Ontario Energy Board

Commission de l'énergie de l'Ontario

EB-2011-0025

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 approving or fixing just and reasonable rates and other charges for the sale, distribution, transmission and storage of gas effective January 1, 2012.

BEFORE: Karen Taylor
Presiding Member

Marika Hare
Member

PARTIAL DECISION AND ORDER
(Issued February 23, 2012 and as corrected March 1, 2012)

Introduction

Union Gas Limited ("Union" or the "Applicant") filed an application on September 6, 2011 with the Ontario Energy Board (the "Board") under section 36 of the *Ontario Energy Board Act, 1998* for an order of the Board approving or fixing rates for the distribution, transmission and storage of natural gas, effective January 1, 2012 (the "Application"). The Board assigned file number EB-2011-0025 to the Application and issued a Notice of Application on September 15, 2011.

The Application is for rates for 2012 to be set under the multi-year Incentive Rate Mechanism ("IRM") as approved by the Board under File No. EB-2007-0606. 2012 will be the final year of Union's five year plan.

On September 15, 2011 Union filed the evidence and a draft rate order in support of its Application.

The Board issued its Procedural Order No. 1 on October 12, 2011, in which it scheduled a number of events in the proceeding.

The Board issued its Procedural Order No. 2 on October 20, 2011, which established the Final Issues List and provided an updated List of Intervenors.

The Board held a Settlement Conference on November 1, 2011, which resulted in a settlement of most issues. A Settlement Agreement was filed with the Board on November 9, 2011, which indicated that a settlement was reached on all but the following issues:

- The treatment and amount proposed for Union's Cross Bore Safety Program;
- The establishment of Deferral Account 179-127 – Pension Charge on Transition to United States Generally Accepted Accounting Principles ("USGAAP") ("USGAAP Transition Deferral Account");
- The closure of the Long-Term Peak Storage Services Deferral Account; and
- The wording change requested related to Union's Late Payment Penalty Policy (collectively, the "Unsettled Issues").

The Board issued a Partial Decision and Order on November 14, 2011, which accepted the Settlement Agreement and ordered Union to file a revised Draft Rate Order reflecting the Settlement Agreement. In the Partial Decision and Order, the Board also scheduled an Oral Hearing to hear the Unsettled Issues on January 16-17, 2012.

The Draft Rate Order was filed on November 18, 2011. Letters of comment were received from Energy Probe, the City of Kitchener ("Kitchener"), and the Canadian Manufacturers & Exporters ("CME"). Energy Probe submitted that the wording included in the Draft Rate Order relating to the establishment of a DSM Incentive Deferral Account could be improved to provide more detail, clarity and consistency with the Settlement Agreement. Union filed a reply submission on November 28, 2011. Union

submitted that it did not object to the wording change suggested by Energy Probe regarding the DSM Incentive Deferral Account.

The Board issued a Partial Decision and Rate Order on December 2, 2011, which approved the Draft Rate Order and accepted the wording change suggested by Energy Probe.

At the conclusion of the oral hearing, the Board set out the process for Board staff and intervenors to make submissions on the Unsettled Issues. The Board required that submissions by intervenors and Board staff be filed by January 25, 2012 and Union's reply be filed by February 1, 2012.

Z-factor – Cross Bore Safety Program

Background

Union proposed a Z-factor adjustment effective January 1, 2012 to allow the recovery of costs related to Union's Cross Bore Safety Program.

Union noted that the Cross Bore Safety Program was developed and implemented during 2011 as a direct result of communications with the Technical Standards & Safety Authority ("TSSA") and subsequent order dated August 31, 2011 establishing the requirement that a Cross Bore Safety Program be developed. Union stated that the Cross Bore Safety Program is designed to identify and rectify potentially dangerous situations where a natural gas line has been installed through a sewer line, as well as establish processes and procedures to minimize the risk of these occurrences happening on future installations.

In 2011, Union expects to incur $0.800 million in O&M costs and $1.100 million in capital costs associated with the Cross Bore Safety Program. The forecasted costs for the program in 2012 are $1.825 million in O&M costs and $1.100 million in capital costs. The annual revenue requirement related to the Cross Bore Safety Program is estimated to be $1.873 million.

Union stated that the potential safety issues related to cross bores have only recently become more widely known in the utility industry as a number of serious safety incidents and explosions have occurred in the United States. Union noted that over the past 10 years, there have been approximately 25 explosions related to cross bores involving natural gas lines in the United States. Union stated that these incidents have prompted the establishment of the Cross Bore Safety Association (of which Union is a member) as well as the establishment of a Cross Bore Task team through the Canadian Gas Association ("CGA"), which Union has also participated in.

Union noted that the potential danger created as a result of a cross bore involving a natural gas line can remain undetected for years and that in many cases the gas line can remain in the sewer line without creating any issues or problems. The danger in a cross bore situation only occurs when there is a need for work to be done within that particular sewer line. In most cases, this work would be the result of a sewer line blockage or sewer line cleaning / maintenance.

Union noted that in the event of a blockage or cleaning / maintenance being required in a sewer line that contains a cross bore, the danger is created if the company or individual performing this work utilizes rotating mechanical auguring equipment or water jetting equipment in the sewer line that can potentially damage and rupture the gas line that is present.

Union noted that during late 2010 and early 2011, it developed a Cross Bore Safety Program to address the cross bore issue and associated risks. This program was developed utilizing the CGA Cross Bore Task Team's white paper and best practices on the issues as a guideline. Union noted that implementation and communication of the program started in mid-2011 and full implementation was expected by the end of 2011. Union noted that the Union Gas Cross Bore Safety Program was designed based on the following objectives:

(a) Develop processes and procedures to be used during new construction utilizing trenchless technology to avoid the creation of any new cross bores.

(b) Manage the risk associated with legacy cross bores that may already exist within the distribution system.

(c) Proactively investigate areas of Union's natural gas distribution system that may have higher risk of cross bores.

(d) Educate industry stakeholders, municipalities, and the general public on the issue of cross bores and raise awareness of the steps they should take prior to clearing a blocked sewer line or other work in a sewer line.

Union noted that during the spring of 2011, it implemented new construction procedures designed to be used when using trenchless technology aimed at avoiding the creation of any new cross bores.

Union noted that its Cross Bore Safety Program is also designed to manage the risk associated with any legacy cross bores that may already exist in its system. Union noted that the program is essentially a response program in the event of a blocked sewer being cleared using motorized augers or water jetting equipment that could damage a natural gas line if a cross bore existed.

Union noted that in an attempt to identify and remove legacy cross bores, it is proactively investigating areas in its system that may have a higher chance of a cross bore existing. Once these areas are identified, service providers with sewer video technology check these addresses to ensure that no cross bores exist. In the event that a cross bore is found as part of this video investigation, the cross bore will be repaired and further investigation in the area will be considered.

Union stated that the education and communication of the cross bore issue and the Union Gas Cross Bore Safety Program has and will continue to be a major focus for Union.

Union indicated that its Cross Bore Safety Program qualifies for Z-factor treatment as it meets each of the five (5) Z-factor criteria which Union set out as follows:

(1) The event must be causally related to an increase / decrease in costs;

(2) The cost must be outside of the control of the utility's management and not a risk for which a prudent utility would take risk mitigation steps;

(3) The cost increase / decrease must not otherwise be reflected in the price cap index;

(4) Any cost increase must be prudently incurred; and

(5) The cost increase/decrease must meet the materiality threshold of $1.5 million annually per Z-factor event (i.e. the sum of all individual items underlying the Z-factor event).

Position of Parties

Union argued that its Cross Bore Safety Program meets the Z-factor criteria listed above. Union noted the following:

(1) The increased costs incurred to develop and implement Union's Cross Bore Safety Program are a direct result of a newly identified industry issue that was not previously accounted for or identified as part of rates. Customers have previously benefited from lower costs associated with trenchless installations and this is a related unforeseen cost that has now arisen.

(2) This issue and the costs associated with Union's Cross Bore Safety Program were unexpected and are required in order to comply with a TSSA Director's Order (Ref No. 1-88-11) which requires natural gas distributors to identify and incorporate procedures to manage the integrity of their systems related to this risk as well as an action plan to manage this risk. The action plan is to be completed and available for TSSA review by October 31, 2011.

(3) The cost of Union's Cross Bore Safety Program is not otherwise reflected in the price cap incentive regulation formula.

(4) Union's Cross Bore Safety Program was developed in alignment with the Canadian Gas Association White Paper (including Best Practices) on the

cross bore issue, and in alignment with Enbridge Gas Distribution's program to ensure it incorporated best practices and alignment across Ontario. Vendors used to support Union's program were selected through a competitive bid process.

(5) The forecasted program costs exceed the Z-factor threshold of $1.5 million.

The Building Owners and Managers Association of Toronto ("BOMA"), Consumers Council of Canada ("CCC"), CME, Energy Probe, Federation of Rental-housing Providers of Ontario ("FRPO"), Industrial Gas Users Association ("IGUA"), London Property Management Association ("LPMA"), School Energy Coalition ("SEC") and Vulnerable Energy Consumers Coalition ("VECC") all argued that Union's Cross Bore Safety Program does not qualify for Z-factor treatment and accordingly the 2012 costs related to the program are not recoverable.[1]

The above noted intervenors argued for disallowance of Z-factor treatment of Union's Cross Bore Safety Program because of three factors:

1) There is no Z-factor event that caused the costs for which Union seeks recovery;

2) Union has failed to demonstrate that the costs of the program are outside of the control of the utility's management and not a risk for which a prudent utility would take mitigation steps; and

3) Union has not adequately demonstrated that the Cross Bore Safety Program costs meet the Z-factor materiality threshold and that the forecasted costs are incremental.

[1] For the noted parties' argument on the Z-factor – Cross Bore Issue see:

EB-2011-0025, BOMA Final Argument, pp. 1-3.
EB-2011-0025, CCC Final Argument, pp. 2-3.
EB-2011-0025, CME Final Argument, pp. 1-6.
EB-2011-0025, Energy Probe Final Argument, pp. 4-10.
EB-2011-0025, FRPO Final Argument, pp. 1-5.
EB-2011-0025, IGUA Final Argument, pp. 1-3.
EB-2011-0025, LPMA Final Argument, pp. 1-3.
EB-2011-0025, SEC Final Argument, pp. 2-3.
EB-2011-0025, VECC Final Argument, pp. 3-8.

Each of these factors is explained in greater detail below.

Z-factor Event

VECC noted that in order to qualify for recovery as a Z-factor, the relevant costs must be causally connected to a Z-factor event. VECC submitted there is no Z-factor event that caused the costs for which Union seeks recovery.[2]

VECC noted that Union has been performing trenchless installations of natural gas lines for approximately 30 years. VECC submitted that the risks associated with these types of installations have existed for decades, and did not suddenly manifest themselves during the course of Union's IRM period. VECC submitted that the failure of Union to appreciate the potential risks associated with their trenchless installations is not a qualifying Z-factor event; it is simply an example of the utility having failed to act prudently. VECC noted that it appears from the transcript that Union thought this was not an issue in their operating area as sewers are typically installed below the frost line in colder climates.[3]

In response to cross examination on behalf of the CME Union agreed that although the issue has been reasonably known since 2006 it did not consider this to be a problem in its franchise area.[4]

VECC noted that there is no evidence that, having been alerted to the possibility of the dangerous intersection of sewers and natural gas lines, that Union did anything more than assume, incorrectly, that their lines were well clear of sewers. VECC submitted that the fact that Union determined, within the timeframe of the IRM term, that their assumption about the proximity of their natural gas lines to nearby sewers was wrong, does not create a Z–factor event.[5]

In addition, VECC submitted that the issuance of a requirement from the TSSA to initiate a Cross Bore Safety Program is not a Z-Factor event. VECC submitted that the

[2] See EB-2011-0025, VECC Final Argument, p. 3.
[3] See EB-2011-0025, Oral Hearing Transcript, Vol. 2, p. 28.
[4] See EB-2011-0025, Oral Hearing Transcript, Vol. 2, p. 34.
[5] See EB-2011-0025, VECC Final Argument, p. 5.

issuance of a requirement from the TSSA is nothing more than an assertion that in the absence of a Cross Bore Safety Program, Union has been acting imprudently.[6]

VECC noted that the issuance of an order by the TSSA or other authority compelling Union to incur costs is not necessarily a *de facto* Z-Factor event. If it were, every failure of Union to meet the standards of the TSSA that resulted in an order that compelled Union to incur costs would become justification for Z-Factor relief.[7]

In response to submissions that Union should have known about the cross bore issue sooner, particularly since it is a member of the Cross Bore Safety Association, Union stated that this is a U.S. based organization and the experience discussed on its website is a U.S. experience. Union noted that it was not a member of the Cross Bore Safety Association until 2011 and the Association itself was only founded in 2007. Union noted that the evidence is that it was not until late 2010 and early 2011 that Union developed its Cross Bore Safety Program, utilizing the CGA Cross Bore Task Team White Paper (issued in 2010) as a guideline.[8]

Union submitted that intervenor submissions on this issue defy common sense. Union stated that if it was aware of the cross bore safety issue and appreciated the risks associated with it, some costs associated with the issue would already be included in rates. Union submitted that there are no costs related to its Cross Bore Safety Program in rates and that there is no evidentiary dispute on this point. Union submitted that the Cross Bore Safety Program was not added to Union's Distribution System Integrity Management Program until 2011, and therefore does qualify as a Z-factor event as the issue was unknown at the time of rebasing.[9]

Management Control

CME provided extensive argument that Union has failed to demonstrate to the Board that the costs of the program have been prompted by an event that is outside the control of utility management, and relate to a risk that is not a risk for which a prudent utility would take risk mitigation steps.

[6] See EB-2011-0025, VECC Final Argument, p. 5.
[7] See EB-2011-0025, VECC Final Argument, p. 5.
[8] See EB-2011-0025, Union Reply Argument, p. 3.
[9] See EB-2011-0025, Union Reply Argument, pp. 2-3.

CME noted that the fact that the installation of gas lines using trenchless technology might result in a gas line being bored into a sewer line has been a known risk for years. CME submitted that its occurrence in prior years was managed by Union and repaired as part of Union's regular plant damage procedures.[10]

CME noted that commencing in 2009, and in the midst of the operation of its 5-year IRM Plan, Union became more sensitive to the known risk associated with cross bores. As a result, Union decided to join Enbridge in taking a more proactive approach to the investigation of the existence of cross bores. CME submitted that these decisions were taken voluntary by Union, and in accordance with its obligation, as a prudent utility, to manage known risks. CME submitted that the decision to become more proactive with respect to the investigation of cross-bores and the level of the spending plans resulting from that decision, are not events beyond the control of Union's management.[11]

CME stated that Union attempted to portray the TSSA Order in 2011 as the Z-factor event, beyond its control, that triggered the incurrence of the Cross Bore Safety Program costs. CME submitted that the incurrence of the costs was prompted by the voluntary decisions taken by both Enbridge and Union to take a more proactive approach to investigating a known risk. CME noted that the voluntary actions of Union and Enbridge prompted the TSSA Order, and not the reverse as Union has attempted to portray the situation. CME submitted that Union's arguments to the effect that the TSSA Order is a causative factor in relation to the increased spending with respect to the known cross bore risk is without merit.[12]

CME stated that the risk of utility plant damage that stems from the clearing of plugged sewers containing a gas line cross bore is no different than the risk of plant damage from any other third party intervention. The risk of third party damage to utility plant is something that all prudent utilities plan to mitigate.[13]

[10] See EB-2011-0025, CME Final Argument, p. 1.
[11] See EB-2011-0025, CME Final Argument, pp. 1-2.
[12] See EB-2011-0025, CME Final Argument, p. 2.
[13] See EB-2011-0025, CME Final Argument, p. 4.

CME noted that there is an amount already embedded in Union's rates to cover overall capital and O&M expenses with respect to avoidance of plant damage, and repairing plant damages including insurance premiums for damages caused by third parties.[14]

CME concluded by stating that the fact that Union has voluntarily chosen to spend more money in 2011 and beyond investigating the known risk of cross-bores is not an event outside the control of its utility management, nor do the costs relate to a risk that is not a risk for which a prudent utility would take risk mitigation steps.

As outlined in its pre-filed evidence and in its argument-in-chief, Union's position is that the costs associated with the cross bore program are outside of Union's control in that they are required to comply with the TSSA order. Union noted that these are not costs that can be avoided through risk mitigation.[15]

Union noted that certain intervenors argue that the costs associated with the cross bore program are within Union's control because the program was initiated prior to the issuance of the TSSA order. Union noted that these parties argue that that the order "is irrelevant to consideration of the Z-factor criteria".[16] Union submitted that the problem with this submission is that it disregards the fact that, given the order, Union has no choice but to maintain the program. It also disregards the fact that the TSSA's Draft Advisory, which ultimately resulted in the order, was issued as far back as March 2010, well before Union's program was developed.[17]

Union noted that VECC argues that the TSSA order is "nothing more…than an assertion that in the absence of a Cross Bore Safety Program Union has been acting imprudently".[18] Union submitted that this argument is without merit. Union noted that no Canadian utility had a cross bore program prior to 2009. Union submitted that the fact that Union, relied on trenchless technology (to the benefit of ratepayers) while not appreciating the potential risks associated with cross bore is not evidence of imprudence. Union submitted that the fact that utilities across North America were all

[14] See EB-2011-0025, CME Final Argument, p. 4.
[15] See EB-2011-0025, Union Reply Argument, pp. 3-4.
[16] See EB-2011-0025, IGUA Final Argument, p. 2.
[17] See EB-2011-0025, Union Reply Argument, p. 4.
[18] See EB-2011-0025, VECC Final Argument, p. 5.

similarly situated confirms the prudence of Union's actions, both historic and more recently in developing the program.[19]

The Z-factor materiality threshold

CME submitted that the evidence on which Union relies to justify a 2012 forecast revenue requirement of $1.873 million is unsupported by objective data. CME submitted that the evidence does not reasonably support a forecast of non-controllable costs in excess of $1.5 million.

CME stated that the only objective data Union has provided to support the estimates pertaining to the O&M costs of $1.825 million is its 2011 experience which Union's witnesses discussed at the oral hearing.[20] CME noted that additional details of the 2011 experience are shown in Exhibit J2.3.[21] CME submitted that there is no data in the record to support the estimate that 70% of its 1.3M customers have sewer systems, nor is there any data in the record to support the assertion that, every year, 1% of the sewers of such customers will be blocked. CME noted that the November and December 2011 locates data that Union has provided reflect an average monthly balance of 523 locates per month, or about 6,300 locates on a 12-month basis. This translates into 6,300 locates per annum rather than the 9,000 locate estimate upon which Union relies. The use of a 6,300 locate estimate rather than 9,000 locate estimate reduces the Z-factor requirement claim for 2012 by $405,000 (a level below the $1.5 million threshold). CME submitted that the level of estimated costs is further reduced when one considers that the Pro-Active Investigation for Potential Cross Bore costs of $200,000 which Union includes in its forecast and the publication of Education Awareness Materials costs included therein (in the amount of $40,000) are costs related to actions that are completely within the control of Union's management. These items of costs in the estimate are clearly not beyond the control of management and do not satisfy the Z-factor criteria.[22]

CME submitted that the video assessment component of the cost estimate is also questionable. CME noted that, in 2011, some 1,200 video assessments were conducted

[19] See EB-2011-0025, Union Reply Argument, p. 4.
[20] See EB-2011-0025, Oral Hearing Transcripts, Vol. 2, pp. 42-52.
[21] See EB-2011-0025, Ex. J2.3.
[22] See EB-2011-0025, CME Final Argument, p. 5.

without revealing the existence of any cross bores. The 2011 cost per assessment of about $300 is materially less than the $400 amount used in the current cost estimate. In addition, CME submitted that the need for Union to conduct any such assessments is questionable considering the 1,200 video assessments already conducted by Union revealed no cross-bores and the municipalities themselves conduct routine video assessments of their sewer systems.[23]

Based on the foregoing, CME submitted that Union has failed to provide convincing evidence to demonstrate that the non-controllable costs associated with cross bore locates in 2012 is likely to exceed $1.5M.

Energy Probe stated that it does not dispute that costs will be incurred related to Union's Cross Bore Safety Program. Energy Probe submitted that intervenors and the Board are unable to comment on the prudence or the incrementality of the costs as required by the Z-factor criteria. Energy Probe noted that Union stated, up until the hearing, that it had no prior year historic cost information or activity levels to compare with, because, according to Union this is a new requirement and it did not track costs until 2011. Energy Probe noted that until requested to do so in the hearing, Union did not provide information on costs or activity levels for 2011. Energy Probe submitted that it is no clear if, and how much of, the claimed 2012 Cross Bore Safety Program costs are covered under the price cap and rates.[24]

Energy Probe submitted that the implications of failing to provide information on historic costs and activity levels until requested in the hearing is that neither Intervenors nor the Board have the ability to question Union in detail to determine if and how much of the proposed 2012 costs are incremental to 2010/2011.[25]

Board staff and Kitchener supported Union's request for Z-factor treatment of its Cross Bore Safety Program.[26] Board staff submitted that its only concern is Union's estimate of costs related to its Cross Bore Safety Program. Board staff submitted that Union's cost estimate may be overstated. Board staff noted that the assumptions used by Union to forecast the costs for its Cross Bore Safety program may turn out to be

[23] See EB-2011-0025, CME Final Argument, p. 6.
[24] See EB-2011-0025, CME Final Argument, pp. 5-6.
[25] See EB-2011-0025, CME Final Argument, p. 7.
[26] See EB-2011-0025, Board Staff, Final Argument, pp. 9-10 and City of Kitchener, Final Argument, p. 1.

incorrect and Union could realize actual costs that are substantially lower than the forecasted costs of $1.873 million.

Union noted that it has forecasted O&M costs associated with the cross bore safety program of $1.825 million in 2012. Union also anticipates incurring $1.1 million in capital costs. Union noted that a number of intervenors take issue with Union's forecast. Union noted that some parties argue that, after reducing the number of locates and Proactive Investigations that Union undertakes, the forecasted costs fall below the Z-factor threshold of $1.5 million. Union submitted that these criticisms should be rejected.[27]

Union noted that the best evidence of its anticipated costs is the amount actually spent by Union in 2011, when it had no recourse for cost recovery. For the 5 month period from August to December, Union spent just over $806,000.[28] Union noted that, on a full year basis, this translates to costs in excess of the threshold. Further, the evidence is that in 2011 Union's program was at an early stage. In the circumstances, Union submitted that the reasonable conclusion is that costs will increase in 2012 and that Union's forecast is appropriate.[29]

Union noted that, in any event, ratepayers are not at risk for any amount up to the threshold. As confirmed in Ex. B8.2 and in Union's argument-in-chief, should 2012 costs not exceed the threshold, there will be no impact on ratepayers.[30]

Board Findings

The Board finds that Union's Cross Bore Safety Program costs do not qualify as a Z-factor, as the program fails to meet the first criterion, that of being causally connected to a Z-factor event. During oral testimony Union Gas agreed that the TSSA Order was not a "triggering event", as the issue had been known and a cross bore program was in development prior to the TSSA Order. Union's understanding of the cross bore issue evolved since 2009, and Union was involved in the CGA's efforts to address this problem since then. In that respect, Union acted appropriately as should any responsible distributor in assessing its risks and taking action. This is no different than

[27] See EB-2011-0025, Union Reply Argument, pp. 4-5.
[28] See EB-2011-0025, Ex. J2.3.
[29] See EB-2011-0025, Union Reply Argument, p. 5.
[30] See EB-2011-0025, Ex. B8.2 and EB-2011-0025, Oral Hearing Transcripts, Vol. 2, p. 128.

what a distributor does on a regular basis. It is therefore not a Z-factor event, but an essential component of operating a safe and reliable distribution system.

Although the Board has denied the cross bore program costs as a Z-factor, it is supportive of Union's outreach initiatives to enhance knowledge of this issue and the importance of ensuring safety in undertaking maintenance work where trenchless technology is involved.

Having determined that the cross bore program does not meet the first criterion of a Z-factor, the Board need not comment on management control, prudence of the program costs or materiality.

USGAAP Transition Deferral Account

Background

Union requested that the Board approve the establishment of the USGAAP Transition Deferral Account. In the pre-filed evidence, Union explained that it is transitioning to USGAAP for financial reporting purposes as of January 1, 2012.[31] Union noted that as a result of the transition, a charge to retained earnings related to Other Post Employment Benefits ("OPEB") will be recorded on its financial statements. Union stated that the charge to retained earnings is made up of two components: a change in measurement date from September 30 to December 31 and a write off of unrecognized actuarial losses upon the implementation of CICA 3461.[32] In the Oral Hearing held on January 16 and 17, 2012, Union stated that in order to provide the comparative period financial statements, Union needed to set the retained earnings adjustment as of January 1, 2011.[33]

Union noted that the amount that would ultimately be recorded and disposed of in the proposed deferral account is an approximate debit amount of $7 million to $7.3 million.[34] Union stated that this amount represents the remaining unamortized amount of actuarial losses arising from the implementation of CICA 3461 - Employee Future Benefits.

[31] See EB-2011-0025, Application and Evidence, Ex. A, Tab 1, p. 18.
[32] See EB-2011-0025, Application and Evidence, Ex. A, Tab 1, p. 19.
[33] See EB-2011-0025, Oral Hearing Transcript, Vol. 1, p. 69.
[34] See Union Gas Limited, EB-2011-0025, Oral Hearing Transcript Volume 2, Page 112.

Union, in its argument-in-chief, proposed that the amount can be collected all at one time or over time in exactly the same manner as it would have been collected under Canadian GAAP ("CGAAP").[35]

Union noted that there is no rate impact for 2012 as the annual amortization of approximately $3.6 million, related to the noted actuarial losses, is already included in rates.[36] Union stated that the proposed USGAAP Transition Deferral Account will essentially be used as an accounting tracking mechanism for the time being.[37]

Position of Parties

Union, in its argument-in-chief, presented the following arguments for approving the USGAAP Transition Deferral Account in the current proceeding:

1) The Board's approval of the establishment of the USGAAP Transition Deferral Account is the best evidence that can be provided to Union's auditors to persuade them that a regulatory asset exists for these USGAAP transition-related costs;

2) There is no compelling argument that it is more efficient to delay the decision on the establishment of the USGAAP Transition Deferral Account until Union's 2013 Cost of Service ("CoS") proceeding.

Board staff, BOMA, CME, Energy Probe, Kitchener, SEC and VECC all took the position that the USGAAP Transition Deferral Account should not be established at this time.[38] The noted parties argued that after a decision has been made by the Board on

[35] See Union Gas Limited, EB-2011-0025, Oral Hearing Transcript Volume 2, Page 117.
[36] See Union Gas Limited, EB-2011-0025, Interrogatory Responses, Ex. B1.8 (h).
[37] See Union Gas Limited, EB-2011-0025, Oral Hearing Transcript Volume 1, Page 12.

[38] For the noted parties' argument on the USGAAP Transition Deferral Account issue see:

EB-2011-0025, Board Staff Final Argument, pp. 2-5.
EB-2011-0025, BOMA Final Argument, pp. 3-5.
EB-2011-0025, CME Final Argument, pp. 8-11.
EB-2011-0025, Energy Probe Final Argument, pp. 10-12.
EB-2011-0025, Kitchener Final Argument, p. 1.
EB-2011-0025, SEC Final Argument, pp. 1-2.
EB-2011-0025, VECC Final Argument, p. 8.

Union's proposed transition to USGAAP in its 2013 CoS application, a decision can be made on the proposed USGAAP Transition Deferral Account.

Board staff submitted that Union's argument for establishing the USGAAP Transition Deferral Account in the current proceeding is not compelling because the Board does not regulate Union's internal accounting processes or its external financial reporting. Board staff noted that it is entirely up to the individual utility to decide how it wants to track the amounts that arise due to a transition of accounting standards and how it wants to meets its own financial reporting requirements. Board staff submitted that the Board is not required to provide Union with an evidentiary basis that Union can in turn provide to its external auditors to persuade them that a regulatory asset exists related to the USGAAP transition costs. Board staff noted that, in any case, the establishment of a deferral account does not provide any assurance that approval to dispose of the balances recorded in the account will ultimately be given. Therefore, Board staff submitted the establishment of the USGAAP Transition Deferral Account would not be strong evidence to the external auditors that the regulatory asset exists.[39]

Board staff noted that the establishment of the USGAAP Transition Deferral Account is directly associated with Union's request for and the Board's determination on Union's proposed transition to USGAAP in its 2013 CoS application. Despite the fact that Union has adopted USGAAP for the purpose of external financial reporting, the Board has not yet determined whether it will allow Union to use USGAAP for the purposes of rate regulation. Board staff submitted that the Board should make its decision regarding Union's request for the USGAAP Transition Deferral Account after it has made its decision on the use of the USGAAP standard for ratemaking purposes in Union's 2013 CoS proceeding (as part of the "Preliminary Issue"). If the Board determines that Union's proposed transition to USGAAP for ratemaking purposes is not appropriate, this account, at least in its currently proposed format, will not need to be established. [40]

In addition, Board staff noted that there is no rate impact in 2012 as the annual amortization of approximately $3.6 million, related to the actuarial losses caused by implementing CICA 3461, is already included in rates. Board staff noted that only the balance, in the proposed deferral account, at 2012 year-end needs to be addressed as

[39] See EB-2011-0025, Board Staff Final Argument, p. 4.
[40] See EB-2011-0025, Board Staff Final Argument, p. 4.

Union resets its rates in 2013.[41] Therefore, Board staff submitted that there is no harm to Union in deferring the Decision on the establishment of the proposed USGAAP Transition Deferral Account until after the Board makes it determination on the Preliminary Issue in Union's 2013 CoS proceeding.[42]

Board staff submitted that although it may very well be appropriate to establish the USGAAP Transition Deferral Account if Union's proposed transition to USGAAP for ratemaking purposes is ultimately accepted by the Board, the Board should not grant approval for the establishment of the USGAAP Transition Deferral Account in the current proceeding.

CME submitted that if the USGAAP Transition Deferral Account is established by the Board, then the Board should make it clear that it is not a regulatory asset account and that any amounts to be recorded in and/or cleared from the account, including the period of amortization, should be determined in Union's 2013 CoS proceeding.[43]

LPMA submitted that it does not oppose the creation of the USGAAP Transition account but the Board should consider whether it wants to approve a deferral account which Union has admitted it does not need to have.[44] CCC and FRPO took similar positions in their submissions. IGUA did not comment on this issue.

In its reply argument, Union submitted that that there is no compelling case for delaying the establishment of the USGAAP Transition Deferral Account. Union noted that as a result of its transition to USGAAP, it will recognize a debit to retained earnings associated with unrecorded pension expenses. Union noted that the debit will not be as large as it would be if Union were transferring to IFRS, the debit is nevertheless significant (approximately $7 million). Union submitted that the deferral account seeks to record that debit and is precisely the sort of account contemplated by the Board's Report in EB-2008-0408.[45] Union submitted that approving the account at this stage will preclude the need for further steps in the event the preliminary decision confirms the

[41] See Union Gas Limited, EB-2011-0025, Oral Hearing Transcript Volume 1, Page 77.
[42] See EB-2011-0025, Board Staff Final Argument, pp. 4-5.
[43] See EB-2011-0025, CME Final Argument, p. 10.
[44] See EB-2011-0025, LPMA Final Argument, pp. 3.
[45] See EB-2008-0408, Report of the Board: Implementing International Financial Reporting Standards and Addendum to Report of the Board: Implementing International Financial Reporting Standards in an Incentive Rate Mechanism Environment.

appropriateness of Union's decision to file on the basis of USGAAP, provides good evidence for Union's auditors and does not harm ratepayers at all. Union noted that delaying the decision will only result in Union coming forward at a later date (in 2012 or 2013) to seek the same account or a similar account in relation to IFRS.[46]

Board Findings

The Board will approve the establishment of the USGAAP Transition Deferral Account, the balance of which, at December 31, 2012 will be approximately $7.3 million. The Board is of the view that the account is needed to appropriately track the effect of the change in measurement date and the amount that would have otherwise been amortized and recovered in rates had the transition to CICA 3461 occurred at an earlier date. The Board finds that the establishment of the deferral account is consistent with the Addendum to the Report of the Board regarding the implementation of IFRS, dated June 13, 2011.

The Board is not persuaded that there is a sufficient rationale to delay the establishment of the USGAAP Transition Deferral Account and does not accept the argument that a delay is appropriate because the 2013 CoS application that is currently before another panel of the Board will likely be completed prior to December 31, 2012. The Board notes that effective January 1, 2012 Union must transition from CGAAP to another accounting standard (IFRS or USGAAP). In order to ensure that balances arising from this transition are eligible for recovery in rates, it is appropriate to approve the establishment of the deferral account at this time, even though there is no effect on 2012 rates.

The Board believes that the establishment of the USGAAP Transition Deferral Account is not contingent on whether or not the Board approves the use of USGAAP for ratemaking purposes in 2013 and the Board need not defer its decision on this matter until the Board has considered and issued its decision regarding the use of USGAAP by Union for ratemaking purposes. If approval to use USGAAP for ratemaking purposes is not forthcoming, the USGAAP Transition Deferral Account would no longer be required, as the balance to be recorded in the account would not be recognized. Moreover, approving the establishment of the USGAAP Transition Deferral Account does not

[46] See EB-2011-0025, Union Reply Argument, pp. 5-6.

guarantee that the amount in the deferral account will be disposed of, consistent with the principles underlying all Board-approved deferral accounts.

Finally, as noted in the Addendum to the Report of the Board, the Board does not prescribe financial reporting for regulated utilities; nor does the Board govern the principles for financial reporting. The Board does set the requirements for regulatory accounting and it is from this perspective that the Board finds it appropriate to establish the requested deferral account. As such, while alternative tracking methodologies may exist for financial reporting purposes, the deferral account is consistent with the regulatory accounting practices of the Board and the transition to a new accounting standard that is the subject of the Report of the Board and the Addendum to that report.

Closure of the Long-Term Peak Storage Services Deferral Account

Background

Union noted that in EB-2005-0551, Union was directed to phase out the sharing of margins on Union's long-term storage transactions over four years, starting in 2008 as follows: 2008 - 25%, 2009 - 50%, 2010 - 75%, and thereafter 100%. Effective January 1, 2011, Union no longer allocates any portion of margins on Union's long-term storage transactions to this account. On that basis, Union requested approval to close the Long-Term Peak Storage Services Deferral Account effective January 1, 2012.[47]

Position of Parties

Board staff, CCC, CME, FRPO, Kitchener, LPMA, SEC and VECC all took the position that the Long-Term Peak Storage Services Deferral Account could be closed effective January 1, 2012.[48] BOMA, IGUA and Energy Probe did not comment on this issue.

[47] See EB-2011-0025, Application and Evidence, Ex. A, Tab 1, p. 20.

[48] For the noted parties' argument on the Closure of the Long-Term Peak Storage Services Deferral Account see:

EB-2011-0025, Board Staff Final Argument, p. 10.
EB-2011-0025, CCC Final Argument, p. 4.
EB-2011-0025, CME Final Argument, p. 11.
EB-2011-0025, FRPO Final Argument, p. 5.
EB-2011-0025, Kitchener Final Argument, p. 1.

Union agreed that the Long-Term Peak Storage Services Deferral Account should be closed.

Board Findings

The Board approves the closure of Union's Long-Term Peak Storage Services Deferral Account, effective January 1, 2012. Closure of the account is appropriate since Union no longer allocates any portion of margins on its long-term storage transactions to this account, as per EB-2005-0551.

Late Payment Penalty Policy – Requested Wording Change

Background

Union's current bills and rate schedules include a statement that the annual effective rate for Union's late payment penalty is 19.56%. The existing effective rate disclosure is similar to what all the other OEB-regulated utilities include on their bills and rate schedules. Union proposed to change the wording on its customer bills and rate schedules relating to the Late Payment Penalty Policy as follows:

> When payment of the monthly bill has not been made in full 16 days after the bill has been issued, an OEB-approved late payment charge equal to 1.5% per month (equivalent to a nominal fee of 18% per annum, compounding monthly) of any unpaid balance including previous arrears will be charged.

Union noted that this change is being made to reflect the fact that the actual amount of interest charged may vary depending on the timing of the payment of the late payment.[49]

Position of Parties

EB-2011-0025, LPMA Final Argument, p. 4.
EB-2011-0025, SEC Final Argument, p. 3.
EB-2011-0025, VECC Final Argument, p. 8.

[49] See EB-2011-0025, Application and Evidence, Ex. A, Tab 1, p. 17.

In its argument-in-chief, Union noted that as a legal matter, the requirement to disclose the interest rate is set out in Section 4 of the *Interest Act*.[50] Section 4 of the *Interest Act* provides that where interest is calculated in respect of a period less than one year, then the yearly rate shall be shown.

Union noted the question that arises and which courts have had to consider is whether that means that the nominal or the effective annualized rate needs to be shown.

Union submitted that the law is reflected in the case *Smith v. Canadian Tire*[51] in which the Ontario Court of Appeal held that it is not necessary for a lender to disclose the effective rate of interest recognizing that in that case and many other cases, it is not possible to state in advance the effective rate of interest because this will depend upon a number of factors. Most significantly, when payment is made.

Union submitted that its wording change proposal meets the statutory requirements and is a more accurate description of its late payment penalty policy.[52]

CCC, FRPO, LPMA, SEC and VECC all took the position that this issue should be addressed as part of a full legal review on a generic basis (for application to all OEB-regulated utilities).[53]

Energy Probe, SEC and VECC took the position that Union could maintain the existing disclosure of the 19.56% annual effective rate and add the reference to the 18% nominal annual rate (compounded monthly).[54] Energy Probe argued that the Board should direct Union (and all other OEB-regulated utilities) to make this change as soon

[50] RSC 1985, c I-15.
[51] 26 O.R., 3(d), 1995 (OCA).
[52] See EB-2011-0025, Oral Hearing Transcripts, Vol. 2, pp. 123-127.

[53] For the noted parties' argument on the Wording Change Proposal for Union's Late Payment Penalty Policy see:

EB-2011-0025, CCC Final Argument, p. 4.
EB-2011-0025, FRPO Final Argument, p. 5.
EB-2011-0025, LPMA Final Argument, pp. 4-5.
EB-2011-0025, SEC Final Argument, p. 4.
EB-2011-0025, VECC Final Argument, pp. 8-14.
[54] See EB-2011-0025, Energy Probe Final Argument, p.13; See EB-2011-0025, SEC Final Argument, p.4; See EB-2011-0025, VECC Final Argument, p.14.

as possible.[55]

CME and Kitchener supported Union's request to change the wording related to its Late Payment Penalty Policy. CME submitted that if Union's current wording is misleading as Union suggests,[56] then the misleading wording should be corrected to make it accurate. CME and Kitchener submitted that misleading late payment penalty wording should not be perpetuated to maintain consistency with the wording on the bills of other utilities.[57]

Board staff, BOMA and IGUA did not take a position on this issue.

In its reply submission, Union noted that most intervenors oppose Union's proposed change to the wording of its customer bills and rate schedules relating to Union's Board approved late payment policy. Union noted that the intervenors argue that the Board should initiate a generic proceeding to consider the issue. Union noted that, while not opposed to such a proceeding, it questions its merit given the relatively straightforward nature of the issue.

Union submitted that there is no legal requirement that Union show an annual effective interest rate. While numeric disclosure of this rate may be desired by some, it should not come at the expense of accuracy. Union submitted that its proposed wording reflects an appropriate balance between the requirements of the *Interest Act* and the objective of providing meaningful information to ratepayers; namely, that the monthly nominal interest rate of 1.5% equates to 18% on a yearly basis, and that the monthly rate is subject to compounding.[58]

Board Findings

The Board does not approve Union's proposed rewording of the late payment penalty explanation. Rather, the Board is persuaded that providing more information will be more helpful to customers. The Board has reviewed the wording used by the electric utilities and Enbridge Gas Distribution, and agrees with intervenors that consistency in wording is desirable. Therefore, the wording on Union's rate schedules and customer

[55] See EB-2011-0025, Energy Probe Final Argument, p.13.
[56] See EB-2011-0025, Oral Hearing Transcripts, Vol. 2, pp. 123-126.
[57] See EB-2011-0025, CME Final Argument, p. 11 and EB-2011-0025, Kitchener Final Argument, p. 1.
[58] See EB-2011-0025, Union Reply Argument, p. 6.

bills should include the following: “the monthly late payment charge equal to 1.5% per month or 18% per annum (for an approximate effective rate of 19.56% per annum) multiplied by the total of all unpaid charges will be added to the bill if full payment is not received by the late payment effective date”.

The Board agrees that a review of the language and explanation of the late payment penalty may be helpful. However, the Board believes that if this is undertaken it should be done on a generic basis, such that all utilities adopt the same language in explaining the late payment penalty charges.

Cost Awards

The Board may grant cost awards to eligible stakeholders pursuant to its power under section 30 of the *Ontario Energy Board Act, 1998*. When determining the amount of the cost awards, the Board will apply the principles set out in section 5 of the Board’s *Practice Direction on Cost Awards*. The maximum hourly rates set out in the Board’s Cost Awards Tariff will also be applied.

The Board will issue a Decision on Cost Awards after the steps set out below have been completed.

THE BOARD ORDERS THAT:

1. Union shall establish a deferral account to record as a debit the amount recognized in retained earnings associated with transitioning accounting standards and reporting to USGAAP for previously unrecorded pension expenses. The Accounting Order for the USGAAP Transition Account is attached as Appendix “A” to this Partial Decision and Order.

2. Union shall close Account No. 179 – 72 – Long-Term Peak Storage Services Deferral Account effective January 1, 2012.

3. Union shall include the following language on its rate schedules and customer bills in regards to its late payment penalty policy as of April 1, 2012 as part of its QRAM Rate Order:

The monthly late payment charge equal to 1.5% per month or 18% per annum (for an approximate effective rate of 19.56% per annum) multiplied by the total of all unpaid charges will be added to the bill if full payment is not received by the late payment effective date.

4. Intervenors shall file with the Board and forward their respective cost claim to Union within 14 days from the date of this Decision.

5. Union shall file with the Board and forward to the intervenors any objections to the claimed costs of the intervenors within 21 days from the date of this Decision.

6. If Union objects to the intervenor costs, intervenors shall file with the Board and forward to Union any responses to any objections for cost claims within 28 days of the date of this Decision.

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

All filings to the Board must quote file number **EB-2011-0025,** be made through the Board's web portal at www.errr.ontarioenergyboard.ca, and consist of two paper copies and one electronic copy in searchable / unrestricted PDF format. Filings must clearly state the sender's name, postal address and telephone number, fax number and e-mail address.

Please use the document naming conventions and document submission standards outlined in the RESS Document Guideline found at www.ontarioenergyboard.ca. If the web portal is not available you may email your document to the BoardSec@ontarioenergyboard.ca. Those who do not have internet access are required to submit all filings on a CD in PDF format, along with two paper copies. Those who do not have computer access are required to file seven paper copies. If you have submitted through the Board's web portal an e-mail is not required.

All communications should be directed to the attention of the Board Secretary at the address below, and be received no later than 4:45 p.m. on the required date.

All parties must also provide the Case Manager, Lawrie Gluck, lawrie.gluck@ontarioenergyboard.ca, with an electronic copy of all comments and correspondence related to this case.

ADDRESS:
Ontario Energy Board
P.O. Box 2319
2300 Yonge Street, 27th Floor
Toronto ON M4P 1E4
Attention: Board Secretary
Tel: 1-877-632-2727 (toll free)
Fax: 416-440-7656
E-mail: Boardsec@ontarioenergyboard.ca

DATED at Toronto, March 1, 2012

ONTARIO ENERGY BOARD

Original Signed By

Kirsten Walli
Board Secretary

Appendix A

USGAAP Transition Deferral Account

Accounting Order

EB-2011-0025

Dated March 1, 2012

UNION GAS LIMITED

Accounting Entries for
Pension Charge on Transition to US GAAP
Deferral Account No. 179-127

Account numbers are from the Uniform System of Accounts for Gas Utilities, Class A prescribed under the Ontario Energy Board Act.

Debit	-	Account No. 179-127 Other Deferred Charges – Pension Charge on Transition to US GAAP
Credit	-	Account No. 212 Retained Earnings

To record, as a debit in Deferral Account No. 179-127, the amount recognized in retained earnings associated with transitioning accounting standards and reporting to US Generally Accepted Accounting Principles (GAAP) for previously unrecorded pension expenses.