ONTARIO ENERGY BOARD

FILE NO.:	**EB-2011-0210**	
VOLUME:	**15**	
DATE:	**August 24, 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 Friday, August 24th, 2012,
commencing at 9:05 a.m.

VOLUME 15

BEFORE:

MARIKA HARE	Presiding Member
KAREN TAYLOR	Member

A P P E A R A N C E S

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DWAYNE QUINN	Federation of Rental-housing Providers of Ontario (FRPO)
RANDY AIKEN	London Property Management Association (LPMA)
JAY SHEPHERD	School Energy Coalition (SEC)
GORDON CAMERON	TransCanada Pipelines Limited

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.

Friday, August 24, 2012

--- On commencing at 9:05 a.m.

MS. HARE: Good morning. Please be seated.

Do we have any preliminary matters?

MR. SMITH: No, Madam Chair.

PRELIMINARY MATTERS

MR. MILLAR: Madam Chair, I have one very minor thing. I received a communication from Dr. Higgin, who had a couple of misspeaks on the transcript yesterday and he asked that I read in some corrections. I have had a quick look and I don't, for a second, imagine they will be controversial.

On page 37, line 14, he should have said 2.5, not 5.

On page 47 of the transcript, it should read December 31st, 2010, not 2011 as he said.

And, finally, on page 67, line 17, he meant to say 5,000 m^3, not 5 m^3, and that's all.

MS. HARE: Okay, thank you. Then I think, Mr. Cameron, you're first in terms of submissions this morning.

FINAL ARGUMENT BY MR. CAMERON:

MR. CAMERON: Thank you, Madam Chair.

I was going to see if that needed to be a preliminary matter. We have had discussion among counsel and that's agreeable, because I expect to be fairly short, whereas some of the others speaking today will have more to say.

So if I may begin, on behalf of TransCanada, by observing that in Board Staff's report to the Board following the 2010 Natural Gas Market Review, Staff recommended that the Board undertake review of the criteria in the Board's 1987 EBO-134 report regarding the expansion of the natural gas system in Ontario, because, as the Board put it in its more recent letter of April 30th of this year, and I quote:

> "The Board's review of proposed expansions of natural gas transmission systems in Ontario should take into account existing alternatives to the proposed expansions to ensure economically prudent long-term investments."

The Board's April 30th letter stated that the Board expected this Union 2013 hearing and the Enbridge 2013 rate hearing to inform the Board on this topic in anticipation of the Board's planned review of EBO-134 regarding the addition of natural gas infrastructure in Ontario.

In that context, TransCanada's interest in this proceeding arises from Union's inclusion in its capital budget of $215 million for the proposed Parkway West project. The primary purposes of the Parkway West project are said to be the provision of loss of critical unit protection for Union's deliveries into the TransCanada Mainline system at Parkway, and, for the smaller component of the project, greater security of supply to the GTA arising from a new meter station as part of one of the components of the project.

Parties arguing before TransCanada have noted that though described in the materials provided to the Board, exclusively in terms of security of supply, documents obtained through contested interrogatories indicate that Union and Spectra in fact view this project as a pre-build and a launching pad for an expansion of Union's transportation corridor.

Viewed in either context, TransCanada believes that the Parkway West project is, at best, premature, and, at worst, an example of the redundant infrastructure with which the Board should be concerned because of the costs that it will impose on Ontario gas consumers.

As the Board is aware, looking back a few years, from TransCanada's participation in the 2010 Natural Gas Market Review, TransCanada has a significant investment in natural gas transportation infrastructure in Ontario.

That infrastructure is being paid for, to a significant extent, by Ontario gas consumers. As a result of changes in supply opportunities available to North American gas consumers, and most recently Marcellus shale gas, portions of TransCanada's Mainline infrastructure and, in particular, its northern Ontario line, have capacity available.

TransCanada is also interested in this proceeding because the Parkway West project interconnects with the TransCanada system, and TransCanada is alleged to be a beneficiary of the loss of critical unit protection that this project will provide.

Finally, needless to say, TransCanada is interested in this proceeding because TransCanada is a major shipper on Union and will be among those paying for any new facilities at Parkway.

TransCanada understands that this Board will make decisions that are in the best interests of Ontario gas consumers and the Ontario public interests generally. However, we believe there is an important intersection of those interests - that is, the interests of Ontario gas consumers and Ontarians generally - and the interests of TransCanada and its Mainline stakeholders, including Ontario LDCs, because, as noted, Ontario gas consumers are contributing to the costs of the TransCanada Mainline.

And in today's world, where most natural gas end use customers pay cost-of-service tolls for gas transportation, gas transportation infrastructure serving Ontario is paid for by Ontarians, whether it is used or not.

TransCanada accepts that there can be justification for duplicative or redundant infrastructure, justifications such as supply diversity and perhaps competition. In each case where the Board is asked to approve redundant infrastructure, it must weigh the benefits of duplication with the costs that Ontario gas consumers will bear.

TransCanada has participated in this proceeding in order to alert the Board to TransCanada's view that the Parkway project, Parkway West project, is a specific example of the potential for wasteful infrastructure duplication that TransCanada described in more general terms in its submission to the Board in the 2010 Natural Gas Market Review.

Such wasteful infrastructure can result if a thorough assessment of the merits of the proposed infrastructure is not undertaken by the Board, as TransCanada anticipates will occur at the leave to construct application for the Parkway West project facilities described in Union's application here.

TransCanada agrees that loss of critical unit protection can be appropriate in some situations. TransCanada's Mainline is designed to have that type of protection. TransCanada's Alberta system, which transports about 9 Bcf of gas a day, does not.

TransCanada does not believe that loss of critical unit protection is needed at Parkway at this time, and believes that if there is to be loss of critical unit protection at Parkway, it does not make sense to build the Parkway West project to provide it.

TransCanada believes that the Board should consider three important points when assessing the loss of critical unit protection component of the Parkway West project.

First, loss of critical unit protection at Parkway will protect against an extremely improbable event. Union's compression has a 99.9 percent reliability rate.

Second, insofar as security of supply to the GTA and downstream markets is concerned, Union delivers to both Enbridge and TransCanada at Parkway. Two-thirds of the Enbridge GTA peak day load is supplied directly from Union to Enbridge at Parkway with existing loss of critical unit protection and will not receive any benefit from the proposed Parkway West project, loss of critical unit protection facilities.

Third, if loss of critical unit protection is warranted for deliveries into the TransCanada system at Parkway, Union has the ability to acquire non-facility loss of critical unit protection from TransCanada for a small fraction of the cost of the $180 million associated with that protection in the Parkway West project.

Just to clarify here, the Parkway West project has an approximate capital budget of $215 million. Of that, approximately $180 million is associated with the loss of critical unit protection component of that project.

In this proceeding, TransCanada has identified at least four ways that TransCanada can provide Union with loss of critical unit protection at Parkway by using existing infrastructure, existing TransCanada infrastructure in conjunction with Union infrastructure, or by adding small and efficient capacity increases on the TransCanada system.

These alternatives to a $180 million capital investment in a new compressor site at Parkway result in much lower annual owning and operating costs for Union's customers.

Importantly, the alternatives identified by TransCanada are scaleable; they are not one, big compressor site and project.

The alternatives identified by TransCanada might amount to a solution that involves the complete provision of loss of critical unit protection with the virtually costless solution of short-term firm service on TransCanada's underutilized system, or a mix of solutions, such as a certain amount of service to Parkway on TransCanada's Hamilton line, a certain amount of service at Parkway through displacement accomplished by Dawn-to-Dawn TCPL service, feeding Great Lakes backhaul, and a certain amount of STF –- STFT service. So it could be all of one, or some of each, depending on what, in collaborative discussions with Union, is decided to be the most economical, flexible and reliable way of providing that service.

The point here is that Union has not seriously explored these options. TransCanada first learned of Union's sudden interest in loss of critical unit protection at Parkway in a meeting a few days before the application for this proceeding was filed.

And this was not a meeting to explore options, but a meeting in which Union informed TransCanada of its intention to build the Parkway West project.

Disappointingly, Union opened its Parkway West project panel with evidence in-chief to the effect that Union had dismissed, without any consultations, without discussions, had dismissed TransCanada's four alternatives. And TransCanada believes that the Board ought to be concerned about the dismissive, backhanded approach that Union took towards TransCanada's alternatives.

TransCanada found Union's evidence in-chief on this topic at the opening of their Parkway West panel and its summary dismissal of the alternatives -- alternatives to a huge capital investment -- TransCanada found that evidence to be uninformed, as one would expect comments to be uninformed in the absence of consultations with TransCanada about these available alternatives.

I said this before and I will say it again: TransCanada is not here to convince the Board that there is a better alternative to a new compressor site, a new compression infrastructure at Parkway, nor what the specific better alternative is.

TransCanada is here because Ontarians are paying billions of dollars for TransCanada infrastructure that was designed and built to deliver gas to Ontario gas consumers, and that could provide better alternatives for loss of critical unit protection at Parkway, should it be determined that loss of critical unit protection into the TransCanada system at Parkway is even needed.

TransCanada also observed in its evidence that the part of the Parkway West project that involves a new connection to Enbridge is simply an unnecessary expenditure.

In this case, TransCanada's position isn't because TransCanada can provide a less expensive alternative, but simply because the new connection is pointless. It will not materially increase reliability for service to the GTA.

The new compressor site and its connection to Enbridge at Parkway makes sense for Union's shareholder as a pre-build for Union's proposed Parkway extension to bypass the

TransCanada system, and as a source of discretionary revenue that will add -- as Union notes in its presentation to management -- 200 basis points to Union's return on equity.

It makes sense for that purpose, but the Parkway West project does not make sense as a means to provide greater reliability for deliveries to TransCanada or Enbridge at Parkway.

Now, in this proceeding, as we all know, we're at the capital budget stage, not the prudence or approval of cost recovery stage. Nonetheless, TransCanada believes that the Board should not, in its reasons for decision in this matter, make any comment that could be taken as acceptance of any capital budget item in relation to the Parkway West project.

As noted, TransCanada doesn't aspire to convince the Board here that it has a better solution to Union's proposal for loss of critical unit protection at Parkway, should that be needed. But TransCanada has described at least four viable alternatives to a new Parkway compressor station, the merits of which need to be reasonably assessed before any decision on Union's Parkway West project is made.

One option was moving existing TransCanada compression, and that would be compression that Ontarians are already paying for to Parkway.

Now, this would involve a significant expenditure, because moving a compressor is an expensive operation, but as the evidence indicates, it still saves $50 million. It avoids the need to run a pipeline from Union's right-of-way to a new compressor site. And it allows that compression to be located with much greater flexibility; it doesn't have to be at the Parkway site. It could be somewhere between Parkway and Maple.

TransCanada also suggested that some measure of increased TransCanada Dawn-to-Parkway service effected inside the Dawn compressor yard with Dawn Union to Dawn TCPL service from Union, combined with inexpensive backhaul on unused Great Lakes capacity, appears to be economical and technically viable.

If Union were to sit down with TransCanada and describe its loss of critical unit protection needs at Parkway and tell us its capabilities in its Dawn yard, this alternative can be explored further.

Getting information about Union's capabilities in its Dawn yard to provide Dawn Union to Dawn TransCanada service - that is, service from the Union facilities in the Dawn yard to the TransCanada feed into the Dawn yard - finding information from Union about that potential has been challenging, and TransCanada considers this to be, doubtless, because such service allows TransCanada to get gas from Dawn to Parkway without an expansion of the Union system. And it is our perception that Union doesn't want to tell us how we can get gas cheaply from Dawn to Parkway when they would rather we get it there by having them expand their Dawn-to-Parkway system.

And this is an example of why, in TransCanada's submission, the Board needs to be proactive in requiring that Union explore these options, options that may be in the interests of Ontario gas consumers.

It appears to TransCanada that Union would rather expand its Dawn-to-Parkway system than provide TransCanada with a virtually costless service within the Dawn yard that allows TransCanada to feed Parkway with its existing Ontario -- northern Ontario line and North Bay-to-Maple infrastructure.

And the only way that Ontario gas consumers will be spared the cost of Union's refusal to cooperate with TransCanada in this regard is with the Board's oversight.

Another option is adding cheap compressibility to TransCanada's Hamilton line, which, as the Board will be aware, comes up from Niagara Falls to the Hamilton area, to Parkway.

This line provides huge benefits to both Union and Enbridge, in the sense that for relatively modest capital expenditure it allows Ontario gas consumers - as noted, both Union customers and Enbridge customers - to use existing TransCanada infrastructure to add reliability to both franchises.

Union would add reliability to its Burlington and Bronte delivery areas, and Enbridge would acquire a third source of supply independent of TransCanada's northern Ontario line and independent of Union's Dawn to Parkway service.

This is another scaleable option. In combination with other options, TransCanada could, for a small investment in compression, provide some additional capacity to Parkway through its Hamilton line, and, then, through some of the other options, as I mentioned earlier, complete whatever it is determined is the appropriate loss of critical unit protection needed at Parkway.

Alternatively, which is another intriguing option, on its own, expansion of TransCanada's Hamilton line could provide the entire loss of critical unit protection that Union has said it needs at Parkway, equivalent to the new compressor station, for roughly the same investment, but with considerable advantages.

It has the reliability advantages that come from the fact that the supply would be delivered to Burlington and Bronte areas and the GTA on a completely separate path from Union's Dawn to Parkway system, and with direct access to an alternative gas supply source, which is Marcellus gas coming in from Niagara Falls and Chippewa.

When the issue of cooperation among gas transportation providers was explored at the Natural Gas Market Review, Union's position was that there should not be any requirement for such cooperation because the service providers are competitors.

One point to observe here is that that position, while understandable, ignores the fact that Ontario gas consumers constitute separate markets and don't benefit equally from the costs that they pay for redundant infrastructure, even if it does enhance supply diversity or competition.

And the losers in that context obviously are northern Ontario gas consumers, who end up paying for unused infrastructure and don't get the benefits of what goes on in southern Ontario.

TransCanada recognizes that that is an argument for another day. The Parkway West project is not -- and this is important in the context of Union's refusal to cooperate with TransCanada. On its face, as it was presented to this Board, the Parkway West project is not about competition or market seeking new supplies. It is, ostensibly at least, about system reliability.

In TransCanada's view - and TransCanada believes it should be this Board's view - when it comes to system reliability, TransCanada and Union are not competitors. They should cooperate, as all of the Ontario utilities do, and, indeed, as all of the North American utilities do, to make sure gas consumers get service when it is needed.

So whatever argument there might be for failing to consult about competitive projects, if the Parkway West project is genuinely about system reliability, it should be exactly the type of project on which Union consults with TransCanada, and with Enbridge and with other potential service providers into Ontario, to see if it is the best way to ensure system reliability, both from an operational point of view and from an economical point of view.

And so TransCanada submits that, notwithstanding Union's position on why it doesn't consult with

TransCanada, there is no good explanation related to system reliability for Union's failure to consult with TransCanada before proposing hundreds of millions of dollars of new infrastructure that interconnects with and would deliver gas into the TransCanada system.

This was true when this proceeding started and Union initially proposed the Parkway West project. TransCanada observes that it is most emphatically true now, given that TransCanada's most recent forecast is for a further reduction in Mainline through-put of approximately one Bcf a day, about the same amount just from that most recently announced reduction as Union's entire loss of critical unit protection need described in its application at Parkway.

Returning to, in conclusion, Board Staff's report following the 2010 Natural Gas Market Review and the Board's interest in reviewing the EBO-134 criteria in today's context, TransCanada observes that with even more underutilized TransCanada capacity into Ontario than when this proceeding began, the recommendation of Board Staff in the 2010 market review report and the initiative of the Board, as described in its April 30th, 2012 letter, are becoming even more important.

Ontario LDCs should be looking at ways to make use of existing infrastructure before jumping into major capital expenditures.

And here's the point. To the extent that the LDCs do not do so on their own initiative, it is the oversight of this Board in that regard that will protect Ontario gas consumers.

Subject to any questions you have, those are the submissions of TransCanada.

MS. HARE: I have just two questions. One is just a minor point of clarification.

When you referred to the Hamilton line, is that what used to be called the Niagara line, 200 line?

MR. CAMERON: Yes. I apologize for the confusion, because it is more generally known as the Niagara line or the Niagara domestic line, but more recently, I think because of the potential reversal of flow, it is being started to be called the Hamilton line.

MS. HARE: Just so I know it is the same one.

MR. CAMERON: Yes.

MS. HARE: The other thing is you mentioned four alternatives. Some sounded like they would not require NEB approval, and the ones involving compression, I assume, would require NEB approval?

MR. CAMERON: Yes. They would require what you've probably heard of as section 58 approval. It wouldn't -- frankly, I don't know if the relocation of compression would require approval, but the addition of compression would require --

MS. HARE: Section 58, which is a pretty streamlined process?

MR. CAMERON: Yes. A streamlined approval process, yes.

MS. HARE: So do you have any comments? Did you have the opportunity to review the transcripts and, in particular, BOMA's submissions on NEB approval first before the Board does anything?

MR. CAMERON: We're --

MS. HARE: Sorry, before this Board does anything.

MR. CAMERON: The answer to your question is, yes, I did review those submissions.

We've thought a lot about the sequencing of events related to the Parkway West project and the potential alternatives, and the roadblock, if I can call it that, that we come up against is Union's announcement that it intends to apply for leave to construct the Parkway West project in the near future, perhaps just by logistics of it, in advance of this Board's decision in this case, and that will be a fait accomplis.

They will have filed it and, subject to this Board's scheduling of it, we're going to have to deal with it. And we can make this observation, that to TransCanada's point of view it sure would make a lot more sense if Union and TransCanada, and probably Enbridge, sat down and got their senior engineers and senior management together and worked out what happens in the Parkway area and the Parkway to Maple corridor before everybody runs off building hundreds of millions of dollars of infrastructure.

But we appear to be stymied by this, as I call it, fait accompli. Union is going to file its leave-to-construct and we're going to be in a proceeding where we will have to debate the issue there.

So that said, TransCanada's alternatives, for example, we described in our evidence customizing IT and STFT services to ensure that they would be available on demand, if Union had a loss of a unit at Parkway. That is achievable within weeks or months of drafting a tariff.

Relocating a compressor or adding compression to the Hamilton line, well, based on our recent eastern expansion project -- which was a Section 58 project -- that too can be accomplished fairly expeditiously, but it is more a question of months than weeks.

But can we get this done before Union gets in its leave-to-construct application? That is difficult to say. In that regard, the Board might decide to deal with that leave-to-construct application in a way that allows for consultations and other regulatory steps to take place, but if it doesn't, we're prepared to deal with the matter at the leave-to-construct application.

MS. HARE: Okay. Thank you.

MR. CAMERON: Thank you. And thank you to counsel for allowing me to precede them in argument.

MS. TAYLOR: Mr. Cameron, I do have one question.

When you suggested in your argument that the Board should act in a proactive manner, BOMA filed yesterday as Exhibit K14.1 a legal opinion or decision from the Ontario Court of Appeal in the Toronto Hydro -- we will call it the dividend case, for lack of a better description.

In paragraph 50, it describes the relationship that a rate-regulated entity has with respect to balancing the public interest with the interests of its shareholders.

The last line of that paragraph says:

> "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 effect, that is what you are asking the Board to do here, and I am assuming, reading into what you said, in terms of ordering or requiring a meaningful consultation on this facility; is that correct?

MR. CAMERON: That's correct. I believe that Ontario Court of Appeal decision correctly captures what I was saying in my decision about the need for this Board's proactive oversight to prevent LDCs from acting in their shareholder interests instead of the interests of Ontario gas consumers. So I agree with you.

MS. TAYLOR: Thank you.

MS. HARE: Thank you, Mr. Cameron.

Mr. Cass, are all of your submissions on really the same topic of Parkway West?

MR. CASS: Yes, Madam Chair. My submissions will be completely on issues related to those addressed by Mr. Cameron, and they will actually be considerably shorter.

MS. HARE: All right. Then I know Mr. Aiken was supposed to be next, unless you have a problem, Mr. Aiken. Then I think it makes more sense for Mr. Cass to go next.

MR. CASS: Thank you, Madam Chair.

FINAL ARGUMENT BY MR. CASS:

MR. CASS: As the Board will, I think, have noticed, Enbridge Gas Distribution became more directly involved in this proceeding than it had been previously because of the issues that arose with respect to the Parkway West project.

I think it is important that I make clear - this was probably clear in any event, but I think I should emphasize it - that Enbridge's participation in this case was most certainly not for the purpose of actively engaging on the issues that had been raised with respect to the Parkway West project. Enbridge's point, instead, was to do its best to ensure that it is as clear as it can be in this case that there will be opportunities for these issues to be addressed at a later time.

In particular, Enbridge's central point is that there will be leave-to-construct proceedings - as Mr. Cameron has referred to - in which issues raised in this proceeding can be addressed.

With respect to the Parkway West project itself, the evidence is clear on this that there will be a leave-to-construct application, and as to the scope of that application, for example, Mr. Redford said at volume 8 of the transcript, page 77:

> "We would file a leave-to-construct application in September or October of this year for the components of the project which would be typically covered under leave-to-construct".

Then later on on the same page, he went on to address the scope of that, and he said:

"As part of that application, we would include a full description of the project, full economics, which would include the compression and the metering facilities and also rate impacts."

Then later on -- I won't read this, but later on in volume 8 of the transcript at page 83, it was, indeed, confirmed that the issues in this case, particularly about options and alternatives, will be live issues in that Union leave-to-construct proceeding.

The Board is also aware that Enbridge will be bringing a leave-to-construct proceeding for facilities in the near future. That, for example, was referred to by the Board when it gave its Ruling with respect to a request for production of a document in this case. That is at volume 9 of the transcript, page 45, where the Board indicated its expectation that these sorts of issues were going to be fully considered in the context of the various leave-to-construct applications that would be filed in due course.

There are some comments that I wish to make about these leave-to-construct proceedings. I should emphasize, first of all, of course I am not speaking when I do this about Union's proceeding. I can't speak on Union's behalf.

However, I can comment, generally, about upcoming leave-to-construct proceedings.

The main thrust of my submission is to urge the Board in this proceeding not to do anything that would amount to prejudging leave-to-construct applications that will be forthcoming.

I think it is important that I emphasize, as well, that when I speak of prejudging, I am talking not just of substance, not just of things like the alternatives that have been raised in this case, but, perhaps even more importantly, about process and timing.

I understand that others have been making submissions to the Board about process for consideration of issues that would arise in these leave-to-construct applications.

The difficulty is that the Board would be making those decisions about process and those decisions would have an effect on timing, and yet the Board would not yet have received the evidence in the leave-to-construct applications about the importance of timing.

Again, I can't speak about Union's application, but I think the Board would be well aware, at least from Enbridge's point of view, that a leave-to-construct application typically addresses purpose, need and timing.

In the context of Enbridge's application, that evidence about purpose, need and timing is something that would be extremely important for the Board to see before it starts making decisions, certainly about substance, but also about process and also anything that meet affect timing.

That is the thrust of the submission I came here to make to the Board today, to urge the Board not to do anything that could potentially prejudge substance, process or timing before it sees that evidence in the leave-to-construct applications.

In this regard, I do take some support from Board Staff's argument in this proceeding. Board Staff addressed the extent to which the Board should make any decisions with respect to the Parkway West project in this case. That is at page 18 of Board Staff's argument. There are three paragraphs there. I won't read them all, but Board Staff did say that:

> "The cost, need, prudency and impact on the environment will all be reviewed in the leave-to-construct application that Union is expected to file before the end of 2012. Board Staff submit that no decision is required on the project in this proceeding."

Again, I reiterate Enbridge's submission that the Board should not make determinations that will affect substance, process or, particularly, timing until it has seen the leave-to-construct applications and especially Enbridge's application with evidence on purpose, need and timing.

Thank you, Madam Chair.

MS. HARE: Thank you.

MS. TAYLOR: Mr. Cass, I do have a question and it relates to -- you used the words "prejudge the substance, form or timing" of your subsequent application and that potentially of Union Gas, as well.

There have been certain issues raised in this proceeding. They go more to a global question of how integrated facilities owned by three separately regulated monopolies, one of which is not regulated here in Ontario by the OEB itself, how we achieve, I suppose, an optimal outcome for ratepayers by three entities who would like to eat, in effect, each other's lunch.

And my concern with the submission that you have just made, given the overarching concern we have heard from others in the proceeding, is how particular applications that are filed in silos with the Board will, in effect, effectively address this overarching issue of: How do we integrate three disparate groups of facilities that operate as one system?

Your answer has not provided me with any comfort that in fact the global issue will be addressed in a comprehensive way in two separately filed applications for different facilities, and, in the case of Union Gas, not all of those facilities are in fact subject to a leave to construct, as I understand Union's submission, requirement.

So perhaps you could gently tell me how the concerns that have been raised by parties in this proceeding will be effectively addressed in two silo proceedings, different facilities, different parts of a project that may or may not be fully addressed.

MR. CASS: Well, Ms. Taylor, first of all, I don't believe that I used the word "silos". I don't see them as necessarily being silo proceedings. I see that as something that the Board should look at when it has the applications, when it knows what they're about, when it has the complete evidence and when it is in the position to make the best decision about process.

I think the Board will -- does have and will have tools at its disposal to set the best process when it has the applications in front of it, and I have faith that the Board will make the appropriate judgment about the process for these issues to be considered in the best way.

I am just saying, in my submission, the Board really is not in a position to make that best decision about process until it actually has the applications and the evidence.

At that time, I think the Board will be in the correct position to decide how these issues should go forward.

MS. HARE: Mr. Cass, are you coordinating -- is Enbridge coordinating with Union Gas so that those applications come in at the same time?

MR. CASS: I don't think they're coming in at the same time, Madam Chair, no. I think Enbridge is attempting to get its application in as fast as it possibly can.

MS. HARE: That leaves me with a worry about how you are addressing alternatives.

MR. CASS: I'm sorry, Madam Chair, in what sense? Alternatives will be addressed.

MS. HARE: We heard a lot in this case about collaboration or the lack of, lack of discussion, between TransCanada and Union. We have heard a number of submissions talking about the need to talk about the projects and what the alternatives -- the best alternative for the Ontario ratepayer might be.

And I am wondering how you are doing that if you are marching along and filing an application and Union is doing its own thing.

MR. CASS: Yes. Well, again, Madam Chair, I'm sorry that the impression seems to have been created here, perhaps in the interests of particular parties, that things happen in silos. At least from Enbridge's point of view, they do not.

Unfortunately, it is a little difficult to address. So let me try to address it in the fashion that I attempted to do when I was cross-examining the TransCanada witnesses.

The TransCanada witnesses were very, very good, and I appreciate that they were good, in protecting the confidentiality of the discussions that they have been having with their customers. That is important, and Enbridge very much appreciated that they were respecting that confidentiality.

However, I did my very best on that cross-examination to have the witness confirm that the Board should take nothing from that that would cause the Board to assume that discussions are not happening between the parties.

MS. HARE: When you say "the parties", two parties or three parties?

MR. CASS: I can't speak for three parties, Madam Chair. I am only here speaking on behalf of one client.

Again, we are very appreciative that TransCanada respects confidentiality, and we don't want to cause any disturbance to confidentiality, either.

However, the effect of that may be to cause the Board to think that discussions are not happening, when that is not the case.

MS. TAYLOR: Mr. Cass, I just have a question with respect to timing. So while your submission is that you would prefer the Board not to issue any sort of directions, with respect to Parkway, to Union or authorize or direct consultations between the three pipeline players in Ontario, you did say that you were working hard to submit as soon as possible.

MR. CASS: Yes.

MS. TAYLOR: Given that this Panel has the option and will be considering potentially one of the alternatives that parties are making, which is to direct some form of consultation, do you not think that there is a certain amount of respect that parties should have until this Panel has rendered that decision, either directing or not directing consultation, and that rushing to file preemptively before this Panel has a chance to render its decision doesn't necessarily speak well to the process that we have just gone through, the legitimacy of the request, because we've got three major pipeline players in this province? And we are talking about facilities that will go to through rates.

I am a little bit concerned there is a rush to file to preempt this Panel and the determinations that we may or may not make. You said it again this morning, and I am somewhat concerned by that approach.

MR. CASS: Again, Ms. Taylor, I can't really speak to the determinations that you might make with respect to Union in this proceeding. I am not really in a position to comment, not being fully aware even of the discussion that has occurred in this case.

You said -- you stated, though, a preference that the Board not -- that I expressed a preference that the Board not proceed until it has seen the evidence. In the case of Enbridge, I would say it is much stronger than a preference. It is a very emphatic submission.

I would see it quite differently than you have put it, Ms. Taylor. I don't believe that Enbridge is rushing to get an application into the Board. First of all, I don't think "rushing" is the right word. If I used that word, I apologize.

Enbridge is trying to submit its application as quickly as it can and, in doing so, to make it as good an application with the best evidence that it can put to the Board in the shortest possible time frame.

That is not, in any way, to preempt a decision of the Board. It is to put the Board in a position of having that evidence and having the benefit of that evidence to make the best decision not only about substance, but about procedure and timing.

It is not attempting to preempt anything. It is attempting to get the evidence to the Board as quickly as it can in a fashion that will allow the Board to have what it needs in front of it to make the best decision.

MS. TAYLOR: Thank you.
MR. CASS: Thank you.
MS. HARE: Okay, thank you, Mr. Cass.
Mr. Aiken, if you could proceed? Now I have you down as a time estimate of 90 to 120 minutes, so maybe you could decide where the best time to take a break might be.
MR. AIKEN: Sure.
MS. HARE: Because we can't go 120 minutes.
MR. AIKEN: Neither can I.

FINAL ARGUMENT BY MR. AIKEN:

Thank you, Madam Chair, Ms. Taylor. My submissions are on behalf of the London Property Management Association on the issues that were not completely settled in the settlement agreement dated June 28th, 2012.

These submissions will generally follow the order of the issues list. Now, I do have a compendium of some of the material that I will be referring to.

MR. MILLAR: Exhibit K15.1.

EXHIBIT NO. K15.1: COMPENDIUM OF BOMA.

MR. AIKEN: I should note, with respect to the compendium, I will be referring to various documents and they're basically in the order that they are in in the compendium.

I should also note that the electronic version of the compendium will be a lot easier to follow at some point in the future if you are looking at it again, because it is fully bookmarked. So it is a lot easier to follow.

The first issue I am going to be touching on is

Parkway West. I won't do a lot of preliminary on it, because we have just heard that from TCPL and Enbridge. LPMA is not making any submissions in this proceeding related to the need for the project, the cost of the project or the allocation of the costs of the project to rate classes. We know this will be done in other proceedings.

However, LPMA does submit that based on the extensive oral evidence in this proceeding, it is clear that the Parkway West project extends beyond Union Gas to encompass Enbridge through their GTA reinforcement project, and TransCanada through the proposed alternatives to the project.

LPMA is concerned the leave-to-construct application related to the project, which Union has indicated it will likely file in the fall of this year, needs to encompass a wider perspective that includes the needs of Enbridge and the potential options to serve those needs not only by Union, but also by TransCanada.

This review is likely to be larger than a typical leave to construct application. Such a review may include the impact on upstream tolls into Ontario of the various options that may be available. Similarly, a review of the options is likely to be influenced by the changing mix of supply options and basins across North America.

LPMA submits that the Board should initiate a proceeding that would encompass Union's Parkway West project, Enbridge's GTA reinforcement project, TransCanada options, any Parkway-to-Maple expansion plans by any of the companies involved, and any other projects that may be related to this issue.

The amount of money that may be spent over the next few years will have a significant impact on Ontario ratepayers.

The Board should not deal with separate projects on a piecemeal basis. Rather, there needs to be a process that can review an integrated planning exercise that involves all parties that may be affected, along with all those parties that can provide cost-effective solutions.

Moving on to operating revenues, I am going to reverse issues 1 and 2 under this heading and deal with issue 2 first. Issue 2 is:

> "What is the appropriate methodology to be used to forecast degree days for the test year?"

Unfortunately, in the view of LPMA, Union Gas did not attempt to answer this question. All Union did was compare their proposed 20-year declining trend to the current 55/45 30-year average and 20-year declining trend blended methodology.

The issue is not whether or not the 20-year declining trend methodology is more appropriate than the existing methodology. The issue is broader in scope than that addressed by Union in their evidence.

Union was aware of the evidence and Board decision in EB-2006-0034, in which Enbridge proposed to change the degree-day forecasting methodology from the de Bever methodology to the 20-year trend. That is at transcript volume 1, page 32.

The Enbridge proposal was accompanied by an exhaustive analysis of nine different forecasting methodologies. The analysis included rankings based on a number of statistical measures and over a number of different periods.

I have included the relevant pages from the Enbridge evidence in that proceeding in the compendium.

They rank the nine methodologies based on the mean absolute percent error, the root mean square error, both of which are measures of accuracy, the mean percent error and percent over forecast, both of which are measures of symmetry, and the standard deviation, which measures stability.

And they did this analysis based on three different out-of-sample forecast periods, which were all available years of data, being -- sorry, being all available years of data, the most recent 10-year period and the most recent five-year period.

Union used four of these criteria on three methodologies over one period, as shown in table 1 of Exhibit C1, tab 5.

In their original evidence, Enbridge proposed to use the same methodology for their eastern and Niagara regions as the one that they found to be the best ranked methodology for the Toronto area, because the weather in the three regions is highly correlated.

However, in their argument in-chief, they amended their proposal by requesting approval of separate forecasting methodologies for the eastern and Niagara regions.

Specifically, Enbridge requested approval of the 20-year trend method for the Toronto region, the Energy Probe method for the eastern region, and the 50/50 method for the Niagara region. This amended proposal was based on the fact that these other methods were ranked higher in the analysis done by Enbridge in those regions than the 20-year trend methodology.

In other words, the high correlation between the three different regions did not translate into the same methodology being the best forecast method.

LPMA notes that Mr. Gardiner agreed that Union's distribution regions are equally or more diverse weather-wise than those of Enbridge. That is at transcript volume 1, pages 31 to 32.

In the Board's decision in the Enbridge proceeding, which I have included in the compendium, the Board indicated that two issues needed to be considered with respect to the proposed methodology change. The first was whether the company had made a sufficient case to alter the currently used methodology, and the second was: What is the appropriate degree-day forecasting methodology or methodologies for setting test year rates?

The second issue is essentially the issue as it is worded in this proceeding.

With respect to the first issue, LPMA makes no submissions, because a sufficient case to alter the current methodology hinges on finding a better methodology that provides a more accurate forecast.

The Board noted on page 9 of the Enbridge decision that:

> "Given the sole purpose of a forecasting methodology is to accurately forecast weather, it is simply appropriate to select a method based on the empirical findings."

So then the focus turns to Union's 20-year declining trend methodology. Has Union made a case that it is an appropriate methodology? LPMA submits that the answer is no, because the analysis is flawed.

Union did not consider any of the other six methodologies reviewed by Enbridge, including the two methodologies that both Enbridge and the Board determined were better forecast methodologies for the eastern and Niagara regions than is the methodology proposed by Union. That is transcript volume 1, pages 32 through 34.

Also, Union only considered a trend methodology based on a 20-year time horizon, with no other explanatory variables other than the trend used to explain the fluctuation in heating degree days. Union did not investigate any trend methodologies other than 20 years, based on the consultation done for the 2004 rates case, which is now nearly a decade out of date.

Despite having eight additional years of data, Union did not look at any periods other than 20 years. That is transcript volume 1, pages 34 to 35.

If one were locking for the best trend methodology, one should look at the best length of what the trend should be.

Union also did not consider adding any other variables to the trend models to see if they could find a better fitting equation that might improve the forecast. And the reference to that is transcript volume 1, pages 44 to 46.

Mr. Gardiner indicated that because the 20-year trend declining -- sorry, the 20-year declining trend methodology is simple, and that was one of the features of developing a weather-normal, there is only a time variable in the equation.

LPMA submits that simplicity should not be at the cost of accuracy. In addition, LPMA submits that by adding a dummy variable to the equation - as was requested in Undertaking J1.3 - cannot by any stretch of the imagination be said to be adding to the complexity of the model. Union does it routinely for its average use and volumetric equations.

In the response to Exhibit J1.3 corrected on August 3rd, 2012, Union states that:

> "...the inclusion of a dummy variable is not appropriate, because inclusion of such a variable would necessitate the annual re-specification of the degree day trend equation and be subjective."

LPMA submits neither of these reasons is appropriate. What is appropriate is doing whatever is required to provide the best forecast. If that includes re-specifying a few equations on an annual basis, then so be it.

As for subjectivity, Union already employs it through the decision to include or not include dummy variables for inclusion in its average use and volumetric equations.

A significant flaw in the view of LPMA is that Union is basing its forecast of degree days for the test year based on equations that are not statistically significant at even an 85 percent level of confidence. This can be seen in the equations shown in Exhibit J1.2 that was used to forecast 3,599 degree days for the south region.

In the ANOVA table, or the analysis of variance table, the significance of the F statistic is 0.153, meaning the regression is significant at a confidence level of only 84.7 percent. The time variable in the equation is also significant at only an 85 percent level of confidence. What is really disturbing is that the adjusted R-squared, which indicates the amount of variance explained in the data, is only 6.1 percent.

LPMA submits that the Board should direct Union to do a comprehensive review of at least the same forecasting methodologies as reviewed by Enbridge in both their EB-2006-0034 and in their current EB-2011-0354 rates proceedings, and provide that analysis at the next rebasing application.

Further, to recognize that a high level of correlation in weather does not necessarily lead to the same methodology being the most accurate forecasting method, Union should conduct this analysis on each of the weather stations it utilizes in the weighting of its northern and southern degree days.

A review of the weighting degree days is not appropriate, because there are issues with the proper rates that should be applied to the degrees from each weather station, and whether they should be fixed or vary on a year-to-year basis as the growth in the different areas fluctuates.

So that leaves us with how to forecast degree days for the current test year.

LPMA has had the opportunity to review the staff argument on this issue. Staff suggests that the Board should approve a weather methodology that gives equal weight, or 50/50, to the 20-year and 30-year declining trend, and this was in line with what the Board contemplated in the RP-2003-0063 decision.

Now, I must pause here, because I have assumed that this is an error and Staff meant to say equal weighting between the 30-year average and the 20-year declining trend.

Assuming that is correct, LPMA agrees with Staff's submission with one modification. The 20-year trend component of the blended methodology should not be Union's 20-year declining trend forecast as included in the evidence.

First, the 20-year forecast should be updated to reflect actual 2011 data, as should the 30-year moving average; second, that the 20 year declining trend equations, modified for a structural shift that is shown in attachments 1 and 3 of Exhibit J1.3, should be used in place of the equation shown in attachments 2 and 4.

First, dealing with the south, which again is attachments 1 and 2 of that exhibit, the equations that include the structural shift variable is an overall fit confidence interval -- or confidence level, rather, of more than 99 percent, while the version without the dummy variable is significant at a 93 percent level of confidence.

The first equation explains 51 percent of the variance in the data, while the second equation only explains 13 percent. The confidence level on the time trend in the first equation is 85 percent, the same level that Union was happy to live with in their equation.

The test year forecast from the better fitting equation from a statistical point of view is 3,816. This should be used in the weighting for the 2013 forecast.

In the north, which is attachments 3 and 4, the two equations show that they are both a good fit with an overall confidence level of more than 99 percent. The equation with the structural shift variable, however, explains 50 - 56 percent of the variability in the data, while the equation without it explains only 34 percent.

The test year forecast from the better fitting equation, from a statistical point of view, is 4,844. This should be used in the weighting for the 2013 forecast.

Union may comment on the fact that while the structural shift variable is highly significant, the trend variable in the north equation is not significant at even a 5 percent level of confidence, and this is a valid concern.

However, removal of the trend variable in the north and re-estimating the equation yields statistical results that are comparable to the equation with the time trend included.

The forecast from that equation, which still includes a structural variable, is 4,841 degree days, a decrease of three from the forecast of 4,844 shown in attachment 3 to Exhibit J1.3.

In summary, LPMA submits that the Board should approve a 50/50 weighting between the 30-year moving average and the 20-year trend methodology, where the 20-year trend reflects inclusion of a structural shift variable resulting in better fitting equations.

Now, I am moving back now to issue 1 under operating revenue, and the topic there is: Is Union's general service demand forecast appropriate?

So now that the degree day forecast is out of the way, we can deal with the general service demand forecast. I have submissions on two issues, the average use forecast and the customer addition forecast.

Starting with the average use forecast, LPMA believes that rather than critiquing the methodology and the equations used by Union to arrive at their forecast, it is only necessary to review the results to see if they are plausible.

The best starting point is to look at the average use figures for all of the general service classes that Union forecasts on a historical basis and compare that with their forecast. The best place to do this is Exhibit J1.4.

This schedule shows the average use for all of the historical and forecast years normalized to the same number of degree days in all of the years as that proposed by Union for the test year. In other words, the figures shown there have no weather impact in the changes.

This effectively removes the impact of not only weather on the NAC figures, but also removes the impact of normalizing to different normal degree days over history.

As a result, the NAC figures shown in Exhibit J1.4 reflect changes in average use caused by everything except the weather. This would include DSM, equipment efficiency changes, and so on.

LPMA makes no submissions on the industrial average use forecast, as the M2 category is basically flat and the rate 10 average use would be impacted by the various resource industries that are concentrated in the north with their cyclical behaviour.

The forecasted average uses are plausible in the view of LPMA. We do not, however, believe that this can be said for the residential and commercial figures.

First, with respect to the M2 residential average use, Union is forecasting an annualized percentage decline in average use between 2011 and 2012 of 2.6 percent.

So how does this compare to what has taken place in the recent past and over the entire period shown in the table?

The average analyzed percent decrease over the last five years - so that is 2006 to 2011 - was 1.2 percent. Over the last ten years, 2001 to 2011, it was 1.4 percent.

Over the entire 20-year period shown, for 1991 to 2011, it was 1.3 percent. Union is forecasting that the percentage decline in non-weather-related average residential use will double in the bridge and test years.

Similarly, for the 01 residential average use, it fell by 0.2 percent in 2006 to 2011, 1.3 percent per year in 2001 to 2011, and 1.4 percent in the 1991 to 2011 period.

Union is forecasting a decline of 2.4 percent per year for the Enbridge and test years. Union is forecasting an increase in the rate of decline by one full percentage point compared to the historical changes.

LPMA submits that Union has not provided any evidence to support this accelerated decline in average use. The rate of decline due to furnace efficiency improvements has not accelerated nor has a reduction due to DSM.

In fact, with respect to DSM, we know that Union is focussing more on larger customers than they have in the past in order to maximize their volumetric savings.

LPMA submits that the Board should approve a forecast for the two residential classes that reflects a decline in average use in the bridge and test years that is consistent with the historical data. In particular, LPMA submits that a reduction of 1.4 percent per year for both residential classes is reasonable and consistent with the long-term trend.

This would reduce the M2 average use from 2,264 m^3 in 2011 to 2,201 in 2013, and the average -- sorry, the rate 1 average use from 2,269 m^3 to 2,206.

This results in the M2 average use being 2-and-a-half percent higher than that forecast by Union, and the 01 average use being 2.1 percent higher than forecast.

Based on the sensitivity of the deficiency to NAC shown in Exhibit A2, tab 1, schedule 2 - and I should stop here and note this reference is not in the compendium - this would reduce the deficiency by 2.25 million for the M2 change and 1.05 million for the 01 change, for a total impact of 3.3 million.

Turning to the commercial average use, also shown in Exhibit J1.4, LPMA has the same concerns with the significant acceleration in the decrease in average use forecast for the old rate M2 and rate 01.

The reduction in commercial rate -- commercial old rate M2 is 3.4 percent on an annualized basis between 2011 and 2013. The annual percentage decline between 1991 and 2011 is only 0.4 percent.

Over the last five- and ten-year periods, the average use for these commercials has actually increased. Union has indicated that they believe the increase in average use in this category in 2011 is an outlier.

However, this is the type of judgment call that Mr.

Gardiner indicated, with respect to adding dummy variables in the equation to forecast degree days, that he did not want to do.

LPMA notes the commercial use per customer equation used by Union does not include any explanatory variables related to the economy or the relative price of natural gas versus other fuels, such as electricity.

LPMA submits the growth of the economy in 2011 back to near pre-recession levels, accompanied by the decline in natural gas prices over this period, while electricity prices continue to march upwards, could well explain the increase in 2011.

With respect to the commercial 01 rate class, LPMA notes that the average use in 2011 also increased relative to the 2010 figure. Union is forecasting a decline of two-and-a-half percent on an annual basis between 2011 and the test year, while the 1991 to 2011 average decline is 1.0 percent. Over the shorter time periods, average use has increased since 2006, while, looking back to 2001, it has only declined by 0.25 percent per year on a compound annual basis.

The commercial rate 10 volumes -- sorry, the commercial rate 10 volumes are forecasted decline by 1.7 percent per year. However, the average use in this category is higher in 2011 than it was in any previous years shown. Moreover, the general trend has been higher over the past decade. The increase over the last five years has been more than seven percent per year.

LPMA submits that the Board should approve a forecast for these three commercial classes that reflects a decline in average use in the bridge and test years that is consistent with the historical data. In particular, LPMA submits that a reduction of 0.4 percent per year for commercial rate M2 and 1.0 percent for commercial 01 is reasonable and consistent with the long-term trends.

This would reduce the M2 average use from 17,213 m^3 in 2011, to 17,076 in 2013. And the average use would decline from 8,580 to 8,409.

LPMA submits that the rate 10 average use should be maintained at the 2011 level of 124,714 cubic metres. This results in the M2 commercial average use being 6.2 percent higher than forecast by Union, 01 average use being 3.1 percent higher than forecast, and the rate 10 average use being 3.6 percent higher than forecast.

Union indicated that a one percent NAC increase for commercial M2 would be a decrease in the deficiency of $339,000, with a corresponding figure for rate 10 of $150,000. And that is taken from the technical conference transcript on May 31st, at pages 226 to 227.

Based on these sensitivities, along with the assumption that the sensitivity for the rate 01 commercial is similar to that for rate 10 commercial, the figures proposed would reduce the deficiency by about $3 million.

With respect to the customer addition forecast, Union has under-forecast customers in three of the last four years. The average under-forecast in 2008, 2010 and 2011 is 6,455 customers, while in 2009, when the impact of the recession -- sorry, when the impact of the recession hit the housing market, Union over-forecast by 2354 additions. That is taken from Exhibit J.C-1-1-5.

They state, Union states that the average range over the four budgets is 4,253 customers.

Now, Union has not provided any evidence to suggest that they view this under-forecast as a problem or that they have taken any measures to address it.

LPMA submits that the Board should increase the general service customer forecast by 4,250 in both the bridge and test years.

Based on the sensitivities shown in Exhibit A2, tab 1, schedule 2, 5,000 additional customer attachments in 2003 reduces the deficiency by approximately $200,000.

By adding customers in the bridge year, the impact would be double that in the test year, so the addition of 4,250 in both years should reduce the deficiency by about half a million dollars.

LPMA notes that Board Staff have submitted that Union should include the 800 customers associated with the expansion in Red Lake in the 2011 forecast. LPMA agrees, but if the Board accepts the increases proposed by LPMA, then it is submitted that these customer additions should be considered be included in the increase of 4,250 in the 2013 test year.

I am moving on to issue 3 and that is:

"Is the 2013 contract customer demand forecast appropriate?"

LPMA's main concern with the contract forecast is the unsupported reduction in the overrun forecast provided by Union.

In the response to Exhibit JT1.1-7, Union is forecasting only 0.6 million in overrun revenues in the test year, despite recording actual overrun revenues that average nearly $2 million a year over the 2007 through 2011 period, including 2.4 million for the most recent actual year.

LPMA submits that Union has not provided any credible evidence for any of the reductions shown for the non-power markets shown in the response to Exhibit JT1.1-7.

The overrun revenues from these non-power markets have been very stable over the 2007 through 2011 period, averaging over just 1.7 million per year.

LPMA submits that this is a reasonable forecast for the test year, given the levels recorded in the past.

With respect to the power market, Union's forecast of nothing is not credible. Union has added additional generators over the 2007 through 2011 period, and the last year of actual revenue is 0.6 million in 2011.

Union also did not forecast any power market overrun revenue in 2012. However, by the end of June of this year, Union had collected 0.3 million from the Halton Hills generating facility. That is at transcript volume 1, page 100. On an analysed basis, this equates to 0.6 million, the same is recorded in 2011.

LPMA submits that an appropriate overrun revenue forecast for the power market is the same as recorded in 2011 and projected for 2012, being 0.6 million.

In summary, LPMA believes that the Board should increase the overrun revenue forecast from 0.6 million to 2.3 million. This figure is more realistic and it is reflective of the recent past.

Moving on to issue 4 --

MS. HARE: This might be an appropriate place for a break.

MR. AIKEN: Okay. That would be fine.

MS. HARE: Let me ask you a quick question, though, on your customer forecast. When you say the average variance over the four budgets is 4,253, that is per year, right?

MR. AIKEN: Yes.

MS. HARE: Yes. Thank you.

So why don't we break now until 10:45?

MR. CAMERON: Madam Chair, with your leave, I would like to depart the hearing room, and I think Mr. Cass would, as well.

MS. HARE: Yes, that would be fine.

MR. CAMERON: Thank you.

--- Recess taken at 10:24 a.m.

--- On resuming at 10:53 a.m.

PRELIMINARY MATTERS:

MS. HARE: Please be seated. Mr. Millar, do you have anything from VECC, in terms of the question I asked yesterday?

MR. MILLAR: Yes, I do. VECC filed a letter which clarified the sentence that you had asked about. I had meant to bring it down so we could either read it onto the record or you would formally adopt it. I think you have seen the letter, but I forgot to bring it down. I apologize.

We can deal with that after lunch, if that would suit.

MS. HARE: If I had known that, I wouldn't have asked.

[Laughter]

MS. HARE: We will deal with it after lunch.

MR. MILLAR: It's embarrassing. Thank you.

MS. HARE: Mr. Aiken, can you proceed, then, please?

CONTINUED FINAL ARGUMENT BY MR. AIKEN:

MR. AIKEN: Thank you. I am continuing with issue 4 under operating revenue. The issue is: Is the 2013 S&T forecast appropriate?

Attachment 1 to Exhibit J.C-4-5-2 provides a listing of the accounts that fall under this heading. LPMA will be making submissions on each of the five main components, being the M2 long-term transportation, other long-term transportation, other storage and transportation services, short-term transportation and exchanges, and, finally, short-term storage and balancing services.

I will also be making or dealing with the FT RAM revenues as a separate issue.

So starting with the M12 long-term transportation revenues, which are lines 1 and 2 in attachment 1 to Exhibit J.C-4-5-2, it can be seen that these revenues had an increasing -- or had been increasing steadily up to 2010.

The actual 2011 level and the forecast for 2012 are just over $140 million, with a reduction of 5.3 million forecast for the test year relative to 2012.

A review of Exhibit J6.3 shows that on a year to date June basis, the actual revenues are tracking very close to the forecast in 2012.

However, as noted, there is a decrease of more than $5 million between the bridge and test year forecasted revenues for these line items. Union provides a rationale for this decline on page 5 of Exhibit C1, tab 3.

LPMA accepts the variance explanation as being reasonable. These changes are all related to the turnback of M12 capacity that began in 2011, and is forecast to continue in 2012 and 2013.

Some of this capacity has been used to generate new sales, but the net impact is a reduction in forecasted revenues based on contracts currently in place. LPMA notes, on the response provided in Exhibit J8.10, Union indicates that based on changes to M12, M12X and C1 long-term firm contracts, since the forecast was completed there is an increase of $280,000. LPMA submits that this increase should be reflected in the forecast.

LPMA submits that the acceptance of the forecast does not mean that the capacity that is not currently contracted for has no value. Union has a lot of available capacity on the Dawn to Parkway system, at more than 200,000 gJs per day. That, again, is Exhibit J8.10.

As the Board is aware, there is significant changes taking place in the source and movement of gas in eastern North America. This unused capacity may be contracted for in 2013. LPMA submits that any variance from the forecast, both up and down, should be captured in a variance account and shared 90 percent to ratepayers and 10 percent to the shareholder.

The second component of the S&T forecast is the other long-term transportation, which is comprised of lines 3, being C1 long-term transportation; line 6, being M13 transportation; and line 7, being M16 transportation in attachment 1 of Exhibit J.C-4-5-2.

LPMA accepts the M13 transportation forecast, and I will make separate submissions on the M16 transportation revenues later on.

With respect to the C1 long-term revenues, LPMA accepts that the decrease between 2012 and 2013 is related it the impact of the M12X conversion noted on page 8 of Exhibit C1, tab 3.

However, LPMA notes that the year to date June 2012 revenues for this line item shown on Exhibit J6.3 is more than 7 percent higher than the forecast. Based on this under-forecast in the bridge year, LPMA submits that the 2013 forecast should be increased by the same proportion, resulting in an increase of $400,000 in the test year forecast.

The third component of the S&T forecast is other S&T

revenues shown on line 8 of Exhibit J.C-4-5-2. These revenues have been stable over the period shown. The June year-to-date actuals are on forecast as shown in Exhibit J6.3. As a result, LPMA submits that the revenue forecast for the test year is appropriate.

The fourth component of the S&T forecast is the short-term transportation and exchanges. This is shown on line 4 of the attachment to Exhibit J.C-4-5-2. This line item includes FT RAM-related revenues, which will be discussed separately.

The attachment to Exhibit J6.1 shows the short-term transportation and exchange revenues excluding the FT RAM revenues and costs.

These revenues have been 21.4 million in 2010, 22.5 million in 2011, and the forecast for 2012 and 2013 are 17.986 million and 21.86 million, respectively.

Table 3 on page 10 of Exhibit C1, tab 3 shows the short-term transportation revenue component of these figures. Actuals of 12.8 million in 2010 and 12.5 million in 2011 are followed by a forecast of 11.1 million for both 2012 and 2013.

This reduction is explained by the insufficient take-away capacity on TCPL capacity downstream of Parkway. LPMA accepts these forecasts based on the evidence.

The base exchanges make up the difference in the figures we have just gone through, meaning that these exchanges total about 8.6 million in 2010, 9.7 million in 2011 and are forecast to be 6.9 million in 2012 and

9.1 million in 2013.

LPMA submits that the forecast for base exchange revenues are significantly understated. In particular, a review of line 5 at Exhibit J6.3 shows that the actual base exchange revenue for the year to date June is more than 2.6 million, or 66 percent, higher than the forecast for the same period.

In fact, the actual revenue to June of more than 6.6 million is less than $300,000 from the forecast for the entire 2012 bridge year.

Union states at page 13 of Exhibit C1, tab 3 that the exchange revenues of 9.1 million exceeds the actual revenues earned in years prior when the FT RAM program is removed. This is not likely to be the case when 2012 is completed.

LPMA submits that the Board should increase the 2013 forecast of 9.1 million to reflect the under-forecast that is taking place in 2012. Union forecasts $4 million on, a year-to-date basis, for June out of the total of 6.9 million for the year, or about 58 percent.

Reflecting the same ratio, but applying it to the 6.6 million of actual revenues in the first six months of 2012, would result in an annual figure of about 11.4 million.

Union has provided no evidence that base exchange revenues will decline in 2013 compared to this year. In fact, their own forecast is for an increase. LPMA submits that the Board should increase the base exchange forecast for the test year from 9.1 million to 11.4 million, the same level as projected for 2012.

The fifth component of the S&T revenue forecast is short-term storage and balancing services and is made up of lines 10 and 11 on the attachment to Exhibit J.C-4-5-2.

As can be seen in Exhibit J6.3, the June year-to-date revenues for off-peak storage balancing and loan services is very close to the forecast, which is one-half of the annual forecast.

Since 2012 is on track to hit the forecast and the forecast for 2013 is the same level, LPMA submits that the forecast of 2.5 million for this line item is acceptable.

However, as can be seen in Exhibit J6.3, the year-to-date June revenues for short-term storage services is more than 2.7 million, or 87 percent, ahead of the forecast for the bridge year. Moreover, the year-to-date June actual revenue of 5.8 million is just under the forecast for the entire year of 6.6 million.

Using the same methodology as for the base exchanges, the projected -- the projected 2012 forecast, based on the proportion of the forecast for the first half of the year, applied to the actual revenue for that period is 12.3 million.

LPMA submits that the 2013 forecast should be increased to the projected 2012 level of 12.3 million from the current forecast of 8.988 million.

This reflects a correction for the continued under-forecasting of Union. LPMA notes that the forecast of

12.3 million is still below the levels recorded in 2007 through 2010, despite more excess utility space projected to be available in 2013 than in those years.

This increase in the amount of excess storage helps to offset the decline in storage prices projected.

Finally, with respect to the five components of the S&T forecast, LPMA submits that there should be no sharing of the test year revenue forecast between ratepayers and Union for all of the S&T accounts discussed, with the exception of the 90 percent-10 percent sharing that the Board has approved for the short-term storage and balancing services account.

In other words, LPMA submits that 100 percent of the forecast revenues should be reflected in rates. Union should not receive an automatic percentage of these forecasted revenues. Any automatic slice of the pie may reduce Union's hunger to exceed the revenue forecast built into rates.

Because of the uncertainty and poor forecasting history of Union associated with many of the accounts, LPMA further submits that the Board should establish variance accounts for all of the S&T accounts, other than the short-term storage and balancing services where one already exists.

LPMA proposes that the variance accounts be symmetrical with the gains or losses shared 90 percent to ratepayers and 10 percent to the shareholder. This sharing is the same as the Board has approved for the short-term storage and balancing services.

The 10 percent incentive that Union receives has certainly worked well for short-term storage and balancing services, as Union continues to exceed the forecast on a regular basis.

Obviously, the 10 percent incentive is more than enough encouragement for Union. There is no reason or evidence to suggest that Union would not be as stimulated to earn a 10 percent share on these other S&T accounts.

With respect to the FT RAM issue, LPMA notes that in their argument in-chief Union proposes to include 11.6 million related to the FT program in 2013 rates, and establish a variance account to capture any additional revenue or any revenue shortfall.

Alternatively, Union suggested that a deferral account could be set up to track revenues related to the FT RAM program. Under both scenarios, Union proposes that revenues be shared 75/25 in favour of ratepayers.

LPMA submits the first issue that the Board needs to decide is whether the FT RAM credit program is an S&T activity or a cost of gas activity.

LPMA submits it is the latter. FT RAM credits that Union is currently accounting for through S&T revenues are earned when Union acquires the gas supply it has purchased. This gas supply is delivered through alternative routes that cost less than the FT RAM credit that Union earns.

In short, Union is proposing -- or, sorry, Union is using upstream pipeline capacity that is being paid for in its entirety by system gas customers to generate S&T revenues. It does this by selling this capacity in the market and providing gas deliveries at a lower cost for the gas it has purchased and needs delivered.

Union has stated that ratepayers are being held whole because they are getting the service that they are paying for, in that the gas is being delivered to Union as needed.

LPMA submits, however, that system gas customers are paying for one service and receiving a lower-cost service. The difference in cost goes to Union, with some of it shared with ratepayers. Of course the ratepayers that share in the profits are not the same group of customers that pay the costs.

In particular, Union proposes to uses FT RAM credits to lower distribution rates. Lower distribution rates benefit both system gas customers and direct purchase customers. In other words, system gas customers would be footing the bill for lower distribution rates for direct purchase customers and higher Union Gas shareholder profits.

LPMA submits the Board should not tolerate either one of those subsidies.

Union does not make a profit on the cost of gas. It is a flow-through cost to system gas customers. LPMA submits that the cost of gas includes the cost of getting the gas to the Union system. The actual cost of gas, including the actual cost of getting it to Union, is what system customers should be paying, no more, no less. It is a pass-through of the actual costs.

LPMA notes that, in their argument at page 17, Board Staff acknowledges that Union needs some incentive to optimize, and proposes that 90 percent of the revenues generated through optimization activities related to the transportation capacity that in-franchise customers have paid for should go to offset gas costs, with the remaining 10 percent flowing to utility earnings.

LPMA strongly disagrees. Union should not receive any incentive to get the best cost of gas it supplies its system gas customers.

They would essentially be getting a mark-up on the actual cost of upstream transportation. The next thing you will know is that they will be looking for a mark-up on the gas commodity cost.

If the Board determines that any revenues generated by this optimization activity, with or without a mark-up going to Union, should accrue to gas -- system gas customers, then this is the end of the story. There is no need to look at the allocation of the revenues to ratepayers, since all the ratepayer benefit flows to the system gas customers. There are no issues as to what the proper amount forecast to be received in 2013 is, as all of the revenue would flow through the PGVA on a monthly basis.

However, if the Board determines that the FT RAM revenues should not flow to the system gas customers, but should flow through S&T revenues, then LPMA submits that the amount included in the 2013 forecast and how it is allocated to rate classes need to be addressed.

Union proposes to include 11.6 million in rates, with a variance account to provide protection.

Exhibit J7.11 shows that if the FT RAM credits continue for all of 2012, Union could receive credits of 37.8 million. They have already received FT RAM credits of 19.9 million on a year-to-date basis for June.

Clearly there is a wide range of possible outcomes for 2013, ranging from nothing to something in the neighbourhood of 40 million.

LPMA submits that the Board should not approve the inclusion of any amounts in rates for 2013. Whatever amount that may be included may be subject to claw-back if the program is eliminated, and in our view it would be better to give customers something in 2014 if there are credits to distribute, than to give them something in 2013 and then take it back from them in 2014.

This would also eliminate the need to decide on how to allocate the credits to the various rate classes.

Union's approach would seem to be based on rate mitigation and not cost causality.

LPMA submits that when and if there are credits in an account to be disposed of, that should be the time to look at how they should be cleared to the rate classes.

Union did not forecast any FT RAM credits for the test year, so there is no evidence on how any amounts would be allocated to customer classes in this proceeding.

Moving on to issue 5; this deals with the test year other revenues.

LPMA accepts the test year other revenue forecast as being appropriate, as seen in Exhibit C1, summary schedule 6. The forecast for 2013 is just over 23 million, a level similar to that posted in 2010 and 2011.

Other revenues were higher in the previous two years by about three million. The reduction, according to Union, is a decline in the number of direct purchase general service customers, as more customers have returned to system gas, and a reduction in delayed payment charges, which were high in 2008 and '09 due to the economic downturn.

With respect to the cost and pricing -- and price of these services, Union indicated that it reviews the costs on an annual basis, and that since Board approval is required to change these changes -- sorry, to change these charges, it would file the necessary cost data to support any proposed changes. And the reference for that is Exhibit J.C.E-5-2-3, part a).

Union is not proposing any changes to the fees charged, and LPMA accepts that no change is needed.

Issue number 6:

> "Has Union levied proper charges and allocation to non-regulated business and affiliates, and provided proper credit for those charges and allocations in calculating revenue requirement to be recovered from regulated ratepayers?"

LPMA supports the recommendations of Mr. Rosenkranz, under the heading "Union's use of utility transmission assets for non-utility storage" on pages 7 and 8 of Exhibit K10.7.

LPMA is concerned that a number of Union affiliates and related parties are currently taking regulated transportation services from Union Gas on an interruptible basis, and that these customers have yet to be interrupted. LPMA submits that the Board should impute net transportation revenues of an additional 0.7 million, as noted in the response to Exhibit J7.13, to ensure that Union is not providing what, in essence, is a firm service to its affiliates and related parties, while only reflecting interruptible revenues in the forecast.

I am moving on to cost of service, specifically issue 14:

"Is the gas supply plan for 2013 appropriate?"

LPMA has had the opportunity to review the draft submissions of FRPO on this issue, and LPMA supports those submissions.

LPMA believes that Union's gas supply plan for 2013 may be overly conservative and that this results in higher costs to be paid for by system gas customers, but is willing to accept the plan as filed for 2013.

However, LPMA believes that there would be value in the Board directing Union and interested parties to participate in a consultative to explore other options and explore the potential benefits and risks associated with those options.

In light of the changing dynamics in the North American gas supply and changes in upstream transportation tolls that have taken place and will take place, this consultative would be an opportunity for all interested parties to investigate this matter further.

Issue E, cost of capital, again, I am going to reverse the issues under this cost of capital and deal with issue 2 first, and then issue 1.

Issue 2: Is the proposed change in capital structure increasing Union's deemed common equity component from 36 percent to 40 percent appropriate? The answer is: No, the proposed change in the deemed equity component is not appropriate or warranted.

The Board's policy with regard to the capital structure for natural gas utilities is clearly stated in the EB-2009-0084 report of the Board on the cost of capital for Ontario's regulated utilities dated July 11th, 2009.

In section 4.3 of that report, which is pages 49 and 50, the Board stated that its current policy with regard to capital structure for all regulated utilities continues to be appropriate, and it noted that in the Board's draft guidelines of March 1997:

> "...capital structure should be reviewed only when there is a significant change in financial, business or corporate fundamentals."

The policy is clearly stated on page 50 of the report. For gas utilities, among others:

> "...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 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 base capital structure for Union includes 36 percent equity, which resulted from a settlement agreement in 2006, unless of course you believe that the base capital structure should be that based on the last litigated common equity ratio decided by the Board in 2004.

In that case, their common equity ratio was 35 percent. Dr. Booth discussed this in his evidence.

Now, Union Gas has not provided any evidence in this proceeding of any significant changes in the business or financial risk. In the response to part e) of Exhibit J.E-2-2-2, Union stated "It", and I quote:

"...has not performed an analysis of its financial or business risk, because Union's proposal to increase its equity level to 40 percent is not based on changes in risk."

In the response to Exhibit JT1.55, Union reiterates that it has not analyzed its business and financial risk, but then goes further and states that, and I quote, "accepts that its overall risk profile has not materially changed since 2004."

Mr. Broeders confirmed this response to Mr. Thompson, transcript volume 4, page 128, and further confirmed that none of the experts retained by Union were asked to analyze whether there had been any significant changes in the company's business and/or financial risk.

On the other hand, we have Dr. Booth's evidence, which I believe is Exhibit K6.3, in which he states that, in his judgment, the business risk has marginally decreased since Union was granted the 35 percent equity ratio because of the collapse in natural gas prices.

Dr. Booth also indicates that the changes in financial conditions since the 2004 to 2006 period have been dealt with through the rebasing the ROE formula.

Union has also indicated that over the last five years it has not had a specific case where it was not able to issue debt to financial capital investments. That is Exhibit J.E-2-1-1.

In this proceeding, Union is proposing to change its weather normalization method. If the Board does approve Union's proposal or some other proposal, then LPMA submits that Union's business risk will decline. Union itself described the current 55 percent 30-year average and 45 percent 20-year declining trend methodology as representing, and I quote, "a substantial risk to the company." That is taken from EB-2007-0606, Exhibit B, tab 1, page 12.

The evidence before the Board in this proceeding is clear. Union has not provided any evidence of any increase in its business or financial risk, as is required on the

Board's -- under the Board's policy.

There is evidence, however, of a marginal decrease in business risk. LPMA submits that the Board should approve a common equity ratio of 35 percent, unchanged from the last time the Board reviewed Union's business and financial risk.

I want to make a brief comment on Union's rationale for their proposal. This is stated clearly in the second paragraph of the response to part e) of Exhibit J.E-2-2-2. Their proposal is based on a comparison of other utilities with similar risk profiles to Union, in their opinion.

In other words, they have come to the Board with one hand open, palm up, and, with their other hand, they're pointing to the 40 percent equity ratio that the electricity distributors and others have under the Board's policy, and they're saying to the Board, Look, they have it. We want it.

Union should know that if they want the Board to approve something and a Board policy clearly states what is required for Board approval, then they should provide evidence in support of the request that follows the Board policy.

Now, if the Board does approve Union's proposal or some equity ratio greater than the current 36 percent, then LPMA submits that the Board needs to deal with the issue of how to treat preferred shares in the deemed capital structure.

To the best of my knowledge, the EB-2009-0084 report of the Board did not deal with the treatment of preference shares. It was primarily focussed on the return on equity or, to be more specific, the return on common equity; to a lesser extent on the determination of deemed long-term and short-term debt rates.

The Board's determination on the capital structure did not change from the report of the Board on cost of capital and second generation incentive regulation for Ontario's electricity distributors dated December 20th, 2006.

The split that was deemed to be appropriate by the Board was 40 percent debt and -- sorry, 60 percent debt and 40 percent equity. There was no mention of common equity.

Table 2 in the summary section of the 2009 report of the Board shows the components of the Board's cost of capital policy. In the first section, the 60 percent debt is broken down into long-term debt and short-term debt components of 56 percent and 4 percent, respectively. There is no such breakdown associated with the 40 percent for equity.

In the response to Exhibit J5.2, Union shows its actual total equity ratios at December 2011 and June 2012. These total equity ratios, which are 36.14 percent and 39.46 percent, respectively, include both common equity and preference shares. So obviously Union considers preference shares as equity.

And just to eliminate any doubt whatsoever about whether preference shares should be treated as equity, I refer you to the response to Exhibit J5.6. With a change to US GAAP, all of Union's preference shares are classified as equity by the auditors. LPMA submits that there is no reason for the Board to deviate from the US GAAP treatment.

In schedule 3 of appendix B to the settlement agreement, Union shows that the preference shares make up 2.75 percent of rate base. It is the submission of the LPMA that if the Board approves an increase in the equity ratio to some figure above the current 36 percent, that the preference shares should be taken into account as equity.

For example, if the Board agreed with Union that their equity component should be 40 percent, then their equity would be comprised of 2.75 percent for preference shares at a cost of 3.05 percent, and the remaining 37.25 percent would be common equity priced at the Board's approved return on common equity.

I am now going back to issue 1, and that is: Is the forecast of the cost of debt for the test year, including the mix of short- and long-term debt and preference shares, and the rates and calculation methodologies for each appropriate?

LPMA has no issues with the rates for the short-term debt, long-term debt or the preference shares. LPMA's submissions in this area relate to the mix of short-term and long-term debt.

As can be seen in schedule 3 of appendix B to the settlement agreement, Union is proposing that the Board approve a long-term debt ratio of 60.17 percent and a short-term debt ratio of minus 2.92 percent.

What this means is that ratepayers are being asked to pay a long-term debt rate on about a hundred-and-eight-and-a-half million dollars of borrowings, and get a credit at the short-term debt rate.

LPMA submits that this is not appropriate, because Union is, in fact, overcapitalized for rate base purposes. The long-term debt component used by Union is based on a forecast amount of the long-term debt that is allocated to the regulated portion of Union Gas. That is from Exhibit E3, tab 1, updated, schedule 2.

The regulated portion of Union Gas includes more than just rate base. Mr. Broeders indicated that the negative short-term debt is a result of rate base and the real long-term debt. He stated that the cause of negative short-term debt is because there were some items outside of rate base that the utility has to invest in, such as construction work in progress and contributions in excess of the expense for pension. That is from transcript volume 5, pages 38 and 39.

Later on, however, in the discussion with Ms. Taylor - and this is at transcript volume 5, pages 55 to 58 - Mr. Broeders indicates that those things that the Board has not yet agreed to put into rate base are primarily funded out of short-term debt. In fact, Mr. Broeders indicated that Union's average short-term borrowings for 2013 is predicted to be $136 million. That is page 40 of transcript volume 5. This represents about 3.66 percent of Union's rate base.

LPMA submits that Union has more long-term debt than needed to finance rate base. This can be seen in the attachment to Exhibit J5.4.

With either 40 percent or 36 percent equity, the long-term debt is in excess of the total debt needed to finance rate base. Neither of these scenarios reflect 136 million in short-term borrowings for the test year that Union is forecasting.

Union has included all of the actual long-term debt cost in the cost of capital, even though, clearly, not all of it is needed to finance rate base.

At the same time, they have not included any of the short-term debt that they say they will be borrowing.

LPMA submits the Board should direct Union to include the $136 million in short-term debt in the cost of capital calculation. The plug or balancing figure would then be the long-term debt component. LPMA believes this is fair, because it is obvious that some of the long-term debt is being used to finance items outside of rate base.

In the compendium, you will find a page that shows the calculation of the requested return under four scenarios labelled A through D. A is per the settlement agreement, B assumes the Board approves a 40 percent equity component, C assumes the Board approves a 40 percent equity component, and D assumes the status quo for the equity ratio.

MS. HARE: Mr. Aiken, can you take us to the page in the compendium?

MR. AIKEN: Yes. It is not quite halfway through the compendium. It is on the 88th page. It is titled "Requested return." And it is right after the transcript volume 5, page 58.

I apologize that these pages were not numbered.

MS. HARE: After I find it, I am going to ask you to walk us through it again when we're looking through it, if you don't mind.

MR. AIKEN: Sure.

MS. HARE: We have it.

MR. AIKEN: Okay. Part A is directly out of the settlement agreement, part B assumes 40 percent common equity on top of the 2.75 percent in preference shares, but includes 136 million for short-term debt. And that is the 3.66 percent component of the capital structure, and then the long-term debt is the plug figure; it is what is left over to balance.

Option C -- or part C is, again, 40 percent equity, but this time -- sorry, in part B it is 40 percent common equity. I want to make that difference. In part C it is 40 percent total equity, which includes 2.75 percent preference shares and 37.25 percent common equity. And again, it has the 136 million in short-term debt and the long-term debt, again, is calculated as a plug figure.

And you will see in that case it is higher, the long-term debt component is higher than in option B, because the total equity is lower.

And then part D is the status quo, which maintains common equity at 36 percent, preference shares at

2.75 percent, again uses the -- their forecasted short-term debt of 136 million. And again, the long-term debt is the plug figure to make everything balance.

Okay?

MS. HARE: Thank you.

MR. AIKEN: Now, if the Board does approve either a 40 percent common equity ratio or a 40 percent equity ratio, then LPMA submits that the Board should implement the remainder of that policy as far as the capital structure is concerned.

That is, the deemed capital structure for Union should be to include four percent short-term debt and 56 percent long-term debt.

Under the 40 percent common equity scenario, LPMA submits that the preference shares should be considered part of the long-term debt component of the capital structure.

So that was my submissions on the cost of capital.

A couple of brief submissions on the revenue requirement. The first issue is: Has it been calculated correctly? And we believe it's been calculated correctly.

Issue 2 is:

> "Is the overall change in revenue requirement reasonable, given the impact on consumers?"

LPMA submits that the change in the revenue requirement is not reasonable, given the impact on consumers in some rate classes.

As shown in the updated versions of Exhibit H3, tab 1, schedule 3, there is a wide discrepancy between the impact on different rate classes arising out of Union's revenue requirement and cost allocation rate design proposals.

In the north distribution area, these increases range from a high of 29 percent for rate 100 to a low of minus 0.1 percent for rate 20.

In Union south, the range is even better -- or I shouldn't say better. It is even greater, from a high of 38.3 percent for rate M5 interruptible to a low of a decrease of 6.3 percent for rate M9.

Of particular concern to LPMA members is the 12.7 percent increase for rate M2 and the 17.8 percent increase for rate M4. These ranges are likely to be somewhat reduced based on a hopefully lower Board-approved deficiency.

I am moving on to the issue of cost allocation.

MS. TAYLOR: Mr. Aiken, just before you do, I want to clarify for myself. On the record, you said if we go to 40 percent, that LPMA submits that the -- where am I here?

That under the 40 percent common equity scenario, LPMA submits that the preference shares should be considered part of long-term debt; is that right?

MR. AIKEN: Yes. Yes. What I'm saying there, that if the Board accepts Union's proposal to go to 40 percent equity, then you should also accept the 56 percent deemed long-term and four percent deemed short-term.

MS. TAYLOR: Right?

MR. AIKEN: If you go to 40 percent common equity, that begs the question: Where does the preference shares fit in? And so our submission is that would be effectively part of the long-term debt in the capital structure.

MS. TAYLOR: So that would be, then, scenario B?

MR. AIKEN: Yes, that would be scenario B.

MS. TAYLOR: All right. Can you just reconcile that, before we leave this point, with the statement that you made earlier on, that LPMA submits that there is no reason for the Board to deviate from the US GAAP treatment with respect to treating preferred shares as equity? Is that a response to one of these other scenarios?

MR. AIKEN: Yes.

MS. TAYLOR: Okay.

MR. AIKEN: That would be -- again, if the Board were to go to 40 percent total equity --

MS. TAYLOR: Okay?

MR. AIKEN: -- that would be scenario C.

MS. TAYLOR: Okay. Thank you.

But your recommendation, just to be clear -- because it is Friday and a long week -- is B?

MS. HARE: No, I think your recommendation –-

MR. AIKEN: My recommendation is --

MS. TAYLOR: Well, the status quo, but it's --

MR. AIKEN: -- is D.

MS. HARE: If you can't get D, then you would be recommending --

MS. TAYLOR: B.

MS. HARE: C, I thought.

MR. AIKEN: No. My recommendation is D. If not D, then C, and if not C, then B.

MS. TAYLOR: So first, second and third.

MR. SMITH: If I look at the bottom number, it goes in reverse order.

MS. TAYLOR: Reverse order. Thank you.

MS. HARE: So that we're clear.

[Laughter]

MS. TAYLOR: Sorry I interrupted.

MR. AIKEN: No, that's fine. I am moving on to the very interesting topic now of cost allocation, something I usually don't make a lot of argument on, but in this case there is enough going on that I think it is required.

So the first issue: Is Union's utility cost allocation study, including the methodologies and judgments used, and proposed application of that study with respect to the test year rates appropriate?

Yes, LPMA submits that Union's utility cost allocation, including the methodologies and judgments used, are appropriate, with the exceptions related to issues identified below.

Issue 2 deals with the Oil Springs East costs. LPMA submits that the changes to the allocation of these costs are appropriate. As indicated in Exhibit G1, tab 1, updated, at pages 7 and 8, Union's review has determined these assets provide both storage and transmission services to customers. As a result, Union proposes to functionalize these assets between storage and transmission, rather than continue the direct assignment of these assets to the Dawn-Trafalgar easterly transmission function. As a result, LPMA submits the proposed change is justified.

We further note that the impact on the allocation of costs shown in appendix B to Exhibit G1, tab 1, updated, is minimal.

Issue 3 deals with the allocation of Tecumseh metering. Again, we support the change proposed by Union. In Exhibit G1, tab 1, updated, pages 6 and 7, Union has moved the assets from transmission to underground storage in its plant accounting records, and proposes to classify the costs to demand and allocate the costs to rate classes based on the design day demands of Dawn compression.

We understand that these assets provide transmission service to both ex-franchise and in-franchise customers, and is consistent with the allocation of costs of other interconnects in the Dawn station yard. That is from Exhibit J.G-3-3-1.

And, again, we note that in appendix B to Exhibit G1, tab 1, updated, the impact is minimal.

Issue number 4 deals with the cost of system integrity. Now, LPMA understands that this issue is settled, or at least partially settled, as part of issue 1.6 in the settlement agreement.

Union agreed that for the purpose of calculating the 2013 revenue requirement through the short-term storage margin available for sharing with ratepayers, that the system integrity costs related to Union's non-utility storage space of 0.334 million would be excluded from that calculation. That is on page 7 of the settlement agreement.

The remaining issue relates to the need for the 3.5 petaJoules of contingency space to be left unfilled in the fall, and for the 6.0 pJs of contingency space that is be filled for the winter.

The issue is whether any or all of the 3.5 pJs of fall contingency space can be effectively used twice, once for the fall, and then filled and used for the winter.

A reduction of the total 9.5 petaJoules of contingency space would result in additional excess utility storage that could be sold to benefit both ratepayers and Union.

LPMA has had the opportunity to review the draft submissions of FRPO related to this issue and supports those submissions. LPMA believe the Board should direct Union to conduct an independent third-party analysis of the potential benefit of increased storage revenue versus the potential cost additions for purchasing gas in the late fall or early winter and having to sell that gas the following summer.

Issue number 5 deals with the allocation of north distribution customer station plant. Since LPMA members are located in Union's southern distribution area, we do not make any -- or do not take any position on the changes proposed by Union.

Issue 6: Are the cost allocation study methodology changes to classify and allocate the costs of distribution, maintenance, OM&A, meter and regulator repairs appropriate?

Again, we support the proposal made by Union. Union currently classifies the distribution and maintenance costs for meter and regulator repairs to distribution customers -- sorry, to distribution customer, and allocates the costs of the M2 rate class in Union south.

In Union north, these costs are classified to distribution demand and allocated to rate classes in proportion to the allocation of distribution meter and regulator gross plant.

Union has reviewed its operating practices and determined that there are minimal maintenance costs associated with residential meters, since it is more economical to replace residential meters than perform repairs. That is Exhibit G1, tab 1, updated, page 13.

Union's proposal would harmonize the cost allocation between the north and the south and would reflect its operating practices. The proposal would move the south to the methodology used in the north by classifying and allocating the maintenance costs for meter and regulator repairs in proportion to the distribution meter and regulator gross plant cost allocation. Excluding the M1 and rate 01 rate classes that are predominantly residential customers, LPMA agrees that this change is appropriate.

However, as the Board is aware, Union's current M1 and rate 01 rate classes include customers that have an annual consumption of up to 50,000 cubic metres per year. Union proposes to change this effective January 1st, 2014 and reducing the number of customers in these classes by reducing the threshold to 5,000 cubic metres per year.

It is not clear if the Union proposal would shift more costs associated with the maintenance costs from meter and regulator repairs into the M2 and rate 10 classes as more customers are moved into those classes.

Those additional customers will have their associated distribution meter and regulator gross plant costs moved with them, resulting in a greater proportion of the meter and regulator costs in these rate classes than the current split.

At Union's next rebasing, where cost allocation will again be reviewed, the customers that use between 5,000 and 50,000 cubic metres of gas per year would now be in a class that attract the repair costs, even though Union's evidence in this proceeding is that the customers currently in rates M1 and 01, which include these customers, with not attract repair costs, because it is more economical to replace the meter than repair it.

This is most likely to be the case in the future, at least for the smaller volume customers that are proposed to be moved from rates M1 and 01 to M2 and 10.

LPMA submits that the Board should direct Union to address this potential issue in its next cost allocation study assuming, of course, the Board approves Union's proposal for the change in the split between the rate classes from 50,000 to 5,000 cubic metres.

Issue 7 is the cost allocation related to equipment and customer premises. Again LPMA supports Union's proposal. These costs are primarily related to customer station maintenance. That is Exhibit G1, tab 1 updated, page 14.

In Union south, these costs are allocated to M1 and M2 customers based on service call time, and no maintenance costs were allocated to contract rate customers, despite those contract rate customers having customer stations requiring maintenance. That is Exhibit J.G-7-3-1.

In Union north, these costs are allocated to rate classes based on the historic allocator.

Union's proposal is to allocate the distribution maintenance costs for equipment on customer premises in proportion to the allocation of customer station gross plant. This would harmonize the approach in Union south with Union north, and more accurately reflect costs.

LPMA also notes this proposal is in line with the proposal to allocate the distribution maintenance costs associated with the meter and regulator repairs that we addressed earlier.

Issue number 8 deals with the cost of purchase production, general plant. Again, we accept that change as being appropriate, and, again, note that the change is minimal.

Number 9, LPMA makes no submissions on this issue. This is the Dawn to TCPL, Dawn to Dawn-Vector, and M12, F24T services.

We make no submissions, because none of these costs are allocated to any in-franchise rate class in Union south or north delivery areas. That is Exhibit J.G-9-2-1.

Issue number 10 deals with the cost allocation to separate Parkway station metering and compression costs, and Kirkwall station metering costs from Dawn-Trafalgar easterly costs.

The total revenue requirement in the 2013 test year associated with the Parkway station metering and compression costs and the Kirkwall station metering costs included in the Dawn-Trafalgar costs is about twenty-two-and-a-half million dollars. The reference there is Exhibit J.G-10-2-1.

These costs have -- can have a significant impact on rates depending on how they're allocated.

Mr. Rosenkranz's evidence, which is Exhibit K10.7 filed on behalf of CME, CCC and FRPO and the City of Kitchener, estimates that an increased cost would be reduced by approximately 1.6 million if the Parkway station costs were allocated -- sorry, that in-franchise costs would be reduced by approximately 1.6 million if the Parkway station costs were allocated as recommended in that evidence.

The response provided in Exhibit L.G-10-3-1 provides a further level of detail that shows the majority of the reduction in costs would flow to rates M1, M2 and T1 customers, but also shows that all rates in the Union south delivery area would benefit.

LPMA agrees with the analysis of Mr. Rosenkranz at page 3 of Exhibit K10.7. In particular, the metering and compression facilities at the Parkway station are designed to meet Union's design day requirement to export gas from the Union Gas system into the TCPL and Enbridge systems.

Most critically from a cost causation perspective, the Parkway station is not used to transport or deliver natural gas to any of the upstream in-franchise markets that are connected to the Dawn-Trafalgar transmission system.

Union confirmed that no customers west of Parkway, including those served by Parkway suction volumes –- Parkway, Consumers and Lisgar -- would be impacted by a compressor failure at Parkway. That is Exhibit J.G-10-2-1, part c).

LPMA submits that it is clear that the Parkway station metering and compression do not provide any benefits to in-franchise customers. As a result, these customers should not pay any of the associated costs.

LPMA submits that another way to look at this issue is to consider the hypothetical situation where the Union Gas system did not connect to the TCPL or Enbridge systems.

In this scenario, LPMA submits there would be no need -- there would not need to be any Parkway station metering or compression costs. All of Union's in-franchise customers could continue to be served in the absence of a Parkway station.

If TCPL and/or Enbridge then connected to the Union system and the Parkway station was required, the metering costs would be allocated to these new customers since they are the only ones using the meters. The compression costs would be incurred in order to provide the design day requirement of these new customers, and would also be allocated directly to those customers.

LPMA notes that Mr. Rosenkranz did not address the issue of Kirkwall metering costs. The use of Kirkwall has changed over the years and may change further in the future, given the changing flow of natural gas in the northeast area of North America that includes Ontario. This demonstrates the need to review the allocation of the Kirkwall costs. The changing flow of natural gas in the northeast has been highlighted by Union in this proceeding through the level of turnback of M12 capacity that has happened and is forecast to occur, along with the repurposing of that capacity on the Dawn-Trafalgar system.

The Parkway-to-Maple bottleneck has been discussed. The dramatic increase in TCPL tolls, especially along the northern Ontario route relative to other routes to the Greater Toronto Area, has illustrated the potential need for the Parkway West project.

All of this highlights the fact that there has been considerable change that has taken place with respect to the flows of gas around the Parkway station, since Union last reviewed the cost allocation and rate design for services offered on the Dawn-Trafalgar system in 1995, and that the Board last approved in Union's 1997 rate case, which was EBRO-493-494. And the reference for that is Exhibit J.G-11-10-1.

LPMA supports the recommendation 2 in Exhibit K10.7, that being that the Parkway costs should be recovered from all services that utilize Parkway as a receipt or delivery point.

Cost causation principles would suggest that the Parkway station costs should be recovered based on the maximum daily use of the services that use those facilities.

LPMA further supports recommendation 3 in Exhibit K10.7, for the reasons stated there. The Board should direct Union to create a service that can be used by in-franchise customers to meet their obligated delivery requirements at Parkway.

Issue 11 deals with the kilometre -- sorry, the commodity kilometres allocator for Dawn-Trafalgar.

With the removal of the Parkway station metering and compression costs discussed above, LPMA submits that the allocation of the remaining Dawn-Trafalgar easterly costs should continue to be phased -- should be continued to be based on commodity kilometres, subject to the review of the Kirkwall metering costs also noted above.

No evidence has been presented in this proceeding to suggest that this allocation methodology is inappropriate for these remaining costs, nor has any evidence been presented in support of another methodology.

Moving on to rate design, issue number 1:

> "Are the rates proposed in Exhibit H just and reasonable?"

LPMA submits the answer to this question is that we simply do not know at this point in time. We submit that the methodology used by Union to move customers from the M1 and 01 rate classes into the M2 and 10 classes is highly suspect. LPMA is especially concerned about the M1 to M2 shift, because that is where the majority of LPMA customers reside.

Attachment 1 to Exhibit J12.1 highlights the issue for LPMA members of this proposal.

Some members are in the current rate M1 category and are small enough that they will not be impacted to any great extent, with an increase of 0.6 percent from Union's proposal.

Others are in the current rate M2 category and will benefit from the change, to the tune of delivery cost reductions generally ranging from 17 to 27 percent. However, there are also LPMA members in that middle group from 5,000 cubic metres per year to 50,000 cubic metres per year, that will be impacted by an increase of somewhere between three-and-a-half and 34.2 percent.

There was a great deal of discussion in the hearing about how Union has assigned costs to this middle group of customers, that will shift costs out of M1 and into M2, along with about 51,000 customers or about five percent of the general service customers in Union south. That is Exhibit JT2.27, attachment page 2.

Union characterizes this as a small percentage, but I guess that depends on whether or not you are in the five percent. And unemployed rate of eight percent doesn't sound all that high either, unless of course you are part of the eight percent.

The breakdown of the customers that will be moved shows that more than 17,000 residential customers will face substantial delivery cost increases, representing about one customer in every 53. And I'm talking about in Union south.

More than 31,000 commercial customers, representing about two in every five, will be impacted, and more than 2,500 industrial customers, representing one in every two, will be impacted.

In general, LPMA supports the direction that Union is proposing to go in moving the break point from 50,000 to 5,000 cubic metres.

However, given the substantial impact that Union is projecting on different groups of customers, the change should be based on a sound cost allocation study, not on assumptions and conjecture.

Unfortunately, LPMA submits that Union's proposal is more of the latter than the former.

With respect to the customer-related costs, Union has used a customer-weighting factor to determine the amount of customer-related costs that are associated with the 51,000 customers that will be moved. The weights used are 1.0 for residential, 1.5 for commercial, and 2.0 for industrial. These can be seen in the attachment to Exhibit J.T2-27.

When asked if Union had any empirical evidence to support the relative differences in the weights used, Union's witness replied that the empirical evidence that they have in this is similar to the evidence that they used he when they did the 2007 rate split, which used the same weightings.

The empirical evidence, however, was not filed in this proceeding. The reference to that is transcript volume 12, page 32.

A review of the undertaking response provided in Exhibit J12.2 indicates that Union filed a report in support of the 2007 split prepared by Navigant Consulting Inc. that simply stated that the weights currently used by Union were 1.0 for residential, one-and-a-half for commercial, and two for industrial. The Navigant report went on to say that it understood that Union was currently reviewing the appropriateness of those weights.

In the undertaking response, Union indicates that it could not find any other 2007 source files related to the weightings.

So all we know is that we do not know if Union reviewed the appropriateness of these rates -- sorry, of these weights, and if so, what the result of that review was.

The concern that LPMA has with the weights is that there is no evidence that customer-related costs for commercial customers are 50 percent higher than they are for residential customers. Customer-related costs includes such items as billing and meter-reading costs, and the return on depreciation on meters, regulators and service lines. The reference to that is transcript volume 12, page 5.

Union has provided no evidence to suggest that the commercial customers that are being moved are any different from residential customers when it comes to billing costs or meter reading costs. Similarly, they have provided no evidence that these customers require larger and more expensive meters, regulators or service lines.

In fact, when you look at the graph in attachment 4 to Exhibit J10.3, it is obvious that the majority of the customers in the 5,000 to 50,000 m^3 range that are being moved are in the 5,000 to 7,500 m^3 range. As noted earlier, the commercial customers that are being impacted represent the majority of the customers being moved.

LPMA submits a more appropriate weighting scheme, in the absence of empirical evidence, is to use the same weight for commercial customers as for residential customers. The impact on the customer-related costs that would be moved to rate M2 is significant. In the compendium, I have included a page that has the title "Weighting of Customer-Related Costs", followed in brackets, "(By Source Exhibit JT2.27)".

And just for your information, it is at page 133 of 206.

This calculation replicates the Union calculations in Exhibit JT2.27 on page 2 of 3 of the attachment. The impact is a substantial reduction in the costs moved to rates 10 and M2. The reduction in rate 10 is 2.4 million, and in rate M2 is 4.4 million. In the south, this cost represents more than $85 for each customer that is proposed to be moved.

Now, we also have the calculations related to the other delivery-related costs to be transferred. These costs include demand-related costs and commodity-related cost. Mr. Tetreault confirmed that Union allocates demand-related costs based on peak day demand. That is transcript volume 12, page 4.

The response to Exhibit J12.3 shows that the vast majority of the other delivery-related costs are, in fact, demand-related costs in south for both rates M1 and M2, with a small component of commodity-related costs. In the north, all of the other delivery-related costs are demand-related costs.

However, Union has estimated the costs for the customers that are transferring based on commodity volumes, and you can see that on page 3 of the attachment to Exhibit JT2.27.

Union did indicate that based on forecast data it did not have all of the detailed material that is needed to do a detailed cost study. As an example, the need for an appropriate design day was highlighted, in that the forecast would need to be broken up by the engineering people to come up with a reasonable figure. That is transcript volume 11, page 132.

LPMA submits that this should have been done to come up with an appropriate design day weighting allocator. However, it has not, and we will have to live with the volumetric proxy for the immediate future.

Another area that LPMA believes needs to be addressed is the proposed fixed charges for the M2 and rate 10 rate classes proposed by Union for 2014. Union proposes the monthly customer charge of $35 for both rate classes. Union arrived at this rate by taking the midpoint of the monthly customer charges required to recover all customer-related costs for these two rate classes - that is on pages 16 and 17 of transcript volume 12, which is not in the compendium - and Union's desire to maintain the same monthly fixed charges between the two rate classes.

LPMA submits that the Union proposal is inappropriate. The evidence provided at page 4 of 5 of Exhibit JT2.18 shows a clear difference in the monthly customer charge based on the allocated customer charges between rates 10 and M2. In particular, the cost-based rate 10 charge would be $41, while the M2 charge would be $30.

Union is effectively under-recovering, based on its proposed $35 charge, from those in rate 10 and over-recovering from those in rate M2.

LPMA submits it is not appropriate to set a monthly fixed charge by splitting the difference between two different rate classes that obviously have different costs.

Union indicated that keeping the monthly charges the same was part of the harmonization of the two rates. LPMA disagrees. Harmonization of the rates is based on eligibility and block structures, not the charges. Union is not proposing to harmonize rates 10 and M2 into one rate class, and their proposed rates have different volumetric charges between the two rates.

There is no sound rationale for maintaining the same monthly customer charges in light of the difference in the allocated customer-related costs.

LPMA submits that the rate M2 monthly customer charge should be set at $30 and the rate 10 charge should be set at $40. Both of these are cost-based charges.

In summary, LPMA recommends that the Board approve Union's proposal, with a modification to the customer weighting discussed earlier and the change in the monthly customer charge we just discussed.

LPMA further submits that the Board should direct Union to prepare a proper cost allocation study as soon as possible so ratepayers can be satisfied that they are being allocated costs on a proper basis. And based on the response at transcript volume 11, page 132, we believe Union agrees with this concept.

LPMA submits that the cost allocation study should be filed with the Board and intervenors as soon as possible so the parties have the opportunity to determine if adjustments to rates are required to more properly and equitably recover the proper allocated costs.

Now, Union may be under some form of IRM when this study comes forward, but I am sure we can find a way to adjust rates, if needed, so ratepayers do not have to wait until the next cost-of-service application to rectify any inequity that may be found to exist.

Another issue that the Board should address is the revenue-to-cost ratios. LPMA has had the opportunity to review the submissions of Board Staff on this issue and share the same concerns.

In particular, LPMA submits that the Board should direct Union to increase the revenue-to-cost ratio for the M12 class to 1.0. This will increase revenues by approximately $2.6 million and would not be a burden on M12 customers, since they are currently only facing a 2 percent increase in rates compared to substantially large increases in many other rate classes.

The additional revenue would be used to lower the M1 revenue-to-cost ratio to 1.0, which would account for about 1.1 million. The remaining 1.5 million in reallocated revenue should be used to lower the rate impacts on the classes with the highest percentage increases forecast.

Issue 2 under rate design, LPMA makes no submissions.

Issue 3: Is the proposal to lower the breakpoint between small- and large-volume general service customers to 5,000 m^3 per year effective January 1st, 2014 appropriate?

Yes, LPMA supports the proposal to lower the breakpoint to 5,000 m^3 per year. LPMA believes that more homogeneity in rate classes will be achieved with the 5,000 cubic metre breakpoint relative to that currently in place, and that this is desirable.

The graph included in attachments 1 through 4 of Exhibit J10.3 illustrate that the proposed breakpoint result is a more normal distribution of customers around the mean.

However, LPMA believes that it would be preferable to make this change effective January 1st, 2013, rather than waiting to 2014, if the Board determines that the shift in costs as proposed by Union are appropriate.

As shown in attachment 2 - and this is Union south - to Exhibit J12.5, there is little impact on the customers that consume less than 5,000 cubic metres per year between 2012 and 2014. At the same time, there is a significant impact on the customers between 5,000 and 50,000 cubic metres, but at least the increase in 2014, which ranged 3-and-a-half percent to 28.9 percent, follow increases that range from 7.8 percent to 15 percent in the 2013 test year.

For the customers that consume more than 50,000 cubic metres per year, the increase shown in the attachment between 2012 and 2013 ranges from 8 percent at the 80,000 cubic metre level, to 11 percent at the 500,000 cubic metre level. This is followed by decreases that range from 25.9 percent at the 80,000 cubic metre level to 17-and-a-half percent at the 500,000 cubic metre level.

rate stability is an important regulatory concept, and Union's proposal certainly does not bring rate stability to these customers in 2013 and 2014.

Now, hopefully the revenue deficiency will be significantly reduced as a result of the Board's decision in this proceeding. That would reduce the increase in rates for all customers between 2012 and 2013 and lessen the instability between 2012 and '14.

LPMA notes that this type of rate instability will not result in Union north. As shown in attachment 1 to Exhibit JT12.5, the change in rates for the customers that can consume in excess of 50,000 cubic metres per year is much less pronounced than in Union south.

Union has indicated that it is not practical to implement the changes by January 1st, 2013, as Union needs Board approval in time to update administrative systems and billing systems. And that is page 113, transcript volume 12.

There were no other reasons why the change could not be implemented on January 1st, 2013 given.

Now, LPMA understands that time may be required to change the block structure in Union north to match that of Union south. However, LPMA submits that there is no reason to delay the change in the break point in Union south.

There are no changes proposed in the block structure for Rates M1 and M2. The change in the break point simply requires Union to identify the customers that will move from rate M1 to rate M2, and then move them. By Union's own admission, the number of customers impacted by the rate design proposals and general service, and I quote:

> "... is a very small percentage of the overall customer base."

That is from transcript volume 12, page 22.

As a result, LPMA sees no obstacle to moving a small percentage of the overall customers from rate 1 to M2 -- sorry, from rate M1 to M2 on January 1st, 2013.

Further, since this move is revenue-neutral for Rates M1 and M2 in aggregate, it has no impact on the recovery of the deficiency.

Further, there is no reason to delay the change in Union south to coincide with the change in Union north. In fact, by staggering the change for the two operating areas, Union will likely be able to better manage the calls it will inevitably receive from customers that are being impacted.

If Union explains why they cannot make the break point change on January 1st, 2013 by simply moving the affected customers from rate M1 to M2, then LPMA submits the rate change should be implemented as soon as is practical. While this may not be January 1st, 2013, there is no reason to expect it could not be done on April 1st, July 1st, or September 1st, 2013, in conjunction with the QRAM change.

Mr. Tetreault agreed that Union would rather not have customers subjected to a big increase followed by a big decrease. By making the change some time in 2013 rather than at the beginning of 2014, the annual cost changes experienced by customers would be less volatile and result in a greater degree of rate stability.

In conclusion, should the Board approve the proposed -- the proposal to change the break point to 5,000 cubic metres, LPMA submits that the Board should direct Union to implement the change as early as is practical in 2013, in conjunction with the QRAM change.

Issue number 4:

"Is the proposal to harmonize the general service rate structures between the north and south effective January 1st, 2014 appropriate?"

Yes, we agree that the harmonization is appropriate, other, of course, than the timing. And we further note that there is actually no change in the rate structures for Rates M1 and M2 in the south.

Issue number 5, the lower eligibility for M4 and M5 rates: LPMA supports this proposal. This will allow more M2 customers the option of moving to rate M4.

However, LPMA is concerned with the communication that large M2 customers may receive about the movement from rate M2 to rate M4.

As shown in attachment 1 to Exhibit J.H-5-2-1, the impact on the large M2 customer can be positive or negative, depending for the most part on their load factor.

Customers with a low load factor would be -- could end up paying more under rate 4 than they did under rate M2. Mr. Pankrac calculated that the crossover point would be a load factor of 48 or 49 percent, where they would be price -- where there would be price equivalence. That is page 24 of transcript volume 12.

LPMA notes that 302 of the 595 customers that may qualify for this change are commercial customers, many of which could be apartment buildings. That is Exhibit

J.H-5-2-1.

Given the uncertainty as to the cost impacts of moving to rate M4, LPMA believes that there should be clear and concise communication with customers.

As was evident during the cross-examination, there does not appear to be a process in place at Union to ensure M2 customers will not sign up for M2 under the impression that their costs will go down - transcript volume 12, pages 26 through 28 - will not go down when, based on their load profile, it could go up. Nor does there appear to be a process in place to directly advise those M2 customers that they could reduce their costs under rate M4, that they could qualify for this rate in 2013.

Union indicates that these customers are managed by a separate billing system, and as a result they have the communication tools to communicate this change to them.

LPMA submits that this is not adequate communication to be provided to customers. Union confirmed that, assuming the proposals were approved, that about 595 customers would be eligible to move to rate M4. That's transcript volume 12, page 27.

However, as noted earlier, some of these customers would pay more, while others would pay less. LPMA submits that the Board should direct Union to do a comparison of the annual costs for each of these customers, calculating their annual costs based on both Rates M2 and M4, with an educated guess as to what the firm contract demand level would need to be for each of these customers under rate M4, and for each customer that would be better off under rate M4, Union should be required to contact the customer directly and provide them with the information they need to make an informed decision.

Issues 6, 7 and 8, LPMA makes no submissions.

Issue 9 is the UFG on the Dawn-Vector system. We support Union's proposal.

Issue 10: Is the proposal to modify the M1 and M2 rate schedules appropriate?

LPMA notes that Union is not proposing to harmonize the charge in the general service rates related to the supplemental service available under Rates 1 and 10 in Union north with a service available under Rates M1 and M2 in Union south.

In both the north and south, the supplemental service allows customers to combine meter readings for billing purposes, where the meters to be combined are located on continuous pieces of property of the same older -- same owner, not divided by a public right-of-way.

This allows customers to achieve savings by moving some of their monthly volumes to lower-priced blocks in the rate structure.

This ability also recognizes that the customer could ask Union to replace a number of meters with one meter, and do their own piping behind that meter to their various contiguous properties.

This would be inefficient and costly to both Union and the customer. The supplemental service makes this unnecessary.

Union is proposing to increase this charge for M1 customers from $15 per month to 21 per month, for M1 customers, and to increase it for M2 customers from $15 to $70 per month in 2013, and then to $35 per month in 2014. That is taken from Exhibit H1, tab 1, updated, pages 55 and 56.

Union offers a similar supplemental service in Union north for Rates 1 and 10, but does not currently charge for it. Nor do they propose to charge for it in the test year. The reference is Exhibit J.H-10-2-1, part q), and Exhibit JT2.18, number 6b).

When asked why Union was not proposing to charge for the supplemental service in the north, the response was that Union was not prepared to do that, and I quote:

> "...largely as a result of that being a longstanding policy that dates back to the Centra Gas days in the north."

That is page 15, transcript volume 12.

Mr. Tetreault then goes on to state that Union felt it was prudent not to introduce the type of supplementary service charge, and to maintain the longstanding policy in light of the -- in light of some of the rate increases they were seeing in the north.

At the same time, however, as stated in the response to Exhibit J11.1, Union does not consider mitigation to be necessary.

Union indicates that it did not consider dropping the supplemental service in Union south in order to harmonize with Union north and extending that policy to the south.

Union took it, subject to check, that if it were to do so, revenues would be reduced by about $300,000 per year, which, it is submitted, is an immaterial amount for Union.

LPMA therefore submits the Board should direct Union to extend its longstanding policy in the north to the south, and eliminate the charge for the supplemental service.

Issues 11 and 12, LPMA makes no submissions.

Issue 13, changes to the gas supply administration fee: We support the changes as proposed.

Issue 14, are rate mitigation measures required to address the rate impacts on some customers as a result of the proposed January 1st, 2014 rate proposals?

LPMA submits the answer to this question is: Maybe yes; maybe no. In the response to Exhibit J11.10, at page 2 of attachment 1, Union uses the unit rate of 17.707 cents per cubic metre as the gas supply charge for the M2 rate class.

I have used this rate to look at the impact of the proposed January 1st, 2014 rate design on the customers that are proposed to be moved from rate M1 to rate M2.

The delivery impacts -- the delivery bill impacts between 2014 are shown in attachment 1 to Exhibit J12.1. By adding in the cost of gas at 17.707 cents, we can get an estimate of the total bill impact that results from Union's proposal.

For a customer consuming 5,001 cubic metres of gas per year, the gas commodity cost is $885.53. Adding this to the delivery cost in 2013 of $436.47, it results in a total bill of $1,322. Adding the commodity cost to the delivery cost in 2014 of 585.59 results in a total bill of 1,471.12. This is an increase in the total bill of 11.3 percent.

Similar calculations for the 6,000 m^3 level of consumption shows that the increase is around 9.6 percent.

As a result, it would be fair to say that the customers in the 5,000 to 6,000 cubic metre range are getting hit with increases of roughly 10 percent or more.

Now, if the Board accepts the LPMA submission on reducing the fixed monthly charge for the M2 class from $35 to $30 per month, the impact on the customer consuming 5,001 cubic metre per year falls around to 7 percent from 11.3 percent.

I can't provide a concise figure, because of course the reduction of $5.00 per month would be partially offset by an increase in the variable rate. However, this would impact the smaller customers in the class the least, because their volumes are the lowest.

So in this instance, LPMA submits that rate mitigation measures would not be needed. On the other hand, if the Board does adopt -- or, sorry, does not adopt the $30 per month charge for the M2 rate class, then LPMA submits that rate mitigation is needed for the smaller customers in the new M2 rate class.

This could be accomplished through a phase-in of the change in the fixed monthly charge from the 2013 level of $21 to the proposed level of $35 in 2014 over a period of two years. In other words, the 2014 level would be $28, and then rising to $35 in 2015.

And, finally, on issue 15 of rate design, LPMA makes no submissions.

Moving on to the last -- or to the second last general issue, this is deferral and variance accounts. Issue number 1: Are Union's proposed and existing deferral and variance accounts appropriate?

LPMA has no issues with the continuation of the existing deferral accounts as shown in Exhibit H1, tab 4, appendix B, other than those listed in issue 4 below, which are highlighted as "continue as proposed" in appendix B.

Union originally proposed the addition of only one new deferral account. This was related to the Technology and Innovation Canada, or ETIC, expenditures originally forecast.

As part of the settlement of issue 3.1, which was the OM&A budget, the parties agreed that the ETIC budget would be removed from Union's 2013 O&M budget, and, as a result, there is no need for this deferral account.

LPMA supports the closing of account 179-113, which is the late payment penalty litigation account, and account 179-124, which is the harmonized sales tax account, as proposed by Union.

Both of these accounts deal with issues that have been completed by the end of 2012 and there would be no activity in these accounts in 2013 or beyond.

Issue number 2: Should deferral accounts for transmission-related transactional services that were eliminated in the EB-2007-0606 incentive rate-making proceeding be re-established?

The three accounts eliminated in the EB-2007-0606 proceeding were: Accounts 179-69, transportation exchange services; account 179-73, other S&T services; and account 179-74, other direct purchase services.

LPMA submits that these accounts should be established for two primary reasons. First, as we've -- as you've heard earlier today, Union has a horrendous track record in forecasting amounts in these accounts. Union's best forecast is an under-forecast of more than 16 percent for account 179-73 over the 2010 through 2012 period, with 2012 being their current forecast.

For account 179-74, they over-forecast by a factor of almost four. These figures can be derived based on the information provided in the attachment to Exhibit J6.2.

It should also be noted that when this information was requested, Mr. Smith indicated that it was his understanding that Union did not provide a number of services that were previously reflected in these two deferral accounts, and that would be the answer.

However, as seen in the response, the revenues, costs and resulting margins in these accounts are relatively stable over the 2012 through 2013 period.

Turning to the big-dollar account, 179-69, which is the transportation and exchange services, Union's forecasts were out by a factor of ten over the 2010 through 2012 period.

Mr. Isherwood indicated that their margin forecast was increased by $4.3 million in the incentive regulation proceeding from their forecast of 2.6 million. That is transcript volume 6, page 84.

The actual margins for the 2012 to -- sorry, for the 2010 to 2012 period are shown in attachment 1 of Exhibit J.DV-2-2-1. The average margin over this period is $26 million, or ten times their forecast.

I should note two things here. First, the 2012 margin forecast I believe only includes FT RAM credits for ten months, because Union forecasted that the credits would cease to exist as of November 1st, 2012.

Obviously, if they continue for the final two months of the year, the margins will be higher and the forecast error will be in excess of a factor of ten.

The second item is that these margins include the FT RAM credits that Union may not have known would grow into such a lucrative business for them when they did their forecast of 2.6 million. If you remove the revenue and costs associated with the FT RAM credits, you get an average margin of $11.5 million per year. This figure can be derived from the attachment to Exhibit J6.1.

So excluding the FT RAM credits, the forecast error was only a factor of 4.4, certainly something to write home about.

Now, of course, this all is based on the accuracy of 2012 forecast, but we know it is foolish to believe in the 2012 forecast, given Union's track record. This is confirmed in the figures provided in the attachment to Exhibit J6.3 at lines 5 and 6. The base exchange revenue is 2.6 million, or 66 percent higher than the forecast on a year-to-date June basis for 2012. The net FT RAM margins are nearly $13 million, or 184 percent above the forecast.

Clearly Union's forecasting ability has not improved over the years. When a utility cannot provide a forecast that the Board and intervenors can verify as credible, the use of a deferral or, in this case, a variance account should be approved.

The second reason for re-establishing the accounts is that the level of uncertainty associated with the forecast has increased. This is Union's evidence, especially with respect to turnback and repurposing of the capacity on the Dawn-Trafalgar system.

There is also the highest level of uncertainty around the biggest revenue generator of them all, the FT RAM credits. They could be worth tens of millions of dollars a year, or they vanish. At this point in time, no one knows.

The elimination of FT RAM credits, if that were to occur, may give rise to other incentive programs from TCPL. It may give rise to the provision of other services by Union. It may increase the interest of other parties in the base exchanges provided by Union, or it may result in an increased interest in the uncontracted capacity between

Dawn and Parkway.

The only thing that the Board, Union and intervenors know with certainty around this issue is that none of us know what will happen or what the impact will be in 2013 or in the period beyond the test year.

This is another instance where the use of deferral and variance accounts is not only acceptable, but also prudent and just. Neither the utility nor ratepayers should benefit or lose out based on circumstances beyond the control of the parties involved.

In summary, LPMA submits that there are more than sufficient reasons to re-establish the accounts that were eliminated in EB-2007-0606.

Having said that, LPMA reminds the Board that earlier in this submission we recommended that the FT RAM credits should be treated separately from the other revenues in account 179-69, which we understand would be base exchange revenue and C1 short-term transportation revenues, as shown on lines 4 and 5 of the attachment to Exhibit J6.3.

If the Board determines that any or all of these accounts should be re-established, LPMA submits that the Board-approved forecast of the margins for the services included in these accounts should be included in base rates.

Any variance from the Board-approved margin should be shared between ratepayers and shareholder on a 90/10 basis in favour of ratepayers.

This is the same sharing in place for account 179-70, and LPMA has seen no evidence that the 10 percent shareholder margin is not sufficient to get Union interested in maximizing their revenues associated with these short-term storage and other balancing services. We believe that Union would be interested to maximizing the margins for the services included in the re-established accounts in the same way.

Issue number 4 deals with the wording of two different deferral accounts.

The first one is the inventory revaluation account, 179-109. We support the proposed changes that Union is making there. Union has reclassified line pack gas from gas and inventory to property, plant and equipment and we support that change. This eliminates the need to revalue the line pack gas on a quarterly basis as a part of inventory.

On the average use per customer account -- this is 179-118 -- LPMA does not accept Union's proposal with respect to the average use per customer account. This account was established in EB-2007-0606 as part of a true-up mechanism that was utilized under IRM, and the current wording of the account makes it applicable only to the current incentive regulation plan years, 2008 through 2012.

In the response to Exhibit J.DV-4-3-1, Union indicated it was proposing to eliminate the wording in the account that limits the account's applicability to 2008 through 2012, and that the account would not record differences from forecast for 2013 because 2013 is a cost-of-service year.

LPMA agrees with Union that this account should not be used for the 2013 test year. Part of the risk for which Union earns its return on equity in a cost-of-service test year is its forecast risk. Use of the average use per customer would reduce the risk, with no corresponding benefit to customers. Use of the account during the IRM term was to reflect that the average use was expected to decline over the term of the IRM plan, and that both Union and ratepayers would benefit from the implementation of such an account over the IRM, by ensuring that neither party benefited at the expense of the other.

Union indicated that the earliest the account would be used would be in relation to 2014, assuming that there is incentive regulation framework in place at the time and that the average use true-up is a feature of that framework.

Under cross-examination, Ms. Elliott indicated there was no need to keep this account in 2013, but that Union wanted to keep it around because it might be possible -- it might be a possible component of the next multiyear incentive regulation proposal. That is transcript volume 8, pages 10 through 11.

Ms. Elliott also agreed that the proposed wording of the account does not appear to preclude its use in 2013. Page 12 of the same transcript.

Ms. Elliott then went on to suggest that a possible wording change would be to put in a 2004 effective date.

Ms. Elliott indicated that technically Union does not need to keep the account around, and that it could be eliminated for 2013 and reintroduced as a part of the next IRM application.

In light of the admission there is no reason to keep the account around other than it might be used in 2014, or whenever the next multiyear IRM mechanism is put in place, and that it could be reintroduced at that time, LPMA submits that the Board should eliminate this account for 2013. The Board should not approve the continuation of an account that it knows will not be used for the test year and may or may not be used in the future beyond the test year.

There is no evidence on the record in this proceeding as to the type or timing of the next multiyear IRM that will be in place after 2013.

Deferral and variance accounts should not be allowed to continue based on only speculation that they might be used in the future.

The next wording change deals with short-term storage and other balancing services. This is account 179-70. We believe there are two issues that need to be addressed under this issue. The first is the proposed change in the wording and what is actually to be captured by the account, and the second is how the amounts are calculated.

With regard to the proposed changes in wording, LPMA is concerned that there may be lack of clarity as to what net revenues are included in the account. The proposed wording of the account found in appendix C to Exhibit H1, tab 4, updated, includes, and I quote:

"Peak short-term storage underpinned by excess utility storage assets, off-peak storage, off-peak short-term storage, gas loans and supplemental balancing services."

Then at Exhibit C1, tab 7, page 3, the evidence indicates, and I quote again:

"Union will continue to sell all excess annual utility storage as short-term peak storage and likewise 90 percent of all margins from C1 off-peak storage, gas loans, Enbridge LBA, supplemental balancing services and C1 firm short-term deliverability will accrue to ratepayers."

Now, there appears to be a subtle different between these two lists.

The second includes Enbridge LBA, while the first does not.

The first refers to off-peak short-term storage, while the second refers to C1 off-peak storage, not short-term storage, although the C1 off-peak storage may be short-term in nature.

The second reference includes a reference to C1 firm short-term deliverability, while the first does not include any mention of deliverability services.

Ms. Elliott clarified that for every other source of revenue that goes into the account, other than the peak short-term storage underpinned by excess utility storage assets, that 100 percent of those activities go through the deferral account and there is no differentiation between utility and non-utility assets. That is transcript volume 7, pages 96 to 99. This was discussed further by Ms. Elliott and Mr. Isherwood at transcript volume 5, pages 47 through 50, through a number of examples given by Mr. Quinn.

However, as shown in part (d) of the response to Exhibit J.DV-1-1-1, Union states that, and I quote:

> "90 percent of all margins from C1 off-peak storage, gas loans, Enbridge LBA supplemental balancing services and C1 short-term deliverability arising from the sale of excess utility space will accrue to the ratepayer. Excess utility space is the difference between 100 pJs and the in-franchise storage requirement."

And then there is a reference to the EB-2005-0551 decision. And it then goes on to say:

> "Non-utility space is all space in excess of the 100 petaJoules, and all revenues, whether short-term or long-term, accrue to the company."

So in our view there is obviously some confusion as to what will accrue in the account to be shared with ratepayers.

When asked about the possibility of new services that may be developed by Union in the future that were not defined as peak short-term storage underpinned by excess utility storage assets, but were underpinned by those same excess utility storage assets, Ms. Elliott indicated that revenues generated from these services would be included in the account.

LPMA submits that the intent of the account as explained by Ms. Elliott appears to be appropriate. However, the proposed wording of the account should be improved to reflect this intent.

Turning to what should be captured in the account, Union clearly proposes that only the peak short-term storage net revenues underpinned by the excess utility storage assets should be included in the account. In the response to part (e) of Exhibit J.DV-1-1-1, Union agrees that that description -- that the description provided by Staff in the question is more transparent. The description provided by Staff included, in part, the following, and I quote:

> "Peak short-term storage underpinned by the excess utility storage assets..."

And then in brackets:

> "...above utility requirements and below the 100 pJ fixed utility asset)."

Now, when asked if Union would agree to change the proposed wording from "excess utility storage assets" to "utility storage assets", Union responded that, no, it was not appropriate to change the proposed wording, because it is only the net revenue earned on the excess utility storage assets that are subject to deferral and sharing.

And that response is found in Exhibit J.DV-4-10-1. Ms. Elliott confirmed this interpretation when she stated that, as the deferral account is currently worded, only the peak short-term storage in excess of the utility storage asset applies. That is transcript volume 6, page 98.

In Exhibit J.DV-4-2-2, Union was asked in part b) if Union agrees that any source of revenue that is received, based on the use of the regulated utility storage space, that is not included in the proposed list should be included in the deferral account.

Union did not provide a complete response to this. Instead, it stated it expected to sell the space in excess of in-franchise requirements up to the 100 petaJoules on a short-term basis. That is transcript volume 6, pages 97 to 98.

LPMA submits that any revenue generated through the use of the regulated utility storage space up to the 100 pJ cap, both planned and the excess over planned, should be recorded in the account for sharing with ratepayers. To do otherwise would be to deny ratepayers a share of the revenues generated by the assets, the costs of which are already being built into their rates.

The planned use of utility storage assets includes contingency space, some of which is filled on a planned basis and some of which is left empty on a planned basis.

The use of the contingency space can be altered during the year depending on the circumstances that exist.

Similarly, a colder than expected fall season could result in increased storage capacity being available. In other words, reality can deviate from the plan.

This reality may allow for the optimization of the planned utility storage assets in addition to the excess utility storage assets, and we all know how good Union is at optimization.

The wording of the deferral account should reflect the inclusion of all revenues generated from the regulated utility storage assets of 100 petaJoules.

The second issue I noted earlier is how to calculate the amounts to be recorded in this account. This is dealt with in Exhibit C1, tab 7. Union is proposing that if it sells short-term peak storage services using non-utility storage space, the total margins received from the sale of all peak short-term storage would be allocated to ratepayers and shareholders based on the utility and non-utility share of the total quantity of peak short-term storage sold each calendar year.

This methodology would effectively calculate an average margin per unit of storage and use this average to calculate the utility margin to be shared.

This methodology would yield the same proportionate return on all short-term peak storage service transactions for ratepayers as it does for shareholders. LPMA submits that this is a key benefit of what Union is proposing.

As Union notes in its evidence, the market price for short-term storage fluctuations -- sorry, the market price for short-term storage fluctuates from year to year and season to season. There is no easy way to determine when the prices for the storage will be at the highest or the lowest.

In his evidence at Exhibit K10.7, and specifically pages 10 and 11, Mr. Rosenkranz indicates that Union's proposal is flawed, in that it would create a strong incentive for Union to sell additional short-term peak storage service from non-utility assets if the value of storage falls during the year.

This is because by selling additional short-term peak storage from non-utility storage, when market prices are lower, Union's non-utility storage business would effectively reduce the average price for the storage as compared to the sales that were made earlier at higher prices, ultimately reducing the amount that gets allocated to be shared with ratepayers. Of course, the opposite would be true if the price of storage were to increase.

In either situation, there would be winners and losers under this approach. This is also true of the situation where an individual storage transaction is tied to either the utility storage account or non-utility storage account. Union confirmed that it was able to do this in part b) of the response to Exhibit J.DV-1-1-1.

If the individual transaction were tied to non-utility or non -- sorry, were tied to utility or non-utility assets, there wouldn't be a debate of which transaction should have been tied to utility assets and which should have been tied to non-utility assets.

In LPMA's view, this is no better than Union's proposal, in that again there is a potential for winners and losers. The Board could direct Union to tie all individual transactions to the utility assets first, and, when all of these assets have been contracted for, only then would any additional transactions be tied to non-utility assets.

The Union proposal essentially mirrors this, because it is only when the amount of peak short-term storage services contracted for exceeds the excess utility space that the sharing would begin.

The difference is that the prices for the individual transactions would be tied to the utility and non-utility assets, and this methodology should mitigate Mr. Rosenkranz's concerns about Union's potential to capture revenue from utility storage if the value of storage falls during the year.

LPMA submits that this latter approach is preferable to Union's proposal and to the tying of individual storage transactions to the utility and non-utility assets.

Both of these approaches can result in undesirable incomes from a regulatory point of view, as has been described. If the Board rejects the LPMA proposal, then it is submitted that Union's proposal is second best. It would eliminate the contentious debate about what contract should go where, if the individual transactions are tied to utility or non-utility assets.

Moving on to other issues --

MS. TAYLOR: Just before you move on, Mr. Aiken, I just want to make sure I understand the proposal that you are making.

If memory serves, and as you have reviewed it here, Union is proposing that the non-utility storage can be sold now for -- or would like to sell it for both short-term peak and longer term, utility being space being sold primarily for short-term peaking; is that correct?

MR. AIKEN: That's correct.

MS. TAYLOR: Your proposal or Union's proposal would basically say all short-term sales, it doesn't matter where they're going; they get the average price. Fair enough?

MR. AIKEN: That's correct, yes.

MS. TAYLOR: You're suggesting in your proposal that the first sales would go to the utility assets first, and, once that capacity is contracted for, then you start to consume the non-utility asset on the short-term sales; is that correct?

MR. AIKEN: That's correct, yes.

MS. TAYLOR: And that they would be directly tied to the asset?

MR. AIKEN: That's correct.

MS. TAYLOR: Okay, thank you.

MR. AIKEN: Other issues. We have no submissions on whether they've responded appropriately to all relevant Board directions.

Are Union's economic and business planning assumptions for the test year appropriate? We believe they are.

Issue number 5 under "other issues" is: Are the forecasts of the natural gas market conditions in 2013 and beyond, and the impacts on Union, including turnback and mitigation actions by Union, appropriate?

We submit that the forecast of natural gas market conditions and the impacts on Union, including turnback and mitigation actions by Union, are adequate for the 2005 test year.

Whether or not the forecast for the period beyond 2013 is appropriate, in the view of LPMA, is irrelevant for the setting of 2013 rates.

Any such forecasts are likely to change in the future and will be dealt with in future proceedings, similar to the approach that Union has indicated is likely to apply to the Parkway West project.

And, mercifully, subject to any questions, those are my submissions.

MS. HARE: I have one question. When you were talking about reinstating the accounts 179-73, 179-69 and -74, are all three needed, or could they be lumped together? Is it advantageous to see each separately?

MR. AIKEN: I think technically they could be lumped together, but I think there is benefit in having them continued to be separated out, because they do apply to distinct types of services.

MS. HARE: And since they're variance account, are they symmetrical?

MR. AIKEN: Yes.

MS. HARE: Then I had a question actually which occurred to me, which you didn't touch and neither has anybody else.

There was discussion at the hearing about the reduction that was agreed to in the settlement proposal for OM&A and whether or not Union's proposal, as to where that reduction is made, is appropriate. Do you have any comments on that?

It was clear in the settlement proposal it's tied to distribution assets, but distribution assets is broad. The way that Union proposed it benefits a certain rate class, but not all. But if you don't --

MR. AIKEN: Sorry, do you mean OM&A? Or do you mean rate base and the distribution assets in rate base?

MS. HARE: I mean the distribution assets in rate base, and the reduction that was made.

MR. AIKEN: Okay.

MS. HARE: But if you don't have any comments on that, that's fine.

MR. AIKEN: No, I don't have any comments on that.

MS. HARE: Okay.

MS. TAYLOR: I had one final question relating to the short-term storage and other balancing services account, 179-70, and the difference in language and the proposed language.

Given that all of the sales of utility storage space are expected to continue to be short-term and, I suppose, peak, is it necessary in the specification of that account to actually refer to a peak short-term storage?

Or is it simply sufficient to broadly define utility storage, such that any activity related to utility storage gets captured and doesn't presume the nature of the transaction?

MR. AIKEN: I think the broader definition that just talks about revenues generated from the use of utility storage probably would be more appropriate, and would, in general, cover anything that may, you know -- may be developed by Union in the future as new services, that may not be, by definition, short-term peak.

MS. TAYLOR: Right. And that would --

MR. AIKEN: It might be mid-term off-peak.

MS. TAYLOR: Okay. And would that -- Staff's submission was that should also include encroachment, and I assume that you would also include that?

MR. AIKEN: Yes, yes.

MS. TAYLOR: Thank you.

MS. Hare: Okay. Thank you very much, Mr. Aiken.

PROCEDURAL MATTERS:

I think we should take our lunch break now, but I would like to do a little time check.

Mr. Wolnik, I have you down for an hour; do you think that is about right?

MR. WOLNIK: Yes. It will be.

MS. HARE: And Mr. Thompson?

MR. THOMPSON: Well, I think I allowed up to 90 minutes.

MS. HARE: Yes.

MR. THOMPSON: And looking at my notes, I think I am going to be at least that.

MS. HARE: Okay. Then we have Mr. Shepherd?

MR. THOMPSON: Right.

MS. HARE: We will come back at 1:45.

--- Luncheon recess taken at 12:46 p.m.

--- On resuming at 1:51 p.m.

MS. HARE: Please be seated. With the time estimates of how long arguments are going to take, our intention is to keep going today, so whether it is 4:00 or 5:30, 6:00, 6:30.

[Laughter]

MS. HARE: Just checking with our court reporter if that is okay. So, Mr. Wolnik, I think you are next.

FINAL ARGUMENT BY MR. WOLNIK:

MR. WOLNIK: Yes. Thank you, Madam Chair.

APPrO intends to make submissions in six different areas. We will talk about rate base, revenue forecast, capital structure, cost allocation, some of the rate redesigns, and also rate mitigation.

I will also follow the issues list relatively carefully, and I have also provided a compendium of references. I don't know if that's been provided, whether you have a copy of that or not.

MR. MILLAR: K15.2.

EXHIBIT NO. K15.2: COMPENDIUM OF APPRO.

MS. HARE: Thank you. Okay.

MR. WOLNIK: I would first like to start with Parkway and the various projects around Parkway. I guess an observation that I've made this morning is that there may be two related but distinct projects at Parkway. One of them is the LCU project that Union is proposing to reinforce existing compression. The second one is the need to interconnect a future project of Enbridge. I will only be commenting on the former one, the LCU part of this.

APPrO members are significant shippers on both the -- long-haul shippers on both TransCanada and also Union's system, and, as you may know, they've -- on the TransCanada side, there's been significant rate increases in the last several years, well over 200 percent -- or 200 percent higher rates today than they were a few years ago. So they're quite sensitive to additional infrastructure being built when there may be other options.

APPrO understands the fundamental rationale to proceed with the Parkway West project is to improve the reliability of the existing Parkway compressor stations, and the new station would provide compression redundancy in the event of compression loss.

APPrO believes that Union should first ensure there is a problem that needs solving and, if so, ratepayers deserve the most cost-effective solution, not merely the facility solution that Union can offer.

While I do not believe in this proceeding we ought to be delving into the need to spend over $200 million on this compressor, it is noteworthy that at transcript volume 8, page 99, which is the first page of the compendium, Union does indicate there is an extremely low probability of failure of these stations.

As part of the proposed assessment of alternatives, APPrO recommends that Union do its due diligence on potential alternatives to a Parkway West build, and this could not only be the alternatives presented by TransCanada, but there may be other commercial solution, as well, out there. And without some sort of consultative, these may not be evident.

So APPrO takes no position on the issue of capital spending for the test year, but presumes that in the event that Union undertakes to spend non-recoverable capital in the Parkway West project, and if the Board subsequently does not approve the proposed facility either due to lack of need or that the Parkway West project is not the appropriate solution, that Union will be at risk for such non-recoverable spending.

APPrO further suggests that given the potential magnitude of the expenditures and the related impact on rates, it may be appropriate for Union to conduct broad and ongoing consultation with stakeholders, including but not limited to all M12 shippers and in-franchise users of the Dawn-Trafalgar system that would be impacted by this major decision, not just those limited shippers that may be looking for greater security.

On the issue of B4, the issue of is the rate base appropriate, this was a settled issue in the settlement agreement, and Union agreed to reduce the 2013 rate base by $12 million, which has a revenue impact of approximately $1.7 million. This was clause 1.4 of that agreement.

The initial reduction or allocation of this reduction by Union was solely to distribution mains for the north, and this primarily benefitted rates 1 and 10. This is from page 88 of -- I don't have the transcript reference, I'm sorry.

Union offered an alternative allocation to the proposed distribution rate base as found in J11.10, attachment 2, column 8, which is page 6 of the compendium.

APPrO supports the broader allocation of the rate base reduction that benefits more rate classes.

On the issue -- I'm moving to issue C3 now in terms of contract demand forecast. APPrO proposes an increase to Union's revenue forecast for in-franchise customers by a total of $3.09 million.

This comes from the following four categories: A power revenue commodity increase of $1 million; incremental fuel associated with this commodity revenue of $0.14 million; a T1 billing contract demand overrun revenue of $0.75 million; and other contract overrun revenue of $1.2 million.

Now, before I get into the detail of these, I just wanted to, by way of overview, provide a few comments on the changing gas-fired power market.

Consistent with the provincial mandate, coal-fired generation is being phased out. Much of this has been replaced with the clean energy supply, or CES, gas-fired generation. Exhibit J.C-3-13-1 on page 8 of the compendium illustrates that between 2010 and 2011, there was a reduction of 940 megawatts of coal-fired production. A further 1,890 megawatts was closed between 2011 and 2012, for a total reduction in these few years of 2,830 megawatts.

Coal-fired plants were dispatched in the past after base load or non-dispatchable units to meet mid-merit and peaking demands of the province. Gas-fired generation has replaced coal for much of this capacity and provides backup for renewable generation. The reduced coal generation will, therefore, increase the runtime for gas-fired power generation.

Union also points out that the Lennox, which is a -- the Lennox plant, which is a combination gas- and oil-fired Rankine cycle plant, will essentially be producing little power in the future. The reason is that Lennox is a fairly inefficient plant relative to these new gas-fired generation facilities, and these new CES plants have a much lower heat rate and, therefore, would be dispatched on an economical basis, well in advance of Lennox.

The decline in Lennox production can be found at Exhibit C1, tab 2, page 13, figure 1, which is on page 9 of my package.

So coming back to these four categories, the first one I will deal with is the commodity associated with the power forecast, which we had forecast to be an increase of $1 million.

And this, I will just point out, is separate from the overrun revenue that I will talk about shortly.

Union's methodology to forecast power commodity revenue is fundamentally flawed, by its very nature, as gas-fired power generation, as the gas-fired power generation market is growing and Union uses dated historical information that will, by its very nature, result in a lower throughput forecast.

This throughput forecast impacts the commodity revenues that will be collected from generators; not the demand charges, just the commodity revenues associated with -- or the commodity volumes and associated revenues. APPrO takes no position what the demand charge forecast in the test year.

In order to come up with a forecast for contract customers, Union indicates at transcript volume 1, pages 63 and -4, which is page 10 and 11 of my package, that in May of 2011 they took the prior three-year history, which included 2009, 2010, and a few months of 2011 data as the basis for the forecast.

Clearly this is outdated information and, by its very nature, doesn't recognize the impact of the coal closures that I mentioned earlier.

Just by way of example, the Halton Hills plant, which is the latest plant to come on in the Union franchise area, didn't come online, fully online, until mid-2010. I will talk about that a bit more shortly. Although it did come on -- start commissioning prior to that, the full plant operations didn't start until mid-2010.

Moreover, Union does not recognize the overall IESO forecast of increasing provincial power demand for 2013. When asked if Union uses the IESO forecast at transcript volume 1, page 64, line 20, which is my page 11, Union acknowledged they do not take the IESO forecast into account.

So, in all fairness, Union prepared their forecast in May of 2011 for 2012 with two-and-a-quarter years of backward-looking data. So the 2009 data will be four years out of date relative to 2013. Clearly, things have changed since 2009.

Union also invited us to look at the IESO website, and if one looks at the IESO June 23rd, 2012 18-month outlook at page 3, which is table 3.1, which is page 12 of my package, this clearly shows that the 2013 aggregate energy consumption is expected to be 1.1 percent higher in 2013 over 2011.

Looking at Exhibit C1, tab 2, page 7, table 1, which is page 13 of my package, this shows the power volumes growing from 2008 to 2011, and then a precipitous 11 percent decline to the test year.

APPrO submits when Union uses its bottom-up 2009 to 2011 data in developing the forecast, it is outdated and fails to take into account current trends.

Union does indicate they provide these forecasts to individual power generators and request their input, but it is clear at transcript volume 1 at the bottom of page 86 and '07 that Union has no idea what customers take into account with respect to such things as the impact of coal closures on their generation demand. Nor does it appear that -- does Union take this certainty into account when they assemble the aggregate forecast on behalf of all generators.

While APPrO disagree with Union's commodity forecast, it does agree that customers are not going to reduce their contract demand levels if -- the need for physical capacity to meet their production or to meet their physical production requirements.

But a plant operator that is charged with keeping the plant running efficiency and safely is not likely going to spend much time looking at more global factors that might have -- might or might not drive higher load factors.

Generators get compensated for the margin of cost of power production in the power rate, so there is little or no incentive for them to give this aggregate consumption much thought, not to mention the time difference between when they were doing this in 2011 and the test year.

Moreover, the responsibility for preparing an accurate and complete forecast is not the responsibility of the customers. It is Union that has this responsibility to prepare a full and complete forecast for the Board that recognizes all drivers for the forecast period.

Using dated information in a changing market will, by definition, result in a biased forecast.

Union does imply a reduction in MAV revenue may account for reduction in power related revenues. At J1.6, which is page 17 in my package, corrects an IR, J.C-3-13-1, that otherwise shows constant MAV.

Further, J1.7 shows that a mere $1- to 200,000 difference in MAV revenue is the amount that has changed over the years. So there is a very small to de minimus impact on -- that this clause has on overall revenues.

Union acknowledges in J.C-3-13-1, page 20 in my compendium, that contract demand levels are constant. These contract demand levels generate a fixed revenue stream each year. So it is the additional generation production above the MAV level that results in incremental commodity revenue for Union that is in question here, not the CD levels.

Overall power throughput in 2013 should be greater for the reasons previously noted, or were similar to the 2013 level -- sorry, similar in 2013 as experienced in 2010 and 2011, but not decline by 11 percent as forecasted by Union at C2 -- C1, tab 2, page 2, table 1.

It is this basis that APPrO suggests that the commodity revenues for power customers for 2013 should be increased by $1 million. The addition of this $1 million would result in the same commodity revenue that Union collected in 2011 for this group, for a total of 4.9 million.

Now moving on to the second item, which is the incremental fuel revenue for of $0.14 million, since the just discussed power-related commodity revenues will be 11 percent higher, customers have to provide the necessary fuel to Union to transport these volumes. As outlined in J1.7 under "Customer-supplied fuel line," Union treats customer-supplied fuel as a revenue stream, and therefore, additional fuel will also result in this additional revenue and should be included in the forecast.

The customer-supplied fuel is priced at WACOG for this purpose, so it would be inappropriate to restore the revenue source to the 2011 level, because of the fluctuating commodity prices.

As noted above, the throughput volumes will be adjusted upward by 11 percent; therefore, the customer-supplied fuel should also reflect this 11 percent increase from the forecast. And the forecast was $1.3 million, so the 11 percent of that is $0.14 million.

The third item deals with the T1 billing contract demand, or BCD, revenue stream of $0.75 million. Union collects separate and distinct overrun commodity revenue for those T1 customers that have the billing contract demand. These customers have had the level of contract demand set for billing purpose at an initial level that results in a profitability index of 1.0.

Union charges for any volume consumed in any day that is in excess of this daily contract demand level. The overrun rate for -- the overrun rate for T1 is much higher than the normal commodity rate, and I believe it is set at

100 percent of the load factor T1 rate.

In any event, the -- Union's T1 current rate schedule indicates that the overrun rate for these customers as of July 1st this year is 0.8521 cents per cubic metre. This comes from page 6 of 8 of the T1 rate schedule.

This compares to the normal commodity rate for the second commodity block, which these customers would be in when this -- if they were not subject to this charge, 0.1127 cents per cubic metre.

So the overrun commodity rate is about eight times the normal commodity rate, so it is fairly significant.

The billing contract demand for Halton Hills occurs on any day in which the consumption exceeds 1.374 million cubic metres, as outlined in J1.8, which is on page 19 of my package. Essentially, any day that the plant runs more than about nine-and-a-half hours, Union charges the overrun revenue on these -- the volumes above this 1.374 million cubic metres.

The Halton plant started in August 2009, as indicated in J2.7, and after a commissioning period, overrun revenue commenced in June 2010, which resulted in $300,000 in revenue in the first year.

This increased to $606,000 in 2011, as shown in J.C-3-10-1 on page 20 of the compendium.

Union also acknowledged at transcript volume 1, page 100, that the year-to-date June 2012 numbers, the billing contract demand revenue had already reached $300,000 for 2012. Now, remember, this 2012 year-to-date revenue is before the significant summer generation peak.

2012 overrun revenue is on trend to exceed 2011 revenues, recognizing this.

The closure of the coal plants and low-efficiency Lennox plants is driving additional overrun volumes at Halton Hills and other gas-fired generating plants. APPrO believes a T1 overrun revenue forecast should therefore be increased from zero, as currently forecast by Union, to $750,000 for 2013, to recognize both the actual consumption and the trend.

Board Staff, in its argument on page 8, suggested the overrun revenue for 2013 should be $300,000.

APPrO respectfully disagrees, because, in part, this relies on the analysis of the five-year average overrun revenue from 2007 to 2011, of $180,000.

Staff did not seem to be aware that the plant had only come on-line in the mid-2009 period and only started using overrun in 2010.

Furthermore, APPrO suggests that Staff failed to recognize the new efficient gas-fired generation is increasingly running more often, displacing the prior coal generation.

On the fourth item, which is non-power contract overrun revenue, APPrO proposes an increase of $1.2 million.

Union also appears to be under-forecasting overrun revenues for other contract markets, as well. JT1.17, page 22 of my compendium, clearly shows that the forecast for volumes for 2012 and 2013 are well below historical averages.

APPrO has already addressed the overrun revenue for power markets. APPrO further believes that the overrun revenues for the contract sector should be increased to the average of the non-financial crisis years.

The actual non-power-related overrun revenue for the years 2007, 2010 and 2011 is $2.1, $1.5 and $1.8 million, respectively. This yields a three-year average of $1.8 million, which is $1.2 million greater than what was forecast by Union.

APPrO also believes, in addition to the increased overrun revenue, that there will also be associated increase in the revenue from the customer-supplied fuel that Union also includes as a revenue stream, as I noted earlier.

However, we were unable to provide a reliable estimate of what this might be, because the information on the record only deals with revenues and not volume. So we were unable to come up with an estimate of what this amount might be.

So this suggests that the $1.2 million is a very conservative estimate of the total revenue forecast once fuel is accounted for.

APPrO notes that the $1.2 million is fairly similar to what was proposed for the proposed increase of $1.1 million in the non-power overrun revenue forecast as proposed by Staff.

In further support of an increase in Union's overall revenue forecast found in J.C-3-1-1, page 23 in my compendium, in response to a Board Staff IR, the IR looks at Union's forecasting accuracy for the power markets during the IRM.

Comparing the actual consumption to forecasted consumption suggests that Union, on average, has underestimated the actual power -- the volumetric consumption by 4.3 percent.

The only negative years were those in the 2008/2009 period, which the demand declined due to declines in power consumption as a result of the financial crisis.

Excluding these two years, yields a systemic under-forecasting of 11.7 percent. So our increase of 11 percent is on trend with Union's actual experiences.

Moving on to the S&T revenue forecast, I listened as Mr. Aiken proposed -- proposal for his S&T revenue forecast and deferral and variance accounts, and rather than detail my proposal, we adopt what he had suggested.

Similarly, moving on to cost of capital, also listening to Mr. Aiken's proposal for issues E2 and E1 related to cost of capital, we are also prepared to adopt his evidence in the interest of time.

Moving on to the issue F2, is the issue -- is the revenue requirement reasonable give the impact on customers?

We believe that Union has not taken into account the impact of rate shock on industrial customers in the north, and I will address this towards the end of my submission.

On the cost allocation matters, issue G5: Are the cost allocation methodology changes to allocate the cost on northern distribution customer station plant appropriate?

APPrO opposes this change to the allocation. This item deals with the allocation of capital cost of customer stations. Union proposed -- Union's proposed change has the effect of reallocating 1. -- 2.169 million of annual revenue requirement from rate 10 to rates 20, 25 and 100. This can be found at G1, tab 1, appendix B, page 2, line 7.

Union's proposed methodology is found in the G1, tab 1, pages 11 to 15, which is page 35 in - starts at page 35 in my compendium - is underpinned by the assumption that customer stations in the north are only applicable for those customers that have an annual consumption greater than 934,400 metres cubed per year.

They arrive at this annual consumption based on a peak hourly flow of 320,000 metres cubed per hour. Multiply this by 20 hours a day, and then by 40 percent load factor, and then by 365 days a year. This contains a number of arbitrary assumptions.

The 320,000 metres cubed was not chosen because it had any link to rates 20, 25 and 100, but because it is the way historical planning -- plant accounting records had been maintained. This is found at transcript volume 11, page 109, and page 29 of my compendium.

Union acknowledges in J.G-5-13-1, item c), page 31 in my package, that the design criterion to size and install meters and regulators is the peak hourly load and pressure considerations. Annual consumption is not mentioned as a design criteria.

Union also acknowledges at transcript volume 11, page 110, or page 30 in my package, that capital costs are driven by design criteria; that is, hourly design load and pressure, not annual consumption. So Union does not provide any link between capital cost and annual consumption.

Union was asked to also provide the rate base that would be allocated if the allocation was based on peak hourly volume -- of any peak hourly volume or any station in which the hourly volume exceeded 320 metres cubed per hour, rather than the annual volume.

This was provided at J.G-5-13-1, attachment 1. That is page 33 in my compendium, but this was not the corrected version. There was a corrected version that was handed out during the proceeding, and I understand that was just filed today. So I would encourage you to look at the corrected version as opposed to this one.

One can see that if gross plant is allocated -- gross plant is used to allocate the capital cost to the station, then the capital cost associated -- or that would be allocated to each rate class would be 72 percent to rate 10, 21 percent to rate 20, 6 percent to rate 100 and 1 percent to rate 25.

This compares to Union's proposed allocation, which is found at attachment 2 of the same IR, which is 21 percent to rate 10, 35 to rate 20, 10 percent to rate 100 and 34 percent to rate 25.

Union acknowledges in attachment 1 that there is only two pure rate 25 customers. This was in -- rate 25 is an interruptible service in the north and is used by industrial or power generation customers to supplement their firm load, and recognizes their gas requirements may vary from year to year with their overall actual production requirements.

For those customers taking both firm and interruptible load, there is only one meter. Under Union's proposal, customers taking either 10, 20 or rate 100 service are first allocated costs of the meter station for the firm load, and then they receive a second allocation of costs related to the customer station for the interruptible load.

APPrO believes these customers only taking -- APPrO does believe that those customers only taking the rate 25 load and no firm component should pay their fair share of the costs, but those in a firm rate class should not pay twice for the same meter. This is a double allocation for this rate category.

Union respectfully submits that Union's attempt at reallocating costs of a meter station is fundamentally flawed, because capital costs are dependent on the design criteria of peak hourly flow, not annual consumption. APPrO proposes no change be made to the current allocation, or, in the alternative, to the extent that any changes are made, they should be consistent with the corrected

J.G-5-13-1, attachment 1.

Moving on to item number G7: Are the cost allocation methodology changes to allocate the cost of distribution maintenance O&M appropriate?

APPrO also opposes this proposed change to O&M costs associated with the maintenance of equipment on customer premises, as found in G1, tab 1, appendix B, line 2, page 2, line 5, which is page 28 in my package.

It appears that Union may not fully understand this cost item and the request for reallocation should be rejected.

Union states in G1, tab 1, page 14, lines 10 and 11, that the maintenance of equipment on customer premises are primarily related to station maintenance, customer station maintenance. However, most of the evidence suggests otherwise.

As found in G1, tab 1, appendix B, page 2, at page 28 in my package, the effect of the change is to allocate $1.5 million from rate class 1 to rate classes 10, 20, 100 and 25.

At transcript volume 11, page 100, page 38 in my package, there is no evidence advanced to what the equipment was that was the subject of the maintenance. While one might think meters and regulators might be the logical items to be maintained, Union acknowledges at page 100 of this transcript that meter and regulator maintenance is covered by separate cost categories, covered on item number 4, page 2, appendix B. So there is nothing on the record as to what the subject of the maintenance is.

The same reallocation is happening in Union south. At G1, tab 1 appendix B, page 1, line 5, in this case $324,000 is being reallocated from regular rate customers to large-volume rate classes.

It seems suspect that, independently in the north and the south, these costs have been historically allocated to small-volume residential meter stations, and now without regard for a full and complete understanding of the equipment, these are now being proposed to be allocated to the large-volume rate classes.

At page 42 in my compendium, which is an excerpt from G1, tab 1, appendix B, page 5, there is some information that may actually provide some insight as to what these costs really are about.

In the middle of the page, there is a heading that says "Distribution maintenance equipment on customer premises."

Note that there is no reference to customer stations in this heading. It is just "equipment on customer premises."

In the second sub-heading, "North distribution maintenance - equipment on customer premises," the current allocator, as approved in EB-2005-0520, is: "Allocate costs in proportion to appliance rentals." I will say that again: "Allocate costs in proportion to appliance rentals." I think this is very telling.

Appliance rentals could be, in fact, equipment on customer premises, which has nothing to do with customer stations.

Union's provided no evidence what has changed between EB-2005-0520 and now. It is not clear to me, at least, if Union continues to rent appliances to customers. These rentals might have been phased out several years ago; perhaps not. Perhaps the account number is used to maintain customer stations; perhaps not. Perhaps it was used a bit of a slush account, for almost anything.

The only thing that is clear from the evidence is that meter and regulatory maintenance is done under a separate account category, which leaves little, if any, equipment in a customer station to be maintained.

So Union's project, therefore -- or Union's proposal, therefore, should be rejected in its entirety.

To the extent that the Board sees some merit in Union's proposal, Union's methodology for allocation should be changed. Union also proposes to allocate the costs at G1, tab 1, appendix B, page 5, again on the basis of this annual so-called volume of 934,430 m^3 per year. That is in the north.

In the south, they propose to allocate costs in proportion to customer station gross plant, which is allocated based on distribution station replacement costs. And that is a quote from that G1, tab 1, appendix B.

It is not clear why Union, in the south, why these costs are being allocated on distribution station replacement costs.

My understanding is that the definition of distribution stations are the pressure-reducing stations between the distribution piping of different pressures.

So it is unclear why they're using this as a -- this methodology.

The Union north proposed allocation of customer stations is proposed on the gross plant basis, but again, only for those customers having an annual load greater than 934,400 metres cubed per year.

If the Board is convinced on the face of it that there should be some costs allocated to large industrial accounts, then it is inappropriate to use the -- this annual volume as the allocator in the north.

If, in fact, there are maintenance costs, then they should be allocated -- the costs should be allocated based on some customer component, rather than just gross plant.

The Union north franchise area is a ribbon straddling the TransCanada pipeline from Kenora in the west to Cornwall in the east, a span of some 2,000 kilometres. Surely, maintenance time and hence maintenance costs ought to have a customer component to recognize the significant geographic region served by the company.

Since the company does not have service centres in all towns and villages, the majority of the service call can be taken up driving to and from the site, as opposed to actual station maintenance activity.

Therefore, APPrO expresses concern under this issue as to what the definition should be for a customer station.

And I think this definition needs to be decided before this item is finalized.

Moving on to item number G9, this is more cost-allocation methodology. The only item I am going to talk about here is F24T.

APPrO is opposed to the current F24T allocation. Union should simply include the cost of the additional nomination windows in the overall O&M cost of the Dawn-Trafalgar system, just as it does for the 1,250,731 gJs a day of M12 capacity, where Union provides eight nomination windows for those shippers also contracting for TransCanada's STS service.

F24T is an add-on service to Union's M12 and C1 service. F24T has nine additional nomination windows; that's in addition to the standard NAESB windows that other transportation services contain.

F24T is used by generators, as well as other customers that require these additional nomination windows. The service is used in conjunction with non-utility storage or other non-utility balancing arrangements, so that these customers can access intra-day balancing services. Shippers using F24T contract for TransCanada capacity downstream of Parkway using TransCanada's FTSN service.

Under the settlement agreement, Union agreed to reduce the O&M budget by half a million dollars. Half of this related to the reduction in provision for wages and salaries, and the other half related to amounts attributable to non-utility services.

The net amount after these reductions was $645,000. And this can be found at H3, tab 8, schedule 1.

Union acknowledged that it provides somewhat similar service for other M12 customers, and that -- for customers that contract for TransCanada's STS or storage and transportation service. STS and F24T share the four standard NAESB nomination windows, as well as they share the four STS windows.

F24T, in fact, only has five incremental windows above these eight.

Union acknowledges at transcript volume 11, page 76, page 43 in my compendium, that it does not charge STS customers a separate and distinct fee associated with providing these four extra STS nomination windows.

The Union witnesses didn't know if there were extra costs associated with providing these four extra nomination windows, but if there were extra costs related to receiving and processing these nominations, readjusting the system flows to accommodate these changes, then these costs were embedded in the M12 rate, and not charged separately.

F24T shippers pay the same underlying M12 rate as these STS shippers that include the eight nomination windows, and also pay for the -- these extra nine nomination windows.

The volume of F24T referenced in H3, tab 8, schedule 1, is 356,500 gJs a day. However, in J.G-9-13-1, response b), Union indicates the sum of the current F24T contracts is 442,154 gJs a day.

Union has this 1,250,000 gJs a day of M12 service that feeds into TransCanada's STS service. This comes from J11.5. This is three to three-and-a-half times the volume of F24T capacity and is subject to these four nomination windows compared to the F24T volume that has -- sorry.

This STS volume is three to three-and-a-half times the F24T capacity and has no extra nomination fee associated with it. For those customers contracting on TransCanada's FTSN service, APPrO proposes this $645,000 of annual O&M cost be included and recovered as part of the overall M12 costs and no specific charge apply.

This would be done in the same manner as Union currently does for those M12 shippers contracting for STS service.

Rather than -- to ensure that not all M12 shippers would have access to these windows, though, we would propose that access to these additional windows be conditional upon the customer holding downstream FTSN capacity with TransCanada.

In the alternative, in the event that the Board is of the view that Union should charge a separate rate for F24T, then it's APPrO's position that the costs are allocated directly to F24T -- that the costs allocated directly to F24T should only reflect the increase in the five nomination windows, above the eight that is already offered to M12 STS-related customers, not the nine windows that is proposed by Union.

APPrO believes if the Board were to elect -- continue to allocate costs to F24T in this manner, five-ninths of the $645,000, or 359,000, would be allocated to F24T, with the balance being recovered within the overall M12 service, just as Union does with the cost of extra nomination windows for M12 shippers.

And the five-ninths fraction was arrived at by -- the numerator is the difference between the current total F24T nomination windows of 13, minus the eight, and this represents the STS windows. The denominator is the difference between the 13 F24T windows and the four standard windows.

If the Board does accept there should be a separate charge attributable to F24T, then Union should also be required to use the billing determinants as shown in J.G-9-13-1 of 442,154 gJs a day.

Moving on to issue H8: Is the splitting of T1 into two rate classes effective January 1, 2013 appropriate?

APPrO agrees with Union's proposal that the largest T1 customer should be recognized in a separate T2 class, along with other large industrial customers.

These customers have different utility facility requirements, and recognize that, for the most part, these customers are served off Union's transmission system and require higher delivery pressures from these systems in their plant processes. Therefore, Union requires little or no distribution plant to serve these customers.

Many, if not all, gas-fired generators have been taking full transmission pressure, because gas turbines require combustion pressures at or above 500 pounds in order to function. And this was well above standard distribution pressures.

If the Board does not separate the T1 class into a T1 and T2, then APPrO proposes the proposal to lower the threshold for T1, as they will no longer be -- there will be a loss of homogeneity of the customer sizes in that event. So we support the T2, but only if there is no change in the T1 entry volume.

Issue H14: Are rate mitigation measures required? Yes, and we will address that shortly.

"Other Issues", O2: Are the economic and business planning assumptions for the test year appropriate? APPrO has some concerns with the business planning assumptions as we have already identified in our argument.

Now, turning to the matter on rate mitigation, when analyzing the issue of rate mitigation, we must return to some of the basic tenets of rate-making, the Board's responsibility to set rates that are just and reasonable.

The legislative framework provides the Board with wide discretion when selecting the most appropriate approach to rate-setting. On May 11th, 2005, the Board issued its 2006 Electricity Distribution rate Handbook, a report of the Board, or 2006 EDR, which sets out the Board's views in the 2006 Electricity Distribution rate Handbook or the EDR Handbook.

These documents explained the Board's existing policy regarding rate and/or other bill impact mitigation. As there is no equivalent documentation for gas distributors, the parties before the Board often reference these documents when citing -- seeking guidance on rate mitigation.

It is in these documents that the Board declares, as cited by Union in Exhibit J11.10, that the appropriate rate mitigation action level should be based on the total amount of the electricity bill, or in this case the gas bill, and that the threshold should be set at a 10 percent increase over the previous total bill impact.

While this 10 percent increase is often cited in proceedings as a definitive threshold for warranting mitigation, we must remember that the Board has gone to great efforts not to restrain its discretion over such issues.

As stated in the 2006 EDR report, the Board sees its role in this subject area as providing direction to the distributor in its efforts without prescribing any particular mitigation methodology or response. Mitigation proposals will need to be considered on a case-by-case basis.

There is no compelling single methodology that can equitably address all situations that may arise. This comes from page 89 of the 2006 EDR report.

This is precisely why the 2006 EDR Handbook does not propose any particular methodology or approach to be used by distributors to achieve mitigation. Indeed, it is worth noting that the Board, in the midst of reviewing this very rate mitigation issue in the electricity context, having initiated a consultation process for developing a renewed regulatory framework for electricity distributors and transmitters -- sorry, the RRFE, one of the three elements of this framework is to review the Board's rate mitigation policy, which I understand to be EB-2010-0378.

During the initial stakeholder conference on developing the RRFE in February of 2011, Board Staff presented various issues for consideration during the consultation, including whether the Board's mitigation policy should even have a threshold.

There is no bright line test for rate shock, nor any formula, set formula, that should be applied. The 10 percent total bill impact is merely a screen or guideline and not determinative of whether the Board can step in to request mitigation in certain circumstances.

Turning to Union's proposal in J11.10, which is page 6 in my package, Union mentions that a mitigation plan is only required where a customer class or group bill exceeds 10 percent. Union then explains that its proposed efficiency and associated total bill impacts for each rate class fall below this 10 percent threshold.

If one reviews the proposed delivery charges for industrial customers, you will note that the increases are well above this. They will be -- for rates 20, 25 and 100, they will be in the 28 to 33 percent range. Under the initial application, they were at least 10 percent higher.

With respect to Union, its contention that mitigation is only required when the total impact exceeds 10 percent does not make sense in the case of large industrial customers. Union does not purchase gas for most generators in rates 20 and 100. Rather, these customers purchase gas independently of the utility, and these costs are not included in the overall Union bill.

It is thus impossible for Union to know precisely what direct industrial customers are paying for their upstream supply and transportation. This is different from direct purchase customers or system customers in which Union does understand and know what the bill impacts are.

If the total bill impact were to significantly increase due to rising commodity prices, Union would argue that, on the face of it, it should not be required to mitigate those things that are external to the bill.

It is worth noting that APPrO does not think commodity prices should be included in any mitigation analysis.

The delivery rate increases proposed for large industrial customers in the north is significant. These are cost inputs that Union has direct control over. In any other market, if one input were to increase by 30 percent, customers would likely be encouraged to shop elsewhere.

Because this is a monopoly service, however, customers cannot do that.

The Board's regulation is the only avenue for these customers. It has wide discretion of ratemaking, and should seek rate stability as one of its basic principles of rate regulation. The Board must protect ratepayers from any volatile changes in delivery rates.

In this situation, large industrial customers in the north are being exposed to volatile changes in delivery rates, some exceeding 30 percent.

Such increases must face the scrutiny of the Board, and Union must engage in some form of mitigation. Union believes that the Board should require rate mitigation when the delivery rate increases are more than 10 percent.

In terms of some of the mitigation measures, APPrO's concerns are primarily related to rate shock in this application for large industrial rates in the north.

The need to mitigate these northerly rates can be reduced if Union were to accept the APPrO proposals outlined earlier, including the additional revenue forecast highlighted under issue C3; this was an increase of -- after adjusting the $3.09 million by only those things that affect categories in the north, there is about a $2.2 million revenue impact to these northerly customers.

Also, the proposed cost-allocation methodologies for G5 and G7 should be rejected. This would also reduce the rate impact to these customers.

Union also proposes the capital structure not be adjusted from the current 36 percent as requested by Union. This would further reduce the need for additional mitigation.

In J11.10, Union also identified several other potential mitigation measures that would be beneficial.

Union suggested that the ROE formula originally used in the application would now result in a lower ROE and that should be reflected in this mitigation measure, as well.

Union also identified an alternative allocation to the reduction of revenue requirement associated with the reduced rate base. I also mentioned that. This would also reduce rate base -- or, sorry, revenue requirement.

Union also proposed that FT RAM be used to further reduce rate shock to northerly customers. Union acknowledges that Union identifies FT RAM as a mitigation measure. However, FT RAM is dependent upon the outcome of the NEB restructuring proceeding. And if the NEB accepts TransCanada's proposal to phase out FT RAM, then this may not be available after the decision.

Our best estimate at this time is that could be phased out as early as May of 2013.

If the Board accepts APPrO's other adjustment to reduce costs and increase revenue, then the need for the reliance on FT RAM may be significantly reduced.

The Board, other stakeholders or Union may offer other mitigation options to help the rate shock impact.

A chart has been provided that estimates the impact to the revenue requirement -- not the overall rate impact, but the revenue requirement -- for these rates, if Union were to implement the changes as I have discussed. This is on page 48 of the compendium.

So this chart just shows the changes to the revenue requirement, not adjusting for billing determinants.

These are APPrO's submissions, and we thank the

Members and the company for allowing APPrO to participate.

Thank you.

MS. HARE: Thank you.

MS. TAYLOR: Mr. Wolnik, just to be clear, when you were talking about splitting the T1 into the two rate classes T1, T2, can you just reconfirm for me what you mean by the "T1 entry volume"?

MR. WOLNIK: Yes. My understanding is that Union's proposal is to have a new T2 rate class and also reduce the threshold for the remaining T1 class.

So if they're going to reduce the -- our view is that both have to happen in order for the T2 to be approved.

Otherwise, you would have some very small T1 customers in the T1 class and some very big ones. So you lose that homogeneity.

MS. TAYLOR: So now you confused me. Let me back up, then.

When you talk about the T1 entry volume, you are talking about the reduction in the threshold from 50 to five; is that correct?

MR. WOLNIK: Yes, I'm sorry. Right, yes.

MS. TAYLOR: Originally I had jotted down that you would support the splitting of the rate class into T1 and T2, but only if there is no change in the T1 entry volume.

So did I mis-hear you, then?

MR. WOLNIK: Yes. So we're supporting the T2 rate category. If you reject that, then we're saying no change to T1, if that helps.

MS. TAYLOR: Okay. So in other words, a split, and -- and -- change the threshold?

MR. WOLNIK: Yes, right.

MS. TAYLOR: Also, I just have a question on your mitigation. And we have heard this several times, and it is a concern.

I think the Federal Court of Appeal has said that at the time the Board or the regulator sets ROE and decides on deemed equity, that shareholder interests and ratepayer interests are not aligned. It then is the process of setting rates that aligns the interests of ratepayers, but not the determination of the proper cost factor.

So I just want to make sure that you are not asserting that we should make a determination on deemed equity in this case, because the other matter has been settled, on the basis that it would create some form of increase in rates that you find unacceptable.

MR. WOLNIK: We're not suggesting that, that there be a change in the equity as a mitigation measure.

MS. TAYLOR: Okay. Thank you.

MS. HARE: Mr. Wolnik, when you were talking about mitigation, you said -- you made the statement that commodity prices should not be included in mitigation analysis. Then a little bit later, you said Union believes that the Board should require rate mitigation on the delivery rate increases if it is more than 10 percent.

Did you mean to say "APPrO believes"?

MR. WOLNIK: Yes.

MS. HARE: Yes. Okay. So just to correct that.

Second, I just want to follow up on F24T, and you talked about objecting to the allocation and how F24T is an add-on to M12 and C1 -- or C1.

MR. WOLNIK: Right.

MS. HARE: But then your proposal seemed to speak to M12 only. What about C1?

MR. WOLNIK: Well, F24T, I think, is where the cost is captured. So it applies -- my understanding is F24T rate is applied to both M12 or C1. So the rate is captured in the F24T component.

MS. HARE: So if there are changes made so that the rate for F24T is reduced, the costs would be picked up by both M12 and C1?

MR. WOLNIK: I'm sorry, yes. I did I miss on the T1, that's right. It was relatively new and I only became aware of that relatively recently, yes.

MS. HARE: I didn't understand your proposal for rate 25. I understood you are saying that it is also a companion service, so most have firm. There are these two customers that only have rate 25, so they're not paying their full share, and not to pay twice.

But I didn't understand what the proposal was, then, how to fix that, if we agree that there is a problem.

MR. WOLNIK: I think if you were to look at the corrected J.G-5-13-1, attachment 1, I think the costs could be allocated based on gross plant.

And in that version, or at least what I understand that version to be, there is only two customers in that category that have just rate 25 service.

So that -- there is a gross plant identified in that attachment, so you could use that gross plant as the overall allocator for that service.

MS. HARE: Okay. Thank you.

Mr. Thompson, you would be next but maybe we should take a quick break so that then we are not stopping during yours. And that way we will be fresh for you too.

MR. THOMPSON: Thank you.

MR. WOLNIK: Madam Chair, if I could be excused?

MS. HARE: Yes. Thank you.

Why don't we take till five after 3:00?

--- Recess taken at 2:50 p.m.

--- On resuming at 3:08 p.m.

MS. HARE: Please be seated. You look very lonely. You're deserted.

MR. SMITH: I hope not.

MS. HARE: Mr. Shepherd has joined us now.

Okay, Mr. Thompson.

FINAL ARGUMENT BY MR. THOMPSON:

MR. THOMPSON: Yes. Thank you very much, Madam Chair. Does the Panel have a copy of my compendium? I was told that you did, because I will be referring to that for these submissions.

I appreciate the time of day is late and it is not easy to be the last thing – second-last thing between you and the weekend, so I will try and expedite this to the extent I can.

Let me begin by saying that, like Union and its argument in-chief, we have structured our argument in-chief under ten topic headings.

MS. HARE: I'm sorry, Mr. Thompson, to interrupt you. Ms. Taylor doesn't have her screen working.

MS. TAYLOR: It fell asleep on me during the break and is now locked.

[Technical issue]

MR. THOMPSON: Start again?

MS. HARE: Sorry about that.

MR. THOMPSON: Thanks. This argument is structured under ten topic headings. I will just list them quickly.

Background and context is number 1; in-franchise revenues number 2; gas supply plan, number 3. Four is ex-franchise revenues; 5, cost of capital; 6, Parkway West; 7, deferral and variance accounts; 8, cost allocation; 9, rate design; and 10, accounting issues.

Having regard to everything you have heard to date and the written submissions that have been filed, my submissions on a number of these topics will be brief.

Turning to topic 1, background and context, there are really four items here I would like to touch on, and the first is what I have entitled: Some characteristics of this particular application.

This is a cost-of-service rebasing case, as you know. The prior cost-of-service base was set six years ago, and we've had five years of operation under the approved IRM plan.

As others have already observed, during the past six years, Union has achieved some $278 million of overearnings. That's over and above the approved utility return.

This total amount is displayed in Exhibit K2.3 at page 1. This was the document that you may recall Union prepared at my request showing the cumulative overs and unders over that six-year period.

The total amount of the 275 shown in this document, part of K2.3, or 278, does not reflect the additional 23.6 million of net FT RAM revenues now forecast for 2012. You can find that in J7.17, comparing it to K7.3.

When you add that amount, the cumulative overearnings are close to $300 million, which averages $50 million a year. Even with a repayment to ratepayers of the about $60 million of upstream gas transportation cost amounts that we say have been improperly withheld, the cumulative overearnings average about $40 million a year.

Based on these outcomes, and under IRM theory, one might expect the revenue requirement in the rebasing year would be a decline by about $40 million a year, i.e., the average achieved over the six years. But that is not so in this case for 2013. We are looking at a revenue deficiency currently at $54 million, subject to your resolution of unresolved issues that affect revenue requirement.

So we ask: Why are we facing a revenue deficiency rather than a sufficiency in this rebasing case? And one of the reasons, in our submission, is because a substantial portion of overearning achieved over the six years has been attributable to revenue increases rather than cost reductions.

In that connection, Exhibit K2.3, line 5 indicates that there's been some $285 million of cumulative revenue increases that are contributing to the $275 million cumulative overearnings.

So that part of the context prompts us to suggest that underestimates of revenues is a problem and causes us to urge you to embark upon your task of reviewing revenue estimates in this case with care and caution.

The second point that I just wanted to touch on - others have mentioned it by way of context - is what I think Mr. Warren described as the imbalance, what Mr. Quinn referenced as the profit motive affecting the gas supply plan, and it's what I label the priority emphasis that Union places on shareholder return above the Board allowed.

I submit that the record is pretty clear in this case that enhancing shareholder return at the expense of ratepayers is a matter of very high priority for Union Gas. And I submit that conclusion is buttressed by a number of efforts made by Union over the past six years to attempt to achieve even greater enhanced overearnings.

I will just list the cases that have occurred in that time frame and the docket numbers. I don't intend to refer to them, but the first in August of 2007, so shortly after the NGEIR decision, Union was seeking to enhance returns by allocating $10.5 million of deferred taxes to ratepayers. That was rejected. That is EB-2007-0598.

About a year later, June 2008, in EB-2008-0034, Union presented an application where it had reduced the ratepayers' share of long-term storage premiums based on its interpretation of NGEIR that it only applied to pre-NGEIR contracts. That was rejected, and that was millions of dollars.

In 2011, we had the EB-2011 - I think I have this; no, that's it - 0038 decision that rejected Union's charging of hurdle rates of return on incremental storage and purchased storage assets. Mr. Quinn, I think, referenced that yesterday.

Recently we have had Union trying to deprive ratepayers of their full share of the short-term storage premium. That is in 2012-0206. And one other case that came to mind was the Z-factor claim that Union presented, trying to get some Z-factor relief in the last year of the IRM.

You contrast that to the absence of any effort to seek Board validation of their unilateral decision to convert demand charges to profits and classify them as transactional services, as exchange revenues, and, on that basis, to withhold amounts from ratepayers that we say are properly classified as gas costs.

You have, in my submission, corroborative information that demonstrates this imbalanced approach that Union takes.

Why is that important? Again, it should, in my submission, prompt you to be very wary of the numbers that you are asked to approve. We submit that, in the context of this track record, there is a high probability that these estimates have been prepared to enhance the utility's prospect for overearnings at the expense of ratepayers.

The third topic of context that we would like you to consider is what I characterize as Union's significant revenue-generating potential. And you will see that the basis for that item is -- are two documents in the record.

The first is Exhibit J.O-4-15-1. There is an unredacted and a redacted version of this document. I am only referring to the cover sheet, which is on the public record.

You may recall that was -- that attaches two presentations made to management in 2011, one in July and the final one in September. And between the two presentations, the forecast was increased to a point where -- to add 242 basis points to ROE.

And a question was asked by Mr. Shepherd: What are the drivers? And one of them was unidentified distribution contract market opportunities. 242 basis points of equity is about $43 million of revenue requirement in Union's system.

So that, I submit, is demonstrating a potential, significant potential, for revenues.

The other presentation - I think Mr. Brett may have referred to it in his submissions - was contained in the

J.B-1-7-8, attachment 1. This is a presentation to -- I think it was Spectra or Union people, April of 2012. This was dealing with the Parkway projects.

And there, at page 11, the revenues included 200 basis points' increase in ROE above the regulated return, to recognize revenue synergies realizable from additional transactional services available at the Dawn hub.

By way of explanation in an undertaking response to TransCanada, Union – that's J8.9 - explained that Union assumes this level of revenue potential when it presents projects of this nature to its management.

My submission is the Union representatives would not make such an assumption if it was unreasonable. And the point is that this evidence, in my submission, corroborates what was reflected in the earlier exhibit, that there is considerable headroom within the Union system. It is a system that has considerable revenue-producing potential.

The last factor that I mentioned by way of context, I have entitled the reliance of the Board on intervenors on Union to adhere to principles fundamental to the Board's regulation of gas utilities.

The reality is that the Board and intervenors rely on Union to adhere to the concepts and principles embedded in the Board's regulation of gas utilities. One of those fundamental concepts that, in my submission, is relevant here is that, for ratemaking purposes, gas commodity costs and upstream transportation costs are to be treated by the gas utilities as pass-through items.

This principle has been part of the Board's regulation of gas utilities for as long as I have been around, and that goes back to 1973.

The utility cannot either profit or lose as a result of the actual gas commodity or upstream, actual upstream transportation costs it incurs; whether they're greater or lesser, the ratepayers are responsible.

This principle, in my submission, assumes that customer needs will be the total focus of gas supply planning. A corollary of the principle is that gas supply planning cannot and should not be influenced by a consideration of opportunities to profit from upstream transportation.

In its application, this principle, in effect, obliges the utility to hold in trust the forecast amounts that it receives from ratepayers on account of gas commodity or upstream transportation costs.

The forecast amounts are to be used to cover the actual costs incurred. If actual costs are less than the forecast amounts collected, then the excess is held as a credit for the benefit of the ratepayers. If actual costs are more, the ratepayers will be required to pay.

Ratepayers cannot avoid the obligation to pay actual costs, and the utility cannot refrain from remitting amounts collected and not actually required.

Excess funds cannot be converted to profits without the prior explicit consent of the beneficiaries of the trust, the ratepayers, or the prior explicit approval of the utility regulator.

In my submission, this concept is fundamental to your regulation of Union. You rely on Union and we rely on Union to -- we, as intervenors, to adhere to the spirit and intent of this concept and others that are fundamental to its regulation.

It is no answer to say: Well, we've done it before, which is what Union says.

The fact that they may have done it before doesn't matter, if there has not been a full presentation of all of the relevant facts to the intervenors and the Board, so a determination of the validity of the actions can take place.

Absent an explicit presentation, subject to scrutiny, the fact that they've done it before is irrelevant.

Union cannot unilaterally take action to enrich its shareholders at the expense of ratepayers. If they do, I submit their actions are invalid.

These are matters of context and guiding principles that we urge you to consider when determining Union's 2013 revenue requirement and rates.

Let me, then, move from there directly to transportation exchange revenues, rather than going in-franchise and so on, because this is the major component of my submissions and it does supplement what others -- rather than duplicate or say in another way what others have covered.

As you've heard, transportation exchange revenues are a component of Union's short-term transportation and exchanges forecast for 2013.

The starting point in my analysis that I present for your consideration is: What is the nature of the transportation services Union provides? That then takes me to the brief, and hopefully you will join me in turning up tab 3.

This is providing -- an attempt to provide you with a bit of history dealing with this particular service. At tab 3 there is an excerpt from evidence presented by Union in 1998. This deals with this topic and others.

At the second page - page 6 of the evidence, second page under tab 3 - you will see the heading, "Transactional Services Forecast". It notes:

> "Union offers a range of transactional services, including transportation, short-term peak storage, balancing services, exchanges hub to hub..."

And so on. So the first point is an exchange is a service provided by Union and it's a transactional service. If you go to the next page, you will see how it's determined what resources are available to support transactional services. You will see in the second paragraph:

> "Union forecasts the resources required to meet its in-franchise and ex-franchise firm requirements. Any remaining resources are the basis for transactional services."

So they're supported by surplus assets. That is the nature of them. In terms of what an exchange is, if you go to the next page, page 8, you will see:

> "Defined under an exchange agreement, gas is typically received by Union at a point on the Union system in exchange for gas delivered to the other party at a point outside the Union system. To provide these interruptible services, Union brokers available capacity on its system which is not being utilized by firm shippers."

That definition -- there is another document that -- in the material that Union presented in this case. It is found at tab 9, and this is an exhibit that was filed in a later proceeding, the 0063 proceeding, describing an exchange. The definition is:

> "An exchange is a contractual agreement where party A gives agrees to give physical gas to party B at one location and party B agrees to give physical gas to party A at another location. Either A or B may agree to pay the other party for this service. An exchange can only happen between a point on Union's system and a point off of Union's system. The exchange must also happen on the same day at the same time."

I believe Mr. Smith read that in his argument in-chief.

So you can see from those excerpts that it is transactional services supported by surplus assets and where Union is the provider of the exchange. That is what Union's services encompass.

Now, it can be surplus -- the surplus assets, the point I want to emphasize is Union has the Dawn-Trafalgar system, which it owns and operates. There can be surplus assets there that could support exchanges on that part of their system.

Then it acquires transportation from third parties to bring utility gas upstream of its system to its system. And I think it is important to distinguish between those two types of assets that can be used to support an exchange.

With respect to the upstream assets, i.e., the transportation acquired from third parties, the history in the record, if you go to tab 8, describes the extent to which those resources are available to support transportation services.

We are now here in the 0063 case, and under section 3, transactional services forecasts, you will see at lines 17 to 20 a statement that is essentially the same as what was in the previous presentation:

"Union forecasts the assets required to meet its in-franchise demand through the gas supply planning process."

Then the last sentence:

"Ex-franchise firm requirements are then added to the in-franchise requirements and any remaining assets are used to support the sale of transactional services."

Then down at the bottom, where they're now dealing with gas supply assets:

"The gas supply plan allocates the required assets to provide annual and peak day capacity for in-franchise demands. With a balanced gas supply portfolio, which meets the needs of forecast in-franchise and ex-franchise demands, there will be few, if any, assets available to support transactional services on a planned basis."

Then lines 14 and 15:

"The actual assets for S&T transactional services will change on an ongoing basis dependent on actual weather and market factors, including the amount of direct purchase switching."

So, in my submission, the transactional exchanges or transactional services and to the extent that upstream transportation is used to support them, it is only that component of upstream transportation that periodically is freed up as a result of weather or declines in demand.

It is in that context that these transactional deferral accounts were set up. In other words, because -- the purpose of them was to prompt that idle capacity to be utilized, to the extent possible. And for that, the utilities were given a share, an incentive, and that incentive share changed over time, as I will come to in a moment.

It is to that extent that these exchange revenues generated by upstream transportation assets were treated as delivery revenues.

Now, at tab 15 -- is it 15 or 13? Sorry, tab 13. To give you the history of these deferral accounts that were closed, you will see at tab 14 the four accounts that were closed in the 0606 process.

The one that is relevant for my argument and Mr. Smith's argument is 179-69. Mr. Smith says these FT RAM transactions were covered by the 179-69 deferral account. I say that is not correct. What that account covered was transactional services exchanges that were limited, as I've mentioned, to exchanges that were done to optimize temporarily idle upstream capacity that was rendered idle by factors beyond Union's control, such as weather and declines in -- unexpected declines in demand.

So it was that account, and a few others here that don't really apply, that Union was seeking to close starting in 0520. So you will see that at tab 14, and at line 17 you will see that Union describes these as transactional S&T deferral accounts, and then on the next page, at line 19, proposing to eliminate the S&T transactional service deferral accounts. So that's what they were proposing to close.

And just to reiterate the point, 179-69 was a transactional services deferral account that only extended to exchange transactions provided by Union to optimize resources, upstream transportation resources, temporarily surplus because of factors beyond its control. It was not created and did not cover optimization of upstream transportation surpluses self-created by the utility on a planned basis.

And counsel for Union is dead wrong when he makes that assertion.

Now, if you are looking for a definition of the transactional -- of the transactional services that were covered by this particular deferral account, my definition is, first of all, they are services provided by Union to third parties, and secondly, they were supported by transportation assets owned and operated by Union or acquired by Union from third parties to carry upstream gas to its system, provided the resources are temporarily surplus to Union's utility requirements as a result of changes in weather and declines in demand of its utility customers, being matters beyond their contract.

Then you could list the various services that fall within the description of transactional services, and one of them is exchanges.

Now, at the time of the closure of the deferral accounts -- just to fill in the history -- they were not closed in the 0520 case. They remained open and subject to a decision in the NGEIR case. The NGEIR proceeding dealing with the topic is at tab 17, and if you go to the last page that is in the excerpt, they weren't closed at that time:

"The Board finds that the proposed elimination of these three transmission-related accounts should be considered as part of a comprehensive review that includes all deferral accounts under an incentive regulation mechanism."

So at tab 18, you have the excerpts from Union's evidence pertaining to the proposal to close them. And at page 11, paragraph 3, you will see the description of the history dating back to 0520. That goes over on to page 4. The accounts that they wish to close are identified.

The settlement agreement dealing with the closure of those accounts –- which, again, was in evidence in this case -- you will find excerpts of that at tab 20; the provisions dealing with those particular accounts are excerpted in that decision.

Now, there was an amount - I think it is $2.6 million - of margin embedded in rates, and for the closure of the accounts there is an additional amount of 4.3 million that is referenced at page 33. So the total amount that became embedded in S&T rates was $6.9 million.

In terms of the balances that had accumulated in those accounts that were closed over the period 2004, 2005 and 2006 -- i.e., no FT RAM involvement, at least as far as ratepayers or the Board do -- are shown at tab 19. And the cumulative amounts there that were credited to ratepayers range from roughly seven million to $11 million.

So there was, in my respectful submission, nothing in the consideration that was provided for the closure of the accounts - which were transactional services accounts, as I mentioned - that gave Union a green light to convert demand charges to profits under the guise of calling them exchange revenues.

Now, what did happen in terms of Union's presentation of facts pertaining to FT RAM?

At tab 21, there is a description of a service that was introduced by TransCanada in November 2008. This wasn't presented in evidence at any time then, this particular description. That is taken from someone that provided that to me for the purposes of this case.

What you have at tab 22 is some evidence filed in -- in the IRM framework to set rates for 2009. So it was fixing the rates. Nothing in the prefiled evidence about DOS MN or FT RAM.

One question was asked in that case, and you will see the answer provided at tab 23. I think the question was from APPrO, asking about DOS MN, and the response is indicating that this is S&T transactional service. Nobody questioned that at the time. There are no further details.

We, in our submissions, asked a question -- you will see that at tab 24, in paragraph 33. There wasn't any hearing here that I recall, no oral hearing. We questioned why reductions -- referring to this exhibit -- are not being flowed through to the benefit of ratepayers.

Union provided a response to that in its argument, again referring to transactional services type of activity. You will see that at tab 25.

Then the Board's decision on the issue, you will find at tab 26. The passages that are relevant are at page 8, where -- starting under the heading "Upstream transportation changes."

The Board paraphrases what Union has said in its reply argument, again, in its mind, using the phrase "transactional services business," and on that basis, expresses its finding that Union's approach in dealing with DOS MN is appropriate.

DOS MN and FT RAM are different animals, but I draw that to your attention because Union argues that the decision on DOS MN was -- that was the green light to do what they were doing, converting demand charges to profits.

The next document that Union references -- and this comes out by way of interrogatories -- is at tab 28. This is now -- we are now in the 2008, I believe it is, earnings sharing and deferral account clearance proceeding. The evidence dealing with earnings sharing from that proceeding is excerpted at tab 27.

The Board Staff asked a question of Union about the revenues it was earning, and Union provides the response, which is at tab 28, and mentions FT RAM:

> "Union was also focussed on further optimizing its upstream supply portfolio. Union was able to extract value from new services introduced by upstream transportation providers in excess of what was achieved historically."

And then it refers to FT RAM and DOS MN.

These new services provided increased opportunity for transportation and exchange transactions in the market.

Those opportunities were influenced by favourable market conditions experienced in 2008.

So there is no details of what is actually taking place. That is their answer. People accepted it and moved on. But at that time, certainly there was no presentation to the Board of the type that you have now had in this case as to what all of these transactions involve.

So I say, as I mentioned in my introductory remarks, the fact that they say, We did it, or, We gave -- we threw out a notice to this effect, does not help them in this case or in the 2011 deferral account, in my submission. They did not get the explicit approval that they required.

The issue never arose for the Board's consideration, because the actual details of what was actually happening only surfaced in this case. And why? Because TransCanada Pipelines posed the very precise questions that they did, both in their own proceeding and in this proceeding, and that alerted people to what was going on.

So that then brings me to: What have we learned in this case about FT RAM activities? What I am trying to do is lead up to what is the relevance of all this for this case and the forecast that Union is presenting.

Well, what we've learned is that FT RAM is an attribute to a TCPL FT contract. And what it is is IT purchasing power equivalent to the amount that is paid for the FT firm service.

FT demand charges are convertible to, in effect, IT purchases, and it is very flexible, because we can go anywhere on the TCPL system, from any point on the system to another point on the TCPL system. It is not like FT that has receipt points and delivery points, specific receipt points and delivery points, and that is in the evidence from some Union witnesses, I believe.

Essentially, what you have under the contract are two options of obtaining service from TCPL based on what you pay for FT service.

Why is that? Because the FT toll is derived from all of the fixed costs on the TransCanada system. So TransCanada recovers all of the fixed costs from its firm customers. They, in effect, pay for the fixed costs of the pipeline. So if they're not using their FT, the service says, Well, you can have the value of what you're paying to us to use interruptible, if that suits your purposes.

So that is what it is. It is a convertible -- FT demand charge is convertible to IT, if it wishes. But what you have, in my submission, is you have access to two NEB tolled services under this single contract, FT service, IT service.

So now how does Union monetize the FT from the attributes that it holds under this contract? You heard a lot of evidence about this, and there are a number of documents in my binder that incorporate those descriptions.

There are two ways. There is a capacity assignment, and then there is the we-use-the-IT-ourselves approach.

So what I would like to do is take you through the capacity -- each of these methods of monetizing the FT RAM attributes, credits, to demonstrate they really are gas cost reductions, because when you parse the transactions, you can see clearly they are gas transactions.

So what we're trying to determine is whether this, what Union is calling an exchange transaction, a transactional service, exchange transaction, generating revenue is really that, or an -- upstream gas cost reductions.

So step 1 is they decide to not use FT. So that's a planned decision, so that creates surplus FT. And at that particular moment in time -- let's assume that the FT demand charge to the EDA is $2.24.

At the moment in time they make that decision, there is a UDC amount of $2.24. So they're holding, if you will, the $2.24 they have collected from the ratepayers to be used to purchase upstream transportation or to be mitigated in some fashion.

Step 2 is they assign the FT contract to a marketer, and that's on TCPL paper, we've been told. It is not Union paper that has that assignment transaction.

The assignment is not at 100 percent value of the 2.24. It is something less. Let's assume that it is $1.80 for the purposes of this example. So if you just stopped right there, if that is where the transaction stopped, that $1.80, which is an amount that's being received for an unutilized item of FT, would go into the UDC deferral account as mitigation.

The next step is they then acquire an exchange; that is, Union acquires an exchange, an exchange being, I have to get -- now I have to get my gas. I don't have FT to move my gas from the west to the east. I have to acquire it from somebody else. So they purchase the exchange, and, if they purchased it from a third party - in other words, not the same marketer to whom they applied -- to whom they sold the FT -- they would have to post that cost to the UDC deferral account. They're now using the $1.80 that they got to purchase another form of transport.

And if they purchased it for $1.40 and there is 40 cents left over, that is a balance that would flow to ratepayers through the UDC deferral account.

So the difference between the value of the FT assigned and the cost of exchange acquired by Union is, when you parse it in this fashion, an upstream gas cost reduction that should flow to ratepayers.

But what does Union do? That's not what it does at all. What it does is it acquires the exchange it needs from the same marketer to which it has assigned the FT, and it papers the transaction under its exchange paper, under its own exchange services paper. And Union calls this a sale, a sale of an exchange. So they classify it as revenues, and they then say, That's ours.

I submit to you it is not a sale of an exchange. They are actually acquiring an exchange from the marketer, and the difference is not a difference in -- it's not a purchase by the marketer of anything. It is the difference between the sale of the FT and the cost of the exchange.

And all of it is not supported by capacity that has been temporarily rendered surplus because of conditions beyond Union's control, such as weather or demand. It is supported by a planned creation of UDC.

So that's the first transaction. It is, in our submission, an inappropriate classification of the 40 cents as exchange revenues. It's a cost reduction. And when you think it through, they really are taking money out of the -- that should be in the deferral account and using it to create profit, calling it profit.

Now, the other method of monetizing the FT RAM credits is -- doesn't involve an assignment. What they do is they decide: Well, we're going to use our IT purchasing power under our contract, as opposed to the FT.

So, again, step one, they create the surplus. They say: We're not going to use our FT. That, then, gives them the right to use the FT amounts as IT purchasing power.

They then say: Okay, I'll use my IT to shift my gas from A to somewhere on my system that's likely closer than the FT contract that they're monetizing; i.e., Dawn versus the EDA, as Mr. Quinn was discussing yesterday.

And that transaction, just to keep it consistent with the other one, let's assume it costs $1.84 so there is a 40-cent differential.

So if you stopped it there and you asked yourself: How should that be recorded? How should the use of a lower-tolled service on TransCanada be reflected? It would, in my submission, show up in the north anyway, in what's called the TCPL tolls account.

It's a toll that is different from the toll that is reflected in the forecast that's been recovered from rates. You will find these deferral accounts at tab 51. These are the gas supply deferral accounts.

And you will see that, in the second paragraph, to record as a debit in deferral accounts 179 -- the difference between the cost, between the actual per unit TCPL tolls, and the TCPL tolls included in the rates as approved by the Board.

So the difference of 40 cents would show up in the north in that account, and in the south, because they buy at 100 percent load factor, I believe it would show up in the PGVA or be captured by the QRAM process.

But they don't do that; what they do is they then say: Okay, I'm going to use that 40 cents, that 40 cents' purchasing power for IT, to support an exchange.

So what you have, for example, of that is found at tab 40. This is the exhibit where they have the base exchange capacity assignment. Then they have a RAM optimization example, supported by -- supported by RAM credits to purchase the IT.

So they don't leave the 40 cents where it should be, in gas supply. They, in effect, take it out, use it to purchase IT to support the exchange that they're selling to a third party, and treat that 40 cents of gas supply deferral account amounts as adding to the margin.

So they convert it to profit. They classify all of the margin, including the 40 cents, as revenues.

And in my submission, this is nothing but misappropriation of funds that should be in these gas supply deferral accounts.

Both situations, carefully analysed, in my submission, reveal that they are -- the amounts are properly classified as upstream gas cost reductions, and not exchange revenues.

So what are the implications of all of this, of the 2013 case?

For the 2013 case, Union is proposing that exchanges be divided between base exchanges -- which I believe are the traditional transactional services exchanges -- and these exchanges that are not supported by FT RAM attributes. They could have an exchange where they actually go out and purchase incremental IT outside the gas supply plan, and that is what Ms. Cameron told me a base exchange was; i.e., it was incremental to the gas supply plan. You will find that at transcript pages 117 and 118 of volume 7.

So base exchanges, as I understand them, are the -- this type of exchange that is incremental to the gas supply plan, or it also encompasses, I submit -- or I believe -- the type of exchanges that were previously regarded as transactional services exchanges, supported by transportation that is -- upstream transportation, just temporarily surplus as a result of weather and declines in demand, i.e., uncontrollable events.

Union is proposing that nine million be -- 9.1 million be embedded in delivery rates for those types of transactions.

Mr. Aiken believes the amount should be increased to a number -- I think he said $11.6 million. We agree with that.

Union is not proposing, as I understand it, any deferral account protection around these base exchanges. Mr. Aiken is, and we support that.

So I don't have any problem with the base exchange concept, assuming the base exchange is defined as I've indicated. And insofar as upstream transportation is concerned, it is limited to the capacity that -- it's rendered temporarily surplus as a result of weather or declines in demand.

The other aspect of the proposal in this case with respect to exchanges relates to the FT RAM-related activities. Union is proposing, as I understand it, that these activities be characterized as exchanges.

We don't agree with that. They are not transactional services exchanges; they are reductions to gas supply costs.

Union is proposing that the revenues from these activities be treated as delivery revenues, and we do not agree with that. They are, in our submission, reductions to gas costs.

So this issue of classification is one that you will have to resolve, and the resolution of that issue, in my submission, will inform the deferral account treatment that follows.

If you agree with us that these are gas cost reductions, then my submission is the existing gas cost regime should handle them. We don't need other deferral accounts. I can't envisage you would not agree with the view that they're gas cost reductions, so I don't even address the alternative, but others have in their submissions.

In terms of the current gas supply deferral account regime, the QRAM process, you may hear from Mr. Smith a lot of argument based on the precise wording in some of these accounts. And the view that Union takes, as I understand it, is it's not the principle that scopes what should be within these accounts. It is the accounts that scope what flows back to ratepayers.

My submission is they have it backwards. These accounts were created to cover the principle that gas supply costs and upstream transportation costs should be pass-through items and they should be interpreted in that context. The principle should guide the interpretation of the accounts and not reverse. I look at the words and, to me, they cover what we're talking about.

So my suggestion is, my submission is, that we're not into a situation of creating new deferral accounts to address these gas supply reductions. It should be confirmed that the accounts are to be compatible with the principle, and if there's some clarifying language that is needed, it can be added.

As I say, I don't see that it is necessary, but the interpretation of the words should be broad and not narrow, as counsel for Union, I suspect, will argue.

So we urge you to reject Union's proposal with respect to the FT RAM-related transactions, and we urge you to reject counsel for Union's submissions that the FT RAM transactions are the same as traditional transactional services exchanges. They are not. We urge you to reject his suggestion that these exchanges were covered by a deferral account, 179-69. They were not.

And when you really look at the FT transactions carefully, they are not transactional services exchanges at all, because they're not supported by temporarily surplus assets created by factors beyond Union's control.

We urge you to reject his suggestion that these transactions have been implicitly approved by you as a result of these items that I've referenced. I think in his letter he said the issue has already been addressed, and it has not.

So in terms of how the recovery of FT RAM amounts in 2013 would play out under this proposal, the amount of $11.6 million, or whatever it is, would flow to ratepayers through the gas supply deferral accounts.

There is another option which I will come to in a moment when I speak to gas supply that you might want to consider, but my overall submission is that the gas supply deferral accounts and the QRAM process will see that the

$11.6 million flows back to the people who paid the demand charges that were used to purchase -- sorry, that paid the demand charges that were not used to purchase gas supply.

What does it mean for the years prior to 2013? That really is an issue for that case -- sorry, for the 2011 case. The only point I wanted to mention here is, because you did ask I think it was Dr. Higgin to address it, is that in our submission the company cannot keep these amounts withheld in prior years, and that the balance to December 31, 2010 would be, if the Board agrees with this, recorded in the 2011 deferral account.

And the precedent for that is something that is at tab 53 of our brief, which is a situation in Union's last deferral account proceeding -- sorry, 52 and 53 -- where Union itself brought forward for crediting in the 2010 deferral account some monies that it had failed to credit to ratepayers in prior years.

So the precedent for that aspect of the relief is there, and what happens for the 2011, of course, is on the record. So those are my submissions with respect to exchanges.

I will just quickly try and wrap up with the others in the time that allotted to me. I think I have until 4:30.

MS. HARE: Mr. Thompson, let us ask a couple of questions about the transportation exchange before we move to a different topic.

MS. TAYLOR: Mr. Thompson, if I can make sure I understand, you took us through the history. And, as I understand it, to the end of 2004, perhaps 2005, these exchange transactions were based on -- there was no surplus, if you will, built into the gas supply. Is that what you're telling us, that the trading, if I can generally call it that, related to assets that were temporarily made surplus due to factors beyond Union's control?

MR. THOMPSON: Correct. That's my understanding.

MS. TAYLOR: And what I have gleaned from your submission, as well as that from Dr. Higgin and Mr. Dwayne Quinn, that there is a demand charge involved here that was not involved in previous tools that they may have traded, such as the Dawn overrun service transaction from TransCanada. The DOS, I guess it's been to.

MR. THOMPSON: Yes. The DOS is -- I'm not -- I just have to read what it is, but I believe it is available as an attribute to FT. But the way it was used in the Union -- by Union, and you will find that at - I intended to mention this - at tab 49, it wasn't used to support acquisition of alternate transportation.

What they actually did was they displaced commodity. They had a cheaper form of -- in their forecast, they had a unit they were going to buy at Dawn, and then they said, Well, I can take my DOS, right, and the cost of commodity in Alberta and land it at Dawn cheaper?

So what they're actually displacing was commodity.

MS. TAYLOR: Right.

MR. THOMPSON: And making a profit on that. Now, I know that today. I certainly didn't know it back when they described it to the Board, and it wasn't scrutinized. But, yes, they're entirely different services, and the distinction between them was not known until this case. I hope that is responsive.

MS. TAYLOR: Yes. I am just trying to differentiate now versus then.

MR. THOMPSON: Right.

MS. TAYLOR: So, again, as you have described the difference between the two services, one is fact that we were dealing with assets that were temporarily surplus, different than a planned surplus --

MR. THOMPSON: That's my understanding.

MS. TAYLOR: -- with demand charge costs associated with that planned surplus?

MR. THOMPSON: Correct.

MS. TAYLOR: And I wanted to confirm, since I think you did say you supported what Dr. -- or, sorry, Mr. Quinn said, he implied that because of the reduction - and I think this was BOMA, as well - the reduction in IT revenue on TransCanada had the result of increasing the firm toll higher than would otherwise be the case.

If these RAM credits had not been used in the way that they were, interruptible revenue on TransCanada would have been $400 million higher, if I understand what was filed yesterday or brought into evidence.

So these are the differentiating factors that give rise to the concerns that you are talking about; is that fair?

MR. THOMPSON: Yes. I must confess I don't factor into my analysis the impact of the way FT RAM was utilized on the TransCanada system. I am not totally familiar with that proceeding, so I shouldn't really say anything.

I have some suspicions, but I just don't know.

MS. TAYLOR: Okay. Thank you very much.

MS. HARE: So if I was to simplify and summarize so I understand whether I am on the right track with what you're saying, if this panel accepts that FT RAM is really part of gas supply, that would, then, be a component of the PGVA and be reviewed every three months?

MR. THOMPSON: That's right. Whether -- I think that's right in Union's case.

MS. HARE: Okay.

MR. THOMPSON: Some of their gas supply deferral accounts are reviewed annually.

MS. HARE: Yes.

MR. THOMPSON: I think PGVA is quarterly; is that right?

MS. HARE: PGVA is quarterly. But it is whether -- well, I guess my real question, then, is -– well. I have two questions.

As you pointed out, the gas supply is a pass-through.

MR. THOMPSON: Correct.

MS. HARE: So does that imply that your position would be there should be none of this 90/10 sharing; it should be 100 percent to the ratepayer?

MR. THOMPSON: That's right. This is not a TS deferral account.

I agree with whoever said if you give them 10 percent on gas transactions, then you are creating an incentive to start planning for profit, because this is what has given rise to this problem.

MS. HARE: So then my last question is: If it is going into a deferral account, or a variance account, let's say, does it really matter whether it is 9.1 that you start off with in the variance account, or 11.6?

MR. THOMPSON: Well, the 9.1 and the 11.6 are -- we are now into the delivery stuff. We are out of gas supply and into delivery.

MS. HARE: Okay.

MR. THOMPSON: And if it is symmetric, it doesn't matter, but the -- on a transactional services deferral account being credited to delivery revenues, and the -- I have included in the brief the various decisions in Enbridge's case, which you may be familiar with, and Union, but the Board has stated in the past there should be, like, a guaranteed amount.

MS. HARE: Right.

MR. THOMPSON: And then variance over and above that.

So I believe Mr. Aiken -- I don't know if he was saying 11.1, with a symmetric deferral account. I think Consumers -- CCC said asymmetric and an embedded amount.

I believe I would go with the embedded and variance above the amount embedded.

MS. HARE: So asymmetrical?

MR. THOMPSON: Asymmetric would be my preference on that account.

MS. HARE: Ms. Taylor has another question now.

MS. TAYLOR: I have one last question, promise, on this issue.

The notion of planned versus unplanned surplus implies, in the old regime, balanced gas supply without an incentive to over-plan for resources.

MR. THOMPSON: Right.

MS. TAYLOR: I think we will call that.

In the regime that we're in now, where there seems to be an incentive, given what you have said you are assuming that we have the complete ability, potentially, to eliminate the incentive to over-plan resources, I guess what I'm sensitive to is it is a changing world and incentives come and they're created when -- we don't know if they have been created. And you're basically suggesting anything that relates to upstream gas supply would then flow through a QRAM-like settlement, directly to, without an incentive.

Is that what you are suggesting?

MR. THOMPSON: Except where the -- there's a temporary surplus because of weather or whatever. That is where you need the incentive, to mitigate that sort of fluctuating upstream capacity amount. That's what it was required for in the past.

But beyond that, when you are into gas supply, as soon as you put incentives in there, then I believe that it is creating more of a problem than solving one.

If you get the profit out of gas supply and gas transportation, the incentive will be to plan better, I believe. Time will tell, I suppose.

I hope that is responsive.

MS. TAYLOR: Thank you.

MR. THOMPSON: All right. Well, let me just quickly -- let me just find my -- where I left off.

So that is all about exchanges. The in-franchise revenue, I would agree with what others have said, and really have nothing further to add there in terms of adjusting the revenue estimates.

The gas supply plan, the only point that I would like to mention is that a gas supply plan that is influenced by profit cannot be prudent, because if it's prudent to use marketer-provided transportation to move gas from A to B, which is cheaper than FT, then that's what should be planned at the outset.

And the only reason that would not be planned from the outset, in my respectful submission, is this profit motive that is driving their plans.

A gas supply plan that is premised on the conversion to profit of a portion of the forecast demand charges for upstream transportation recovered from ratepayers is incompatible with the principle that is embedded in your regulation of Union, that a utility cannot profit from amounts needed -- amounts received from ratepayers for upstream transportation.

You did have some questions about what I would call the transition between the gas supply plan that's pretty much established for 2012 and '13, and one that will be beyond 2013. And you asked others; others had suggested some independent review.

We are more supportive of the approach recommended by Mr. Quinn, which is a collaborative one. We agree that Union has people that can deal with this. And with the minds collaborating, we should be able to transition back to where we should be.

The other point, though, that I -- it occurred to me you may wish to consider is a disallowance of gas supply costs, subject to conditions.

And the disallowance could be -- could be derived from your estimate of what the current gas supply plan would have yielded or would likely yield in 2013, through the optimization of RAM credits.

If you disallowed that amount and then had whatever was happening recovered in the gas supply deferral accounts, as I mentioned, you could -- it would be sort of like an advance clearance of a credit balance from the gas supply deferral accounts to ratepayers.

You could have the deferral account build up, and at quarterly or whenever, look at that and evaluate whether the disallowance amount should be recovered by the shareholder from the deferral account.

That is something that I thought might prompt the utility to optimize its gas supply plan back to matching the needs of its customers.

The other point that is of concern to us with this gas supply plan is the 10.4 pJs of UDC in the north. That is up considerably from the current forecast of 4.4 pJs, and our concern there is that the market as a whole appears to be taking steps to minimize expected UDC through a combination of FT and STFT, and Union has not done that.

That said, I think the best way to address this problem is to direct Union to mitigate that level of UDC to the maximum extent possible, and add a proviso that the ultimate responsibility for the unmitigated amount will be assessed by the Board in a following process.

So my recommendation or suggestion is you approve that 10.4 pJ forecast, subject to conditions.

Ex-franchise revenues, M12 long-term transportation, we agree with -- well, I agree with Mr. Aiken, with one exception. He's prepared to accept their forecast of 134.6. He has a variance account, symmetric, which I agree with here. But I submit the embedded amount should be 139.8, which is the actual 2011 amount.

Regardless of whether gas is coming from points west or east, it has to get to Dawn, because Dawn is the trading hub where storage is located. And having regard to this potential, revenue potential I described at the opening, I submit the best surrogate for embedding amounts should be the 2011 actual, which is $139.8 million.

There is one issue that came up -- other points I agree with Mr. Aiken. There is one issue that came up on -- Mr. Cameron was examining Union on. This is the costs that -- this would come up in the short-term transportation revenue, where I believe the costs that the company pays to St. Clair and Bluewater are deducted.

The question there was: What sort of returns is the company providing to its affiliate? I think those returns are largely in excess of what the utility return is in Ontario, and would submit that amounts of return being paid to those two affiliate pipelines that are largely empty, standing by for security of supply reasons, should not exceed the utility return that is allowed here.

Short-term storage services or forecasts, we agree with Mr. Aiken.

On this encroachment issue, excuse me, we have a suggestion that at -- to consider whether this might be best addressed in the deferral account proceedings in the year in which the encroachment occurs. Rather than trying to devise some sort of market value for encroachments, when one occurs it could be dealt with as an item that -- if it occurred in the year of the deferral account clearance, would be added as a credit to be cleared as determined by the Board at that time.

The system integrity point, we agree with Mr. Aiken.

Cost of capital, that has pretty well been flogged to death. There is a couple of points, though, that I would like to mention. You people wrote the report, so I will find out whether this interpretation is or is not accurate.

But my submission is that if the Board regarded the comparability approach that Union advocates to be relevant to a determination of capital structure for gas utilities, it would have said so in the report.

It said nothing to that effect, despite referring to the 40 percent equity ratios for electrics. That was in the very section of the report that establishes what Mr. Janigan calls, and I agree, the threshold requirements for a change in capital structure requested by a utility.

On the other hand, if comparability was a factor to be considered, then the only reasonable interpretation to draw from the report is that -- from the policy stated therein, that the Board regarded Union and EGD at 36 percent as comparable to the electrics at 40 percent.

Moreover, if the markets regarded EGD and Union at 30 percent equity to lack comparability to utilities with higher equity ratios, then that lack of comparability would be reflected in a market requirement that EGD and Union pay higher costs for debt than the utilities with larger equity ratios.

To my knowledge, there is no evidence whatsoever that that situation has materialized, and so the market regards, in my submission, Union and EGD at 36 percent to be comparable to those other companies with higher equity ratios.

If there is market evidence led that shows that they're not being treated as comparable, then the 36 percent is not cast in stone, as Mr. -- counsel for

Union suggested was our position.

The business of challenging the report, the only point I wanted to make there is the report itself establishes a review process, and any challenges to the capital structure policy should be made there and not on a company-specific basis, as Union asserts.

Finally, with respect to the interest coverage issue, I agree with Mr. Brett that interest coverage ratio, the relevant one is the ratio for Union Gas limited.

This is particularly so for UGL where the unregulated segment and forbearance in that segment exists as a result of an exercise of jurisdiction by this Board.

That, in and of itself - in other words, an exercise by this Board - led to significant improvement in interest coverage ratios, and it would be ironic if that, in and of itself, now prompts yet a further increase in Union's profitability.

You cannot disregard the reality that when considering requests for enhanced return, Union Gas Limited and its assets are still subject to regulation; that is, the integrated storage assets are, safety, that kind of thing, construction, subject to OEB regulation. What has happened is there has simply been forbearance on price only.

Parkway West, the issue is, as I see it: What guidance, if any, should you provide -- should you provide? I agree with the concept that you should be proactive in prompting a solution that will best serve the interests of all Ontario ratepayers.

Deferral and variance accounts, I believe I have covered that from our perspective.

Cost allocation, Mr. Quinn has addressed that from the -- in terms of Mr. Rosenkranz's evidence, and I have nothing to add.

The rate design issues, we have the -- the evidence with respect to manufacturer constituency is the evidence. It is broad and it's some 9,900 customers, I believe, and they take service under all of the contract rates, and on rates 01 and 10 and M1 and M2.

So a bit of a mixed bag in terms of the constituency I am representing. I don't have anything to add to what others have said. My only submission is to minimize disruption to the extent that you can.

The subdivision of the M1 and M2, 01 and 10, I agree with Mr. -- well, there are two ways to come at that, in my view. You can reject it and say, Get your act straight and come back -- sorry, approve it in principle and say, Get the proper evidence to support it and bring it back, or Mr. Aiken's approach is, in effect, Approve it now, and then tell them to clean up their act.

I don't really care -- I don't think it matters one way or the other which way you go.

There was a concern and there is a concern of my client that this probably hasn't had enough discussion with Union, between Union and its customers, but that is on the record.

rate impacts and mitigation, if you agree with intervenors on all of the revenue requirement reductions, you will have, I think, done probably as much as you can with respect to mitigation.

And finally, with respect to accounting issues, we support Staff's request that there be audited disclosure of the utility business, and -- because we understand this to mean UGL is currently audited. If the utility is audited, then we will have audited information for both the regulated and unregulated segment.

And on that point, the transparency point that Mr. Quinn made is important. There has been quite an odyssey trying to get details with respect to the allocations between storage -- unregulated storage and regulated storage. And that kind of disclosure of audited statements for the entire UGL, as well as for the utility, would, I believe, alleviate the difficulties that have been experienced there.

My apologies for running over, but you asked me too many questions.

[Laughter]

MR. THOMPSON: Thank you for your attention.

MS. TAYLOR: I have no more questions, promise.

MS. HARE: Thank you, Mr. Thompson.

MS. TAYLOR: But I do need five minutes to get this working.

MS HARE: We will take five minutes, because the screen is still giving us a little problem here.

--- Recess taken at 4:42 p.m.

--- On resuming at 4:51 p.m.

MS. HARE: Please be seated. Please be seated.

Mr. Shepherd, are you ready?

FINAL ARGUMENT BY MR. SHEPHERD:

MR. SHEPHERD: Yes. Thank you, Madam Chair.

You will be pleased to know that I did listen yesterday and heard you say don't ignore the fact that everything's already been said.

I also just want to note that this is the latest I have ever started argument in my career. Anyway, I will be less time than I expected.

We do have a set of materials, which I wonder if we could mark as an exhibit.

MR. MILLAR: Yes. Madam Chair, I think we neglected to mark Mr. Thompson's compendium, so I propose we do that now.

Mr. Thompson's will be K15.3, and the School's compendium will be K15.4.

EXHIBIT NO. K15.3: COMPENDIUM OF CME.

EXHIBIT NO. K15.4: COMPENDIUM OF SEC.

MR. SHEPHERD: I will also note, Madam Chair, that my compendium, which was 200-odd pages, is now 88. I am not going to refer to most of those.

And, finally, the last piece of good news is that Mr. Thompson, in his context stuff, covered most of the context. So my first couple of pages of argument are gone.

The one thing I will mention about context is this, and it's short. The Board has evidence that Union can run its utility and make a fair return on significantly lower than the current rates, and have done so year after year after year.

The reason this is important is because, unless the future is different from the past, the Board should start with the assumption that there should be a sufficiency. Now, there may be reasons why there shouldn't be; that's understood.

But the empirical evidence is that it does not cost them, including fair return, as much as their current rates produce to run the utility. That we know.

We also know why there is a deficiency, and there appear to us to be three components. One is that they increased their OM&A and capital spending. They're limited in ability to do that, obviously, because they're a mature utility, and that in fact has been settled at reasonable levels. So problem solved.

The other two things they did, which are the bulk of the deficiency, is they revived a previous request, which they've come to the well twice for already, I believe -- once, maybe once -- for a higher cost of capital through an increase in their equity thickness, and that is $22 million of the deficiency.

And they have, on a broad range of the components of their revenue forecasts, reduced those forecasts below what the past information would suggest. And that appears to be another $30 million or so of the deficiency.

Without those two things, it would appear to us that there probably isn't a deficiency, which is exactly what you would have expected in this proceeding, given the last six years.

So the Board saw that SEC, in participating in this proceeding, took a very focussed approach. We concentrated on those two things, the revenue forecast and the cost of capital, and on the third thing, which is the rate redesign proposal for M1, M2 and 01, 10, but, other than that, we basically didn't involve ourselves. And so we will limit our final argument to those three areas.

With respect to capital structure, that's the first area I will touch on. Almost everything you could possibly have heard on this has already been said, and there are only really, I think, two or three things that I can comment on.

The first is a lot of talk has gone around about the Board's policy. If there's no change in business risk, then don't come back to the well.

Mr. Smith, I believe, will argue when it comes to reply, Well, you're not allowed -- and I think he is correct on this if he says it. You're not allowed to slavishly follow -- I told him I would shock him today. You're not allowed to slavishly follow the policy. It is a guideline. It's not binding. So if you treat it as binding, you are breaking the law, and that's true.

However, the other side to that is you're not required to review business risk and equity thickness every time you turn around. The reason why that policy is in place is because, once the Board has reviewed the business risk of a utility in detail, which the Board did in 2004 in this case, and determine what the appropriate equity thickness is relative to that business risk, then unless there is some reason to change it, you are wasting your time.

And anybody who asks you to go through it again with no changes - just it's the same as before, we just don't like it - they're wasting your time.

In this case, it appears to us fairly clear that this is nothing more than a rearguing of the 2004 case; nothing more. And that being the case, our view is that you should say to them, We don't need to even look at the policy, because you have no reason -- you have no new evidence that we haven't already seen.

All right, that is the first thing.

The second comment I'm going to make is -- and this has been said by a number of people, and so I will be very brief.

Equity thickness is not actually about equity, and I'm sure you are both aware of that, particularly Ms. Taylor.

Equity thickness is actually about debt, because equity thickness is about how much you leverage your organization. It is not about fair return or anything like that. Those are all irrelevant.

Equity thickness drives fair return, but failure to give somebody as much equity thickness as they would like has nothing to do with whether you are giving them a fair return.

The concept is a concept of leveraging. You reduce debt ratios - that is, you increase your equity thickness - for only two reasons. One is to get better access to credit markets, more ability to borrow, and second is to get a lower rate of interest when you do borrow.

In this case, the evidence is crystal clear that neither of those things is going to happen. The company has been straightforward. We're not going to have a lower interest rate, and, indeed, their interest rate is 3.9 percent. How could it be lower?

And they're not going to -- they have great access to the credit markets already. No problem with either of these things.

What this really is is an insurance premium. And we've included in our materials at page 3 and 4 one of the various references to this. This is a reference by Mr. Fetter, and if you take a look at page 3 of our material, you see, starting at line 16, he says:

> "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..."

Et cetera, et cetera, et cetera. His point is a simple one. Bad things can happen. If you have more equity thickness, you are more bulletproof to those bad things.

It is an insurance premium. It costs $22 million a year, and the worst financial crisis we've had in a very,

very long time has just passed. Union weathered it fine, which tells me this is not insurance you need to buy, and certainly not for $22 million a year.

Mr. Aiken has talked about one of the issues in capital structure, and that is whether the preference shares should be treated as equity or debt. We've actually included a number of references in our materials, but I am not going to go through them, because I think you have heard enough about that particular issue.

I will say this, that we -- we are going to suggest that the Board has made a decision in 2004 about the appropriate capital structure for this company. That's the decision that should be applied. And in that decision, our understanding is that preference shares were not considered part of the equity, and, therefore, it would be sucking and blowing for us to say, Oh, by the way, include the preference shares as equity, even though that's not how it was done in 2004.

So we think that this time around the preference shares should be treated as long-term debt. However, that is 35 percent equity ratio, but common equity, preference shares being treated as part of the long-term debt.

However, we do note that preference shares are not debt and that sooner or later this should probably be fixed. This proceeding is not the place to do it, I don't think.

And the final comment on cost of capital is with respect to the short-term debt. Short-term debt is used as a plug. And you have heard a detailed analysis of this from Mr. Aiken this morning.

I should mention, by the way - and I'm sure you figured this out by now or maybe somebody said it and I missed it - Mr. Aiken and others have shared their arguments earlier this week, and a lot of us relied heavily on his very detailed analysis of a lot of the issues. So you are going to hear me say I agree with him a lot, because why do the work again when he has already done it?

His conclusion is the correct one, in our view. His conclusion is the short-term debt should not be plug figure because -- for the reason that we identified in cross-examination, and that is it means you're borrowing at long-term debt rates and reinvesting at short-term debt rates.

The fact is that they do have short-term debt, $136 million. That should be in their capital structure.

The swing figure should be the long-term debt, because we know the long-term debt covers more than rate base. So that's the logical swing figure.

So therefore our conclusion on capital structure is in 2004 the Board approved 35 percent equity; we believe that is the correct number. That is the last time the Board looked at business risk and equity thickness for this company, and that's the figure that should be used.

So therefore, if you take a look at the LPMA compendium, at page 88 of their compendium they have a chart of the various capital structures and resulting cost of capital, which I know you asked some questions about.

We agree with number D in that, except at a 35 percent common equity.

Now, I would like to turn to distribution revenues?

MS. HARE: Can I just ask a couple of questions before you turn to a different topic?

MR. SHEPHERD: Sure.

MS. HARE: You say the pref shares issue should be addressed and should be fixed, but this is not the proceeding to do that; what does that mean?

MR. SHEPHERD: Yes. And the reason for that is because -- our position is that Union has a Board-approved capital structure, a common equity structure, based on a decision of the Board in which a thorough review took place.

So we think that you should implement that, again, as the Board has in the past, and -- but that is not consistent with then saying: Well, that 2.75 percent should come out of the 35 percent, because that is not what the Board did then.

So that would be unfair to Union, to say: Well, we're going to give you 35 percent, and we're going to treat that as part of the 35 percent. That would be then going further than the Board went last time.

MS. HARE: I see.

Just a minor point. We've been hearing that the impact of the equity thickness is 17 million, and you used 22 a couple of times; is that just a --

MR. SHEPHERD: No, no. The 22 is correct. The additional amount is the tax impact associated with the fact that you increase the amount of ROE which is taxable.

That is on the record somewhere. I don't actually remember where it is. It is something like four-and-a-half million dollars of additional tax.

MS. HARE: That's helpful. Thank you.

MR. SHEPHERD: Then next I would like to turn to distribution revenues, and we only have four points on this. There are quite a number of issues on this, and as you heard from Mr. Aiken -- who went through them at some length and nailed every one of them -- we're only going to comment on four of them.

The first is normalized average uses or normalized average consumption for M1, M2, 01 and 10. We want to specifically note that we agree with Mr. Aiken on this. He did a detailed analysis. We don't need to do it again. And we have looked at his analysis and the numbers that he produced, the resulting numbers that he produced for average uses, the NACs, and we agree with them.

The additional comment we want to make about that is that there was some confusion earlier today about how weather and NACs interact, and they do interact, but in terms of impact on the revenue requirement, our understanding is that heating degree days captures changes in use due to weather.

That weather methodology captures that component of changes in units.

The NAC, because it is normalized, captures all other changes of use. It is intended to be -- so the two are intended to be additive, is our point.

The second comment that we would make on distribution revenues is Mr. Aiken has also done a detailed analysis on the customer forecast and has proposed that 4,250 customers be added in each of 2012 and 2013. We have looked through his numbers; we agree that his conclusions are correct.

The third comment we will make -- and both Mr. Aiken and Mr. Wolnik have talked about this -- is the overrun forecast.

We'll start with the comment that it is patently ridiculous to us that you have overrun every year, year after year after year, and this year you don't have any. That just doesn't make sense to us.

Mr. Aiken and Mr. Wolnik have come to similar conclusions. We agree with Mr. Aiken's final numbers, that an additional 600,000 for power overruns, overruns in the power sector, and 1.7 million for overrun revenues in the non-power sector are appropriate numbers.

Finally, on this area, I want to talk about weather and about the forecast of heating degree days. I am going to deal with this in two ways.

First of all, the detailed analysis has already been done. You don't need to hear a detailed analysis again about testing the models and this and that and all of that stuff, which you've heard at length, and most of it I didn't understand anyway.

Mr. Aiken did a comprehensive analysis. We agree with it, with one caveat. And that caveat is he's proposed that you use the formula that includes a dummy variable for a certain period of time in the time series.

He may be right. But since we don't understand what the effect is and why it is there, we can't say that we agree with it or disagree with it. We make no submissions on that.

Otherwise, we support his analysis on the detailed side.

That leads us, however, to a more general question, and this is something that we pursued and we think is probably the biggest flaw in how Union approached this.

I guess the easiest way to start is Union is proposing to use a 20-year trend.

All models like this - including this one - are intended to capture mathematically a real world phenomenon. This is not random data. In fact, if it were random data you couldn't have a model, because the model wouldn't predict anything. The model has to be describing something, some underlying reality.

In this case, as we understand it, the model is describing a warming trend of Ontario climate, presumably caused by global climate change or something like that, and what it appears to us is that if there is a trend -- and there appears to be -- of heating degree days, the slope of that line depends entirely -- entirely -- on capturing the actual period over which the phenomenon is happening.

If you don't capture the correct period, you don't have the right slope. It's not complicated; it is straightforward. You are describing something in the real world. If that something in the real world is happening over X period of time, then the only way to get the slope of the line, the trend, right is to have that period.

We have included in our materials at pages 18 through 25 - I am not going to take you through this - a discussion with Mr. Gardiner, in which we were cross-examining him on this issue.

And it appeared to us that they simply didn't understand that the time period was important, that having the right period of time mattered.

They appear to have taken the view that: We used 20 years last time. We used 20 years the time before. We will use 20 years this time. We don't have to think about that.

And they -- in fact, they admit: We didn't even look at it, didn't even look at anything else other than 20 years.

Well, if you use a 20-year trend, then you assume one of two things. You assume either that climate change started in 1992, which, to the best of my knowledge, nobody in this room agrees with. Mr. Smith could correct me in reply. Or, that the slope, the trend line for the last 20 years is identical to the trend line for the rest of the period prior to that when climate change was occurring. And there's no reason -- no evidence on the record that that is true either. And it would be surprising if it was.

All of the evidence suggests that that is probably not true.

So they got 20 years because they used it twice before. The first time in which the Board said, No, you can't use 20 years, we will let you phase in half of it, but you can't have 20 years, we're not convinced. So they said in their evidence, well, the Board nodded. Well, no, actually, the Board didn't nod. The Board shook its head and said, No, no, we're not going to let you have this. That's not right. It's not the right answer.

Then in 2007 when they proposed it again, and then they settled for the existing method. So not the most convincing reasons to use 20 years.

So we asked them in cross-examination, Could you produce trend forecasts using other periods other than 20 years? And we asked them to do from ten years to 30 years, still ending at the same time, still forecasting 2013, but starting ten years ago, then '11, '12, '13, et cetera, up to 30.

If you see, at page 30 of our materials, Exhibit J2.5, which gives their answer. These are the 2013 estimates for Union south and north based on different trend periods.

If you are sort of a number geek like me, you look at this and you immediately say, Ah, I see patterns here. But it is actually easier to go to the next page, which is page 31, where we plotted those numbers exactly on a graph so we can see the shape.

By the way, this is the reason why I couldn't do my argument this morning, because I decided to have four pages of colour in here, and you have no idea how much harder it is to put colour in a black and white presentation.

So on page 31, what you see is that in fact if you use 30 years or anything more than 20 years, you will have a higher forecast for 2013. Similarly, except for 19 years, if you use anything less than 20 years, you will get a lower -- you will get another higher forecast.

Twenty years is the least - not quite the least; 19 is the least - is the period of trend that produces the steepest slope downward. The reason we're raising that is this. It would appear to us that this pattern -- had my friends at Union looked at the various other trends, the other periods of trend, this pattern would have told them that 20 years is not representative. There is no reason to believe that 20 years is the likely period of climate change, because in fact there are changes going on, and 20 years is at the low end.

In fact, if you take a look at the south, there appears to be a fairly constant slope from 21 years to 30 years; that is, no matter whether you use 21 years, 22, 23, 24, et cetera, up to 30, the slope appears to be the same. And that suggests that you may actually be in the period where the time is relevant.

Here's the reason why we are raising this. Our position is that they have not displaced the existing weather methodology, and we agree with Mr. Aiken that unless they can displace it, which they can't - they didn't even really try very hard - that they should be using the weather methodology that is currently approved by the Board.

However, there does appear to be a problem with the 20-year trend component, and we think that the Board should order them before their next rate case to go away and do this properly, do a full review of what the various options are, as Enbridge did a few years ago, as they did a few years ago, and present the set of options to the Board with full analysis.

I want to turn to cost allocation and rate design, my last area. Do you have questions on weather?

MS. HARE: Yes, I do. Looking at your page 30 of the compendium --

MR. SHEPHERD: Sure.

MS. HARE: -- am I not understanding this table? I look at it. I look at Union north, and it shows me the number 1 ranking, which I understood to mean the one that is closest to what they have applied for, is the 20-year.

MR. SHEPHERD: Understood, except that the number 1 ranking is based on testing that does not include trying to understand, in any way, what the phenomenon is you are describing.

Unless it is a 20-year climate change, unless that's what is actually happening, these rankings are irrelevant. They're accidental.

But let me put that a different way. Let us suppose that you have a random set of data - and you could have a random set of data - you can do statistical tests on that random set of data and you can come up with a ranking of which -- what formula will best predict the next number in the set of data.

That formula will have no value whatsoever, because the data underlying it is random.

MS. HARE: Okay, thank you.

MR. SHEPHERD: Now, as to cost allocation and rate design, I will cut to the chase on what we're going to propose to you, and then I will come back and I will walk through the components of why what we're proposing is the appropriate result.

MS. TAYLOR: Mr. Shepherd, just before you go on to your submission to sum up with respect to the forecast, I want to make sure I understand this.

You're saying that there is actually a problem with the 20-year formula?

MR. SHEPHERD: What I'm saying is that we don't know whether there is a problem with the 20-year formula. There is no reason for us to believe that 20 years is the appropriate periodicity for a trend line for weather. There is no reason -- no evidence has been provided on that.

So the Board has no way of knowing whether that is true, and it does appear to be pretty short.

MS. TAYLOR: You want us to order them, before the next rate case, to come back and provide us with a more comprehensive analysis?

MR. SHEPHERD: That's right. It wouldn't necessarily just include linear trends. The old method was something called the de Bever method, which included both a 60-year cycle and a 10-year cycle and was far more sophisticated. You have heard about a number of them in this proceeding.

A proper review would have considered all of those things, and they didn't.

MS. TAYLOR: That leads me to the next question.

If they want to change the methodology in the next case, it is their case to bring. Why would the Board tell them to do a bunch of analysis to, in effect, make their case for them? That is their burden to bear, if they want to move off the methodology.

MR. SHEPHERD: I suppose that's true.

MS. TAYLOR: Unless there is a technical problem with the methodology, that it is no longer producing the result that the Board can rely on.

MR. SHEPHERD: Well, I don't think there is any evidence before the Board that it is producing results that is reliable.

What we know is that we have an approved methodology that is working okay, but it's not perfect, because it is weather we are forecasting.

And Union keeps coming back time after time - this is the third time now --

MS. TAYLOR: Mm-hm.

MR. SHEPHERD: -- saying, We don't like it. So what we're suggesting is the Board should tell them, Look, if you want to come back and talk about this, come back with a proper analysis. And it may not be mandatory, but it should be very clear that coming back with, We compared 20-year trend to the existing rule and that's it, that's not enough.

MS. TAYLOR: Okay, thank you.

MR. SHEPHERD: Okay. Cost allocation and rate design; and I hope to be finished in about 15 or 20 minutes.

So let me get to the end point. We are proposing to this Board that the Board not order new rates for M1, M2, 01 and 10 in this proceeding, that the Board does not have sufficient evidence on either a proposal or some other number that would produce just and reasonable rates for those classes. The onus was on the applicant to provide such evidence. It has not done so, and therefore, those rates cannot, in law, be changed.

I am going to come back to the details of that, but that is where I am going with this, is that you simply leave it, leave those rates for those four classes as they are, and invite Union to go back - and in a subsequent proceeding, hopefully soon, and if it were me, I would say give them a deadline - in a subsequent proceeding come back with a proper analysis that is a proper foundation for just and reasonable rates, because what -- the evidence you have before you does not allow you to pick a new number for just and reasonable rates for any of those four classes.

So there's several components to this, to get to that result. That's only the foreshadowing.

The first is there appears to be a general consensus with the company, with all of the intervenors, that the break point for M1, M2 and 01, 10 should be lowered from 50,000 to 5,000.

And the most graphic illustration of this is seen at pages 33 through 36 of our materials, which is an undertaking response from the applicant that shows the very clear superiority in homogeneity at the 5,000 break point as opposed to the 50,000 break point for M1.

I don't think I need to say anything further about those. It is pretty straightforward. You can see there visually exactly what they're talking about.

And frankly, the last time this was considered, when M2 was split up, SEC was the ones –– they were saying: No, no, no, 50,000 is wrong. You need something lower. And Union said: No, we're comfortable with 50,000 --I'm so sick of hearing: We're comfortable -- we're comfortable with 50,000. And we lost.

Well, now they're comfortable with 5,000, and we're comfortable that they're comfortable.

[Laughter]

MR. SHEPHERD: Their evidence is very clear and you will see on page 37 -- and I am going to come back to this -- their evidence is clear the 50,000 break point is no longer appropriate.

What that tells you is that if you approve new rates that use the 50,000 break point, Union is telling you and we're telling you and everybody else is telling you those rates are not just and reasonable, because the 50,000 break point is not appropriate.

There's a number of other references to this. If you see on pages 38 and 39 of our material, this is in redirect of the panel that dealt with the cost allocation and rate design.

Mr. Smith was asking Mr. Tetreault about what happens if you lack homogeneity in a class, and Mr. Tetreault says: Oh, you know, you get unusual rate results, unusual rate impacts, intra-class subsidies, et cetera. Lots of bad things happen.

So for all of those reasons, it appears pretty clear that the break point should be lowered and the sooner the better, and I think everybody agrees.

The second thing they want to do is harmonize the blocks in north and south, and that also seems straightforward. They're not harmonizing the rates; they're just harmonizing the blocks. It is a simplification that nobody has hurt by, as long as it is done correctly.

The problem is this has not been done correctly. The way -- the proposed implementation is badly flawed.

And Mr. Aiken took you through this morning one problem after another with how this has been -- how this is proposed to be implemented, the shortcuts, the errors in calculation, mistakes, et cetera. It is very bad.

So for that reason alone, their proposal as is should not be implemented, particularly since they didn't even do a cost allocation study.

And that leads to the second thing, and that is we've been telling them throughout this process, starting with IRs -- in the technical conference we tried to ask questions and we were told: No, don't answer the questions.

We have been telling them: You have a problem at the break point. You appear to have -- in your existing rates, you appear to have a discontinuity between M1 and M2 that is not explained by any of your evidence, and it is a problem. It's not intuitive.

They haven't done anything about that. And I am going to talk about that in a second, what it implies, and I am going to give you some graphics so you can see how it works.

But for that reason, as well, because there's clearly an underlying problem that they have not addressed and they have not attempted to address –- or they may have attempted to but they didn't address -- the rates that come out of the process are not justified.

So let me take you through -- the first part of that is -- that is the errors in their implementation and everything and the shortcuts and all of that of stuff. The weighting that you heard about, one, 1.5, two, all of those sort of things. There is lots of that stuff.

Mr. Aiken took you through that in detail. I'm not going to cover any of that, just what he said.

However, with respect to the problem with the underlying cost allocation, I want to take you to this in two steps.

First of all, if you take a look at page 40 of our materials, you will see Exhibit J12.5.

What we asked Union to do is give us the 2012, 2013 and 2014 distribution bills -- or, sorry, delivery bills for customers at various volume levels.

You will see on page 41 the Union north, and this has the rate 01, and then you see the break point in line 10 at 50,000 and it goes to rate 10.

And then you see in 2014 where they propose to change the break point. The break point moves at 5,000, and then at 7,000 it is up to rate 10.

And the same on page 42. You will see Union south, all the same thing.

So what we did, we took those figures, their numbers, and we just divided one by the other to get unit rates, because unit rates will tell you about continuity. And you will see that in a second.

So if you look at page 43, this is simply -- if you take a look, for example, at the top of page 43, you see 5,000 and you see $11.96. It is actually 11.96 cents.

That is, if you go back to page 41, it is -- at 5,000 the bill is 598.23. Divided by 5,000 is $11.96.

So it is not complicated. This is their numbers. We haven't done anything special to them.

So what this does is it gives you the unit cost for customers at various volume levels, the total unit costs for delivery.

And I am not going to take you through all these numbers. I'm happy to answer questions about them, and if my friend wants the Excel spreadsheet I will be happy to provide it, but it is pretty straightforward.

What we did, then, is on page 44 we put that on a graph, because it's -- continuity is about the pattern. In perfect rate continuity, when you go from one rate class to another you should still be recording your economies of scale, and as a result -- assuming the two rate classes are just distinguished by volume -- the economies of scale should continue on a relatively smooth plane. That is continuity.

In fact, there is evidence in this proceeding from the company on continuity and why it is appropriate.

So in the north, you will see the blue line is the 2012 rates, and it shows that if your annual m^3 is 5,000, you're going to pay almost 12 cents total for delivery. And if you are at 500,000, you're going to be just over four cents.

It is a smooth curve. This is very normal.

Similarly, you see the red line is 2013, where the break point has not changed yet. So they have done a little bit of playing with it, but generally speaking it is still pretty smooth.

Then in 2014, where they changed the break point from 50,000 to 5,000, you will see the green line actually dips lower, because those customers that are moving over from one to the other -- you already heard about this -- are going up in 2013 and then back down in 2014. A strange result, but that is what they're doing. Okay?

And so this is a relatively -- except for that up and down thing, this is a relatively normal pattern.

Now take a look at Union south on page 45, and this is not a standard rate continuity pattern. What it shows is very shocking discontinuities between one rate class and another. This is the thing we've been asking them about from the outset and trying to get them to get their heads around.

So let me start with the green line, because it's the simplest. The green line is the 2014 rates. This is the unit costs based on volume. And what it shows is, when you go from the -- from the new M1 to the new M2 at the 5,000 breakpoint, you get a little jump, but then you go down immediately in the normal pattern.

That little jump, by the way - this is M2, remember - that little jump is because the $35 per month charge is actually more than cost. So -- and you heard from Mr. Aiken about that this morning, and there is an interrogatory that says that the actual cost is $30.

If you change the fixed charge for M2, in this example, to $30, that little jump on the green line goes away and you have exactly the same smooth curve that you have on the previous page.

So no apparent problem there. I am going to -- there is a problem, but not in discontinuity.

However, if you take a look at the blue, which is current rates, and the red, which is the proposed 2013 rates, what you see is at the breakpoint there is a huge jump in the unit cost for the customers.

Keep in mind there are economies of scale here, so there should not be a huge jump, and they have admitted that. So what do we have here? Well, is this just a question of the fixed charge? The fixed charge goes from 21 to 35 -- or actually 21 to 70 in this case. Is that it? Well, the answer is no.

We know that for two reasons; first of all, because the dollars involved in these customers are way too much for a 49 increase in fixed charge to have any significant impact. Some of these customers are paying $20,000 a year, $30-, $40,000 a year. So that $49 a month, nothing.

The second reason we know is because if it was just the fixed charge, it would only happen in the first one or two blocks, and then it would go down. As we saw with the green line, it would go down below the previous rates.

The reason why this is higher and it's higher even -- you get to 500,000, your unit cost at 500,000 is still higher than the customer at 50,000. That can't be right.

The cost per unit to deliver to somebody taking 500,000 m^3 is not as much, in fact, as the one at 50,000. Anybody who has been in the gas business for five minutes knows that.

So the reason for that can only be, therefore, that too many costs are allocated to the M2 rate class. There is only rate design and cost allocation that will cause this sort of result. In this case, it can only be cost allocation.

All right. So then the question is: Well, doesn't that green line really fix that problem? So even if you accept that there is a problem in 2012 and 2013, once you get to the harmonized rates and the lower breakpoint, isn't it fixed?

And the answer is, and I will show you this in a minute: No, it's not. It is masked. The pattern is okay, but the costs, the excess costs, are still there.

So let me show you this. And to do this, I want to take you -- this is step 2 of the analysis. I want to take you to JT2.27, which is on page 46, and I am including this because -- for completeness, if you like, because this is the source of all of the numbers that follow.

This is a response from Mr. Tetreault to us talking about the costs associated with various components of the M1, M2 and 01 and 10 classes.

And you may recall, if you take a look at page 50, we then took that analysis and we calculated the costs associated with the customers in the middle, the ones that were moving from one class to another, and we filed this in K10.5 at page 18. This is on page 50 of our materials.

After a huge struggle in which the company did not want to agree that these numbers were correct, eventually they agreed they were correct. You will see an example of that on page 51, where they say the net cost per customer of 6.3 and 5.8 are correct.

And in pages -- sorry, in our materials, pages 52 to 56, there is a discussion between Mr. Aiken and the Union witnesses talking about whether these numbers are accurate or not.

Ultimately, after saying, No, no, no, they're Mr. Shepherd's numbers, they're not ours; they said, Oh, yeah, okay, they're all right.

So what does this tell us? Well, I want you to turn, if you could, please, to page 61 of our materials, because what we heard throughout the proceeding was, well, you can't have a sub-group of a class, because that will be misleading.

So we said, Okay, let's assume that's true. Let's look at what your costs are before you move these customers, how they're allocated, and what your costs are after you move these customers.

Now, this is dealing only with delivery costs, and it is because customer-related costs are more complicated and this really proves the point.

On page 61, what we've done is we calculated -- we start with the costs that were allocated to the group that was in M1 -- sorry, the group that was in the lower class. On line 1 it is 01, and on line 5 it is M1, the group that is in the larger class, regardless, which is line 3, class 10, and line 7, which is class M2, and the group in the middle, lines 2 and 6, who are the customers that are being moved from one class to another.

You may recall there was a lengthy discussion with the witnesses in which we got them to agree - and this is in here somewhere, but I am not going to take you to it in light of the time - in which they admitted, Yes, when we move the customers, we have to move their costs and we have to move their volumes in order to get things right.

These are the costs and these are the volumes that got moved. And this is right from their data, and we've tracked it through exactly. This is exactly the same spreadsheet that they argued about before and finally accepted as being correct.

So what we said is, Okay, what were the unit costs, delivery only -- the unit costs for 01 and 10 and M1 and M2 prior to moving these customers? And the answer is that according to them, the delivery costs for an 01 customer are 5.62 cents per m3, but for a rate 10 customer they're 6.32 cents.

That is not right. That is not going to be correct. We know that.

Similarly, for M1 and M2, if you look at lines 5 and 7 under column G, you will see the unit costs pre-move, 3.699, and for the larger class where there should be economies of scales, 3.753. Again, that can't be right.

So the reason -- when we looked at the low unit costs being moved in lines 2 and 7, we thought maybe you're not moving enough costs over. Well, no, that's wrong. They were actually doing that deliberately, because if they didn't do that, they would continue this problem where the larger rate class is treated as being more costly to serve on a unit basis. That can't be right.

So what they did is they moved less costs over to get to a situation where M1 and M2 and 01 and 10, respectively, have the same unit costs for delivery.

Now, that also is a strange assumption. They claim it is the right assumption, but it is a strange assumption.

But in any case, they did that by, essentially, a plug as they moved the customers over. It wasn't rigorous in any way; it was just a plug.

So they talked about their methodology for how they -- their allocation methodology that they used to do this. They had the answer in mind. They took whatever numbers they needed to get there.

What this tells us is that, because the pre-move costs show high costs in Rates 10 and M2, what that tells us is that too many costs have been allocated to those classes. We don't know how much, but we know it is something. And this is only disclosed because they're moving things over and it created some anomalous results.

All right. We could speculate on why this is happening. It is really -- there's no point to that. I would be wasting your time. Especially at 20 to six, I don't want to waste your time.

But the reality is if they don't do a proper cost allocation based on their new break point, we have no way of knowing what the right costs are. They split up M2 in the first place based on a shortcut, which they've talked about. They then used a similar shortcut, which, as Mr. Aiken pointed out today, isn't a very good one, to then change the break point.

And at this point, we don't know what the correct cost allocation is. All we know is the results are anomalous.

So therefore, given that, our conclusion is the following.

We think the Board has ample evidence to show that moving to the new break point and the common block structure with different rates is the right answer. Nobody's disagreeing here on that.

We think it is also common ground amongst everybody except the utility - and maybe, by now, even the utility - that a proper cost allocation study had to be done and it was not. It had to be done to get rid of the shortcuts and things like that that were exposed by Mr. Aiken, and it would get rid of the underlying problem of incorrect cost allocation that is shown by the pattern -- the discontinuity between the existing rate classes.

That will take some time. That can't be done between now and January 1st. So the question is: Well, what do you do?

Well, thankfully, there's a good chance - I'm touching wood as I say this - that the deficiency will not be huge in the end. I'm hoping.

But even if they got everything they want, it is not a massive deficiency.

In our view, the legal issue is this. The Board has jurisdiction to set just and reasonable rates. The Board does not have jurisdiction to set rates. It has jurisdiction, and it is limited to setting just and reasonable rates.

The onus is on the applicant to propose and support new just and reasonable rates, if they want to change. The onus stays on them. It doesn't leave them. It is theirs all the way through.

Or to provide sufficient evidence -- if you are not convinced of their proposal, the onus is still on them to provide sufficient evidence to support some other just and reasonable rates that you could order.

So either they provided sufficient evidence for you to set just and reasonable rates, new ones, or not. If they have, then you should implement it, for sure.

We don't believe they have. We think that the evidence is fairly clear that every proposal they have made on these four classes does not meet the test of just and reasonable. And therefore, our view is you don't have jurisdiction to set new rates for those classes, because you have no evidence before you on which to set those rates.

Now, in response, Mr. Smith – well, I am on my last page, and it is a short one - Mr. Smith in response, I think, will say two things. It is one of the funny things about intervenor argument is you have to anticipate reply and answer it before it happens. I think he will say two things. If I were him, I would.

First, these problems should have been put to the witnesses. Why are you talking about this in argument? Why didn't you talk to the witnesses about this?

And of course the answer is we did. We did time and time again throughout this proceeding. We kept telling them there is a problem. We kept telling them: Look at the break point. You see how difficult, how bad this is. Fix it, please. Tell us why you didn't, or fix it if you don't know why you didn't.

I mean, at one point Mr. Smith said: Don't answer that. But in any case, we got no traction from them.

In fact, before this proceeding, they should have looked at all of this stuff. They should have seen this break point problem before the proceeding happened, and then when it was raised during the hearing they should have fixed it, and they didn't.

So that is the first thing he might say.

The second thing he might say is: Well, the intervenors should have filed evidence if they don't think the rates we're proposing are right.

Well, I think the answer is: Wrong. Union wants new rates. Their onus is to support them. If they don't support the new rates they're proposing, and if there is no evidence for the Board to set different rates, then the Board has no basis on which to change the rates for these four classes.

So here's what we are proposing. We are proposing that the Board say to Union: Whatever you're going to do on everything else, on revenue requirement, et cetera, the rates in these four classes must remain as they are for the time being.

You, Union, have a problem with these rates. Go away. Do your homework. Do a cost allocation study. Do proper rate design, so you don't have this discontinuity stuff, and come back to the Board with a new application for rates for those four classes.

Now, it could be done in a second phase of this proceeding, but I frankly don't think that is necessary. I think it can be in a separate proceeding with the same revenue requirement, and it could be done in six months.

And in the meantime, those rates are not changed, and if that costs them some deficiency, if they don't make enough money, the problem is one of their own making.

Now, I want to make clear SEC wants the new break point. We're in that group that is moving. And we've been telling the company for years: Your break point is wrong. So we want them to implement it, and the sooner the better.

But it has to be done right, and the Board should not set rates if it doesn't know those rates are just and reasonable.

Subject to your questions, those are our submissions. Longer than I expected; I apologize.

MS. HARE: I do want to make sure what you are suggesting.

We will at the end in our decision have a new revenue requirement. Are you suggesting, then, that for those four classes, we declare the rates interim? Or are you suggesting we don't make any rate design changes?

MR. SHEPHERD: No. I'm saying you make no changes to those rates, at all. Those rates continue.

So the company has proposed an allocation of their deficiency to various classes, and all the other classes except for those four classes, there will be allocations of various sorts.

On those four classes, the only thing you can do is keep the same rates, because you don't have evidence to change them, any change.

MS. HARE: I understood that, but you're not saying to declare them interim. You're saying so if it is six months before they're done, it's -- so that is where you talked about foregone revenue?

MR. SHEPHERD: That's right. They will forego some revenues, because they don't do it right in the first place. And it will make them do it faster.

MS. HARE: But I don't understand -- if they're going to do a cost allocation study, it's not going to be a cost allocation study for those four rates only. It will look at all of the rates.

MR. SHEPHERD: Sure it will.

MS. HARE: So that might mean that the others might change, as well.

MR. SHEPHERD: They might have to come in and ask for changes to those too. That's absolutely correct.

Although they did do a 2013 cost allocation study, and

-- sorry, a recent -- 2011, I guess -- cost allocation study.

So other than the issues that have been put before you already, there don't appear to us to be any major issues with the allocations to those classes.

It looks to us like the allocation problems are between M1 and M2, and between 01 and 10.

But that might not be the case. I mean, they might find it is something else.

If they had done it in the first place correctly, we wouldn't be having this discussion. This also solves the problem, by the way, of this up and down problem in the north, because if you don't change the rates, by the time they come in, they come in with the proper break point. They have time to do that now, properly.

MS. HARE: Okay. Thank you.

MS. TAYLOR: I just want to follow on, Mr. Shepherd.

So you're saying that because there is a consensus between parties, including the utility, that the break point needs to be changed, that we don't have jurisdiction to impose any changes on these four rate classes that would otherwise occur in approving revenue requirement?

MR. SHEPHERD: No. No, sorry.

There's two parts to this. First of all, they have proposed 2013 rates based on the existing breakpoint, but since we've identified there is a clear problem with cost allocation underlying that, you can't -- in our submission, you can't order those new 2013 rates at whatever level, because you know there's a problem underlying them. The discontinuity is obvious.

So until that problem is fixed, you lack jurisdiction.

MS. TAYLOR: So we're currently at a 50,000 breakpoint.

MR. SHEPHERD: Yes.

MS. TAYLOR: So you're saying right now - right now - that same discontinuity problem would exist in the rates?

MR. SHEPHERD: That's right.

MS. TAYLOR: Right. So you're saying that we would have no ability to, on that four - particularly these four rate classes, to implement the findings of the Board in this as it relates to the overall revenue requirement - this is the numbers and we're talking about how they divvy up between rate classes now --

MR. SHEPHERD: That's right.

MS. TAYLOR: -- as a result of this proceeding?

MR. SHEPHERD: For those four rate classes, no, that's right, because you're prevented from changing the rates unless you know the new rates are just and reasonable.

MS. HARE: You're saying because of the information that has come out in this case, that we now can't conclude they're just and reasonable --

MR. SHEPHERD: That's right.

MS. HARE: -- whereas we could last year, because we didn't know about this problem?

MR. SHEPHERD: That's right. That's exactly right.

MS. TAYLOR: I have no further questions.

MS. HARE: Well, thank you very much, and thank you all for staying.

MR. SMITH: Thank you very much.

--- Whereupon the hearing adjourned at 5:52 p.m.