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By electronic filing

June 20, 2012

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

Dear Ms Walli,

Union Gas Limited ("Union") **2011 Earnings Sharing and Disposition of Deferral Accounts and Other Balances**	
Board File No.:	**EB-2012-0087**
Our File No.:	**339583-000137**

We are writing to respond to counsel for Union's letter to the Board dated June 18, 2012, (the "Union letter") asserting that the issue of Union's diversion of FT-RAM amounts to its shareholder, rather than applying them to reduce the TCPL FT demand charges paid for by ratepayers, is an issue that the Board "has already addressed". We strongly disagree with that assertion. The issue has not been addressed and it should not be considered without a complete record of all relevant facts. For reasons that follow, we urge the Board to reject the attempt by Union to obtain a Board pre-determination of the matter in issue in its favour on the basis of the arguments contained in the Union letter.

Ratepayer representatives have only recently gained an understanding of the factual matters related to the issue. Union's responses to Interrogatories posed by TransCanada PipeLines Limited ("TCPL") and others in the EB-2011-0210 proceeding reveal that FT-RAM credits are not "value" that Union "extracted" from "new services", as asserted in the evidence in the EB-2009-0101 proceeding referenced at pages 2 and 3 of the Union letter. Rather, we have learned that the net FT-RAM revenues that Union is currently streaming to its shareholder stem directly from the TCPL demand charges that ratepayers pay with respect to the FT capacity Union holds on TCPL.

None of this is described in the evidence quoted in the Union letter. The evidence to which Union refers omits any reference to details related to the source and nature of the FT-RAM credits. These details, of which we are now aware, clearly demonstrate that the FT-RAM credit amounts were provided by TCPL to enable FT shippers to mitigate their Unabsorbed Demand Charges ("UDC"). Means of mitigating FT demand charges have been a matter of high priority for shippers on the TCPL Mainline in recent years. This is because the year-over-year tolls have been increasing significantly as a result of the combined effect of increasing Mainline under-utilization and the fact that FT shippers pay all of the fixed costs of the Mainline, regardless of its under-utilization.

Having regard to the source of the FT-RAM credits and their intended purpose, we submit that the amounts should properly be credited to ratepayers through the gas supply related deferral accounts which were never eliminated as a result of the provisions of the EB-2007-0606 Settlement Agreement to which the Board refers in the Decision referenced at pages 1 and 2 of the Union letter. Put another way, the general architecture of the IRM Plan, including its gas supply deferral accounts, and the provisions of the EB-2007-0606 Settlement Agreement require that all mitigation amounts related to items of expense paid for by ratepayers as "gas supply costs" be credited to ratepayers. The principle that applies is that regulated gas utilities in Ontario cannot profit from items of expense classified as "gas supply costs".

The elimination of certain S&T deferral accounts pursuant to the provisions of the EB-2007-0606 Settlement Agreement has no relevance to the issue we seek to have the Board examine. The issue pertaining to the compatibility of Union's actions with the existing gas supply related deferral account regime and the principle that Union cannot profit from items of expense classified as gas costs has never been explicitly considered or addressed by the Board. The issue is of considerable importance because the information at line 5 in Exhibit J.C-4-7-9 Attachment 1 in the EB-2011-0210 proceeding indicates that, to the end of 2010, Union had acted to stream to its shareholders some $31.1M of amounts paid by ratepayers as "gas costs". For 2011, the additional gas costs amount streamed to the shareholder is $22.0M and for 2012, the forecast amount is $14.2M. Using this information, we estimate that the total amount in issue, to the end of 2011, is about $53.1M. We believe that this $53.1M amount is a component of the total over-earnings Union realized in the 5-year period 2007 to 2011 inclusive of about $264.724M, as shown at line 24 of columns (b) to (f) inclusive in Exhibit J.O-4-14-1 Attachment 1 in the EB-2011-0210 proceeding.

We submit that, in situations such as this, where Union takes unilateral action to enrich its shareholder at the expense of its ratepayers, the principle that the Board should apply is that, without explicit prior Board approval, the outcome of such actions is invalid and particularly so when the amounts being streamed to the shareholder are amounts ratepayers have paid to Union as "gas costs". In the EB-2011-0038 proceeding, Union accepted, as a matter of principle, that improper gas supply deferral account balances, in prior years, should be rectified by making the necessary adjustment to the current year's gas supply deferral account balances. That principle applies to the situation we wish the Board to examine.

Neither the question raised in CME's Argument in the EB-2008-0220 proceeding about the Dawn Overrun Service – Must Nominate ("DOS-MN"), nor Union's response to that question in Reply Argument, nor the excerpt in the Board's Decision in that case, nor the excerpt from part of Union's evidence in the EB-2009-0101 proceeding, all of which are cited in the Union letter, can reasonably be construed to support a conclusion that the Board has already addressed Union's actions in streaming to its customers some $67.3M of money paid by ratepayers as gas costs. FT-RAM credits, sourced from FT demand charges paid by Union's ratepayers, were not a factor reflected in the net revenues generated by Union's use of the DOS-MN. The argument in the Union letter is specious.

The Union letter refers to the fact that ratepayers realized an earnings sharing credit in 2008 of $34.461M. and states that this amount "reflects" revenues associated with TCPL's FT-RAM program. The portion of the $34.461M earnings sharing credit attributable to the FT-RAM program is one of the matters that a complete record will clarify. Based on Exhibit J.C-4-7-9 Attachment 1 in the EB-2011-0210 proceeding, we believe that a small portion (about $5M) of Union's 2008 over-earnings of $82.264M was attributable to FT-RAM credit amounts and that 50% of this $5M amount is reflected in the earnings sharing credit of $34.461M.

The point to be emphasized is that the existence of the earnings sharing mechanism in the IRM Plan is not relevant to whether the FT-RAM amounts should properly be applied to reduce Union's upstream transportation costs charged to ratepayers as an item of gas supply costs. If the Board considers this issue

in the context of a complete record and eventually agrees that the FT-RAM amounts should have been applied to mitigate these costs, then the Board will need to adjust the amounts to be credited to the appropriate gas supply deferral accounts to eliminate the portion of ratepayers' share of earnings in prior years attributable to FT-RAM credit amounts.

For all of these reasons, we submit that the Board should have a complete record before considering the important question of whether Union is improperly streaming FT-RAM amounts to its shareholder rather than crediting them to ratepayers through the gas supply related deferral accounts.

We reiterate that, in our view, a Technical Conference is the most efficient way of completing the record. If a Technical Conference is not to be held, then intervenors should be allowed to submit further interrogatories to Union. In the alternative, they should be allowed to file, in this proceeding, the interrogatory responses provided by Union in the EB-2011-0210 proceeding that are relevant to the matter in issue so that Union witnesses can be examined, at the hearing, with respect to this information.

Yours very truly,

Peter C. P. Thompson, Q.C.

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