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October 3, 2011

Ms. Kirsten Walli
Board Secretary
Ontario Energy Board
P.O. Box 2319
2300 Yonge Street, 27th Floor
Toronto, ON M4P 1E4

Dear Ms. Walli,

RE: EB-2011-0038 - Final Submission of London Property Management Association

Please find attached the final submission of the London Property Management Association in the above noted proceeding.

Yours very truly,

Randy Aiken

Randy Aiken
Aiken & Associates

c.c. Chris Ripley (Union Gas)

IN THE MATTER OF the *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15 (Sched. 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.

SUBMISSIONS OF THE LONDON PROPERTY MANAGEMENT ASSOCIATION

I. INTRODUCTION

These are the submissions of the London Property Management Association ("LPMA") in the matter of an application by Union Gas Limited ("Union") for approval of the final balances for all 2010 deferral accounts and an order for final disposition of those balances; approval of the market transformation incentive for 2010 and an order for the final disposition of the balance; approval of the impact of federal and provincial tax changes in 2009 and 2010 and an order for final disposition of the balances; approval of $3.433 million as the customer portion of the earnings sharing in 2010 and the proposed disposition of that amount to Union's customers; and approval of its regulated and unregulated cost allocation methodology.

II. 2010 YEAR-END DEFERRAL ACCOUNT BALANCES - OTHER

The net balance in the deferral accounts proposed to be cleared by Union, as shown in Exhibit A, Tab 1, Schedule 1 is a credit to ratepayers of $2.511 million. Union has divided the deferral accounts into three main categories: Gas Supply Accounts; Storage Accounts; and Other Accounts.

A) Gas Supply Accounts

The only gas supply account to be disposed of in this proceeding is Account 179-108 Unabsorbed Demand Cost ("UDC") Variance Account. All other gas supply related deferral account balances are disposed of through the QRAM process.

As shown in Exhibit A, Tab 1, Schedule 1, the balance in this account (line 1) to be cleared to ratepayers is $4.615 million. This account is discussed at pages 2 through 4 of Exhibit A, Tab 1.

LPMA has two issues with the disposition of the UDC balance. Both issues relate to the correction that Union has made in the calculations for the 2007 through 2009 figures. These corrections are shown and explained in the interrogatory response at Exhibit B2.1. This response indicates that the correction amounts to a credit of $1.931 million out of the total credit to ratepayers of $4.615 million noted in Table 1 of Exhibit A, Tab 1. LPMA supports the correction and the associated rebate to customers, with the exception noted below.

The first issue of concern to LPMA is the lack of timeliness and transparency in the revelation of this error to the Board and intervenors. According to Ms. Elliott, this error was discovered by Union in early 2010 (Tr. Vol. 1, page 22). Union filed an application for the disposal of the 2009 balances in a number of deferral account balances in EB-2010-0039 dated April 29, 2010. These balances included the UDC account. On June 25, 2010, Union filed corrected evidence related to a number of accounts, none of which included the UDC account. Union filed interrogatory responses on June 28, 2010 and a technical conference was held on July 9, 2010. A settlement conference was held on July 26 and 27, 2010, with the Settlement Agreement filed on July 30, 2010.

Union had ample opportunity to inform the Board and intervenors of the error in the UDC calculation that it discovered in early 2010 in the EB-2010-0039 proceeding. It did not.

Furthermore, Union had the opportunity to identify the error in the current proceeding as part of its prefiled evidence dated April 18, 2011. Again, it did not do so. It was not until the response provided in Exhibit B2.1 dated June 8, 2011, that the Board and intervenors were informed by Union (Tr. Vol. 1, pages 22-23) of the error that it had discovered in early 2010.

LPMA submits that Union should have provided a more timely and transparent disclosure of the error rather than waiting more than a year after it was discovered and only identifying the error in response to an interrogatory when it became apparent that this error could no longer remain hidden.

The second issue for LPMA with respect to the clearance of the UDC account is the amount of interest included on the balance in the UDC account associated with the error that took place from 2007 through 2009. As shown in the response to Exhibit J1.1, Union proposed to include interest in the amount of $7,250 and is based on the date of the adjusting entry of August, 2010. The undertaking response indicates that if interest had been calculated based on when the balances were created, the amount would have been $44,805, an increase in the amount to be refunded to ratepayers of $37,555.

LPMA submits that the Board should direct Union to increase the interest on the balance related to the error to reflect the higher amount of $44,805. LPMA sees no reason why ratepayers would only be entitled to interest on a balance that was in error only from the date that Union posted the correction to the account. Ratepayers are entitled to the credits that were created in 2007, 2008 and 2009. Ratepayers did not receive these rebates because of the error made by Union. LPMA submits that interest on the rebates that ratepayers did not receive in each of 2007, 2008 and 2009 should also be credited to them.

B) Storage Deferral Accounts

The storage deferral accounts proposed for disposition in this proceeding are related to the short-term (179-70) and long-term (179-72) accounts.

<u>i) Short-Term Storage and Other Balancing Services (179-70)</u>

LPMA has had the opportunity to review the preliminary submissions of the Canadian Manufacturers & Exporters ("CME") and adopts those submissions.

ii) Long-Term Peak Storage Services (179-72)

LPMA submits that there are three issues that need to be determined as part of the calculation of the long-term peak storage services margin. These issues are related to the use of a return on purchased services, the post-tax hurdle rate and the resource optimization net revenues, each of which is discussed below.

a) Background

The EB-2005-0551 Natural Gas Electricity Interface Review ("NGEIR") Decision with Reasons dated November 7, 2006, states with respect to the sharing of margins associated with long-term storage transactions (page 107):

> *"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%."*

As part of the EB-2008-0034 proceeding that dealt, in part, with the disposition of the 2007 balance in Account 179-72 Union originally only included the revenues from existing storage and excluded the revenues from incremental storage (Tr. Vol. 1, page 144). The Board's Decision and Order dated June 3, 2008 stated that it did not agree with Union's interpretation of the NGEIR decision, quoting the above noted paragraph from the NGEIR decision, and directed Union to include the revenues associated with all long-term storage transactions.

In particular, the EB-2008-0034 Decision and Order stated the following (page 8):

> *"The Board finds that the NGEIR decision does not **<u>require or permit</u>** 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) **<u>actual net revenues</u>** (on <u>all</u> 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."* (emphasis added)

Union has consistently stated through interrogatory responses that there has been no change in the methodology to allocate costs to Union's unregulated storage activity from one year to the next. The response to Exhibit B5.2 in this proceeding indicated that was no change from that used in EB-2010-0039. The response to Exhibit B7.02 in EB-2010-0039 confirmed that there was no change in methodology from that used in EB-2009-0052. In the response to Exhibit B5.2 in EB-2009-0052, Union confirmed that the actual net revenue had been calculated in compliance with the Board's EB-2008-0034 Decision. These interrogatory responses were included pages 19 through 21 of the LPMA Cross-Examination Compendium which was filed as Exhibit K1.5. Ms. Elliott confirmed that these responses were in respect to all costs used in the calculations (Tr. Vol. 1, pages 143-144).

LPMA submits that Union has made significant changes in the calculation of actual net revenues between what it did in EB-2008-0034 for the 2007 account balances and the current proceeding for the 2010 account balances. These significant changes are discussed below in the following sections related to the return on purchased services and the use of a post-tax hurdle rate.

<u>b) Return on Purchased Services</u>

Union has included a return on purchased services as a cost in the calculation of the actual net revenues in Account 179-72. LPMA submits that the Board should direct Union to remove this return in the margin calculation.

LPMA notes that Union has consistently referred to this return as a return on purchased assets or as a return on purchased capacity. LPMA believes that this label is very misleading in that Union did not purchase the assets used to provide the storage services. Union has no ownership of these assets by virtue of their use of services provided by these assets anymore than Union's in-franchise customers can claim ownership of the regulated storage assets used to provide services to them or Union's ex-franchise customers can claim ownership of the unregulated storage assets owned by Union and used to provide storage services to them.

Union has included the costs associated with these contracted storage services from other parties in the calculation of the actual net revenues in Account 179-72. LPMA submits that the inclusion of this cost of $10.7 million is appropriate since it is an actual cost incurred and required to earn additional long-term storage revenues. It is not, however, appropriate to include a cost to reflect a return on equity on assets that do not belong to Union over and above the actual costs paid for the services.

Allowing Union to earn a return on equity of these phantom assets would, in the view of LPMA, not just break regulatory accounting conventions, it would shatter them. Indeed, Union's proposal is so far removed from conventional regulatory accounting, that Ms. Elliott indicated there is not even a regulatory accounting term for assets that a utility does not own but seeks to earn a return on equity from (Tr. Vol. 1, page 129). As the Board is well aware, accountants and regulators have a term and/or acronym for everything. The fact that there is not one in this instance highlights how extreme the Union proposal is.

The calculation and amount of return on these phantom assets is shown in the response to Exhibit B3.15 and totals $6.63 million in 2010. Union has made a number of assumptions in the calculation of this figure, including the use of the post-tax hurdle rate of 14.4%. This assumption is discussed in more detail in part (c) below. Other assumptions include a $10/GJ capital cost associated with the five assets shown and an equity component of 36.00%. Union has not provided any evidence in this proceeding in support of the capital cost assumption (Tr. Vol. 1, page 135). The 36% equity component is used for "simplicity's sake" (Tr. Vol. 1, page 137) because it is equal to that used for the regulated business. No evidence has been provided that this is an appropriate equity component for the unregulated storage business.

While calling the contracts with the parties shown in Exhibit B3.15 third party contracts (Tr. Vol. 1, pages 120-121 & Tr. Vol. 1, page 127), Union acknowledged that three of the five parties shown are actually related parties to Union (Tr. Vol. pages 132-133). In fact, Union owns 75% of the Huron Tipperary pool for which it is claiming a return on phantom equity of $1.191 million in 2010. Moreover, the claimed return on phantom equity associated with affiliate/related parties is more than $4.8 million.

Mr. Isherwood acknowledged that the $10.7 million paid for the storage services from the five parties noted in Exhibit B3.15 would cover the costs of these assets, including a return on equity to the actual owners of these assets (Tr. Vol. 1, page 132). In other words, for the three related party, Union's affiliate would earn a return on equity based on the true ownership of these assets and then Union would earn a second return on equity on these phantom assets. LPMA does not believe this is appropriate.

LPMA notes the exchange between Mr. Isherwood and Mr. Thompson (Tr. Vol. 2 pages 76-77). Mr. Isherwood appears to suggest that Spectra's expectation is that with respect to the pools owned by related companies that it looks for a combination of revenue from that related party plus the revenue that Union Gas can expect to get over the term of the contract by reselling that capacity in the open market to meet the minimum threshold for investment. In other words, Union ratepayers are being used to subsidize the return to the related party. LPMA does not believe this is appropriate.

As noted in part (a) above, the Board Decision and Order in EB-2008-0034 indicated that based on the NGEIR decision Union was not required or permitted to modify the method of calculating the balance in Account 179-72 for 2007. Also, as noted above, Union has consistently indicated that it has not made any change in the methodology to allocate costs to this account from that approved in EB-2008-0034. For this to be the case, Union would have had to included in the actual net revenue calculation a return on purchased storage services in 2007.

LPMA submits that there is no evidence of Union including a return on purchased storage services or on any services purchased in the setting of 2007 rates. In fact, the opposite is true.

In a cost of service application, Union would not include a return on purchased services for such items as upstream transportation, pipeline construction contracted out to a third party, or for such items as legal fees, consulting fees and call centres (Tr. Vol. 1, pages 129-130). Mr. Isherwood correctly noted that the shareholder is not at risk for variances for upstream transportation costs, as these costs are a flow through to ratepayers. He makes the same statement related to the other purchased services noted above. However, any variance in those costs are not a flow through to ratepayers but are borne by the shareholder.

The response to part (a) of Exhibit B3.15 indicates that 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. LPMA submits that the Board should reject this rationalization for including such a cost in the margin calculation. Under this approach, the cost of sending packages by courier would include not only the actual cost of the service, but a return on phantom capital for the courier truck(s), computer tracking system, warehouses and so on.

The evidence is even more clear with respect the 2007 approved cost allocation and revenue requirement used by Union. It is clear that Union did not include any return on purchased services (or capacity using Union's terminology). In Exhibit B1.26 Union indicates that it used a combination of owned assets and purchased capacity on the Dawn Trafalgar system to provide service to customers in the north and that these costs are recovered from customers in the north storage rates and are not subject to deferral. There was no return on equity included in these north storage rates associated with the purchased capacity (Tr. Vol. 1, pages 131-132).

Even more compelling is the evidence that indicates that Union did, indeed, have costs associated with third party storage in the calculation of the amounts in the storage deferral accounts. As shown on page 2 of Exhibit A, Tab 1, Schedule 6, at line 6, Union did include third party storage costs in the allocation of costs to long-term storage as per Union's 2007 approved cost allocation study. As explained by Ms. Elliott this is the Enbridge Black Creek storage pool, which is also referred to at page 3-11 of the Black & Veatch report attached to Exhibit A, Tab 4. The costs associated with the purchase of this third-party storage service was $0.179 million and included only the direct cost of the purchased storage and did not include any return on these purchased services (Tr. Vol. 1 pages 144-145).

Ms. Elliott confirmed that Union did not include any return on purchased storage assets (services) for storage assets not included in rate base as part of the 2007 revenue requirement. Union never requested approval of the concept of a return on purchased assets (services). Union has never received Board approval to use a return on purchased assets (services). This is shown in the following exchange (Tr. Vol. 1, pages 141-142).

MR. AIKEN: Specifically in relation to the 2007 rate case, did Union include in the 2007 revenue requirement any return on purchased storage assets for storage assets not included in rate base?

MS. ELLIOTT: No.

MR. AIKEN: Has Union ever requested approval of the concept of a return on purchased assets?

MS. ELLIOTT: No.

MR. AIKEN: Has Union obtained any specific approval to utilize this content?

MS. ELLIOTT: No.

Based on the evidence, LPMA submits that it is clear that 2007 rates and the 2007 calculation of actual net revenue in account 179-72 did not include any return on purchased services. The EB-2008-0034 decision made it clear that Union was not permitted by the NGEIR decision to modify the method of calculating the balance in account 179-72 for 2007. Union has indicated that it has not made any change in the methodology for calculating the actual net revenue balances between 2007 and 2010.

However, the evidence is clear that 2010 includes a return on the purchased services, while 2007 did not.

LPMA submits that the Board should direct Union to remove the return on purchased services from the calculation of the actual net revenues in account 179-72. There is no reasonable justification to include a return on phantom assets in the calculation of the margin to be shared with ratepayers. The 2007 Board approved cost allocation included no such return on phantom assets and neither should the 2010 calculations.

c) Post-Tax Hurdle Rate

In addition to the return on phantom assets noted in the previous section, Union has included an incremental return on equity based on a post-tax hurdle rate. The Attachment to the response to Exhibit JTC1.2 shows the difference between the return used by Union in the filing and the return using the Board approved return. In particular, the increase related to incremental assets is $2.594 million and the increase related to the purchased services is $2.7 million, for a total increase of $5.294 million. These figures do not include the impact of income taxes on the incremental returns.

Union defines the post-tax hurdle rate in conjunction with the internal rate of return ("IRR"). Mr. Isherwood indicated that Union's minimum threshold IRR rate is 8.5%, which translates into a return on equity of 14.4% (Tr. Vol. 1, pages 112-113). It was also indicated that this IRR of 8.5%, or the corresponding post-tax hurdle rate of 14.4%, is the minimum threshold for Union in terms of what projects will go forward for review in an attempt to acquire capital from their parent company. The linkage between the IRR and the post-tax hurdle rate is found in the response to Exhibit J1.3.

Union indicates that it has used the **required** return on equity on rate base for deferral account purposes and that this required return includes the hurdle rate (Tr. Vol. 1, page 139, lines 21-25).

In Exhibit B3.18 Union states:

> *"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."*

With respect to the required return used to cost storage services in the 2007 rate case, Ms. Elliott confirmed that the Union did not request and the Board did not approve a required return that was based on some assets earning a return on equity approved by the Board and some assets earning another level of return on equity (Tr. Vol. 1, pages 139-140).

In the response provided in Exhibit B3.54, part (c) Union was asked whether 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. Union's response is as follows:

> *"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."*

Ms. Elliott clarified that with respect to this response, Union was referring to the methodology of including a required return in setting of rates, clarifying that there is a return component built into the utility's revenue requirement and that in calculating the margin to be shared in this deferral account, Union has included a return component.

When asked to provide an example of how the Board has set approved rates where part of the return component is at the Board-approved rate and part is at some other rate, Ms. Elliott further clarified that that was not the methodology that she was referring to. She was simply referring to the "*methodology of including a return, not necessarily the fact that there is two different returns used in the calculation"*. (Tr. Vol. 1, pages 140-141)

Ms. Elliott further confirmed that Union has never sought or obtained any specific Board approval for using the two returns. She did, however, indicate that the methodology that includes the two returns has been used since the NGEIR decision and that it has been included in the disposition of the deferral account since that point (Tr. Vol. 1, page 141).

LPMA assumes that Union did not used the two returns (i.e. use a post-tax hurdle rate) in the calculation of the margin sharing in account 179-72 with respect to the 2007 balances disposed of in EB-2008-0034 even though this proceeding took place well after the NGEIR decision of November, 2006. This assumption is based on the clear statement from the Board that the NGEIR decision at page 8 of the EB-2008-0034 Decision and Order *"does not require or permit Union to modify the method of calculating the balance in account 179-72 for 2007"*.

Again, the evidence is clear. Union has not sought nor obtained approval from the Board to use the post-tax hurdle rate in the calculation of the margins in account 179-72. Union's evidence that this methodology is consistent with approach used by the Board of including a required rate of return does not refer to the use of two rates of return, which is the issue in this proceeding. It simply refers to the inclusion of the approved rate of return in the setting of Board-approved rates and using the Board-approved rate of return in the calculation of margins in the deferral account.

Mr. Isherwood indicated that the 8.5% IRR (or 14.4% post-tax hurdle rate) is the **minimum** threshold for the projects to at least go forward to be reviewed (Tr. Vol. 1, page 112). He further indicated that projects above this minimum will not necessarily go forward.

Union has not provided any evidence as to what the expected IRR or post-tax hurdle rate is in relation to its unregulated storage investment. LPMA submits that the expected IRR for the unregulated storage business could be well in excess of 8.5%.

Union has not provided any evidence as to whether or not it reflected earnings sharing as determined by the NGEIR decision in its project evaluations or included this in any of the sensitivity scenarios that should have been considered. It may well be that under such a scenario, the IRR was still in excess of the minimum IRR threshold. Union has not provided any evidence to suggest it was not.

Ms. Elliott agreed that the minimum IRR of 8.5% required by the shareholder is over the life of the investment (Tr. Vol. 1, page 142). Storage assets have long lives. The impact on the IRR over the life of these assets of removing the post-tax hurdle rate of 14.4% and replacing it with the Board approved return is likely to be small because the sharing with ratepayers was phased out over a short period of time (4 years) with a declining sharing going to ratepayers in each year of the phase out. The impact on 2010 is illustrated by comparing the 50.67% return on equity for 2010 shown in Attachment 1 of Exhibit K1.4 with the return of 48.15% shown in the Attachment to Exhibit J1.4 which reflects the removal of the return on equity and the tax consequences associated with both the return on purchased assets and elimination of the post-tax hurdle rate.

LPMA submits that the use of a post-tax hurdle rate or an IRR is an appropriate tool for evaluating whether or not a project proceeds. However, it is not appropriate to use these rates for calculating margins in a deferral account.

The use of the post-tax hurdle rate on incremental assets (and on phantom assets) implicitly shifts additional costs from the shareholder to ratepayers through the calculation of the margins to be shared.

The NGEIR decision noted in several places that shareholders should bear the risk of new non-utility assets and that ratepayers will not bear the risks associated with these developments. At page 4 of the Executive Summary, the Board stated:

> *"... 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."*

At page 51 of the Decision with Reasons the Board indicated that *"Under forbearance, the utility shareholders would be expected to bear the risk of any storage development for* *the competitive market."* At page 54 the Board stated that *"Ontario consumers will not bear the risks associated with these new developments".* At page 70, *"The utilities will bear the risk of these investments, not ratepayers".* Finally with respect to the transition related to long-term margins, the Board stated that *"Union should reap the benefits and bear the risks of those new transactions".*

LPMA submits that the phase-out mechanism that the Board put in place in the NGEIR decision was to compensate Union for the risks of competing in the open market. This phase-out was a rough proxy for the conceptual approach discussed by the Board at page 107 of the decision. The Board noted that the share accruing to Union would increase over the four year phase-out period to recognize that pre-NGEIR contracts would mature and a larger part of Union's total long-term margins would be generated by new transactions.

It is submitted that Union's proposal of using a post-tax hurdle rate effectively shifts the costs associated with the increased risk associated with the non-utility assets to ratepayers by reducing the margins to be shared with them. This violates the intent of the NGEIR decision which clearly indicated that the risks associated with new investments was to be borne by the utility and not by ratepayers.

For all of the reasons noted above, LPMA submits that the Board should direct Union to remove the post-tax hurdle rate from the calculation of the return cost associated with incremental assets and with purchased services, should the Board determine that Union should be allowed to earn a return on the storage services purchased. There is no reasonable justification to transfer return related costs associated with the unregulated assets to ratepayers in the calculation of the margin to be shared with them when the margin sharing proposed by the Board in the NGEIR decision was a rough sort of "proxy" for the conceptual approach where 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. Ratepayer would have been credited with a share of the margins on existing contracts for the remaining terms of those contracts. Clearly the margins on the existing contracts would have included a return on equity at the Board approved rate only.

The 2007 Board approved disposition of this account specifically indicated that Union was not permitted to change the method used to calculate the actual net revenues in account 179-72 for 2007. The same should apply to the calculation of the 2010 balances.

<u>d) Resource Optimization</u>

Union has reduced the total storage revenues shown in Exhibit A, Tab 1, Schedule 6 by an amount of $18.727 million. This figure is shown in the Attachment to the response to Exhibit B3.53 and is labeled as Incremental Storage Costs.

As explained at the Technical Conference approximately $8 million of this total is related to resource optimization. It was also explained that these costs related primarily to gas loans (Tech. Conf. Tr. July 26, 2011, page 49). The Union witnesses explained the mechanics of the gas loans and how they create storage that can be sold on a long term basis (Tr. Vol. 1, pages 122-126).

Mr. Isherwood indicated that Union only creates storage using gas loans if it can actually sell storage in that same first year for more than the cost of creating the storage (Tr. Vol. 1, page 126, lines 25-28). At the same time, however, Ms. Elliot stated that Union does not have the revenue divided out (by year), and that they could not identify the revenue to match the costs that caused it (Tr. Vol. 1, page 126, lines 11-13).

LPMA is concerned that Union may have higher costs included in the 2010 account than revenues generated in calendar 2010 as a result of the space freed up by the gas loans. LPMA submits that the Board should direct Union to confirm that the revenue generated in calendar 2010 is equal to or in excess of the $8 million in costs associated with the gas loans used to create the space to be sold in 2010. Further, if Union cannot confirm this, or the revenue generated in 2010 is less than the associated cost, then LPMA submits that the Board should direct Union to remove any costs in excess of the revenues generated through the use of the gas loans in 2010 from the calculation of the margins in the account.

The rationale for this approach is that the costs in 2010 should not result in a lower margin to be shared with ratepayers and then provide additional revenues to Union in 2011 and beyond when there is no longer any sharing with ratepayers.

LPMA has a further concern with the overall resource optimization methodology used by Union. The evidence is clear that resource optimization only creates space in the first year of a long term contract. The space used for the second and subsequent years of a long term contract is based on space that becomes available from the expiry of long-term contracts (Tr. Vol. 1, pages 122-125). This space would be available in subsequent years, regardless of whether or not Union is able to create space in the first year through resource optimization.

Resource optimization, as described by Mr. Isherwood, is actually a transaction that creates short-term storage space. Gas is taken off the system in July and brought back in November and December (Tr. Vol. 1, page 122, lines 8-11). The only reason Union classifies this as a long-term storage transaction is because they use it to create space in the first year of a 2 or 3 year storage contract.

The reason for this is obvious in that Union has been sharing a declining portion of long-term storage margins and beginning in 2011 will no longer share any long-term margins. Short-term margins, on the other hand, will continue to be shared with ratepayers, and in 2010 instead of 25% going to ratepayers (long-term sharing amount), short-term margins accruing to ratepayers are effectively 71.1%. The following exchange clearly illustrates that Union has no intention of maximizing short-term margins (Tr. Vol. 1, page 148).

MR. AIKEN: And then anything over the 100 petaJoules which the Board has deemed to be a non-utility asset, does Union always sell that, along with the resource optimization, but in terms of the physical capacity, the 60-some petaJoules over the 100, does Union always sell that as long-term storage, or are there times when you sell some of that as short-term as well?

MS. CAMERON: We sell that all long-term.

MR. AIKEN: Is there a possibility in the future that some of that could be sold short-term, or that's not in your plans?

MS. CAMERON: Not under the current regulatory framework. We won't change.

LPMA submits that the Board should consider whether or not the resource optimization, or gas loans, that actually created short-term storage space should be considered as part of the long-term contracts to which Union has linked them or whether they are effectively short-term contracts.

e) Impact of LPMA Submissions

As noted above in parts (b) and (c), LPMA submits that the Board should remove from the calculation of actual net revenues the impacts associated with the return on purchased assets and the use of the post-tax hurdle rate.

As shown in the response to Exhibit J1.4, the total return component of costs, including taxes, included by Union for the return on purchased services and the use of the hurdle rate in the calculation of actual net revenues for the long-term storage account total \$24.477 million. Elimination of these costs and reducing the return and associated taxes to a return on owned assets at the Board approved rate results in a cost of \$10.594 million. Based on this reduction of \$13.878 and a 25% margin sharing ratio, the amount to be paid to ratepayers increases by \$3.469 million.

The amount of costs included in the calculation of the actual net revenues are also shown should the Board approve one of the post-tax hurdle rate and the return on purchased services and not the other. If the Board were to approve the post-tax hurdle rate, but not the return on purchased assets, the impact is an increase in the amount paid to ratepayers of \$2.495 million ((\$24.477 - \$ 14.498) x 25%). Similarly, if the Board were to approve the return on purchased services, but not the use of the post-tax hurdle rate, the impact is an increase in the amount paid to ratepayers of $1.992 million (($24.477 - $16.509) x 25%).

However, as noted in parts (b) and (c) above, LPMA submits that there is no principled basis that is compatible with the NGEIR decision which would allow Union to include any amount in the actual net revenue calculation for either a return on incremental assets that is greater than the Board approved return or any return amount at all on purchased services.

C) Other Accounts

LPMA makes no specific submissions with respect to the Other Accounts (lines 5 through 18 and 21 through 23) shown in Schedule 1 of Exhibit A, Tab 1. LPMA accepts the balances as shown, noting that some of the accounts include preliminary figures that will be trued up at the next proceeding dealing with deferral account balances when the amounts will have been finalized.

III. EARNINGS SHARING

LPMA has no issues with the earnings sharing calculations shown in Exhibit A, Tab 2. As shown in the response to Exhibit B5.3, Union has indicated that the calculation of utility earnings and earnings sharing is consistent with the methodology used to calculate the 2009 earnings sharing in EB-2009-0039.

However, LPMA does note that the Board may make changes to the cost allocation methodology that is an issue in this proceeding. If the Board does approve changes to Union's cost allocation methodology as part of this proceeding, then there may be changes to the earnings sharing calculation that would have to be made and reviewed.

IV. ALLOCATION AND DISPOSITION OF 2010 BALANCES

With the exception of Account 179-124 Harmonized Sales Tax ("HST") Deferral Account, Union has indicated that the 2010 allocation proposals are consistent with the allocations approved by the Board in the EB-2010-0039 proceeding that dealt with the

2009 balances (Exhibit B5.7). LPMA supports the use of the allocations proposed by Union and previously approved by the Board for these accounts.

With respect to the HST account (179-124) Union notes in the response to Exhibit B5.7 that the allocation methodology to dispose of this account has not yet been approved by the Board and that it was requesting Board approval for the allocation proposal as part of this proceeding. Union's proposal, as outline at pages 5-6 of Exhibit A, Tab 3, is based on use of three separate 2007 Board-approved allocators.

In particular, Union proposed to allocate capital savings using rate base, operations & maintenance savings using O&M expenses excluding cost of gas and compressor fuel costs using the allocation of compressor fuel less customer supplied fuel. In the response to part (b) of Exhibit B5.7 Union indicates that it has allocated the components of the HST deferral account consistent with how these types of costs are included in Board-approved rates. LPMA submits that the approach proposed by Union is appropriate and should be approved by the Board for the HST deferral account 179-124.

V. ALLOCATION OF COSTS BETWEEN UNION'S REGULATED & UNREGULATED STORAGE OPERATIONS

LPMA has had the opportunity to review the preliminary submissions of the CME and adopts those submissions.

VI. COSTS

LPMA requests that it be awarded 100% of its reasonably incurred costs for participating in this proceeding.

All of which is respectfully submitted this 3rd day of October, 2011.

Randall E. Aiken__

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