation of the net revenue figures shown in the ST and LT accounts (Attachments 1 & 2 of Exhibit B3.1).² FRPO, Kitchener, SEC, the CME, VECC, and Energy Probe generally reiterated the concerns expressed in LPMA's submissions.

² Union had filed a supplemental response to Exhibit B3.1 on May 14, 2009.

In their original submissions, intervenors attempted to compare 2008 data to 2007 data, and expressed concerns with the year-to-year increases and the explanation provided by Union in its evidence and interrogatory responses. Intervenors focussed on several key issues where further explanation was required:

- The \$12 million of “imputed margin” in the ST account;
- Increased storage activity, and specifically the \$4.6 million commodity cost increase in the ST account;
- The significant increase in asset-related costs in the LT account;
- Lack of clarity surrounding the accounting differences between the estimate provided in the Audited Financial Statements (“AFS”) and Union’s proposed deferral disposition amounts; and
- Lack of clarity around issues of methodology, assumption and cost allocation applicable to Union’s deferral accounts.

Union’s Reply Argument expanded significantly on Union’s interrogatory responses, and on the issues above.

In supplemental submissions on the Storage Revenue Issue, intervenors did not raise further concerns regarding the first three points listed above. The Board views those issues as no longer being in dispute and accepts Union’s proposals.

Certain matters involving the Storage Revenue Issue remained unresolved through the expanded discovery process, and were raised in supplemental submissions.

LPMA accepted the further clarification provided by Union, and accepted the balances in all accounts as filed by Union. Other parties did not.

SEC submitted the Operations & Maintenance (“O&M”) costs charged to the LT account are too high. SEC alleged that the approximately \$1 million increase to O&M costs, due to the deregulation of ex-franchise long-term storage assets, is “exactly analogous” to the Board’s denial of an accounting tax liability in a previous disposition proceeding.³ SEC submitted that costs should continue to be capitalized as if they were regulated assets until the phase out of the ratepayer share is completed. FRPO made similar submissions.

³ EB-2007-0598 – Decision - Union’s 2006 Deferral Account Disposition and Earnings Sharing Proceeding.

Union replied that the reduced capitalization of the O&M costs at issue here is an ongoing cost and is not at all comparable to the Board's decision on historical deferred taxes. Union submitted that the concerns of the parties regarding two prior deferral decisions^{4,5} are completely misplaced. In EB-2008-0154 the Board clearly stated that, "Union can include ongoing costs associated with the unregulated storage business to calculate net revenues with the exception of deferred taxes."

The Board agrees with Union. The Board stated in EB-2008-0154 that Union is permitted to include ongoing costs associated with the unregulated storage business. Union has clearly shown that the reduced capitalization of the O&M costs is an ongoing cost associated with that line of business. The Board's denial of a deferred tax liability in the EB-2007-0598 proceeding concerned past liabilities, not ongoing costs. Accordingly, the Board does not accept SEC's argument that the two situations are somehow analogous.

CME, supported by FRPO and Kitchener, argued that the Board should approve for disposition the deferral balances as recorded in Union's 2008 Audited Financial Statements ("AFS"), as opposed to the adjusted balances presented by Union.

Union replied that no question has ever been raised about the practice of adjusting the deferral and variance accounts estimates in the AFS to reflect unaudited actuals.

The Board observes that there is no issue that either Union or ratepayers would benefit or be harmed in the long run from either method. The Board finds Union's approach reasonable as it is consistent with past practice and produces more recent data on account balances.

FRPO expressed concerns with the constrained time frame and process afforded in this proceeding in dealing with the disposition of account balances. FRPO submitted that the Board consider an expanded discovery phase for the 2009 account disposition.

The Board sees some validity to FRPO's concerns. The Board invites parties and Union to bring forward specific submissions on ways in which the hearing process might be improved, when Union files for its 2009 deferral and variance accounts disposition.

⁴ Ibid.

⁵ EB-2008-0154 – Decision on Motion to Review - Union's 2006 and 2007 Deferral Account Disposition and Earnings Sharing.

Order and Cost Awards

The Board orders that the amounts Union seeks to dispose of in this proceeding, as adjusted or otherwise directed by the Board, shall be recovered from or refunded to Union's ratepayers in accordance with the methodologies included in Union's application. The impacts which result from the adjustments shall be implemented on October 1, 2009 to align with other rate changes resulting from Union's next QRAM application.

A decision regarding cost awards will be issued at a later date. Intervenors eligible for cost awards shall file with the Board and forward to Union their respective cost claims by August 28, 2009. Union may file with the Board and forward these intervenors any objections to the claimed costs by September 4, 2009. Intervenors may respond to any objections by filing their responses with the Board and forwarding to Union by September 11, 2009. The cost claims must be filed in accordance with the Board's *Practice Direction on Cost Awards*.

Union shall pay the Board's costs of, and incidental to, this proceeding immediately upon receipt of the Board's invoice.

All filings to the Board must quote file number EB-2009-0052, and consist of two paper copies and one electronic copy in searchable / unrestricted PDF format filed through the Board's web portal at www.errr.oeb.gov.on.ca. Filings must clearly state the sender's name, postal address and telephone number and, if available, a fax number and e-mail address. Please use the document naming conventions and document submission standards outlined in the RESS Document Guideline found on the "e-Filing Services" webpage of the Board's website at www.oeb.gov.on.ca. If the web portal is not available you may email your document to BoardSec@oeb.gov.on.ca.

DATED at Toronto, August 6, 2009

ONTARIO ENERGY BOARD

Original signed by

Kirsten Walli
Board Secretary

TAB 7

**2009 DEFERRAL ACCOUNT BALANCES, MARKET TRANSFORMATION
INCENTIVE AND TAX CHANGE AMOUNTS**

2009 YEAR-END DEFERRAL ACCOUNT BALANCES

Union has classified the deferral accounts approved by the Board for use in 2009 into three groups:

- a) Unabsorbed Demand Cost;
- b) Storage accounts; and
- c) Other accounts.

The net balance in the deferral accounts above, the market transformation incentive and the 2009 tax change amounts at December 31, 2009, is a \$9.356 million credit payable to Union's ratepayers. Each account balance includes interest up to December 31, 2009, computed monthly on the opening balance. The applicable short term interest rates used were 2.45% for the months of January through March, 1.00% for the months of April through June, and 0.55% for the months of July through December as prescribed by the Board in accordance with EB-2006-0117.

In Union's 2008 Deferral Account Disposition proceeding (EB-2009-0052), the Board requested that Union investigate the possibility of implementing a true-up mechanism which would reconcile any over or under recovery related to the disposition of deferral

1 supply. This results in UDC of \$1.472 million for the Northern Operations area and
2 \$0.463 million for the Southern Operations area.

3

4 Interest

5 Interest associated with UDC amounted to a credit of \$0.013 million for the Northern and
6 Eastern Operations area and a debit of \$0.001 million for the Southern Operations area,
7 resulting in a net credit of \$0.012 million.

8

9 (Credit)/Debit to Operations areas

10 The UDC deferral account has a net total credit balance of \$1.285 million. The balance
11 applicable to customers in the Northern and Eastern Operations area is a credit of \$1.624
12 million. The balance applicable to customers in the Southern Operations area is a debit
13 of \$0.339 million.

14

15 STORAGE DEFERRAL ACCOUNT

16 Actual net revenues from storage services are deferred against the net revenues included
17 in the rates approved by the Board. The credit balance of \$19.736 million represents the
18 ratepayer portion in the following storage deferral accounts.

1 Account No. 179-70 Short-Term Storage and Other Balancing Services

2 The Short-Term Storage and Other Balancing Services deferral account includes
3 revenues from C1 Off-Peak Storage, Gas Loans, Enbridge LBA, Supplemental Balancing
4 Services, C1 Short-Term Firm Peak Storage, and C1 Firm Short-Term Deliverability.

5 The net margin for Short Term Storage and Other Balancing Services is determined by
6 deducting the costs incurred to provide service from the gross revenue.

7

8 The credit balance in the Short-Term Storage and Other Balancing Services deferral
9 account is \$4.949 million. The balance is calculated by comparing the actual 2009 net
10 margin for Short Term Storage Services of \$22.789 million to the net margin approved by
11 the Board of \$15.829 million in the EB-2007-0606 Rate Order. The result is a net
12 deferral credit of \$6.960 million. The net deferral margin is adjusted to reflect the 79%
13 Utility portion (EB-2005-0551) and is to equal \$5.498 million, of which 90% or \$4.949
14 million is shared with ratepayers. The details of the balance in the Storage Services
15 deferral accounts are shown in Table 2 below.

16

17 Account No. 179-72 Long-Term Peak Storage Services

18 The credit balance in the Long Term Peak Storage Services deferral account of \$14.787
19 million is 50% of the variance between the forecast of \$21.405 million and the actual net
20 revenues of \$50.980 million.

1 The details of the balance in the Storage Services deferral accounts are shown in Table 2
2 below. The methodology used to allocate operating costs to Union's unregulated storage
3 activity can be found at Tab 4.

4

5 The Long-Term Peak Storage Services deferral account includes revenues from High
6 Deliverability Storage, T1 Deliverability Upstream Balancing, Downstream Balancing,
7 Dehydration Service, Storage Compression, C1 Long Term Storage, and Long Term Peak
8 Storage. The net margin for Long Term Storage Services is determined by deducting the
9 costs incurred to provide service from gross revenue.

10

11 The balance in the Long-Term Peak Storage Service deferral account reflects the rate
12 payer portion of the deferred margin or 50% of the difference between actual revenue in
13 excess of the costs to provide Long-Term Peak Storage Services and the revenue forecast
14 in excess of the cost to provide these services as approved by the Board in the EB-2005-
15 0520 Rate Order.

1

Table 2

Details of Balances in Storage Deferral Accounts
(\$ Millions)

	2009			2008	
	Short term	Long term	Total	Total	Variance
	(179-70)	(179-72)			
Storage revenue	\$ 28.914	\$106.372	\$ 135.286	\$ 110.420	\$ 24.866
Operating costs					
Cost of gas	3.864	2.454	6.318	7.904	(1.586)
O&M	2.261	10.636	12.897	12.028	0.869
Depreciation	-	7.312	7.312	4.966	2.346
Property & capital taxes	-	1.754	1.754	0.953	0.801
	6.125	22.156	28.281	25.851	2.430
Interest, return and income taxes	-	33.236	33.236	18.233	15.003
Net margin	22.789	50.980	73.769	66.336	7.433
Board approved	15.829	21.405	37.234	37.234	-
Excess	\$ 6.960	\$ 29.575	\$ 36.535	\$ 29.102	\$ 7.433

2

3

4 OTHER DEFERRAL ACCOUNTS

5

6 Account No. 179-26 Deferred Customer Rebates/Charges

7 The Deferred Customer Rebates/Charges account has no balance. This account captures
8 unclaimed cheques related to amounts refunded to customers that arose from the
9 disposition of deferral balances as approved by the Board.

UNION GAS LIMITED
Deferral Account Balances, Market Transformation Incentive and Federal and Provincial Tax Changes
Year Ending December 31, 2009

Line No.	Account Number	Account Name	Balance (\$000's)	(1)
<u>Gas Supply Accounts:</u>				
1	179-108	Unabsorbed Demand Costs Variance Account	(1,285)	(2)
<u>Storage Accounts:</u>				
2	179-70	Short-Term Storage and Other Balancing Services	(4,949)	
3	179-72	Long-Term Peak Storage Services	(14,787)	
4	Total Storage Accounts (Lines 2 + 3)		(19,736)	
<u>Other:</u>				
5	179-26	Deferred Customer Rebates/Charges	-	
6	179-75	Lost Revenue Adjustment Mechanism	2,394	
7	179-102	Intra-period WACOG Changes	(7,615)	
8	179-103	Unbundled Services Unauthorized Storage Overrun	-	
9	179-111	Demand Side Management Variance Account	1,468	
10	179-112	Gas Distribution Access Rule (GDAR) Costs	-	
11	179-113	Late Payment Penalty Litigation	5,651	
12	179-115	Shared Savings Mechanism	8,922	
13	179-117	Carbon Dioxide Offset Credits	-	
14	179-118	Average Use Per Customer	(2,144)	
15	179-120	IFRS Conversion Cost	2,191	
16	179-121	Cumulative Under-recovery – St. Clair Transmission Line	-	
17	Total Other Accounts (Lines 5 through 16)		10,866	
18	Total Deferral Account Balances (Lines 1 + 4 + 17)		(10,155)	
19	Market Transformation Incentive		500	
20	Federal and Provincial Tax Changes		(1,500)	
21	Total Deferral Account Balances, Market Transformation Incentive and Federal and Provincial Tax Changes (Lines 18 + 19 + 20)		(11,154)	
22	Earnings Sharing per Settlement Agreement		(7,397)	

Notes:

(1) Account balances include interest to December 31, 2009.

(2) With the exception of UDC (No. 179-108), all gas supply-related deferral account balances are disposed through the QRAM process.

UNION GAS LIMITED
Deferral Account Balances, Market Transformation Incentive and Federal and Provincial Tax Changes
Year Ending December 31, 2009

Line No.	Account Number	Account Name	Balance (\$000's)	(1)
<u>Gas Supply Accounts:</u>				
1	179-108	Unabsorbed Demand Costs Variance Account	(1,285)	(2)
<u>Storage Accounts:</u>				
2	179-70	Short-Term Storage and Other Balancing Services	(4,949)	
3	179-72	Long-Term Peak Storage Services	(14,787)	
4	Total Storage Accounts (Lines 2 + 3)		(19,736)	
<u>Other:</u>				
5	179-26	Deferred Customer Rebates/Charges	-	
6	179-75	Lost Revenue Adjustment Mechanism	2,394	
7	179-102	Intra-period WACOG Changes	(7,615)	
8	179-103	Unbundled Services Unauthorized Storage Overrun	-	
9	179-111	Demand Side Management Variance Account	1,468	
10	179-112	Gas Distribution Access Rule (GDAR) Costs	-	
11	179-113	Late Payment Penalty Litigation	5,651	
12	179-115	Shared Savings Mechanism	8,922	
13	179-117	Carbon Dioxide Offset Credits	-	
14	179-118	Average Use Per Customer	(2,144)	
15	179-120	IFRS Conversion Cost	3,989	
16	179-121	Cumulative Under-recovery – St. Clair Transmission Line	-	
17	Total Other Accounts (Lines 5 through 16)		12,664	
18	Total Deferral Account Balances (Lines 1 + 4 + 17)		(8,357)	
19	Market Transformation Incentive		500	
20	Federal and Provincial Tax Changes		(1,500)	
21	Total Deferral Account Balances, Market Transformation Incentive and Federal and Provincial Tax Changes (Lines 18 + 19 + 20)		(9,356)	

Notes:

- (1) Account balances include interest to December 31, 2009.
- (2) With the exception of UDC (No. 179-108), all gas supply-related deferral account balances are disposed through the QRAM process.

TAB 8

UNION GAS LIMITED

Answer to Interrogatory from
Board Staff

Ref: Exhibit A, Tab 1, page 6

Please provide a summary table with a break down of revenue, allocated costs, total margin, and the earnings sharing amount to customers for:

- C1 off peak storage
- Gas Loans
- Enbridge LBA
- Supplemental Balancing
- C1 ST firm peak
- C1 firm ST deliverability

Response:

Please see the attachment.

2007 - 2009 Continuity
Short Term Storage Services Account 179-70

Line No.	Particulars (\$000's)	2007			2008			2009					
		Board Approved (\$ 000's)	Cost % of Total Revenue	Actual (10 ³ M ³)	Actual (\$ 000's)	Board Approved (\$ 000's)	Actual vs. Board Approved (%)	Cost % of Total Revenue	Actual (10 ³ M ³)	Actual (\$ 000's)	Board Approved (\$ 000's)	Actual vs. Board Approved (%)	Cost % of Total Revenue
1	Revenue												
2	C1 Off-Peak Storage	\$ 1,000		1,351,590 \$	2,040 \$	1,040	104%		1,145,504 \$	4,344 \$	3,344	334%	
3	Supplemental Balancing Services	2,000		1,511,426	3,122	1,122	56%		695,632	2,903	903	45%	
4	Gas Loans	1,000		647,556	2,177	1,177	118%		1,335,987	3,922	2,922	292%	
5	Enbridge LBA	75		0	211	136	181%		0	0	-75	(100%)	
6	C1 ST Firm Peak Storage	13,794		1,239,871	15,777	1,983	14%		744,717	17,746	3,952	29%	
7	C1 Firm ST Deliverability	92		-	-	-92	(100%)		0	0	-92	(100%)	
9	Total Revenue	17,961		4,750,443	23,327	5,366	30%		3,921,839	28,914	10,953	61%	
10	Costs												
11	Demand												
12	O&M	(175)	(1%)		(2,261)	-2,086	1192%	(10%)		-2,261	-2,086	1192%	(8%)
13	Depreciation	(132)	(1%)			132	(100%)	0%		0	132	(100%)	0%
14	Property & Capital Tax	(28)	(0%)			28	(100%)	0%		0	28	(100%)	0%
15	Return	(105)	(1%)			105	(100%)	0%		0	105	(100%)	0%
16	Interest	(153)	(1%)			153	(100%)	0%		0	153	(100%)	0%
17	Income Taxes	(6)	(0%)			6	(100%)	0%		0	6	(100%)	0%
18	Total Demand	(599)	(3%)		(2,261)	-1,662	277%	(10%)		-2,261	-1,662	277%	(8%)
19	Commodity												
20	O&M	(74)	(0%)		-	74	(100%)	0%			74	(100%)	0%
21	UFG	(751)	(4%)		(3,269)	-2,518	335%	(14%)		(2,352)	-1,601	213%	(8%)
22	Compressor Fuel	(707)	(4%)		(2,939)	-2,232	316%	(13%)		(1,512)	-805	114%	(5%)
23	Total Commodity	(1,532)	(9%)		(6,208)	-4,676	305%	(27%)		(3,864)	-2,332	152%	(13%)
24	Total Costs (line 17 + line 22)	(2,131)	(12%)		(8,469)	-6,338	297%	(36%)		(6,125)	-3,994	187%	(21%)
25	Net Revenue	\$ 15,829			\$ 14,858	-971	(6%)			\$ 22,789	6,960	44%	
26	Deferral Sharing (90% x 79%)									\$	4,949		

UNION GAS LIMITED

Answer to Interrogatory from
Board Staff

Ref: Exhibit A, Tab 1, pages 6-7

Please provide a summary table with a break down of revenue, allocated costs, total margin, and the earnings sharing amount to customers for:

- High deliverability storage
- T1 Delivery and upstream balancing
- Downstream balancing
- Dehydration Service
- Storage Compression
- C1 LT Storage
- LT Peak Storage

Response:

Please see the attachment.

[illegible]

UNION GAS LIMITED

Answer to Interrogatory from
Canadian Manufacturers and Exporters ("CME")

Reference: Exhibit A, Tab 1, Page 8, Table 2

Please broaden Table 2 to show separate line items for "Interest, return and income taxes".

Response:

Please see the response at Exhibit B1.01 and Exhibit B1.02.

UNION GAS LIMITED

Answer to Interrogatory from
Canadian Manufacturers and Exporters ("CME")

Reference: Exhibit A, Tab 1, Page 8, Table 2

Please produce an additional table, comparable to Table 2, as broadened in response to the previous question, to show the "Short-term", "Long-term" and "Total" line items for "Storage revenue", "Operating costs", "Interest, return and income taxes" that lead to the "Board approved" margins for "Short-term", "Long-term" and "Total" shown in Table 2 of \$15.829M, \$21.405M, and \$37.234M respectively.

Response:

Please see the response at Exhibit B1.01 and B1.02.

	<u>\$000s</u>
Earnings Before Interest and Taxes	90,052
Financial Expenses	<u>11,752</u>
Income before income taxes	<u>78,300</u>
Income taxes @ 33%	25,839
Preferred dividend requirements	<u>178</u>
Unregulated earnings	<u>52,283</u>
Long-term storage premium subsidy to ratepayers (after tax)	(7,171)
Short-term storage premium subsidy to ratepayers (after tax)	<u>(7,540)</u>
	<u>(14,711)</u>
Net earnings from unregulated business	<u><u>37,572</u></u>
Unregulated storage investment	268,229
Equity component @ 36%	96,562
Return on equity	38.91%

UNION GAS LIMITED

Answer to Interrogatory from
Canadian Manufacturers and Exporters ("CME")

References: Exhibit A, Tab 4; Exhibit A, Tab 2, Appendix B, Schedule 1

The evidence at Exhibit A, Tab 2, Appendix B, Schedule 1 indicates that, for the year ending December 31, 2009, Union's Non-utility storage earnings before interest and taxes of \$90.052M were realized on Non-utility storage revenues of \$119.909M. This represents earnings before interest and taxes in an amount that is approximately 75% of revenues.

- a) What Return on Equity ("ROE") did Union earn on its unregulated storage assets in the fiscal period ending December 31, 2009?

Response:

The return on equity for Union's unregulated storage operations does not have any relevance to the issue of allocation of costs between Union's regulated and unregulated storage operations for the purposes of calculating earnings sharing or deferral accounts.

TAB 9

EB-2010-0039

ONTARIO ENERGY BOARD

IN THE MATTER OF the *Ontario Energy Board
Act 1998*, S.O.1998, c.15, (Schedule B);

AND IN THE MATTER OF an Application by Union Gas
Limited for an Order or Orders amending or varying the rate
or rates charged to customers as of October 1, 2010.

SETTLEMENT AGREEMENT

July 30, 2010

This Settlement Agreement (“Agreement”) is for the consideration of the Ontario Energy Board (“the Board”) in its determination, under Docket No. EB-2010-0039, for an order of the Board amending or varying the rate or rates charged to customers as of October 1, 2010 in connection with the sharing of 2009 earnings under the incentive regulation mechanism approved by the Board as well as final disposition of 2009 year-end deferral account and other balances (the “Application”). Union is also seeking approval of a cost allocation methodology used to allocate costs between Union’s regulated and unregulated storage operations. By Procedural Order No.1 dated June 1, 2010, the Board scheduled a Settlement Conference to commence July 26, 2010. The Settlement Conference was duly convened, in accordance with Procedural Order No. 1, with Mr. Kenneth Rosenberg as facilitator. The Settlement Conference proceeded until July 27, 2010.

The settlement presented in this Agreement is comprehensive in that the agreement that has been reached settles all issues in this proceeding.

The Agreement is supported by the evidence filed in the EB-2010-0039 proceeding.

The purpose of this proceeding was for:

- (a) approval of final balances for all 2009 deferral accounts and an order for final disposition of those balances;
- (b) approval of the market transformation incentive for 2009 and an order for final disposition of the balance;
- (c) approval of the impact of federal and provincial tax changes in 2009 and an order for final disposition of the balance;
- (d) approval of the customer portion of earnings sharing in 2009 and the proposed disposition of that amount; and,
- (e) approval of Union’s regulated and unregulated storage operations cost allocation methodology.

It is acknowledged and agreed that none of the provisions of this Agreement is severable. If the Board does not, prior to the commencement of the hearing of the evidence in EB-2010-0039,

accept the Agreement in its entirety, there is no Agreement (unless the parties to the Agreement agree that any portion of the Agreement the Board does accept may continue as a valid agreement).

It is further acknowledged and agreed that parties to the Agreement will not withdraw from this Agreement under any circumstances except as provided under Rule 32.05 of the Board's Rules of Practice and Procedure.

The participants in the Settlement Conference agree that all positions, negotiations and discussion of any kind whatsoever which took place during the Settlement Conference and all documents exchanged during the conference which were prepared to facilitate settlement discussions are strictly confidential and without prejudice, and inadmissible unless relevant to the resolution of any ambiguity that subsequently arises with respect to the interpretation of any provision of this Agreement.

The role adopted by Board Staff in Settlement Conferences is set out on page 5 of the Board's Settlement Conference Guidelines. Although Board Staff is not a party to this Agreement, as noted in the Guidelines, "Board Staff who participate in the settlement conference are bound by the same confidentiality standards that apply to parties to the proceeding".

The evidence supporting the Agreement is set out in the Agreement. Abbreviations will be used when identifying exhibit references. For example, Exhibit B1, Tab 4, Schedule 1, Page 1 will be referred to as B1/T4/S1/p1. Attached as an Appendix is A/T1/Schedule 1 "Per Settlement" which is a schedule showing the final agreed upon deferral account balances and earnings sharing amount. The structure and presentation of the settled issues is consistent with settlement agreements which have been accepted by the Board in prior cases. The parties agree that this Agreement and any Appendices form part of the record in the proceeding.

In Procedural Order No. 1 in this proceeding, the Board granted intervenor status to all intervenors of record in EB-2010-0039. The following entities participated in the Settlement Conference:

Canadian Manufacturers & Exporters (“CME”)
Consumers Council of Canada (“CCC”)
City of Kitchener (“Kitchener”)
Energy Probe Research Foundation (“Energy Probe”)
Federation of Rental-housing Providers of Ontario (“FRPO”)
Industrial Gas Users Association (“IGUA”)
London Property Management Association (“LPMA”)
Union Gas Limited (“Union”)
Vulnerable Energy Consumers Coalition (“VECC”)

The parties to this Agreement include all of the above noted entities (the “parties”). The parties to this Agreement represent major stakeholders and constituencies with an interest in Union’s rates.

The parties to this settlement encourage the Board to accept this Agreement in its entirety. The parties to this Agreement also support finalization of the rate order in these proceedings to enable implementation of this Agreement in Union’s October 1, 2010 QRAM.

1. Unabsorbed Demand Cost Variance Account (179-108)

(Complete Settlement) Parties agree to Union’s proposed disposition of this account.

Evidence References:

1. A/T1
2. B.01
3. JT1.10

2. Short-Term Storage and Other Balancing Services (179-70)

(Complete Settlement) Parties agree to Union’s proposed disposition of this account.

Evidence References:

1. A/T1
2. B1.01, B2.02, B5.02, B8.01, B9.02

3. Long-Term Peak Storage Services (179-72)

(Complete Settlement) Parties agree to Union's proposed disposition of this account.

Evidence References:

1. A/T1
2. B1.02, B2.02, B4.02, B6.01, B7.02, B8.01, B9.02

4. Deferred Customer Rebates/Charges (179-26)

(Complete Settlement) Parties agree to Union's proposed disposition of this account.

Evidence References:

1. A/T1
2. B4.03

5. Lost Revenue Adjustment Mechanism (179-75)

(Complete Settlement) Parties agree to Union's proposed disposition of this account.

Evidence References:

1. A/T1
2. B3.03, B3.04, B8.01, B9.06, B9.11

6. Intra-Period Weighted Average Cost of Gas ("WACOG") Costs (179-102)

(Complete Settlement) Parties agree to Union's proposed disposition of this account.

Evidence References:

1. A/T1
2. B4.04

7. Unbundled Services Unauthorized Storage Overrun (179-103)

(Complete Settlement) Parties agree to Union's proposed disposition of this account.

Evidence References:

1. A/T1

8. Demand Side Management Variance Account (179-111)

(Complete Settlement) Parties agree to Union's proposed disposition of this account.

Evidence References:

1. A/T1
2. B2.03, B5.03, B8.01, B8.02, B9.09, B9.10, B9.11
3. JT1.2

9. Gas Distribution Access Rule ("GDAR") Costs (179-112)

(Complete Settlement) Parties agree to Union's proposed disposition of this account.

Evidence References:

1. A/T1

10. Late Payment Penalty ("LPP") Litigation (179-113)

(Complete Settlement) Parties agree to Union's proposed disposition of this account.

Evidence References:

1. A/T1
2. B1.03, B1.04, B4.06, B5.07, B7.03, B8.01

11. Shared Savings Mechanism ("SSM") Variance Account (179-115)

(Complete Settlement) Parties agree to Union's proposed disposition of this account.

Evidence References:

1. A/T1
2. B1.05, B3.05, B8.01, B9.06, B9.11

12. Carbon Dioxide Offset Credits (179-117)

(Complete Settlement) Parties agree to Union's proposed disposition of this account.

Evidence References:

1. A/T1

13. Average Use Per Customer (179-118)

(Complete Settlement) Parties agree to Union's proposed disposition of this account.

Evidence References:

1. A/T1

2. B8.03

14. International Financial Reporting Standards ("IFRS") Conversion Costs (179-120)

The parties agree that, upon approval of this Agreement by the Board, Union will remove from the deferral account the capital costs associated with upgrading Union's accounting system in order to report results under IFRS. These capital costs will be replaced by the annual revenue requirement related to those capital costs, increasing the amount recovered between 2010 and 2014 to \$1.747 million as illustrated in the table provided at JT1.11 (attached). For clarity, Union's 2009 deferral account balance will include \$2.577 million of O&M. Union will include the revenue requirements noted on JT1.11 for years 2010 through to 2014 inclusive in the respective future deferral account disposition proceedings.

Further, the parties agree that, upon approval of this Agreement by the Board, Union will make an adjustment of \$0.386 million to the deferral account to the credit of ratepayers. The adjustment is being made to reflect the difference between the inclusion of 2008 IFRS related costs of \$0.965 million in Union's 2008 earnings sharing calculation (with the result that, at the margin, ratepayers absorbed 90% of this cost) and the credit for reversal of these costs included in the 2009 earnings sharing calculation (with the result that, without the agreed adjustment, ratepayers would have been credited with only 50% of this cost). The parties agree that the adjustment to Union's 2008 IFRS expenses is without prejudice to the method for calculating utility earnings for the purposes of earnings sharing as approved by the Board in the EB-2009-0101 settlement agreement.

Evidence References:

1. A/T1
2. B1.06, B8.01, B9.08
3. JT1.11

15. Cumulative Under-recovery – St. Clair Transmission Line (179-121) and Impact of Removing St. Clair Transmission Line from Rates (179-122)

The parties agree to defer determination of disposal of balances in deferral Account No. 179-121 and Account No. 179-122 until after November 1, 2010. November 1, 2010 is the deadline by which Dawn Gateway Limited Partnership (“Dawn Gateway”) and its shippers will determine whether the Dawn Gateway Pipeline will proceed for in-service in November 2011.

The parties request that this matter come back on for hearing before the Board on a date or dates agreeable to the Board between November 29, 2010 and December 31, 2010. The parties further agree that in advance of that hearing Union shall be entitled to file further written evidence to address any changes in circumstances subsequent to the date of the Settlement Agreement and that parties have an opportunity to ask interrogatories in respect of that evidence and file responding evidence.

The agreement by the parties to defer any determination relating to the balances in Account No. 179-121 and Account No. 179-122 is without prejudice to the parties’ positions with respect to the proper determinations concerning the accounts or the appropriateness of any relief requested in the proposed application.

In accordance with the terms of the settlement of this issue, Union has produced, in confidence and without prejudice to, its position pertaining to relevance and admissibility, the following documents:

- (a) the Precedent Agreements between DGLP and its shippers filed confidentially in the EB-2008-0411 proceedings;
- (b) communications including emails between DGLP and its shippers pertaining to amendments to the precedent agreements aforesaid;
- (c) the Amended Precedent Agreements between DGLP and each of its shippers; and

- (d) the Agreement of Purchase and Sale pertaining to the St. Clair Line between DGLP and Union.

Until a determination by the Board with respect to the balances in Accounts No. 179-121 and 179-122, Union will continue to track the ratepayer credit in deferral account 179-122 based on a sale date of March 1, 2010 as outlined by Union in response to CME interrogatories B3.14 and B3.31. Union will use the Board's methodology as outlined in its EB-2008-0411 Decision to calculate the ratepayer credit.

Evidence References:

- 1. A/T1
- 2. B1.07, B3.12, B3.13, B3.14, B3.15, B3.16, B3.17, B3.18, B3.19, B3.20, B3.21, B3.26, 3.28, B3.29, B3.30, B3.31, B3.33, B4.05
- 3. JT1.1, JT1.4

16. Market Transformation Incentive

(Complete Settlement)

Evidence References:

- 1. A/T1
- 2. B8.01, B9.03, B9.04, B9.05, B9.06, B9.07

17. Federal and Provincial Tax Changes

(Complete Settlement)

Evidence References:

- 1. A/T1
- 2. B8.01

18. 2009 Earnings Sharing

The parties agree that, upon approval of this Agreement by the Board, Union will credit ratepayers in the amount of \$0.334 million, in addition to the \$7.063 million credit reflected at A/T2/Appendix B/S1 (Corrected), which additional credit represents the adjustment to 2008

utility earnings sharing that would have resulted if Union had calculated the future income tax expense in respect of its OEB approved deferral accounts for 2008. The \$0.334 million arises as a result of differences between 2008 and 2009 tax rates applicable to deferral accounts. This adjustment is consistent with Union's tax treatment of its deferral accounts in 2009, as outlined at A/T2/p9.

Evidence References:

1. A/T2
2. B1.08, B1.09, B1.10, B1.11, B5.05, B5.06, B6.02, B6.03, B6.04, B7.04, B7.05, B7.06, B7.07
B7.12, B8.04, B8.06
3. JT1.9

19. Allocation and Disposition of 2009 Deferral Account Balances, Market Transformation Incentive, and 2009 Federal & Provincial Tax Changes

(Complete Settlement) Parties agree to Union's proposed allocations.

Evidence References:

1. A/T3
2. B2.01, B7.01, B7.08, B8.07, B8.08, 9.12
3. JT1.3

20. Allocation of Costs Between Union's Regulated and Unregulated Storage Operations

The parties agree that, upon approval of this Agreement by the Board, Union will commission an independent study ("the Study") of its cost allocation methodology for allocation of costs between its regulated and unregulated storage operations. The Study will also examine the attribution of revenues to deferral accounts 179-70 and 179-72 and provide a volumetric reconciliation between physical space and space sold "short term" and "long term". Union will solicit a person, group or organization to conduct the study ("Study Staff") by way of a request for proposals ("RFP"). Union will provide an opportunity to the other parties to comment on a draft version of the RFP and to suggest changes. Final drafting of the RFP and selection of Study Staff will be at the sole discretion of Union.

Union will take steps to ensure that, at or near the outset of the Study, the other parties will be provided an opportunity to present Study Staff with their concerns, questions, and/or opinions on the subject matters of the Study.

The Study will be filed by Union in connection with its application to dispose of 2010 deferral account balances with sufficient time to permit full discovery and review of the Study as part of the application.

Any changes that Study Staff may recommend to Union's cost allocation methodology will not be implemented until after receiving approval from the Board. Any findings or recommendations made by Study Staff will be adopted, if at all, on a prospective basis, and will have no impact on balances disposed of prior to 2010.

This Agreement is without prejudice to any party's right to disagree with, or challenge any of the findings of Study Staff.

Evidence References:

1. A/T4
2. B1.13, B1.14, B1.15, B1.16, B1.17, B1.18, B1.19, B2.05, B2.06, B3.34, B3.35, B3.37, B3.38, B3.39, B3.40, B3.41, B3.42, B4.07, B4.08, B4.09, B4.10, B4.11, B4.12, B4.13, B4.14, B4.15, B4.16, B4.17, B4.18, B5.08, B5.09, B5.10, B6.05, B6.06, B6.07, B6.08, B7.09, B7.10, B7.11, B7.13, B7.14, B8.09, B9.14
3. JT1.5, JT1.6, JT1.7, JT1.8, JT1.12

TAB 10



EB-2010-0039

IN THE MATTER OF the *Ontario Energy Board Act 1998*,
S.O.1998, c.15, (Schedule B);

AND IN THE MATTER OF an Application by Union Gas
Limited for an Order or Orders amending or varying the rate
or rates charged to customers as of October 1, 2010.

BEFORE: Paul Sommerville
Presiding Member

Marika Hare
Member

DECISION AND ORDER

Union Gas Limited ("Union") filed an application dated April 22, 2010 with the Ontario Energy Board (the "Board") under section 36 of the *Ontario Energy Board Act, 1998*, S.O. c.15, Schedule B, for an order of the Board amending or varying the rate or rates charged to customers as of October 1, 2010 in connection with the sharing of 2009 earnings under the incentive rate mechanism approved by the Board as well as final disposition of 2009 year-end deferral accounts and other balances (the "Application"). Union also sought approval of a cost allocation methodology used to allocate costs between Union's regulated and unregulated businesses.

On June 1, 2010, the Board issued Procedural Order No.1 setting out the schedule for the case. Interrogatories were filed on June 16, 2010 and responses to interrogatories were filed on June 28, 2010. On June 25, 2010, Union filed corrected evidence which primarily affected the International Financial Reporting Standards Conversion Costs,

and the GST in the Late Payment Penalty Litigation deferral account. A Technical Conference was held on July 9, 2010 and a Settlement Conference took place on July 26 and July 27, 2010.

Certain materials, such as responses to specified interrogatories and a specific undertaking made by Union at the Technical Conference were filed in confidence by the Applicant. For the purposes of this proceeding the Board shall consider these documents confidential and they will not be placed on the public record.

On July 30, 2010 Union filed a Settlement Agreement (the "Agreement") in this matter which is attached as Schedule "A". The following intervenors were party to this Agreement:

Canadian Manufacturers & Exporters
Consumers Council of Canada
City of Kitchener
Energy Probe Research Foundation
Federation of Rental-housing Providers of Ontario
Industrial Gas Users Association
London Property Management Association
Union Gas Limited
Vulnerable Energy Consumers Coalition

The Agreement indicated that a comprehensive settlement on all of the issues in relation to the EB-2010-0039 Application was reached.

The Board has considered the proposed Agreement and the quality and detail of the supporting evidence. The Board approves the Agreement which is appended to this Decision as Appendix "A".

The Board orders that the amounts Union seeks to dispose of in this proceeding, as revised and adjusted for the Agreement, shall be recovered from or refunded to Union's ratepayers in accordance with methodologies included Union's Application.

Union shall file a draft rate order giving effect to this Decision as soon as it is able. Also, as part of that filing Union is to clearly identify the rate riders resulting from this Decision that pertain to each rate classification. Parties who wish to comment on draft

rate order must do so within 7 calendar days from the date of the filing of the draft rate order. Union must reply to these comments within 10 calendar days of the filing of the draft rate order.

Intervenors eligible for cost awards shall file with the Board and forward to Union their respective cost claims within 10 calendar days from the date of this Decision and Order.

Union may file with the Board and forward these intervenors any objections to the claimed costs within 24 calendar days from the date of this Decision and Order. Intervenors, whose cost claims have been objected to, may file with the Board and forward to Union any responses to any objections for cost claims within 31 calendar days of the date of this Decision and Order. Union shall pay the Board's costs of, and incidental to, this proceeding immediately upon receipt of the Board's invoice.

ISSUED at Toronto, August 10, 2010.

ONTARIO ENERGY BOARD

Original Signed By

Kirsten Walli
Board Secretary

APPENDIX "A"

THE SETTLEMENT AGREEMENT

FOR

EB-2010-0039

**Union Gas 2009 Deferral Account and Earnings Sharing Disposition
Settlement Agreement**

DATED: JULY 30, 2010

EB-2010-0039

ONTARIO ENERGY BOARD

IN THE MATTER OF the *Ontario Energy Board
Act 1998*, S.O.1998, c.15, (Schedule B);

AND IN THE MATTER OF an Application by Union Gas
Limited for an Order or Orders amending or varying the rate
or rates charged to customers as of October 1, 2010.

SETTLEMENT AGREEMENT

July 30, 2010

This Settlement Agreement (“Agreement”) is for the consideration of the Ontario Energy Board (“the Board”) in its determination, under Docket No. EB-2010-0039, for an order of the Board amending or varying the rate or rates charged to customers as of October 1, 2010 in connection with the sharing of 2009 earnings under the incentive regulation mechanism approved by the Board as well as final disposition of 2009 year-end deferral account and other balances (the “Application”). Union is also seeking approval of a cost allocation methodology used to allocate costs between Union’s regulated and unregulated storage operations. By Procedural Order No.1 dated June 1, 2010, the Board scheduled a Settlement Conference to commence July 26, 2010. The Settlement Conference was duly convened, in accordance with Procedural Order No. 1, with Mr. Kenneth Rosenberg as facilitator. The Settlement Conference proceeded until July 27, 2010.

The settlement presented in this Agreement is comprehensive in that the agreement that has been reached settles all issues in this proceeding.

The Agreement is supported by the evidence filed in the EB-2010-0039 proceeding.

The purpose of this proceeding was for:

- (a) approval of final balances for all 2009 deferral accounts and an order for final disposition of those balances;
- (b) approval of the market transformation incentive for 2009 and an order for final disposition of the balance;
- (c) approval of the impact of federal and provincial tax changes in 2009 and an order for final disposition of the balance;
- (d) approval of the customer portion of earnings sharing in 2009 and the proposed disposition of that amount; and,
- (e) approval of Union’s regulated and unregulated storage operations cost allocation methodology.

It is acknowledged and agreed that none of the provisions of this Agreement is severable. If the Board does not, prior to the commencement of the hearing of the evidence in EB-2010-0039,

accept the Agreement in its entirety, there is no Agreement (unless the parties to the Agreement agree that any portion of the Agreement the Board does accept may continue as a valid agreement).

It is further acknowledged and agreed that parties to the Agreement will not withdraw from this Agreement under any circumstances except as provided under Rule 32.05 of the Board's Rules of Practice and Procedure.

The participants in the Settlement Conference agree that all positions, negotiations and discussion of any kind whatsoever which took place during the Settlement Conference and all documents exchanged during the conference which were prepared to facilitate settlement discussions are strictly confidential and without prejudice, and inadmissible unless relevant to the resolution of any ambiguity that subsequently arises with respect to the interpretation of any provision of this Agreement.

The role adopted by Board Staff in Settlement Conferences is set out on page 5 of the Board's Settlement Conference Guidelines. Although Board Staff is not a party to this Agreement, as noted in the Guidelines, "Board Staff who participate in the settlement conference are bound by the same confidentiality standards that apply to parties to the proceeding".

The evidence supporting the Agreement is set out in the Agreement. Abbreviations will be used when identifying exhibit references. For example, Exhibit B1, Tab 4, Schedule 1, Page 1 will be referred to as B1/T4/S1/p1. Attached as an Appendix is A/T1/Schedule 1 "Per Settlement" which is a schedule showing the final agreed upon deferral account balances and earnings sharing amount. The structure and presentation of the settled issues is consistent with settlement agreements which have been accepted by the Board in prior cases. The parties agree that this Agreement and any Appendices form part of the record in the proceeding.

In Procedural Order No. 1 in this proceeding, the Board granted intervenor status to all intervenors of record in EB-2010-0039. The following entities participated in the Settlement Conference:

Canadian Manufacturers & Exporters (“CME”)
Consumers Council of Canada (“CCC”)
City of Kitchener (“Kitchener”)
Energy Probe Research Foundation (“Energy Probe”)
Federation of Rental-housing Providers of Ontario (“FRPO”)
Industrial Gas Users Association (“IGUA”)
London Property Management Association (“LPMA”)
Union Gas Limited (“Union”)
Vulnerable Energy Consumers Coalition (“VECC”)

The parties to this Agreement include all of the above noted entities (the “parties”). The parties to this Agreement represent major stakeholders and constituencies with an interest in Union’s rates.

The parties to this settlement encourage the Board to accept this Agreement in its entirety. The parties to this Agreement also support finalization of the rate order in these proceedings to enable implementation of this Agreement in Union’s October 1, 2010 QRAM.

1. Unabsorbed Demand Cost Variance Account (179-108)

(Complete Settlement) Parties agree to Union’s proposed disposition of this account.

Evidence References:

1. A/T1
2. B.01
3. JT1.10

2. Short-Term Storage and Other Balancing Services (179-70)

(Complete Settlement) Parties agree to Union’s proposed disposition of this account.

Evidence References:

1. A/T1
2. B1.01, B2.02, B5.02, B8.01, B9.02

3. Long-Term Peak Storage Services (179-72)

(Complete Settlement) Parties agree to Union's proposed disposition of this account.

Evidence References:

1. A/T1
2. B1.02, B2.02, B4.02, B6.01, B7.02, B8.01, B9.02

4. Deferred Customer Rebates/Charges (179-26)

(Complete Settlement) Parties agree to Union's proposed disposition of this account.

Evidence References:

1. A/T1
2. B4.03

5. Lost Revenue Adjustment Mechanism (179-75)

(Complete Settlement) Parties agree to Union's proposed disposition of this account.

Evidence References:

1. A/T1
2. B3.03, B3.04, B8.01, B9.06, B9.11

6. Intra-Period Weighted Average Cost of Gas ("WACOG") Costs (179-102)

(Complete Settlement) Parties agree to Union's proposed disposition of this account.

Evidence References:

1. A/T1
2. B4.04

7. Unbundled Services Unauthorized Storage Overrun (179-103)

(Complete Settlement) Parties agree to Union's proposed disposition of this account.

Evidence References:

1. A/T1

8. Demand Side Management Variance Account (179-111)

(Complete Settlement) Parties agree to Union's proposed disposition of this account.

Evidence References:

1. A/T1
2. B2.03, B5.03, B8.01, B8.02, B9.09, B9.10, B9.11
3. JT1.2

9. Gas Distribution Access Rule ("GDAR") Costs (179-112)

(Complete Settlement) Parties agree to Union's proposed disposition of this account.

Evidence References:

1. A/T1

10. Late Payment Penalty ("LPP") Litigation (179-113)

(Complete Settlement) Parties agree to Union's proposed disposition of this account.

Evidence References:

1. A/T1
2. B1.03, B1.04, B4.06, B5.07, B7.03, B8.01

11. Shared Savings Mechanism ("SSM") Variance Account (179-115)

(Complete Settlement) Parties agree to Union's proposed disposition of this account.

Evidence References:

1. A/T1
2. B1.05, B3.05, B8.01, B9.06, B9.11

12. Carbon Dioxide Offset Credits (179-117)

(Complete Settlement) Parties agree to Union's proposed disposition of this account.

Evidence References:

1. A/T1

13. Average Use Per Customer (179-118)

(Complete Settlement) Parties agree to Union's proposed disposition of this account.

Evidence References:

1. A/T1

2. B8.03

14. International Financial Reporting Standards ("IFRS") Conversion Costs (179-120)

The parties agree that, upon approval of this Agreement by the Board, Union will remove from the deferral account the capital costs associated with upgrading Union's accounting system in order to report results under IFRS. These capital costs will be replaced by the annual revenue requirement related to those capital costs, increasing the amount recovered between 2010 and 2014 to \$1.747 million as illustrated in the table provided at JT1.11 (attached). For clarity, Union's 2009 deferral account balance will include \$2.577 million of O&M. Union will include the revenue requirements noted on JT1.11 for years 2010 through to 2014 inclusive in the respective future deferral account disposition proceedings.

Further, the parties agree that, upon approval of this Agreement by the Board, Union will make an adjustment of \$0.386 million to the deferral account to the credit of ratepayers. The adjustment is being made to reflect the difference between the inclusion of 2008 IFRS related costs of \$0.965 million in Union's 2008 earnings sharing calculation (with the result that, at the margin, ratepayers absorbed 90% of this cost) and the credit for reversal of these costs included in the 2009 earnings sharing calculation (with the result that, without the agreed adjustment, ratepayers would have been credited with only 50% of this cost). The parties agree that the adjustment to Union's 2008 IFRS expenses is without prejudice to the method for calculating utility earnings for the purposes of earnings sharing as approved by the Board in the EB-2009-0101 settlement agreement.

Evidence References:

1. A/T1
2. B1.06, B8.01, B9.08
3. JT1.11

15. Cumulative Under-recovery – St. Clair Transmission Line (179-121) and Impact of Removing St. Clair Transmission Line from Rates (179-122)

The parties agree to defer determination of disposal of balances in deferral Account No. 179-121 and Account No. 179-122 until after November 1, 2010. November 1, 2010 is the deadline by which Dawn Gateway Limited Partnership (“Dawn Gateway”) and its shippers will determine whether the Dawn Gateway Pipeline will proceed for in-service in November 2011.

The parties request that this matter come back on for hearing before the Board on a date or dates agreeable to the Board between November 29, 2010 and December 31, 2010. The parties further agree that in advance of that hearing Union shall be entitled to file further written evidence to address any changes in circumstances subsequent to the date of the Settlement Agreement and that parties have an opportunity to ask interrogatories in respect of that evidence and file responding evidence.

The agreement by the parties to defer any determination relating to the balances in Account No. 179-121 and Account No. 179-122 is without prejudice to the parties’ positions with respect to the proper determinations concerning the accounts or the appropriateness of any relief requested in the proposed application.

In accordance with the terms of the settlement of this issue, Union has produced, in confidence and without prejudice to, its position pertaining to relevance and admissibility, the following documents:

- (a) the Precedent Agreements between DGLP and its shippers filed confidentially in the EB-2008-0411 proceedings;
- (b) communications including emails between DGLP and its shippers pertaining to amendments to the precedent agreements aforesaid;
- (c) the Amended Precedent Agreements between DGLP and each of its shippers; and

- (d) the Agreement of Purchase and Sale pertaining to the St. Clair Line between DGLP and Union.

Until a determination by the Board with respect to the balances in Accounts No. 179-121 and 179-122, Union will continue to track the ratepayer credit in deferral account 179-122 based on a sale date of March 1, 2010 as outlined by Union in response to CME interrogatories B3.14 and B3.31. Union will use the Board's methodology as outlined in its EB-2008-0411 Decision to calculate the ratepayer credit.

Evidence References:

1. A/T1
2. B1.07, B3.12, B3.13, B3.14, B3.15, B3.16, B3.17, B3.18, B3.19, B3.20, B3.21, B3.26, 3.28, B3.29, B3.30, B3.31, B3.33, B4.05
3. JT1.1, JT1.4

16. Market Transformation Incentive

(Complete Settlement)

Evidence References:

1. A/T1
2. B8.01, B9.03, B9.04, B9.05, B9.06, B9.07

17. Federal and Provincial Tax Changes

(Complete Settlement)

Evidence References:

1. A/T1
2. B8.01

18. 2009 Earnings Sharing

The parties agree that, upon approval of this Agreement by the Board, Union will credit ratepayers in the amount of \$0.334 million, in addition to the \$7.063 million credit reflected at A/T2/Appendix B/S1 (Corrected), which additional credit represents the adjustment to 2008

utility earnings sharing that would have resulted if Union had calculated the future income tax expense in respect of its OEB approved deferral accounts for 2008. The \$0.334 million arises as a result of differences between 2008 and 2009 tax rates applicable to deferral accounts. This adjustment is consistent with Union's tax treatment of its deferral accounts in 2009, as outlined at A/T2/p9.

Evidence References:

1. A/T2
2. B1.08, B1.09, B1.10, B1.11, B5.05, B5.06, B6.02, B6.03, B6.04, B7.04, B7.05, B7.06, B7.07
B7.12, B8.04, B8.06
3. JT1.9

19. Allocation and Disposition of 2009 Deferral Account Balances, Market Transformation Incentive, and 2009 Federal & Provincial Tax Changes

(Complete Settlement) Parties agree to Union's proposed allocations.

Evidence References:

1. A/T3
2. B2.01, B7.01, B7.08, B8.07, B8.08, 9.12
3. JT1.3

20. Allocation of Costs Between Union's Regulated and Unregulated Storage Operations

The parties agree that, upon approval of this Agreement by the Board, Union will commission an independent study ("the Study") of its cost allocation methodology for allocation of costs between its regulated and unregulated storage operations. The Study will also examine the attribution of revenues to deferral accounts 179-70 and 179-72 and provide a volumetric reconciliation between physical space and space sold "short term" and "long term". Union will solicit a person, group or organization to conduct the study ("Study Staff") by way of a request for proposals ("RFP"). Union will provide an opportunity to the other parties to comment on a draft version of the RFP and to suggest changes. Final drafting of the RFP and selection of Study Staff will be at the sole discretion of Union.

Union will take steps to ensure that, at or near the outset of the Study, the other parties will be provided an opportunity to present Study Staff with their concerns, questions, and/or opinions on the subject matters of the Study.

The Study will be filed by Union in connection with its application to dispose of 2010 deferral account balances with sufficient time to permit full discovery and review of the Study as part of the application.

Any changes that Study Staff may recommend to Union's cost allocation methodology will not be implemented until after receiving approval from the Board. Any findings or recommendations made by Study Staff will be adopted, if at all, on a prospective basis, and will have no impact on balances disposed of prior to 2010.

This Agreement is without prejudice to any party's right to disagree with, or challenge any of the findings of Study Staff.

Evidence References:

1. A/T4
2. B1.13, B1.14, B1.15, B1.16, B1.17, B1.18, B1.19, B2.05, B2.06, B3.34, B3.35, B3.37, B3.38, B3.39, B3.40, B3.41, B3.42, B4.07, B4.08, B4.09, B4.10, B4.11, B4.12, B4.13, B4.14, B4.15, B4.16, B4.17, B4.18, B5.08, B5.09, B5.10, B6.05, B6.06, B6.07, B6.08, B7.09, B7.10, B7.11, B7.13, B7.14, B8.09, B9.14
3. JT1.5, JT1.6, JT1.7, JT1.8, JT1.12

TAB 11

**2010 DEFERRAL ACCOUNT BALANCES, MARKET TRANSFORMATION
INCENTIVE AND TAX CHANGE AMOUNTS**

2010 YEAR-END DEFERRAL ACCOUNT BALANCES

Union has classified the deferral accounts approved by the Board for use in 2010 into three groups:

- a) Unabsorbed Demand Cost;
- b) Storage accounts; and
- c) Other accounts.

The net balance in the above deferral accounts together with the market transformation incentive and the 2009 and 2010 tax change amounts at December 31, 2010, result in a \$2.511 million credit payable to Union's ratepayers. Interest has been calculated on account balances according to the Board-approved accounting orders. The applicable short-term interest rates used were 0.55% for the months of January through June, 0.89% for the months of July through September, and 1.20% for the months of October through December as prescribed by the Board in EB-2006-0117.

Tab 1, Schedule 1 provides a summary of the deferral account balances, market transformation incentive and 2009 and 2010 tax change amounts.

1 supply. This results in UDC of \$2.160 million for the Northern and Eastern Operations
2 area and \$0.227 million for the Southern Operations area.

3
4 Interest

5 Interest associated with UDC amounted to a credit of \$0.022 million for the Northern and
6 Eastern Operations area and a debit of \$0.001 million for the Southern Operations area
7 for a net credit of \$0.021 million.

8
9 (Credit)/Debit to Operations areas

10 The UDC deferral account has a net total credit balance of \$4.615 million. The balance
11 applicable to customers in the Northern and Eastern Operations area is a credit of \$4.715
12 million. The balance applicable to customers in the Southern Operations area is a debit of
13 \$0.100 million.

14
15 STORAGE DEFERRAL ACCOUNTS

16 Actual net revenues from storage services are deferred against the net revenues included
17 in the rates approved by the Board. The credit balance of \$9.309 million represents the
18 ratepayer portion in the following storage deferral accounts.

1 Account No. 179-70 Short-Term Storage and Other Balancing Services

2 The Short-Term Storage and Other Balancing Services deferral account includes
3 revenues from C1 Off-Peak Storage, Gas Loans, Enbridge LBA, Supplemental Balancing
4 Services, C1 Short-Term Firm Peak Storage, and C1 Firm Short-Term Deliverability.

5 The net margin for Short-Term Storage and Other Balancing Services is determined by
6 deducting the costs incurred to provide service from the gross revenue.

7

8 The credit balance in the Short-Term Storage and Other Balancing Services deferral
9 account is \$0.657 million. The balance is calculated by comparing the actual 2010 net
10 margin for Short-Term Storage Services of \$16.753 million to the net margin approved
11 by the Board of \$15.829 million in the EB-2007-0606 Rate Order. The result is a net
12 deferral credit of \$0.924 million. The net deferral margin is adjusted to reflect the 79%
13 Utility portion (EB-2005-0551) and is to equal \$0.730 million, of which 90% or \$0.657
14 million is shared with ratepayers. The details of the balance are found at Tab 1, Schedule
15 6.

16

17 Account No. 179-72 Long-Term Peak Storage Services

18 The Long-Term Peak Storage Services deferral account includes revenues from High
19 Deliverability Storage, T1 Deliverability Upstream Balancing, Downstream Balancing,
20 Dehydration Service, Storage Compression, C1 Long-Term Storage, and Long-Term

1 Peak Storage. The net margin for Long-Term Storage Services is determined by
2 deducting the costs incurred to provide the service from gross revenue.

3

4 The credit balance in the Long-Term Peak Storage Services deferral account of \$8.652
5 million is 25% of the variance between the forecast of \$21.405 million and the actual net
6 revenues of \$56.013 million. The details of the balance are found at Tab 1, Schedule 6.

7

8 The balance in the Long-Term Peak Storage Service deferral account reflects the rate
9 payer portion of the deferred margin or 25% of the difference between actual revenue in
10 excess of the costs to provide Long-Term Peak Storage Services and the revenue forecast
11 in excess of the cost to provide these services as approved by the Board in the EB-2005-
12 0520 Rate Order.

13

14 OTHER DEFERRAL ACCOUNTS

15 Account No. 179-26 Deferred Customer Rebates/Charges

16 The Deferred Customer Rebates/Charges account has no balance. This account captures
17 unclaimed cheques related to amounts refunded to customers that arose from the
18 disposition of deferral balances as approved by the Board.

UNION GAS LIMITED
Details of Balances in Storage Deferral Accounts
 (\$ Millions)

Line No.	2010			2009	Variance
	<u>Short-term</u>	<u>Long-term</u>	<u>Total</u>	<u>Total</u>	
	(179-70)	(179-72)			
	(a)	(b)	(c)	(d)	(e)
1 Storage revenue	20.887	111.941	132.828	135.286	(2.458)
Operating costs					
2 Cost of gas	1.873	(1.282)	0.591	6.318	(5.727)
3 O&M	2.261	11.078	13.339	12.897	0.442
4 Depreciation	-	8.645	8.645	7.312	1.333
5 Property & capital taxes	-	1.661	1.661	1.754	(0.093)
6	<u>4.134</u>	<u>20.102</u>	<u>24.236</u>	<u>28.281</u>	<u>(4.045)</u>
7 Interest, return and income taxes	-	35.826	35.826	33.236	2.590
8 Net margin	16.753	56.013	72.766	73.769	(1.003)
9 Board approved	15.829	21.405	37.234	37.234	-
10 Excess	<u>\$ 0.924</u>	<u>\$ 34.608</u>	<u>\$ 35.532</u>	<u>\$ 36.535</u>	<u>\$ (1.003)</u>

UNION GAS LIMITED
Assignment of Union's 2010 Unregulated Storage Costs to its Short-Term and Long-Term Accounts

Line No.	Item	2010 Actual Amount (\$000)	Assignment Basis to 179-70 (Short-Term) and 179-72 (Long-Term)
	Revenue		
1		132,828	Based on services provided.
2	Total Revenue (A)	132,828	
	Commodity Costs		
3	UFG	2,049	Ratio of actual unregulated short and long-term volume to total actual unregulated volumes Short-Term = $3.8\% / (3.8\% + 8.1\%) = 31.9\%$ Long-Term = $8.1\% / (3.8\% + 8.1\%) = 68.1\%$
4	Compressor Fuel	3,684	Ratio of actual unregulated short and long-term storage activity to actual total storage activity Short-Term varies monthly, annual average = 33.1% Long-Term varies monthly, annual average = 66.9%
5	Customer Supplied Fuel	-5,321	Direct to Long-Term Storage
6	Third Party Storage	179	Direct to Long-Term Storage as per Union's 2007 approved cost allocation study
7	Total Commodity (B)	591	
	Demand Costs		
8	O&M	11,078	Direct to Long-Term Storage Total unregulated O&M assigned using Union's Board-approved 2007 cost allocation methodology
9	Depreciation	8,645	Direct to Long-Term Storage Total unregulated depreciation assigned using Union's Board-approved 2007 cost allocation methodology
10	Property & Capital Tax	1,661	Direct to Long-Term Storage Total unregulated property & capital tax allocated using Union's Board-approved 2007 cost allocation methodology
11	Interest Expense	11,348	Direct to Long-Term Storage Weighted average interest rate of 4.95% times the total 2010 unregulated rate base assigned using Union's Board-approved 2007 cost allocation methodology
12	Return	16,263	Direct to Long-Term Storage Board-approved 2007 weighted average return rate of 3.07% times the total 2010 unregulated rate base assigned using Union's Board-approved 2007 cost allocation methodology, plus Incremental Return on 2010 unregulated rate base, plus Return on purchased assets
13	Income Tax on Return	8,215	Direct to Long-Term Storage Income tax required on return assuming a tax rate of 33.56%
14	Revenue Requirement on 7.9 PJs of excess in-franchise storage capacity	2,261	Direct to Short-Term Storage O&M, depreciation, taxes and regulated return on equity of 7.9 PJs of storage services. Amount has been charged to unregulated business each year 2007 through 2010.
15	Total Demand Costs (C)	59,471	
	Net Margin (D) = (A) - (B) - (C)		
16	Net Margin	\$72,766	

TAB 12

UNION GAS LIMITED

Answer to Interrogatory from
Canadian Manufacturers and Exporters ("CME")

Unabsorbed Demand Cost Account No. 179-108

Reference: Exhibit A, Tab 1, pages 2 to 4

Please provide the following information with respect to the calculation of the Unabsorbed Demand Cost ("UDC") Variance Account credit balance of \$4.615M:

- a) Is the UDC amount recovered in rates the product of a particular volume of demand per day and a cost per unit of demand per day? If so, then please provide the cost per unit of demand per day associated with the UDC volume of 4.4 PJs in the Northern and Eastern Operations area and 0.2 PJs in the South Operations area that produces costs collected in rates of \$6.853M and \$0.128M respectively for a total of \$6.981M shown in Table 1 of Exhibit A, Tab 1 at page 3.
- b) Please explain how 13.207 PJs of actual UDC in the Northern and Eastern Operations area and 1.391 PJs in the Southern Operations area produces UDC costs incurred of \$2.160M and \$0.227M respectively for each operations area, for a total of \$2.387M when the lower volumes of demand being collected in rates produce substantially higher cost recovery amounts in each operations area.

Response:

- a) Please see the response at Exhibit B1.1.

The amount also includes an adjustment to correct the UDC deferral account. For the period April 1, 2007 to Dec 31, 2009, the UDC deferral calculation did not account for the changes in TCPL tolls that were included in Union's approved rates during the same period. In the deferral model, Union understated the amount of UDC recovered in approved rates by \$1.931 million. As noted above, an adjustment has been made to the 2010 UDC deferral calculation to credit ratepayers an additional \$1.931 million.

Please see the Attachment that shows the calculation of the UDC amount recovered in rates in 2010.

- b) Unfilled capacity was sold on the secondary market to minimize UDC. Revenues generated from the transportation releases were credited to the UDC deferral account mitigating the UDC that was forecasted in rates.

UNION GAS LIMITED
Calculation of 2010 UDC Collected In Rates

Original Deferral Calculation of North UDC Collected In rates									
Line No.	Particulars	Actual UDC Unit Rate (\$/10 ³ m ³) (a)	Actual Throughput Volumes (10 ³ m ³) (b)	UDC Collected In Rates (\$000's) (c) = (a x b)	2007 Board Approved UDC Unit Rate (\$/10 ³ m ³) (d)	Actual Throughput Volumes (10 ³ m ³) (e) = (b)	UDC using 2007 Board Approved Rates (\$000's) (f) = (d x e)	Variance In UDC from Prior Periods (\$000's) (g) = (c - f)	Total 2010 UDC (\$000's) (h)
<u>Jan 1, 2010 - Dec 31, 2010</u>									
1	R01	4.4574	837,602	3,734					
2	R10	3.4066	316,303	1,078					
3	R20	0.9081	122,491	111					
4	Total North			4,922					
5	M1/M2	0.0515	2,457,963	127					
6	M4	0.0515	14,885	1					
7	M10	0.0515	35	0					
8	Total South			128					
<u>Apr 1, 2009 - Dec 31, 2009</u>									
9	R01	3.1453	471,664	1,484	2.5325	471,664	1,194	289	
10	R10	2.4038	199,792	480	1.9355	199,792	387	94	
11	R20	0.6408	90,583	58	0.5159	90,583	47	11	
12	Total North			2,022			1,628	394	
<u>Jul 1, 2008 - Mar 31, 2009</u>									
13	R01	3.6775	806,995	2,968	2.5325	806,995	2,044	924	
14	R10	2.8105	301,566	848	1.9355	301,566	584	264	
15	R20	0.7492	109,221	82	0.5159	109,221	56	25	
16	Total North			3,897			2,684	1,213	
<u>Apr 1, 2008 - Jun 30, 2008</u>									
17	R01	2.9086	136,819	398	2.5325	136,819	346	51	
18	R10	2.2229	62,605	139	1.9355	62,605	121	18	
19	R20	0.5925	39,833	24	0.5159	39,833	21	3	
20	Total North			561			488	73	
<u>Jul 1, 2007 - Mar 30, 2008</u>									
21	R01	2.7564	771,668	2,127	2.5325	771,668	1,954	173	
22	R10	2.1066	288,736	608	1.9355	288,736	559	49	
23	R20	0.5616	124,805	70	0.5159	124,805	64	6	
24	Total North			2,805			2,577	228	
<u>Apr 1, 2007 - Jun 30, 2007</u>									
25	R01	2.6564	132,988	353	2.5325	132,988	337	16	
26	R10	2.0302	64,009	130	1.9355	64,009	124	6	
27	R20	0.5412	37,556	20	0.5159	37,556	19	1	
28	Total North			504			480	23	
29	Subtotal - UDC Recovery Adjustment							1,931	
30	Total North 2010 UDC Collected In Rates (Column c, line 4 plus Column g lines 12+16+20+24+28)								6,853
31	Total South 2010 UDC Collected In Rates (Column c, line 8)								128
32	Total 2010 UDC Collected In Rates (line 29 + line 30)								6,981

UNION GAS LIMITED

Answer to Interrogatory from
Federation of Rental-housing Providers of Ontario ("FRPO")

Long-Term Storage Service Costs

Reference: Exhibit A, Tab 1, Schedule 6, Page 2, Lines 11 and 12

Please explain what is meant by "return on purchased assets" and provide a table showing how this return and the underlying "rate base" are calculated.

Response:

Subsequent to the Board's NGEIR decision Union invested in additional storage capacity as part of the company's unregulated storage operations. This included the development of new storage capacity as well as contracts to purchase storage from others.

The return on purchased assets is an amount calculated to recognize the expected return on equity equivalent to the return necessary to attract capital for an owned asset. The deemed capital cost used to calculate the return on purchased assets was an estimated simple average of the capital cost of development at the time of the purchase decision.

The calculation is as follows:

Space PJ's x Capital Cost \$10.00/GJ x Required Rate of Return x number of months

Asset Name	Contract Start	Space PJ's	Capital Cost \$/GJ	Required Rate of Return	Total Annual Amount	C10 in Service Amount
Washington 10	Apr-08	2.1	\$10.00	5.18%	\$1,088	\$1,088
Huron Tipperary	Jun-08	2.3	\$10.00	5.18%	\$1,191	\$1,191
MHP/St Clair Pool	Apr-08	1.2	\$10.00	5.18%	\$622	\$622
Sarnia Airport	Jun-09	5.8	\$10.00	5.18%	\$3,004	\$3,004
Michcon/Gateway	May-10	2.1	\$10.00	5.18%	\$1,088	\$725
Total						\$6,630

Required Rate of return is calculated as follows:

Equity	36.00%
Post Tax Hurdle Rate	14.40%
Required Rate of Return	5.18%

UNION GAS LIMITED

Answer to Interrogatory from
Federation of Rental-housing Providers of Ontario ("FRPO")

Long-Term Storage Service Costs

Reference: Exhibit A, Tab 1, Schedule 6, Page 2, Lines 11 and 12

Are the 3rd party storage costs used for calculating the long-term storage margin different from the amounts Union actually pays the 3rd party storage providers? If so, please provide a comparison of the return on purchased assets and the actual cost of the services.

Response:

To calculate the long-term storage margin Union reflects the amount of 3rd party storage cost paid of \$10.7 million (as a reduction to revenue) and the return on purchased assets of \$6.6 million as shown at Exhibit B3.15.

UNION GAS LIMITED

Answer to Interrogatory from
Federation of Rental-housing Providers of Ontario ("FRPO")

Long-Term Storage Service Costs

Reference: Exhibit A, Tab 1, Schedule 6, Page 2, Lines 11 and 12

Please explain what is meant by "Incremental Return". Please show how the Incremental Return is calculated, including documentation supporting the return on equity.

Response:

Incremental return is the return in excess of the Board-approved level of 8.54% necessary to attract new investment and is applied to unregulated storage investments and purchased/leased storage assets post NGEIR.

Calculation is as follows:

Incremental Return

= (Current Rate base - 07 BA Rate base) * (Required Rate of Return - Weighted Average Return)

= (229,266-106,300) * (5.18% - 3.07%) = \$2,594.09

Required Rate of return is calculated as follows:

Equity	36.00%
Post Tax Hurdle Rate	14.40%
Required Rate of Return	<u>5.18%</u>

Weighted Average Return:

Equity	36.00%
Board-approved ROE	8.54%
	<u>3.07%</u>

Return on Purchased Assets

Please see the response at Exhibit B3.15.

UNION GAS LIMITED

Answer to Interrogatory from
Federation of Rental-housing Providers of Ontario ("FRPO")

Long-Term Storage Service Costs

Reference: Exhibit A, Tab 1, Schedule 6, Page 2, Lines 11 and 12

Since the 179-72 Deferral Account is a component of Union's regulated utility rates, please explain why Union should not use the Board-approved return for purposes of calculating the margin on long-term storage service. Please provide the derivation and bottom line result for Long-term Margin sharing that would have been calculated using the Board-approved return for each of the years 2008, 2009 and 2010.

Response:

Union uses an incremental rate of return for storage investments made subsequent to the Board's NGEIR decision to reflect the threshold return on investment required by the shareholder for capital projects in unregulated operations. The additional investment in unregulated storage projects would not have been approved by the shareholder at Board approved rate of return.

The allocation of costs, including a required return on rate base investment that is calculated for deferral account disposition purposes, is consistent with the traditional revenue requirement calculation. This approach has always been used for deferral disposition purposes before and is consistent with the methodology used to cost storage services in the 2007 rate case, which was accepted by the Board in the NGEIR decision.

Please see the Attachment.

Long-Term Margin Sharing 2008-2010

Line No.	Particulars (\$000s)	2008	2009	2010
1	Return Used in Filing	7,279	14,220	16,262
2	Board-Approved Return	<u>(5,638)</u>	<u>(9,749)</u>	<u>(10,968)</u>
3	Difference	<u>1,641</u>	<u>4,471</u>	<u>5,294</u>
4	Rate Payer Portion	75%	50%	25%
5	Difference	<u>1,231</u>	<u>2,236</u>	<u>1,324</u>

UNION GAS LIMITED

Answer to Interrogatory from
Federation of Rental-housing Providers of Ontario ("FRPO")

REF: Exhibit B3.15

Please provide additional information about the "return on purchased assets" cost for 3rd party storage services.

- a) Please explain why Union imputes a return on equity "cost" for 3rd party storage services, in addition to the payments made to the storage operator for the service.
 - b) Please provide tables in the same format to show how the "return on purchased assets" was calculated for 3rd party storage services for the years 2008 and 2009.
-

Response:

- a) A return on third party storage services is included to recognize the long-term contracting risk assumed by the shareholder.
- b) The interrogatory does not seek to clarify previous interrogatory responses and therefore no response is being provided.

UNION GAS LIMITED

Answer to Interrogatory from
Federation of Rental-housing Providers of Ontario ("FRPO")

REF: Exhibit B3.16

Union states that the long-term storage margin for 2010 includes \$10.7 million of 3rd party storage costs as a reduction to revenue.

- a) Are the 3rd party storage costs used for calculating the long-term storage margin different from the amounts Union actually pays the 3rd party storage providers? If not, why not?
- b) Are 3rd party storage costs incremental to the "return on purchased assets" addressed in Exhibit B3.15? If they are, please explain why Union is charging both a return on purchased assets for 3rd storage services and additional costs for 3rd party storage services?
- c) Please restate the long-term storage revenue for 2010 (Attachment to Exhibit B1.3, col. (d), lines 1 through 7) to exclude any and all reductions, including reductions for 3rd party storage payments. Please provide the same information requested in (c) for the years 2008 and 2009.

Response:

- a) Yes.
- b) The return on purchased assets is incremental to the cost of purchasing storage from third parties. The return on purchased assets is included to recognize the risk assumed by the shareholder when entering into long-term storage purchase contracts.
- c) Please see the Attachment. Union has revised Exhibit B1.3 to exclude the reductions from the long-term storage revenues. The costs have been included at line 8. It is not appropriate to restate the revenues without including these costs because Union would not have earned the associated revenues without incurring the costs.

The costs for 2008 and 2009 are not relevant and therefore have not been provided.

2010 Actual Long-Term Storage Services Account 179-72

		<u>2010</u>	
Line			Restated to
No.	Particulars (\$000's)	Actual	Exclude Reductions
Revenue			
1	Long-Term Peak Storage	87,166	105,893
2	T1 Deliverability and upstream balancing	1,825	1,825
3	Downstream Balancing	742	742
4	Dehydration Service	1,257	1,257
5	Storage Compression	772	772
6	High Deliverability Storage	<u>20,179</u>	<u>20,179</u>
7	Total Revenue	<u>111,941</u>	<u>130,668</u>
Costs			
Demand			
8	Incremental Storage		(18,727)
9	O&M	(11,078)	(11,078)
10	Depreciation	(8,645)	(8,645)
11	Property & Capital Tax	(1,661)	(1,661)
12	Return	(16,262)	(16,262)
13	Interest	(11,349)	(11,349)
14	Income Taxes	<u>(8,215)</u>	<u>(8,215)</u>
15	Total Demand	<u>(57,210)</u>	<u>(75,937)</u>
Commodity			
16	O&M	-	-
17	UFG	(1,397)	(1,397)
18	Compressor Fuel ⁽¹⁾	(2,643)	(2,643)
19	Customer Supplied Fuel	<u>5,322</u>	<u>5,322</u>
20	Total Commodity	<u>1,282</u>	<u>1,282</u>
21	Total Costs (line 15 + line 20)	<u>(55,928)</u>	<u>(74,655)</u>
22	Net Revenue (line 7 + 21)	<u>56,013</u>	<u>56,013</u>

Notes:

(1) Includes compressor fuel and third party storage costs.

UNION GAS LIMITED

Answer to Interrogatory from
Federation of Rental-housing Providers of Ontario ("FRPO")

REF: Exhibit B3.17

Please provide additional information concerning the "Incremental Return" cost included in the long-term storage margin calculation.

- a) What is the source of the 14.40% Post Tax Hurdle Rate?
- b) Prior to the NGEIR Decision, did Union evaluate opportunities to expand or acquire gas storage assets based on the Board-approved return on equity, or did Union use a higher Post Tax Hurdle Rate for these capital investment decisions?
- c) Has the Board specifically approved the post-tax hurdle rate approach that Union is using to calculate the margin-sharing credits that would be used to adjust Board-approved rates? If so, please provide that evidence and decision.
- d) Union states that "the additional investment in unregulated storage projects would not have been approved". For each of 2007, 2008, 2009 and 2010, please provide the Profitability Index given the expected revenues and costs at the time using the Board-approved return and Union's deemed hurdle rate.

Response:

- a) The 14.4% rate represents the return on common equity required that, when combined with other sources of financing, will achieve an 8.5% internal rate of return (IRR). The 8.5% IRR is the minimum hurdle rate target established by the Company for approval of unregulated investment opportunities.
- b) Prior to the NGEIR Decision (EB-2005-0551) regulated investment, including storage opportunities were evaluated on the basis of approved returns and in accordance with Board-approved economic feasibility guidelines. As indicated on pages 48-51 of the NGEIR Decision the utilities, which included Union, indicated that new storage development would only take place in Ontario under a forbearance scenario and not under the previously existing regulatory regime. Page 51 of the NGEIR Decision indicates that "the Board is convinced by the evidence that storage investments are generally riskier than other regulated activities, such as distribution or transmission expansions".
- c) The methodology Union is using to calculate the storage margin to be shared is consistent with the approach used to set Board-approved rates. No specific approval of the approach was obtained.
- d) The interrogatory does not seek to clarify previous interrogatory responses and therefore no response is being provided.

UNION GAS LIMITED

Answer to Interrogatory from
London Property Management Association ("LPMA")

Ref: Exhibit A, Tab 1, page 5-6

With respect to the long-term peak storage services (account 179-72) please indicate if there has been any change in the methodology used to allocate operating costs to Union's unregulated storage activity from that used in EB-2010-0039. If yes, what is the impact on the ratepayer portion of the deferred margin if the methodology used and approved in EB-2010-0039 were to be maintained?

Response:

There has been no change in the methodology used to allocate costs to Union's unregulated storage activity from that used in EB-2010-0039.

TAB 13

ONTARIO ENERGY BOARD

EB-2011-0038

UNION GAS STORAGE MARGINS AND COST ALLOCATION PROPOSAL

Prepared for:

Canadian Manufacturers & Exporters ("CME")
Federation of Rental-housing Providers of Ontario ("FRPO")
City of Kitchener ("Kitchener")

July 6, 2011

John A. Rosenkranz
Principal
North Side Energy, LLC
56 Washington Drive
Acton, MA 01720

UNION GAS STORAGE MARGINS AND COST ALLOCATION PROPOSAL

In this proceeding Union Gas has applied to the Board for approval of the deferral account balances for year-end 2010 and the utility earnings sharing amount. Union also asks the Board to approve a methodology for allocating costs to its non-utility storage operation, in order to comply with the Board's directives in the Natural Gas Electricity Interface Review proceeding (NGEIR).¹ This report examines the reasonableness of Union's proposed cost allocation methodology and reviews Union's calculation of margins on short-term and long-term storage services for the storage service deferral accounts.

The principal findings and recommendations from this review are as follows:

Allocation of Costs to Union's Non-Utility Storage Operation

- The non-utility storage allocation factor should be based on the actual marketable storage capacity and deliverability at the time of the separation. Union's proposal to use cost allocation factors from its 2007 rate case causes a significant under-allocation of costs to Union's non-utility storage operation, and must be rejected.
- Union allocates certain costs using internal estimates and judgment calls. Greater transparency is needed to demonstrate the reasonableness of these numbers.
- Union should consider whether other objective factors, such as compression horsepower, would result in a better allocation of direct storage operating costs.
- Full or partial approval of Union's proposed methodology must not preclude parties from investigating Union's implementation of that methodology, including support for Union's actual and estimated costs, in future rate proceedings.

Margin Calculations for Storage Services Deferral Accounts

- Union substantially reduces the reported margins on long-term storage services by including a "return on purchased assets" expense for third-party storage service contracts, on top of the actual charges paid to the third-party storage operators. These additional costs are inappropriate, and must be eliminated.
- Union adds an arbitrary premium to the Board-approved return on equity for new storage investments. This high target return reduces the margins shared with ratepayers, and is inappropriate for purposes of calculating storage service margins.
- Union errs by shifting \$1.662 million of fixed cost of service from long-term storage to short-term storage for the purpose of calculating margins.

¹ See Decision with Reasons, Natural Gas Electricity Interface Review (EB-2005-0551), November 7, 2006 ("NGEIR Decision")

implementation of this methodology to allocate plant between utility and non-utility storage operations should be open for review in future rate cases. The cost study prepared for the 2013 rate case should show all storage plant and O&M costs, and describe in detail how these costs are allocated between the utility and non-utility operations.

II. Margin Calculations for Union's Storage Service Deferral Accounts

The differences between the actual storage margins owed to utility customers and the storage margins included in rates are tracked in two deferral accounts: Short-Term Storage Services Account 179-70, and Long-Term Storage Services Account 179-72.

The NGEIR Decision changed how margins from sales of ex-franchise storage services are shared between Union and utility ratepayers. Before NGEIR, the margin sharing methodologies for short-term storage services (transactions shorter than two years) and long-term storage services (transactions two years or longer) were the same. Under the terms of the NGEIR Decision, ratepayers will continue to receive a portion of the margins from short-term storage services, but margin sharing on long-term storage services is phased out.

This section describes several areas where Union is calculating the storage service margins to be shared with utility ratepayers incorrectly. These errors stem from Union's misallocation of costs from long-term to short-term storage, and the inclusion of inappropriate costs for new non-utility storage assets and purchases of third-party storage service.

A. Margins on Short-Term Storage Services

The margin calculation for short-term storage services for 2010 is shown in Schedule 3. This calculation is incorrect because Union has shifted \$1.662 million per year from the long-term storage cost of service to the short-term storage services account.

In the NGEIR Decision, the Board referred to the amount of cost-based storage needed for utility purposes, up to a cap of 100 PJ, as the "utility asset".¹⁰ However, in order to comply with applicable accounting standards, Union currently defines all of the 100 PJ of storage reserved for utility needs at cost-based rates as the utility asset. Because not all of the 100 PJ is used for utility purposes, the cost of the surplus cost-based storage space has been assigned to the non-utility storage operation. The total amount of this adjustment Union is shown on Schedule 3, Line 15.

While this adjustment is appropriate, Union's implementation is flawed. In the EB-2005-0520 Cost Study, costs that were not assigned to utility services were allocated to C1 storage, and were charged to long-term ex-franchise storage for margin sharing purposes. Some of these C1 storage costs were then moved to the utility side of the ledger when Union separated storage plant based on 100 PJ, instead of the 92.1 PJ used for the EB-2005-0520 Cost Study. In moving these costs back to non-utility storage, Union has added fixed costs to the short-term storage account for the purpose of calculating storage service margins, instead of leaving these costs in the long-term storage account, where they originated.

¹⁰ NGEIR Decision, p. 101

Union explains that these costs are charged to short-term storage because the surplus storage is only sold as short-term storage services. However, even if this is Union's practice, earmarking storage space and deliverability for short-term storage services is inconsistent with the Board's view that short-term storage revenue is derived from optimizing storage assets that were developed or obtained for other purposes, but are temporarily available for sale in the ex-franchise market.¹¹ Since short-term storage sales are asset optimization transactions, it is Board policy that margins on short-term storage services should be calculated on the basis of direct marginal costs, such as compressor fuel expenses.¹² Allocating additional fixed costs to short-term storage services runs counter to this policy.

For these reasons, Union's error should be corrected by removing the additional fixed cost of service that Union has applied to short-term storage services (the difference between \$2.661 million and the \$0.599 million approved by the Board), from the short-term storage services account and returning these costs to the long-term storage services account for purposes of calculating margins.

B. Margins on Long-Term Storage Services

The margin calculation for the Long-Term Storage Services deferral account is shown in Schedule 4. In addition to the adjustment described above, there are two other problems with Union's calculation of long-term storage service margins that require correction.

1. Return on purchased assets

According to Union, the long-term storage costs for 2010 include a "return on purchased assets" for third-party storage services of \$6.6 million.¹³ This amount is in addition to \$10.7 million paid to third-party storage operators, which Union has treated as a reduction to revenue.¹⁴ To calculate the "return on purchased assets", Union multiplies the amount of storage space Union has under contract with each third-party storage operator by an assumed capital cost for new storage development of \$10.00 per GJ. This result is then multiplied by a cost of capital based on Union's internal hurdle rate of 14.4%.

Union describes the "return on purchased assets" as an incremental cost that has been added to "recognize the risk assumed by the shareholder when entering into long-term storage purchase contracts".¹⁵ Union provides no explanation as to what this risk entails or how the imputed return on investment Union calculates relates to this risk.¹⁶ More importantly, however, there is no basis for Union to include in the storage margin calculation any costs other than the direct payments Union makes to third-party storage operators for these storage services.

¹¹ NGEIR Decision, p. 99.

¹² NGEIR Decision, p. 100, citing EBRO 494-03.

¹³ EB-2011-0038, Exhibit B3.15

¹⁴ EB-2011-0038, Exhibit B3.16. In a later interrogatory response (Exhibit 3.53), Union restated the Long-Term Storage Services margin calculation showing the reductions to revenue as a separate Incremental Storage cost. These restated numbers were used in Schedule 4.

¹⁵ EB-2011-0038, Exhibit B3.53

¹⁶ If "shareholder" means Spectra Energy Corp, this may not even be a Union cost.

2. Rate of return on new storage assets

Union calculates the return on rate base for new (post-NGIER) non-utility storage assets using an internal hurdle rate of 14.4%. This causes the return component of the long-term storage cost for 2010 to be \$5.294 million than it would be using the Board-approved cost of equity.¹⁷ According to Union, the difference in costs for 2008 and 2009 are \$1.641 million and \$4.471 million, respectively. This inflated cost reduces the amount of long-term storage margin shared with ratepayers by at least \$1.231 million for 2008, \$2.236 million for 2009 and \$1.324 million for 2010.

Margin sharing on non-utility storage services creates an adjustment to the regulated, cost-based rates charged to Union's utility customers, and Union has never obtained Board approval to depart from using the Board approved cost of equity in its long-term storage margin calculations. For purposes of calculating storage service margins, storage costs should be based on the Board-approved return on equity.

C. Recommendations – Storage Service Deferral Accounts

1. Union should shift \$1.662 million from the short-term storage costs, and add an equal amount to the long-term storage costs.
2. Third-party storage costs should be equal to the actual costs paid to third-party storage operators. Union must remove the "return on purchased assets" from the long-term storage costs.
3. For purposes of calculating the storage service margins to be shared with utility ratepayers, Union should calculate the return on incremental non-utility storage assets using the Board-approved return on equity.
4. Union should identify all revenues and costs that enter into the storage margin calculation, instead of incorporating certain costs as a reduction to revenue.

The implications of these recommendations for 2010 storage service margins are shown on Schedule 5. The ratepayer share of the long-term storage service deferral account balance increases from \$8.7 million to \$12.2 million, and the ratepayer share of the short-term storage service deferral account balance increases from \$0.7 million to \$1.8 million.¹⁸

¹⁷ EB-2011-0038, Exhibit B3.18

¹⁸ These numbers do not include the cost changes that would result from implementing the corrections to Union's proposed storage cost allocation methodology recommended in Section I.

**Schedule 5 - Revised
Adjusted Storage Service Margins**

Long-Term Storage Services Account 179-72		<u>2007</u> (\$000)	<u>2010</u> (\$000)	<u>Source</u>
1	Revenue	42,058	111,941	EB-2011-0038, Exh. B1.3
2	Costs	20,653	55,928	EB-2011-0038, Exh. B1.3
3	Margin	21,405	56,013	EB-2011-0038, Exh. B1.3
4	Margin vs. Forecast		34,608	EB-2011-0038, Exh. B1.3
5	Ratepayer Share		8,652	EB-2011-0038, Exh. B1.3
Adjustments to Revenue:				
6	Reductions to revenue		18,727	EB-2011-0038, Exh. B3.53
7	Adjusted Revenue		130,668	Line 1 + Line 6
Adjustments to Costs:				
8	Long-term storage fixed costs		1,662	Schedule 3, Line 15
9	Third-party storage costs		10,700	EB-2011-0038, Exh. B3.16
10	Resource Optimization costs		8,027	Line 6 - Line 9
11	Return on purchased assets		-6,630	EB-2011-0038, Exh. B3.15
12	Extra return on new storage rate base		-2,594	EB-2011-0038, Exh. B3.17
13	Income tax on excluded return items		-4,659	Tax on Lines 11 & 13 at 33.56%
14	Adjusted Costs		62,434	Line 2 + Sum(Lines 8 through 13)
14	Adjusted Margin		68,234	Line 7 - Line 14
15	Margin vs. Forecast		46,829	Line 14 - Line 3 (Year 2007)
16	Ratepayer Share		11,707	Line 15 x 25%
17	Change in Ratepayer Share		3,055	Line 16 - Line 5
Short-Term Storage Services Account 179-70				
18	Revenue	17,961	20,887	EB-2011-0038, Exh. B1.3
19	Cost	2,132	4,134	EB-2011-0038, Exh. B1.3
20	Margin	15,829	16,753	EB-2011-0038, Exh. B1.3
21	Margin vs. Forecast		924	EB-2011-0038, Exh. B1.3
22	Ratepayer Share		657	EB-2011-0038, Exh. B1.3
Adjustments to Costs:				
23	Long-term storage fixed costs		-1,662	Schedule 3, Line 15
24	Adjusted Costs		2,472	Line 19 + Line 23
25	Adjusted Margin		18,415	Line 18 - Line 24
26	Adjusted Margin vs. Forecast		2,586	Line 25 - Line 20 (Year 2007)
27	Ratepayer Share		1,839	Line 26 x 79% x 90%
28	Change in Ratepayer Share		1,182	Line 27 - Line 22

TAB 14



ONTARIO ENERGY BOARD

FILE NO.: EB-2011-0038

VOLUME: Technical Conference

DATE: July 26, 2011

THE ONTARIO ENERGY BOARD

IN THE MATTER OF the Ontario Energy Board
Act, 1998, S.O. 1998, c. 15, (Schedule B);

AND IN THE MATTER OF an Application by Union
Gas Limited for an Order or Orders amending
or varying the rate or rates charged to
customers as of October 1, 2011.

Hearing held at 2300 Yonge Street,
25th Floor, Toronto, Ontario,
on Tuesday, July 26th, 2011,
commencing at 9:30 a.m.

TECHNICAL CONFERENCE

A P P E A R A N C E S

KRISTI SEBALJ	Board Counsel
HEMA DESAI	Board Staff
TINA LI	
CRAWFORD SMITH	Union Gas Distribution Ltd.
MARK KITCHEN	
CHRIS RIPLEY	
JULIE GIRVAN	Consumers Council of Canada (CCC)
PETER THOMPSON	Canadian Manufacturers & Exporters (CME)
DAVID MacINTOSH	Energy Probe Research Foundation
DWAYNE QUINN	Federation of Rental-housing Providers of Ontario (FRPO)
JASON F. STACEY	Intervenor
RANDY AIKEN	London Property Management Association (LPMO)
VALERIE YOUNG	Industrial Gas Users Association (IGUA)
JAMES GRUENBAUER	The Corporation of the City of Kitchener
MICHAEL BUONAGURO	Vulnerable Energy Consumers Coalition (VECC)
ALSO PRESENT:	
JOHN ROSENKRANZ	CME, FRPO, Kitchener

I N D E X O F P R O C E E D I N G S

<u>Description</u>	<u>Page No.</u>
--- On commencing at 9:30 a.m.	1
Appearances	3
UNION GAS - PANEL 1	5
G. Tetreault, P Elliott, L. Vienneau	
Questions by Mr. Thompson	5
Questions by Ms. Li	32
Questions by Mr. Quinn	46
--- Recess taken at 11:17 a.m.	48
--- On resuming at 11:39 a.m.	48
UNION GAS - PANEL 2	48
R. Feingold, P Elliott, M. Isherwood, C. Cameron	
Questions by Mr. Thompson	48
Questions by Mr. Quinn	55
Questions by Mr. Gruenbauer	68
Questions by Mr. Quinn	78
--- Whereupon the conference concluded at 12:57 p.m.	90

E X H I B I T S

Description

Page No.

NO EXHIBITS WERE FILED IN THIS PROCEEDING.

U N D E R T A K I N G S

<u>Description</u>	<u>Page No.</u>
UNDERTAKING NO. JTC1.1: TO ANSWER QUESTION 6 FROM ADDITIONAL QUESTIONS FOR UNION GAS.	10
UNDERTAKING NO. JTC1.2: TO BREAK OUT ATTACHMENT AT B3.18 FOR 2010 INTO EXISTING INCREMENTAL STORAGE ADDITIONS AND PURCHASED STORAGE.	18
UNDERTAKING NO. JTC1.3: TO PROVIDE UPDATE TO EXHIBIT B1.23, ATTACHMENT 2, THE DEFERRAL ACCOUNT RECONCILIATION OF SPOT GAS VARIANCE 179- 107.	39
UNDERTAKING NO. JTC1.4: TO ADVISE ON STATUS OF RECONCILIATION POLICY OR PROCEDURE	41
UNDERTAKING NO. JTC1.5: TO BREAK OUT STORAGE OPERATIONS INTO WHATEVER COMPONENTS ARE CONTAINED IN EXHIBIT B2.7.	47
UNDERTAKING NO. JTC1.6: TO VERIFY IF ANY LOANS WERE TO MICHCON OR DTE	59
UNDERTAKING NO. JTC1.7: TO EXPLAIN THE DIFFERENCE BETWEEN THE 3.4918 GJS PER MONTH AND THE 2.334 GJS PER MONTH REFERRED TO IN B1.26, AND THE REASON FOR THE ACQUISITION OF THE GAS AT THE 3.4918 GJS PER MONTH.	88

1 three or four confidential answers, in any event, and I
2 think they were to Board Staff questions, so maybe we can
3 just deal with that at the end.

4 MS. SEBALJ: I think that's right. So to the extent
5 there are any questions, if we could deal with them at the
6 end, and then determine whether any parties who are in the
7 room -- any intervenors who are in the room that wish to
8 sign a declaration and undertaking, then we can deal with
9 it then.

10 I understand Mr. Thompson has volunteered to go first.

11 **UNION GAS - PANEL 1**

12 **Greg Tetreault**

13 **Pat Elliott**

14 **Linda Vienneau**

15 **QUESTIONS BY MR. THOMPSON:**

16 MR. THOMPSON: Yes. Thanks a lot, Kristi. Mr. Quinn
17 circulated some written questions in preparation for this
18 technical conference. Maybe we could start with some of
19 those. Do you have written responses for these or are you
20 just going to read them into the record?

21 MR. SMITH: We don't have written responses to these
22 questions, so we will have to take the questions orally.
23 We don't, as I understand it, have an answer at this stage
24 to the final question, and we will have to provide that by
25 way of undertaking.

26 We also are not prepared to answer the third and
27 fourth questions, but do have answers, with the exception
28 of number 8, to the other questions. So if you want to

1 just go down the list, Mr. Thompson, and it's satisfactory
2 to you, I will just put the first question to the panel and
3 we will get the answer.

4 MR. THOMPSON: Sure. That's fine. You go ahead.

5 MR. SMITH: Panel, in the first question, it asks: In
6 Exhibit B3.16, Union states -- reports that the third-party
7 storage costs paid in 2010 were 10.7 million and the return
8 on purchased assets as 6.6 million. These costs sum to
9 17.3 million. Please reconcile this 17.3 million with the
10 incremental storage amount of 18.27 million shown on line 8
11 of Exhibit B3.53. Do we have an answer for that question?

12 MS. ELLIOTT: Yes, the 18.727 million includes the
13 10.7 million of third-party purchase costs. It also
14 includes \$8 million of resource optimization costs.

15 MR. SMITH: Question 2 asked to --

16 MR. THOMPSON: Sorry, just -- so where is the
17 6.6 million?

18 MS. ELLIOTT: It's included in the return number, so
19 if you looked at schedule -- in the prefiled evidence, if
20 you look at Exhibit A, tab 1, schedule 6, page 2 of 2, the
21 return at line 12.

22 MR. THOMPSON: Sorry, Exhibit A, tab 1?

23 MS. ELLIOTT: Schedule 6.

24 MR. THOMPSON: Schedule 6? Right.

25 MS. ELLIOTT: The return at line 12 of 16,263,000
26 includes the 6.6 million of return on purchased assets.

27 MR. THOMPSON: Sorry, Exhibit A, tab 1, schedule 6?

28 MS. ELLIOTT: Page 2 of 2.

1 MR. THOMPSON: Page 2. All right. And that is a
2 component of line 7 on the previous page?

3 MS. ELLIOTT: That is correct, yes.

4 MR. THOMPSON: All right. Thank you.

5 MR. QUINN: Is this the best way to handle it, if I
6 may ask, Mr. Smith, in terms of us understanding the
7 answers at each of the respective questions?

8 MR. SMITH: Yes, that's fine, Mr. Quinn.

9 MR. QUINN: What I heard, Ms. Elliott, you to say that
10 there was \$8.9 million cost of resource optimization. Can
11 you clarify what is included in that?

12 MS. ELLIOTT: Those are generally costs for resource
13 gas loans, gas loans that we enter into to create storage
14 capacity.

15 MR. QUINN: So these loans, you are having to invest
16 money to loan gas to create a cost; is that...

17 MS. ELLIOTT: That's correct. It's a cost we incur to
18 create storage space.

19 MR. QUINN: But what does that look like? If you loan
20 people gas, you are paying them to take your gas for a
21 while so you create space?

22 MS. ELLIOTT: That's correct.

23 MR. QUINN: Are any of these loans to affiliates?

24 MS. ELLIOTT: I can't answer that; I don't know.

25 MR. QUINN: How is the cost determined?

26 MS. ELLIOTT: That's also a question that I can't
27 answer.

28 MR. THOMPSON: Can you undertake to answer it?

1 MS. ELLIOTT: I think the next panel can answer that
2 question.

3 MR. THOMPSON: Oh, I see. Well, tell us that, please.

4 MS. ELLIOTT: Sorry.

5 MR. THOMPSON: Thank you.

6 MR. QUINN: Okay. So we will come back to the next
7 panel on that. But I want to be clear about it. Is that
8 the totality of these resource optimization costs, or are
9 there other costs besides gas loans?

10 MS. ELLIOTT: That would also be a question for the
11 next panel.

12 MR. QUINN: Okay. Thank you.

13 MR. SMITH: Question No. 2 asked to confirm that the
14 10.7 million is the actual amount paid to third-party
15 storage operators for storage services in 2010. Do we have
16 a --

17 MS. ELLIOTT: That's correct, yes.

18 MR. SMITH: Question 3 asked to provide the return on
19 purchase assets that were included in the storage deferral
20 account margin calculations for 2008 and 2009, and given
21 the nature of the proceeding, we won't be answering that
22 question.

23 Question 4 asked to prepare the costs for 2008 and
24 2009 as requested, indicating that the issue of relevance
25 can be addressed later, and in our view, for the same
26 reason, given the nature of the proceeding, we won't be
27 answering that question, as well.

28 Question 5 asks for - 5(a):

1 "Please provide the requested response of
2 B3.54(d) relating to the post-tax hurdle rate."

3 And do we have an answer to that? Sorry, we are not
4 answering that, as well.

5 5(b):

6 "Was the post-tax hurdle rate applied only to new
7 investments? Very specifically, was this hurdle
8 rate applied to existing assets deemed non-
9 utility at the time of separation?"

10 MS. ELLIOTT: The post-tax hurdle rate was applied
11 only to new incremental investments and not the existing
12 assets at the time of the separation.

13 MR. SMITH: Question 6, I had earlier indicated that
14 we need more time with question 6, so we will provide an
15 answer to that in writing. So we are happy to undertake to
16 do that, but we don't have that today.

17 Question 7:

18 "What was the total revenue Union received from
19 market hub partners Canada LP and Huron Tipperary
20 Storage Limited Partnership for M16
21 transportation service in 2010?"

22 MS. ELLIOTT: The revenue from the market hub partners
23 contract was 185,000, and their revenue from the Huron
24 Tipperary contract was 118,000.

25 MR. SMITH: And question 8:

26 "If Union had not developed any new non-utility
27 storage assets after the end of the NGEIR
28 decision or required any additional third-party

1 storage contracts, would the demand O&M cost used
2 for the long-term deferral calculation for 2010
3 be equal to the 2007 forecast amount? If not,
4 please explain."

5 And on the basis that the question is purely
6 hypothetical, given that non-utility storage assets were,
7 in fact, developed, and additional third-party storage
8 contracts were, in fact, acquired, we are not prepared to
9 answer that question either.

10 MS. SEBALJ: Sorry, Mr. Smith, just so that I am
11 clear, I thought you said that you were going to give an
12 undertaking to answer Question 6, but then I thought the
13 panel answered it.

14 MR. SMITH: No, I -- sorry, the panel answered
15 Question 7, what was the total revenue Union received.

16 We will give an undertaking for 6; 7, the panel
17 answered, and 8, we are not prepared to answer.

18 MS. SEBALJ: All right. So if I could just mark that
19 as JTC1.1, which is an undertaking to answer Question 6
20 from the additional questions for Union Gas in preparation
21 for the technical conference, which was provided by Mr.
22 Quinn, I believe. Thank you.

23 **UNDERTAKING NO. JTC1.1: TO ANSWER QUESTION 6 FROM**
24 **ADDITIONAL QUESTIONS FOR UNION GAS.**

25 MR. QUINN: If I may, I am going to provide it this
26 way: Question 8, to the extent that I can clarify, then
27 hopefully there will not be a hypothetical aspect to this.

28 What I am hearing is of course that there was third-

1 party storage contracts and there were new storage assets,
2 so what demand O&M costs -- what other factors contributed
3 to an increase in demand O&M costs, beyond those two
4 aspects?

5 MS. ELLIOTT: One of the primary drivers of the
6 increased cost was the change in accounting that was
7 required after the NGEIR decision. Costs that under the
8 utility operation were previously capitalized as indirect
9 overhead costs are now expensed under the non-utility O&M
10 costs. There would also be salary and benefit costs
11 increases over that time that weren't related to new
12 development.

13 MR. QUINN: So if it had stayed as utility assets,
14 would these accounting changes be required?

15 MS. ELLIOTT: Under utility accounting, we have the
16 approval to capitalize indirect overhead costs to rate
17 base. That's not allowed under non-utility accounting.

18 MR. QUINN: Okay. That's very helpful. Thank you.

19 MR. THOMPSON: I guess it's back to me.

20 Was the date of the NGEIR decision November 2006?
21 Have I got that straight?

22 MS. ELLIOTT: Yes.

23 MR. THOMPSON: And am I right that the settlement
24 agreement with respect to the 2007 rates preceded the NGEIR
25 decision?

26 Let me back up. Were the 2007 rates base rates?

27 MR. TETREAULT: Yes.

28 MR. THOMPSON: And can you recall whether the -- when,

1 in relation to the settlement of those rates, the NGEIR
2 decision was rendered? Was it before or after?

3 MR. TETREAULT: I can't recall myself, Peter. It's
4 before my time in my current capacity.

5 MR. THOMPSON: That's fine. We will find that out.
6 So what I would like to do is just touch on a few of these
7 interrogatory responses and get some clarification of
8 what's taken place here.

9 If you could start with CME 1, so this is Exhibit
10 B2.1. In subparagraph (a), you are talking about an
11 adjustment to correct miscalculations in the UDC deferral
12 account; have I got that straight?

13 MR. TETREAULT: That's correct.

14 MR. THOMPSON: And it talks about the period April 1,
15 2007 to December 31, 2009. So can I take it that the error
16 dated back to April 1, 2007?

17 MR. TETREAULT: Yes.

18 MR. THOMPSON: All right. And the approach that you
19 took was to correct the error from the date it was first
20 made?

21 MR. TETREAULT: That's correct.

22 MR. THOMPSON: So it was made in -- at this point in
23 time, for -- am I right -- for fiscal 2007, fiscal 2008 and
24 fiscal 2009? The 1.931 million is a cumulative correction
25 for that time frame?

26 MR. TETREAULT: That's correct.

27 MR. THOMPSON: So that, then, takes me to your B3.53
28 and some of your responses to Mr. Quinn's written questions

1 where you are refusing to provide numbers for 2008 and 2009
2 for what we say are incorrect calculations of margins.

3 I appreciate you saying you are not going to do it and
4 we will have to get an order to compel you to do it. But
5 my question is: Can the calculations be done? I assume
6 they can.

7 MS. ELLIOTT: Yes, the calculations can be done.

8 MR. THOMPSON: And so if the Board orders it, we will
9 have from you your calculations for 2008 and 2009 of
10 correcting for the miscalculated -- what we say are
11 miscalculations of the third-party storage costs,
12 miscalculations of the return on incremental investment and
13 the misallocation of the O&M cost, the fixed O&M cost to --
14 characterized as O&M costs to short-term storage.

15 All those corrections can be provided if you are
16 ordered to provide them?

17 MR. SMITH: Well, Mr. Thompson, certainly if the Board
18 orders us to answer the questions, the questions will be
19 answered to the best of Union's ability. Obviously we
20 don't accept your characterization of the questions and,
21 similarly, don't agree with the relevance of the questions.

22 Not only is this proceeding intended to deal with 2010
23 deferral accounts, but you will of course recall that the
24 settlement agreement agreed to by your client was
25 specifically on the basis that it would deal with 2010
26 going forward and would not have any impact on prior years.

27 MR. THOMPSON: Right. Well, I understand your
28 position, but it is a position that did not apply to the

1 corrections that you made in response to -- well, which are
2 described in B2.1.

3 MR. SMITH: If you are looking for intellectual purity
4 on that point, we can make the number smaller.

5 MR. THOMPSON: Well, we will see what the Board says
6 about purities and impurities later. As you know, we are
7 always on the side of the angels.

8 MR. SMITH: No doubt.

9 MR. THOMPSON: So the sabres are drawn. Just to
10 follow up on that a little bit, if you would go to Exhibit
11 B3.15, this, as I understand it, displays how you calculate
12 the return on purchased assets for third-party storage
13 costs. Have I got that straight?

14 MS. ELLIOTT: That's correct, yes.

15 MR. THOMPSON: And that number is \$6,630,000 in
16 calendar 2010. Am I reading that right in B3.15?

17 MS. ELLIOTT: Yes.

18 MR. THOMPSON: And then it's derived from some asset
19 names that are shown on the left-hand part of this
20 interrogatory?

21 MS. ELLIOTT: Yes.

22 MR. THOMPSON: And are there contracts for each of
23 these assets?

24 MS. ELLIOTT: Yes.

25 MR. THOMPSON: And so what is the MichCon gateway
26 asset?

27 MS. ELLIOTT: These are questions you should probably
28 also pose to the next panel.

1 MR. THOMPSON: Can anybody on this panel give me a
2 high-level description of the MichCon gateway asset with
3 the contract starting May 2010?

4 MS. ELLIOTT: My understanding is it's a storage
5 contract with MichCon.

6 MR. THOMPSON: All right. Can that contract be
7 produced or is that confidential?

8 MR. SMITH: Well, certainly the contract is
9 confidential. Let me reflect on your question and I will
10 let you know when panel 2 comes up.

11 MR. THOMPSON: All right. Well, I would accept
12 production under the auspices of the confidentiality
13 undertaking certainly at this stage.

14 MR. QUINN: Can I just ask a question, Peter, if I
15 may, so I can understand which questions I may ask of this
16 panel?

17 MR. THOMPSON: Sure.

18 MR. QUINN: Who else besides Mr. Feingold will be on
19 the next panel?

20 MR. SMITH: It will be Carol Cameron, Mark Isherwood
21 and Pat Elliott.

22 MR. QUINN: Thank you.

23 MR. THOMPSON: Just before I leave that, I think Staff
24 asked you in one of their interrogatories about a status
25 report on the Dawn Gateway Pipeline. Are there any updates
26 to provide to the information you provided in response to
27 that interrogatory?

28 MR. SMITH: I think the answer is no. If Mr.

1 Isherwood has any further information, we will let you know
2 in the next panel.

3 MR. THOMPSON: All right, thank you. So back to the
4 C-10 in-service amount. The total annual amount for in-
5 service for each of these assets I believe is shown in the
6 second-last column?

7 MS. ELLIOTT: That's correct, yes.

8 MR. THOMPSON: And so, for example, on the last asset,
9 MichCon Gateway, the total annual amount is 1 -- is that
10 \$1,088,000?

11 MS. ELLIOTT: Yes.

12 MR. THOMPSON: And for the C-10 in-service amount,
13 it's 725,000, and I presume that's because the contract
14 start date is May 2010? It's only for part of the year?

15 MS. ELLIOTT: That's correct.

16 MR. THOMPSON: And so am I correct, we could derive
17 the number equivalent to 6630 for calendar 2010 for prior
18 years by just using the contract start dates in the second
19 column and the total annual amount in the second-last
20 column?

21 MS. ELLIOTT: Yes, you can.

22 MR. THOMPSON: So if one did that, that would give us
23 the equivalent of 6.6 million for years 2008 and 2009?

24 MS. ELLIOTT: Yes.

25 MR. THOMPSON: Thanks.

26 Now, on Exhibit -- if you just, then, jump to Exhibit
27 B3.18, this is dealing with the incremental rate of return
28 for storage investments made subsequent to the Board's

1 NGEIR decision, and if you go to the second page of this
2 exhibit, I think we see at line 2 the difference between
3 the return -- sorry, at lines 1 and 2, the return used in
4 each of the filings in '08 and '09 and 2010, compared to
5 the return that would result by applying the Board-approved
6 rate of return; am I right?

7 MS. ELLIOTT: Yes, that's what lines 1 and 2
8 represent.

9 MR. THOMPSON: Thank you.

10 MS. ELLIOTT: The difference here is this is total
11 storage, so this is existing storage, incremental storage
12 and purchased assets in the calculation of this number.

13 So it's not incremental to the 6.6 million.

14 MR. THOMPSON: Well, if we were correcting for the --
15 as we say, one should correct for the margin calculation in
16 2008, would -- is the comparable number -- well, the 2010
17 number is 10.968 million; is the comparable number for 2008
18 5.638 million?

19 MS. ELLIOTT: That's the Board-approved rate of return
20 on existing storage, incremental storage additions and
21 purchased storage.

22 MR. THOMPSON: All right. So can it be broken out
23 between the three? Can this exhibit be broken out between
24 the three components that you have just described? And if
25 so, would you undertake to do that?

26 MR. SMITH: We won't undertake to do it. The question
27 is: Can it be done?

28 MS. ELLIOTT: It can be done.

1 MR. THOMPSON: All right. Thank you.

2 MR. QUINN: If I may, to follow-up on that, can it be
3 done for 2010?

4 MR. SMITH: I think the answer was it can be done for
5 every year.

6 MS. ELLIOTT: It can be done for all of the years,
7 including 2010.

8 MR. SMITH: But we are not prepared to do it.

9 MR. QUINN: You are not prepared to provide a break-
10 out for us to understand the 2010 allocation of costs
11 before margin-sharing?

12 MR. SMITH: We will do it for -- well, we will do it
13 for 2010.

14 MR. QUINN: Thank you.

15 MR. THOMPSON: So that's an undertaking?

16 MR. SMITH: In respect of 2010, yes.

17 MR. THOMPSON: Correct.

18 MS. SEBALJ: So it's JTC1.2, which is to break out the
19 attachment at B3.18 for the year 2010 into existing
20 incremental storage additions and purchased storage?

21 Correct?

22 **UNDERTAKING NO. JTC1.2: TO BREAK OUT ATTACHMENT AT**
23 **B3.18 FOR 2010 INTO EXISTING INCREMENTAL STORAGE**
24 **ADDITIONS AND PURCHASED STORAGE.**

25 MR. SMITH: Mr. Thompson, obviously this is a point
26 that will have to be debated at later time. But you have
27 used the word "correct" a number of times.

28 Of course we obviously -- unlike in B2.1, where

1 everyone agrees on the methodology, but there was, in fact,
2 an error in the calculation of the number -- we don't
3 accept that the methodology Union has used in any year, let
4 alone 2010, 2009, 2008, is in any respect incorrect.

5 Obviously you don't agree with that, but it's
6 important, I think, that for the purposes of the record, we
7 disagree with your characterization of the dispute between
8 us.

9 MR. THOMPSON: Yes, thank you. I understand your
10 position.

11 Now, the other item that we identify in the prefiled
12 evidence is the short-term storage margin calculation,
13 where there is an allocation of -- in 2010, of \$1.662
14 million to short-term that we say properly belongs with
15 long-term, and I know you disagree with that.

16 But do we have in the record the equivalent numbers to
17 that number for '08 and '09?

18 MR. SMITH: Well, you may want to -- let's just ask
19 the panel that question. I don't -- I am not sure of the
20 answer.

21 MS. ELLIOTT: If I can refer to the \$2.261 million as
22 the total charge or the total O&M cost for short-term
23 storage, that number is consistent across all years. So
24 '08, '09 and -- those costs are included in the short-term
25 deferral for all three years.

26 Union is selling that space, that excess utility
27 space, short-term. That's the difference between the 92
28 PJs and the 100 PJs that the Board required set aside in

1 the NGEIR decision.

2 MR. THOMPSON: Okay. So if we are right on the 1.662,
3 it's the same number for each of the three years?

4 MR. SMITH: The answer to your question is yes, except
5 I don't think, based on the witness' answer, that the 1.6
6 is the correct number.

7 Maybe I can just have the panel explain that.

8 MS. ELLIOTT: You have calculated the 1.6 as the
9 difference between the Board-approved short-term O&M pre-
10 NGEIR and what I would say is the cross-charge for the
11 short-term storage space that we calculated post-NGEIR.

12 The \$2.261 million is consistent across all years.
13 You can subtract the -- 569,000, I think, was the number,
14 and get the same answer for all three years.

15 MR. THOMPSON: So was that different than what I said?

16 MS. ELLIOTT: It's our view that the 2,261,000 is the
17 right number for short-term O&M costs.

18 MR. THOMPSON: All right. Well, we will let Mr.
19 Rosenkranz help us with that.

20 Okay. Now, back to CME interrogatories. If you could
21 look at B2.6, subparagraph (b), and this may not be your
22 panel, but am I correct that I should read the answer in
23 (b) to mean that Black & Veatch was not asked to review
24 whether your calculations of margins was appropriate?

25 MR. SMITH: I'm sorry, which question are you on Mr.
26 Thompson?

27 MR. THOMPSON: B2.6, page 2, subparagraph (b). They
28 say they weren't required to review the storage deferral

1 account data for 2010. I just want to nail down the scope
2 of their mandate with respect to these margin calculations.
3 Is that something that was in the ambit of their mandate or
4 not within the ambit of their mandate?

5 MR. SMITH: We will ask Mr. Feingold. I think the
6 answer is that given the timing of their retainer, they
7 were not in a position to provide that, but we will let Mr.
8 Feingold answer that.

9 MR. THOMPSON: Thank you. The last area I want to
10 question, it's really related to the -- I am trying to
11 understand how you folks calculate O&M costs for the
12 purposes of the allocation to non-utility storage in each
13 year. And it's -- I am trying to understand how you build
14 up your non-utility demand O&M costs.

15 Can someone give me an explanation, 25 words or less,
16 as to how you do it?

17 MS. ELLIOTT: I don't know about the 25 words or less,
18 but let me try. So we have O&M costs for the storage
19 operations that we look at, and those costs are essentially
20 captured on an asset-by-asset basis. So the O&M costs for
21 each of the corresponding assets is allocated consistent
22 with the asset allocation.

23 So any new incremental assets post NGEIR are 100
24 percent non-utility, and any O&M costs for the assets
25 existing at the time of the separation are allocated in
26 proportion to the asset.

27 So if it's a storage pool, it's allocated consistent
28 with the pool assets.

1 MR. THOMPSON: For the purposes of building up your
2 allocation, do you start with the O&M costs, total O&M
3 costs, as of the base year?

4 MS. ELLIOTT: If by base year you are referring to
5 2006 or 2007, no.

6 MR. THOMPSON: 2007, right.

7 MS. ELLIOTT: No. We look at O&M costs for the year
8 in question. So 2010 costs will be allocated -- again, if
9 the pool was existing at the time of the separation, the
10 costs are allocated consistent with the assets. If the
11 pool was new post NGEIR, then it's 100 percent unregulated.

12 MR. THOMPSON: And this approach gets carried forward
13 to the long-term storage margin calculation; right?

14 MS. ELLIOTT: That's correct, yes.

15 MR. THOMPSON: So what you are doing is you are not
16 confining the O&M calculation to the base year amount plus
17 an O&M amount attributable to incremental assets only. You
18 are doing it afresh each year?

19 MS. ELLIOTT: That's correct.

20 MR. THOMPSON: Is that compatible with IRM rates?

21 MS. ELLIOTT: We are dealing with actual operating
22 expenses every year we file, so our utility earnings are
23 based on actual utility operating costs and our storage
24 earnings are based on actual storage operating costs.

25 MR. SMITH: And deferrals are cleared based on
26 actuals.

27 MR. THOMPSON: I am just trying to understand what you
28 are doing. I am not criticizing it yet.

1 MR. SMITH: All in good time, Mr. Thompson.

2 MR. THOMPSON: Yes, all in good time. You are taking
3 -- I don't know if this is the way to put it, but it's an
4 earnings-sharing type of approach to the margin calculation
5 in each year?

6 MS. ELLIOTT: For the storage deferral, yes, it's
7 calculated actual revenues, actual costs for the year, just
8 the same as the utility earnings sharing calculation is
9 done, yes.

10 MR. THOMPSON: Okay, that helps me understand that. I
11 think that's all the questions I have. Thank you very
12 much, panel.

13 MR. SMITH: Thank you.

14 MR. QUINN: If I may start with the last question Mr.
15 Thompson was talking about, what I understood your answer
16 to be is that what was attracted as costs into the long-
17 term storage margin count are actual utility costs.

18 To the extent that your allocator has -- let me start
19 with that. When you said the existing assets are
20 allocated, is that on the basis of plant allocator you were
21 speaking? Is that the allocator you were speaking of?

22 MS. ELLIOTT: Yes.

23 MR. QUINN: So that allocator stayed constant over the
24 period since base rates were established?

25 MS. ELLIOTT: Yes. Once the base assets were
26 separated in 2007, those pools are split 37 percent non-
27 utility with the remainder going to the utility. That's
28 the allocator for the O&M for those pools, as well, and

1 there won't be a change to that allocator.

2 MR. QUINN: So, again, dealing with how you described
3 it here, what costs would change between base rates and
4 actual just for the demand portion? I understand the
5 activity portion of O&M costs are tied to the amount of
6 actual activity, but your non-utility demand O&M, what
7 would increase that costs? If the allocator stays the
8 same, what other costs -- besides incremental demand costs
9 associated with new assets, what other costs may go into
10 that calculation?

11 MS. ELLIOTT: The allocator may stay the same, but the
12 base costs would increase. So salary and wages over the
13 years will have increased. We are taking the same
14 percentage of a higher cost that will result in an increase
15 in the non-utility storage costs.

16 MR. QUINN: So would there be any transfers from
17 utility to non-utility between base rates and the
18 calculation of the non-utility demand O&M cost?

19 MR. SMITH: I am not sure I understand the question,
20 Mr. Quinn.

21 MR. QUINN: I am framing it specifically as non-
22 utility demand O&M. Would there be any shifts of costs
23 from utility to non-utility that would occur between the
24 establishment of base rates and this calculation for the
25 purposes of defining how much margin is available?

26 MS. ELLIOTT: I don't think that's likely, given the
27 base allocation -- the base costs are allocated in the same
28 percentage as the total cost increase that the result --

1 the answer will increase, but there won't be a shift in --
2 all incremental activity related to the unregulated storage
3 operation is assigned directly to the non-utility
4 operation.

5 So I am not sure that I can see a situation where you
6 would have a shift in costs between the utility and the
7 non-utility for those base storage operations.

8 MR. QUINN: My colleague was assisting with
9 terminology.

10 So fixed is fixed in terms of absolute dollars; is
11 that what you are saying?

12 MS. ELLIOTT: Fixed is fixed in terms of percentage
13 allocation. It's either allocated in percentage of the
14 existing asset or it's directly assigned if it's new, but
15 the dollar value will depend on what the base dollars the
16 allocator is applied to.

17 MR. QUINN: Now, I am going to try to defer some of my
18 questions to the next panel as I have tried to understand
19 them, but I will ask the questions and if the next panel is
20 the appropriate panel to ask, then I will come back to it.

21 I just want to turn up again the Board Staff
22 Interrogatory B1.26.

23 MS. ELLIOTT: Okay.

24 MR. QUINN: In your response in the third paragraph,
25 it states that the average unit cost in the deferral
26 account calculation to calculate the credit was \$3.49 per
27 gJ per month.

28 Then there is the cost that -- what I understand is

1 2.33 is the demand cost that the Dawn-Trafalgar lines would
2 represent; is that accurate?

3 MS. ELLIOTT: That's the unit rate calculated relative
4 to the cost, as well as the demand charge on the Trafalgar
5 system in the 2007 rate case.

6 MR. QUINN: So is there anything else besides demand
7 in that unit rate?

8 MS. ELLIOTT: Not that I am aware of.

9 MR. QUINN: So I guess the question that I have is:
10 Why was the contract purchased at a cost of \$3.50 when your
11 own costs were \$2.33?

12 MS. ELLIOTT: That's not a question I can answer.

13 My understanding is the capacity on our system didn't
14 exist at the time we were looking for this capacity, so it
15 had to be purchased.

16 MR. QUINN: Who was it purchased from?

17 MS. ELLIOTT: I believe it was TransCanada.

18 MR. QUINN: And it was purchased through an open
19 season, was it?

20 MS. ELLIOTT: I can't answer it.

21 MR. QUINN: Okay. Is that the next panel?

22 MS. ELLIOTT: Possibly.

23 MR. QUINN: And it was purchased -- well, okay.
24 Short-term, I will ask the next panel.

25 Okay. I guess I will move on, then.

26 And this may be my fundamental misunderstanding with
27 Union north, but why, again, is the -- sorry in the fourth
28 paragraph, it says these costs are recovered from customers

1 in the north storage rates. They are being recovered on a
2 storage rate but not a transmission rate, even though this
3 is a pipe.

4 Can you just help us with a fundamental understanding
5 of why that is?

6 MR. TETREAULT: Well, for the north, Mr. Quinn, the
7 Dawn-Trafalgar system is used to move gas to storage and
8 out of storage to meet north requirements, so we treat that
9 for the north as a storage cost, and therefore that storage
10 cost is in storage rates for those customers.

11 MR. QUINN: Well, maybe I will get my education in the
12 rebasing and you can help me with that, Mr. Tetreault.

13 I think I will move on, then, to FRPO's
14 interrogatories, if you can turn up Interrogatory 3.14.
15 Thank you.

16 The increment of net plan between 2008 and 2009 is
17 quite significant, and yet your gas inventory actually
18 decreased. Can you help us with the reasons why that
19 decreased?

20 MS. ELLIOTT: Price fell.

21 MR. QUINN: So are the number -- did the number of
22 units increase?

23 MS. ELLIOTT: No.

24 MR. QUINN: I guess that wasn't the answer I was
25 expecting.

26 So you had an increment in storage capacity as part of
27 that net plant addition, or the overall gross plant
28 addition, for that matter, where you have gone up by 50

1 percent, but your inventory units did not increase?

2 MS. ELLIOTT: This is the unregulated rate base. We
3 don't hold inventory for our ex-franchise, our market-based
4 services. This will be an allocation of inventory from the
5 2007 cost study that likely reflects a small piece of
6 deliverability inventory, but there has been no incremental
7 inventory requirement on the unregulated side.

8 MR. QUINN: Said another way, then, cushion gas or
9 minimum storage balances that third parties require, the
10 non-utility business does not pay for any kind of minimum
11 storage balance?

12 MS. ELLIOTT: Well, let's be clear. Cushion gas is
13 part of gross plant, so to the extent that there were new
14 pools that required cushion gas, that will be in line 1.

15 Any additional inventory requirements that the
16 customers are required to hold as a result of their
17 contracts are not part of the rate base for the non-utility
18 operation.

19 MR. QUINN: So if you are dealing ex-franchise, you
20 don't have any minimum volume requirements for space that
21 is sold in the market?

22 MS. ELLIOTT: We don't hold inventory for those
23 customers. They would hold it themselves if there is
24 contractual requirements for inventory levels. It would be
25 the customer's cost.

26 MR. QUINN: Okay. So then maybe just -- is there a
27 minimum requirement for the ex-franchise storage contracts?

28 MS. ELLIOTT: I don't know. That would be a question

1 for the next panel.

2 MR. QUINN: Just a follow-up, so -- I think this will
3 be efficient if I can ask an additional question there.

4 Are those weighted average cost of gas numbers for
5 inventory or year-end numbers?

6 MS. ELLIOTT: Rate base is an average of the monthly
7 averages calculation, just like the utility calculation of
8 rate base.

9 MR. QUINN: Thank you.

10 Mr. Thompson has canvassed 3.15 sufficiently; if we
11 can turn the next one, to B3.16, I guess I somewhat need to
12 understand or have you turn up 3.53 also. So I think our
13 supplemental questions answered some of what we are trying
14 to ask here, but I just want you to help me with that
15 number again.

16 If I am understanding the number, which you call in
17 3.53 restated to exclude reductions, that is the actual
18 total gross revenue that was received for the non-utility
19 storage?

20 MS. ELLIOTT: That's correct, yes.

21 MR. QUINN: So the numbers that are shown here, 87,
22 that was a net revenue number?

23 MS. ELLIOTT: That's correct.

24 MR. QUINN: And has that practice been consistent
25 through the period since Board-approved rates?

26 MS. ELLIOTT: Yes.

27 MR. QUINN: Was that consistent with the 2007 cost
28 study?

1 MS. ELLIOTT: I am not sure in the 2007 forecast
2 whether we had costs for third-party purchased assets or
3 resource gas loans. I suspect not. So the forecast in '07
4 would have been the gross revenue from Union-owned assets.

5 MR. QUINN: So you had no third-party storage
6 contracts in 2007? I am thinking of Black Creek.

7 MS. ELLIOTT: Yes. We only had -- Black Creek was one
8 example of third-party storage contract that existed prior
9 to the NGEIR decision. I think the cost of that contract
10 is in our utility cost of gas.

11 MR. QUINN: I think I understand the answer
12 sufficiently. Thank you. I think, again, some of our
13 supplemental questions have answered outstanding issues.
14 If you can turn up 3.22?

15 Maybe the best way of asking this is, in 3.22, we are
16 trying to understand deliverability, because it's not clear
17 to us in some areas. Can we expect that the undertaking
18 that Union has agreed to answer question 6 of our
19 additional questions last week, will that be all four parts
20 of -- (a), (b), (c) and (d)? Can we expect a response to
21 those questions?

22 MR. SMITH: Just a moment, Mr. Quinn. I am just
23 looking at your B3.32. We are just pausing over (c). I am
24 going to have to talk to the next panel and find out. They
25 would be the people providing the answer, in any event.

26 MR. QUINN: I think what I would do, in terms of
27 making sure I go through my questions, I am going to go
28 through the rest of the questions, which are only a few,

1 and see if the next panel can answer them or if Mr.
2 Thompson has canvassed them sufficiently for everyone's
3 interest. Those are my questions for now. Thank you.

4 MR. SMITH: Thank you.

5 MR. THOMPSON: Can I just ask one more, folks? It
6 relates to -- the easiest way to introduce this is if you
7 look at Mr. Rosenkranz's responses to Staff
8 interrogatories? And I am looking at Board Staff
9 Interrogatory No. 1.

10 On the second page, he expresses the view as to the
11 return the company is entitled to under the NGEIR decision.
12 This is the return on the unregulated side of the business.

13 And the question I wanted to ask, and I forgot to ask,
14 was this. In the 2010-0039 proceeding, which was the case
15 dealing with 2009 deferral account balances, Union filed an
16 attachment to an interrogatory response. It was Exhibit
17 B3.41, and it was in response to a question about the rate
18 of return on unregulated storage. And the calculation was
19 38.91 percent, if you would take that subject to check, and
20 it assumed, as I recall it, 50 per sharing of long-term
21 premiums.

22 What I wanted to ask was: Could Union provide the
23 comparable calculation for 2010, as well as 2008; and then
24 the second is: Will Union provide it?

25 MR. SMITH: Well, Mr. Thompson, you will recall, I
26 think, that the answer that you have referred to was
27 provided through inadvertence, and, indeed, it was Union's
28 view then and now that the information is of no relevance,

1 but given that it had been filed inadvertently, Union
2 didn't seek to remove it from the record.

3 But I recall specifically advising that it was our
4 view then that the information was not relevant, and so on
5 the basis of that, we are not prepared to answer the
6 questions you have just put to us.

7 MR. THOMPSON: Thank you very much.

8 MS. SEBALJ: Are there any other parties, other than
9 Board Staff, that have questions? I think all of our
10 questions -- and I will be corrected by my colleagues, but
11 I think all of our questions relate to PGVA accounts. Is
12 that properly for this panel or for the next panel? This
13 panel?

14 MR. SMITH: This panel.

15 MS. SEBALJ: I don't think -- there is no one behind
16 the beam that I can't see that is desperate to ask any
17 questions? No.

18 MR. SMITH: Apparently not.

19 MS. SEBALJ: Thanks. I think we have a couple of
20 attachments to distribute with reference to our questions.

21 **QUESTIONS BY MS. LI:**

22 MS. LI: First, I would like to provide some
23 background information related to the question that I am
24 going to ask. So in Union's QRAM rate application EB-2010-
25 0359 for the rates effective January 1st, 2011, and Union
26 proposed three prior-period adjustment for the PVGA.

27 So on adjustment was related to south purchase gas
28 variance account of the amount 8.377 million, and the one

1 MS. SEBALJ: Is that everything? So returning, Mr.
2 Smith, do you need a certain amount of time?

3 MR. SMITH: 25 to 12:00.

4 MS. SEBALJ: 25 to 12:00, thank you.

5 --- Recess taken at 11:17 a.m.

6 --- On resuming at 11:39 a.m.

7 MS. SEBALJ: Let's get started.

8 MR. SMITH: So we have our second panel consisting of
9 Mr. Feingold of Black & Veatch, Ms. Elliott, Mr. Isherwood
10 and Ms. Cameron.

11 **UNION GAS - PANEL 2**

12 **Russ Feingold**

13 **Pat Elliott**

14 **Mark Isherwood**

15 **Carol Cameron**

16 MS. SEBALJ: Mr. Thompson, were you going to go ahead
17 first, or...

18 MR. THOMPSON: Thank you.

19 **QUESTIONS BY MR. THOMPSON:**

20 MR. THOMPSON: While there were some written questions
21 circulated by Mr. Quinn, and I thought one or more of these
22 was deferred to this panel, so perhaps you could deal with
23 those, Crawford.

24 Was there not something on here that was deferred to
25 this panel?

26 MR. SMITH: There was; it was question 6, whether or
27 not we could provide answers to all of (a), (b), (c) and
28 (d).

1 I must say I didn't -- although I have a note of it, I
2 didn't get a chance to ask Ms. Cameron that question.

3 MR. THOMPSON: Is your mic on?

4 MR. SMITH: Yes. Sorry, I didn't ask the question of
5 Ms. Cameron. My apologies. I forgot, so we will have to
6 advise you at the end of the proceeding. Perhaps if people
7 have questions about the confidential answers, we can take
8 two minutes before that, and I will get the answer and then
9 advise you.

10 MR. THOMPSON: Okay. Then let's come back to this
11 issue of -- I think it would relate to Mr. Quinn's Question
12 1 in writing.

13 This was the question about the incremental storage
14 amount of \$18.727 million, and my understanding now is that
15 that -- currently reduction in revenue amount reflects the
16 \$10.7 million of actual cost paid to third-party storage
17 operators, and then I understand the difference of
18 \$8,027,000 to be costs related to storage loans, or
19 something to that effect.

20 Have I got that straight, Ms. Elliott?

21 MS. ELLIOTT: That's my understanding. The difference
22 is the resource optimization costs; primarily the gas
23 loans.

24 MR. THOMPSON: And I thought in the first go-round you
25 said the second panel will have to tell us what is in this
26 number.

27 And if I understood that correctly, would the second
28 panel please tell us what goes in to the make-up of this

1 number?

2 MS. CAMERON: The \$8 million consists of the cost of
3 purchasing a loan, which will ultimately create storage.

4 MR. THOMPSON: So this is Union Gas limited purchasing
5 loans from a third party?

6 MS. CAMERON: Yes.

7 MR. THOMPSON: The question was asked: Are these
8 purchases from affiliates, some or all of them, and
9 secondly, how is the cost derived? Do you know?

10 MS. CAMERON: The gas loans are not purchased from
11 affiliates, and the costs are derived through negotiation
12 with the counterparty.

13 MR. THOMPSON: So these are arm's-length transactions
14 with entities other than entities related with Spectra and
15 Union and tout le gang?

16 MR. SMITH: I am not sure who that third party is,
17 but...

18 MS. CAMERON: With respect to the first two parties,
19 yes, there are no affiliate activities.

20 MR. THOMPSON: Okay. Thanks.

21 Then I had a question -- this is probably for you, Mr.
22 Isherwood. It stemmed from the response to B3.15, where
23 there were a list of storage assets, and one was described
24 as the MichCon Gateway storage asset.

25 We were told there is a written contract that the --
26 the interrogatory response indicates that the start date
27 was May 2010, and I asked if that document could be
28 produced, in confidence if necessary.

1 MR. SMITH: And the answer is no.

2 MR. THOMPSON: It cannot be produced?

3 MR. SMITH: It will not be produced.

4 MR. THOMPSON: Will not be produced? Could you
5 explain why?

6 MR. SMITH: Union has not provided third-party storage
7 contracts in the past, and we don't see the particular
8 relevance of producing this contract.

9 MR. THOMPSON: Well, it's leading to a component of a
10 charge that's being recorded for the purposes of
11 calculating margin, that is depriving, we say, ratepayers
12 of their appropriate share.

13 And I am sure that will change your mind; will it?

14 MR. SMITH: No, but if you have specific questions
15 about the line items there, perhaps you should put them on
16 the record and we will reflect on your question.

17 I know that it's -- the use of the word "Gateway" has
18 perhaps attracted your attention, it being a subject near
19 and dear to your heart, but if you had specific questions
20 about the line items, we will certainly reflect on them.

21 MR. THOMPSON: All right.

22 Well, let's start with that one, Mr. Isherwood. What
23 does the "Gateway" refer to in the MichCon Gateway
24 contract?

25 MR. ISHERWOOD: As part of the --

26 MR. SMITH: Sorry, sorry. Just -- I am reminded that
27 we will be providing you with the incremental return in
28 total, in any event.

1 So whether you have the number per contract or on an
2 incremental basis, I think what's more interesting is the
3 incremental number, and we have agreed to provide you with
4 that.

5 MR. THOMPSON: I don't think I follow that. This, we
6 are talking here about third-party purchase in this
7 interrogatory response, I think, are we not? Maybe not.

8 No, it's not. You are right. Okay.

9 So can you answer my question, Mr. Isherwood?

10 MR. ISHERWOOD: Sorry, can you restate your question,
11 please?

12 MR. THOMPSON: Yes. The asset name is MichCon
13 Gateway; what does the reference to "Gateway" refer to?

14 MR. ISHERWOOD: We have concluded a contract with
15 MichCon for that 2.1 PJs of space, and the path that we
16 will be using will be the traditional MichCon/Union Gas
17 path between MichCon and Dawn, and if and when Gateway goes
18 ahead, the Gateway path would be used for that 2.1 PJs.

19 If it never goes ahead, then we will continue to use
20 the MichCon/Union Gas traditional path.

21 MR. THOMPSON: So is the asset being used as we speak?

22 MR. ISHERWOOD: Yes, it is.

23 MR. THOMPSON: And I take it that the transportation
24 link to that storage is as you have described? It's the
25 existing MichCon, St. Clair -- St. Clair pipeline to Dawn
26 route?

27 MR. ISHERWOOD: That's correct.

28 MR. THOMPSON: And if the Dawn Gateway goes ahead, it

1 will be labelled the Dawn Gateway pipeline, I guess?

2 MR. ISHERWOOD: That's correct.

3 MR. THOMPSON: You did provide a response to a Board
4 Staff question about the status of the Dawn Gateway line.
5 I think it might be number 8, I think.

6 MR. ISHERWOOD: 1.9, I believe.

7 MR. THOMPSON: 1.9? Is there anything further to add
8 to that report?

9 MR. ISHERWOOD: When this interrogatory was filed in
10 the first week of June, the expectation was that --
11 MichCon, as you know, is responsible for the regulatory
12 approvals on the US side, as Union Gas was responsible on
13 the Canadian side. MichCon has been working diligently on
14 doing a presidential permit filing, as well as a filing
15 with the Michigan Public Service Commission.

16 And our expectation in first week of June was both of
17 those would be filed in June. And as in most things with
18 Gateway, it always seems to be two weeks away and it
19 remains to be about two weeks away. So it is not filed yet
20 is I guess my answer, but it's imminent.

21 MR. THOMPSON: So the expectation now is will be filed
22 by the end of July or is that getting too aggressive?

23 MR. ISHERWOOD: Based on my last experience, I would
24 say it's too aggressive, but they are working on it. We
25 are helping them with it. We fully expect it to be done
26 within the next couple of weeks, but it's been delayed with
27 vacations and other things happening.

28 MR. THOMPSON: So by the end of August would be

1 realistic?

2 MR. ISHERWOOD: I am hoping for the end of July, but I
3 can't commit to that. It's really their work effort, not
4 mine.

5 MR. THOMPSON: And what does that mean, the filing of
6 that application? Does that mean it's going ahead or
7 something less than it's going ahead?

8 MR. ISHERWOOD: No, it just -- all it means is the
9 same on the Canadian side. It's important for the market
10 to know you have regulatory approvals on both sides. We
11 have the regulatory approvals on the Canadian side, and you
12 need both of those things to happen, to have regulatory
13 approvals on the US side.

14 Assuming we got approval on both of those items, we
15 still have the issue with the market. The market still
16 needs to commit and contract for the path.

17 MR. THOMPSON: All right. Well, I am asking this
18 question from recollection, but my recollection is, from
19 the Board's last decision in this Dawn Gateway business,
20 that I thought you had until the end of this year to get
21 this done.

22 MR. ISHERWOOD: That's true. Based on the current OEB
23 decision, that's true.

24 MR. THOMPSON: So are you trying to do that?

25 MR. ISHERWOOD: We are.

26 MR. THOMPSON: Thank you. The only other question I
27 think that I had that was deferred to this panel related to
28 the Black & Veatch -- the scope of the Black & Veatch

1 retainer, and it was a reference to Exhibit B2.6,
2 subparagraph (b).

3 And the question I asked was something to the effect:
4 Are we correct that Black & Veatch did not -- that Black &
5 Veatch's retainer did not extend to reviewing the
6 appropriateness of Union's margin sharing calculations?

7 Mr. Smith said he thought the answer was it did not
8 extend that far. Could I have that clarified, if that
9 answer is inaccurate?

10 MR. FEINGOLD: The Black & Veatch project, and the
11 time frame over which it extended, precluded us from
12 looking at the 2010 S&T balances by virtue of the fact that
13 the report was done before those numbers were prepared for
14 the 2010 filing.

15 MR. THOMPSON: Okay. So that was not and still
16 remains not part of your retainer?

17 MR. FEINGOLD: To the best of my knowledge, our work
18 is completed, other than for responding to questions on the
19 evidence that was filed contained in the report and any
20 other post filing activities associated with this
21 proceeding.

22 MR. THOMPSON: Okay, thanks very much. Those are my
23 questions.

24 **QUESTIONS BY MR. QUINN:**

25 MR. QUINN: I think I will try to ask the question Mr.
26 Thompson was asking in a slightly different way.

27 Did the scope of the retainer for Black & Veatch
28 include reviewing the appropriateness of the methodologies

1 that Union had for allocating the costs between utility and
2 non-utility?

3 MR. FEINGOLD: Yes, it did.

4 MR. QUINN: And so did you review or render opinions
5 on the post-tax hurdle rate?

6 MR. FEINGOLD: No, I did not. I believe that -- in
7 response to an interrogatory, indicated that that was not
8 part of the scope of the work.

9 MR. QUINN: How do you define what the scope of the
10 work is if that is inherent in the allocation methodology?
11 Was there a list of limitations of areas that you were not
12 to comment on?

13 MR. FEINGOLD: Not so much a list of limitations, but,
14 in my view, that wasn't an allocation methodology issue as
15 much as an absolute dollar component. And if you look in
16 the report, the scope of the review really entailed three
17 major functions and it didn't look at the origins of any
18 particular cost component to the degree that I think you
19 are suggesting.

20 MR. QUINN: Well, I will defer to my colleague, who is
21 a better accountant than I, and we can differentiate
22 between cost allocation and, in this case, rate-making.

23 Are you familiar with any other jurisdictions that
24 have a post-tax hurdle rate become part of rate-making for
25 the purposes of margin sharing?

26 MR. FEINGOLD: I am not sure I understand your
27 definition of the term "the hurdle rate" or - what was it -
28 post-filing?

1 MR. QUINN: Post-tax hurdle rate.

2 MR. FEINGOLD: Post-tax hurdle rate. Are you talking
3 about from the standpoint of an internal rate of a
4 particular utility, or a rate of return that was used by
5 the regulator?

6 MR. QUINN: I am looking for: Are you familiar with a
7 jurisdiction that uses a concept like post-tax hurdle rate
8 to do rate-making for the allocation of margins between
9 ratepayers and the utility?

10 MR. SMITH: Mr. Quinn, perhaps you could assist by
11 advising of a jurisdiction in which there has been a
12 decision such as NGEIR, or a structure, which has resulted
13 in a portion of an integrated utility's storage system
14 being disaggregated between utility and non-utility, and
15 then asking Mr. Feingold to comment on whether or not he is
16 familiar with that jurisdiction. Perhaps that would
17 assist.

18 MR. QUINN: I had more than the normal voices in my
19 head going on here. Can you repeat that Mr. Smith, please?

20 MR. SMITH: Well, in a nutshell, I think it would be
21 of assistance if you were to ask the witness if he were
22 familiar with a particular jurisdiction, and that
23 jurisdiction would be a jurisdiction in which there had
24 been a decision rendered, such as NGEIR, disaggregating a
25 utility's integrated storage system between utility and
26 non-utility, and, if you had a particular jurisdiction in
27 mind, ask the witness about that.

28 MR. QUINN: Well, that probably narrows the scope of

1 my question more than I intended, so I guess I will try to
2 ask the question this way, and then I will potentially
3 defer. Are you familiar with the post-tax hurdle rate?

4 MR. FEINGOLD: I am familiar with the concept within
5 the context of this process in general terms.

6 MR. QUINN: Are you familiar with Union Gas's post-tax
7 hurdle rate?

8 MR. FEINGOLD: I saw the return level that was used by
9 Union within the context of their S&T calculations.

10 MR. QUINN: Are you familiar with any jurisdiction
11 that, for the purposes of rate-making, uses the internal
12 rate of return as opposed to that Board's -- that
13 jurisdiction's approved rate of return?

14 MR. SMITH: Well, sorry, Mr. Quinn, that, again, goes
15 to the point I was making before. I mean, there is a
16 particular paradigm in Ontario, and I think my earlier
17 request for clarification stands.

18 Is there a jurisdiction which you say is comparable?
19 I am not familiar with anything that's been put on the
20 evidence, but if you have something, I think a fair way to
21 do it to the witness would be to put that particular
22 jurisdiction on the record and ask Mr. Feingold to comment
23 on it.

24 MR. QUINN: I will defer then, because I think our
25 question has been answered. I wanted to then get back to
26 the -- what I understood - and the phrase was used, I
27 believe, by Ms. Cameron - was purchasing a loan.

28 Can you help us with the mechanics around that? What

TAB 15

EB-2011-0038
Estimate of Incorrect and Unauthorized Deductions
made by Union Gas Limited
in its Long-Term and Short-Term Storage Margin Calculations

Line #	Unauthorized Items	2008 \$000	2009 \$000	2010 \$000	Total \$000
1	Unapproved "Return" on Incremental Investments	\$805 ¹	\$2,190 ¹	\$2,594 ²	\$5,589
2	Unapproved "Return" on Purchased Assets	\$1,978 ³	\$4,653 ³	\$6,630 ³	\$13,261
3	Unapproved Taxes at 33.56% tax rate ⁴ (lines 1 plus 2 x 50%)	\$1,392	\$3,422	\$4,612	\$9,426
4		\$4,175	\$10,265	\$13,836	\$28,276
5	Ratepayer Percentage Share	75%	50%	25%	
6	Ratepayer Share	\$3,131	\$5,132	\$3,459	\$11,722
7	Unauthorized Cost Shift from Long-Term to Short-Term Margin Calculation	\$1,662 ⁵	\$1,662 ⁵	\$1,662 ⁵	
8	Ratepayer Share of Unauthorized Cost Shift (line 5 x line 7)	\$1,247	\$831	\$416	
9	Unauthorized Deductions less Reversal of Unauthorized Cost Shift (line 6 minus line 8)	\$1,884	\$4,301	\$3,043	\$9,228
10	One Time Deferral Account Balance Adjustment to Account No. 179-72 to remedy Incorrect Calculations in prior years				\$9,228
11	One Time Adjustment to Short-Term Balance to remedy Unauthorized Cost Shift from Long-Term to Short-Term Deferral Accounts (3 x \$1,182 ⁶ = \$3,546)	\$1,182	\$1,182	\$1,182	\$3,546
12	Total Short-Term and Long-Term Deferral Account Balance Corrections	\$3,066	\$5,483	\$4,225	\$12,774

¹ Estimated by applying 49% ratio of 2010 incremental return of \$2,594 in Exhibit B3.17 as proportion of whole of \$5,294 in Exhibit B3.18 to line 3 of B3.18 Attachment for 2008 and 2009. Union refuses to provide its calculations for 2008 and 2009.

² Exhibit B3.17.

³ Exhibit B3.15.

⁴ Exhibit A, Tab 1, Schedule 6, page 2, line 13.

⁵ Rosenkranz Evidence, page 11.

⁶ Rosenkranz Evidence, Schedule 5 Revised, line 28.

IN THE MATTER OF the *Ontario Energy Board Act*, 1998, S.O. 1998, c. 15, (Schedule B);

AND IN THE MATTER OF an Application by Union Gas Limited for an order or orders amending
or varying the rate or rates charged to customers as of October 1, 2011

ONTARIO ENERGY BOARD

**MOTION RECORD OF
CANADIAN MANUFACTURERS & EXPORTERS
("CME")**

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