Ontario

ONTARIO ENERGY BOARD

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

VOLUME:	**14**	
DATE:	**August 23, 2012**	
BEFORE:	**Marika Hare**	**Presiding 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,
25th Floor, Toronto, Ontario,
on Thursday, August 23rd, 2012,
commencing at 9:34 a.m.

VOLUME 14

BEFORE:

MARIKA HARE	Presiding Member
KAREN TAYLOR	Member

A P P E A R A N C E S

MICHAEL MILLAR KRISTI SEBALJ	Board Counsel
KHALIL VIRANEY LAWRIE GLUCK	Board Staff
CRAWFORD SMITH MARK KITCHEN CHRIS RIPLEY	Union Gas
JOHN WOLNIK	Association of Power Producers of Ontario (APPrO)
TOM BRETT	Building Owners and Managers Association (BOMA)
PETER THOMPSON	Canadian Manufacturers & Exporters (CME)
ROBERT WARREN	Consumers Council of Canada (CCC)
ROGER HIGGIN	Energy Probe Research Foundation
DWAYNE QUINN	Federation of Rental-housing Providers of Ontario (FRPO)
MICHAEL JANIGAN	Vulnerable Energy Consumers' Coalition (VECC)

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

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NO UNDERTAKINGS WERE FILED IN THIS PROCEEDING.

Thursday, August 23, 2012

--- On commencing at 9:34 a.m.

MS. HARE: Good morning. Please be seated.

The Board is sitting today to hear submissions in the matter of Union Gas's application for 2013 rates. Are there any preliminary matters?

MR. SMITH: No, Madam Chair.

MS. HARE: Thank you. We have received written submissions from Board Staff, from the Corporation of the City of Kitchener, from VECC on all matters except for cost of capital.

We do have some questions of Board Staff. The first question is, looking at page 15 of Staff's submission, Board Staff recommends that Union should be directed to develop a gas supply plan that reflects the realistic requirements of its customers, and the Panel's question is: How actually would that work in terms of the 2013 rates being set, and does that mean that the Panel would then be reviewing a subsequent gas supply plan?

FINAL ARGUMENT BY MR. MILLAR:

MR. MILLAR: Madam Chair, exactly. If you were to accept Staff's submission in that regard, how that would be operationalized, I suppose, would be up to you, but I can offer the following thoughts.

You will have seen in our submission that we identify what we believe is a problem with them overcontracting for gas supply, and that's based on what we think are overly generous buffers in their gas supply plan.

We didn't feel that we are in the position to offer an alternate specific gas supply plan. As you will recall, I believe there is no written document that is a gas supply plan. It is a couple of spreadsheets, I think, and some parameters they use, but it is not a specific document that I am aware of.

We didn't think we would have the expertise with Union's system to be able to actually come up with our own gas supply plan and say exactly what it would be.

Now, we do have some suggestions. Obviously our submission is the peak design day uses a temperature this is too cold, that their NAC and weather analysis has shown a warming trend. They're still using the coldest day in 50 years as the basis for their gas supply plan.

So for all of those reasons, we didn't feel we were in a position to offer an alternative plan ourselves.

Now, what we have offered and what I think other intervenors will also suggest are a variety of deferral accounts and flow-throughs to the PGVA that will largely flow any money they make off this back to ratepayers, which wasn't necessarily happening over the past four to five years.

So we think there is protection there for the ratepayers in the interim period, if you will, between gas supply plans.

So we haven't given a date whereby we think a new one should be done, whether that is done - I hate to suggest this - through a QRAM or if it is the next rates case or if it's in the IRM case. It would be some future proceeding.

We're not suggesting that you make current rates interim or you make this a holdover for the current proceeding. In other words, we're comfortable with you issuing a final rate order in this proceeding, with a new gas supply plan to come in the future.

MS. HARE: To be applied in the future?

MR. MILLAR: Well, presumably, yes, not to be applied retroactively. Although, as I say, the deferral account should capture most of the earnings they make in that regard, so that is why we're comfortable with that approach.

MS. HARE: All right, thank you. The other question we had was about the Board Staff's silence on the issue of T3, the new rate design on T3.

So when Board Staff doesn't take a position on an issue, does that mean you accept Union Gas's proposal?

MR. MILLAR: On T3, I would say we're taking no position on that. When I say no position, it means no position. We're not supporting Union. We're not supporting the other side, Kitchener in this case.

Like any party, Board Staff tries to canvass all of the issues or as many issues as it can, but, like any party, we have to allocate our resources, and there are some issues we simply aren't able to devote a proper submission to. So rather than look at something in an incomplete fashion, we simply take no position on those.

There would be any number of other issues that, frankly, aren't really in dispute, whereas you might assume that Staff supports Union in those, and that would probably be correct. But in issues where there is a dispute between the parties as there is on this T3 rate and Staff takes no position, no position means just that. We are not siding one way or the other.

MS. HARE: Okay, thank you. Thank you. I understand the order for submissions, then, are that CCC, Mr. Warren, you are going first.

Then I thought that Mr. Brett was going next, but I don't see him.

MR. MILLAR: I understand Mr. Brett is en route. So by the time Mr. Warren is done, he should be here.

MS. HARE: Okay, thank you.

FINAL ARGUMENT BY MR. WARREN:

MR. WARREN: Thank you, Madam Chair and Ms. Taylor. I will be referring to only one piece of material. That is a decision of the Ontario Court of Appeal on a Toronto Hydro case. I have made copies for my friend, and I will offer to Mr. Millar copies for you. I side-barred the relevant passage.

In anticipation, and I think a realistic anticipation, that over the course of next two days you are going to hear a great deal of repetition, what I'm proposing -- what I will do this morning is to briefly summarize my client's position on the following issues: operating revenues, storage and transportation and the related deferral accounts, and a couple of rate design and cost allocation issues. But the principal focus of my submissions will be on the capital structure issue.

Other parties, members of the Panel, will deal in great detail with the issues that I propose to summarize our position on. We've had the benefit of discussing the storage and transportation issues with Mr. Thompson. We anticipate realistically that he will provide a detailed analysis of that cluster of issues, and we adopt his analysis and recommendations on those issues.

Mr. Quinn, we've had the benefit of discussing with him the issues which are raised by Mr. Rosenkranz in his testimony, and we adopt the analysis and submissions of Mr. Quinn on those issues.

Finally, Mr. Aiken will provide, no doubt, a detailed analysis of the issues of weather and forecast methodology, and we adopt his analysis.

I should say, also, that we have had the benefit of reading the comprehensive analysis of Board Staff in their argument, and with a few exceptions we adopt their analysis and recommendations.

Let me deal, first, with the two operating revenue issues. Our position with respect to the weather normalization issue is that Union's proposal to move to a 20-year declining trend methodology for forecasting degree days should be rejected.

As approved by the Board in the EB-2003-0063 proceeding, we support using a blended approach. That blended approach is a 50-50 blend between the 30-year average and 30-year declining trend. Shifting to the 20-year declining trend methodology has a significant impact on general service customers.

In our submission, Union has not made a case to demonstrate that the 20-year declining trend would be an improvement over the current blended approach or the 50-50 blend. Union should be required, in our submission, to recast its general service volume forecast using the 50-50 blended approach.

With respect to the normalized average consumption for rates M1 and 01, we submit that Union's forecasting methodology has overstated the expected declines. In effect, the evidence demonstrates that Union's forecast normalized average consumptions for rate M1 and rate 01 for 2012 and 2013 are too low. They should, in our submission, be increased by 1.4 percent per year. This will increase the general service volume throughput for the 2013 test year.

Let me turn, then, to the storage and transportation-related issues, and I have some preliminary issues by way of suggesting an appropriate analytical framework. And this will, I'm sure, parallel my friend Mr. Thompson's more detailed analysis.

As the Board is aware, the consideration of this, I'll describe it as cluster of issues, has taken on a sharper focus in the hearing because of the sheer amount of revenue that Union was able to earn during the IRM period using its storage and transportation operations.

We acknowledge that what occurred during the IRM period is the subject of another proceeding, and we do not intend to make any submissions on it.

I raise this point simply to say that the amounts earned in that period have inevitably sharpened the focus on establishing what I submit are the appropriate governing principles to consider that issue for 2013.

And those principles, in my respectful submission, are the following. Revenues generated from the use of utility assets paid for by ratepayers should flow to the benefit of ratepayers. And I think it bears repeating that that foundational principle of regulation is an important one and needs to be borne in mind.

A corollary of that is that Union should be obliged to optimize the use of these assets for the benefit of its ratepayers.

The second principle is that gas supply planning and related transportation planning should be based on, to the extent possible, the actual needs of the in-franchise customers.

Gas supply planning and related transportation planning should not be used to generate additional profits for Union's shareholder.

We agree with Board Staff's analysis, that the evidence shows that Union is planning for more capacity than is required. Ratepayers, as a result, bear an additional cost for that. Union uses the excess capacity to generate revenue under its storage and transportation operations.

In our respectful submission -- I will return to this in the context of the case I handed up to you -- Union is preferring the interests of its shareholder over those of its ratepayers. And in my respectful submission, the Board is required to redress that balance.

Rebalancing, the third principle is that rebalancing the interests of ratepayers and shareholders requires for 2013 at least three things.

It requires, first, that Union move to more precisely forecast its gas supply needs, and we adopt the analysis that my friend Mr. Millar has just provided you with on that issue.

It also requires that ensuring the benefits of any additional revenues are appropriately allocated to ratepayers, and ensuring that there are deferral accounts in place to protect ratepayers.

Now, with respect to the FT RAM issue, we support the view, we take the view that amounts generated from FT RAM credits should be classified as gas transportation cost reductions and flowed back to ratepayers through the gas supply deferral accounts.

Revenues are generated by optimizing assets used to meet Union's gas supply plan each year; these assets are paid for by utility ratepayers and we see no reason why Union's shareholder should profit from these transactions.

Union's proposal for the FT RAM revenues should, in our respectful submission, be rejected.

With respect to the other transactional services that Union undertakes, including base exchanges, we support the reintroduction of the accounts that were closed prior to the IRM period. In addition, to the extent Union generates any revenues from transactional services, the majority of the revenue should flow back to ratepayers.

Counsel notes that Board Staff has proposed the introduction of an account to capture the margins associated with all other S&T activities other than FT RAM. For these activities -- for those activities set out in -- the evidence references Exhibit H3, tab 10, schedule 1.

We propose that the margins be treated in the same manner as the current account 179-70, short-term storage and other balancing services account, with one exception: the amount embedded in rates should be 100 percent of the forecast.

MS. HARE: I'm sorry, you trailed off there. I didn't hear what you said.

MR. ARREN: I'm sorry. With -- the exception is that the amount embedded in rates should be 100 percent of the forecast.

MS. HARE: Okay. Thank you.

MR. WARREN: I want to turn, if I can, briefly to the two rate design issues.

First of all, with respect to the M1, M2, threshold proposal, the current annual volume break point between the small-volume general service rate classes, Rate 01 and Rate M1, and large-volume general service rate classes, Rate M10 and Rate M2 is 50,000 metres cubed. In the 2007 rate proceeding, the Board approved the use of the annual volume break point of 50,000 m^3 to split the general service M2 rate class into small-volume Rate M1 and large-volume Rate M2 in Union south.

Using that annual volume break point recognized that the small-volume residential customer does not incur the same level of customer-related costs as the large-volume industrial customer. In this proceeding, Union is proposing to lower the annual break point to 5,000 metres cubed to improve the rate class composition of Rate 01 and Rate M1, and to achieve more homogenous rate classes.

These changes are proposed to take place in 2014.

Although lowering the break point to 5,000 metres cubed would result in more homogenous classes, Union has not supported its proposal with a cost allocation study.

In addition, the customers that are close to the break point and would be moved to the new M2 rate class would experience significant rate impacts.

From our perspective, if the proposal is not based on a proper cost allocation study and Union has not provided for sufficient rate mitigation for the customers most adversely affected by the changes, the Board should not approve the approach. Proper ratemaking requires a valid connection to cost causality. We have not seen that in Union's proposal.

In addition, the absence of any proposal for mitigation for those customers that will experience significant bill impacts should prompt the Board to be concerned.

With respect to the revenue-to-cost ratios, the proposal is to set the revenue-to-cost ratio for Rate M1 to 1.003. This results, in our submission, in an over-recovery of $1.14 million for that class. We do not accept that the move is justified, and believe that Union has sufficient flexibility to correct what amounts to a cross-subsidy.

As a matter of principle, in our submission, revenue-to-cost ratios should be as close to unity as possible.

Let me turn, then, to the principal thrust of our submissions, which is on the capital structure issue.

Union seeks approval for a change in its capital structure to increase its equity ratio from 36 to 40 percent. The effect of the change, subject to some variation, would be to increase the revenue deficiency by approximately $17 million annually.

Starting point for this analysis is, in our submission, the report of the Board on the cost of capital for Ontario's regulated utilities, EB-2009-0089, dated December 11, 2009.

In that report, the Board expressed its policy on changes to a gas utility's capital structure as follows:

> "The Board's current policy with regards to capital structure for all regulated utilities continues to be appropriate. As noted in the Board's draft Guidelines, capital structure

should be reviewed only when there is a significant change in financial, business or corporate fundamentals. For electricity transmitters, generators and gas utilities, the deemed capital structure is determined on a case-by-case basis. The Board's draft Guidelines assume that the base capital structure will remain relatively constant over time, and that..."

And I underscore the following words:

"...a full reassessment of a gas utility's capital structure will only be undertaken in the event of significant changes in the company's business and/or financial risk."

The citation for that is pages 49 and 50 of the Board's report.

Union has made no attempt to comply with that policy. Union's evidence is that it has not, for this case, analyzed its business and financial risk. Union's evidence is that its overall risk profile has not materially changed since 2004.

Arguably, that is the end of the issue. The Board has a policy; Union has not complied with it.

Union disregards the Board's policy and makes its case on a different ground. In its argument-in-chief, Union advances what it calls a, quote, "simple proposition."

That proposition is set out at page 53 of the argument-in-chief, as follows.

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 in 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 majority are 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 -- quoting Mr. Smith -- be at a disadvantage when it does.

It is important, in my submission, for the Board to understand the structure of that argument.

Union does not rest its case on comparability alone. It would, of course, be absurd to do so, because it would require the Ontario Energy Board to follow in lockstep with other regulators, thereby surrendering its independence and vitiating its own policy.

Rather, the argument is that there is a link for Union between comparable equity ratios and the ability to compete for capital. Union has provided no evidence, in our submission, that, whatever comparison it relies on, it has not been able to compete for capital on favourable terms with other utilities. In other words, it has not met the structure of its own argument.

We submit that the Ontario Energy Board, consistent with its own policy, must examine the individual circumstances of Union and, in particular, the business and financial risk faced by Union to determine whether a change in equity structure is required.

The use of comparators may supplement, but not replace, that analysis. Comparisons are not in and of themselves determinative. Indeed, if the business and financial risk doesn't justify a change, comparisons are of no value. That, in our submission, is what the OEB's policy on changes in capital structure makes clear.

Union's witnesses and its experts in their evidence and testimony suggest that a change in equity ratio will strengthen Union's credit quality, which, in turn, will allow Union, first, to compete with other utilities in the capital market, and, second, withstand unforeseen events, such as the 2008 and 2009 worldwide financial crisis.

The proposition appears, for example, in the cross-examination of Union's expert, Mr. Fetter, at pages 149 and 150 of volume 4 of the transcript as follows, and I quote:

> "Mr. Fetter: I feel strongly that creating a credit profile which can withstand unforeseen events, such as we saw in 2008 and 2009 during the worldwide financial crisis, which Dr. Carpenter also did not predict -- I think it is important for every utility to be able to

withstand such stress, and so even though this response to an IR..."

And I'll get to that response in a moment:

"...states that there might not be immediate change as measured by an upgrade, it does not mean that Union Gas's credit quality has not improved and puts itself in a better stead on behalf of both its customers and its investors."

It is important to note that that statement by Mr. Fetter makes the argument in the face of Union's concession that the proposed change, the change it is asking for in its equity structure, will not be sufficient to result in a rating upgrade or significantly impact its cost of debt.

In the face of these concessions, the concerns expressed by Mr. Fetter are, in my respectful submission, entirely hypothetical.

It is essential that the Board set this hypothetical concern against the reality of Union's experience over the past five years and against the circumstances described by Dr. Booth in his evidence.

His expert evidence is Exhibit K6.3. At pages 24 and 25, he posits that one major aspect of risk is whether a utility has been able to earn its allowed ROE. Dr. Booth points out that since 2000, Union's average over-earning has been about 2 percent. From the period 2007 to 2012, Union has over-earned by some $278.7 million.

He also posits the test, arguably, according to him, the most important test, is whether a regulated utility can access capital on reasonable terms and maintain its credit rating.

Throughout the IRM period, which coincided, I point out, with the most severe financial crisis in a century, Union has maintained a high credit rating. It has been able to attract capital on reasonable terms, and it was able to attract capital on reasonable terms and maintain its credit rating with its existing capital structure.

Union has provided no evidence that it was unable to borrow money on favourable terms or that it has not been able to compete with other utilities on equal terms for money.

As to the alleged financial risk posed by financial crises, the evidence is that Union was able to survive the 2008/2009 financial crisis, with its debt rating unchanged.

I put the evidence of Union's consistent and consistently high debt rating to Mr. Fetter in cross-examination in the following exchange, which appears at transcript volume 5, page 11. My question was:

> "And am I wrong in my conclusion that they were able, through that financial crisis, to withstand unforeseen, severe financial crises with their existing equity structure?"

> "Mr. Fetter: Let me note that they did sustain it through that economic crisis, but that regulators across Canada have increased equity thicknesses for utilities -- I think in large part in response to that economic crisis -- to

ensure the ability to access funding at reasonable levels going forward, if there is another financial crisis that were to occur."

Positing again a hypothetical.

Dr. Booth's evidence was that the long-run financial risks facing Union are minimal and have, in fact, decreased since 2006, and his analysis is in Exhibit -- on that point is Exhibit K6.3 at page 30 and following.

He bases that position on, among other evidence, the decline in commodity prices for gas and increased use of gas-fired generation.

Dr. Booth's evidence proceeds in the first evidence -- instance from an acknowledgement that the Board's policy on changes in capital structure -- and he acknowledges, in effect, that that is the policy.

His evidence sets out the essential analytical framework for an examination of changes in capital structure, including an examination of Union's return on equity and its ability to attract capital on favourable terms, and examines the factors affecting Union's business and financial risk, and analyzes the relevance of comparators in that context.

Now, Union's response to Dr. Booth is not to attack that fundamental analysis. That is perhaps not surprising, given Union did not follow the Board's policy, did not examine its business and financial risk and conceded that its risk profile has not changed since 2004.

In place of attacking the fundamentals of his analysis, Union engages in the old debating trick - I don't think I've used this trick since I was in high school in a debating club - of pointing to instances where Dr. Booth has said comparisons may be relevant.

Doing so does not derogate from the strength of Dr. Booth's evidence and certainly does nothing to substantiate Union's argument.

The evidence in this case on the change in Union's equity structure can be summarized as follows. There is no evidence of a change in the financial or business risk of Union. With its existing equity structure, Union last been able to compete with other utilities with capital and maintain a consistent and consistently high credit rating through a catastrophic financial crisis.

Dr. Booth's substantive evidence is that all indicators suggest that Union's risk profile is likely to improve, and that was not challenged. Notwithstanding these considerations, Union argues that a change in equity structure is necessary because it is possible that, at some point in the future and in the face of some unforeseen financial crisis of unknown character and duration, Union may be disadvantaged by its existing equity structure. And for that, Union's ratepayers should have to pay an additional $17 million a year.

In my submission, Union has simply not made a credible case for a change in its equity structure.

Union's request for change in its capital structure poses two larger questions. The first is whether Union has provided any basis for the Ontario Energy Board to abandon its policy on changes in capital structure. The answer to that, in my respectful submission, is simply no.

Union argues that any utility can make a case for a change in the Board policy on capital structure. Its proposition presumably is that the policy can be changed to allow a utility to demonstrate, first, that its circumstances are comparable to those of other utilities, and, second, that it cannot, without a change in the capital structure, compete with those other utilities for capital.

We do not agree that that should be the basis for a change in the policy. We submit that Dr. Booth's evidence substantiates the correctness of the existing policy and that, whatever the Board may do with comparators, it must start with a determination of whether a utility's business and financial risk has changed.

But even if you accept Union's argument about the basis for a change in policy, Union has not made out the case. Whatever might be said about the validity of comparables -- of the comparables Union chooses, Union has not made the case that it cannot with its existing capital structure compete with those competitors on equal terms for capital.

The second question, and this is the larger policy question, if you wish, is whether in proposing that change Union has appropriately balanced the interests of its shareholder and its ratepayers.

The Ontario Court of Appeal in its 2000 decision in the Toronto Hydro-Electric System case, the case which I handed up to you --

MS. HARE: Well, actually, we don't have it and we should give it an exhibit number.

MR. MILLAR: Exhibit K14.1, Madam Chair. It is the Ontario Court of Appeal decision in Toronto Hydro-Electric System Limited and the Ontario Energy Board.

EXHIBIT NO. K14.1: COURT OF APPEAL DECISION IN TORONTO HYDRO-ELECTRIC SYSTEM LIMITED AND THE ONTARIO ENERGY BOARD.

MR. WARREN: I have side-barred the relevant passage, which is in paragraph 50 of the decision, if you could turn that up, members of the Panel.

The Ontario Court of Appeal, in the decision I have just handed up, articulated the principle that regulated utilities must balance the needs of its shareholders and those of its ratepayers, and it did so in the following terms.

"The principles that govern a regulated utility that operates as a monopoly differ from those that apply to private sector companies, which operate in a competitive market. The directors and officers of unregulated companies have a fiduciary obligation to act in the best interests of the company (which is often interpreted to mean in the best interests of the shareholders) while a regulated utility must operate in a manner that balances the interests of the utility's shareholders against those of its ratepayers. If a utility fails to operate in this way, it is incumbent on the OEB to intervene in order to strike this balance and protect the interests of the ratepayers. If a utility fails to operate in this way, it is incumbent on the OEB to intervene in order to strike this balance and protect the interests of ratepayers."

In our submission, the evidence in this case is clear that if the proposed change in capital structure is accepted, Union's shareholder will benefit, receive a benefit of approximately $17 million a year, with no corresponding benefit, certainly within the test year, to Union's ratepayers.

This is not a case where Union argues that a cost must be incurred to serve the interests of its ratepayers and its shareholder. In such circumstances, the choice between protecting the respective interests of ratepayers and shareholder is often uncertain.

In this case, however, Union has a stark choice between adding a $17 million a year benefit to its shareholder, with no corresponding benefit to its ratepayers, or delaying that until it can demonstrate that its financial and business risks have changed.

In the latter circumstance, it would be able to demonstrate that the interests of ratepayers would benefit or might benefit from a change in its capital structure.

With the choice Union has made, the best Union can do is argue that there may be a prospect of a possible benefit for ratepayers in the future, depending on contingencies which may or may not occur, but which have occurred in the past with no adverse impact effect on Union's return on equity or its ability to raise capital on favourable terms.

I asked Union's witness whether, in deciding to advance this proposal, Union had considered how best to strike the balance between the interests of ratepayers and shareholders -- and its shareholder, I'm sorry, in the following exchange. The question was:

"If I could return to you, Mr. Broeders, for an answer to my question, which was: Did you not feel it incumbent on you in balancing the interests of your ratepayers and shareholder to provide the Board with evidence that your financial and business risk was fundamentally different than it was in 2004? Do you not feel that was an obligation on you?"

Mr. Broeders, in response, said:

"We submitted evidence on the change before. However, as we looked at our filing in 2013, we felt that the risks have not materially changed. So it was our position, based on comparability of other utilities."

We ask the Board to conclude that Union, in requesting this change in its equity structure, has not struck the appropriate balance between the interests of its ratepayer and its shareholder. In those circumstances we ask the Ontario Energy Board to fulfil the obligation expressed by the Ontario Court of Appeal in the Toronto Hydro-Electric System case, to strike the appropriate balance by denying the requested change in capital structure.

Those are my submissions.

MS. HARE: Thank you. If I could just go back to storage and transportation, when you spoke about the transactions and the principle that, if utility assets are being used, that the revenues from those transactions should flow to the ratepayer, are you suggesting 100 percent? Or are you suggesting 90-10, or... I wasn't clear what your position was.

MR. WARREN: Well, the idea of an incentive sort of sticks in my craw, I have to say, Madam Chair. But having said that, I think the 90-10 split is the appropriate split. Recognition that some incentive may be required.

MS. HARE: Okay. Thank you. Thank you very much.

MR. WARREN: Thank you.

MS. HARE: Mr. Quinn, are you prepared to go next, then?

MR. QUINN: I actually am not. I had a technical difficulty, and I will be ready right after the break, but I have to wait.

MS. HARE: Dr. Higgin, are you prepared to go next? Thank you.

DR. HIGGIN: Yes, I am. I am prepared to go, Madam Chair.

Just by way -- I have speaking notes, and perhaps I should give a copy of those to the reporter anyway. That will help when she gets to grips with my trans-Atlantic accent.

[Laughter]

DR. HIGGIN: Okay? And if the Board Panel or anyone else would like a copy of those speaking notes, then I can provide them now.

MS. HARE: Sure. Thanks.

DR. HIGGIN: So I have a number of copies and maybe Union would like one. Anyone else? Mr. Millar?

MR. MILLAR: Thank you. We will mark this as Exhibit K14.2.

EXHIBIT NO. K14.2: SPEAKING NOTES OF DR. HIGGIN.

MS. HARE: Thank you.

DR. HIGGIN: Thank you, Madam Chair.

Just by way of clarification, I am here today as a consultant to Energy Probe Research Foundation. My submissions have been vetted with the foundation, and I am speaking for them in that regard. Thank you.

MS. HARE: Thank you.

FINAL ARGUMENT BY DR. HIGGIN:

DR. HIGGIN: So first of all, this is the Energy Probe Research Foundation oral argument, and we have two parts to this argument. The overview, part A, will deal with the 2013 revenue requirement, and part B with the cost allocation, rate design and rate implementation.

So moving on now to the revenue requirement, I will just give you a bit of the background as we see it.

The background is that, prior to this application, Union has completed five years of regulation, during which rates were set by a rate cap incentive mechanism. This has resulted in distribution rates being relatively flat, at or below inflation, and has driven out productivity improvements, and at the same time allowed Union to significantly exceed its allowed return on equity. And that can be seen at J.E-3-5-1.

When the application for 2013 rates and rebasing was filed, ratepayers were expecting that the company would receive an increase in its allowed return on equity following the Board's new cost of capital guidelines, and this would increase the 2013 revenue requirement and thereby increase rates.

However, as a ratepayer-oriented intervenor, given the background, we were surprised to see the size of the 2013 revenue requirement and the significant increase in revenue deficiency and distribution rates, particularly for the north.

Even after a $17.3 million reduction in the deficiency from the ADR settlement, the distribution rate impacts average six percent, and that is at J11.10.

This translates to a 1.7 percent increase on a typical southern residential customer's total bill, representing about $1.05 per month. And in the north, it is 7.5 percent for an average residential customer, or about $5.00 per month.

Union, in its argument-in-chief - that is page 4 - represents these increases as just and reasonable, using as its measure total bill impacts, rather than distribution rates.

Union claims that these increases are in line with the Board's rate mitigation guidelines. However, in its argument-in-chief, it acknowledges that these rate mitigation guidelines -- which are EB-2010-0378 -- are applicable to electric distributors, and as such are not necessarily appropriate for gas utilities.

We note the different bill structure for gas and electricity, for example.

Given the level of these impacts, it is a bit difficult to understand why Union could not have either deferred or phased in its potentially costly proposals to change weather methodology and to increase its equity thickness. And we will address this issue of mitigation measures at the end of our submission.

So now turning to the revenue requirement and revenue deficiency, the updated 2013 revenue deficiency, as filed, was 71.378 million. The settlement agreement, as I mentioned, has settled 2013 capital and operating costs and reduced this to $54.524 million.

The major drivers of this remaining 54 million deficiency are shown at A2, tab 1, schedule 1, updated, and listed qualitatively at page 3 of Union's argument-in-chief.

The change in capital structure is the first, 17.3 million before tax; the change in weather methodology applicable to general service volume forecasts, 6.5 million; and a shortfall in general service market revenues, 13 million.

In addition, as we will argue, even though the contract market revenue is increased over 2007, the 2013 forecast is understated.

Now, you will be fully aware a great deal of this proceeding has been focussed on historic and test year gas supply plans and the cost consequences resulting from storage and transportation, S&T, transactional services, TS, related to those plans. And we will provide our perspective on some of these issues later on.

The main issues we're going to cover are the proposed full adoption of the 20-year declining trend weather methodology and whether Union's forecast of general service, contract, and ex-franchise market revenues for 2013 is reasonable.

Is the gas supply plan for 2013 appropriate, and have ratepayers been disadvantaged by historic transportation optimization activities?

Second, what protection should be afforded to ratepayers in 2013? And that we will see under issue 6, I am coming now -- to that in a minute.

Is Union's proposed cost of capital and its proposal to increase its common equity to 40 percent appropriate? Is Union's plan for Parkway West loss of critical -- LCU appropriate, and what, if any, direction the Board should provide in this application?

Deferral and variance accounts for 2013, including the S&T short storage deferral account -- and we will summarize our proposed changes and estimates of these changes on the 2013 revenue deficiency at the part of -- end of our part A.

So in part B we will go on to cost allocation, rate design proposals, including the changes affecting 2014 rates. Finally, we will visit the issue of rate mitigation.

So coming to the 2013 volume and revenue forecast, the evidence of Union is that the demand forecast combines four separate estimation steps: Estimate of the total number of billed customers for each rate and service class; second, forecast the NAC for the residential, commercial and tobacco customer service classes. I note this is a quote from Union, and we would probably now look to the greenhouse sector, for example, okay?

Combining the normalized average use estimates combined from the econometric analysis with the billed customer estimates from step 1 yields the total throughput volumes estimated before consideration of the DSM plan consumption impacts, and then estimate the total throughput volumes for the industrial customers - that is a bottom-up analysis - and then remove the future consumption savings of DSM programming from 2011 to 2013 from the individual econometric estimates obtained from steps 1 and 2 -- 1 and 3, sorry.

So the key to the whole forecast is the weather normalization methodology. Heating degree days is one of the major independent variables in the regression equations to forecast normalized average consumption per customer.

So for the general service residential markets, it is used, as well as for the large commercial industrial and greenhouse sectors.

Now, the Excel files that Union provided are the regional results and regional data, and they were provided in response to one of our IRRs at Exhibit C -- J.C-2-3-2, show the history and analysis details supporting the 2013 degree day forecasts for the south, which is 3,599 heating degree days, and the north, 4,626 heating degree days. This is based on Union's proposed 20-year trend methodology.

Energy Probe has concerns about Union's heating degree day forecast fundamentals that affect both the current 30- -- the 20-year forecast methodologies, and also the -- obviously affect the 20-year trend forecast methodology.

And the basis of this is that Union's evidence for comparing heating degree day methodologies is based on Pearson Airport data. And you see that at transcript volume 2, page 21.

However, the test year volume forecast is produced using historical actual heating degree day data from 16 weather stations weighted according to actual volume and lags three years; i.e., 2013 is based on HDD and total volumes up to 2010.

Now, this is then used with the test year heating degree day forecast based on either the current, which is the blend, or the 20-year trend to produce the general service volumetric forecast, and that is discussed at the transcript volume page 20 -- volume 2, page 22, and also set out in undertaking J1.1.

There is, to our mind, also an issue whether the eastern delivery area climate is sufficiently different. It is 25 percent of the, quotes, "northern", and whether heat sensitive volumes rather than total volumes should be used in the regression equations.

The normalized average use per customer, NAC, for each rate class is derived from the actual volumes normalized to the same heating degree day forecast as the test year. That is shown at C1, tab 1, figures 5 to 8.

Now, Union claims that it conducted a review of heating degree day forecast methodology in 2004 and adopted the Pearson Airport-based methodology for comparison of the forecasts, and the transcript reference is volume 1, page 33.

However, Union has not investigated zone-based heating degree day forecasting methodologies as was done by Enbridge Gas Distribution, and that resulted in three zone forecast, and that was approved by the Board for EGD. And that is discussed at the transcript volume 1, page 34.

In our view, it is not reasonable for Union to state that its heating degree day forecasts, based on Pearson data, lead to a conclusion that the 20-year trend is superior to the 30-year trend -- to the 30-year average, sorry, or to the 55-45 blend.

The reason is, there is only two choices: A, 30-year average, and B, 20-year trend; both based on Pearson Airport data. How can you demonstrate one is superior? Yes, one over the other. But does that answer the question, which is: Which heating degree day forecast methodology gives the best results for Union's geographically diverse regions?

So Union is basing its forecast of degree days for 2013 on equations that are not, in our view, statistically significant, even at the 85 percent confidence level. That can be seen in the equation shown in Exhibit J1.2.

Now, my statistics are very rusty, to say the least, but the data in J1.2 does not impress me. The significance of the F statistic is 0.153, meaning that the regression equation is significant at a confidence level of only about 84.7 percent. The time variable in the equation is also significant at about 85 percent confidence. The R squared, which indicates the amount of the variance explained in the data, is only 6.1 percent.

So we suggest the following, that Union needs to do the work to demonstrate whether the best HDD forecast is a regional HDD forecast, and this is either two or three regions, the eastern area, using actual weather data from the 16 weather stations, for which the long-term data are available.

Now, we note also that Enbridge's 20-year trend for its central region is also based on Pearson data, but that is for obvious reasons, its geographic and volumetric centrality to its central region, but the HDD forecast for the other regions is based on local weather data.

According to -- in the interim -- so we suggest the following, that the Board approve the existing HDD methodology at 50-50 for 2013 for generating the HDD heating degree day and general service volume forecast.

According to Undertaking J2.2, if we go back to that for 2013, the revenue deficiency would decrease by 6.323 million. Now, there is another number been used in the mitigation chart later on, but that is the number in J2.2.

So now I would like to just go on and make some comments about the actual forecast.

So starting with the volume forecast and normal average use per customer for the general service classes, the 2013 volume forecast is shown, amongst other places, at C1, tab 1, page 3, table 1.

Energy Probe is of the view that, apart from the issues with the HDD forecast, other factors may have contributed to an overstatement of the decline in the overall normal average use, and that is from 3,830 cubic metres, down to 3,610 cubic metres. And that is shown in J.C-1-2-2, page 2.

These factors include reductions in average gas bills and reductions in customer additions. There is a transcript volume reference, which is volume 1, pages 59 to

60.

Turning to the residential normalized average use forecast, the evidence which I am relying on is J.C-1-2-2, just cited, and J.C-1-2-4, and that shows that the M1 forecast shows a variance of 37 cubic metres, and that is about 1.7 percent.

After adjustment for DSM and other factors, the residual error for 2013 was 22 cubic metres. And if this is a -- this is also applied to both 2012 and 2013; that is, an increase over two years -- this would translate to a revenue increase of about 3.5 million. And that is -- the transcript reference for that is at volume 2, page 138.

We now turn to the commercial sector NAC results and the 2011 forecast, and that is shown at C1, tab 2, table 1, appendix A.

The residual, which is the difference between forecast and actual shown in the regional results file, is the largest ever, and Union has no explanation. That's at transcript volume 2.

More importantly, although answering an IR to show the effect of updating for 2011 actuals -- and that IRR is J.C-1-2-6 -- Union did not make an adjustment to the 2013 forecast and retains its earlier forecast. And that is at the transcript volume 2, pages 33 and 34.

We submit that the 2013 forecast for the commercial sectors, and that's the all rates commercial sector, all rates, is overstated and needs to be increased to at least match the numbers in J.C-1-2-6. The required adjustment can be derived from a comparison of normalized throughput volumes at line 4 and 5 in that schedule, for Rates M1 and M2. And between that schedule and C1, tab 1, table 1 -- and to be clear, the volumes in that J.C-1-2-6 are normalized to the 2013 heating degree days in the south. That is the 3,599 I cited before. And in the north, 4,626 heating degree days. So those are the data that are in that schedule.

So we have used these data and we believe that, based on a calculation we have done, that the commercial NAC for all rates should be higher by a minimum of 177 cubic metres in 2013.

The revenue requirement impact of this can be estimated by using the data from the schedules or by using the sensitivities provided by Union at the technical conference, and this is the technical conference transcript, May 31st, page 226.

Now, we have used the former to estimate an adjustment to the revenue forecast based on the 2013 commercial NAC, and this results in a revenue deficiency impact of about 1.2 million.

We have set out the derivation of that estimate in our written copy, and I am not going to read it to you right here.

So in sum, we believe, with respect to the general service forecast, that the following normalized average use per customer adjustments are warranted.

As discussed with Mr. Millar at transcript volume 2, page 137, the 2013 residential general service NAC should be increased by 44 metres cubed, with an impact of about 3.5 million on the 2013 revenue deficiency.

The 2013 commercial general service normalized average use per customer -- that is the all rates -- should be increased as a minimum from 15,876 cubic metres to 16,055 cubic metres, with an impact of about 1.2 million on the 2013 revenue deficiency.

Now, with respect to the balance between shareholder and ratepayer risks and rewards related to that general service volume forecast, we are suggesting that the average use true-up variance account - that's account number 179-118 - be continued in 2013. Now, according to Undertaking J2.1, this could net the company an additional 2.83 million in revenue, if its forecasts for 2012 and 2013 are correct.

We note that the average use true-up variance account mechanism does not compensate for weather risk.

So how would it work in 2013? If the Board was to reject the full 20-year trend for 2013, as we have suggested, then Union's forecast general service normalized average use per customer is too high.

So if you also accept reductions to the general service revenue, as proposed by intervenors and probably others, such as us and others, based on the 20-year trend, then you would have comfort that if any reductions were ordered, it would come out in the wash. Forecast error would not favour either the company or ratepayers in the long term. And that is why we're suggesting that both adjustments to GS volumes and revenues be made, and in addition, the average use true-up variance account be continued into 2013.

MS. HARE: Dr. Higgin, before you proceed to the next topic, you didn't read out the derivation of your estimate because it is in the written copy.

Could we just, for the transcript, make reference to K14.2, that that is where it is set out? So if somebody in the future looks at the transcript, they would know where that is.

Thank you.

*** Reporter's Note: Referring to Exhibit K14.2.***

DR. HIGGIN: So I am now going to turn to the contract customer demand forecast.

The contract market history and forecast is shown at Exhibit C1, tab 2, tables 1, volume, and 2, revenue. It includes segments that are forecast by econometric model, and others that employ bottom-up forecasts; the latter includes the power market, and that is shown at Undertaking J2.3.

Now, we observe that in general, growth in the contract market has been strong and continues into 2013, with the notable exceptions of the flattening of the power market volumes and revenues, and the continuing decline in the large commercial - and that should read "industrial" – LCI sector.

Turn to the power market. As you know, Union has several large gas-fired generators, St. Clair Generating

Station, East Windsor Co-gen, Halton Hills, and in 2013 there will be the fourth, Thunder Bay.

So total power market revenue is shown in IR response J.C-3-13-1, and it comprises the demand charge, the commodity, the storage, the overrun and the customer-supplied fuel. That is also discussed at the transcript volume on page 91.

So J.C-3-2-2 shows power market growth.

Energy Probe agrees with others - which would be APPrO, Board Staff - that the 2013 power market revenue forecast is understated.

As a minimum, the 2013 forecast of overrun volumes and revenues needs to be increased. So that is about a 5 million impact on the revenue deficiency, with historic experience, and that is shown at J1.7 and transcript volume 1, page 99.

Customer-supplied fuel is forecast to be down relative to prior years, and this is, in our view, is not credible and also requires adjustment.

Turning now to the large commercial/industrial LCI segment, the volume and revenue is forecast by econometric models, as is the greenhouse segment. These models for 2013 forecast heating degree days based on the 20-year trend.

The volume forecast by the econometric models comprises about 17.5 percent of the total contract market. That is at the transcript volume 2, page 99.

Undertaking J2.6 shows the effect of applying the 55-

45 blend - that's 30-year average, 20-year trend - as a volume reduction of about 11,000 10^3 m^3, and a revenue decrease of about $106,548 -- $106,000.

Other undertakings, such as J2.7 and 2.8, show the original and updated LCI greenhouse forecasts relative to lines 3 and 4 of Exhibit C1, tab 2, table 2.

Undertaking J2.9 updates the forecast numbers in lines 3 and 4, and this shows small increases in the forecast for 2013 relative to those undertakings, and that is equivalent to about -- an increase in revenue of about $0.3 million. I should correct myself. Revenue deficiency of about $0.3 million.

Having considered the company's evidence and responses, we submit that the contract market, as I said, is understated, and we believe a number of factors have been omitted or understated by Union, including lower gas prices, overrun volumes.

So, in sum, we believe an adjustment of the order of $2 to $2.8 million is required. That is a decrease to the revenue deficiency.

In sum -- so if we go through all of those, we find that the revenue forecast needs to be increased and the deficiency post settlement needs to be reduced by about $4.7 million due to an increase in GS, general service, revenue, and 2.8 for an increase in contract market revenue. This is on top of the $6.5 million for reduction from applying the 50-50 blend for the 2013 heating degree day forecast. So that is about $14 million overall.

The Board is obviously facing a bit of a process issue here. If it does not accept Union's full 20-year declining trend methodology for 2013, Union would have to amend its forecasts that use the 20-year trend and resubmit these based on the 50-50 blend.

However, what to do about this, the fact of the overstatements of the forecast, that is less obvious. So perhaps in one respect the average use true-up variance account would help for the general service market, but of course this doesn't apply to the contract market.

So I am now going to go on and have a few brief comments on the gas supply plan and gas supply. And the evidence for the 2013 gas supply plan is Exhibit D1, tab 1, pages 4 and 5 and pages 11 through 16 of that reference.

The main issue we will address is overcontracting of firm transportation, FT, for the northern/eastern delivery areas. Union's evidence is that it uses approximately 15 pJs of STS injection and diversions to move excess gas from Union north in the summer into Dawn storage.

In the winter, gas is withdrawn, again, using STS from Dawn, and transported into the northern and east without the need for Union to contract for any other firm upstream transportation capacity. And by doing that, Union claims it is able to make the best use of its transportation portfolio.

Nevertheless, there is still some forecast unabsorbed demand charges expected to occur, and the amount forecast for 2013 is 10.4 petaJoules.

Union has provided the UDC costs incurred from 2007 onwards in Exhibit J4.1. This shows that ratepayers have paid net $5.1 million in unmitigated demand charges.

The major gas supply issue is mitigation of the unabsorbed demand charges incurred in the north, and mostly the Manitoba zone. This is done by releasing capacity to the market and utilizing the TCPL firm transportation risk alleviation mechanism, FT RAM, credits, and that is at transcript volume 3, page 10. See also a couple of IR responses, J.C-4-7-9 and J.C-4-7-10.

The information provided by Union's gas supply panel indicates that various transactions using contracted firm transportation in the north and eastern delivery zones are undertaken by Union's storage and transportation, S&T group.

These transactions are complex, but result in revenue to the S&T services account and the shareholder. And one such example I cite here is the transcript volume 3, pages 53, 54.

Now, IR response J.D-1-16-2 sets out the history of the FT RAM. Currently, Union is a member of the TCPL shippers group advocating for the continuation of the FT RAM program, and, according to the evidence, which is Exhibit K3.1, the earliest date at which the TCPL FT RAM program could end is mid-2013.

As discussed earlier, Union did not include any FT RAM credits in its original 2013 S&T revenue forecast, whereas in our view, it should have included at least half a year.

So the issue could have been addressed by including half a year of credits in the 2013 revenue requirement and rates, together with one or more deferral/variance account treatment of FT RAM credits and the related S&T transactions. So we will return to this a bit later under the issues of deferral accounts.

The other more serious gas supply issue is whether, as Board Staff noted, Union has overcontracted for FT services in order to use the RAM credits from the capacity released and how the revenues that have been generated using those credits, including base exchanges, RAM optimization, et cetera, have been and are being credited.

The details of who benefits and who discussed various benefits has been discussed on the record, for example, transcript volume 4, pages 42 to 43.

That issue of course is directly tied into the EB-2006-0606 settlement, which discontinued the S&T variance accounts in exchange for an embedded amount, which we believe is $6.3 million, in base rates during the IRM period.

The majority of the evidence on exchanges is covered under the topic of ex-franchise revenue by the S&T group. So we will move there now to the ex-franchise revenue.

The evidentiary reference for the ex-franchise revenue is Exhibit C, tab 1, and the main issues we will address are the forecast of 2013 ex-franchise revenues and transportation optimization activities. That is the two topics.

Turning first to the M12 long-term transportation and other long-term transportation, they're set out at various parts of the record, including C1, tab 1, schedules 1 and 2, and include at page 2, a handy reference, tab 1 of Union's argument-in-chief compendium, and the other long-term transportation forecast at page 10.

Now, this schedule shows a significant decline in M12 service revenue between 2013 forecast and 2010 actuals, from -- that is from 142 million to 134.6 million, and that includes 13.5 million of M12 X revenue. That is the new service, M12 X.

That is in C1, summary schedule 5, updated.

Now, the 11.1 million forecast of transportation revenues will be adjusted upwards by 2 million for the St. Clair line forecast revenue, as per the settlement agreement.

So we have no submissions on Union's M12, M12X forecast, and we will leave that topic to others to comment on that forecast.

The second component of the short-term transportation revenue forecast that we would like to discuss is the 2013 exchange revenue forecast.

The main issue is Union's forecast of FT RAM exchange revenue. Union initially, as I mentioned forecast zero, but now it has updated that to 11.6 million -- J.C-4-7-9 -- and based on the program continuing until about May 2013.

Energy Probe submits that the forecast should be accepted, either as -- what Mr. Warren mentioned, this amount should be flowed through the PGVA as a transportation-related gas cost, or the deferral/variance account should be accorded.

The different treatments are summarized in Union's argument-in-chief at page 36.

I give a quote -- 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.

So with respect to the historic 2007 to '12 FT RAM-related exchange revenues, as you know, there is a major dispute between Union and ratepayers in that regard.

So as noted above, Union's position is that the EB-2006-0606 settlement agreement, the S&T deferral accounts were closed in exchange for an amount in rates. Therefore, the shareholder has benefited from S&T transactions above that floor.

To be fair, ratepayers have also indirectly benefited from earnings sharing that include the contribution of S&T revenues. That is shown at transcript volume 6, page 87.

Importantly, Union was not originally proposing to reinstate the discontinued S&T deferral accounts. However, it seems to have changed its positions, at least in respect of FT RAM. You see that at the argument-in-chief, page 39.

There are some issues, though, about how the accounts should operate and the sharing of net revenues. We will make submissions on those matters under the topic of what should happen in 2013 and under deferral accounts.

So now turning to those transactions in the period of 2007 to 2012, we understand, based on Procedural order No. 2 in the EB-2011-0087 ESM deferral account proceeding, that part of this matter is now scheduled to be addressed in that case, at least for 2011.

With regard to the period 2007 to 2012 IRM, we support the positions expressed by Mr. Warren, FRPO and others, that the ratepayers are due for a credit for the excess profits realized by Union from those transportation optimization transactions in the period 2007 to 2012.

Now, I am in your hands whether we want to make any submissions on this topic. We know Board Staff did, and, if not, we have attached to our written copy a summary of our positions on this matter.

So if you wish me to move on, then I will just stop there and I can read those, or just leave it that it is in the written copy. Which would you prefer?

MS. HARE: Just give us a minute, please.

[Board Panel confer]

MS. HARE: No, we would like you to go through it, please.

DR. HIGGIN: Okay. Thank you.

So I am now flipping back, then, to the pages -- the last two pages, page 25 and 26 of our submissions. So this is to summarize our position on transportation optimization from 2007 to 2012.

So the transportation optimization transactions are described at several places -- many places on the record in 2010, this case, including transcript volume 6, pages 131 to 132. And I will not read the quote there.

Mr. Isherwood describes in some detail those transactions and how revenue is generated from those transactions.

So a number of the exhibits and undertakings show the amounts realized by Union during that period, and I have listed in the written copy, again, a number of those ones that I looked at as references that support our position. So I am not going to read those. They are in the written copy.

So going to our position, we support the submissions to the effect that Union, having discontinued the transportation-related deferral accounts in 2007, conducted transportation optimization transactions based on the availability of FT RAM credits and discounted transportation services from TCPL during the period 2007 to 2012.

The margin from these transactions was passed through Union's S&T margin account, boosting net income and shareholder profit.

Ratepayers, on the other hand, paid full firm transportation tolls for gas transportation to the three delivery zones, offset to a degree by FT RAM credits generated from some of the assignments.

So Energy Probe says that also ratepayers got some benefit from the embedding of an amount of S&T revenue in rates, and also indirectly benefited from earnings sharing related to the resulting net income in excess of the allowed regulated return.

The big issue is whether ratepayers are due a rebate from the net transportation optimization margin generated on transportation paid for by ratepayers in the period 2007 to 2012.

Energy Probe says yes, we are.

We support CME, FRPO and others on this point, who claim that Union converted ratepayer-funded demand charges into shareholder profit. By December 31, 2012, total profits from this scheme will exceed $60 million.

Union was never authorized to effectively convert S&T demand charges to profits for its shareholders, and Union cannot profit from its unauthorized transportation optimization actions.

Now, how to account to ratepayers.

So for the question of profits up to December 31, we agree that -- with FRPO, CME and others, that the transactional services account should be set up at December 31, 2010, with an opening balance of the net profit realized; i.e., the net profit after deducting the share of earnings allocated to ratepayers in 2008, 2009 and 2010.

The $22 million forecast -- well, it is actual now -- margin realized in 2011 should be recorded in the 2011 gas supply deferral accounts that would be established starting

December 31, 2011. And the total balance should then be cleared to ratepayers in each operating area, in the same proportion that the demand charges were paid for by ratepayers in each operating area; that is the EDA and the CDA.

As far as the S&T margin realized in 2012, the earnings sharing and deferral account proceeding will not occur until the first quarter of 2013.

Based on current estimates, there is $37.8 million of profits that Union expects to realize in 2012, and this amount should be recorded in the 2012 gas supply deferral accounts and cleared to ratepayers in that proceeding.

So those are our submissions about the history, and I would like to move on now to just what are the decisions that I think need to be made for 2013 -- this case, and for 2013.

The first topic is gas supply planning. We submit that Union's gas supply planning process and longer-term supply plan needs an independent review, both for the EDA and the CDA, and you have addressed this partly with Board Staff counsel.

Now, we think, if you look at Exhibit 3.6, again, the much viewed chart of EDA-contracted capacity and actual, based on firm transportation to the EDA, in today's market we suggest that some portion of the transportation portfolio should be STFT and other services. So we think that.

Union rejects this in its argument-in-chief at pages

49 to 51, and, as the Board will recollect, the settlement dealing with Enbridge's issues about system reliability led, amongst other things, to replacement of peaking supplies by 200,000 gJ per day of STFT. That is paragraph two of the settlement agreement.

Now, we don't pretend to have any expertise. I think like Board Staff, we don't have any expertise, which is why we suggest that there should be an independent expert review. Just aside here, you asked what to do about 2013. I guess, accept the forecasts and hope that the S&T deferral accounts will capture the amounts that are due to both Union and to the ratepayers. So that is how I would suggest to deal with it in 2013.

So coming to those, we say that we should deal with -- have set up the S&T transactional services deferral and variance accounts. Those are the previous 179-69, et cetera, et cetera.

So to avoid a repeat, unless the Board establishes a different treatment of 2013 FT RAM credits, Union should be directed to reestablish the S&T transactional services accounts for the 2013 test year. And we will say a bit more about that, when we come to the deferral accounts, about some of the detail.

So now come to the 2013 revenue sharing from optimizing the gas supply and transportation. There are two key issues, in our view, to a decision on this matter in this case.

First, as we have noted, the S&T accounts should be reinstated. TCPL is unlikely to discontinue FT RAM until sometime into 2013, and the NEB, indeed, may support its continuation.

So Union has supported at the argument-in-chief that the account be set up with $11.6 million as the, quotes, "fulcrum", and sharing 75-25, but it also should have 100 percent downside protection for Union in the event that the RAM program is discontinued, because there has been imputed revenues related to a program that the NEB has discontinued.

This proposal is not acceptable to us. We suggest that one approach is for FT RAM costs to be classified as a gas cost in 2013 and passed through the PGVA.

However, if the Board agrees with Union that that is a deferral account matter, then it should establish the deferral accounts, confirm its forecast and embed that amount, 11.6 currently, in rates.

So the other issue is the sharing of any revenues above that amount. In this regard, we neither accept Union's proposed 75-25 sharing as fair, or do we agree that Board Staff and others -- that 90-10 in favour of ratepayers is more appropriate.

We suggest that 100 percent is appropriate net of any costs that Union may have incurred to optimize the FT RAM. Obviously, it is net of costs. So that is our position.

Also, in addition, as you know, Union has forecasted $9.5 million of other transactional services revenues, and they're not related to FT RAM exchanges, and we believe that -- our feeling, having looked at the evidence, that 2012, the amount is low and should be updated, but we don't have a specific amount to suggest.

In sum, we submit that the Board accept that the FT RAM costs, including credits, are a gas transportation cost.

However, if this is not the Board's finding, then the Board should authorize the re-establishment of the deferral accounts and direct Union to include $11.6 million from its forecast in base rates with the variance to be recorded in the other exchange revenue in the S&T transactional service account.

These accounts should be cleared to ratepayers in the 2014 deferral account proceeding on the same basis as the demand charges are recovered for customers in each operating area.

So that is our conclusion. You got quite clear evidence, I think, on what is going on and -- but this decision, in this case, only deals with 2013. So we have put forward those three things as we think are the issues that need to be addressed by the Board in this test year.

So that is where we are on that. I don't know whether you want to take a morning break at this point, Madam Chair?

MS. HARE: I think this is an appropriate time to take a break. Why don't we return at 11:20?

DR. HIGGIN: Thank you.

--- Recess taken at 11:00 a.m.

--- On resuming at 11:23 a.m.

MS. HARE: Please be seated. If you can please proceed.

DR. HIGGIN: Thank you.

I have a few comments on some of the matters that were addressed by the finance panel. The main evidence is at A2, tab 2, B1 -- and B1, tab 2, D -– and D1, tab 2, and the interrogatory responses.

So these are the average use true-up account. We have discussed that briefly already.

In our view, the wording that is there does not make it clear. As it currently stands, it will not apply to 2013. And I think Ms. Elliott addressed that at the transcript volume 8, page 11 and 12.

However, as we have already said, the volume for -- under our volume forecast submissions, we believe it should continue to operate as part of an accommodation of shareholder and ratepayer interests around the 2013 NAC and volume forecasts.

So the other topics are the allocation of costs between regulated and unregulated storage. The references are transcript volume 1, page 23 and Undertaking J8.3. We have comments on two issues.

First is changes to the allocation for new replacement assets and related O&M, and transparency of Union's information on the allocation of costs between regulated and storage and unregulated storage and transmission.

On the former, the changes that have been uncovered in the discovery process may be valid, but require independent verification.

Second, it is clear that Union needs to improve the transparency of its application of the approved methodologies.

For these reasons, we submit Union should be directed to commission a short update to its storage cost allocations by independent experts, as was done for the EB-2011-0038 proceeding.

Now, Board Staff have also raised in their argument an issue about audited financials for Union's unregulated business. And I just note that it is now about 24 percent of the consolidated financial position of Union Gas. And there is a discussion with counsel for Board Staff at the transcript volume 8, pages 64, 65, and that was centred on whether Union is or is not following the CICA Guideline 1701 in this respect. We don't have any expertise or any submissions on that issue.

The last issue that the finance panel covered that I would like to talk about is the unaccounted-for gas.

So the evidentiary references for this are D3, tab 2, schedule 2 -- that is the 2013 forecast -- and then D4, tab 2, schedule 2. That is 2012 estimate.

Union's UFG accounting methodology has not changed for 2013. And that is described at the transcript volume at page 40, and the quote is in our copy.

Now, what we believe is that this methodology differs from that of some other Canadian utilities, including

Enbridge Gas Distribution. So it may be appropriate to review the various approaches and confirm/deny that Union's method continues to be the most appropriate for its franchise.

Now, I am going to go to cost of capital. And I will try to be fairly fast, up to the speed the court reporter can do, because some of this ground has been covered.

So the first issue is whether there is a change in Union's risk profile as required by the Board's cost of capital guidelines, that would predicate a review of the deemed capital structure.

I think Mr. Warren gave you the quote, and it is at page 50 of the report. And the Board's Guidelines assume that the base capital structure will remain relatively constant over time and that a full reassessment of the gas utility's capital structure will only be undertaken in the event of significant changes in the company's business and/or financial risk.

So as Mr. Warren said, Union's counsel challenges the absolute nature of the Board's statement and posits that it is only a guideline. In essence, Union's argument is that things have moved on and capital markets are different, and -- as a result of the economic downturn and financial in 2008/2009 and the recent financial crises that affect sovereign debt, particularly the latter.

So Union's view is that its current equity structure is not commensurate with its risk. However, it has agreed that its business and financial risk hasn't changed materially since 2004. In fact, Union witnesses confirmed several times during the oral hearing that there had been no material increase to business or financial risks. And some examples would be volume 4, page 128, and volume 5 at pages 15 and then again 31.

Union has consistently earned, in fact over-earned, its allowed rate of return 2007 to 2011, and that is shown at J.E-2-12-9. And that contributed to its excess earnings of 278.7 million, and those are shown at J.E-3-5-1 and discussed at transcript volume 4, page 134.

We submit that Union has not demonstrated any change in its business or financial risk.

Union's request for an increase in equity thickness in the deemed capital structure to 40 percent is based on a selective analysis of come comparables, both US and Canadian, as set out in the evidence of its experts, Mr. Stephen M. Fetter and Dr. Vander Weide.

Regarding Dr. Vander Weide, we noticed that his ambit was return on equity, and his comments related to equity thickness were unsupported by any filed analysis.

The evidence is that Union's debt rating has been maintained by DBRS for many years, although other utilities have changed. As the Board knows, S&P rates Union lower, but the evidence is that this is in part due to its parent, Spectra Energy. And the reference is transcript volume 6, page 30 -- sorry, page 40. Correction -- again, I will get it right this time. Page 50.

Exhibit J.E-2-3-6 shows the equity thickness and ratings for Canadian utilities.

Experts from Union contend it has more exposure than most of those listed to a potential downgrade if the 2008/2009 financial crisis reoccurs.

Also, Union contends that its forecast utility standalone interest coverage is below the critical level of two times. And that is at J5.5, and is also repeated at the argument-in-chief, page 69.

Union contends that this takes into account the effect of higher ROE, which is about $19 million on 2013 net income. But it is not just interest coverage, but how the financial markets view Union Gas as a result of the increase in ROE.

Turning to the impact of increased equity thickness on ratepayers, the Board is being asked to make a decision that Union's ratepayers should pay 17-plus million a year for reducing what we believe is an unproven financial risk.

In response to J.E-1-1-2(b), Union confirmed that an equity component of 40 percent will not lead to a higher credit rating or a lower cost of debt. So ratepayers are not likely to receive any benefit from a higher common equity ratio.

The shareholder, on the other hand, will directly benefit from increased equity, and that's on top of receiving $19 million more in increased earnings from the results of the application of the Board's ROE formula.

Dr. Booth in his evidence - and that is K6.3 - and testimony in transcript volume 6, concurs that Union's business risk has not changed and, in fact, may have decreased slightly due to the change in competitive market position of natural gas. And that is at transcript volume 6, page 6, line 18.

Dr. Booth unequivocally states that Union's financial market access is very good, as evidenced by its 2012 MTN medium-term note at 3.9 percent. This issue was immediately sold out, and that is at transcript volume 4, page 134.

Dr. Booth summarized the significance of this at the transcript, volume 6, page 56:

"It just indicates that Union Gas is a very..."

Good, I insert the word "good":

"...investment credit, and the investment dealers will talk to Union Gas about raising money and they can raise that money relatively quickly, given the fact that it is a good investment-grade credit."

So with respect to Canadian comparables, J.E-2-3-6, Dr. Booth noted:

"So there are benchmarks. I prefer to look at them as benchmarks, that the reasonable range is, say, on this basis, 36 to 40 percent for the big gas distributors, and within that range there are ones that are a little bit more risky, like Gaz Métro, and I continue to place Enbridge and Union as amongst the lowest risk."

That is transcript volume 6, page 62.

We fundamentally disagree with the selective nature of Union's evidence. It has relied on comparability arguments and rating criteria from Standard & Poor's and ignores the fact that Union has maintained its DBRS rating, has had stable earnings, a stable regulatory environment, and, as demonstrated by its most recent MTN at 3.9 percent, has had no problem accessing capital markets.

For all of these reasons, we agree with Dr. Booth that there is no evidence that Union requires higher equity. In our view, Union has not made the case for changing its deemed equity ratio, particularly now that it has higher allowed ROE and potentially higher net income in 2013 and beyond.

So this places the Board in the position to consider whether there is a broader issue, and that is: What is the future direction of capital markets and whether -- for A-rated gas utilities such as Union and Enbridge, is there a case for some change in deemed capital structure?

We don't have the expertise to say yes or no; simply to request the Board that the cost benefit to ratepayers will be a key consideration if that issue is to be examined.

So I am going to -- in the written copy I have given, there is a summary of our changes to the 2013 revenue requirement and revenue deficiency. I will not read all of these, but they add up to a total reduction of $42.6 million.

We will now go on to a few non-revenue requirement issues, starting with Parkway West project. The matter of whether Parkway West - and that is the LCU, loss of critical unit project - is a prudent investment was unsettled in the settlement conference.

The prefiled evidence is at B1, tab 9, and a number of interrogatory responses have been provided. Some of these are corrected in Exhibit 8.3, and that corrects interrogatory responses J.B-1-1-2 and J.B-1-7-12. This then shows that the capacity loss from a Parkway B outage is 1.1 petaJoules per day, and Parkway A outage 0.5 petaJoules per day. That is at the transcript volume 8, pages 72 and 73.

So you can also see there is a correction to J.B-1-7-1, part c), and J.B-1-7-14, part 7.

Just out of interest, I took a look at J.B-1-7-13 and J.B-1-1-2, and that shows the configuration of the Parkway West valve site in a diagram on that reference.

So Union is not asking for approval of its Parkway West project capital expenditures in this proceeding, since the evidence is the project will not complete and close to rate base until 2014.

However, Union states the reason it has brought it forward is, first, the filing guidelines, plus the materiality of the capital expenditure and timing of the project.

Significant costs are and will be incurred in 2012. Now, there is a number of places where these costs have variously showed different levels, but I note there is an amount, for example, in slide 13 of the Spectra presentation of $37.3 million and, in 2013, $61 million. That is the transcript volume -- page 123.

Now, TCPL has provided evidence on four alternatives to provide LCU protection at Parkway. Union rejects these in its IRRs to TCPL and testimony, and that is the transcript volume 8, pages 78 to 80.

So it is clear to us that the record shows that the Parkway West project is not simply about LCU protection for Union's gas transmission service to Enbridge and other shippers, but also may generate collateral benefits from transactional services at the Dawn hub. That is discussed at the transcript volume 8, page 102.

Undertaking J8.9 seeks to clarify this. The presentation to Spectra executives, and that is slide 12 of that presentation, forecasts revenues attributable to the project of $23 million in 2014. This proposed generation of revenue does not reconcile with Union claiming the project is pure LCU with no incremental capacity.

This is confirmed in one of our interrogatories - that is, J.B-4-3-1 - which referred us to J.B-1-7-11 a) and TCPL IRR J.B-1-7-16.

The quote here is:

> "The proposed Parkway West project is not planned to create any additional capacity..."

And it goes on to say:

> "Union will not sell any part of the capacity required for LCU as transportation capacity. As

such, there are no additional firm..."

And that is the emphasis I have added:

"...transportation contracted volumes supporting the addition of LCU coverage for Parkway."

We submit that while the primary motivation for the Parkway West project is, no doubt, to provide additional security of supply for deliveries to the EGD central region, and perhaps reducing the chance of EGD decontracting on the Dawn-Parkway system, as well as providing increased security for gas flowing onto Maple, there are potential collateral benefits, including delivering gas east of Parkway and also providing short-term S&T services from Dawn.

The evidence and testimony put on the record here will allow the Board to be more aware of these additional factors when it considers its comments in this case.

We believe ratepayer interests would be protected by a comprehensive review of options for LCU, Parkway extension, Enbridge reinforcements and/or long-term transportation arrangements before these projects are approved.

In an ideal world, this would require Union, EGD and TCPL to collaborate, but I suggest that competitive considerations appear to prevent this.

Union in its argument-in-chief, pages 72 to 73, talks about collaboration, but does not make a commitment to this. In fact, I would suggest the tone of Union's argument-in-chief submission is that Union will file for leave to construct later in 2012, and all parties can argue about the need and alternatives before the Board.

So now moving to deferral and variance accounts, this will be fairly short.

So Union's evidence on the proposed 2013 deferral accounts is at H1, tab 4, appendices A, B and C. We have comments on three of those proposed deferral accounts.

So the first is the short-term storage account; that is 179-70. And the evidentiary reference, additional one, is C1, tab 7.

So Union is proposing 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. In addition, the average price per transaction will be used to calculate the amount recorded. Union states this is fair and will reduce complexity. And that is the argument-in-chief, page 74.

Now, Mr. Rosenkranz, in his evidence, proposed that the account should be broadened to include short-term storage revenues obtained from optimizing utility storage space that is not classified as excess utility storage space. And that is his evidence, which is K10.7, and that is page 11.

Board Staff suggest, in their submission on page 38, that the account also capture all revenue realized from encroachment of utility space. We agree with these proposals.

Storage and transportation transactional service accounts, I will come back to this one. We have been around this one several times.

As we have argued, these accounts, if the Board finds that -- sorry. If FT RAM is a gas cost, then a different treatment, but if the Board finds that these are transactional services, then there should be a new or a re-established set of -- sorry, storage and transportation transactional service accounts, including the 2013 exchange revenues associated with the continuing of the FT RAM and any other exchanges.

Union's 2013 S&T margin forecast is now updated to 23.9 million, and it's been built into in-franchise rates. This amount is exclusive of any FT RAM revenues.

We have already argued that the FT RAM revenue of 11.6 million be included in base rates, and the accounts record any difference from this amount, as well as the variance related to any other transactions.

As to the issue of sharing, we note the -- again, 75-25 was the historic. However, given the limited evidence on transactions other than those involving FT RAM credits, we suggest 100 percent in favour of ratepayers to protect ratepayers from a repeat of the last IRM term.

And then last one on average is on deferral accounts average use true-up account. So we have gone through this a bit.

And we think it should be re-established, and that it is warranted for 2013, and this will ensure that both ratepayers and shareholder are protected from forecast error.

We submit that the AUTVA should be continued in its present form. The AUTVA will true up the normalized average use per customer and associated revenues for Rates M1, M2, Rate 1 and Rate 10. We note that the account does not true up for weather risk, which continues to be a company risk.

So details of the true-up for 2011 can be found in -- they're in the EB-2012-0087 2011 DSM deferral account proceeding, and the interrogatories related to that proceeding.

So finally now we move to our second part of cost allocation. We have very short submissions on this, and then on rate design.

So we accept most of Union's proposed cost allocation changes. We have concerns with some of the proposals.

We have a concern with the allocation of storage operating costs.

The evidence on the 2013 cost allocation was initially filed at A2, tab 2, but lacked detail. This detail was provided in the late stages of the proceeding as a result of questions from FRPO. That is FRPO supplemental Questions 1 and 2.

As noted earlier, we are concerned that, although the cost allocation was reviewed by Black & Veatch in their report filed in EB-2011-0038, it is important to ratepayers to get it right in this rebasing application.

We are very hesitant to recommend an update by B&V, but believe that this is the only sure way to have confidence going forward, and potentially into another IRM period.

Now, the next question is how to allocate the S&T margin from the new proposed deferral accounts.

So we are assuming now that the Board agrees that one or more of these margin accounts should be established. The remaining question is how will the revenue flow to ratepayers. An undertaking, which is J11.2, provides one answer to this.

If the transportation and exchange deferral account existed, the deferral balance would be disposed to rate classes in proportion to the actual capacity available. Union south customers would be allocated their portion of the balance based on their design day demand, and Union north customers would be allocated their portion of the balance based on approved storage demand costs in approved rates.

This is consistent with the methodology used and approved by the Board before the elimination of the transportation and exchange deferral account -- that is 179-69 -- as a result of the EB-2007-0606 settlement agreement.

So we can't comment whether this methodology is still appropriate, given the limited evidence on the nature of what is likely to happen with respect to transactions in 2013, but it is a matter that we believe needs to be addressed.

I am now going to go to the question of our Parkway station costs. Our submissions here relate to the evidence of Mr. John Rosenkranz, which is Exhibit K10.7. He was a witness for FRPO, CME.

And he recommended that Parkway station costs should be separated from the overall Dawn-Trafalgar easterly transmission costs and allocated to rate classes on the basis of design day requirements.

Union provided background to the peak design day criterion. And that is in the argument-in-chief, pages 18 to 25, citing the Board's decision in EBRO-493/494 -- which, by the way, was a very excellent decision -- and that accepts that on a design day, the flow is uni-directional, west to east, and part of that flow serves in-franchise customers.

Energy Probe, unfortunately, in this case does not agree with Mr. Rosenkranz's proposal, for four reasons.

And that is that the peak design day criterion has not been challenged.

It would allocate, Mr. Rosenkranz's proposal would allocate more costs of the Parkway station to services contracted by ex-franchise customers, M12, et cetera.

That would, then, in our view, raise rates for M12 service, and that could, in fact, exacerbate decontracting on Dawn-Trafalgar, thereby resulting in lower revenues for Union, which will need to be compensated by an increase in in-franchise rates.

It will also increase costs for Enbridge customers, the largest users of C1/M12 service, by about 1.6 million in 2013, and twice that in 2014 if the Parkway West LCU project proceeds.

The agreement in the settlement agreement in this case to re-examine the Parkway delivery obligation could also result in changes to the treatment of the cost allocation for Parkway station costs.

For all of these reasons, we think Mr. Rosenkranz's proposal is not a win for either in-franchise or ex-franchise customers. So leaving the cost allocation as is, at least for 2013, is, in our view, preferable.

Now, come to the last main topic, and that is rate design. Short submissions here.

The evidence on this topic is summarized at H1, tab 1, updated as filed on July 13th, 2012, and Exhibit H3, tab 1, schedule 1, page 1, and undertakings J10.2 and 10.3 are also informative. So those are the sources that we reviewed.

As far as 2013 rates, we have a submission with respect to revenue-to-cost ratios. The reference for this is again Exhibit H1, tab 1, page 12, updated, H3, tab 1, schedule 1.

We are of the view, as Mr. Warren has already stated, that Union's 2013 revenue-to-cost ratios are within accepted bounds, with the notable exception of Union's proposal to increase rates in M1 to slightly beyond unity for the revenue-to-cost ratio. It goes to 1.003, and, therefore, over recover from that rate class by an amount of $1.14 million.

Now, this transfer of revenue from M1 to other classes is discussed at the transcript volume 10, and that is at page 145 to 147. This indicates that Union has preferentially streamed $10.4 million of the total S&T revenue of $20.8 million - that is now updated to $23.9 million - preferentially to the north to offset the allocated revenue deficiency. That is at the transcript volume 11, page 147.

We submit that under the circumstances of the rate increase for the north, this allocation is appropriate, but if this drives up the rate M1 revenue-to-cost ratio, this should be adjusted for.

So now we're coming to the other topic, and that is -- that we need to -- wish to address, and that is the 2014 rate design change in the breakpoint to 5 m^3 for the M2 and rate M10 classes.

We support the submissions of others that Union's proposed 2014 rate redesign proposals for the general service classes - and that is rates M1, M2, rate 01 and rate 10 - are not appropriate and have major impacts for about 4 to 5 percent of customers. That is about 60,000 customers, and that is shown at J.H-3-1-1. The impacts shown -- are also shown in IRR J.H-1-14-2.

The former shows the distribution rate impacts for customers consuming 5,000 to 10,000 m^3 as up to about 33 percent. I emphasize that is distribution rate impacts.

Even with a lower monthly charge, $35 versus $70, that constitutes, in our view, rate shock for these customers. We note that the impacts will be even greater if Union increases the 2014 revenue requirement under an IRM or any other type of application.

Now, Union dismisses these impacts on a greater good argument, and that is at the argument-in-chief, page 75. You will see at page 22, in answer to Mr. Aiken's question, what Mr. Tetreault says at page 12 is that:

> "Union's rate designs in total are revenue neutral, and the number of customers that are impacted in some way by our rate design 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."

With respect to Union, the impacts faced by customers around the proposed breakpoint are simply too large. Union has to either amend its redesign or propose mitigation measures for these 60,000 general service customers.

A number of possible mitigation measures have been discussed on the record, including changing the M2 rate 10 monthly charges from the proposed $35 a month to $40 in the north, and $30 in the south. That is one proposal that is on the record.

We don't have any opinion with respect to those other possible mitigation measures. In principle, we don't oppose a new block structure for 2014 in rates 01 and rate 10 in order to harmonize with rates M1 and M2. However, we believe the support for the current proposal, which in part is based on Union's proposed weightings, cost allocation weightings, 1.0, 1.5 and 2.0, which are based on EB - I think this quote is right - 2005 -- it is 0510, that the support is inadequate. Therefore, that needs to be reviewed before implementing those block structures.

So now we come to the final topic, you will be glad to hear, and it is rate impacts and rate mitigation. We will start with Union's position, and that is set out in the argument-in-chief at page 81.

And I won't give the quote, but Union didn't stop there. This is the key bit. We have set out, yes, Union has laid out the impacts with respect to total bill impacts. Mitigation is not necessary.

So, they go on to say, if you were to consider mitigation, then we have set out some of those mitigation measures. And as you know, that is in J11.10.

But the key quote there is -- the overarching submission I want to make is that, in Union's view, mitigation is unnecessary. So that is their opinion.

Union goes on also to say, "to stream the transactional services margin", which we discussed, which is H3, tab 10, schedule 1, "preferentially to the north rate classes." I think this belies the position that rate mitigation is unnecessary.

Energy Probe is of the view that if the Board accepts all of the revenue requirement and deficiency reductions that we have proposed, and others, then perhaps it isn't necessary. However, if not, then we suggest that rate mitigation measures should be invoked.

And now returning to Undertaking J11.10, we suggest the least harm to the company would be phasing in any change in equity thickness over a number of years. J11.10 shows the impact of that as 11.1. That is not to say that we agree that that should be done, but if that is to be done, that is the amount.

Deferring the change in weather normalization, again, this has a number in that schedule of $5.8 million, whereas the other schedule J - I have to come back to that - had a 6.5 million, and then, finally, by reestablishing the S&T transactional services deferral account we've talked about with an FT RAM amount of $11.6 million in base rates.

So based on that schedule, these three measures would reduce the 2013 revenue deficiency by about $28.5 million, or just over half of the post-ADR amount of $54.5 million.

We haven't calculated the impact of the residual $25 million deficiency, but a quick review of J11.1, including the change in ROE, leads to a conclusion that using delivery rates as the measure, increases in the north will be about 10 percent in some rate classes, and in the south they will see similar increases.

So, Madam Chair, Member Taylor, those are our submissions.

Thank you very much for your attention.
MS. HARE: Thank you. I do have a few questions.
DR. HIGGIN: Sure.
MS. HARE: Starting on page 1, you made the point that you note the different bill structure for gas and electricity. What did you mean by that?
DR. HIGGIN: Well, I was particularly talking about the uplift portions on the electricity bill, so that they deal with a number of things which aren't in play for the gas utilities.
So --
MS. HARE: You mean things like the debt retirement charges and retail sales?
DR. HIGGIN: Yes, all of those -- exactly. All of that bundle.
MS. HARE: Things that the distributor has no say over?
DR. HIGGIN: Yes.
MS. HARE: Okay.
DR. HIGGIN: That is what I was referring to, Madam Chair.
MS. HARE: Okay. Thank you.
My next question is on page 8.
DR. HIGGIN: Is that 8?
MS. HARE: Let me ask something different first, talking about your proposal about the 50-50 blended approach with respect to the weather methodology, so the blend of the 20-year and the 30-year.

And in addition, like Mr. Warren, you suggest revising the NAC.

This is what I'm wondering. If you alter the weather methodology, that would presumably change the NAC. Are you proposing to further revise the NAC?

I think Mr. Warren proposed an increase in the M1 NAC by 1.4 percent, and a change to the weather methodology.

So my question is: Is there double-counting going on there?

DR. HIGGIN: No, Madam Chair.

MS. HARE: Okay. Can you explain, please?

DR. HIGGIN: We think there are other factors that are in play here, that has resulted in the normalized average use declining more rapidly than it should have, under either methodology.

So those changes that we're talking are in addition.

MS. HARE: In addition? Okay.

And then that takes me to the question on page 8.

You are saying that if we do not accept Union's full 20-year declining trend rate for 2013, there is a process issue. What is the process issue?

DR. HIGGIN: Well, it is basically how -- if you reject that -- how do you then get a 2013 forecast using the 2013 methodology?

I believe some of the IRs have given a response that would lead to some estimates on that, but I certainly wouldn't want to rely on those.

I think Union would then have to be directed to refile its general service forecast.

MS. HARE: Wouldn't it do that with its draft rate order?

DR. HIGGIN: It could do that with its draft rate order.

It probably has the data, as you know; it is just a case of running the models. And so that would be one option.

If it does that, then the problem is that the Board -- how does the Board address these other changes that you have just asked about?

MS. HARE: Mm-hmm.

DR. HIGGIN: Because the thing -- the forecast that is filed will be a pure 50-50 blend. And all of the NACs will be based on that and the models.

And so we and other intervenors believe that the actual regression equations that are being used -- there's the heating degree-day component, for example -– is -- we're not agreeing with how that's done, and so on, overstates the forecast.

So, you know, if you just want to focus on heating degree days, that would still be embedded in that forecast.

MS. HARE: Okay. On page 12 -- and you discussed this later on -- you're saying that Energy Probe is not in favour of the 90-10 split, and suggests 100 percent to ratepayers is appropriate since it's firm transportation.

But do you not see a problem that there would be no incentive for Union to aggressively pursue these transactions?

DR. HIGGIN: Okay. This is more of an organizational issue as to how Union chooses to organize the two departments; that is, its gas supply and its transactional services people.

What we believe, in fact, is that, yes, there should be expert people or a third party contracted to optimize for the ratepayers the transportation that the ratepayers are paying for. And therefore that is a cost that has to be deducted -- netted out against any -- anything realized.

So how to do that? Because right now the way it is organized is basically that the focus of gas supply is contracting for the year, for the whole, and the focus of the S&T group is doing transactions to make money from that transportation.

Okay? So what we're saying is: Why don't you hire some people, either in-house or outside, to optimize the ratepayer portfolio for them, deduct those costs and pay the ratepayers the proceeds?

That's our submission. That's why we're saying 100 percent.

MS. HARE: Okay.

DR. HIGGIN: Thank you.

MS. HARE: Actually, in that same area, then, you're suggesting that Union's forecasted 9.1 of revenues to non-FT RAM exchanges, you're saying that should be -- it is too low and it should be updated.

You're not suggesting a number, though, are you? Or did I miss that?

DR. HIGGIN: No, Madam Chair. I didn't have time or the expertise to try and come up with a number.

But there is parts of the evidence that suggest that is a direction that is warranted. Perhaps others will weigh in on that topic, as well. Okay?

No, I do not have any estimate.

MS. HARE: Okay. When you're saying -- when you are discussing the unaccounted-for gas and you're saying the methodology differs and it should be reviewed, so are you suggesting for the future, for their next cost of service application, for example? Is that what you're suggesting?

DR. HIGGIN: Yes, Madam Chair. Not for this case, obviously, but that's the idea.

It is probably timely to do that, and there was some -- there was some evidence filed in the Renewable Natural Gas proceeding, which compared methodologies. I didn't want to bring that into here.

MS. HARE: Yes.

DR. HIGGIN: But that also illustrates there are different methodologies at play amongst different utilities.

Thank you.

MS. HARE: Okay. In the argument-in-chief, Union's counsel argued - I'm talking about Parkway West now - argued that this Panel should give no direction to the next Panel with respect to Parkway belt.

Do you have an opinion on that?

DR. HIGGIN: No, Madam Chair. I think that you have the evidence in front of you, but it doesn't affect the revenue requirement, rate base and revenue requirement in 2013, which is the focus of your determinations.

However, I think there are process-related issues that you could comment on. And that's what we commend to you, is those processes, as to how to go forward with respect to that project and the related projects and so on at Parkway.

We hope that you may consider some comments with respect to those process-related issues.

Thank you.

MS. HARE: My last question may be -- maybe Ms. Taylor has some questions.

My last question to you is with respect to the argument that ratepayers are owed something for the transactions that were undertaken between 2007 and 2012. Why do you think that should be discussed in this case, as opposed to the 2011 earnings sharing?

DR. HIGGIN: Okay. I think you have to parcel the issue into three pieces.

There is a -- the revenues generated -- and there is an earnings sharing issue here, as you know -- from the deferral account that was discontinued, up to, I would suggest, the end of 2010. That is one set of issues. How should that be dealt with?

Then for 2011, as you know, that is in the other case and that matter is going to be argued there, and that may result in a Board decision regarding how to treat those revenues for 2011.

2012 is still an estimate. It has not happened, but probably will be informed by whatever the Board says about 2011, and there will be a deferral account possibly clearing then.

Then we come to this case. And I think I said there are three issues that you, perhaps, need to consider in this case.

And one of them, the big one, is setting up deferral account treatment, or how to treat -- the big issue is how to those revenues in 2013.

And you have two, which may be complementary, but two different approaches. One is to treat it as a gas cost and flow it through the PGVA, and the other one is to set up the transactional services accounts, the S&T, TSDA accounts.

And I've suggested that the fulcrum for that, for FT RAM, would be 11.6, et cetera.

MS. HARE: Okay.

DR. HIGGIN: So I see those -- from looking at the evidence and seeing -- that's how I would sort of divide the thing up. I hope that is helpful.

MS. HARE: Okay, thank you.

MS. TAYLOR: Dr. Higgin, just with respect to the last answer you provided Ms. Hare, on page 12 of your submission, again, just coming back to the numbers that you quoted, the $11.6 million is the fulcrum, and then the additional forecast revenues.

For the purposes of the 2013 rate year, there doesn't seem to be a lot of distinction between in-franchise, ex-franchise, utility, non-utility asset trading. Are you proposing that these, in effect, go into one big account?

DR. HIGGIN: No. I think what I'm suggesting, following up, is that the Board could make -- consider this and make a finding that the way to treat all FT RAM-related transactions is that it is a gas cost, and, therefore, less -- the net, like any other amendment to the gas supply plan, that would flow through the PGVA. That is certainly one -- for those type of transactions.

But having read the record, as you would realize, there are so many different types of transactions which use FT RAM credits or don't, or exchanges and so on, that you need the S&T TS accounts for those, anyway, in my opinion, for 2013.

MS. TAYLOR: So in order to eliminate -- I don't want to use a bad word here. To eliminate confusion regarding the accounts, we could, theoretically, do everything in one?

DR. HIGGIN: You could, yes.

MS. TAYLOR: On page 21, when you're talking about the allocation of storage operations costs, and you recognize that Black & Veatch had done some work in the EB-2011-0038 case, you do say that you are concerned -- or hesitant, rather, to recommend an update by Black & Veatch. Why is that?

DR. HIGGIN: Only simply because of timing issues. So the question perhaps underlying that is: When would this apply? Would it apply to 2013 or going forward?

And, my view, there certainly would not be time to do that now. That is why I am hesitant.

What the value of that will be let others argue. It should perhaps still be done.

Hopefully we are not asking to go from ground zero on this. My suggestion is simply retain them to do a new -- a quick review, an update, and the question then is perhaps file it in the next cost of service or IRM, and then amend any cost allocations that would result from that.

The other thing that I am concerned about here is the transparency issue of how Union is applying those various cost allocation methods. So perhaps B&V could comment on how to improve the transparency.

I note that that was one of the issues when Enbridge did its update was the transparency issue, and the consultant, which happened to be the same one, had some comments about improving the transparency.

So I hope that is helpful.

MS. TAYLOR: Yes, it is. Thank you. Those are my questions.

MS. HARE: Thank you. Mr. Brett, are you prepared to go next?

MR. BRETT: Yes, I am, Madam Chair.

MS. HARE: Thank you.

FINAL ARGUMENT BY MR. BRETT:

MR. BRETT: Well, good morning, Madam Chair and Panel.

Just before I get started, I have a factum which I would like to hand up to you. Maybe I could give it to Mr. Millar. I have three copies there, two for the Board and one for you guys. There might be a fourth for the --

MR. MILLAR: Two separate documents, Mr. Brett?

MR. BRETT: Yes, there are two separate documents here.

Just while Mr. Millar is bringing those up, there is my factum, and then I attached to it, just for convenience, really, about ten pages of an excerpt from TCPL's evidence in-chief in the RH-003-0019 case, just because I refer to it quite a bit, and it will be easier to follow if you have that there.

MR. SMITH: Sorry. I just might add I wasn't sure whether Mr. Brett was proposing to hand us copies of his written materials.

MR. BRETT: I can give you a copy, sure.

MR. SMITH: Thank you.

MR. MILLAR: Madam Chair, I propose we mark those separately. The BOMA factum will be K14.3, and the excerpts from the TCPL proceeding K14.4.

EXHIBIT NO. K14.3: BOMA FACTUM.

EXHIBIT NO. K14.4: EXCERPTS FROM TCPL PROCEEDING.

MS. HARE: While we are getting those, Mr. Brett, how long do you think you will be?

MR. BRETT: I think about an hour.

MS. HARE: About an hour. So we will go until you are done, and then take a lunch break.

MR. BRETT: Okay.
MS. HARE: Because I understand you have a flight out?
MR. BRETT: I have a deadline, yes. Thank you.
I have some extra copies here which I can give out later. I intend to give everybody a copy through my office immediately after this.
So as I say in the introductory page, BOMA is going to deal with the major issues on the revenue requirement side, capital structure, Parkway West, storage and transportation services revenue as it relates to FT RAM, gas costs and revenue forecast. Let me know if I am going too fast, please.
I am going to start with capital structure, and then -- but before I do, I just wanted to mention that at the back, in the last page of this factum, the last two pages, you will see a number -- a very brief commentary on cost allocation and rate design.
Just to cover that, because I may forget in the sound and fury of the presentation, we basically -- BOMA accepts the position of the Board Staff on the items that are listed there with respect to cost allocation and rate design.
We reviewed their submission carefully, and on the points that we have listed, we support their submissions.
So if I can go back to the beginning, capital structure, well, of course Union has proposed an increase in the equity portion of capital structure from 36 to 40. As we read the evidence, it would have the effect of

increasing test year revenue requirement by $17.3 million, and it represents a one-time 11 percent increase in equity thickness, and we are opposed to that for several reasons.

The first has been talked about quite a bit, so I will try to summarize. We don't think that Union has justified its proposal on the basis of the Board's stated policy on equity thickness, which is laid out in the report, the Board's report of the Board on the cost of capital for Ontario's regulated utilities at page 50.

And you have heard this a couple of times before, but it says, in a sense, in essence, that the utility's equity thickness would be changed only where there was a clear identifiable change to the utility's business risk and/or financial risk.

I would add there is a second quote immediately preceding the quote that I have in the factum that says that essentially the Board will decide on the equity thickness for gas utilities on a case-by-case basis. And they contrast that in that same paragraph, which is the paragraph on page 50 above the one that I have quoted here -- they contrast that approach to their approach in electricity where they, for a variety of reasons, set a 60-40 debt-to-equity ratio some time ago, as I understand it.

Now, the 36 percent existing thickness was a result of a comprehensive settlement agreement, as you know, in 2005-0520. The last time the issue was litigated, the rate was 35 percent. And so, in a sense, 35 percent is -- at least in the opinion of some of the people that are expert in this area, 35 percent is the ratio we should pay attention to, because the 36 comes as a result a settlement conference and who knows what went into the settlement conference.

In any event, it is a significant increase.

Union's evidence, as you heard at least once, is that they haven't had a change, a material change in their business risk or financial risk since the 2005-0520 decision.

And I won't list all of the citations here; you can read those as I go along.

But in effect, it agreed that its overall business and financial risk has not changed materially, and it also did not ask its experts, in this case, to analyze whether there had been any significant change in Union's business and/or financial risks. Its experts were not asked to do that in this case.

And we would -- BOMA would support Dr. Booth's view that business financial risk has not increased since it was last litigated, and maybe slightly declined but it has not increased.

And I use one example, just to punctuate this. Union agreed that one business risk, gas cost risk, has declined with the collapse in gas prices in North America.

It states at page 17 of the overview piece of its evidence -- that's A2, T1, schedule 1, and I have just taken two paragraphs from that and I will read the second one first. This is on my page 3:

"Low energy costs also have a positive impact on Union's cash flows and operating costs. The impact includes but is not limited to bad debt expense, gas used to heat Union's buildings, fuel gas used in compressor stations, financial charges in relation to the financing and carrying costs of lower value and actual gas inventory and the value of UFG."

So that is one perspective on operating costs and cash flow. The second perspective is a broader one on the economy, which is the previous paragraph:

"Low energy prices have a positive impact on consumers and economic growth. Lower costs for consumers are expected to promote economic growth as consumer spending increases. Any consumer-led business cycle improvement will positively impact the Ontario economy, leading to higher housing starts, greater conversion from other fuels and increased industrial output."

So that is that, the business risk.

On the financial risk side, Dr. Booth notes in his testimony that the litmus test of whether the Board has -- quote, has got it right, is whether the regulated utility can access capital on reasonable terms.

BOMA agrees with Dr. Booth's assessment that Union continues to have reasonable access to capital -- to credit markets, evidenced by its planned -- I should say evidenced by, among other things, its planned debt issuance in the amount of 125 million at 3.9 percent.

And in a recent decision - I will come back to this - in a recent decision on Natural Resource Gas Limited – that's NRG EB-2010-0018 - the Board stated:

"The Board has a cost of capital in place that is applicable to all electric utilities, and NRG's size and profile is similar to a number of electric utilities, as opposed to..."

And this was -- these were words that Dr. Booth underlined in his analysis:

"...as opposed to the two large gas utilities, Enbridge and Union."

Just briefly, the Board's view may be contrasted with that of Mr. Fetter, Union's witness, who used the Board's recent NRG decision as a precedent for allowing Union Gas the same equity thickness.

Mr. Fetter stated:

"In addition, a review of Canadian rate decisions since the time of the Concentric report also shows a positive movement in authorized equity thickness. For example, the OEB set a 40 percent equity thickness for Natural Resource Gas in 2010, stating that the NRG has presented no evidence that its risk profile is significantly different than other utilities in Ontario."

Based on that interpretation alone, the Board should give little weight to Mr. Fetter's evidence.

More generally, with respect to financial risk, there is no evidence that from a cash flow or access to capital markets perspective, Union requires additional equity.

More particularly, Union's evidence is that, one, it has maintained strong credit ratings over the last several years. DBRS has rated Union with an A rating since 1997, the year in which it began to rate the utility.

S&P has given it a BBB-plus rating since 2003, the same rating as its parent, Spectra.

As you heard, S&P has a policy that it will not rate a utility higher than its parent unless the subsidiary is completely protected from financial and operating interference by the parent.

Now, as you know, the undertakings from Union to the Ontario government do provide substantial protection to Union from predatory behaviour by its parent, particularly with respect to maintenance of appropriate utility equity, sale of assets and diversification of the business away from gas distribution, transmission and storage.

They do not deal with dividend policy and cash management.

Number two -- so that is the first, is the credit ratings, the history of credit ratings. The second is that Union has maintained strong cash flow and cash positions.

For example, Union has paid dividends to its parent company of 145 million in 2011, 190 million in 2010 and 165 million in 2009, a total of 500 million in three years.

You can see that in Union's annual report, 2011.

Now, perhaps most importantly, Union has not had any difficulty selling debt to the market when it needed to do so after the last several years.

Union's evidence in response to J.E-2-12-8 shows that Union has frequently issued unsecured debt over the last 10 years at very competitive rates in relation to other utility rates -- other utility issuers.

As noted earlier, it plans to issue debt in 2013 at 3.9. And as you know, utilities are a big part of the corporate debt market in Canada.

Then two other brief points. You have heard them already.

Union has earned its weather-normalized return, aside from modest under-earning in 1991 and 1992, for every year since 1990, and on average has over-earned by 1.22 percent since 1990.

Of course, during the most recent IRM period, 2007 to 2012, Union has over-earned in the amount of 288.7 million, of which only 21.2 percent was shared with ratepayers.

Finally, on the interest rate coverage, Union's current interest coverage is 2.74 percent, which is well above the two percent minimum interest coverage ratio set out in Union's trust indenture. That is an increase from 2.4 percent in 2010, 2.4 percent in 2009, 2.47 in 2008, and 2.24 in 2007.

As an aside -- and I don't want to take too long on this, but as an aside, Union has introduced, in response to cross-examination, the notion of an interest rate coverage of the regulated part of the corporation only, and noted that that ratio, quote/unquote, under certain circumstances could slip below the two mandated two-X ratio in the trust indenture.

The notion is a red herring.

Interest rate coverages have been determined and always have been at the corporate level, not the divisional level. The two-times threshold referred to in the trust indenture in the MTN prospectus is referred to as the EBIT interest coverage of Union Gas Limited.

Union Gas Limited contains both an unregulated and a regulated business. They're divisions of the same company. The unregulated storage business is not a separate company.

The interest rate ratio set out in the corporate trust indenture are incorporated in the corporate covenants of the issuer of the securities, the bonds and notes, which is Union Gas Limited.

So I will leave the rest of it, but there was a point Mr. Sommerville made in part of the discussion a few days ago about the notion that -- in response, I think, to a suggestion from a Union witness, that the -- effectively the non-regulated part of the company was subsidizing the regulated part.

And Mr. Sommerville, I thought, quite cogently observed that -- asked whether the unregulated part of the company tended to make the overall company more risky, and the answer he got from Union was yes.

But in any event, in any event, the unregulated part is sufficiently small that it doesn't affect the material

-- had no material impact on the risk profile of Union Gas, and that is the view that DBRS and S&P both have.

Now, on the expense side, just as one last point on the -- given the relatively current low cost of debt of less than 4 percent versus a pre-tax equity cost of 12.7 percent, every dollar of debt shifted to equity costs the ratepayer 8.77 percent. This makes it a particularly damaging time to change the ratio, unless it were absolutely required to do so.

Now, of course we all know that you can't substitute 100 percent debt for the equity. But at the margin - what we're talking now are marginal changes - it is expensive to go from debt to equity for the ratepayer.

Now, I want to move to the FT RAM argument. What I have done here is I have summarized it and I am going to -- I am going to go through and make the points in the summary. I have a fair amount of backup, as well, and I will selectively cite from that, but I thought the argument was a little complicated so it would be good to summarize.

So I have summarized it here in just a few propositions for convenience.

So the first proposition that we have, that BOMA makes, is that revenue arising from transactions entered -- Union entered into with third parties which utilized FT RAM credits should be treated and should have been treated as reduction to gas costs, because they were earned by Union as a result of its holding long-term firm transportation service and related services on the TCPL Mainline.

RAM credits are a feature of the TransCanada tariff. They are embedded in TransCanada's interruptible toll transportation schedule, both of which were approved by the National Energy Board.

The initial FT RAM pilot back in 2004 was approved by the NEB, as were all subsequent modifications to RAM features. Union admits they are features of TransCanada's FT service, and part of the TCPL tariff and the TCPL tolls schedule.

The stated purpose of FT RAM at the time was to induce shippers to use more or de-contract less FT service by offsetting some of the costs of holding that service.

Now, the second proposition -- so that's the background, and I have more history in here, but I won't go into all of it, because it is time consuming, and you can read the history. And I will give you the cite in a moment, but you can read the history in, among other places, an IR response from Union to a request that BOMA made to give us the history.

Union have reproduced TransCanada tolls task force resolutions and letters to the NEB, and so on. So you can follow along each step in the evolution.

Now, the second proposition is, except for a very small percentage of its FT RAM credits which Union used to offset unabsorbed demand charges and TCPL LBA charges, Union used the credits to engage in a series of transactions with third parties, I suspect mostly marketers, to create incremental revenues which it labelled exchange revenue or regulated revenue. And it kept those revenues for its shareholder.

Third proposition: Union treated the revenues generated by the use of our FT RAM credits the same way they treated exchange revenues that they had historically generated by carrying out exchanges with third parties, without the use of FT RAM, except that prior to 2007 ratepayers shared in the revenues, both forecasts and margins, through a transportation exchange service deferral account, which you all -- which we all have heard a lot about, 179-69, prior to 2007.

After many attempts, Union closed that account in 2007 just before RAM -- FT RAM-enabled revenues took off.

Now, the fourth proposition is that Union has admitted that their S&T exchange business was greatly enhanced by their use of FT RAM credits. Broadly speaking -- and I emphasize "broadly speaking", because there is a number of speakers have said when you get down into the weeds on this, there are a number of different sorts of nuances in the transactions.

But, broadly speaking, Union did these transactions using FT RAM credits, as far as we can see, in two general ways. They either kept the IT credits themselves, which they had earned as an FT shipper and which they were entitled to in the first instance, and used those credits to acquire low-cost interruptible service to move the gas which they had contracted to transport via long-term firm transport service to an often upstream delivery area relative to the delivery area of the original FT contracts, and then, as they put it, used the, quote, "excess IT credits" to fund incremental transactions. That is sort of one approach.

Alternatively, they assigned the FT capacity to a third party, thereby creating an empty pipe and RAM credits for that third party, which the third party would fill using IT service. In each case, the overall revenues from -- in each case, each of the two approaches, the overall revenues from the transaction were shared between Union and the third parties.

Union's share of this revenue was streamed to Union's shareholder, notwithstanding the transactions were underpinned by long-term firm transportation capacity paid for by ratepayers, and the FT RAM credits were an attribute -- an attribute -- of that capacity.

Now, the fifth proposition -- and I have seven altogether, but the fifth is the issue of whether the transportation exchange services account, 179-69 deferral account, into which exchange revenue margins -- in which exchange revenue margins were accounted for prior to 2007, but was then closed, would have been irrelevant to this issue had Union treated FT RAM-related revenue properly as a reduction in gas costs. Since all of the revenue in that case would have been paid through to ratepayers via the QRAM process, a deferral account would not have been necessary, other than the traditional gas supply deferral accounts.

However, given that Union treated FT RAM-related revenue as S&T revenues, the closure of the deferral account in 2007 meant that the ratepayers received none of the revenue in the years that saw the largest use in FT RAM-related revenues; that is, the years from 2009 to 2012. I will show you in a moment just how large they were.

As noted above, the transactional -- sorry, that is transportation exchange services account, deferral account, was eliminated as part of a settlement agreement dated January the 3rd, 2008 in the EB-2007-0606 case, page 16 of the settlement agreement, on the eve of a rapid expansion of RAM-related revenues.

The sixth point of the summary, Union's claim that these revenues should go to the shareholder, subject to whatever sharing with customers is required due to the earnings-sharing provision of the current IRM regime, is, accordingly, based on -- is based on a mistaken characterization of these amounts.

The amounts never were exchange revenues and never should have been -- should never have been treated as such.

Moreover, BOMA sees no real difference between test year RAM-related revenues and any RAM-related revenues accrued since 2004 that have not yet been credited to ratepayers, other than, of course, the procedures by which the funds can be returned to ratepayers.

So Union's claim that under IRM it had the right to maximize profits within the parameters of the formula does not hold up. If the revenues are properly characterized as gas reduction, they become a Y factor or a pass-through under IRM.

Now, finally, in our view, any RAM revenue or -- and this I think is something to watch, quote, "RAM replacement" -- I have called it "RAM replacement", in quotations, "revenues" -- arising out of -- that should be NEB's upcoming decision in RH-03-0211, accruing in the test year should be deemed by the Board to be gas costs and treated accordingly.

BOMA will take the -- and this I will not dwell on, because we have discussed it. BOMA will take the same position in EB-2011-0087 with respect to 2011 RAM revenues and in next year's equivalent case for 2012 RAM-related revenues.

If the Board orders restitution in these cases, BOMA will also likely ask the Board to open a proceeding on its own motion to review the payment of RAM-related revenues to shareholders for the years 2008 through 2012.

Similar -- the Board initiated a similar motion last year in EB-2012-0206; that was the split in storage revenues, the case you came out with in July.

So that is sort of the approach.

As far as the numbers go, I won't dwell on the amounts, because I know you have the evidence on that; 67.3 million in revenues from transactions with third parties in the years 2009, 2010, 2011 and 2012 inclusive, made possible by the use of RAM credits obtained from TransCanada Pipelines. That is K7.3.

Now, for the test year, as you have recently heard, Union has forecast, as we understand it, 11.6 million of FT RAM-generated revenues on the assumption that FT RAM will continue essentially in its current form.

Now, the NEB is widely expected to issue its decision in that case in the first half of 2013. Union has stated that TCPL has estimated it would take until approximately May 2013 to make all changes it proposed in its RH-003-2011 evidence, including the elimination of FT RAM.

BOMA's view is that in the event NEB decides that the FT RAM should be discontinued, it will be well into the spring of 2013 before FT RAM ceases to be available, and existing transactions that extend into 2013 would likely be grandfathered.

As I said, in BOMA's view 2013 revenues, net of costs incurred to generate them, should be and should have -- should be treated as a reduction in gas costs and passed through to ratepayers using the QRAM mechanism during 2013.

Now, it is a truism that Union Gas costs include both commodity costs and system gas and pipeline transportation costs.

Let me move on, because the next paragraph you are well familiar with.

Let me move to what I call FT RAM-related revenues. And there is a bit of history here, and I will try and summarize this as I go through.

This history starts a bit in the middle, for reasons that you will see in a moment. Resolution 042009 of the

Tolls Task Force, dated January 7th, 2009, entitled: "FT RAM, STS RAM, STS LRAM permanent tariff feature," states that:

"RAM is a tool to mitigate unabsorbed demand charges and provides greater flexibility in order to give shippers increased confidence in contracting for long-haul FT service on the TransCanada main line."

And that:

"The motivation behind RAM is to promote the renewal of incremental contracting for long-haul FT service."

Now, you will see as you get into this subject that there is somewhat different characterizations from time to time. The basic idea is put differently, but the basic idea seems to remain pretty constant.

Now, that resolution of the Tolls Task Force was unanimously approved on January 7th, 2009, and was sent to the National Energy Board under cover of a letter from TransCanada on January 16th, 2009.

The NEB approved the amendments effective November 1st, 2009, shortly thereafter.

Now, the NEB had previously, as you know, approved a pilot project version of FT RAM and also a gradual expansion to its applicability, in a series of orders and letters over the period 2004 to 2007. So there had been a whole series of these, which are detailed in the interrogatory response I talked about.

Now, what does it do? Because there is still, I think, a bit of lingering confusion in some folks' minds.

The FT RAM tariff feature provide that holders of main line long-haul firm transportation -- and that is defined in the TransCanada tariff as transportation contracts that originate in Alberta or Saskatchewan. That is one type of transportation contract.

The second is short-haul FT, which is linked to an LTFT contract. The example of that is a contract from Empress to Dawn, and then a matching contract from Dawn on to somewhere in the eastern zone.

As long as they're matched at a common delivery and receipt point, then that qualifies.

Then of course, as you heard, ST and STL service qualifies. Now, STSL, which is simply STS service designated for marketers, rather than LDCs -- that is what that means.

Now, what it says is holders of that capacity earn dollar credits -- not volume credits, but dollar credits -- for each unit of capacity held during any contract month or part thereof.

And the calculation of the amount of the dollar credit earned is shown by the example provided by TCPL in its document entitled: "RAM (risk alleviation mechanism)," dated June 2010, page 2. And that is on their website and I believe it is in evidence somewhere. I had planned to bring it with me, but I just ran out of time.

So it is a dollar credit. Now, the dollar values of the credits are calculated daily, based on the customer's daily demand charge.

The shipper may use these dollar credits to purchase interruptible service on TransCanada during the month. They may be used on any TransCanada path; that is, between any TCPL receipt and delivery points, to transport gas between which interruptible service is offered. Not just the path on which the shipper earned the credits.

So since IT, and for that matter, FT tolls, are less on the shorter paths, and most TCPL paths are shorter than the Empress-Parkway path or the Empress to the eastern zone path -- those are the two of the longer ones -- many units of IT transport -- many units of IT transportation can be purchased on the shorter paths with $1 of FT long-haul toll credits. The tolls, both FT and LT, tend to reflect distance on TransCanada's system.

So there is a substantial leverage in the RAM feature.

I am going through this a bit just because the dollar volume of this is huge, and I want to sort of lay the basis for this.

The only precondition is that the credits must be used in the month they are earned.

So the next point -- and this is critical -- TransCanada's interruptible transportation toll schedule contains provisions that provide for the deduction of the RAM credits from the nominal IT toll, in order to determine the actual IT toll paid by the shipper.

And I have cited here the relevant tariff sheets.

Application of the -- but the bottom line is application of the credits allow the IT service to be purchased for the commodity component of the IT toll, which is basically de minimus. It is about five -- I think this it is a few cents, relative to excess of a dollar for the demand charge.

Now, the next piece is the party that earns the credit, the holder of the eligible TCPL capacity -- in this case, Union Gas -- can use the credits itself to purchase IT services. Alternatively, it can assign the FT capacity along with the credits to, say, a marketer, for any period it wishes, from a few days to a year.

The credits themselves are not transferable, but go with the TransCanada capacity.

The marketer can then acquire IT service on TCPL, and engage with Union in various types of revenue-earning transformers.

Union's volumes of capacity assignments, the term, the left are set out in the evidence.

The terms, as I said, range from a month to a year. Many are for winter or summer seasons.

The contracts between Union and third parties provide for sharing of revenues from the transaction.

The details of these transactions have never been made public. Although the credits must be deployed in the month in which they are generated, they can be saved and then deployed within one or two days in that month.

Now, I am going to leave out the detailed discussion of the history, just in the interests of time. I would note one or two things in passing.

The RAM proposal, and a lot of the enhancements to it, were proposed by Shell Energy North America Canada, which is the largest natural gas marketer in North America.

That is the first thing.

The next thing I would say -- I am at the top of page 14. The point I would make is FT RAM has been in place continuously since November 2004. This is not some sort of one-year-long demonstration project, or...

This is a fundamental attribute of the TransCanada toll, of the TransCanada tariff, and it was put in place to try and do something about what they thought would be upcoming increases in the tolls.

Now, my next -- that is the history. Now, then I want to now sort of deal with how RAM has been applied.

Now, Union's evidence is that the value of assignments of capacity was largely due to the FT RAM credits that were transferred to the marketer, along with the capacity, and that the FT RAM credits enhanced the value of the capacity.

The evidence filed by TransCanada in the ongoing proceeding before the NEB, and the excerpt from which I have given you, makes it clear that over 90 percent of the FT RAM credits earned have not been exercised by the shippers that hold mainly long-term firm transportation on TransCanada and who earn the credits.

Rather, they have been exercised by third parties, mainly gas marketers to whom the LDC shippers, including

Union, have assigned the FT capacity, notwithstanding the fact that they acquired it to transport gas to specific areas of their franchise.

Union has referred to this activity as assigning capacity, quote, "when the line is full", as distinguished from assigning capacity which is currently not being utilized, which was the original intent of the program.

The same evidence - this is at page 25 of 39, figure 8.4 which I gave you - is that the exercise of the credits has resulted in a very large revenue reduction to the revenue that could otherwise have been payable to TransCanada as IT revenue due to the exercise of the FT RAM credits, which revenue would have had the effect of reducing FT tolls.

The amount of potential -- and I stress "potential", in fairness, but the amount of potential IT revenue offset by RAM credits has increased from about 50 million in 2004 to $400 million in the first half of 2011 alone. That is a total of 2 billion over the period 2004 to 2011, and considerably more since then.

The gaming of the system by marketers and LDCs has produced the opposite result that TransCanada intended. It has resulted in a cannibalization of potential FT revenue by essentially free IT service.

For example, over 90 percent of the gross potential IT service revenue in 2010, 90 percent, was offset by RAM credits. As noted above, the NEB amended TransCanada's toll structure to build the FT RAM reduction directly into the calculation of the toll and has gradually, over the period 2004 to 2009, increased the number of transportation services that are eligible.

So I am going to skip through now to the -- let me just cite one point on page 16. TransCanada, again, states in the evidence that I left with you that its FT tolls would decrease if the FT RAM is eliminated.

It alleges - and I stress "it alleges" - that the large amounts of virtually free IT service funded by RAM have cannibalized its FT service. Assuming only -- and this is the example it uses. Assuming only a 50 million increase in discretionary IT revenue, TCPL states that the Empress-Dawn toll would decline by 6 cents per gJ.

We consider that -- we consider that to be a very conservative example. If it were 150 million rather than 50 million, it would be an 18 cent per gJ reduction.

As noted above, Union's shareholder has earned substantial revenue from the FT RAM feature of the TCPL tolls, but it has earned those revenues not by purchasing IT service to benefit its ratepayers, but by entering into these various types of transactions.

Now, I am not going to -- I am going to skip ahead and talk about -- go to page 17. So what's happened, in our view, is Union's S&T department has essentially commandeered these credits as a method of, quote, "supercharging" the value of the TCPL capacity Union held, and entered into a variety of transactions with marketers in which Union assigned the TCPL capacity and associated FT

RAM credits to the marketer in return for substantial compensation and a contractual -- often a contractual commitment from the marketer that Union Gas's gas would arrive at a delivery point designated by Union in the contract.

The compensation agreed to reflects a sharing of the net revenues the marketer was able to earn from the utilization of the FT RAM credits, even after the cost to move the gas or have it move, or exchanged for gas at Union's original stipulated alternate delivery point.

These expenditures were then accounted for as a cost of the exchange transaction, rather than the cost of generating revenues to reduce Union's gas costs.

I say we had examples given in responses to some of the questions as to how these might work, and I won't go into those, but I did want to go up to the top of page -- I want to cite a little bit of Union evidence here, at the top of page 18, to kind of close this off a bit.

In their prefiled evidence, Union stated -- this is in C1, T3, page 11:

> "There has been a significant reduction in load factors on TCPL long-haul service, resulting in increases in TCPL tolls. In order to mitigate this trend, TCPL introduced the..."

This is Union's evidence now:

> "... introduced the Firm Transportation Risk Alleviation Mechanism ('FT RAM'). This programs gives firm shippers of long-haul capacity (or

short-haul capacity linked to long-haul capacity) credits for any capacity left unutilized."

The underline is our emphasis. These credits can then be spent, in the same month upon which they were received, on any interruptible service on TCPL's system.

Then moving down, Union described exchange revenues later in its prefiled evidence to include net revenues generated from pipe releases or revenue from TCPL's FT RAM program.

And then later, in table 4, entitled "Exchange Revenue", it set the actual and forecast exchange revenues for the years 2006 through 2013. This is all C1 -- this is all in the C evidence.

Then they state:

"The single biggest factor contributing to growth in exchange revenue was the utilization of the TCPL FT RAM program starting in 2008."

Then finally:

"Union's 2011 actual revenue is primarily supported by the TCPL's FT RAM..."

So I just close this off this way. In the evidence -- this was remarked on, I think, two or three days ago by Mr. Sommerville, but in the prefiled evidence of Union in the same section, they said -- and this was the update filed on the 3rd of March of 2012. This is Union's C1, tab 3 evidence.

"At this time", my emphasis, "Union generally supports these service and pricing changes..."

They're speaking here of the TransCanada proposals:

"...intended to increase Mainline revenue from transactional services and help preserve lower long-haul and short-haul rates for firm transport service, including the elimination of FT RAM."

And then we go over -- that's what they said in this proceeding, but notwithstanding this statement, in its intervention in the RH-003-2011 proceeding, Union, along with its sister utilities, Enbridge and Gaz Mét, as members of the MAS group, has opposed the elimination of FT RAM.

In its prefiled evidence entitled "MAS evidence filed on March 9th, 2012", the MAS shippers state:

"MAS believes that RAM offers a unique tool for Mainline long-haul FT shippers to mitigate their risk of unutilized demand charges and differentiates TCPL from other shippers. The continued and escalating use of RAM credits as provided in table 8-5 of TCPL's evidence entitled 'Contracting Behaviour of 2010 Top 5 RAM Users'..."

And I referred to that table earlier. That is where the $400 million figure came from.

"...demonstrates the market's use and reliance on RAM is a value-added FT service attribute."

So there you have it, two different views.

Now, in its current tolls case -- I will summarize this paragraph. It has been referred to. TransCanada has suggested FT RAM be eliminated. Nobody really knows what is going to happen. No one knows. People very chose to that hearing say that it could very well be eliminated.

On the other hand, it could -- the NEB could sort of come up with a son of FT RAM, which took some of its characteristics, restricted its scope in some way, and made it somewhat less of a hand grenade -- if I might put it that way -- but left something in place. And we won't know until the decision comes up.

Now, just to sort of punctuate the point, and then I am going to move on because I want to get into the Parkway extension, and the -- I will just make one last point here. This is at page 20:

> "Had Union used the credits to purchase IT service to move some of its own gas to customers in lieu of the more expensive FT capacity and gradually reduced its capacity for FT, the savings in total tolls because of the free IT would have, as noted above, been treated as a reduction in gas costs, rather than converting the savings in transportation costs by using IT to increase exchange revenue, as I have described above."

Now, I say here that at the bottom of this page, that this has become more -- the issue has become more cogent The issue of the characterization of this -- of these funds has become more cogent because of the increase in TCPL tolls.

And here is a part that I do want to spend a couple of minutes on before moving to the -- moving to the Parkway West.

A further concern with Union's conduct, in BOMA's view, is the potential negative impacts to ratepayers for the departure from the original gas plan and the potential compromise to the integrity of the gas plan.

If Union were able to deliver or itself use FT RAM credits to purchase IT to deliver gas to points in the northwest, northern and northeastern delivery areas during the winter, or Dawn during the summer, when the original Union -- when Union's original capacity was to the eastern or central delivery areas, as they testified, why did it not contract capacity to the upstream delivery areas in the first instance, rather than burden ratepayers with the higher demand charges to the more distant eastern and central zones so as to allow it the flexibility to earn more profits for the shareholder?

This issue is made more cogent by answers Union provided to concerns raised by me and by Ms. Taylor, Mr. Quinn and others, with respect to the absence -- several issues, including the absence of a written gas supply plan, a reluctance to take into account the interests of ratepayers in other delivery areas when making decisions on gas supply, or transportation for one delivery area.

BOMA is of the view that Union's, quote, "gas supply plan" has never been articulated properly in its evidence and does not appear to exist, other than in 43,000 pages of code. This is a big mistake.

BOMA suggests that partly as a result of the absence of a firm plan, firm written plan, Union's S&T department are apparently allowed to do whatever they needed to do in the interests of increasing revenues to the shareholder, despite gas supply planning principles, and without ever informing the managers primarily responsible and accountable for the plan, and, as noted by the Board Staff in its submission, all the while using transportation assets that the ratepayers have paid for.

One would have thought that Union, as a good steward of its franchise, would have embraced the opportunity to offer its sales and bundled-T customers a reduction in gas transportation costs, rather than appropriating the benefit of the reduced tolls to its shareholders.

Union's behaviour was outrageous, not in keeping with the conduct one expects from a utility with a monopoly franchise to serve the community.

Now, let me go on to Parkway. One last point on this.

Union's senior management, Mr. Isherwood and Ms. Elliott, testified that they did not know if, at any time over the course of the IRM program, Union had discussed in a proceeding with the Board or Board Staff the proper characterization of FT RAM-enabled revenues. Ms. Elliott first answered: "Not that I'm aware of".

An examination of the decisions and settlement conferences over the period of the IRM does not show any discussion of this issue, of the proper characterization of the revenues that obtained from assigning its LT capacity.

Union certainly did not have any meaningful discussion with ratepayer representatives that I am aware of over the of the status of such funds, nor did, in our view, the Board give Union any informed consent to use the FT RAM credits in the way it did.

BOMA urges the Board to determine that, effective on the date of its decision in this case, revenues obtained from selling FT RAM credits be henceforth characterized as gas cost reduction and that this characterization be maintained for any, quote, "modification" to the scope of the introduction of any similar mechanism by TCPL in 2013 and beyond.

Let me move, briefly, to the Parkway West.

Union is proposing to spend about $224 million in the next three years, 2012, 2013 and 2014, on a new compressor, new pipeline headers and valves, and land and related common costs for a second Parkway station. From 80 to 100 million will be spent in the test year, and the balance in 2014. At least six million will likely be spent in 2012 on compressor, vendor engineering planning and regulatory work, including a leave-to-construct application for the pipeline component of the work.

An option has already been secured to purchase land for the project, valid until mid-2013.

The project consists of two main parts: a third interconnection with Enbridge separate from the existing connections at Parkway and Lisgar, and a new 47,000 horsepower compressor.

Union states -- and I will try and shorten this up a little bit, because I would like to get to what we're suggesting you do about it, which I am sure must be paramount in your mind, if anything.

But just to go a little bit -- give you a couple of more facts, Union states that the new compressor at Parkway will enhance the current partial loss of critical unit protection -- sorry, I should say partial nature of critical unit protection for Parkway B, the larger of the two existing compressors. The smaller of the two existing compressors, Parkway A, currently provides, as we learned, 71 percent LCU protection for the loss of the larger one for Parkway deliveries -– sorry, Union's pressurized deliveries at Parkway. Let's get that right.

And the larger compressor, of course, provides 100 percent LCU protection for an outage of the smaller compressor.

Now, Union has two existing connections with Enbridge that do not require compression, as you know; one at Parkway on the suction side, and the other at Lisgar.

Lisgar is two miles away from Parkway.

These two connections have capabilities of 1.2 BCF for the Parkway suction and 0.8 BCF in Lisgar. Union -- and as I understand it, Enbridge has some flexibility in sort of which one they use to what extent.

Now -- and lack of -- LCU protection is provided for those connections and those volumes by Union's existing compressors at Dawn, Bright and Lobo.

Now, the third interconnection that Union proposes with Enbridge as part of this Parkway West project does not involve any additional Enbridge contractual volumes at Parkway at this time.

Union plans to file for leave-to-construct later this year. As the Board knows, leave-to-construct is not require for compressor additions. It is required for only a piece of this project, and actually the smaller piece.

Union has recently also concluded an open season for what it calls the Parkway extension, seeking shipper commitments to contract with Union to underpin a proposed new pipeline from Parkway to Maple, to supplement the existing TransCanada capacity on the Parkway-to-Maple pipeline, which Union says is insufficient and creates a bottleneck, which prevents larger volumes of gas moving east and north from Parkway.

Union estimates Parkway extension will cost 360 million. Meanwhile, TransCanada recently received NEB approval to construct, and is now constructing a loop to the more westerly segment of its Parkway-Maple line, together with a shorter loop near Maple, some enhancements to its Maple facilities, at a total estimated cost of 450 million.

As noted above, Enbridge has two existing connections with Union; one at Enbridge on the suction side, and one at Parkway.

Enbridge also takes a small amount of gas, about 250,000 gJs a day, compressed, at Parkway.

There is currently substantial excess capacity at each of these interconnections.

Finally, as part of its GTA reinforcement project, Enbridge is proposing to construct a 24-kilometre-long transmission line from the new Albion city gate on its distribution system to Union Gas's proposed new Parkway West station, thus providing it with a third interconnection with Union in addition to the connections it currently has at Parkway, Consumers and Lisgar.

Union and Enbridge had explored at some length, through 2010 and 2011 and early 2012, joint ownership of the Parkway West to Albion pipeline. But Enbridge, as you have heard, ultimately decided to build and own the line itself.

Union and Enbridge had extensive discussions commencing in July 2010 and carrying on throughout 2011 and part of 2012, and developed a memorandum of understanding to collaborate on a series of infrastructure issues.

Now, I have listed these and the quote from the relevant presentation at the top of 26. I don't think I will go through them. You know what the pieces are.

Of note, I think, is the third bullet, which states that -- and this was a presentation Union made to its senior management:

> "A new feed into the GTA from the Parkway West station to a new city gate for Enbridge at Albion is built. This section of pipe will be a joint venture between Union and Enbridge."

Now, it didn't turn out that way, as it happens, but the next point is something I would like to emphasize. Mr. Redford testified that Union's proposed 50-50 joint ownership of the line, and their sole ownership of the line east of Albion, would have been the lowest-cost solution to achieving both a third path to Enbridge and increasing the capacity of the Parkway to Maple corridor. That is at volume 9, page 37.

I think that is a very important comment. It wasn't pursued at the hearing. We don't know the detail of it, but this was the man who knew most about these projects alive, I guess. That is his comment.

Moreover, a recent Union open season with -- a recent -- moreover, sorry, a recent Union RFP for an open season states that joint ownership with Enbridge provides significant economies of scale, lower cost, environmental benefits, one pipeline through an urban environment, reduces environmental footprint and impact on local residents.

The alternative now -- the alternative arrangements now being proposed, including a large feeder pipeline by Enbridge, a new compressor station and pipeline and other infrastructure at Parkway West, together will cost more. Both Union and Enbridge ratepayers will likely pay more as a result.

It is clear from the evidence that the Parkway West project and the Parkway extension project are closely linked in the minds of Union and probably Enbridge, as well. The Parkway West project is designed, in part, to underpin the increased volumes that Union expects would flow at Parkway in next few years.

A couple of further ways of putting that, middle of page 27, in Union's presentation to its senior managers in April 2012, the projects are referred to as a suite of projects that will eliminate the bottleneck east of Parkway and provide Enbridge with a third feed to the GTA. And at page 8 of the same document, it states:

> "Parkway West facilities provide reliability and security of supply for customers east of Parkway and provide ability to reconstruct existing capacity and pursue expansion."

Perhaps the clearest statement of the linkage is found at J.B-1-7-8, attachment 13, page 3, in the presentation by Union to a joint Enbridge and Union executive meeting on January 12, 2012 - that is pretty recent - where Union states, and here it lays it on the line:

> "Parkway West station is constructed to provide:
> "1. LCU coverage for Parkway compression."

Two -- second, my bracket -- actually, third:

> "Service feed at Parkway in addition to Parkway consumers and Lisgar; and
> "3. Feed-in compression for Parkway to Maple pipeline."

Parkway West is characterized as a facility that would enable Union to tap new markets downstream of Parkway in Ontario, Quebec and the northeastern United States, and as part of a joint venture in Union, with Enbridge in particular, a station to which Enbridge could connect its new transmission line.

Now here I guess is our conclusion. In BOMA's view, the evidence supports the view that, absent the Parkway extension or an equivalent project by TransCanada beyond the loop that TCPL is currently building, the new compression at Parkway West is unnecessary at this time.

Union has not suggested that the new compressor is required to deliver gas to Enbridge Parkway West or any other proposed Parkway West connection.

LCU used for those connections with Enbridge is already provided on Union's system. The compressor is only necessary if and when Union achieves Board approval to construct the Parkway extension, because that would reflect the need for much greater volumes of gas moving through Parkway in the future.

Union states that LCU is necessary in the event of an outage of Parkway B compressor. However, the likelihood of a serious compression failure at Parkway West is de minimus. That was explained pretty carefully by TransCanada and in questions by TransCanada of Union with respect to reliability indices and the like. So I am going to pass over that. It is available.

Union has predicted -- projected export of gas through Parkway would increase to 3 pJs by 2015 or 2016, but those are just projections at this point. They have not been realized, and they seem at odds with Union's recent open season experience in which it stated it was unsuccessful in obtaining sufficient shipper interest to underpin a new pipeline. It said it was still working on it, as I recall.

The market, we would suggest, is not there for such a service at the present time. There would, therefore, appear to be little urgency for the Parkway extension at this time.

Now, on to sort of how you should deal with this given all of that. While Union contends that it is not seeking any Board approvals in this case with respect to Parkway West, the Board has a practice of approving capital budget numbers when submitted as part of a rate case and of raising with the applicant any concerns it may have as to desirability and other potential prudency risks associated with particular project expenditures, especially larger ones.

The Board is right to do this, because the applicant should be forewarned prior to launching the large investments. Moreover, as a practical matter, it is not possible to dismantle a huge project like a pipeline compressor station after it has been built.

In this case, BOMA urges the Board to warn Union about the possible prudency risk of the expenditures in the proposed -- of the proposed compressor station, given the apparent lack of need for it at this time; nor will Union's upcoming leave to construct application for Parkway West necessarily be an opportunity to focus in detail on the need for the compressor, as only the pipeline portion of

Parkway West capital expenditure is subject to review.

Moreover, more generally - and here is sort of the final part of this - BOMA is of the view that the Parkway West project is the first of several dominos which, when all have fallen into place, will result in very large capital expenditures by Union, Enbridge and TransCanada which may overlap and may very well not be the most cost-effective way to proceed from a ratepayers' point of view, and will likely result in higher costs for ratepayers than would result from a more coordinated approach.

In our view, the Board should not wait for Union and Enbridge leave to construct proceedings to encourage a prudent least-cost solution for both Union and Enbridge ratepayers.

It should act now to ensure that those proposed expenditures are considered in an Ontario-wide context.

Once these expenditures are underway, it would, as a practical matter, given their size and locations, be difficult for the Board to refuse to allow the facilities into rate base or reject them in whole or in part on the grounds of prudency.

The magnitude of these proposals and their strategic nature for all of their utilities require a more forward-looking approach. Our conclusion, the Board should not bless the Parkway capital expenditure in the absence of further and better information on, one, the need for the project in the absence of details on the Parkway extension proposed expenditures on new facilities by the three companies. The proposed facilities are large, easily in excess of $1 billion over the next few years.

Two, a thorough examination of Enbridge's greater GTA project and whether it will necessitate a connection with Union at Parkway West. It is not clear whether a new Union station needs to be constructed to support the Enbridge expansion. Could the Enbridge GTA line connect at or around Lisgar, for example?

A clear understanding of the additional -- three, a clear understanding of the additional costs for ratepayers that Mr. Redford referred to will result -- that will result from both Union and Enbridge building transmission lines rather than a joint line.

The Board should have both the Union and Enbridge expansion plans in evidence before it makes a decision to approve either of the large capital projects in and around Parkway.

Moreover, the Board should not ignore TransCanada's offer to consult with Union and to devise a customized non-facility or partial non-facility solution to Parkway West LCU to the degree the Board thinks it necessary, and to remove the constraint between Parkway and Maple.

The Board should require TCPL, Union and Enbridge to discuss alternatives to Union and Enbridge's facilities' expenditures; they're well over a billion dollars.

While TransCanada's initial suggestions were perhaps deficient in some respects, TCPL, as I understand it, was acting in a relatively short period of time -- reacting in a relatively short period of time to what appeared to be an unexpected, somewhat unexpected, unilateral initiative by Union.

The parties should be asked to negotiate a solution that minimizes overall capital costs while maintaining reliability and access to markets.

These discussions should take place before the Board accepts filings from either Union or Enbridge of their leave to construct applications for the respective projects.

If the parties are able to arrive at a solution, the Board should then require TCPL to obtain NEB approval of any steps it must take as part of the settlement, which do require the NEB approval. Only then should it -- should you entertain leave to construct applications from Union and Enbridge.

In other words, you have to get TCPL locked in, and the only way they can get locked in is if you get -- you don't want a situation - and I am sure you are thinking about this, and others are thinking about this - where TCPL commit to something and then can't do it because some group opposes the proposal at the NEB.

I am not saying that would happen, but I am just saying that you should have the NEB approval in hand.

If, after a decent interval, the parties cannot reach an agreement, then the Board should proceed to entertain the leave-to-construct, and if Union and Enbridge can arrive at an agreement but TCPL cannot agree with them, then the Board should proceed with the leave-to-construct.

Finally, the Board should not accept at face value the proposition that Union, Enbridge and TCPL are competitors and therefore cannot be expected to negotiate a tri-party solution.

For the most part, Union and Enbridge are not competitors. They each have an exclusive franchise.

Union and TCPL have collaborated closely in the past, so they can obviously work together if it is in their common interests. They should not be permitted to insist on being able to each have their own projects for which ratepayers pay without the close scrutiny from the Board.

For an Ontario ratepayer, it does not matter too much how the Parkway corridor is expanded and who does it, as long as the expansions are done in the most cost-effective manner and there are no artificial barriers placed on the movement of gas from Dawn through Parkway to Ontario, Quebec and US northeast markets.

After all, Union and Enbridge are or should be, it seems to me, first and foremost, distribution businesses with adjacent storage facilities.

While TransCanada cannot be given the opportunity to block access to markets, if that is what it is doing, collaboration should be possible.

Finally, in that connection, the Board should also initiate contacts with the National Energy Board at a board-to-board level, to see if some procedural collaboration can be achieved, if only on the scheduling of any components of a just solution -- of approval for a just solution in the event one is reached. The context should not be left to the Ontario Ministry to initiate.

Those are my comments on the Parkway.

Now, we are getting down, I see, to 1:30. Everybody's probably collapsing from lack of energy. I think that the next section that I have here is the in-franchise revenue forecast. I am sensitive to time and to the consideration that you have given me.

This is a lengthy section, because the revenue forecast, as you are well aware, is difficult to get your mind around. It is not a single thing. It is actually six forecasts.

And the way we -- the approach we have taken to it is similar to the approach that Dr. Higgin has taken, that you need to look at each section.

Now, this written -- so anyway, what I am trying to say here, badly, I can do one of two things. We could break, and I could come back and go through this and try to go through it as fast as I could. I could probably get through this in -- in less than half an hour.

Or if you wanted to accept this factum on this section as sort of the argument, I could file that with you, if that makes sense to you and if --

MS. HARE: Well, is there more to file than what you have already given us?

MR. BRETT: Sorry?

MS. HARE: Is there more to file than what you have already given to us?

MR. BRETT: No.

MS. HARE: So it is already an exhibit.

MR. BRETT: Yes. So that would do it, then? I think that rather than me trying to go through this, broadly speaking, you know, our concerns are similar to the concerns that Dr. Higgin has raised. We have taken each segment of the -- I guess there is only one -- there is only one point.

Maybe I will just take one minute, if I may, because this was an area that we spent a lot of time on, at least thinking about it. And we did not -- we didn't really have a very satisfactory response. I just want to mention -- I will just mention it -- I will summarize it this way, if I may.

These forecasts are short-term forecasts. That is agreed by everybody, including Union.

MS. TAYLOR: Mr. Brett, what page are you referring to? What page are you on now?

MR. BRETT: I'm sort of summarizing the whole thing. All right?

MS. TAYLOR: Okay. I won't look, then.

MR. BRETT: I'm sorry. I am just going to summarize one aspect. I am looking, if I may, just for a moment to the little piece that I -- your question is a good one -- that I was going to refer to.

Sorry, I am now getting my mind around it. Just give me a second here. Here we go. Page 50, if you turn up page 50.

First, perhaps, two general propositions.

One, I think everyone is agreed -- I mean by that Union and the intervenors -- that these forecasts are one of a variety, a type of forecast called a short-term forecast. There are -- short-term forecasts are generally regarded, as I understand it, by the experts as a forecast of up to about 24 months in duration, and they raise different sorts of issues than long-term forecasts do.

Now, if you look at Mr. Rudden's evidence, for example, in the 1993/94 case - or, sorry, it is a 2005 case, the last rebasing case - he discusses the difference between short- and long-term forecasts.

In his view, to sort of cut through it, the sort of forecast we're talking about now is a short-term forecast.

The second point is with a short-term forecast, the most important factor is accuracy. In other words, what you're trying to do is forecast -- the best forecast is the forecast that most closely approximates what actually happens in the year that you are trying to forecast.

With longer-term forecasts, as I understand it, you get into other considerations, because you are using it in a different way. All we're using this forecast for, in this case, is to forecast a number of degree days for 2013. Period. Full stop.

It seems to me -- so you look, then, at accuracy, first and foremost.

Now, Union would say, in fairness, and I would agree -

and I will come back do this in a moment - you also have to be a bit -- you have to be concerned with symmetry, because symmetry is just a pseudonym for fairness.

You don't want a forecast that always overstates or always understates, obviously, what the degree days would be, because given the use that we're going to put the forecast to, that would be unfair. That, I think, is a self-evident proposition.

But returning to accuracy, which is a bit more subtle and a bit more complicated, what we did, what BOMA did is we examined a reply set down on page 50, we examined carefully some tables that were provided by Union as part of an IR response to a question, I believe, from Mr. Aiken. It is J.C-2-2-1.

You may remember my stumbling effort to cover this in cross-examination, but in any event, table 2 on that page - and I don't have it in front of me, nor do you, so I will describe it to you. Table 2of that response shows, for each year from 1985 to 2011 inclusive, the Toronto Airport actual degree days.

Now, I heard what Dr. Higgin had to say about Toronto Airport, and I agree with him. This use of Toronto Airport is just -- that I am going to suggest is the same -- is sort of you use it to make a point here, because we're talking about methodology, and the Toronto Airport has the longest data going back the furthest of any place in Ontario.

So, anyway, be that as it may - and you can decide the strength of that comment - the Toronto Airport actual degree days are compared with forecasts for each of those years from 1985 to 2011 using the 20-year trend and the 55-45 blend methods, respectively. That is all it does.

Let me then carefully go through the next paragraph. BOMA has suggested and Union has agreed, subject to check - this is at V1, page 109 - that the forecast of degree days using the 55-45 blend method results in a number of degree days that is closer to the actual number, because the table I have described here has three columns, actual number, forecast of what that number would be using 20-year trend, and forecast of that number using the 30-year -- the 55-45 blend. That is all it has on that table.

So what you find, if you examine it, is that the 55-45 blend results in a number of degree days that is closer to the actual numbers than the forecast using the 20-year trend in 14 of the 26 years, and that's at V1, 109.

Therefore, Union's statement in the second short paragraph on that page underneath the table -- and it says, quote:

"Please note that the 20-year declining trend produces weather normal estimates that is closest to the actual weather."

That is not correct. It is simply not correct, and you can determine that by looking at the table yourselves. And if I am wrong, you can keep heap scorn on me.

In BOMA's view, this fact and Union's admission is a very important point, in that it answers the question -

really answers the question, I think -- we think: Which method is more accurate?

In the hearing, Union's witnesses, after agreeing with BOMA's observations, tried to move the discussion quickly to various statistical tests of accuracy and claimed they produced a more accurate result. But it was not able or did not try, in any event, to explain away the results in the table.

To repeat, the only result that should concern us here is: Which forecasting tool yields the number of degree days that is closer to the actual degree days in more years? Our emphasis.

Neither the prefiled evidence nor the witnesses were able to demonstrate that their test for accuracy was superior to the simple test. If we track just the last ten years, on the same table, each method was closest in five of the ten.

So the findings hold whether one looks at the full 26-year period with which Union has used to devise its 20-year trend, or just the last ten years.

Now, you will say next, Well, what about symmetry? Looking at the symmetry of the two methods in the same table, the ratio of over-forecast to under-forecast of degree days were very close. It was 16 to 10 for the 20-year trend and 17 to 9 for the 55-45 blend.

So my conclusion is, from a fairness point of view, there is no substantial discrepancy.

Now, the third -- you will recall there were five tests. Those were the two big ones, and then there was sustainability, whatever that means -- and I will come back to that -- sustainability and simplicity.

Stability, it is clear that the 55 method is more stable and less volatile. You can see that at volume 2, page 115.

Obviously both methods are simple, and obviously they're both sustainable.

So if you add all of that up, it seems to me that the 20-year trend is still the more desirable -- sorry the 55-45 blend is a better forecasting tool for this specific purpose than the 20-year trend.

And I think with that, I will wind up, and thank you for the accommodation.

MS. HARE: So BOMA's recommendation is to stay with the 55-45 blend?

MR. BRETT: Yes, it is. I mean, we could live with going to 50-50, but we do not -- we suggest the Board not go to the 20-year trend.

MS. HARE: And just one other question. When you said that all we're doing is setting the degree days for 2013, if 2013 happens to be the base year for IRM, would those degree days not hold for the next five years, six years?

MR. BRETT: You mean if -- whatever we chose for 2013?

MS. HARE: If 2013 becomes the base year and Union files for IRM, and I realize that is an "if", but if they file then for another five years, then the degree days presumably would hold for the next six years?

MR. BRETT: I think that's correct, yes.
MS. HARE: Okay, good. Ms. Taylor reminds me, subject to variance accounts or average use accounts.
MR. BRETT: Right.
MS. HARE: Do you have any other questions?
MS. HARE: Okay, we will break --
MR. SMITH: Madam Chair, if I might just ask a brief question.
I am sure, given timing, my friend didn't have time to make copies, but I did not receive a copy from him -- I have his factum, but I did not receive the additional material, which I understood to be excerpts from the NEB proceeding.
I guess I would ask, through you, if my friend could simply advise whether this is material that was actually filed in this proceeding or if what he has proposed to do is just now file the material from the NEB proceeding.
I just wasn't clear, because I hadn't seen it.
MR. BRETT: My understanding is that it is not now, I don't think, in this proceeding.
I have just provided it as a matter of convenience, and it is available. I mean, if anybody wants to go to the work and effort, they can get it from the NEB office, but I just put it here to make it easy for people, frankly.
MS. HARE: Do you object to it being filed at this point?
MR. SMITH: I don't know whether I object. I mean, in the normal course, if my friend had wanted to rely on the

material, obviously it would have been put to the witnesses in cross-examination.

I don't want to make a big deal of it, certainly, not having seen it, but I do make the observation that it is a bit unusual.

MR. BRETT: Well, I guess, I mean, I have heard this a lot -- not a lot, but I really -- all I am really doing is, as a matter of convenience, putting some evidence that is before you that has been filed in another proceeding.

I find it incredible, in a way, that we are even debating this. I mean, the NEB is a statutory tribunal. You have the right to look at what the NEB is doing any time you want, in terms of their decisions, the evidence that is put before them, the transcripts.

The notion that somehow you have this artificial barrier that because it happens before another regulator that it can't be -- that the Board doesn't have the right to automatically look at that I think is wrong.

I don't know of any law or any court practice that would constrain you in that manner, and it is also counterproductive. You presumably have to have the right to do this.

MS. HARE: I think, not to answer for Mr. Smith, that the objection is that this is filed at this point as opposed to when we were cross-examining on the issue. Is that your objection?

MR. SMITH: It is. I frankly just am not in a position to say whether any Union witness would have had a commentary on it. I am not in a position to object or not object.

I just observe it wasn't put to the witnesses. So I am not in a position to, frankly, be informed or, myself, to lead evidence on it. I am not trying to be difficult.

MS. HARE: No, I understand that. Now, looking at it, there are some notes on this, some things underlined, some notes.

MR. BRETT: I can give you a clear copy if you'd like.

MS. HARE: I think if we are going to keep this -- I think the only reason you are filing this is evidence that in fact TransCanada has asked for the FT RAM to be eliminated, which I think is not in dispute.

MR. BRETT: No. Actually, that is partly right.

But really the reason I filed it was a bit different.

It contains in a very -- and Mr. Smith can read this when he gets a chance. Maybe he will have a different view when he reads it.

The reason I used it is simply because it contains, within about ten pages, the best explanation I have seen from TransCanada's -- albeit TransCanada's perspective, but bear in mind RAM is TransCanada's tariff. They started RAM. It is their tariff.

So they are giving an assessment -- they're giving a summary of how it has developed in terms of the volumes, the take-up. It is the take-up. It is the description of it. It is what they hope to achieve.

Well, actually, when it was initially put in place, it wasn't just TransCanada. It was everybody on the Tolls Task Force; it was unanimous agreement. But I use it because it is a convenient summary of data on RAM. I don't think it is something that is contentious. It's a series of graphs that show, you know, TransCanada's FT toll going down, its IT toll going up, the amount of RAM credits that have been realized. I don't think it is anything more than that.

I wanted to have something that I could put in front of you that would give you a snapshot of FT RAM, because the point is, in trying to decide what the proper characterization of these costs are, you need to have an appreciation of what RAM is all about, because it is the link between -- in my view, it is the link. The origins of RAM and what it is are critical to deciding how to characterize it. That's all.

MS. HARE: Do any of the other parties have any comments on this?

Mr. Thompson? No?

MR. THOMPSON: I am okay with it.

MS. HARE: Okay. We will have this document as part of the argument. The only thing is I would like you to file a clean copy.

MR. BRETT: I will. I will do that this afternoon.

MS. HARE: We will take a break now. What I propose we do is break until 3:00 o'clock, and when we return, then, we will go to 4:30 without a break.

Oh, sorry. To the extent that those remaining --

because we have had extensive arguments on some of the issues -- to the extent that your arguments have already been made by others, perhaps you could look at shortening and just referring to people that have gone forward, and just highlight any differences in positions. Thank you.

--- Luncheon recess taken at 1:46 p.m.

--- On resuming at 3:05 p.m.

MS. HARE: Please be seated.

Mr. Janigan, we were thinking that you would -- if you start, you will definitely be done and Mr. Quinn may not. But can you come tomorrow, Mr. Quinn?

MR. QUINN: Actually, I had to beg out of a DSM proceeding and do it by phone because of another complication, so I will endeavour -- I will endeavour to do it in the hour, and that is the commitment I gave to Mr. Janigan to try to allow him some time.

MS. HARE: Okay, good.

MR. JANIGAN: I have a stiletto ready at --

MS. HARE: Perfect, perfect.

FINAL ARGUMENT BY MR. QUINN:

MR. QUINN: Long hook.

Good afternoon, members of the Board Panel, and on behalf of the Federation of Rental-housing Providers of Ontario, we are pleased to be here in the final stages of an important process that consumed much of the summer for most of us.

In our view, the extent of the process was necessary and we are encouraged with this Panel's approach in ensuring an accurate record and clarity on the submissions made.

We trust that our submissions today will be treated with the same discernment and scrutiny, and look forward to any questions the Panel may have as I provide our perspective on the matters before this Panel.

I have compiled a compendium that includes all of the evidentiary references, with the exception of prefiled evidence, which -- I will refer to the document only periodically, pointing out specific pages that may be pertinent to an understanding of our position.

So I have given Mr. Millar copies of the compendium.

MR. MILLAR: Yes. I provided them to the Panel. It will be K14.5.

EXHIBIT NO. K14.5: COMPENDIUM OF FRPO.

MR. QUINN: Thank you.

We have processed a substantial amount of information over the course of this proceeding, and I trust my friends representing other ratepayer interests will provide more insightful and helpful submissions on other matters. Therefore, I will only touch on some of those matters briefly at the end of my submissions, and I will be focussing our submissions on the following areas in this order: storage issues, transportation issues, cost allocation, and then deferral account issues.

In the area of storage, the NGEIR decision was made by the Board with the best information and in the public interest. While a landmark decision for the natural gas industry here in Ontario, the decision could not, and in our view did not, provide detailed orders on how to effect the accounting for an integrated storage operation.

While many intervenors opposed it at the time, we eventually accepted it and turned our attention to managing the implications of the decision in the best way possible in attempting to protect ratepayer interests.

And, yes, we engaged in a series of annual proceedings trying to understand how costs and benefits were allocated by Union. This process resulted in the sum of the Union practices, like return on purchase services and provision of hurdle rate to the shareholder, being changed as a result of EB-2011-0038 once they were understood.

But in our submission, that proceeding did not provide significant understanding of how the ongoing investment in the utility and non-utility storage operations would impact operations, maintenance and administration costs allocated to the operations of the respective businesses.

In the EB-2011-0038 decision, the Board approved the allocation factors that Union used to make a one-time separation of the storage plant at the end of 2006.

However, that decision did not consider how Union should update these plant allocation factors to reflect subsequent plant additions, or prove Union's proposed methodology to allocate O&M costs.

With this as our outstanding concern, and given that this is the first rebasing proceeding since the NGEIR decision, Canadian Manufacturers & Exporters, Consumers

Council of Canada, the City of Kitchener and FRPO engaged Mr. John Rosenkranz to work with us and eventually lead evidence to address our concerns.

While our evidence drew inquiry from other parties, including Board Staff, Union did not ask any questions through the IR nor technical conference.

However, we continued to ask questions of Union to try to understand their methodology and application. Union did not file any significant detail on this approach and provided the results of its assessment of allocation changes as a result of additional non-utility investment, since the time of initial separation, very late in the discovery process.

We are left three areas of concern. The first area is plant allocation for maintenance capital projects. In our view, Union has under-allocated storage plant additions to the non-utility storage operation by continuing to use the same plant allocation factors that were developed for the one-time separation of plant.

Union refers to these original or historic allocation -- refers to these as the original or historic allocation factors.

In our submission, Union needs to update these factors each year to reflect the changes in the relative amounts of utility and non-utility storage.

The summary of this issue, as we see it, is as follows. In Exhibit J8.5, Union confirms that the original allocation factors were used in preparing the evidence for this proceeding. The only exception appears to be Dawn Plant J project, where the non-utility allocation factor was changed from 19.86 percent to 42.45 percent, and this is found in Exhibit J.B-8-10-2 and in Exhibit JT1.34.

Union provided the updated allocation factor for each storage asset. Union says these numbers are a result of a review conducted in 2012, but Union did not file the information until August 2nd.

Union says that it had used the revised updated factors to allocate plant additions for maintenance capital projects. The estimated allocation of plant to non-utility storage would have been 50,000 higher in 2012 and 25,000 higher in 2013.

Union does not provide actual information for the years 2007 through 2011, even though the impact of Union's failure to update the cost allocation factor on 2013 rates depends on the cumulative misallocation of plant additions since 2007, not just the allocations during the bridge year, but also the test year, as evidenced at Exhibit J8.5, as previously mentioned.

Union does not propose to make any adjustment in 2013 to correct this error, and in response to a data request from Staff, Mr. Rosenkranz, in L.B-6-1-1, proposed a methodology for updating the plant allocation factors based on additions to physical storage, capacity and deliverability as the original separation was done in this way.

However, the methodology that Union describes in

JT1.34 is based upon capital expenditures, and while we were surprised at the change in methodology from the original separation, we can accept that it can be done in this way as long as it is done annually, which leads us to our second concern, and that is the allocation of O&M costs to the non-utility storage.

Union admits that its failure to update the plant allocation factors also means that not enough O&M was allocated to non-utility storage operation for 2013.

Now, this may not have been thought of during the IRM period, but this is rebasing, and, in our view, the omission ought to be corrected for the test year and prior to any future -- I'm sorry, and prior to any future IRM period.

According to Union, the utility O&M costs should be reduced by approximately $100,000.

The same plant allocation factors that are used to allocate plant additions are used to allocate O&M costs for shared storage assets. In J8.3, Union confirms that the original allocation factors were used in preparing the evidence for this proceeding.

Union estimates that using the updated factors would decrease utility O&M for 2013 by $100,000, but does not propose to make any modification to 2013 rates. And that's found in Union's supplemental response to J8.5.

Thirdly, we are concerned about the allocation of general plant to non-utility storage. Union has under-allocated general plant additions to non-utility storage plant by failing to update the other general plant allocation factor.

As a result, non-utility gross plant for 2013 is at least $1 million too low, and utility gross plant is at least $1 million too high.

The one-time separation of storage plant included an allocation of general plant. Two separate allocation factors were used, one factor for vehicles and a second factor for general plant.

The other general plant allocation factor that was used for the one-time separation was 2.92 percent. This factor is the arithmetic average of the ratio of non-utility storage plant to total plant, 3.2 percent, and the share of non-utility support costs -- support -- excuse me, the share of non-utility support costs in the total O&M, which at the time of separation was 2.52 percent.

Union has not updated the other plant allocation since the one-time separation of plant, and that can be found in J.B-8-10-2, attachment 1.

Based on plant and O&M shares for year end 2002 -- sorry, 2010, we did an estimate of the other plant allocation factor and have estimated that it should be raised from 2.92 percent to at least 4 percent.

And if you at this point could turn with me in the compendium, it would be on page 17 of 69. Oh, I'm sorry, 19 -- my page is off. 21 of 69.

So just to -- for clarity, to provide an illustrative impact of -- using 2010 year-end figures, we compared the

2007 process that we gleaned the information from EB-2011-0038, and provided each of the references to the specific pieces of data, but then moving forward we have tried to incorporate, as you will see in lines 6 and 7, what information was made available in this rebasing proceeding, but absent the non-utility storage plant for year-end 2012, all we can do is our best effort at an estimate for year-end 2010.

That increases the general plant allocation factor from the 2.92 percent to approximately four percent.

If you would flip over the page to page 22, the application of this factor across 2010, 2011, 2012 and 2013 is demonstrated with a reference to the specific line items that were, again, in this case pulled from the rebasing information, to come up with an increasing under-allocation of non-utility, which peaks as $306,000 for 2013.

With that background, we would respectfully request that Union be directed to make the changes to the other general plant allocation factor using the most up-to-date information available prior to the implementation of 2013 rates.

In our view, Union's cost allocations to its non-utility storage operation needs to be examined more thoroughly in the 2014 rate case, especially if 2014 rates establish the base rates for an IRM period. If that is not available to us, then other alternatives could be considered.

We would respectfully request that the Board direct --

the Board to direct Union to file evidence that updates and expands upon the evidence filed in EB-2010-0039, Exhibit A, tab 4, to fully describe the methodology that Union proposes to use to update all of the cost allocation factors and the resulting factors for each year beginning in 2007.

Further, with that information, we believe that it would be helpful to the Board to have Union file plant continuity tables for its non-utility storage operation, to allow parties to see how plant additions were allocated between utility and non-utility storage.

Now, this last point may draw some concerns from our friends at Union, who often want to refer to non-utility storage as unregulated, and throw the proverbial cloaking device over the information pertinent to non-utility storage operations.

While I may be repeating submissions made in the final minutes of the oral hearing, we would respectfully submit that the NGEIR decision resulted in forbearance on regulating the price of new ex-franchise storage contracts moving forward.

That same decision affirmed the continuation of an integrated storage operation.

In our view, the Board still has the purview over matters of non-utility cost, especially as they impact the costs borne by the utility storage operation by virtue of cost allocation exercises.

And further to that point, we appreciate the Board did require Union to follow -- file unredacted copies of J.O-4-15-1 on a confidential basis, providing an opportunity to create a layer of transparency.

We believe this is a positive step as a check and balance for non-utility storage investments, and would request that these statements be continued to be made available to compare with the continuity tables for the non-utility storage operation, in addition to the concerns shared by Board Staff and others.

MS. HARE: Can I stop you and ask you something?

MR. QUINN: Sure.

MS. HARE: Those continuity tables that you are suggesting, so those would be used on a going-forward basis; is that what you are suggesting?

MR. QUINN: What we would like to see is the represented year's, 2011, and moving forward, so we can understand the point that they got to for year-end 2012, but clearly once 2012 is filed and accepted, then from that point forward, those continuity tables would be updated on an annual basis.

MS. HARE: Okay. Thank you.

MS. TAYLOR: Just to be clear, then, so you're disputing that the 2013 number is, in fact, correct?

MR. QUINN: We are concerned that all of these factors weren't taken into account. As the maintenance capital is updated, there was an under-allocation in our view. So to be able to see the history and see how decisions were made at each year-end.

And admittedly, they may not have been made at each year-end because it was an IRM period, but that is pertinent to allocating of costs. It may not have seemed pertinent because of the IRM period, but in our view, the utility and non-utility separation of costs should happen ahead of issues of cost allocation for the utility. And we believe that they were pertinent, and would still be pertinent moving forward beyond the rebasing year.

MS. TAYLOR: Okay. Thank you.

MR. QUINN: I will leave open an opportunity I should have if I slow myself down. I should be able to field and questions, if that doesn't make sense, at the end.

The other area of utility storage that we would want to bring to the Board's attention is the allocation of system integrity space.

It is covered in Union's evidence in the prefiled evidence, and we asked some interrogatories and some questions at the technical conference and the oral hearing, and quite frankly have not been satisfied to this point.

So at a high level, Union is proposing that it would have two sets of contingency space, one in the fall at 3.5 pJs, and one in the winter at six pJs.

The fall three and a half pJs would be used in the event of warmer than normal weather and in the fall in providing extra space for the continued storage operations, while the six pJs the winter would be used for storage needs, to keep Union's storage operating during the more critical periods of cold weather and through to the March

1st peak day.

We had put forth in our questions the proposition that the three and a half pJs of the fall could also be used for the six pJs of the winter.

In that proposal, we had asked Union to consider, if they have set aside three and a half pJs in the fall, if it does not get used, then it would be subsequently filled and be used as part of the sic pJs for the winter contingency. In that way, three and a half additional pJs of space could be freed up, and that could be then sold as short-term storage space because it is now excess utility space.

The response that we received from Union was that it would cost more to fill the space in December -- or in the winter versus July.

We had asked that they demonstrate that fact.

Unfortunately, through the questions that we asked at the technical conference -- and I include the pages, and we don't need to go through the detail, given the time, but they're found on page 23 through 25.

We had asked for -- to provide the numeric example that demonstrates keeping the space empty has saved ratepayers money.

The initial response is captured at JT1.12, and I skipped over an important point of detail in the -- trying to move forward.

On page 24, I proposed the opportunity to use a fill in December - that would be found in line 3 and 4 - that the space could be kept empty until December and fill the space in December, and then used for the six utilities -- six pJs of utility winter system integrity space.

Again, we were informed that that would cost more, so we asked for that point to be demonstrated.

The first table received back at JT1.12 actually included a July price and a January price, which netted out significant premiums for a winter fill.

But once again, we had referred to the fact that we wanted December. So we did ask for that to be updated in an undertaking in the oral hearing. And we received a July-December set of prices, but neither the JT1.12 nor the Exhibit J7.5 included any reference as to where these prices came from.

Our concern is we had looked at this proposition before forwarding it because we believed that there was merit in using this system integrity space as effectively as possible, and we believed that there was a potential to double-count here.

So these numbers did not, in any way, represent the numbers we expected to see based upon our knowledge of the market.

I undertook to try, without reference to these numbers, I undertook to try to provide an objective source of these numbers. And on the succeeding pages we have presented the monthly natural gas price index summary for July 2010, December 2010, and subsequently, for 2011, those same calendar months.

There is an awful lot of detail on the page, so I will only point you down the left-hand side of the first page on July 2012 found at page 28.

In the areas that are covered by the Canadian Gas Price Reporter is Dawn, which is where we would be filling the storage. That price, index price, for the month of July 2010 was 4.9844.

So I recognize that in this proceeding it is very difficult to follow all of the numbers, so I simply copied and pasted the numbers out of these reports to present a table 1 that is found on page 32, which are simply taken from and extracted from those tables, to show that, in fact, the July price, while marginally higher than the December price in 2010/2011, it was actually -- it was at a significantly higher price in July than in December in 2011/2012.

What this brings us to is the fact that we want to ask that this situation -- and Union can provide, and I am sure it will in its response argument, references to where it got its data, and if it cannot demonstrate there is merit based upon the figures that are in front of them, we would like Union to consider using the 3-1/2 pJs of fall contingency space as a supplement -- as a contributor to its 6 pJs of winter space, freeing up that 3-1/2 pJs. Using Union's reference value of storage for 2013 at 85 cents, that equates to approximately a $3 million potential benefit to ratepayers for the better utilization, in our view, of that storage.

I went through a lot of data fairly quickly, so I pause, but I will consider any questions at the end, if I have lost you in the process.

I am about to move to upstream transportation. In Union's words, the gas supply planning process is guided by a set of principles that are intended to ensure that customers receive secure, diverse gas supply at a prudently incurred cost. And that can be found in D1, tab 1 of the prefiled evidence.

While our friend, Mr. Smith, stated during the oral proceeding that the only experts in gas supply at the hearing were on Union's panel, others in the room, including TCPL and myself, may have taken exception.

In directing the municipal utility for a decade that saw the evolution of the Ontario market away from our primary reliance on Western Canadian Sedimentary Basin via TCPL to other sources of delivered gas in Ontario to my current responsibilities here and with another Ontario utility, I understand the considerations of ensuring security of supply at a reasonable and economically prudent rate.

In my submission, from what we have heard in this proceeding, the Union Gas supply plan is not based on the principle of economic prudency, but shareholder opportunity.

I came to the conclusion that Union is contracting for transportation in excess of its needs because of the following points, which I will cover in slightly more detail.

Union's pattern of utilization demonstrates its actual need; Union's customers have been paying more than they ought to, due to the incentives enjoyed by utility shareholders; and, three, Union has not considered other viable options currently employed by other utilities here in Ontario.

On the first point, it took some time to understand how Union was approaching the meeting of firm peak needs of its customers. While we understand that SENDOUT is a sophisticated model that strives to find the right mix of transportation contracting to serve peak day and seasonal needs in a five-year gas plan, it is clear that it has not used to operationalize the plan. This was confirmed by Mr. Quigley on pages 17 and 18 of volume 3 of the transcript that, again, I provided in the compendium.

However, what became clear over the course of the cross-examination, while transport is contracted for one year at a location, the S&T department assigns contracts seasonally and annually to counterparties who agree to provide gas where it is actually needed for the specific month. In exchange, net revenues from these transactions are enjoyed and flow to the utility's bottom line.

If I could draw your attention, then, to the attachment in our compendium that is J -- sorry, Exhibit J3.6, which is found on page 46 and 47?

I am not going to cover it again in detail given time constraints, but I think the Panel will be familiar that throughout the testimony of two panels, both gas supply and ex-franchise revenue, Union stated that the ultimate destination of the majority of its gas in the summer is at Dawn. And that's what we can find in just scanning the -- in J3.6.

But at the same time, this exhibit shows that Union regularly assigns large quantities of transport from its contracted delivery point to a point upstream. Why would they do that? I will get to that later.

And I don't want it to escape the Board's attention on these matters. These assignments are not surplus rights that have become available due to variable weather or other changes in customer demand. Union's S&T department assigned away large chunks of contracted transport for significant periods of time.

Just looking at the eastern zone for the most completed year, we can compare the assignments in J3.6 with the response in J1.9, also included in the compendium.

For the summer of 2011, assignments topped out at 110,000 gJs a day, which represents three-quarters of the total amount contracted for delivery to other points.

From what we learned from testimony and other undertakings, most of that gas had the ultimate destination of Dawn, so the assignee would be told to provide the gas at Dawn.

More importantly, in the winter, 60- to 80,000 gJs were assigned away. Now, we heard from Union panels many times that they need to provide security of supply as one of their paramount principles.

However, when this level of assignment is compared with Union's total long-haul firm transportation capacity in J1.9, Union's S&T area has assigned away approximately half of these firm service contracts. And the contracts have been assigned away with instructions to the assignee for the winter to deliver to another delivery area.

Therefore, these contracts, these firm contract arrangements, are not available for use to meet security of supply for the customers in the delivery area for whom these rights are contracted.

If you would turn with me to J6.5 in the compendium, which is at page 51 -- 50 and 51, the chart on page 51 is what I will refer to. We had asked Union to provide us with an example to demonstrate how the S&T department effected an assignment and what the cost implications were.

From the table provided in the attachment, you can see that Union assigned, on an annual basis, 20,000 gJs of eastern delivery area transport capacity to points upstream of its contracted designation. So that gas is no longer available to serve the peak winter needs in the eastern delivery area.

We would respectfully submit that it is not needed for the eastern delivery area. Conversely, if the gas is needed for another area on a planned basis, the gas should be contracted to be provided at that designated area at lower cost to ratepayers.

Ratepayers are paying an incremental $3.3 million of distance-based tolls, which can be found as the total for the gas year of November 2010 to October 2011.

At the same time, an opportunity to make $2.2 million of additional profit has been conceived under Union's classification of costs. Union may argue a portion of the $2.2 million would eventually flow back to customers through earnings sharing, assuming Union is always over-earning by at least 200 basis points, but no matter what the level of sharing that is employed, customers are paying for more than they need to to get the gas to that location, and they are receiving dimes back for every dollar they invested in that service.

In addition, by assigning these contracts to other shippers, Union does not maintain the same quality of service. As the Board is aware, Union -- sorry, Enbridge expressed concerns to the Board in 2008 about the fact that shippers were meeting firm obligations to the utilities with IT services.

As a result, over the next few years, the Board approved a series of steps to allow Enbridge to require more firm service from shippers and increase its own purchase of firm services.

Yet, in asking Union about their substantiation that their counterparty was underpinning the assigned delivery obligations with firm contracts, I struggled with getting an answer. This can be found on pages 29 and 31 of volume 7 of the transcript, which are on the succeeding pages.

Starting at line 6 of page 29 and through line 6 of page 31, we eventually find out that Union does not require shippers to demonstrate that their delivery obligations to Union are underpinned by firm contracts.

This is a very important point.

In Union's argument-in-chief, Union's counsel seemed to take offence at the depiction of the resulting assignment service as lesser service, which is found on page 34 of volume 13.

But clearly it is. Reviewing the outcomes presented in Exhibit J6.5, for the gas year of November 2010 to October 2011, Union customers are paying for firm service to, say, Cornwall and receiving assigned winter service in Kenora or Thunder Bay that Union has not substantiated as being underpinned by firm contracts.

Given that these assignments generate IT credits that must be used in the same month, it is highly probable that some or possibly all of the gas that arrives in northwestern Ontario in these assignment arrangements arrives using IT transport, the same interruptible transport that Union Gas supply panel said it ought not rely on in its examination in-chief, which, again, can be found on page 17 and 18 of volume 3, which is, again, near the front of our compendium.

To drive that point home, I want to review another reference, which is Exhibit J7.3, which can be found on page 56 and 57.

In this reference, we actually need to provide the net proceeds provided from assignments of Empress-to-CDA capacity in calendar 2011.

As you can see from the table, while the assignments were sent to Dawn in the summer, gas that was contracted to arrive at the CDA was assigned to the WDA and NDA. The net proceeds of this arrangement was about $9 million.

Now, we did neglect to ask for the difference in demand charges and what the difference in demand charges to the respective areas would be, to be comparable to Exhibit 6.5, but doing the simple math using the demand charges found on Exhibit 6.5, the amount of demand charge differential between deliveries at CDA and where the gas actually arrived at WDA and NDA was $8.8 million.

In our view, customers should not be treated this way, because no one has looked under the hood of the black box.

On my third point, for TransCanada capacity, the Union Gas supply plan relies on long-term firm service contracts that have been avoided or turned back by all customers, including prudent utilities in Canada and the US for the last number of years.

The declining level of annual firm transport contracts is well known in the industry, and the evidence of the continued reduction can be found in Exhibit K3.1, which you've viewed many times in this proceeding.

So while other utilities and shippers like Enbridge have moved to shorter-term arrangements such as winter STFT, Union has continued to keep the long annual FT contract.

When asked why they did not move to shorter-term arrangements like a winter STFT contract, the answer was the capacity may not be available and they may not be able to re-contract for annual -- for the annual FT contract. And again, that can be found in the front of my compendium in the transcript from volume 3.

With respect, that position clearly does not reconcile with the current situation with TCPL contracting.

These are gas supply experts, who work in the same department under Mr. Isherwood that handles the interventions into the TCPL filings at the NEB.

Information commonly known among experts and non-experts is that firm contracting on the main line is diminishing significantly, resulting in spare capacity that cannot be sold.

The often referred to Exhibit K3.1 shows exactly that.

The result is the capacity available for annual -- the result is capacity available for annual FT contracts.

The information is publicly available through TCPL's index of customers, but Union's department under Mr. Isherwood is much better resourced than that.

However, when I posed the question about the availability of STFT to Union's gas supply panel, captured on pages 21 to 23 of volume 3 earlier in the compendium, the barrier was presented that the service may not be available. As can be seen on page 22, the witnesses said the service was not available to Sault Ste. Marie delivery area.

What the witness did not say is that the delivery area is not served directly by TransCanada pipeline, but off of

Great Lakes' system under an arrangement with TCPL.

Clearly I was deflected. However, we were able to ask experts on STFT from TCPL -- which can be found on pages 115 and 116 of volume 9 -- when the last time STFT was not available from North Bay east, and with the exception of a caveat that they placed on Montreal, outside of Union's territory, the answer was: STFT has been available for decades.

In our submission, there are no other reasons why Union is not seeking the same alternatives to pursue the advantages of STFT.

One point that should not be lost in this discussion is Union's choice. Union had an understanding and years of using the FT RAM program.

There is a choice to use the FT RAM program for gas supply, but Union -– and Union confirms that on page 130 of the transcript in volume 7, which can be found on page 62.

Gas could flow, ostensibly, in a contract to Cornwall, could actually be diverted to Dawn and flowed IT. That would create approximately 20 percent more gas available at Dawn for the same price.

Therefore, the gas supply department has had the choice and the knowledge that it could have exercised to evolve its gas supply planning to use FT RAM credits for the benefit of the gas supply program.

Before I get to the issue of the classification of the FT RAM credits, I want to summarize our position. And if there are questions by the Board Panel, I could answer them at that time, but I also want to address a question that the Board Panel asked to Staff.

Our submission summarized is that Union's pattern of utilization demonstrates the actual need, but its contracting practices are in excess of the actual need.

Number two, Union's customers have been paying more than they ought to due to the incentives enjoyed by the shareholders, and the summary of those incentives are captured throughout the evidence in this proceeding.

Union has not considered -- on our third point -- Union has not considered other viable options employed by other utilities. And I might add those options have been considered at the request of and subsequently approved by this Board for utilities such as Enbridge.

Our fundamental belief is the appropriate classification of the benefits of FT RAM credits would address most of the important concerns that we have.

Establishing a return to a more equitable return of the benefits and attributes of gas supply contracts to ratepayers would reduce ratepayers' risk for 2013.

Then, without the exorbitant profit incentives, the rightsizing of asset rights to serve the gas supply needs of its customers can be evaluated, defined and implemented.

And I must add, because of my experience, other alternatives should be considered.

We recognize that Union has entered into contracts for the gas year of November 2012 through October 2013, and it would not be in the public interest to change those arrangements at this time. The prime opportunity would be to review and revise the gas supply plan for the period that would start in November 2013.

Now, I know that some have suggested an independent review could be beneficial. Based on our experience with a recent Union Gas independent study, we do not believe in the efficacy of that approach.

Some may recommend a consultative. I would acknowledge that Union has experienced people with sophisticated tools and information. We would submit that a consultative with ratepayers, similar to the Enbridge consultative, and with the proper scoping of the terms of reference, ratepayer representatives could be involved in understanding the outcomes and the interplay of applying different supply scenarios to the impact of quality of service, including issues such as security of supply, and the costs of these alternatives.

Done well, with an independent facilitator, this process could assist in rightsizing the assets required for meeting customer needs in Ontario starting in November 2013.

Further, done very well, this also could provide the company with the opportunity to restore the trust of its major stakeholders, that their needs are being balanced with Union management's obligation to their shareholders.

Earlier I reached the point of asking the question: Why would a company pay more for a lower quality of service? I trust it is apparent at this point that our view is the profit motivation that is inherit in the FT RAM scheme, and the channelling of those benefits to optimization has resulted in decisions that otherwise would not be made.

We would like to be clear here: The problem is not the FT RAM program. We heard evidence throughout the proceeding the firm transport risk alleviation mechanism was designed to encourage long-haul firm transport on the Mainline by mitigating the cost of holding firm transport by offering IT credits.

And for the end use customer, who is actually their own shipper, the program is likely used for its intended purposes with the credits being used to mitigate the cost, and that is the way it should be. Clearly that's not the way it has happened here.

So, in our view, as you would understand, we believe that the benefits of the FT RAM program should be rightfully classified as gas costs and would be flowing back to the ratepayers through the QRAM process.

I won't go into more detail in that area, because I will defer to somebody at the end that would -- that we're going to adopt his submissions, but I just want to say that Union has taken the position that this ability to channel the FT RAM credits through to its deferral account was precedented based upon the EB-2008-0220 decision.

But as has been laid out in the evidence, that was a DOS MN service for which there was no demand charge associated with it, and the ratepayers were not at risk for

Union's use of that service. So we would differentiate that point.

I move to cost allocation. As was stated in Mr. Rosenkranz's evidence, we support the removal of the metering and compression costs from the Dawn-Trafalgar easterly costs. We believe those costs ought to be moved into ex-franchise services according to design day requirements.

We respectfully submit that the costs could be allocated in proportion to the forecasted utilization of peak day design requirements for providing the M12 and C1 Dawn-Parkway and Kirkwall-Parkway services, plus the M12X services which have recently been initiated by Union.

Union had been directed to review the rates for these services at the time of rebasing. In our review of the evidence Union provided on its review of the rates for this proceeding, with respect, we conclude it was a cursory review at best.

In respect of concerns that have been provided by our friends at Energy Probe earlier this morning, we believe that Union has the opportunity to really consider how the assets are utilized. And for the current services provided to Enbridge, which are upstream of the Parkway compressor, Enbridge customers ought not receive an allocation of the compressor costs if their deliveries are made upstream of the compressor.

So we believe firmly, with a good review of those services, more consistent application of the principles of cost causality would provide a better equity between in-franchise customers and potentially ex-franchise customers, like Enbridge, that are not using the assets that are being allocated in the rates.

We would ask the Board to direct Union to review the opportunity to refine those rates that it originally established recently, and to ensure that there is proper cost causality applied to those rates.

Earlier this morning, our friends from CCC provided their views on capital structure as delivered by Mr. Warren this morning. We will adopt those views, as I have nothing better to add than Mr. Warren provided.

We also have had the opportunity to do a significant preview of the submissions by LPMA to be provided tomorrow. As usual, Mr. Aiken has provided a thorough analysis on the components from degree day forecast to general service and contract revenues.

He has covered our areas of concern with the continued lowball forecasting that Union has provided in these areas, such as commercial rates M2 and rate 10, and the unsubstantiated reductions in over-earned revenues in the contract rate classes.

Therefore, we would completely adopt Mr. Aiken's submissions in these areas.

In the storage and transportation forecast, we commend Mr. Aiken's rigorous analytical work and support his recommendations. I know they are yet unseen by the Board, but we want to give Mr. Aiken the opportunity to deliver his own submissions.

The only additional context that we would provide as additional support is to remind the Board of how much time we spent on the Parkway West and the market's stated desire to move gas through Parkway, including Marcellus gas.

Added to that push is the addition of some TCPL piping on that same route, known as the bottleneck, that is slated to be in service in November.

We had tried to ask Union to recognize these factors in Exhibit J.C-4-10-4, and received an admission that the reduction in the amount of Dawn-Parkway transportation capacity sold as long-firm transportation service could increase the capacity for sale as short-term firm and interruptible transportation service. But Union did not answer our inquiry as to if they valued that capacity as zero in their forecast.

Absent their provision of a positive number, we expect that number was zero or some small unsupported number.

With these market pushes and Union's history of exceeding forecasts, as revealed in Mr. Aiken's submissions, we believe his recommendations reflect a more accurate forecast.

In addition, we support his approach to handling variances relative to these forecasts, and, again, I will defer to Mr. Aiken's delivery tomorrow.

We also support LPMA's submission on deferral account handling, including his views on the funding of FT RAM. They're comparable to what I delivered before in terms of classification, and Mr. Aiken has some views in the alternative, which, again, I will leave to him.

In respect of the fact that he has not delivered these items, I will also say that we will further support his views on trying to find a balance between the concerns of ratepayers, Board Staff and Union Gas as it pertains to Union Gas's sales of the short-term storage.

In the evidence that we submitted and with the advice of Mr. Rosenkranz, we had tried to put forth what we believe was a solution that the Board could undertake to assist in that matter. But having read Mr. Aiken's submissions and having shared it with our expert, Mr. Rosenkranz, we will support and adopt Mr. Aiken's submissions and say that he is trying to effect a balance.

Our primary concern is the area of transparency, and we believe that any move in this direction should come with an area of concern, based upon recent history, and that we would want to ensure that there was transparency on the transactions that were done in the short-term storage account.

We had asked about the opportunity of Union accepting an audit by an auditor approved by the Board and paid for by Union, and Union had provided its response. It was, no, it would not look to that alternative.

We would advance that alternative to the Board. Failing that way of looking at it, we believe the earnings sharing mechanism proceeding that happens an annual basis could provide a forum to review those transactions, if there is a proper level of information provided on non-utility transactions, to give comfort to the Board and to intervenors that there has been an equitable allocation of revenues and costs for short-term storage transactions.

We believe that that could be effected, if there is sufficient transparency in the numbers, not to the level of the actual contracts, because we understand the propriety of that type of information, but on an aggregated level we believe that that information could give comfort to us and the Board in ensuring that there is an equitable allocation of costs and benefits.

And having finished the four-minute mile and trying to be respectful to the clock that everybody is on today, those are my submissions, pending any questions the Board may have. Thank you.

MS. HARE: I did have a couple of questions.

I sense from what you said that Mr. Aiken is going to address it. I was actually going to ask Mr. Janigan this, because it is in the VECC written submission, but maybe you both want to defer it to Mr. Aiken, and that is to do with the FT RAM credits in gas supply costs. You both made that point. I just wanted to know if there are some logistical issues there if those credits are the result of ex-franchise versus in-franchise customers. If you both want to punt it to either Mr. Thompson or Aiken, I am fine with that, too.

MR. JANIGAN: I am perfectly satisfied to punt it to Mr. Aiken or Mr. Thompson, as I had nothing to do with that submission.

[Laughter]

MS. HARE: No, I realize that, but also Mr. Buonaguro asked whether or not we need him tomorrow. So if in fact somebody else can answer that same question, because you both made the same point -- and I take it Mr. Aiken is going to say the same thing?

MR. QUINN: I want to get clarity in your question, because -- maybe it just the way I heard it. I was confused when you said whether it is ex-franchise or in-franchise.

MS. HARE: Don't some of those FT RAM credits -- aren't they the result of ex-franchise transactions, as well?

MR. QUINN: From the definitions I have come to understand from Union, those transactions that would be to a point off of their system and a point on their system, ex-franchise in nature, are generally done through base exchanges as opposed to FT RAM.

FT RAM predominantly –- well, the lion's share of FT RAM has been generated by the gas supply contracts to gas here in Ontario, and therefore -- and Mr. Smith, I am sure, could respond to this at his opportunity -- but in terms of clarity, the vast, vast majority have been through the gas supply program.

And therefore if the credits are created by the program, then the credits should stay in the program and be used for the benefit of the gas supply program, and that is the way the costs and revenues should be allocated.

MS. HARE: Okay. Thank you.

MS. TAYLOR: Before we move on with that point, and I did ask this question earlier, part of the issue, I think, that is before us is an issue with the specification of what is in and what is out, and the treatment.

MR. QUINN: Yes.

MS. TAYLOR: What is gas supply versus what is optimization, what is in-franchise versus ex-franchise.

The distinction appears to me, for purposes of 2013, to have been lost, in that all assets, whether they're in-franchise or ex-franchise, have been commingled for the purposes of optimization.

So if we're going forward with this approach, my concern would be mis-specification, again, potentially, of what is in gas supply versus what is in optimization, without having to undertake an audit exercise every 12 months to verify that something is in the right spot.

I don't think your answer has helped me, because we are not just strictly speaking about FT RAM, because that program could, in fact, disappear midway 2013, and then, as Mr. Brett this morning said, could be replaced by the son of FT RAM, in which case we've mis-specified it again and it would not be picked up in the way that the Board would potentially intend.

MR. QUINN: The way I would distinguish the two is if the assets were purchased for gas supply need, then those should reside with the gas supply, be classified -- cost and benefits stay and remain classified with the gas supply program.

I will give you an example, which may be helpful to my friends, but it is a realistic example.

The STS service is a service that Union needs to have in place to be able to run its fully integrated operations.

That STS service allows Union to get gas out of Dawn and deliver it to -- it could be North Bay, it could be Cornwall. That service in and of itself is needed, but it is not needed all the time. And they can't use it all the time because the weather doesn't allow them to use it.

To the extent that that service has been contracted and rightsized to the peak day needs of, an example, in Cornwall, and they don't need that STS service that day to Cornwall, they actually can generate STS RAM credits.

And to the extent that they have STS RAM credits, those were based upon the delivery -- peak day delivery needs of the customers, and therefore, with the rightsizing of capacity, Union cannot use those assets on that day because of the weather, therefore for Union to optimize those assets as part of what it has done historically, that to me would be a prudent application of its discretion.

And yes, those benefits should flow into what we would encourage as that future deferral account to be re-established, and it would capture the revenues for those types of situations.

MS. TAYLOR: Sorry, and that revenue, that deferral account would be cleared when?

MR. QUINN: That deferral account would take the shape somewhat of the 179-69 that was there previously, and then would be deferred -- would be disposed of with other deferral accounts in the subsequent year, and yes, with an allocation to ratepayers and shareholders.

MS. TAYLOR: And how is the Board going to distinguish -- so we have a principle-based approach coming out of this decision. How are we going to specify with -- given everything people have said in front of us, the principle-based approach may not have worked necessarily in the past, according to some; others, yes.

How is the Board going to distinguish that separation of red and blue molecules when it is appropriate to monetize for optimization versus when it should be a pass-through?

MR. QUINN: That is a very good question. Off the top of my head, I think a pragmatic and I think practical solution would be that long-haul contracts and FT RAM credits associated with long-haul contracts would be gas costs, because it is landing the gas here in Ontario.

Once it is inside of Ontario and it is integrated with Union's storage and the services it provides amongst its assets inside of Ontario, the use of that gas, including, as I referenced, the STS service, could be said to be the effective utilization of contracts.

So you would have FT firm transport long-haul contracts as being gas supply, internal to Union's franchise. If they do optimizations of STS contracts or they find a way to get gas from point A to point B and make that cost differential generate a margin, then that would be more consistent with our view of what the historic 179-69 deferral account would have captured.

MS. TAYLOR: Before we leave this point -- and I don't want to keep pushing it, but you yourself, in this submission, have recommended that we make use of other services rather than long-term firm.

So there may be, if you're talking about a TransCanada system, that they would continue to use but not necessarily long-term firm, there would be the potential for embedded options in other TransCanada services that would not meet that definition.

So then when it comes back to specifying the nature of these deferral accounts that would settle up or not settle up annually or through QRAM, we still have a problem, potentially, sorting this all out.

MR. QUINN: One of the fundamental premises that I used that -- because I was doing the speed read, may have been lost. But the fundamental premises is rightsizing. So if gas is needed in Thunder Bay in the winter, contract for the gas in Thunder Bay. To the extent that they have an STS service, summer needs could be diverted to Dawn and not flowed to Thunder Bay, and they could use the STS service or they could use IT.

That is totally gas supply. So getting the gas from the supply point -- in this case, the Western Canadian Sedimentary Basin -- to Ontario, that is landed gas cost.

In fact, Union has a deferral account to manage differences in landed gas cost, and to the extent that there is a differential created, that is the easiest way of managing benefits and costs that flow on the landed cost of gas.

But to the extent the gas gets to Ontario and is inside of Union's franchise area, to the extent that they're able to then manage the costs better or find a market opportunity, then that would be defined as optimization, and would flow to a deferral account like 179-69.

MS. TAYLOR: Thank you.

MS. HARE: I have just one other question. I want to make sure I understand what you're saying about the system integrity space.

You gave a number of $3 million if they did, in fact, follow your recommendation.

Is that a maximum number? Does that assume that nothing -- that three and a half is empty? And that then they just use the six?

MR. QUINN: What we're saying is the three and a half gets used twice. It gets used in the fall. And if part of it is filled, because they actually had to use it --

MS. HARE: Right.

MR. QUINN: -- then it is already ready for part of the winter.

So the winter, they're holding an additional six. If you move the three and a half in, that means there is three and a half excess that had been allocated to winter need.

That three and a half pJs then could be sold at market before, because it is not needed for that purpose.

Three and a half million times the 0.85 dollars per pJ -- and you have to get the units straight -- but that equates to, round numbers, $3 million.

So it is basically just using system integrity space and having six pJs of system integrity space, three and a half used in the fall, then the combined six available for you in the winter nets you out three and a half pJs for market use.

MS. HARE: Which is about $3 million, and where would that $3 million be reflected?

MR. QUINN: That would be reflected in the 179-70 short-term storage deferral account.

MS. HARE: Okay. Thank you. Anything else?

MR. QUINN: Thank you. With the accommodation of Mr. Janigan, I appreciate your time.

MS. HARE: Thanks.

FINAL ARGUMENT BY MR. JANIGAN:

MR. JANIGAN: Thanks very much to Mr. Quinn, and thanks to the Panel for their indulgence, as well.

I will try to compress some of my submissions, given the fact that they may be repetitive of some of the comments that have been made before on the issue of cost of capital, and hopefully the result will be such that my time period will not qualify as remission for time in Purgatory at a later date.

So I begin with the obvious point that Union is seeking an increase to its allowed common equity component from 36 to 40 percent. This was last set by the Board-approved settlement agreement in 2007 at 36 percent.

Now, intervening in the period between then and now has been the proceeding and subsequent report of the Board in EB-2009-0084, the cost of capital report.

Once again, this has been referred to by a number of intervenors, and, in particular, the Board's policy with respect to capital structure set out in section 4.3 of that report has been referenced. I will not read it again, but to précis, effectively, in order for the Board's policy to be set aside, there has to be significant change in the business or financial risk. So the effective point of inquiry is: Has there been significant change?

I would suggest that there is broad agreement that business risk and changes to business risk are key determinants for setting the deemed equity thickness. The evidence of Union's business risk expert, Dr. Carpenter, in 2006 suggests that this, in fact, is the case. That is found at JT1.55. And on page 2, question 3, he notes:

> "My evidence evaluates whether there has been a change in Union's business risk since 1998 that would warrant a change in the deemed equity thickness authorized by the Board for Union."

Now, in the current proceeding, Mr. Broeders, at Exhibit E1, tab 1, page 4, notes that business risk is the probability that the return of the company will fall short of the expected return.

Once again, many of the intervenors have cited the historical results from Union's ability to earn its expected return. Those results are at J.E-2-12-9. Effectively, we would suggest that the historical results are likely the best evidence of probability of earning that return and meeting the criteria of whether or not the company will earn its expected return as set out by Mr. Broeders.

Also on page 24 of the evidence of Dr. Booth, which I believe is a carry-over from an interrogatory that has been filed - actually, it would be J.E-3-5-1 of the interrogatory - that in fact performance-based regulation has not presented a significant impediment to Union for earning its rate of return, in fact, over the last six-year period.

It has been over-earning the amount of $278.7 million, of which only 22 percent has been shared with ratepayers. So it is a very impressive record of meeting Mr. Broeders' test.

Moreover, with respect to the specific risks that were foreseen by Dr. Carpenter in his 2006 evidence, those risks have pretty much been diminished over the passage of time. Those included the increased threat of bypass, new gas-fired generation, uncertainty with respect to the storage and transportation business, and the possibility of the lack of competitiveness of natural gas with other kinds of fuels.

I am not going to repeat the evidence of Dr. Booth on this score. It is contained in his testimony at K6.3 and discussed at pages 30 to 31 with respect to these risks that were foreseen by Dr. Carpenter at the time that have not eventuated or have diminished substantially.

Particularly, it is trite to note that natural gas has increased in competitiveness, largely because of a wholescale drop in the price. The Henry Hub price has dropped from $12 to $4.00, as noted on Union Exhibit A2, tab 1, schedule 4, page 2.

Finally, with respect to business risk and where it has been going in relation to Union Gas, the clincher is provided on the transcript of the cross-examination of Union witness Mr. Broeders at page 128 in answer to a response from Mr. Thompson.

Mr. Broeders notes:

> "Sorry, just give me a minute. The answer to the undertaking is saying that we have not analyzed our business and financial risk, but we accept that its overall risk profile has not materially changed since 2004."

So effectively Union itself has thrown in the towel on whether or not its business risk has increased, but that is not the complete end of the inquiry, as Dr. Booth suggests that you have to go further and have to test whether or not -- with the business risk assessed as it is, can the regulated company access capital on a reasonable basis?

And this also seems to be, at least initially, an objective of Union. Mr. Broeders, at Exhibit E, tab 1, page 2, says that the objective of Union through this proposal, quotation marks, "will allow Union to finance capital expenditures at favourable debt rates."

The problem with that submission is that it does not seem to be on all fours with the record of access to capital by Union since the last time that the equity component was established.

Once again, compressing the evidentiary record -- and I apologize for any excessive generalization, but since 2009, Exhibit J.E-2-14-1 shows that in 2010 and 2011 the debt issued by Union was below the rate in the Board's formula, and anticipated debt in 2012 will be -- have costs below 4.0 percent. And that is contained at E1, tab 1, page 8.

It would appear that Union's long-term debt has been rolled over at lower costs, and the summary is likely that Union has relatively easy access to raising capital.

So it is difficult to know what is to be -- what will be addressed by this proposal in terms of obtaining favourable debt rates or more favourable debt rates.

And, in particular, this is brought to the fore because there is no evidence that's been brought forward that other utilities, with more substantial capital-equity ratios, are accessing capital at more preferential rates than Union.

As well, there is no evidence that the change that is proposed to the capital structure will affect a change in the credit rating, and Union admits as much in its response to interrogatory J.E-1-1-2b). It will not cause a change in credit rating that will lower its debt costs.

So precisely what is going to be accomplished by this change?

In the transcript of the final argument of Union on page 65, Mr. Smith references the remarks of Dr. Vander Weide when questioned about the value of the thickening of the equity, given the financial implications to customers, this thing of the increase of $17 million or so in revenue requirement, and, as well, the fact that there will be no diminishment of debt costs that occurs by way of an increase in credit rating.

The response of Dr. Vander Weide or the testimony of Dr. Vander Weide that is quoted by Mr. Smith, I would submit, is fairly cryptic. I am half-way down the page.

> "I would note, as well, that when one compares the benefits to the ratepayers -- to the company and the costs 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 the company had 100 percent debt and no equity, but everyone would agree that this 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."

Over the page, it is quoted further that:

"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, that

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

The problem with all of this is that there is no evidence that this, in fact, has taken place in the Union company.

And while one would certainly accept the proposition that it's ridiculous for a company to have 100 percent debt and no equity, it is far from clear what additional capacity this change is going to have in terms of the ability of the company to deal with financial crises, and how it is going to reduce the uncertainty in the business and financial environment when it is clear that its business risk has, if anything, decreased and, in fact, their access to capital has been fairly easy and on fairly generous terms.

So Dr. Vander Weide provides very confusing support for the proposition that this is, in some way, beneficial to all concerned, and in particular, to ratepayers, having a company that's been enriched by $17 million of their money.

Mr. Fetter also, in his evidence, notes in his conclusion - and I believe this is Exhibit E2 on page 19 - that with all the turmoil that last occurred within the utility sector during the past decade, utilities and their regulators should strive to maintain strong financial profiles so as to be able to withstand virtually all the setbacks that have financially harmed certain companies within the utility sector during the recent past.

The problem with Mr. Fetter's evidence is there is no evidence that that has occurred with Union Gas.

And in fact, there is no evidence that even if this change was to result in a higher credit rating, that in the event of a crisis such as occurred in 2009, that this would be of assistance to Union, as the evidence of Dr. Booth on pages 60 and 61 notes, that higher credit ratings were scant protection against the market's insistence on 400 basis point debt spreads in the heart of that crisis, and at the same time, and as evidenced on page 61, that Canadian utility yields were some 50 to 60 basis points lower in that crisis.

So it seems to me that utility status seems to be more significant in relation to lessening the effect of a crisis than the proposed solution by Dr. Vander Weide or Mr. Fetter.

Now, we have reviewed to this point the accepted criteria for setting of capital equity ratios, as well as the history, the recent history of Union's common equity components, the cost of capital report and its likely effect on subsequent proceedings, and a review of the components of business risk for Union and, as well, a review of some of the observable effects of the current risk profile on Union's financial flexibility and its ability to raise capital.

We would conclude by this that, in fact, the proposal brought by Union in this proceeding is largely a cure for which there is no known disease.

We would also suggest that the evidence, if anything, shows that there's been a slight decrease in business risk, largely attributable to dramatic decreases in gas and the cost of gas, as well as the diminishment of potentially troublesome issues such as CDM, independent gas generators and the resolution of the storage issue.

As a consequence, as my friend Mr. Warren has suggested, the evidentiary record that has been raised here falls far short of even a balance of probabilities test that business risk and/or financial integrity has suffered a significant change.

As well, the casual nature of the Union application concerns us.

Mr. Smith suggested in his argument that really all that is needed to effect a change in the capital equity ratios is to file evidence that supports a different conclusion reached by the Board in its cost of capital report. Several points arise from this submission.

Number one, if accepted, it is unclear what will be the efficacy of the Board issuing a report and guideline if it can simply be challenged by evidence establishing a contrary position in a subsequent hearing.

Secondly, one of the important reasons that the Board sets guidelines and policies is to bring certainty to the important process of setting the cost of capital. Union's proposition, ironically, if accepted, will increase regulatory risk and effectively make these kinds of policy reports, such as the 2009 report of the Board, sidebars to the continuous disputation of the cost of capital components.

Thirdly, as a corollary to point number one, it is evident that the -- that what was established by the Board in its report of 2009 was a kind of threshold that has to be met before the dispute or the matter can be heard.

The evidence put forward by Union does not address what, in effect, this threshold test will review, and that is a significant change to the business risk or financial integrity.

The Union evidence that has been filed might be considered by the Board in the event that it was determined that there had been significant changes occurring as per the Board's threshold test. However, it is not determinative, nor can it replace the required evidence of significant change.

This is particularly important when we do have primary sources of evidence on business risk and financial integrity, without having to canvass regulatory decisions outside of the jurisdiction, which are, at best, a secondary source of information about markets and may also raise the traditional concerns about circularity of reasoning and decision-making.

In relation to the potential impact of the Board's cost of capital report and the onus that is put upon Union to prove that it is no longer applicable, Mr. Smith, in his argument, rather remarkably complains -- on page 64 of the transcript -- in the following fashion:

> "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. 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."

With apologies to Lerner and Loewe, I would say: By George, he's got it.

This is not -- this is not a process whereby there is a continual escalation of the capital equity ratio and it is not steady and inevitable, just independent of any change in the controlling parameter, which is business risk or loss of financial integrity.

The business risk stays where it is. If it stays where it is, the capital-equity ratio stays where it is, provided the company still has financial integrity. If that causes a conclusion that it is not going to move from that number, that's just the way the factors line up.

It's not an improper result simply because you can't increase it above that amount without effecting or without showing some kind of change in the parameters.

Finally, the nature of regulation is such that it is frequently unfair to pull out and isolate an issue out of the context of the entire regulatory framework.

We would suggest that this proposal connotes some remarkably poor optics in relation to the fulfilment of the objective in part I of the OEB Act, section 2; namely, to protect the interests of consumers with respect to prices and the reliability and quality of gas service.

In an economic environment where the company is demonstrably thriving and many of its ratepayers are facing uncertain prospects, Union seeks to dismantle the Board's policy regime, with less than three years' vintage, to obtain financial resources it doesn't appear to need that will have either non-existent or ephemeral benefits for the ratepayers that would be paying approximately $17 million annually to provide them. As a result, we would request that the Board rejects the Union proposal.

Thank you. Those are my submissions.

MS. HARE: Thank you. I have no questions on your submission.

I do have a question about Mr. Buonaguro's submission, which I don't think warrants him coming in tomorrow. So I will read the question. Do you have a copy with you?

MR. JANIGAN: No, I don't.

MS. HARE: It is one sentence that I found confusing. It may be that some words are left out. It is on page 21.

It is after the list, (a) to (f) -- oh, do you have it?

MR. JANIGAN: I've got -- Mr. Thompson has kindly lent me his copy. All right.

MS. HARE: Page 21, after (f), the sentence that I don't understand is:

> "It appears to VECC the Board has decided that the gas supply plan for 2013 should not itself be disturbed, and VECC agrees."

The way I read it is you're suggesting we have already decided the gas supply plan. Maybe some words are missing. It may be that what he was trying to say was that Board Staff suggested.

But, in any event, I think that maybe you can speak to Mr. Buonaguro and something could be sent to Mr. Millar, and we could read that in tomorrow.

MR. MILLAR: Yes, particularly if it is something as simple as a typo, then I am happy to coordinate that with VECC.

MR. JANIGAN: I will do so. Thank you very much.

PROCEDURAL MATTERS:

MS. HARE: Thank you. We would like to suggest -- there are a number of submissions for tomorrow. We would like to suggest that we start at 9 o'clock. Does that cause any problem for Union Gas --

MR. SMITH: No, it doesn't.

MS. HARE: -- or anybody else that is here? Hopefully the others will be reading the transcript.

MR. MILLAR: Yes. We will tell -- Mr. Aiken is scheduled to go first, so I will send him an e-mail, in particular.

MS. HARE: Thank you. So we are adjourned for the day. Thank you.

--- Whereupon the hearing adjourned at 4:29 p.m.