Ontario

ONTARIO ENERGY BOARD

FILE NO.: **EB-2011-0210**

VOLUME: **13**

DATE: **August 13, 2012**

BEFORE:	**Marika Hare**	**Presiding Member**
	Paul Sommerville	**Member**
	Karen Taylor	**Member**

EB-2011-0210

THE ONTARIO ENERGY BOARD

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

AND IN THE MATTER OF an Application by Union Gas Limited, pursuant to section 36(1) of the Ontario Energy Board Act, 1998, for an order or orders approving or fixing just and reasonable rates and other charges for the sale, distribution, transmission and storage of gas as of January 1, 2013.

Hearing held at 2300 Yonge Street,
25^{th} Floor, Toronto, Ontario,
on Monday, August 13th, 2012,
commencing at 9:37 a.m.

VOLUME 13

BEFORE:

MARIKA HARE	Presiding Member
PAUL SOMMERVILLE	Member and Vice-Chair
KAREN TAYLOR	Member

A P P E A R A N C E S

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KHALIL VIRANEY LAWRIE GLUCK	Board Staff
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TOM BRETT	Building Owners and Managers Association (BOMA)
PETER THOMPSON	Canadian Manufacturers & Exporters (CME)
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DAVID MacINTOSH	Energy Probe Research Foundation
DWAYNE QUINN	Federation of Rental-housing Providers of Ontario (FRPO)
IAN MONDROW	Industrial Gas Users' Association (IGUA)
JAMES A. GRUENBAUER	Corporation of the City of Kitchener (CCK)
RANDY AIKEN	London Property Management Association (LPMA)
JAY SHEPHERD	School Energy Coalition (SEC)
MICHAEL BUONAGURO	Vulnerable Energy Consumers' Coalition (VECC)

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NO UNDERTAKINGS WERE FILED IN THIS PROCEEDING.

Monday, August 13, 2012

--- On commencing at 9:37 a.m.

MS. HARE: Good morning. Please be seated.

Good morning, everyone. The Board is sitting today to hear argument-in-chief in the matter of application EB-2011-0210, submitted by Union Gas Limited, for an order or orders approving rates for the distribution of gas to be effective January 1st, 2013.

Are there any procedural matters before we hear the submissions?

MR. SMITH: None, Madam Chair.

MS. HARE: Good. Just in terms of timing, Mr. Smith, if you could find a suitable place for a break at around 11:00?

MR. SMITH: Yes.

MS. HARE: That would be good.

FINAL ARGUMENT BY MR. SMITH:

MR. SMITH: I will to that. Thank you.

Members of the Board, first let me say thank you for moving the argument schedule as many times as you did and accommodated the parties. It was particularly helpful to me.

You will have in front of you our brief compendium and I say that --

MR. SOMMERVILLE: Facetiously.

MR. SMITH: -- facetiously.

[Laughter]

MR. SMITH: There is an expression about writing a short letter and a long letter. This is perhaps overly inclusive. I will certainly be touching on a good number of the materials in here, but it is not my plan to review it exhaustively. It does give you an indication, however, of the volume of material in this case, this being only approximately a twelfth of the material that is actually in evidence.

MR. MILLAR: Madam Chair, should we mark that as an exhibit?

MS. HARE: Yes, please.

MR. MILLAR: I believe we are on day 13, so this is Exhibit K13.1, the argument-in-chief compendium of Union.

EXHIBIT NO. K13.1: ARGUMENT-IN-CHIEF COMPENDIUM OF UNION.

MR. SMITH: Members of the Panel, by way of overview before we dive in, I should give you an introduction to the material and an overview of my submissions.

The compendium is organized by key topic area. I intend to address what we say are the principal issues for you to wrestle with, with the exception of Parkway West, which I will come to in my submissions, behind -- so there are major tabs labelled "Overview", "In-Franchise", "Ex-Franchise", et cetera, and then tabs behind that. And I intend to largely follow the order in the compendium.

Now, by way of overview, this is Union's first cost of service proceeding since 2006. Union is seeking to recover, after considering the settlement agreement approved by the Board, a revenue deficiency and delivery rates of $54.524 million. The deficiency calculation can be found at H1, tab 1, page 3, and you needn't turn it up, but that can also be found in our compendium under the "Rate Design" heading at tab 1.

The main drivers of that deficiency and which have not been settled, the matters which should be at issue in this proceeding are set out at A2, tab 1, schedule 1. And, in brief, they are the change in capital structure, the change in weather method applicable to general service in-franchise rates, and, to a much lesser extent, a shortfall in contract market revenues.

In terms of bill impacts arising from Union's application, they are, in my submission, on a total bill basis, modest.

In Union south, the delivery rate changes proposed by the application will result in an approximately 1.7 percent increase on a typical residential customer's total bill, a change of approximately $1.05 per month. And I will come to this, but the reference for that is Exhibit J11.10, which can be found at our compendium, again, under rate design and cost allocation at tab 8.

In the north, the bill increases are somewhat higher, but still less than 10 percent at 7.5 percent for your average residential customer. This increase of 7.5 percent translates to roughly $5.00 per month.

In Union's submission, alone the increases are just and reasonable. When against the backdrop of the past five years, they are even more so. Relative to 2007, delivery rates over the past five years have increased by one-tenth of 1 percent per year, and you can see that at our compendium, tab 3 of the overview section, which is A2, tab 1, schedule 1, at page 5.

You will see on page 5 at line 10:

> "Customers have enjoyed the benefits associated with flat delivery rates for the extended five-year period with rates increasing by only 0.6 percent net of pass-through items relative to 2007 Board-approved rates."

So rates have remained flat, and that, of course, does not take into account inflationary increases over the time period, which would see, in real rates, rates decline.

All of this has happened, in my submission, while the long-term premium previously built in revenues has been phased out.

Now, there was no discussion of this in cross-examination, but, in my submission, it should matter to the Board. The Board should have regard to the fact that Union ratepayers have enjoyed flat rates for five years straight years, and this is exclusive of the millions of dollars -- the tens of millions of dollars shared with ratepayers through earnings sharing.

It is safe to say, in my submission, that the rate of increase, essentially zero, compares favourably to any other major utility in Ontario over the time period, and Union is justifiably proud of that accomplishment. In my submission, respectfully submitted, the Board should be, as well.

Now, the external context for the application is set out at Exhibit A2, tab 1, schedule 1 beginning at page 7 and following, and I haven't extracted that in its entirety, but you will see, at page 7 through 8, the main factors influencing the application.

As you will see beginning on page 7, and as you heard during the case, the natural gas market in North America is changing. This has impacts on Union's Dawn-Parkway transmission system, specifically significant amounts of turn-back on that system, with potentially much, much more in 2014 through 2018, something that you can see and that I will deal with in greater detail later.

But if you look at page 11, members of the Board, and over at page 12, you will see there the considerable volume of turn-back, particularly at the chart on page 12, that Union has experienced on the Dawn-Kirkwall system and Dawn-Parkway system thus far at lines 1 and 2, and that is at risk in 2014 through 2018.

And the Dawn-Kirkwall turn-back is one that I will touch on, because that turn-back by TCPL and two other parties for 2013 has significant impacts on Union's M12 revenue forecast. Indeed, it drives that forecast down by a full $18 million during the 2013 forecast period, and Union has thus far been unable to sell that turn-back capacity.

The other major effects on the application include the lingering effects of the economy and the erosion of

Ontario's manufacturing base. You see this in particular in the LCI and key market contract customer forecast, which we will talk about, where revenues are down substantially from 2007 Board-approved levels.

Indeed, there was a dramatic drop in 2009 actuals, and that market has never come back and is not forecast to come back, either.

Now, offsetting this somewhat is lower gas costs and the phase-out of coal-fired generation.

Now, all of these factors, in my submission, were considered by Union in preparing its application. They're not new, in the sense that they were not new when these factors -- particularly coal-fired generation -- were put in cross-examination. They do not push the forecasts either higher or lower, in my submission, a point that I will take you to in further detail when we talk about the contract market revenue forecast.

Now, as I said at the outset, this is Union's first cost of service application since 2006, really, for 2007 rates. For the past five years, Union has operated under IRM.

If you can please turn to tab 5 of the compendium, you will see there an excerpt from the PEG report that was filed by the Board in this proceeding. And I bring you to this report for one reason only, to show you at page 121 the objectives that the Board itself set out for an effective criteria -- the criteria the Board set out to measure whether IRM has been effective.

And there are four of them.

In my submission, incentive regulation was an unqualified success for Union, but also for ratepayers. And you have the objectives there.

First:

> "Did the incentive regulation plan encourage cost control and generate productivity and efficiency improvements?"

Second:

> "Did both customers and shareholders share in the benefits of any efficiency gains that were achieved?"

And "share" is important there.

> "Did the companies..."

Three:

> "Did the companies provide appropriate service quality to their customers?"

And four:

> "Was the incentive regulation framework conducive to capital investment?"

Just briefly, by way of review, looking at each of those, first, "Did incentive regulation encourage cost control and generate productivity and efficiency improvements," in my submission the answer to that is yes. And the best evidence of that is the parties' settlement, and the parties agreed, as the Board will know, to an approximately $10 million reduction in Union's forecast operating costs for 2013, and they did so obviously after an extensive discovery process.

That reduction is very modest, a very modest reduction in the forecast operating costs.

And when Member Taylor asked directly whether the agreed-upon amount for O&M represented an appropriate stepping-off point on which to set rates for a subsequent IR period, counsel for School Energy answered unequivocally and, in my submission, fairly: "Absolutely."

And the transcript reference for that is Volume 1, pages 18 to 19.

Number two I will come back to in a minute.

Number three, "Did the companies provide appropriate service quality," this is not an issue and I won't spend any significant time on it. It is another settled issue.

The answer is yes, Union's service quality results are all at or above the requirements set by the Board and have been through IRM.

Four, "Was the incentive regulation framework conducive to capital investment," and here again we have a settlement, and in my submission, again, a relatively modest reduction in rate base and an acknowledgement that Union's capital budget, save and except in relation to Parkway West -- which we will come to -- is not an issue -- is appropriate, and Parkway West -- as I will come to -- is not something that requires Board determination in this case.

Just briefly now, returning to item four, "Did customers and shareholders share in the benefits of any efficiency gains that were achieved," and the answer to this question is also yes.

In the four full years of incentive regulation, Union delivered through earnings sharing approximately $60 million of additional earnings to ratepayers, effectively lowering costs even further.

And the reference for that is J.E-3-5-1.

And that amount -- and this is often overlooked, but it ought not to be by the Board -- that amount does not include the productivity adjustment ratepayers receive off the top. If the Board will recall, there is a 1.82 percent X-factor reduction.

That amount adds up to tens of millions of dollars in savings over the period of IRM.

Now, obviously Union has benefited during IRM, as well, and Union does not suggest otherwise. But to the extent parties say there is context for this application, that context is two-sided.

And there are substantial savings that were delivered by Union to ratepayers through the period, in addition to flat rates.

Now, ultimately, of course, this case cannot be in, should not be about Union's earnings during the IR period or even the success of the IR framework.

This case is about 2013, and it would be perverse, in my submission, and effectively defeat the purpose of IRM if we were to focus entirely on Union's earnings and whether or not Union should be punished, as some may suggest, for doing well during IRM.

In my submission, it would undermine the effectiveness of incentive regulation going forward and would undermine the objectives set out by the Board in the Natural Gas Forum and as summarized in the PEG report I have just taken you to.

It would also be contrary to the parties' agreement in the 0606 case.

So what is this case about?

The main issues, the issues I intend to address today, are as follows:

One, whether Union's forecast of general service and contract market revenues for 2013 is reasonable. And I include in this the proposed full adoption of the 20-year declining trend weather methodology.

Two, whether Union's forecast of ex-franchise revenues for 2013 is appropriate.

Three, the gas supply plan for 2013 and whether it is appropriate.

Four, Union's proposed cost of capital and its proposal to increase its common equity ratio to 40 percent.

Five, Parkway West, and what, if anything, the Board should do with it in this application.

Six, deferral accounts. And specifically the issue I intend to address is Union's proposed change to the S&T storage, short-term storage deferral account.

And seven, cost allocation and rate design proposals put forward by Union.

This brings me to the first issue, which is in-franchise revenues. By way of introduction, Union's forecast of in-franchise revenues falls into two broad categories.

One, the general service market -- and just pausing there, as this is sometimes a bit confusing, Union includes in its general service market its residential customers and non-contract commercial and industrial rate classes. You will sometimes hear industrial customers spoken about in various rate classes, and the difference is whether or not they have a contract.

The general service market forecast is set out at Exhibit C1, tab 1 and Exhibit C1, tab 5 as it relates to weather. And I have included excerpts from both at tabs 1 and 3 of the compendium behind the in-franchise tab.

The second broad category for the in-franchise revenue forecast is the contract customer market, and that is set out at Exhibit C1, tab 2, and is located at -- or an excerpt is located at tab 2 of the compendium.

Dealing first with the general service market, if you turn up tab 1, members of the Board, you will see at page 2 of 25 of Exhibit C1, tab 1 that Union is forecasting a flat to very moderately increasing volume forecast for the years 2011 through 2013, and you can see that at line 17.

In my submission, this compares favourably to a decrease in volumes actually experienced by Union between 2007 actuals and 2010 actuals of 1.5 percent. Again, you will see that at the bottom of page 2, and those numbers are both adjusted according to the 2013 weather-normal, so it is actually an apples-to-apples comparison.

On a weather-normalized basis using the 20-year declining trend methodology, Union is forecasting an increase of about 0.7 percent in throughput volume relative to the Board-approved 2007 levels.

Now, in macro terms, Union is forecasting customer growth of approximately 56,000 customers, which is offset by continuing declines in normalized average consumption, or NAC, and the effect of Union's Board-approved DSM activities which also, by definition, reduce volume.

You can see this at the table on page 3, members of the Board. This was discussed at some length -- on page 3, table 1, at some length in the evidence, but you will see in the bottom, nearly the bottom, right-hand corner, the 0.2 percent total change in anticipated throughput that Union forecast for 2013, and you will see the various offsetting effects of customer growth of 2.6 percent, DSM reductions of 1.3 percent and a NAC decline of 1.4 percent.

If you compare that, as you can, over the page at table 2, what you will see there is what actually took place between 2007 and 2010. And that is, again, over on the bottom right-hand side or near bottom right-hand side of that table. You will see the 1.5 percent decline in actual throughput that Union experienced.

A couple of observations. If you compare the DSM and NAC declines that Union actually experienced versus what Union is forecasting and has experienced through 2010 and

2013, they're extremely comparable. So the NAC decline of 1.3 percent compares well to the NAC decline of 1.4 percent in table 1, and the DSM effects of 1.3 compares favourably to the 1.5 percent.

Where the real difference is in customer growth, and there was less customer growth between 2007 and 2010 than Union has experienced from 2010 or as it has forecast end of 2013 -- because they're always year end numbers, end of 2013 versus end of 2010.

Now, in terms of the forecast methodology itself, that methodology is described at C1, tab 1, beginning at page 9. I don't propose to read it. In a nutshell, the forecasting methodology is based on multiple regression analysis. The methodology itself is consistent with the methodology used by Union in EB-2005-0520, its 2007 rate case, which was reviewed at that time by an independent consultant, R.J. Rudden.

I say that it is consistent, subject to two changes. The first is the use of the 20-year declining trend weather-normal, which I will deal with, and, two, the re-specification of the commercial NAC regression model, which we will also discuss briefly.

The four-step forecasting method is, again, set out at pages 9 and 10. Step one estimates the total billed customers for each rate and service. That evidence can be found at Exhibit B1, tab 3. There was -- I believe this is correct. There was no cross-examination in respect of Union's attachment forecast.

Union is forecasting an increase, as I said, of approximately 56,000 customers, about a -- about 4.2 percent from December 2010 to December 2013.

The next step in the estimation process is the forecast of normalized average consumption. And you can see, at page 12, the forecast from 2010 through to 2013 period. And what you have on table 4 is a summary of the historic and forecast NACs using the 20-year declining trend methodology.

In the residential market, southern residential market, Union is forecasting a NAC decline slightly above experience from 1991 through 2010, which has bounced around a bit.

In the north, at -- exactly at most recent historical levels. On the commercial side Union is actually forecasting a reversal in the NAC trend, so from a decline in normalized average consumption to an increase.

Now, in terms of the residential NAC, estimates are prepared for both the north and the south and, again, the methodology follows the method used in EB-2005-0520. The NAC is the product of two equations, an average use equation and a total volume equation, the product of which is then adjusted to take account of forecast DSM effects.

And there was some cross-examination about this, but you might recall that past DSM effects are captured in the forecast NAC; its future DSM effects, which are separately adjusted.

Now, the complete results of the regression analysis were filed by Union with the Board, and they were referred to a number of times. The regression models and the resulting analysis were filed as Excel spreadsheets with the Board, and, in my submission, the bottom line is that the analysis exhibits robust statistically significant results.

Now, there was a question during the hearing regarding re-specification of the residential NAC forecast, and the answer to that can be found at tab 10 of the compendium, which is an excerpt from the transcript, volume 2, and specifically pages 144 and 148. And just in brief, Mr. Gardiner, who you might recall is responsible for the energy demand forecast, was asked about this.

As he testified at the bottom of page 148 and over to page 149, annually the model is checked. It is checked as part of the budget process and a variance analysis is conducted.

So the regression results were reviewed on the residential, commercial and industrial side. On the residential and industrial side, it was determined that re-specification was unnecessary. The variance analysis confirmed the accuracy of the model within 2 percent, as he testified.

On the commercial side, it was determined that re-specification was necessary and that, in fact, took place. And so the commercial market was -- NAC equation was re-specified.

And if you turn back to tab 1 of this portion of the compendium, beginning at page 16, you will see there the discussion of the commercial NAC and the new demand equation. I have not excerpted it, but I will give you the cites. It is referred to at page 16; the statistical results are detailed at appendix A, table 6, and they are, like the residential and industrial results, very strong statistically, in my submission. They are equations, in my submission, that parties and the Board can take comfort in.

Now, the industrial total throughput econometric methodology is described at page 20, and as I mentioned a minute ago, this is the same model as was filed in 2007 and has been checked annually -- or in 2006 for 2007, and it has been checked annually for accuracy. And without belabouring the point, it continues to be, in my submission, the evidence is, reliable.

This brings us to the main issue, which is the weather and the weather-normal methodology.

And that's, of course, important for a number of reasons. It is important because the number of monthly heating degree-days below 18 degrees is a driver of the residential, commercial and industrial service forecast, but normal weather is also a feature of the gas supply planning process.

So the weather-normal that is used is important.

Now, Union currently uses a blended weather-normal, as the Board will know. It is 55 percent weighted towards a 30-year average and 45 percent weighted to the 20-year declining trend.

And the blend, with weightings adjusted through the period from 2004 through to 2008 and then consistently at 55/45, has been in effect since the EB-2003-0063 case.

Now, in this case, Union is seeking approval to move entirely to the 20-year declining trend. And as I said at the outset of my submissions on this point, the evidence is set out at Exhibit C1, tab 5, and that can be actually found at tab 3 of the compendium in this section.

Now, the rationale for the change can be found at page 2 and 3 and was discussed at some length in cross-examination by Mr. Gardiner, but in its simplest terms, the existing weather method, the blended method, is biased towards colder weather. The estimate is asymmetric in this respect, and produces a result that is very likely to overstate 2013 delivery revenue forecast and the amount of gas that Union should procure by gas supply planning by a total amount on the revenue forecast side of about $7 million, compared to the 20-year declining trend.

You can see that, in my submission, plainly by figure 1. And they say that a picture means a thousand words. I am not sure that that is always true. It definitely isn't always true, I suppose. But in this case, if you take a look at that figure, that tells the story.

You go back to 1985 and you look at the table, what you have, the very dotted line moving up and down and up and down all over the place, is the actual heating degree-days. That's what's actually happened with weather going back to 1985.

If you look at the very top line, that is the 30-year average, and you can see it is obviously biased towards colder weather and just really clips along, at best, the tops of the spikes.

Below that is the blend, which does a better job than the 30-year blend, but not as well as the 20-year declining trend, which moves symmetrically through the actual heating degree-days.

And it is for that reason that Union says that the model is not biased, and in my submission, the Board-approved weather method should be symmetrical. It should not favour the utility; it should not favour ratepayers.

Now, the visual of figure 1, what our eyes tell us about the superiority of the 20-year declining trend is confirmed by statistical analysis, and that statistical analysis is set out beginning at page 4 and continuing through to page 7.

As Union has laid out in its evidence there and as Mr. Gardiner testified to on several occasions, the key measure from a statistical point of view is the root mean squared, and you will see that over on page 6 where the statistical results are summarized, looking at the root mean squared and also the average variance and the mean percent error.

But looking particularly at the root mean squared confirms the superiority of the 20-year declining trend method. And in my submission, that method should be approved.

Now, it is hard to know -- we don't have pleadings in these cases -- it is hard to know what intervenors will say two weeks from now or a week and a half from now about the weather method, but there are a few things that we can say for sure.

The first is that the 20-year declining trend is a method that is known to the parties and the Board, and of course it has been used by Union, in part, since 2004.

We also know that it's statistically superior to the other half of the existing blend, being the 30-year average, by a wide margin, and it's statistically superior to the blend as a whole.

The other thing we know for certain is that there is no evidence that has been filed by intervenors in opposition to the proposed change. There was none that was filed as part of intervenors' prefiled case, notwithstanding that they did file evidence on a number of other issues.

There is, therefore, no competing analysis or better method that has been put forward on the record by intervenors, at least not as part of their prefiled case.

In my submission, Union's in-franchise general service market revenue forecast should be approved by the Board, as should the declining 20-year weather method.

Now, turning to tab 2 of the binder, we have there an excerpt from C1, tab 2, and this is the contract market forecast.

The result of that forecast is summarized at tables 1 and 2, which you can find on page 7, members of the Board. And that deals with throughput as to table 1, volume as to table 1, and revenue in table 2.

On the volume front, what you will see relative to 2007 Board-approved levels is an increase in the power market, as you would expect, the steel chemical refinery market, and the greenhouse market where the forecast has more than doubled, and that's offset, in part, by a large reduction, which I alluded to before, in the LCI key market. And you can actually see that in 2009 at line 3, where you see that market dropped off from Board-approved levels by 600, 10^6 m^6, or roughly a 20 to 25 percent decline, and the actuals have never picked up.

That market is described later in the evidence, but that market is made up, among others, of the pulp and paper and auto parts industries served in Union's north and southwest, respectively, and both of those were hit hard by the recession; as I say, never recovered.

On the revenue side, in table 2, the results largely followed the volume forecast relative to 2007. So, for example, you see, relative to 2007, the forecast for the power market up from 23-1/2 million to 29-1/2 million.

You also see the LCI and key market down by just over $10 million during that same period.

There is one exception to this, and it is explained in the evidence, but the throughput increase in steel and chemical has not been matched by a revenue increase, and that's actually explained at page 9 and 10. In essence, what happened or has happened there is that customers have migrated from bundled M4 and M7 where they have higher rates to the semi unbundled-T service, where their rates and corresponding revenues are lower. There have also been some changes that are discussed in their contract demand and storage parameters, both of which drive or have driven revenues down somewhat.

Now, as to the methodology itself, there was -- our fault, but there was some confusion over this. There are two methodologies used to forecast the throughput in this model. First, there is the econometric model, and that is used for the greenhouse market and the smaller LCI and key market customers. And then there is the bottom-up model.

And the breakdown itself can be found at Exhibit J2.3, and I've included J2.3 at the very back of tab 2 so you can see the disaggregation and what's been done by bottom-up and what's been done by econometric model.

I would say, with respect to the bottom-up method, there was substantial cross-examination about this, but Union obviously relies heavily, when it speaks to its customers, on two things: one, past experience, but, two, its discussions with its customers.

And, in my submission, that makes sense for two reasons, both of which were discussed in the evidence. The customers know their business better than Union does. And, in my submission, that is true regardless of what information Union may have about the energy market generally.

What matters to a T1 customer is their business and what they expect to do by way of manufacturing or whatever it is that they do.

The second is, and perhaps this is a bit counterintuitive, but customers actually have an incentive to get their forecast right. They don't have an incentive to low-ball their forecast, because low-balling their forecast leads to greater charges down the road because it leads to overrun.

So, in my submission, if you think about the bottom-up forecast, it makes eminent sense for Union to place considerable weight on the customer's own input into the volume forecast.

Now, one area of growth that I did want to touch upon in the forecast and which was the focus of some discussion during the hearing is the power market, and that's discussed at pages 12 to 14.

And to the extent the suggestion is made that Union has not taken account of the power market and the province's off-coal strategy, in my submission, that suggestion would be flatly wrong.

As discussed in Union's evidence and in answers to undertakings and IRs, Union has taken account of the government's off-coal strategy and is forecasting considerable growth in this area.

There are three gas-fired generation facilities in its service. They're detailed at the bottom of page 12 and 13. They are St. Clair generating station, East Windsor Cogen.

and Halton Hills generating station. And there is a fourth, Thunder Bay, which is expected to come on stream in November of 2013, and there is a modest amount included in the forecast for those two months, but of course, as recent experience has told us, nothing in this sector is certain. But Union has, indeed, included an amount for Thunder Bay in 2013.

Now, you can also see that at the compendium, tab 7, which was an answer to an LPMA interrogatory J.C-3-2-2, and this is where you see the disaggregation of the net growth in the power market, and I thought it was worth taking the Board to this.

So what you will see is actually an increase in gas-fired generation of nearly ten-and-three-quarters million dollars. That is the CES figure, the clean energy supply figure there, the 10.74.

But what you also get there and what perhaps might have been lost a bit in the shuffle is the impact of Lennox and where Union sees a decrease in its Lennox forecast relative to 2007 of $4.38 million. The reasons for that were touched on a little bit in cross-examination. Lennox is lower down the dispatch list and is not expected to run.

In my submission, Union's contract customer -- contract customer revenue forecast, properly understood, is reasonable and should be approved by the Board.

The second core issue I intend to deal with is the ex-franchise revenue forecast, and the evidence, written prefiled evidence, can be found at Exhibit C1, tab 3. And an excerpt of that evidence can be found at compendium tab 1 behind the large ex-franchise revenue tab.

Just pausing there, members of the Board, obviously maybe this should go without saying, but where I say we have included an excerpt, obviously we rely on our evidence in its entirety, but that wouldn't have been a useful exercise in preparing a compendium.

MR. SOMMERVILLE: It came pretty close. Just teasing, Mr. Smith.

MR. SMITH: Well, tease away. It was a thought I had last night.

[Laughter]

MR. SMITH: Any criticism I am vulnerable to. What you will see at Exhibit C1, tab 3 is the storage and transportation revenue forecast for 2012 and 2013.

And the evidence is organized into three broad groupings. First, the M12 long-term transportation forecast and the other long-term transportation forecast is grouping number one.

Grouping number two is the storage and -- sorry, the short-term transportation and exchange revenue forecast.

And three is the short-term storage and balancing revenue forecast.

Now, a few observations before reviewing the forecast.

First, ex-franchise is not synonymous with unregulated. The transportation and short-term forecasts are part of regulated revenues. In the case of transportation, the services are sold pursuant to the M12 rate schedule, which includes M12, M12 X, which is a bidirectional service, and M12 overrun, C1, M13, and M16 rate schedules.

And I apologize if this is stating the obvious to the Board, but I couldn't help but think at times during the hearing that people were equating ex-franchise with unregulated, and that is not correct.

Second, "ex-franchise" is not a dirty word, at least in this sense. And there was some flavour of this during the hearing, and I don't say that, actually, in jest at all.

Ex-franchise shippers such as Enbridge, GMI and TCPL are the shippers who take primary M12 and C1 service. They take regulated transportation service on Union's Dawn-to-Parkway and Dawn-Kirkwall system, to move gas, among other things, to their own system, and in the case of Enbridge and Gaz Mét to serve their own in-franchise customers.

And the benefit of those volumes cannot, in my submission, be underestimated.

M12 customers, for example, account for over half of the throughput on the Dawn-to-Parkway system, and they pick up nearly 85 percent of the Dawn-to-Parkway costs.

Were it not for these customers and were it not for these volumes, then these customers' costs to all in-franchise customers would rise. And it is a very simple analogy, but if you only had an in-franchise and an ex-franchise customer and they divided their volumes equally, if the ex-franchise volumes go away, all of the in-franchise, all of the costs of that transmission system are, by definition, going to be picked up by the in-franchise customer. And that is an undesirable result.

And that is why, in my submission, the change in market dynamics that I touched on at A2, tab 1 is important, and the concern regarding turnback is real.

I mean, to be blunt about it, TCPL wants to keep volumes on its systems. So does Union. And, in my submission, that is something that in-franchise customers should care about a great deal.

Now, turning to the M12 long-term transportation and other long-term transportation forecasts, they're set out at page 2 behind tab 1, and the other long-term transportation forecast at page 7.

If you look, members of the Board, at page 2, what you will see there is a decline between 2013 forecast and 2010 actuals, taking account of all M12 services from 142.4 million to $134.6 million.

The single biggest driver of that decline is what I touched upon earlier, and that has been the turnback on the Dawn-to-Kirkwall system and the turnback for 2013, which Union has not been able to sell. And it accounts for substantially all of the decline -- I think it is $18 million -- between 2010 M12 transportation of 141.9 million, and $121.1 million.

There are a number of places you can see that, but obviously the turnback is -- the volume numbers can be found at A2, tab 1, page 12. That is the cost allocation overview section, tab 3. You needn't turn it up, but I will give you -- the dollar amounts can also be seen at C1, tab 3, schedules 1 and 2. So you have the evidentiary cites.

Now, the other long-term transportation forecast is really set out at pages 7 and 8, and they're excerpted on the next couple of pages of this tab of the compendium. You will see there, again, a decline in transportation, C1 -- well, total transportation from 2010 actuals to 2013, but the actual decline is really in the C1 long-term transportation number, from 6.3 to 5.2.

And that is explained because the decline, calling it a decline is actually incorrect in this respect, because a good part of the decline is attributable to conversion of C1 revenues to M12 X bidirectional revenues, and you can see that those revenues increased substantially. They were zero, because there was no approved service in 2010, but they have since picked up for 2011, 2012 and 2013. And there is some small amount of lost C1 revenue as a result of turnback, but mostly the loss has actually been picked up elsewhere.

Now, the second major component of the ex-franchise revenue forecast is the short-term transportation and exchange revenue forecast, and that's described beginning at page 9 of this tab.

There are two main components. The first component is transportation, and the second component is exchanges.

The transportation forecast at page 10 is

$11.1 million, and it's driven largely by IT and ST firm transportation on the Dawn-to-Parkway system. And I would make one observation about this.

The 11.1 number can be adjusted for your thinking upwards by $2 million. And that's because you will recall in the settlement agreement that the parties agreed to a $2 million adjustment to the St. Clair line forecast revenue. So had that been a forecast item and included, you would have seen it there, as it was, because it came out of the settlement agreement. It's been described as a phase 2 adjustment but it -- that's what it relates to.

And as referred to at page 10 of 17, what you will -- what you see in terms of the decline set out there relative to 2010 actuals -- although with the inclusion of the St. Clair line, it is actually greater than that, but the impact of the insufficient take-away capacity downstream of Parkway and the effects of the changing gas supply dynamics, which I won't go over further, but which are detailed at Exhibit A2, tab 1.

Now, the second component of the short-term transportation exchange revenue forecast is the exchange forecast. Let me just begin by setting out what, in Union's submission, is at issue and what is not at issue in this case.

At issue, given this case concerns 2013 rates, is Union's forecast of exchange revenue for 2013. What is not at issue, in my submission, is exchange revenue earned by Union during the period of incentive rate-making.

Now, we will have to see what people say about that, but it's apparent that a substantial part of this case was dominated by FT RAM-related optimization activities undertaken by Union through the IRM period, as I talked about at some extent in my own overview to this case.

Let me make two broad responses at this time. The first is no one disputes that TCPL, in its Mainline application now before the NEB, is actively advocating the discontinuance of the FT RAM program. That is not in dispute.

Whether that happens on January 1, 2013 or up to May 2013, we don't know. But we do know that there is a great deal of uncertainty around that, and TCPL's proposal, at least, is to discontinue the FT RAM program.

And this drives inevitably, in my submission, to a reduction, a considerable reduction, in the forecast because, as the evidence was from both Ms. Cameron and Mr. Isherwood, the exchange activity that took place during the period of IRM was driven in large part - not entirely, but driven in large part - by FT RAM.

And you will have seen in the evidence a discussion of base exchanges and FT RAM exchanges, and this was done for clarity, but it is interesting how sometimes things can get more confusing.

The evidence is, from Mr. Isherwood -- and I will take to you it, but the evidence is that they're not substantively different, but they were disaggregated to show how a substantial part of Union's past activity is at risk in 2013 because of TCPL's proposal.

And it is important to bear in mind, as well, members of the Board, that at the time this application was put together it was anticipated that FT RAM would be discontinued in 2012. And you see, therefore, a forecast of zero for exchanges that have any connection to FT RAM.

Now, the second broad response, as I said at the outset, is this case is not about revising the parameters of incentive regulation agreed to by the parties in 2007, and it would be inappropriate, in my submission, for the Board to attempt to do that and for parties to suggest it.

Now, what is an exchange? At tab 13 is Exhibit K6.4. I just wanted to take you to one portion of K6.4, which is Exhibit J20.10, which was filed by Union in the 2003-0063 case.

That was an interrogatory that asked to explain the nature and mechanics of an exchange, and you will see the description under (a), that:

> "An exchange is a contractual agreement between party A and party B involving the exchange of physical gas from one location to another. An exchange can only happen between a point on Union's system and a point..."

Sorry:

> "...a point on Union's system and a point off of Union's system. The exchange must also happen on the same day at the same time."

And this was the subject of some cross-examination, and I have included at tab 14 of the compendium an excerpt from volume 6 of the hearing July 19.

If you turn to page 77 of the transcript, this is evidence of Mr. Isherwood talking about exchanges, and he adopts the definition that Union used in 2003-0063. And you will see that on page 17 -- sorry, page 77. What you will see at the bottom of page 77, line 26, he says:

> "That is a pretty consistent definition going back pretty far into our history, actually. It is no different today than it was back in 2003. We would talk today, and we will be talking today, about exchanges, and some start in our system and some end in our system, but it is always with another party."

Then he talks about deferral account treatment relating to exchanges, and what he observes there is that at least as far as he was able to determine, there has been a deferral account relating to upstream optimization and exchange activity going back to 1993, and perhaps even earlier.

So this has been a feature of the regulatory arrangement, with the exception of the period of IRM, going back at least to 2003.

Now, what you will see also described at tab 13 in Exhibit K6.4 at page 3 of tab 13 - again, this is the Exhibit EB-2003-0063, page 6 of 6, but what you will see there from that excerpt, and what you heard in evidence in this case, is that exchanges and optimization generally are market-based opportunities which are not guaranteed to be available on a future planned basis.

In other words, while Union may forecast a certain level of exchange activity and has, indeed, forecast a certain level of exchange activity which goes into its forecast of regulated revenues, what those particular exchanges will be in 2013 is unknown. Who the counterparties will be, on what portion of Union's system or off Union's system, and when those exchanges will take place are all unknown. They are consequential and not planned, even though Union does forecast a certain level of activity.

Now, the optimization activities undertaken by Union during IRM - and this goes back to my two broad responses I indicated before - and forecast for 2013 are the very same optimization activities Union has always undertaken, and that's no different whether you include FT RAM or not.

And I have included at the compendium, tab 15, an excerpt from volume 7 of the transcript. There are other excerpts I may need to pull up at a later date, but you will see at tab 15, at page -- all the way over at page 137 and continuing over all the way through 139 and 140, cross-examination of Mr. Isherwood, and later, Ms. Elliott.

But as Mr. Isherwood testified, the activities, exchange activities Union has engaged in since 2003 as it relates to FT RAM are substantially the same as those that it undertook before and those that it will undertake in 2013.

The only difference is in FT RAM, which is a difference, perhaps, of degree, but not a difference in kind.

And you will have the evidence over at page 139, but when account 179-69 was effective, it would have captured the exchange activity that took place during IRM, and that exchange activity would have been shared 75/25. As it was, that account was not in existence; I suspect some will argue for its reinstitution.

You also have -- and I will just give you the cite because I did not include it -- you also can see similar evidence in this volume, at least, at pages 183 to 185, and no doubt there are others.

I have included also on this point at Exhibit K7.4, and you can see that at the very back of tab 13 -- and this is actually -- K7.4 is an interrogatory that came out of the EB-2009-0101 case. And I won't belabour this point, but it is worth observing EB-2009-0101 was Union's 2008 earnings-sharing proceeding. It was the first earnings-sharing proceeding after IRM came into effect, and Union's S&T revenues at that point were substantially, very substantially above Board-approved levels, which led to overearnings.

And Board Staff asked, in part, about that. And I won't read the interrogatory to you in its entirety, but just focussing on the last paragraph, what Union advised Board Staff and all parties at that time was that:

"Union had focussed on further optimizing its upstream supply portfolio. Union was able to extract value from new services introduced by upstream transportation providers in excess of what was achieved historically. An example of these new services includes TCPL's Firm Transport Risk Alleviation Mechanism (FT-RAM), Storage Transportation Service Risk Alleviation Mechanism (STS-RAM), and Dawn Overrun Service – Must Nominate (DOS-MN). These new services provided increased opportunities for transportation and exchange transactions in the market. These opportunities were also influenced by favourable market conditions experienced in 2008."

Now, an analogy has recently opinion suggested to the difference between various economy and executive class airfare. In my submission -- I may have to deal with this in reply -- but just briefly, two things.

One, it misses the history, that the optimization activity is no different than the Board-approved optimization activity Union has always engaged in, dating back to the early 1990s.

And it implies -- wrongly, in my submission -- that ratepayers are receiving a lesser service, and that is manifestly not the case. And there was a good deal of evidence in relation to this from both Mr. Isherwood and Ms. Cameron, but ratepayers are receiving gas exactly as they need it, and have done so in the past and are forecast to do so going forward.

Now, one final anticipatory comment on this.

The argument may also be that ratepayers are to pay the actual cost of transportation incurred by the utility; i.e., that they should pay transportation costs net of optimization activity.

And in my submission, to the extent that suggestion is made, the suggestion is flatly incorrect. And you really only need to think about it based on the history, but were it otherwise, there would never have been any upstream optimization activity and there certainly would not have been upstream optimization exchange revenue deferral accounts.

Indeed, there would have been no need for them. You would simply have had the purchase gas variance account, and the other gas supply-related or transport-related deferral accounts, which have been in existence and have existed in concert with the transportation exchange deferral account.

The FT RAM or exchange revenue would have been captured in the PGVA or, as I said, in the various other cost gas deferral accounts. And that has never been the case, going back to the early 1990s.

And that is different -- and this is an important distinction -- it is different than what is actually a flow-through.

And what it is actually a flow-through in the PGVA and the gas commodity and transportation deferral accounts is gas commodity changes and transportation toll changes, and those have been rolled through to ratepayers through the currency of IRM, and it is important not to mix apples and oranges and to keep the two concepts separate.

Put simply, the 179-69 account captured optimization activity and exchange activity. It was closed.

The PGVA and northern tolls transportation deferral account and the other gas cost deferral accounts capture commodity changes and toll changes, and those have been in effect, again, back from the '90s all the way through the currency of IRM.

Now, let's just return to what should actually be at issue.

And what we have in this case is a forecast by Union of exchange revenue for 2013 of $9.1 million, attributable entirely to non-FT RAM-related exchanges. And you can see that figure in a few places, but where you will see it easily is behind tab 1 of my compendium, which is an excerpt of Exhibit C1, tab 3, at page 12.

You can also see it at J.C-4-7-9, attachment 2, which is perhaps useful to turn up. That is at tab 8 of the compendium.

You will see in J.C-4-7-9, attachment 2 the breakout of the exchange revenue, so to disaggregate the RAM-related exchanges.

And in line 1, you will see Union's forecast on the far right-hand side of $9.1 million, which compares to actual experience from 2007, starting at a low of three million and bouncing up as high as 9.7, but in my submission, 9.1 is right in the ballpark.

And you don't need to turn this up, but there was discussion of the $9.1 million forecast at tab 15 of the compendium, which is an excerpt of the transcript day 7 at pages 18 to 22, Mr. Isherwood testifying to past experience and what he foresees as being achievable in 2013.

Now, there is an open question, I suppose, as to what to do with FT RAM and Union's forecast for 2013. It was asked what its forecast would be for 2013 if the RAM program were to be continued and its forecast was $11.6 million.

And that forecast can also be seen at Exhibit J.C-4-7-9, which is at tab 8 of the compendium we were just at, and you can see that at page 2 of 3 in answer to question c). And what Union says -- and this is worth repeating, that what Union says about its forecast of $11.6 million, it:

> "...assumes the structure and parameters of TCPL's RAM program does not change materially, and is based on actual 2011 activity. The 2013 revenue decreases compared to the 2012 forecast are due to expected TCPL toll reductions, price anomaly corrections, and turnback of some of TCPL's (sic) capacity on TCPL."

I mean, there are a lot of moving parts there, not least of which, of course, is what the NEB does with the FT RAM program. I don't know. I mean, we're only looking at book ends, continue/don't continue, but there could be something in the middle. As Mr. Isherwood testified, and as the Board may recall, FT RAM actually came in in 2004 and has changed a few times over time.

MR. SOMMERVILLE: Mr. Smith, just on that point, and I am sort of surprised this hasn't surfaced before now, but Union is an intervenor in the NEB process?

MR. SMITH: Yes.

MR. SOMMERVILLE: What position is Union taking with respect to the continuation of the RAM program?

MR. SMITH: Well, it has come up. It is in evidence. There was at least one question in cross-examination, but Union is actively advocating for the continuation of the RAM program.

MR. SOMMERVILLE: You will be giving argument to that effect?

MR. SMITH: We will be giving argument to that effect whenever that stage comes. Obviously I have no idea how it is going to turn out.

MS. HARE: I had the same question, Mr. Smith, because what you said was the FT RAM, whether the NEB discontinues it on January 1st or May 1, but another option would be that they decide that it continues.

MR. SMITH: Absolutely. It could be January 1. It could be May 1. It could be not at all or it could be different.

MS. HARE: Right.

MR. SMITH: And that is why there is substantial uncertainty about this issue in 2013.

One of the reasons I raised the issue earlier, Madam

Chair, was simply to advise, of course, at the time this application was prepared, Union only had TCPL's own filing, which was advocating for the discontinuance of the program I believe in November 2012.

What will actually happen is a very open question and, for that reason, in answer to 4-7-9 and in cross-examination, Mr. Isherwood talked about options that are available to the Board, from Union's perspective, and it's worth putting those out on the table.

You will see them in 4-7-9 and also you will see them at tab 15 of this compendium. It's an excerpt, again, from transcript volume 7, but Mr. Isherwood, at page 36, talked about it. There is really two options, given the considerable uncertainty, that Union would put forward.

The first -- they both involve deferral accounts. The first is don't include any amount in 2013, and you would have a deferral account that would start at dollar one and, like old account 179-69, would be shared 75-25, which would provide the appropriate incentive to Union and would provide, if the program continues, potentially substantial upside to ratepayers.

Option number 2 is similar, but involves a wrinkle; that is, to include an amount in the forecast for 2013. That would have the benefit of reducing -- because it is a revenue item, of reducing rates. So it may be attractive from that perspective, and you would have, in my submission, the appropriate amount to include, if you were minded to go that route, is the $11.6 million.

And you would have a deferral account. But two observations about the deferral account. One, it should continue to have sharing of 75-25, but it should also have 100 percent downside protection for Union in the event that the RAM program is discontinued, because if that happens, you will find -- Union would find itself in the position where there had been imputed revenues relating to a program that the NEB has discontinued.

MS. HARE: In that case, it would be a variance account and it would be 75 percent of 11.6 that would be included; is that correct?

MR. SMITH: No. The way it was described in the evidence and by Mr. Isherwood was 75-25 above $11.6 million.

MS. HARE: I see.

MR. SMITH: And then 100 percent downside protection below $11.6 million.

MS. HARE: Okay, thank you.

MR. SOMMERVILLE: And the resolution of that difference would occur, according to your proposal, when, Mr. Smith?

MR. SMITH: It would, in my submission, occur during Union's annual earnings sharing and deferral account proceedings, just as Union clears its other deferral accounts and, in particular, its short-term storage deferral account.

MS. HARE: Does Union have a preference as to which way to go, whether it is a variance account or a deferral account?

MR. SMITH: I suppose the simplest way. And, thus, Union's preference is to have the deferral account from dollar one. That would be the easiest to administer.

MS. HARE: Thank you. Mr. Smith -- sorry, Ms. Taylor has a question, and then I was going to suggest, since we have already interrupted you, it may be a suitable time for a break, but Ms. Taylor has a question.

MS. TAYLOR: I wanted to clarify for the record. When you read the response to part c) of J.C-4-7-9 on page 2 of 3, you read in "turnback of some of TCPL's capacity on TCPL", and I think you should have read "turnback of some of Union's capacity on TCPL."

MR. SMITH: Yes.

MS. TAYLOR: Also, earlier, it just related to the line of questions from Mr. Sommerville and Ms. Hare with respect to the RAM and the sharing, if the Board were to find that a different sharing was appropriate, you stated earlier that these activities might not otherwise occur. Is that the position that we should consider going forward?

MR. SMITH: Well, this was a subject of cross-examination by Mr. Thompson. He asked the appropriate level of sharing. I mean, in my submission, there is strong reason, both evidentiary and from a precedential perspective, to be minded towards 75-25. That was historically the sharing on the 179-69 account, which captures exchange revenue prior to IRM.

And as Mr. Isherwood testified, 25 percent incentive is a strong incentive for Union to continue to engage in this activity. So, yes, that is Union's position.

MS. TAYLOR: I don't know if that answered my question.

The question was: If the Board came up with a different sharing number, would these activities continue? And you suggested earlier that they might not.

MR. SMITH: Well, that question was not posed directly to Mr. Isherwood, but the clear implication of his answer that the appropriate incentive is 25 percent, in my submission, the clear implication from that evidence is that less than that will have an impact on the exchange activity.

MS. TAYLOR: Thank you.

MR. SMITH: So why don't we take a break? My apologies. Thank you. How much longer do you think you will be?

MR. SMITH: I think we are a bit more than halfway in my notes, and I think that it will speed up a little bit once we get past cost of capital, and the rest should go pretty quickly.

MS. HARE: Okay, thank you. So 11:30.

--- Recess taken at 11:09 a.m.

--- On resuming at 11:38 a.m.

MS. HARE: Please be seated.

Mr. Smith, can you proceed, please?

MR. SMITH: Yes. Thank you, members of the Board.

Just returning to tab 1 behind the ex-franchise tab, I had wrapped up my submissions in relation to the exchange forecast.

There is one final portion of the ex-franchise revenue forecast that I should just touch on briefly, and this is the short-term storage and balancing revenue forecast.

MS. TAYLOR: Sorry, we have lost our transcripts.

MR. SMITH: Oh.

MS. HARE: It is coming on now. No, it's not.

Sorry about that. Maybe we can take a two-minute break.

MR. SMITH: That's totally fine.

MS. HARE: Our screens aren't working, but maybe we should go off air.

--- Technical recess taken at 11:38 a.m.

--- On resuming at 11:45 a.m.

MS. HARE: Please be seated.

Okay. We are now all hooked up.

MR. SMITH: Just -- there was one final item to the ex-franchise revenue forecast that I thought I should touch on very briefly.

And if you have, members Of the Panel, my tab 1 behind the ex-franchise tab, which is Exhibit C1, tab 3, there is, beginning at page 13 and thereafter, the forecast for short-term storage and balancing services offered by Union.

And just by way of refresher, this is the short-term - this is the storage space that is less than 100 pJs and more than the amount required to serve in-franchise needs, referred to as the excess utility portion. And that portion of the storage asset is sold by Union short-term.

I won't spend any real time on it, but you will see at page 15 that the forecast for 2013 at -- page 15, sorry, table 5, the forecast for 2013 is $11.5 million, which is down from 2010 actuals. And the explanation for that can really be found by looking at the page over on table 6.

Obviously the price of storage has a substantial impact on the revenues, and you will see what's happened with the storage market between 2010 and 2013, and that drives the lower forecasted figures.

So those are my submissions in relation to the ex-franchise revenue forecast, which, in my submission, should be approved by the Board, which brings us to the third core issue, and that's the gas supply plan.

The gas supply plan evidence is set out at Exhibit D1, tab 1, and I have included that behind tab 1 of the gas supply portion of our compendium.

Union is seeking approval of its 2013 gas supply plan and the related gas purchase expense, which is obviously where the rubber hits the road and which can be found for 2013 at Exhibit D3, tab 2, schedule 1.

Now, as I say, Union's gas supply written prefiled evidence is at Exhibit D1, tab 1.

The purpose of the gas supply plan, as you see over on page 2 -- and which was the subject of evidence by Mr. Shorts and Mr. Quigley -- is to ensure secure and reliable gas supply to bundled customers from a diverse supply range, all at a prudently incurred cost.

There are five principles that guide the gas supply planning group. They are set out at page 2 and were discussed by Mr. Shorts.

Now, I would say and submit that the principles and the use -- or the purpose, the principles and the use of the send-out model to derive the gas supply plan are all consistent with the approach that Union has taken historically and which it took most recently in the EB-2005-0520 case.

Now, Union's upstream transportation portfolio is described really in two places in the evidence. It is at pages -- well, in the written evidence, at pages 4 and 5 of Exhibit D1, tab 1, and again at pages 11 through 16. There is also in the D binder the specific schedules detailing each of the contracts held by Union.

Now, the capacity, as set out in the evidence, the capacity that Union uses to meet its bundled contract demands include transportation -- firm transportation contracts, firm STS contracts, Dawn-sourced supply and, importantly, storage capacity, all of which is used to meet the full forecast of annual demands.

Now, this was not the subject of examination, but it is worth pointing out. Union meets its obligations in the north and in the south differently, because of the differences in the options available to Union.

Now, as you will recall, at the hearing, substantially all of the time on this topic was occupied by TCPL transportation and Union north gas supply. And obviously I will come to that, but the south and the portfolio held in Union south -- for Union south is described beginning at page 11 and continuing.

And what you will see there is that Union, particularly on page 12, is that Union holds quite a diverse portfolio of transportation contracts.

So you will see in table 1, the south sales service transportation portfolio and relative percentages. And you will see there a mixture of Alliance-Vector, Vector, Trunkline/Panhandle, Panhandle, and TCPL capacity, all of which is used to meet south needs, along, obviously, with storage. And in the south, Union forecasts no unabsorbed demand charges for 2013.

Now, in the north, the situation is quite a bit different, and you will see that on page 15 of 16.

Union serves the vast majority of its customers directly from TCPL interconnects. And therefore, the vast majority of those customers are served off of TCPL FT long-haul contracts and -- well, some short-haul, as well -- and TCPL STS contracts.

And the detailed TCPL contract capacity can be found, so you have the reference, at Exhibit D3, tab 2, schedule 5.

Now, as described in the evidence -- this is back on pages 4 and 5, but as described in the evidence, Union makes extensive use of TCPL's STS service, and it does so -- and we will see this when we look at Exhibit K3.1, but it does so to make maximum use of Dawn storage.

What Union does is it uses approximately 15 pJs of STS injection and diversions to move excess gas from Union north in the summer into Dawn storage, a point I will return to.

And in the winter, gas is withdrawn again using STS from Dawn and transported into the north without the need for Union to contract for any further upstream capacity. And by doing that, Union is able to make the best use of its transportation portfolio.

Nevertheless, there is still some forecast UDC expected to occur; the amount is 10.4 pJs. And that, as explained in the evidence, is the result of the fact that Union has to hold capacity to meet its peak day demands, and those are less than average day demands. And, in particular, what has happened over the 2007 to now, to forecast period, is that those demands in the north, although not peak demands, the average demands have declined somewhat, leading to an increase in planned UDC.

Now, why does Union use firm transportation? Well, Union has firm long-term obligations in the north that it takes very seriously to serve its customers, and the consequences of not being able to serve its customers are significant.

There was obviously extensive evidence given by the gas supply panel on this point.

For this reason, Union meets its obligations with firm long-term transportation contracts, and these contracts, as you will have heard, along with the STS contracts, are the only contracts which provide for automatic renewal rights.

It is known that they will be available and permit Union -- and long-haul in particular permits Union to contract for STS service and to use storage effectively.

In comparison, IT and STFT, which Union does not use, are both biddable services without renewal rights. And what do I mean by biddable services?

Obviously there is a market bidding process, and what you heard evidence about from TCPL is that in their Mainline application, in both instances they're looking to increase the minimum bid.

In the case of STFT, the minimum bid would go to 140 percent of the long-haul toll with no maximum bid, and on the IT side, the number is 160 percent of the long-haul toll, again, with no minimum bid.

You will also see, interestingly, at volume 10, pages 21 to 22, TCPL's cross-examination is that there are in fact days during the winter of 2010 and 2011 that STFT was not available, if you were looking -- and IT were not available if you were looking to go into the market then and procure it. It was simply not available, and for that reason Union is not prepared to take the risk, let alone the fact that if you were looking for service at that time you would be captive to the market and whatever the market price would be.

Now, one thing that is perhaps or was perhaps overlooked in the extensive cross-examination about Union's north gas supply portfolio is the use of STS, and I thought it would be useful to take a quick look at K3.1.

K3.1 is -- it's a snapshot for the period November 9 to March 2012, and it just relates to the eastern delivery area, but it is instructive to see how Union makes use of its various components of its transportation portfolio.

MS. HARE: Did you mean J3.1?

MR. SMITH: Sorry, J3.1. My apologies. It is behind tab 3 of the compendium. I may not have mentioned that.

I hope you have it in colour, because it is very hard to follow otherwise.

MS. HARE: Mm-hm.

MR. SMITH: And what you can -- what you might do, as well, members of the Panel, is just turn up tab -- or put your thumb at tab 7 of my compendium, page 89, or just put a sticky there, because what's at page 89 of tab 7, which is an excerpt from volume 6 of the transcript, is Mr. Shorts walking through this particular exhibit.

What I think that this exhibit shows graphically is why long haul is a good idea and why STFT, in comparison -- for among other reasons, but why STFT is not a good idea.

And so what you will see is the blue is the daily utility activity, excluding T-service. The yellow line is the long-haul contract, well below the utility line.

And then what you see is the green line is both the long-haul and the short-haul line, but you still see days throughout the winter when there is activity well above the green line.

Then what is instructive is looking at the purple line, because the purple line shows you the effect of using STS, and what Mr. Shorts explained and what Mr. Isherwood explained and what perhaps is lost in the discussion in cross-examination is the entire time when you are in the valleys, which is the summer months, gas is being injected into Dawn, and it's that gas which is then used to meet the winter demands at a later date.

So while it may appear in the summer that you are holding too much capacity, you can't forget that what's happening is gas is being injected into the ground for use later.

This was discussed specifically at the transcript, if you have again tab 7, at page 118, Mr. Isherwood saying at line 20:

> "Yes, the gas that is required in the EDA that day. You can go back to the graph Mr. Shorts talked about this morning."

It's the very one we just looked at:

> "You see the kind of sine waves, the peaks and the valleys. That whole valley period, you would be expecting injections into the STS account."

And then over the next page at page 127, Mr. Isherwood, again, comments at line 16 about the use of STS and why it is so important for Union. Line 16:

> "Actually the purpose of the service is to make sure the FT contracts can flow on a hundred percent load factor, or as close to that as possible.

"So it not only helps you serve the winter peak, but also helps you serve the summer valley and provide a spot for that to go back to Dawn. So it really is a very unique tool. It is a great service TCPL offers that allows us to balance our system, summer and winter.

"It is just as important in the summer as it is in the winter. Otherwise gas would be very expensive in Ontario."

There was some cross-examination about -- we'll have to hear what people say, but about the possibility of using STF to capture the winter period only. In my submission, there are two observations to make about that. First, TCPL acknowledged the only prudent thing to do would be to take STFT for the entire winter season, which would be at whatever the cost is. But, two, you would lose the entire benefit of being able to inject during the summer, if that was your strategy.

The second observation I would make about this point - and this was touched on and we needn't turn it up, but I will give you the cite - is it really wouldn't help you if you were trying to deal with UDC, because you would be turning back long-haul capacity for, let's say, eight months and keeping four months of it.

So you wouldn't be dealing with the UDC issue. In fact, you would be creating more, and you see that at tab 5 of the compendium, which is an excerpt from the transcript, volume 3, pages 20 to 21, and I will just give you the cite.

In my submission, Union's gas supply plan follows prior Board approvals and approved methodology and is an appropriate response for Union to meet its obligations to its bundled customers, and is reasonable and prudent and should be approved by the Board.

This brings me to what I've described as core issue number four, and that is Union's cost of capital.

Union's cost of capital, capital structure and related financing evidence is found at Exhibit E1, or principally found at E1, tab 1. There was, of course, evidence also in the F binder.

I have excerpted, again, portions of E1, tab 1 at tab 2, behind the cost of capital tab.

If you look at table 1, it provides a summary of the cost of capital parameters and their related costs, and you will see there an increase in the forecast amount in 2013 over 2007.

And there were two primary drivers of that, one which relates to the common equity ratio -- which we will obviously discuss -- and the second relating to the Board ROE formula, which is not in issue and has been settled.

Now, the primary increase, which is at issue, is obviously Union's request to increase its equity ratio from 36 to 40 percent.

Union's evidence in relation to its requested change in equity thickness is supported by evidence from Mr. Fetter, which is at Exhibit E2 -- and he obviously testified -- and Dr. James Vander Weide, whose evidence can be found at F2. And their evidence -- he obviously testified, as well. Their evidence is excerpted at tabs 3 and 4 of this compendium.

Now, the simple proposition put forward by Union is that an increase in capital structure -- or an increase in the equity ratio, rather, is warranted, having regard to the capital structures of other utilities with whom Union competes in the capital markets.

It is a question of comparability. Other similarly situated utilities, similar as to business risk, have equity ratios in line or, in many instances, greater than the requested 40 percent. All are above -- at least in Canada -- all are above Union's current 36 percent; in the US there may be one or two, but the overwhelming, overwhelming majority are well, well above that.

Union competes, the evidence is, with these utilities for capital across North America and indisputably across Canada, and should not, in my submission, be at a disadvantage when it does so.

I say, respectfully, that there is nothing novel or new in Union's approach in this case, or the approach of comparing utilities one to another to arrive at an appropriate capital structure.

This is exactly the approach that Dr. Booth has advocated in, as far as I am aware, every case in which he has filed evidence, and is obviously the approach taken by Mr. Fetter and Dr. Vander Weide in this case, and in their prefiled evidence and in cross-examination.

I have extracted or excerpted at tab 9, members of the Board, cross-examination evidence from Dr. Booth.

And you will see at page 26, he and I talked about comparability and the ability to compare.

So you will see at the bottom of page 26, line 25, he confirmed that:

> "It is possible to compare utilities one to another?
>
> "Answer: Broadly, yes.
>
> "Question: That that is true both across sectors, gas and electricity; correct?"

And that is an important, in my submission, concession on his part, because there is, perhaps, a tendency to overlook the electricity sector, but in my submission, doing so would be an error, and that it is possible to compare gas and electric utilities.

Continuing on page 27:

> "That it is possible to compare across jurisdictions?
>
> "Answer: That's correct."

And that he's done so on a number of occasions. He says:

> "That's correct."

And then what continues is a description of evidence he has filed in a number of proceedings, and you might recall he did a relative assessment of various types of utilities and their riskiness, and his suggested equity ratios, beginning with transmission, which he found to be the lowest risk.

And then over at page 29, at line 5, he was asked to confirm, and he did, that gas and electric local distribution companies face the same business risks. And that was the judgment that he gave to the Alberta Utilities Commission, a judgment they accepted.

And then what we did was we moved through a portion of his report in the Alberta Utilities Commission dealing with comparability, and he said there that the yardstick for LDCs is Enbridge and Union Gas, and he specifically, in that case, compared Enbridge and Union Gas.

And in my submission, this is significant to two other utilities: ATCO -- ATCO Gas and Terasen.

And I can give you the reference for that portion of his evidence. You needn't turn it up, but it is K6.1, which was my cross-examination compendium on the cost of capital issue, at page 44.

Now, the comparability assessment leaves, broadly speaking, in my submission, the following relevant comparator groups: number one, gas and electric distribution companies in the United States; number two, gas and electric utilities in Canada; and number three, electric utilities in Ontario.

And in my submission, across all comparator groups, Union's equity ratio is demonstrably low and should be increased by this Board.

Dealing first with the US comparator groups, Dr.

Vander Weide and Mr. Fetter were the only experts who testified before this Board with US experience. Both testified directly and in cross-examination as to the comparability of US gas and electric utilities.

Dr. Vander Weide, in particular, has extensive experience, both in the United States and testifying in Canada, including before this Board.

And you see at tab 5 of this portion of my compendium an excerpt from Dr. Vander Weide's evidence where he was asked about the comparability of the two utilities, tab 5, pages 119 to 120. And we needn't go through it, but I will give you the cite.

He testified, with respect to both Canadian and US utilities, that he has examined both and that it is his experience that the risks are similar in each jurisdiction. As he says, the Canadian and US utilities face similar risks, and he is asked why he says that.

He says:

> "I have testified in both Canadian and US jurisdictions and I feel I understand the risks faced by utilities in both Canadian and US jurisdictions. I also read analyst reports and credit rating reports on a frequent basis. I have examined -- I understand and examined the various cost adjustment mechanisms that US utilities have on average, and I understand their capital structures, which are an element in their financial risk and have evidence -- presented

evidence on their capital structures. So I believe that the average risk of my comparable companies is equal to -- is similar to the risk of Union Gas." [As read]

Then he goes on and he disagrees with Dr. Booth, something I will come back to in a minute. And to the same effect is further testimony by Dr. Vander Weide, and I would ask you to make a note of it, behind tab 6, and it is the transcript at page 68.

There are similar comments by both Mr. Fetter and Dr. Vander Weide in their evidence-in-chief in the portions excerpted at tabs 3 and 4 of this compendium.

I would say, as well, that the Board itself, this Board, has relied on US experience and did so in its cost of capital report, and that has helpfully been excerpted by Dr. Vander Weide in the portion of his report at tab 4, and it's specifically page 11, paragraph 31 of his report where he comments on a portion of the Board's cost of capital report that talks about the comparability of US experience.

What the Board said at that time was:

"Second, there was a general presumption held by participants representing ratepayer groups in the consultation..."

And I would say that that is no different in this case:

"... that Canadian and US utilities are not comparators, due to differences in the 'time value of money, the risk value of money and the tax value of money'. In other words, because of these differences Canadian and US utilities cannot be comparators. The Board disagrees and is of the view that they are indeed comparable and that only an analytical framework in which to apply judgment in the system of weighting are needed..."

And then it goes on to comment about the US being a relevant source for comparable data and that the Board often looks to regulatory policies of state and federal agencies.

Now, as I commented -- as I commented, Dr. Booth disagrees, and he disagrees in his report, as to the comparability of US guidance and he does so, in my submission, for a number of reasons, but the one principal reason he comments on is the different regulatory environment in the US and Canada.

I make two observations in respect of that. The first is, with respect to Dr. Booth, he is not qualified to provide that opinion. He has never testified in the United States. He's never been qualified as an expert in the United States. And as he admitted at page 18 of volume 6, he is not an expert in the regulation of US utilities.

Now, none of that is actually referenced in his report, but it is his evidence. And, in my submission, it would be wrong to accept his comments, given his lack of expertise in the area, and the excerpt of his transcript -- I have given you the cite, but by way of further cite it is at tab 9 of the compendium, and, in particular, his comments about his lack of expertise at pages 17 through 19.

The second observation I would make in respect of Dr. Booth's opinion is that his report, with respect, overlooks the most recent analytical guidance issued by Standard & Poor's relevant to this issue which was issued earlier this year in February.

And we went over this at some length with Dr. Booth in cross-examination, but you will recall that Standard & Poor's includes regulatory risk as a component of its business risk profile. And if you look at the business risk profiles of US natural gas and electric utilities, they are all or substantially all regarded as excellent.

And so you have the cite for that, it can be found, again, in the transcript, volume 6, at pages 22 to 25, and the materials that are discussed there -- and it is hard to believe I missed anything in this voluminous compendium, but one thing I did miss was K6.1, pages 23 to 31.

And just by way of summary, 23 to 31 is the S&P reports from January of 2012 and February 2012, and it is the report that can be found on page 34 of K6.1 which makes it clear that S&P includes regulatory support as a feature of the business risk profile. As they say:

> "We categorize business risk profiles from excellent to vulnerable. To determine a business risk profile Standard & Poor’s analyzes a utility's regulatory support, commodity exposure,

operational performance..."

And then it continues. But the very first one that is listed is regulatory support, and then what's back at pages 23 and forward is a summary of the business risk and financial profiles of the electric utilities and gas utilities.

And as I say, they all enjoy very favourable ratings from S&P and an excellent risk -- business risk profile.

So, in my submission, Dr. Booth's basis for distinguishing US experience does not withstand scrutiny and should be rejected by the Board.

This takes us to the US comparators, and you can see this summarized in two places: Mr. Fetter's evidence behind tab 3 at page 17, and Dr. Vander Weide's evidence at tab 4 at page 28. And suffice it to say that their opinion is that Union's business risk is comparable to an average US utility and that the average equity thickness in the United States for a gas utility is in the neighbourhood of 48 to 52 percent and for an electric distribution utility 48 percent, in both cases well above obviously Union's 36. And it is one of the reasons why both Mr. Fetter and Dr. Vander Weide both conclude that Union's requested equity ratio is conservative in the circumstances. That's the US comparators.

On the Canadian side, you can see, again, lists both set out in Mr. Fetter's evidence and Dr. Vander Weide's evidence. And if you look at -- perhaps the easiest place to see it is table 3 of Dr. Vander Weide's evidence, which is at page 28.

Here, you see the mix of Canadian gas and electric distribution utilities. It doesn't include all of the Ontario electric distribution utilities, which would all be at a deemed equity ratio of 40 percent, but you see the mix of them and you will see, at the very bottom, Enbridge and Union well below the equity ratios of all of the other utilities.

Obviously as the Board will know, Enbridge has an application pending before the Board, seeking an increase in its own equity ratio, at least as I understand it, up to 42 percent.

Now, looking at this list at table 3, I want to focus in on -- well, they're all important, but I want to focus in on two of them, and the two I would like to focus in on are Terasen and ATCO Gas.

They have equity ratios of 40 and 39 percent respectively, and the reason I want to focus in on them is, in my submission, if the Board is minded to look at Canadian comparators and focus on Canadian comparators -- as I urge the Board -- they are, on the evidence in this case, the best comparators.

And that is Dr. Booth's evidence.

And this goes back to an observation, or an admission, more particularly, he made in answer to the Board's question early in his examination.

And you will see that at tab 9 of the compendium. It is volume 6, and the pinpoint cite is page 13, but it really begins at page 12 and continues for a little bit.

But Dr. Booth was giving the back of the hand to ATCO Gas, and was stopped in that, and what he says is -- he goes on to talk about ATCO gas at page 9:

"ATCO Gas is, if I recollect, a little bit smaller than Terasen, but it is one of the premier gas distribution utilities in Canada, and it, along with ATCO Pipelines, is part of Canadian Utilities, which in turn is owned by ATCO, which is traded on the Toronto Stock Exchange. So the phrase 'ATCO,' sometimes we use it, but we're not referring to either the pipeline or gas or the holding company."

And then the discussion continues, again, about ATCO Gas, and in my submission, this is an entirely fair admission by Dr. Booth to have made in relation to ATCO Gas, and in my submission, at least indirectly, to its comparability as one of the premier gas distribution companies in comparison to Union Gas.

And it is the very same judgment that he reached in 2003, when he was providing evidence directly to the Alberta Utilities Commission and specifically compared ATCO to Union Gas.

And try as you might, you will find nowhere in Dr. Booth's testimony any basis on which to distinguish ATCO Gas from Union Gas. It is simply not there.

It continues over at page 29, and this is just so you have the cite, but this is the point I took you to about the comparability of ATCO Gas.

And then over at page 32 is where you see the specific comparison by the BCUC at line 18 of Terasen, Union and Enbridge all being comparable in risk. And that ultimately concludes over the page at page 61, with a question from the Board about which of the utilities, in Dr. Booth's submission, are the most comparable.

And he goes through the various utilities on table 3, and I don't propose to go through it all, but I do make this observation.

When you cut out all of the low-hanging fruit, you are, again, left with ATCO Gas, which he doesn't even attempt to differentiate, and Terasen, which he makes passing observation about, but which, historically, at least the BCUC and he had regarded as being comparable in risk to Union Gas.

So in my submission, if the Board is looking at Canadian natural gas comparators, there is no better comparator than those two. And indeed, I think it is fair to say that even Dr. Booth would say that it is of utility for this Board to consider the judgments made by other boards across Canada.

Now, finally, Ontario, I am not going to spend any time on this, but obviously this Board is well aware that the deemed equity ratio for electric distribution utilities in this province is 40 percent. And to the extent you can compare electric and gas utilities -- as the evidence in this case suggests that you can -- and to the extent the evidence is that they are comparable in risk -- and the evidence is that they are -- in my submission, as night follows day, they should have the same equity ratio.

Now, the main objection -- we'll have to, obviously, see, but the main objection to Union's request appears to be the Board's report and whether or not Union must demonstrate a change in its business risk in order to justify an increase in its equity ratio. And in my submission, that would amount to a triumph of form over substance ultimately.

But the implication of the argument is that the 36 percent equity ratio is the right number then and now -- or sorry, then, now and forever, absent a change in business risk. And it is my submission that in this case it is apparent that the market has moved on and has a better appreciation of the risks of debt and the attractiveness of equity, and that is exactly what Dr. Vander Weide testified.

As he testified at volume 5 of the transcript, I believe it was, perhaps volume 4, but it is at compendium tab 6. It's volume 5. What he said there at page 15 and 16 -- and it's instructive, in my submission, to see where he made his comment, but on page 15, this was cross-examination by Mr. Warren, advancing the argument, again, about whether or not Union must demonstrate a change in business risk.

And Mr. Broeders candidly conceded that Union's position in this case is not that its business risk has increased relative to its last rate case, and I don't, in this argument, suggest otherwise.

What he did say is that the equity structure is not commensurate with Union's business risk; i.e., the 36 percent number isn't right, and doesn't reflect Union's business risk, not that that business risk has changed.

And then Dr. Vander Weide, beginning at line 16, picks up on that and he says -- and this was a refrain heard from Mr. Janigan, as well, or a suggestion, about the benefits to ratepayers of debt.

Dr. Vander Weide says:

> "I would note, as well, that when one compares the benefits to the ratepayers -- to the company and the cost to the ratepayers, just by comparing the interest rate on the debt to the cost of equity, that this misstates what the benefit is.
>
> "If one just compares the interest rate on the debt to the cost of equity, one could easily conclude that it would benefit the ratepayers, if a company had 100 percent debt and no equity. And everybody would agree that is ridiculous.
>
> "What that comparison of the cost of debt to the cost of equity misses is the risk to the company on a going-forward basis and being able to deal with the financial crises and being able to reduce the uncertainty in the business and financial environment.
>
> "And it is undoubtedly clear that since the

financial crisis there has been a tremendous shift in attitudes towards debt and the use of leverage across both Canada and the US.

"US companies, US -- and Canadian individual investors have reduced the amount of debt in their capital structures and in their financing."

And he goes on:

"We learned that debt can have deleterious consequences during that difficult period, and across the board the attitude is that investors, individuals, corporations and governments ought to reduce their reliance on debt. That is pretty much a universal change in the view of leverage -- of the use of leverage for individual and corporate and government entities."

And I apologize for reading that in its entirety, but it is extremely important from Union's perspective, and there are similar comments to be found at page 68 and 69.

There is in the circumstances, and based on the evidence in this case, no good reason to, as intervenors may suggest, slavishly follow the Board's guidance in the report on capital -- in the report on capital.

And I say that -- well, not just because of the evidence I have taken you to, but, first, it is important to remember that it is a policy. It is a guideline. And while important, that is different than the Board's exercise of its rule-making power under Rule 44 and the Board's -- sorry, the Board's statutory rule-making power.

It is, as the case with all policies and all guidelines, subject to challenge based upon the evidence, just as the DSM guidelines have been and other guidelines are.

And were it otherwise, there would in fact never have been an issue in this case relating to Union's adoption of the ROE formula. But of course there was, because parties could have challenged that, and there is precedent for that, as well.

And I hope you have up there EB-2009-0096, which is a decision -- yes. Perhaps we should mark this as an exhibit. But this is a decision relating to Hydro One Distribution Networks. It is a decision of the Board.

MR. MILLAR: We will mark that as K13.2.

EXHIBIT NO. K13.2: BOARD DECISION IN EB-2009-0096.

MR. SMITH: There is precedent for this issue. Admittedly this dealt with ROE and not capital structure, but that is a distinction without a difference, in my submission.

If you look over at page 48 of that decision, the Board says, "On December 15, 2009", third paragraph:

> "...after hearing argument from all parties, the Board issued its oral decision. In denying the relief sought by the parties..."

Which was a request that Hydro One file additional evidence:

> "...the Board recognized that its report of December 11, 2009..."

That's the cost of capital report:

"...specifically addressed the question of challenges to the applicability of the guideline or any part of the guideline in any given rate case. Put simply, the Board found that its report contemplated circumstances where intervenors may want to challenge the application of the revised guidelines to a particular applicant in a particular case."

Then it goes on, and the Board ultimately finds, if you want to do that, if you want to challenge the application of the Board's cost of capital report, you better do so with evidence. And it invited intervenors to file evidence.

They didn't take the Board up on that invitation in this case, but the principle holds, in my submission, and, in this case, Union has filed evidence, and Union has filed evidence and that evidence has withstood cross-examination. And, in my submission, it is a basis to vary Union's equity ratio and a basis to vary from the Board's report on the cost of capital.

Now, this was also alluded to -- one other issue that was alluded to in cross-examination at the page I took you to back on page 7, which I will just touch on, tab 7, page 15 of the cross-examination, was the interest coverage ratio.

At tab 7, page 15, you will see Mr. Broeder's testimony at line 10:

"Also, when we take a look at our interest coverage ratios, based on the regulated side of the company, the regulated entity could not issue debt, because we would be under the 2.0 requirement."

And I have included at tab 8 Exhibit J5.5, which was an undertaking given by Mr. Broeders to Mr. Millar, who wanted further explanation of this issue.

And the bottom line, when you review Exhibit J5.5, that if you look at the utility side, based on the capital structure and related return, the only instance where the utility company would be in a position to issue debt on its own merit is when the common equity component is 40 percent, since the interest coverage ratio is above the required 2.0. Only by including the unregulated operations to supplement the utility business would Union be able to exceed the requirement.

And then you will see the detailed workings of that can be found at attachment 1.

Now, I expect some people may argue -- and we will see, but I expect some people will argue that the company-wide ratio should be used, and admittedly on a company-wide ratio I believe the number is forecast to be something in the neighbourhood of 2.74 percent for 2013. Union would meet the interest coverage ratio.

But, in my submission, that is a peculiar argument, because when you strip it down, it is essentially an argument that the regulated business should be subsidized by the unregulated business, and when the shoe is on the other foot and we're looking at cost allocation, great pains are made to make sure that Union's unregulated business is not subsidized by its regulated business.

Finally, I don't propose to address this, but I have included it in the compendium. There was some confusion about Union's capital structure or proposed capital structure and its relationship to utility rate base and what was being financed, and I have included at tab 7 Exhibit J5.4, which was the undertaking given by Mr. Broeders to Member Taylor and was the subject of some further comment by Ms. Elliott in her examination.

But the long and short of that is there is not a non-utility rate base being funded by Union's proposed capital structure, and I don't propose to dwell on it.

That concludes my submissions with respect to capital structure, and, obviously, we ask for the Board's approval with respect to the proposed capital structure, including the increase in equity ratio, which brings me to Parkway West.

It is not a core issue. That is my submission. It is not a core issue, and Union -- I am prepared to fall on my sword in relation to this issue in this respect. The extent of the discussion relating to Parkway West likely comes from the extent of the discussion in Union's prefiled evidence, but the purpose of that evidence was to address the Board's filing guidelines, which I have included in the Parkway West component at tab 2, which was an undertaking given to Mr. Redford by -- undertaking by Mr. Redford to Mr. Thompson. That is tab 2 of the Parkway West component, which specifically refers to the Board's minimum filing requirements for natural gas distribution cost of service applications.

And at page 7, it talks about the minimum requirement to file in respect of capital projects where the anticipated capital spend is greater than $500,000.

Now, it may well have been that Union was more descriptive than it needed to be, strictly speaking, to meet the filing guidelines. I don't, frankly, know the answer to that question, but the purpose was to be of assistance.

In the final analysis, Union is not seeking any approvals in this case relating to the planned Parkway West project. You will see that at tab 3, which is an excerpt from volume 8 of the transcript, pages 77 to 78, Mr. Redford's examination.

And he indicated specifically that Union was not seeking any approval from the Board, and he further talked about the anticipated application and how Union proposes to deal with this matter, first by leave-to-construct application later this year, and then the cost consequences to be dealt with in a 2014 rate application, whatever form that might take.

I have included in the compendium, so the Board has it, at tab 1, Exhibit B1, tab 9, which does talk about the Parkway West project. And obviously there was some cross-examination, considerable cross-examination about Parkway West in both volumes 8 and 9 in the transcript. But in my submission, ultimately that is something that the Board does not need to deal with in this case.

I would say that I believe -- although we will have to hear -- I believe parties join me in that view. At least, I have included at tab 4 of this portion of my compendium an excerpt from Mr. Cameron's -- or the TCPL panel, the very outset of their evidence, and an opening statement by Mr. Cameron to this effect, where there is an acknowledgement that this will all be dealt with, and this isn't the case.

And maybe we could have had a better dialogue at an earlier point. We wouldn't have had a motion to fight about this, and the whole nine yards, but here we are.

Now, there is one question that I suppose is left, and that is whether or not the Board in this proceeding should give any guidance in relation to the future proceedings.

In my submission, the answer to that is no, and it would not be advisable, in my submission, for the Board to do so for a number of reasons.

The first is you have an incomplete evidentiary record by all parties' admissions on the topic.

Two, it is going to be the subject of one and -- two applications, which may well, actually, get underway before the Board can realistically issue a decision in this case, given our argument schedule.

And three, there is no doubt now that all of the relevant parties are engaged. Union's engaged. TCPL is engaged; I am pleased to see them here. It is rare that I have anybody with me. And Enbridge is obviously well engaged and they're an interested party.

So in my submission, there is no need for guidance from the Board and it would be not advisable for the Board to give guidance in the circumstances.

So that is Parkway West.

Maybe we can just pause here for a minute. I know you have an obligation at one o'clock.

MR. MILLAR: Madam Chair, I think that that proceeding has been delayed until 1:30 on account that it wasn't sure we would be finished here at one o’clock. So we have a little bit of wiggle room at that end.

MR. SMITH: There's two issues I intend to deal with. They're both very brief. One is deferral accounts, and two is cost allocation and rate design.

I intend to be extremely brief with both of them, so I am hopeful that I will be done -- subject to any questions that you may have -- by one o'clock or shortly thereafter.

MS. HARE: That's very good. Please proceed.

MR. SMITH: Deferral and variance accounts, Union's proposed changes to existing deferral accounts -- and there are very, very few of them -- are detailed at Exhibit H1, tab 4.

This is separate and apart from the discussion that we had prior to the break about FT RAM, obviously, at Exhibit H1, tab 4.

And in the case of the short-term storage account, there is additional discussion of that deferral account which can be found at C1, tab 7.

And the only change that I propose to deal with in argument -- and obviously I rely on our prefiled evidence in respect to the others, but the only change I propose to deal with is the change in the short-term storage account.

And the change that Union is suggesting with respect to that account is to allocate the total margins associated with short-term peak storage transactions between its utility and non-utility operations in proportion to the utility and non-utility share of the total quantity of peak short-term storage.

And if I can cut through all of that, in my submission, Union's proposal is consistent with both -- well, with the NGEIR decision, it's consistent with the recent 2011-0038 case, and it is consistent with Mr. Rosenkranz's evidence, as well, subject to one comment that I will make in a minute.

The result of Union's proposal is that ratepayers and Union will receive the average price per transaction, and the reason for Union's proposal, as specifically discussed in its prefiled evidence, is that by using the average price it is hoped that the complexity relating to this account will be minimized.

There will be no suggestion as to gaming, and what has been, recent history suggests, a controversial account will become much less so.

That is the reason for the proposal. In other words, there won't be any argument that the price obtained in January on an ex-utility sale was more favourable than a price obtained in December on a non-utility sale, or vice versa, as the case may be.

If everyone gets the average price, everyone is in the same boat and the clearance of the deferral account should be relatively straightforward.

Mr. Rosenkranz objects to that, in that his evidence says there should be some way to do it, but what's not in his evidence is any suggestion as to how. That is not in his prefiled evidence and he didn't talk about it at all.

So in my submission, the Board is left with no evidence on the point, and for that reason the average price is preferable, right off the bat.

The other, perhaps, distinction between Union's position and Mr. Rosenkranz's position is Union's position is that the short-term deferral account should continue as a short-term account. I believe or I understand my friends to be saying excess utility space should be sold either short term or long term.

And this was dealt with by Mr. Isherwood in his evidence as to why you wouldn't sell long term, and the long and the short of it is that the short-term market is more favourable. It produces higher margins, and that is beneficial to ratepayers and that's why Union isn't seeking a change of the deferral account to capture long-term storage transactions.

Obviously, if you introduce an additional parameter, there will be an additional concern, it is submitted, or potential for concern in future deferral account proceedings about whether or not you should have been engaged in long-term or short-term transactions, and, to the extent you engaged in long-term transactions and short-term were more favourable, why you did that.

That is an unnecessary step, in my submission, based on the evidence that you have before you and, in particular, Mr. Isherwood's evidence.

Lastly, let me deal with cost allocation and rate design. Union's cost allocation -- prefiled cost allocation evidence is dealt with at Exhibit G1, tab 1. I rely on that evidence in its entirety. I don't propose to address it in my argument-in-chief. Frankly, I don't know what my friends are going to say, but there was very little cross-examination, generally speaking, in relation to cost allocation.

The few changes that have been proposed have all been proposed to better align cost occurrence and recovery.

That brings us to rate design, and Union's specific in-franchise rate design changes are detailed in Exhibit H1, tab 1, appendix -- sorry, H1, tab 1, and in appendix H1, tab 1, appendix A, and I have attached appendix A at tab 2 of the rate design portion of the compendium.

So you will see that there are a number of them. They're described further in H1, tab 1. And despite the number of them, at the hearing the only proposal which received any focussed cross-examination, in my submission, is or was the proposal to lower the volume breakpoint for the general service rate classes, rate 01 and M1, from the existing 50,000 cubic metres down to 5,000 cubic metres.

And that proposal is described in the evidence at H1, tab 1, beginning at line -- beginning at page 15. And what you will see -- and this goes back to tab 1 of my compendium under cost allocation and rate design.

And what you will see there is Union is seeking to improve rate class composition and achieve more homogenous rate classes in both the rate 01 and M1 categories. And, in my submission, the evidence amply supports those objectives.

You will see the discussion -- and I don't propose to take you through it further, but you will see this point made graphically at table 5 on page 17, and continuing from pages 17 through to 19.

I have included at tab 4 an excerpt of volume 12, our last day of the hearing, and you will see there at page 103 -- I haven't included page 103, but you will see at page 103 Mr. Tetreault's cross-examination and his statement that the best way to manage rate class composition and homogeneity is as Union proposed.

Then you will see at page 22, which I have included, Mr. Tetreault's observation - which, in my submission, was lost somewhat in cross-examination - that it is important to bear in mind that rate design is all about averages and it's all about serving average customers, and there are always going to be outliers.

And that's not to minimize the outliers, but it is to say that it needs to be put into context.

You will see at page 22 in cross-examination, in answer to Mr. Aiken's question, what Mr. Tetreault says at page 12 is that Union's:

> "...rate design proposals in total are revenue neutral, and the number of customers that are impacted adversely in some way by our rate design proposals in general service is a very small percentage of the overall customer base. I believe it is in the neighbourhood of 58 to 60,000 customers out of a general service customer base of approximately 1.4 million, so somewhere in the order of, I'll say, 4 percent of the total customer base."

Not to minimize the numbers, but it is important to bear in mind what rate design is all about and to keep these figures in context.

I have also included in the compendium, and I just want to take you to it briefly, an answer to an undertaking given by Mr. Pankrac to Mr. Shepherd and that is Exhibit J10.3. And, in my submission, this is another instance where a diagram is helpful.

You will see that Exhibit J10.3 can be found at tab 14 of the compendium. It should be the last tab of this portion.

And bearing in mind what we've talked about, and what

Mr. Tetreault talked about extensively and Mr. Pankrac talked about extensively, about averages, what you see is here a distribution of the cubic metres and the annual volumes and showing exactly where the average volumes fall at a breakpoint of 5,000 cubic metres on attachment 1 and attachment 2, again, at the 50,000 cubic metre number where the averages are, and then you see the same in attachment 3 and 4.

And, in my submission, these graphically show the analysis that is described in Union's pre-filed evidence and that Mr. Pankrac and Mr. Tetreault both testified to at length about trying to design a rate class that has sufficient numbers as to be sustainable and reflects average customer size.

Now, I am going to leave it at that. I don't know what my friends are going to say about any of this. They were all very guarded during cross-examination, so I don't really know. But obviously we rely on our evidence-in-chief and the answers given in interrogatories.

As I wrap up, there is one issue that was discussed. I touched on it at the outset and I want to finish with it, because I think it is an important piece of context again for the Board, and that can be found, again, in the rate design and cost allocation piece at tab 8.

And tab 8 -- you should have at tab 8 of the cost allocation and rate design compendium Exhibit J11.10, and this was an undertaking on the issue of which is obviously something the Board considers, and appropriately so, from time to time.

The proposition was put to Union about mitigation, and I started with this and I started in my submissions, talking about the overall impact of Union's application and keeping it in the appropriate context.

What you will see in this undertaking is a reflection that the total bill impacts that Union is anticipating as a result of its application are well below 10 percent. That is the guidance, total bill impacts, that has been issued, as I understand it, to electricity distribution companies. There is, in fact, no comparable guidance that I am aware of to gas distribution companies.

But if we're looking at guidance generally from the Board, the guidance from the Board is on a total bill impact.

And you will see at attachment 1 and attachment 2 the total bill impacts arising from Union's application -- and as I say, you will see at page 1, for example, of attachment 1 in the upper right-hand corner, the small Rate 01, that is the 7.5 percent that I mentioned at the very outset. And then on page 2 of 2 of attachment 1 at the very top, you will see the 1.7 percent.

Now, Union didn't stop there. The mitigation alternatives are laid out there. Union -- and in my submission, mitigation -- having regard to the total bill impacts, mitigation is not necessary.

However, if you were to consider mitigation, any one of the mitigation measures that are outlined there would keep, obviously, keep the total bill impact below the 10 percent. And they're each -- each discussed there, ending with an adjustment to the revenue-to-cost ratio. You will see Union's view that, generally speaking, that shouldn't happen.

But they're each outlined there to be responsive, but the overarching submission I wanted to make is that, in Union's view, mitigation is unnecessary.

There is one final thing I just wanted to touch upon very briefly. This was also not included in my compendium, but in K12.1 -- which was Mr. Aiken's cross-examination booklet -- he included H3, tab 10, schedule 1. That was at page 7 of his compendium.

And you might recall that that schedule shows the transactional margin included in in-franchise rates. Just a couple of observations I want to make about that.

The margin that arises, and as reflected at Exhibit H3, tab 10, schedule 1, arises because regulated revenues for those services are greater than the allocated cost, which leaves some margin that needs to be put somewhere.

The margin associated with those services has historically -- and in my submission, appropriately -- been used and was used by Union in this application as a rate design tool to manage rate impacts, rate continuum.

And in my submission, that is -- there's nothing particularly unusual about that. Union's done it that way going back many, many, many years, and there's some discussion of how Union uses it at volume 12, page 149.

And it is entirely appropriate that that margin be streamed back to in-franchise rates in accordance with those rate design principles, and as I say, to manage rate design -- rate continuum between rate class.

Now, in this case, fully half of that revenue was or has been streamed to Union north, and that is because there are greater impacts in the north.

I would just make this observation about that. That is a higher percentage than has ever been streamed, and you will see that at volume 11, page 148. And that, in my submission, was an entirely appropriate thing for Union to have done.

So given the time, I will spare you the long wrap-up.

[Laughter]

MR. SMITH: But you have our submissions-in-chief. Obviously, we rely on the submissions and the prefiled evidence.

In Union's submission, the application and the resulting rates are just and reasonable, and Union asks that they be approved, subject to any questions.

MS. HARE: Thank you very much. We have no questions.

MR. SMITH: Thank you.

MS. HARE: So we will meet again on August 23rd, 9:30. Thank you.

--- Whereupon the hearing adjourned at 1:11 p.m.