



ONTARIO ENERGY BOARD

FILE NO.: EB-2011-0210

VOLUME: 16

DATE: September 4, 2012

BEFORE:	Marika Hare	Presiding Member
	Karen Taylor	Member

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 Tuesday, September 4th, 2012,
commencing at 9:31 a.m.

VOLUME 16

BEFORE:

MARIKA HARE	Presiding Member
KAREN TAYLOR	Member

A P P E A R A N C E S

MICHAEL MILLAR	Board Counsel
KRISTI SEBALJ	

KHALIL VIRANEY	Board Staff
LAWRIE GLUCK	

CRAWFORD SMITH	Union Gas
MARK KITCHEN	
CHRIS RIPLEY	
RICK BIRMINGHAM	

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

<u>Description</u>	<u>Page No.</u>
--- On commencing at 9:31 a.m.	1
Reply Argument by Mr. Smith	1
--- Recess taken at 10:52 a.m.	35
--- On resuming at 11:21 a.m.	35
--- Luncheon recess taken at 12:23 p.m.	63
--- On resuming at 1:47 p.m.	63
--- Recess taken at 2:59 p.m.	97
--- On resuming at 3:23 p.m.	97
--- Recess taken at 4:34 p.m.	131
--- On resuming at 4:48 p.m.	131
--- Whereupon the hearing concluded at 5:57 p.m.	162

E X H I B I T S

<u>Description</u>	<u>Page No.</u>
EXHIBIT NO. K16.1: REPLY ARGUMENT COMPENDIUM OF UNION.	1

U N D E R T A K I N G S

Description

Page No.

NO UNDERTAKINGS WERE FILED IN THIS PROCEEDING

1 Friday, August 24, 2012

2 --- On commencing at 9:31 a.m.

3 MS. HARE: Good morning. Please be seated.

4 MR. SMITH: Good morning.

5 MS. HARE: Good morning. Are there any preliminary
6 matters before we hear the reply submission?

7 MR. SMITH: No, members of the Board.

8 MS. TAYLOR: These are distracting.

9 MR. SMITH: That's where I was going to give my
10 submissions, but I thought it might be too close.

11 [Laughter]

12 MS. HARE: Okay, Mr. Smith.

13 **REPLY ARGUMENT BY MR. SMITH:**

14 MR. SMITH: Thank you, members of the Board. You
15 should have from me a reply argument compendium, which I
16 would propose to mark as an exhibit.

17 MR. MILLAR: Madam Chair, that will be Exhibit K16.1.

18 **EXHIBIT NO. K16.1: REPLY ARGUMENT COMPENDIUM OF**
19 **UNION.**

20 MS. HARE: Thank you.

21 MR. SMITH: And appearances to the contrary, I did try
22 to limit the duplication from the material previously
23 filed.

24 So these are the reply submissions of Union Gas in EB-
25 2011-0210. The reply should be understood in connection
26 with Union's argument in-chief given in this matter, and
27 Union continues to rely on that argument in-chief, in
28 addition to the evidence filed in this proceeding and, in

1 addition, the evidence given under cross-examination.

2 Now, as I indicated in Union's argument in-chief,
3 Union set out, by way of overview, what it viewed to be the
4 appropriate context for this application, its first cost of
5 service proceeding since the 2007 rebasing proceeding, and
6 that context included four factors set out not by Union,
7 but by the Board, as to whether IRM was successful for
8 Union and ratepayers alike.

9 And as submitted then and as submitted now, Union is
10 of the view, and submits that the Board should be of the
11 view, that IRM was an unqualified success, in that it did
12 provide an incentive to encourage cost control and generate
13 productivity and efficiency improvements.

14 Two, customers and shareholders shared in the benefits
15 of efficiency gains that were achieved, and you heard
16 substantial evidence about the amount of earnings sharing
17 that has already taken place under Union's IRM and is
18 expected to continue through 2011 and 2012; third, that
19 Union was able to continue to provide an appropriate level
20 of service quality; and, four, that it was conducive to
21 capital investments.

22 Now, I would like to say at the outset that
23 unfortunately some parties - and as we foreshadowed in our
24 argument in-chief - essentially grounded their case not in
25 the evidence in this proceeding as I submit they ought to
26 and this Board should require, but used it essentially as
27 an opportunity to punish Union for the success of IRM.

28 In that context, to the extent it is suggested, as

1 such, should be rejected.

2 Now, some parties went so far as to suggest that Union
3 engaged in unauthorized transactions, and I have two
4 submissions in response to that. The first, that is not
5 what this case is about. Try as my friends may like, this
6 case is not about past conduct. It is about 2013. And,
7 two, the submissions are entirely unfounded.

8 Union is a regulated entity, and, as we will go
9 through in some detail when we get to FT RAM, since at
10 least 2007 it has had at least 20 separate proceedings
11 before this Board involving QRAMs, deferral account
12 proceedings and rebasing proceedings. And as the Board
13 will be aware, the Board's discovery-related powers are
14 broad, extremely broad, the ability to compel answers to
15 interrogatories, document production, technical
16 conferences, which are essentially further oral examination
17 for discovery, and undertakings during proceedings, all of
18 which, in my submission, are tools the Board has at its
19 disposal which go well beyond even a court of law has in a
20 civil context.

21 The Board will also know that Union is regulated in
22 rate application, leave to construct applications, through
23 affiliate reporting transactions, annual reporting, and
24 then, as I say, the annual clearing of deferral account,
25 gas cost and QRAM application submissions.

26 So in Union's submission, the overall flavour that
27 Union has not balanced ratepayer and its own shareholder
28 objectives in preparing this application is, with respect,

1 nonsense and should be rejected.

2 Now, I want to point that out through the following.
3 CME purported to bolster its submissions on this point by
4 pointing to other cases in which it said Union has
5 allegedly done something wrong, and I just want to make the
6 observation that that submission lacks any analytical
7 rigour, at least in this respect.

8 The same could be said of any number of proceedings,
9 from Union's perspective, going back to 2007. So, for
10 example, in EB-2010-0039, a deferral account was proposed
11 or the clearance of a deferral account was proposed to
12 clear, in favour of ratepayers, \$7 million that was to
13 compensate for harm that would occur to ratepayers if Dawn
14 Gateway went ahead.

15 It didn't go ahead. There was no harm. And the
16 Board, rightly, rejected the submission that the deferral
17 account should be cleared in favour of ratepayers.

18 In 2012-0048, essentially the same submission was
19 made, but in a different form. And, again, the Board
20 declined it.

21 In 2011-0038, a request was made for an optimization
22 account essentially to circumvent the clear wording of
23 NGEIR. Again, the Board rejected that.

24 What does that tell you? Nothing, absolutely nothing,
25 as it relates to this proceeding. It simply tells you that
26 the Board makes decisions on applications, as it should,
27 based on the evidence that is in front of it; nothing more,
28 nothing less. And that's all Union is asking for in this

1 proceeding.

2 So let me turn to my submissions in the main. I have,
3 again, divided the submissions by main topic area, and you
4 will see that those are captured in the index to the
5 compendium. So I propose today to cover in-franchise
6 revenues, ex-franchise revenues, gas supply, cost of
7 capital, Parkway West, the few issues relating to deferral
8 accounts, and then, lastly, cost allocation and rate
9 design.

10 Turning to the first issue, which is in-franchise
11 revenues, I would like to begin by talking about the
12 weather.

13 [Laughter]

14 There's a joke there, but I won't make it.

15 By way of overview, intervenors and Board Staff oppose
16 Union's proposed adoption of the 20-year declining trend
17 weather normal. Most favour maintaining the existing
18 method of a blend between the 30-year average and the 20-
19 year declining trend at 55/45, or, alternatively, some
20 propose - indeed, most in this category propose - a step-
21 move to 50/50.

22 And so to summarize that submission, what they say is,
23 notwithstanding the complaints about the 20-year declining
24 trend, the weighting to the 20-year declining trend should
25 nevertheless be increased. Obviously that proposition is
26 logically inconsistent, but it is the proposition that is
27 being advanced and one I will come to in a minute.

28 For its part, LPMA proposes an adjustment to the 20-

1 year trend in addition to the continuation of the blend,
2 but, as I indicated before, at a 50/50 ratio. And so they
3 propose the same 50 -- they propose the same 30-year
4 average, certain adjustments to the 20-year declining trend
5 which I will deal with, and a continuation at the 50/50
6 level.

7 The arguments that are made in support of intervenor
8 positions and opposed to Union can, in my submission, be
9 categorized into two broad categories. The first is an
10 attack on the statistical support for the 20-year declining
11 trend. The second is a complaint as to the number of
12 different weather methods considered by Union in this
13 proceeding. And I will deal with each of those two
14 arguments in turn.

15 So dealing first with the attack on the statistical
16 support for the 20-year declining trend, that argument can
17 be divided into a further three categories: one, the use
18 of Pearson Airport data to confirm, at a concept level, the
19 appropriateness of the 20-year declining trend, and that
20 was a submission made by Energy Probe.

21 The second is the use of statistics at all to assess
22 the accuracy of the 20-year declining trend, and that was
23 essentially BOMA's submission, and we will come to that.

24 And the third is a criticism relating to the
25 statistical significance of the 20-year declining trend
26 itself.

27 So if we take each of those in turn -- and I ask you
28 to turn to the transcript at volume 14, page 29. So this

1 is tab 1, and we have set out here the transcript of
2 argument by Energy Probe, and you will see on the left-hand
3 side page 29, and what you will see there about halfway
4 down -- further than that -- line 20 -- I suppose first
5 beginning at line 16:

6 "Energy Probe has concerns about Union's heating
7 degree forecast fundamentals..."

8 Line 20:

9 "And the basis of this is that Union's evidence
10 for comparing heating degree day methodologies is
11 based on Pearson Airport data."

12 The implication of this argument that Energy Probe
13 appears to what want to draw is that Pearson is not
14 representative of Union's franchise area.

15 Two submissions in response to that. The first is
16 there is not a shred of evidence in the record to support
17 this evidence. The second is all of the evidence which is
18 in the record is to the opposite effect. The weather at
19 Pearson, the evidence is, is highly correlated with the
20 weather in all of Union's franchises, and, for that reason,
21 it is appropriate to use the Pearson Airport data, at least
22 at a concept level, to test the 20-year declining trend.

23 And you will see that at tab 2 of the compendium, and
24 what we have collected at tab 2 is the evidence, first, in
25 cross-examination by Mr. Gardiner at page 29 from volume 1.
26 You will see halfway down the page, Mr. Gardiner at line 12
27 indicates that the weather is highly correlated with
28 Pearson in Union's franchise area.

1 To the same effect, a page over, volume 2, page 20,
2 line 1 and thereafter, again, Mr. Gardiner talking about
3 the correlation of Pearson and Union's franchise area.

4 Then the evidence which was filed in this proceeding
5 at the last page of the tab shows the correlation between
6 Pearson and Union's franchise areas in the north and the
7 south since, first, 1971 and, second, since 1985. And the
8 simple point there is that you will see that the
9 correlation is extremely high, well over 90 percent in most
10 instances.

11 So, in my submission, this initial complaint by Energy
12 Probe goes nowhere. And I would also observe that the
13 complaint, such as it is, overlooks the fact that the 20-
14 year declining trend is already a feature of Union's
15 approved weather method.

16 The second complaint that's advanced in relation to
17 the 20-year declining trend relates to the use of
18 statistics at all, and this is the complaint that was
19 advanced by BOMA. And I've collected the references to --
20 or the description of that complaint at volume -- sorry, at
21 tab 1 of the compendium, pages 124 to 125.

22 The complaint is essentially this, that if you add up
23 the number of times when the 20-year declining trend was
24 closer to the actual heating degree days than the existing
25 blend, what you find is a "marginal improvement" - and I
26 use that word in quotes, but a marginal number of days in
27 which the 45/55 blend or 55/45 was closer. And you will
28 see that at tab 3.

1 And so what you see is, looking back to 1985, you will
2 see that the number of appearances when the 20-year
3 declining trend was closer is 12 versus the 55/45 blend,
4 being 14. Now, I just want to pause there. If you
5 actually go to J.C-2-2-1b) you will see one other
6 interesting phenomenon, which is that the 30-year trend
7 also has a number of instances, albeit very, very small,
8 where it is closer, which reflects the fact that the 30-
9 year trend just happens to clip the top of extreme weather.

10 And so you really have to add the 30-year and the 20-
11 year to get to understand how the 14 comes about.

12 But more fundamentally, this submission raises the
13 question as to whether it is appropriate to simply count
14 the number of times it is closer to actual. And, in my
15 submission, that proposition should be rejected, and the
16 reason it should be rejected is because of the use of
17 statistics.

18 Not only statistically is the 55/45 blend less
19 significant, as we will come to, because of the incredibly
20 poor statistical results of the 30-year average, but if you
21 look at the total sum of the errors and the root mean
22 square statistics, all of which you can see laid out at C1,
23 tab 5, what you see is that while it happens that the 20-
24 year -- that the 55/45 blend is closer on two occasions,
25 when it misses, it misses by a lot.

26 And so if you picture a dart board, the proposition
27 that appears to be advanced is this. If you throw ten
28 darts and you hit the dart board twice, but miss the board

1 eight times, that is better than hitting the bull's-eye
2 once and the board itself the remaining nine times.

3 And, in my submission, when you think about what the
4 weather method is actually intended to achieve, which is a
5 method that goes through the anticipated forecast weather
6 in a relatively equal way, the 20-year declining trend is
7 obviously the statistically superior result, and that's
8 confirmed not just by J.C-2-2-1, but also by the evidence
9 at C1, tab 5, which I went through at some length in
10 examination in-chief.

11 And, indeed, if you will recall, that is the chart
12 that shows the declining trend going through -- the 20-year
13 declining trend that goes through the midpoint essentially
14 of the line of actual heating degree days, whereas both the
15 30-year average and the 55/45 essentially cut across the
16 top portion of it.

17 I should observe, as well, that there is no
18 statistical argument that was advanced by BOMA, at least
19 speaking to the statistical merit of its approach advanced
20 by BOMA, either in prefiled evidence or even adduced
21 through cross-examination. In other words, no statistician
22 has said this is an appropriate way to look at the problem,
23 and, indeed, that argument wasn't even based on that
24 footing.

25 The third argument that is advanced by parties relates
26 to the statistical accuracy or merit of the 20-year
27 declining trend, and this essentially is the argument
28 advanced by Energy Probe, VECC, Schools and LPMA, and it

1 goes like this.

2 The 20-year declining trend is statistically
3 significant at only the 84.7 percent level and, therefore,
4 it should be rejected in favour of the existing blend or a
5 50/50 weighting. And you see that argument advanced by
6 Energy Probe in the transcript, volume 14, page 31, and by
7 LPMA, transcript volume 15, page 35, and VECC in its
8 argument, as well.

9 In my submission, what the argument essentially asks
10 the Board to ignore is the merit of the existing blend and
11 of the 30-year average on its own, but that information is
12 in evidence, and you will see that at tab 5 of the
13 compendium.

14 And what you can see there is that if this were an
15 appropriate yardstick on which to reject Union's proposal,
16 you would think, at least logically, that the 20-year
17 declining trend would be inferior to the 30-year average or
18 at least inferior to the existing blend. That is not the
19 case.

20 What's collected on tab 5 and what is shown is that
21 the statistical significance of the blend and the 30-year
22 average are both inferior to the 20-year declining trend.
23 In other words, complaints about the 20-year declining
24 trend statistics are not a basis for rejecting something
25 that is demonstrably better than the existing method or the
26 30-year average.

27 And, frankly, the statistics at tab 5 really should
28 come as no surprise, because they're nothing more than the

1 representation of what you see at tab 6, which is where we
2 collected C1, tab 5, pages 3, 5, 6 and 7. And so what you
3 -- or 5 and 6.

4 So what you see there is really a reflection of what
5 is reflected at tab 5, and that's, you know, what we went
6 through in-chief. And visually you see the red line going
7 through -- the chart on page 3 going through the middle
8 with both the black line being the existing blend and the
9 30-year average clipping the top. So you have a situation
10 where the 30-year average is demonstrably the worst, and
11 nobody in argument suggests that it is superior to the 20-
12 year declining trend, nobody. And statistically it's not.

13 Then you have the 55/45 blend which, again, is
14 statistically inferior to the 20-year declining trend, and
15 you see that not just in the statistics at tab 5, but
16 visually at page 3 and, again, looking at the mean percent
17 error and the root mean square error that is set out on
18 page 6.

19 If I can summarize this argument, essentially it is
20 misdirection. I don't mean that pejoratively, but
21 logically that is what has happened -- happening. There is
22 a focus on the alleged weakness of the 20-year trend in an
23 attempt to overlook the weakness and bias which exists in
24 the existing method, which largely comes about as a result
25 of the 30-year average.

26 And, in my submission, that may well be good advocacy,
27 but it is not particularly sound logic and it is not a
28 basis to reject the 20-year declining trend. And the

1 reason why parties are asking for it is obvious. There is,
2 as the evidence shows, an upward bias in the existing
3 method of approximately \$7 million per year. That is what
4 it is, and that's understandable that people would make
5 these arguments. But it is not borne out by the evidence.

6 Now, LPMA for its part tries to buttress its argument
7 by making an adjustment to the 20-year declining trend to
8 introduce a dummy variable in 1998. In Union's submission,
9 the logic of this adjustment is significantly flawed. It
10 is also highly subjective, and, in my submission, is bound
11 to introduce a continuing debate in future proceedings
12 about the weather method, and that's for reasons that I
13 will come to in a minute.

14 Essentially, through the introduction of the dummy
15 variable, LPMA is proposing to account for a step-change in
16 the weather between 1998 and 2000, and it is that
17 assertion, as I say, highly subjective, that the weather
18 changed in 1998 and, from that date forward, is colder than
19 historically has no support, at least in this proceeding,
20 at all.

21 And if you look at the compendium at tab -- I guess
22 where we were, tab 6 first, on page 3 and you look at
23 figure 1, what LPMA has done is it has purported to account
24 for the move between 1998 and 2000 upwards, and it has
25 built that in through a dummy variable as though that were
26 a move in the weather, a structural move in the weather,
27 from warmer to colder.

28 And not only is that inconsistent with the pattern

1 going back to 1985, but you can see just looking at this
2 chart how that creates a good deal of subjectivity as to
3 when and to what extent a dummy variable should be
4 incorporated.

5 And as we know, through the past year, for example,
6 2012 -- I mean, you could pick any year. Between 2003 and
7 2006, you could say a dummy variable ought to have been
8 introduced to account for the fact that it was going from
9 colder to warmer. But we know that that argument could
10 come about almost every year.

11 Graphically, what does LPMA suggest? What does it
12 look like? If you look at tab 7 of the compendium, this is
13 what the LPMA model shows going back to 2001, and we will
14 go through the balance of it, but it also -- we also have
15 it going all the way back to 1992.

16 So what you will see there graphically in Union North
17 is, again, you have the actual heating degree days shown in
18 green. You have in the light -- in dark blue, you have the
19 LPMA with a dummy 20-year declining trend, and what you can
20 see there is the continual increase in heating degree days
21 from 2001 to 2011, and that's because of a structural
22 change that is proposed.

23 You see the existing 20-year declining trend, which
24 continues to go through the actual heating degree days.
25 You see the 30-year average, which is, again, demonstrably
26 the worst, and then you see the 50/50 proposal put forward
27 by LPMA, which, again, is tracking above, well above, the
28 actual heating degree days.

1 And the same if you turn over the page; this is for
2 Union South. And you can see what's happening in Union
3 South, and essentially the results are the same, perhaps
4 even more so.

5 The next page, we've collected the statistics relating
6 to accuracy, symmetry and stability, the various error
7 statistics for the various proposals. And what you will
8 see there on an evaluation of the various components, you
9 see that the 20-year declining trend continues to rank
10 first and above the LPMA dummy variable.

11 That is largely a function of the fact that the
12 mean percent error and the root mean square error are very
13 large on the dummy variable scenario, and that is true both
14 in the north and in the south.

15 And for completeness and so you can see it again, if
16 you turn over the page and you look at the chart, I
17 mentioned before the influence of subjectivity and the big
18 impact it can have. So what you see there is -- again,
19 this goes back to 1992 and you see the actual heating
20 degree days moving around, and you see the 20-year
21 declining trend in black, again, moving through the actual
22 heating degree days.

23 And then you see the impact, in red, of starting the
24 dummy variable in 1998, and that leads, again, as I said --
25 because the assumption is that in 1998 there was a big
26 shift in the weather, but there is no better example of the
27 impact of subjectivity than if you actually start the dummy
28 variable in 1998, 1999, so you conclude that the move in

1 weather was actually in 1999 and 1998, was not
2 representative of a move in weather.

3 What you get is something that looks really close to
4 the 20-year declining trend. So what you will have, in my
5 submission, is fights year over year about whether or not a
6 structural variable should be introduced, removed, or the
7 weighting that should be given to that structural variable.

8 Then at the next page over, you see essentially the
9 same statistics again.

10 To summarize on this point, in Union's submission, the
11 20-year declining trend is demonstrably superior than
12 anything that has been proposed in this proceeding, and it
13 is demonstrably superior to the existing blend or the 30-
14 year average. And on that basis, Union submits that its
15 request to move to the 20-year declining trend,
16 representing, as it does, an improvement in the existing
17 method, should be approved.

18 Now, that brings me to the second broad complaint that
19 is made in relation to the 20-year declining trend, and
20 that is a complaint regarding the number of methods tested
21 by Union in this proceeding. And, in my submission, this
22 argument can be captured in the following: The perfect as
23 the enemy of the good.

24 And by "perfect", I mean the hypothetical perfect,
25 because as we will come to, there is not a shred of
26 evidence in this proceeding to support any hypothetical as
27 to any other model which might be out there.

28 The argument advanced by essentially VECC and Board

1 Staff regarding the number of methods tests by Union really
2 looks at, in this case, compared to 2004 and relative to
3 Enbridge in its, I believe, 2007 case.

4 And as I say, the logic of this position is
5 confounding to me, at least. And you see it really set out
6 at page 5 of Board Staff's submission. I will just read
7 it, but there is a comparable submission made by VECC in
8 its argument at page 12.

9 What Board Staff says is:

10 "In other words, Union has not discussed other
11 methodologies such as the ARIMA, de Bever trend,
12 moving averages, et cetera. Board Staff submit
13 that since Union has not discussed alternative
14 methodologies, the Board does not have sufficient
15 information or the confidence that the 20-year
16 declining trend is the most accurate and
17 appropriate methodology."

18 The argument -- the logic of this argument is this:
19 You don't know if there might exist some other method that
20 nobody put before you and, therefore, you should decline to
21 approve something, i.e., the 20-year declining trend, which
22 has been shown to be better than what Union currently has.
23 That doesn't make any sense at all, and it is not, in my
24 submission, a basis upon which this Board should decline
25 Union's proposal.

26 Indeed, at page 12 of its submission, VECC goes so far
27 as to say: Given available spreadsheet technology, Union
28 ought to have done this.

1 Let's just turn it around. Given available technology
2 and the broad discovery powers that intervenors have, if
3 any of these models parties had wanted to introduce them
4 into evidence, they could have done so. They could have
5 done so by introducing prefiled evidence. They could have
6 done so by asking interrogatories. They could have done so
7 by asking questions in cross-examination. They could have
8 done so by asking questions at the technical conference.
9 Nobody did.

10 They all are raising the spectre of something that
11 might be better in the hopes that you decline something
12 that is demonstrably better than what is proposed.

13 Now, we have included at tab 8 of the compendium the
14 Enbridge decision from July 5, 2007, and the Board in that
15 decision does review a number of various methodologies.
16 The long and short of it, though, is that the Board does
17 approve the 20-year declining trend for Union's -- sorry,
18 for Enbridge's GTA area.

19 And I've included at tab 9 an actual comparison
20 between the 20-year declining trend and each of the methods
21 ultimately approved for Enbridge. And I want to just say
22 this with respect to what's at tab 9. This is the danger -
23 this is the point with tab 9, and I caution you with
24 respect to it, because it is not in evidence, and I'm not
25 suggesting that it be put in evidence. But it does
26 demonstrate this, the danger of making decisions based on
27 the spectre of what could have been in evidence.

28 And, therefore, I'm not suggesting that you rely on

1 it. I don't. But if anybody had ever wanted to do this,
2 this work could have been done. It's not complicated work.
3 And, therefore, when you look at what is actually in
4 evidence and make a decision about what's actually in
5 evidence, the choice is a simple one. The choice is:
6 What's better, the 20-year declining trend, the existing
7 method, or the 30-year average? On the basis of that, the
8 20-year declining trend.

9 There is also the evidence that Union did look at each
10 of these methods in 2004 and rejected them all in favour of
11 the 20-year declining trend, and the evidence that there
12 was no reason to believe that the 20-year declining trend
13 is anything but better today as it was in 2004.

14 MS. TAYLOR: Mr. Smith, if I may ask a question? You
15 said that you're not proposing to put this table into
16 evidence. In fact, you filed it as part of your
17 compendium. It is now part of the evidence, is it not?

18 MR. SMITH: Well, that's why I specifically refer to
19 it because, in my submission, it happens all the time, and
20 incorrectly. I think that parties all the time do this.

21 And I have tried to be consistent in my approach to
22 this throughout this proceeding, but parties all the time
23 put things into compendiums that are never put to
24 witnesses, not otherwise proven, get an exhibit number, and
25 then rely on it.

26 I'm specifically adverting to the fact, and I'm
27 specifically cautioning as to the use of it. If you want
28 to take it out, I'm indifferent as to it. But I do simply

1 want to make the observation that I think the Board needs
2 to ground its decisions on what is actually in evidence,
3 and not -- not spectre as to what could have been in
4 evidence.

5 MS. HARE: But, Mr. Smith, just to be complete, you
6 also say that in 2004 Union looked at a number of options
7 and rejected all of them except for the 20-year trend, but
8 the Board didn't accept that.

9 MR. SMITH: The Board did not accept that, but the
10 Board did not -- two observations about that.

11 The Board said, Continue to look at the 30-year
12 average and the 20-year declining trend.

13 Union has done that in this proceeding, and that's why
14 Union's evidence, in this proceeding, is focussed on the
15 30-year average and the 20-year declining trend and
16 demonstrating the superiority of the 20-year declining
17 trend.

18 The distraction is the suggestion that Union ought to
19 look at other methods, which even the Board in 2004 did not
20 impose as part of the existing method.

21 And so suggestions about the de Bever method or the
22 ARIMA method, none of which were approved by the Board, are
23 just that. They're distractions. The focus of the Board
24 in 2004 was on the 30-year average and the 20-year
25 declining trend.

26 That's been the focus -- that's why you had an
27 existing -- a blend that was imposed, and what's reflected
28 in the Board's decision in 2004 and what's been continued

1 is a step-change in the amount of the blend.

2 So you get from 70 to 65 to 60, to the existing 55,
3 which was ultimately agreed to as part of the 2007 -- 2007-
4 0606 case.

5 But that was the focus of the Board in 2004, and, in
6 my submission, it should be the focus today, because that's
7 what is before you.

8 So there is evidence. I mean, there is evidence from
9 Mr. Gardiner that says, I didn't redo the work that I had
10 done in 2004. Fair enough. I don't see any reason why he
11 would have redone the work, because the 20-year declining
12 trend was shown to be better at that time.

13 And then he was asked, and confirmed -- he didn't see
14 any reason, based on the information he had, why any of
15 those other methods that had already been rejected and are
16 not part of the blend would be a focus of consideration
17 this go around.

18 And, in my submission, they should not be a focus for
19 the Board, because none of them are in evidence. Any of
20 them could have been put by parties if they had wanted to.
21 So there is no reason for the Board, sitting here today,
22 based on the evidentiary record, to believe that they're
23 any better.

24 MS. TAYLOR: So just let me summarize, because I want
25 to make sure I understand this.

26 So the nature of your application this go round has
27 been shaped by a decision and order of the Board in 2004
28 that suggested the methodologies that Union should focus

1 on, for the future, were those that you filed in this
2 application; is that correct?

3 MR. SMITH: Well --

4 MS. TAYLOR: And that it was incumbent upon parties to
5 file analysis of alternative methods if they were to have
6 been introduced? Do I have that correct?

7 MR. SMITH: Yes and no.

8 Certainly Union focussed on the 20-year declining
9 trend and the existing 30-year average and the blend,
10 because that's what the Board has already approved for
11 Union.

12 And certainly Union looked at those, because that's
13 what came out of the 20-year -- that's what came out of the
14 2004 case and that is what Union has been operating under.

15 But I disagree with the second characterization of the
16 argument, and it's perhaps -- well, it is my fault, but let
17 me turn it around.

18 It's not incumbent on parties to do anything. It's
19 not incumbent on intervenors to have introduced a different
20 weather method. Ultimately, the burden of establishing a
21 new weather method is Union's, and I accept that.

22 But, in my submission, there is a difference -- and
23 this goes to the logic of the opposition. There is a
24 difference between discharging a burden to establish an
25 improvement in the weather method and discharging a burden
26 that the method proposed is perfect or better.

27 And I say that for this reason. The evidence that the
28 Board has -- and it's the evidence on which the Board

1 should make its decisions, and I say that is universally
2 true on every matter that the Board has before it. The
3 evidence is that the 20-year declining trend is better. On
4 that basis, the Board should approve Union's proposal.

5 If parties thought that Union had not shown an
6 improvement or that there was something other than the 20-
7 year declining trend, then they could have introduced that.

8 My observation is nobody chose to do that. They
9 didn't have to, but nobody chose to do that. And the Board
10 should decline the invitation made by intervenors of
11 rejecting the 20-year declining trend on the theory that
12 there might be something better, which is not in evidence.
13 That's the proposition. I hope that's been made clear.

14 MS. TAYLOR: Thank you.

15 MR. SMITH: And you can really see it, because the
16 fallback position or the proposition that is being advanced
17 is not the discontinuation of the existing method in favour
18 of something else. What's being sought is the rejection of
19 Union's proposal in favour of a method which is
20 demonstrably worse than the 20-year declining trend, which
21 is not logically consistent.

22 MS. TAYLOR: Just to be clear with respect to this
23 page under tab 9, it hasn't been introduced into evidence
24 formally. It has not been subject to cross-examination,
25 and when you cautioned us, you are in effect saying that we
26 have the option of giving no weight to it. Do I understand
27 that correctly?

28 MR. SMITH: You absolutely have that weight. And in

1 the same basis, you have the same -- and should consider it
2 in the same vein that you consider VECC's argument or Board
3 Staff's argument.

4 VECC, for example, describes the different ARIMA and
5 de Bever methodologies and cites to a textbook. None of
6 that was put to anybody in cross-examination. In my
7 submission, it is entirely inappropriate.

8 But if the Board is prepared to accept that, in my
9 submission, it should look at tab 9. If it's not, it
10 should be consistent and take the position that none of
11 these other methods, what they look at, how statistically
12 rigorous they are, what they would involve, I have no idea,
13 but none of it was put to anybody in cross-examination.

14 If parties wanted to do that, they could have done it,
15 and I don't think it is appropriate to back-door it through
16 argument. And I'm not holding myself to a different
17 standard on that.

18 MS. TAYLOR: Thank you.

19 MR. SMITH: One final observation about Board Staff's
20 argument on this. Board Staff comes at the argument, in
21 part, by focussing on the volatility in the NAC
22 calculation, and, in my submission, this is a sort of
23 indirect and ultimately incorrect way to look at it.

24 If you're going to focus on the merits of the weather
25 method, you should focus on the weather method. Focussing
26 on the NAC, which has as a component weather, is ultimately
27 a sub-optimal way to do that. In my submission, what
28 should be preferred is the actual analysis of the weather

1 method, which brings me ultimately to the second -- well,
2 before I get there, suffice it to say, and I suppose I
3 have, that in Union's submission it has established that
4 the 20-year declining trend is superior. That is the
5 evidence that's in the record and, on that basis, the 20-
6 year declining trend should be approved by the Board.

7 The second main area of focus is on the normalized
8 average consumption forecast, and I went over this at some
9 length and the calculation of that in my argument in-chief,
10 and I don't propose to revisit it.

11 The simple proposition advanced in argument in-chief,
12 and which was not challenged in reply, is that the NAC
13 calculations for the various residential, commercial and
14 industrial components of the general service market are
15 checked for specification every year; that, where
16 appropriate, they have been respecified; and that the
17 results are statistically significant at the 95 percent
18 level.

19 None of that was challenged by parties in their
20 arguments. In effect, what they did was abandon the very
21 arguments based on statistics that they advanced in
22 weather, and, on NAC, said simply, as LPMA put it, the
23 numbers just can't be right.

24 And, in my submission, that is not an argument that
25 should find favour with this Board. It is not grounded in
26 the statistics. The Board has approved Union's NAC
27 forecast methodology for many years, and it should do so in
28 this proceeding.

1 I would say that if the Board has any concerns with
2 respect to the NAC forecast, there is an appropriate --
3 there is a possible alternative. It's not the preferred
4 alternative, but it is a possible alternative, and that is
5 to maintain and use the average use deferral account which
6 was in place during IRM.

7 Now, I say it is not the preferred approach because,
8 generally speaking, an average use deferral account is
9 consistent with IRM and not with a cost of service
10 application. But the Board could remove any dispute about
11 the NAC forecast by using an average use deferral account.

12 The appropriate thing to do in that circumstance would
13 be to embed Union's NAC forecast and apply an average use
14 deferral account thereafter.

15 The next broad area under general service in-franchise
16 revenues I want to tackle is the customer attachment
17 forecast. There was -- well, LPMA alone in this area
18 argues that Union's forecast of customer attachments should
19 be increased by 4,000 for each of 2012 and 2013, and then
20 that has a knock-on effect on in-franchise forecast
21 revenues for 2013.

22 There was only one question in cross-examination
23 relevant to this topic. It was asked by LPMA, and, in my
24 submission, the answer to the question is all of the basis
25 this Board needs to reject the proposition.

26 The question was asked how total billed customers in
27 2012 is comparing relative to forecast. And the answer was
28 Union is behind its forecast. And I can give you the cite

1 for that. It is at the compendium, tab 13, which is the
2 transcript from July 10, 2012, page 59. And in the middle
3 of the page, what you will see is that through June 2012
4 the forecast -- at line 16, the bridge estimate for June
5 2012 is 1,366,705, and there is a difference of 399.

6 Now, it's a small difference admittedly, but it's a
7 negative variance and, in my submission, there is no basis
8 on this evidence to increase Union's forecast for either
9 2012 or 2013. And, indeed, Mr. Gardiner is then asked to
10 explain whether or not the volume forecast or the number of
11 customers is more accurate, and he says the number of
12 customers is the best estimate, and that, again, is
13 trending down.

14 So on the subject of customer attachments, in my
15 submission, the proposition that there should be an
16 adjustment should be rejected.

17 And I would make the observation here that LPMA's
18 position, as we will come to here, is decidedly contrary to
19 the position they advance when it comes to revenues on the
20 ex-franchise side, because, on the ex-franchise side, what
21 LPMA says in a number of instances is, if you look at 2012
22 six-year actuals, they're trending above or below actuals,
23 so you should make an adjustment.

24 And, in my submission, that is exactly what this
25 evidence is getting at, and it supports a conclusion that
26 no adjustment should be made.

27 MS. HARE: Just two questions on that.

28 There was a discussion about the Red Lake customers,

1 and I think there were 800 that were not included. You are
2 not proposing to adjust your customer forecast even for
3 those customers?

4 MR. SMITH: Well, I guess this raises a fundamental
5 question, which is 800 customers is, by any yardstick, a de
6 minimus number and not a material amount.

7 Union could make the adjustment if the Board were
8 obviously -- or if the Board ordered it to do so. But I
9 guess it raises the question, which is really one for the
10 Board, but there will always be instances -- and we will
11 come to them, but there will always be instances where
12 there are changes, positive and negative, subsequent to the
13 filing. And the Board has taken, I believe, a relatively
14 sensible approach to that, and that is to impose a
15 materiality threshold.

16 Red Lake wouldn't hit that threshold.

17 MS. HARE: I just wanted to understand your position.
18 The other - and I will look at the transcript - you said
19 LPMA alone argue argues about the customer.

20 There are a number of areas where other intervenors
21 said they're not commenting because they adopt LPMA. Is
22 this in that category?

23 MR. SMITH: Yes. And I don't depart from that. I
24 mean, there are certainly a number of parties who took the
25 position that they adopt LPMA's submissions on this
26 category -- sorry, on a variety of different areas. I'm
27 sure this is one of them.

28 So this was LPMA's submission. Others adopted it.

1 MS. HARE: Okay.

2 MR. SMITH: It doesn't change the analysis. Nobody
3 else got into it at all.

4 MS. HARE: Okay, thank you.

5 MR. SMITH: The next area of in-franchise revenues I
6 want to touch on is the contract market. And here, again,
7 I just want to make two brief submissions, because I dealt
8 with it at some length in argument in-chief.

9 But the main thrust of the criticism appears to be
10 that Union put inappropriate weight on information that it
11 receives from customers as to their forecast operations.

12 You heard from me previously that I don't accept that
13 submission, because obviously customers are the people who
14 know their business, in my submission, the best, but this
15 isn't a new proposition. And, in fact, I have set out at
16 tab 14 the decision with reasons in Union's 2004 rate case.

17 And what you will see at page 61 of that decision,
18 page 2, that I have excerpted at the tab:

19 "The Board believes that the contract class
20 forecast should incorporate the input of the
21 customers in the belief that the contract
22 customers possess some relevant information that
23 Union may not have access to."

24 And, in my submission, that logic holds, continues to
25 hold true today. Customers ultimately have to contract for
26 their service and have a decided financial incentive to
27 contract sensibly, and they also have a decided
28 informational advantage.

1 Just touching briefly on the topic of overrun, Union
2 relies on its forecast of overrun, which a number of
3 parties criticized. And I would just simply make the
4 submission that to the extent parties premised their
5 submission on the basis that Union had not forecast any
6 amount of overrun in 2013, that submission is incorrect.
7 Union has actually forecast, and included in revenues,
8 overrun of approximately \$600,000, and that, again, comes
9 back to information from its customers.

10 That concludes my submissions with respect to in-
11 franchise revenues, and, for all of the reasons I
12 indicated, Union submits that its forecast of in-franchise
13 revenues should be approved as filed, which brings me to
14 the next topic, and that is ex-franchise revenues.

15 I propose to break those up into essentially two broad
16 components, non-exchange-related revenues and exchange-
17 related revenues.

18 Just so I have it, I imagine your goal is to take
19 scheduled -- take a break around 11 o'clock? Okay. I just
20 want to make sure.

21 MS. HARE: Whenever that fits in terms of your
22 submissions.

23 MR. SMITH: I think it will probably fit after we talk
24 about non-exchange-related revenue, but we will see.

25 MS. HARE: Okay.

26 MR. SMITH: So the forecast of non-exchange-related
27 revenue can be found at Exhibit C1, tab 3, and that
28 forecast is essentially broken up into two categories.

1 The first is the long-term transportation forecast,
2 and that's made up of the various M12-related revenues and
3 C1-related revenues; and, two, the short-term
4 transportation-, storage- and balancing-related revenues.

5 Now, this is another area, Madam Chair, where parties
6 did not make submissions, but did adopt LPMA's, with the
7 exception of CME, which commented on the long-term
8 transportation forecast. And, in my submission, broadly
9 speaking, the adjustments that are sought should be
10 rejected by the Board.

11 The first relates to C1 long-term transportation. At
12 page 49 of volume 15 of the transcript, LPMA indicates that
13 the C1 long-term transportation revenue forecast should be
14 \$400,000 higher due to the 2012 year to date versus 2012
15 forecast.

16 And the response to this, in a nutshell, is this. As
17 reflected in the evidence, the services which were -- in
18 2012 which were forecast as C1 -- sorry, services were
19 forecast as C1 short-term, but they were sold as C1 long-
20 term. That explains why there is an increase in the C1
21 long-term transportation forecast, but a decrease in the C1
22 short-term transportation forecast.

23 And, in my submission, this is a good example of a
24 selective adjustment, because if you look at Exhibit J6.3,
25 which can be found at tab 1 of the ex-franchise revenue
26 forecast, what LPMA said at page 50 was that it accepts the
27 short-term forecast as stated in the evidence.

28 In my submission, I mean, if you look at lines 3 and

1 4, what LPMA is proposing is to make an adjustment for the
2 \$252,000 positive variance at line 3 and ask the Board to
3 overlook the \$450,000 negative variance in the line
4 immediately under that.

5 The other explanation that is set out in the evidence
6 with respect to the C1 long-term is that Dawn to Parkway
7 revenues are offset by the negative variance in the M12
8 account. Essentially, Union forecasted the capacity to be
9 sold as M12, but it was sold as C1. And with respect to
10 Ojibway to Dawn, revenues are offset by the negative
11 variance in the short-term transportation account.
12 Essentially, Union forecast that more capacity would be
13 sold as short-term firm rather than C1 long-term.

14 So there is a bit of switching going on, but, overall,
15 in my submission, the forecast is a reasonable one.

16 I believe it was CME that proposed that the M12
17 transportation forecast should be rejected in favour of
18 2011 in actuals. And, in my submission, there isn't
19 anything in that, and it ignores the explanation, which
20 other parties appear to accept, as to what has happened
21 with the M12 transportation revenues, and, in particular,
22 what's happened in relation to turnback.

23 And I don't propose to go over this, but you will
24 recall from the evidence in-chief that Union has had
25 substantial turnback on the Dawn Parkway and Dawn Kirkwall
26 system, which it has been unable to sell for 2013, and that
27 leads to a decrease in long-term transportation revenues.

28 Looking at the short-term storage revenue forecast at

1 pages 52 and 53 of its submission, LPMA submits that the
2 2013 forecast should be higher as a result of the 2012 year
3 to date versus 2012 forecast numbers, and you will see that
4 down at line 12.

5 What's missing, however, from that submission is the
6 following. The 2012 forecast, when it was prepared, was
7 based upon a storage price, an assumed storage price, of 55
8 cents per gJ. The actual price -- the average actual price
9 was 84 cents per gJ, which results in the positive
10 variance. But - and this is what's missing - the 2013
11 forecast -- looking at the evidence that I described before
12 at Exhibit C1, tab 3, the 2013 forecast price is 85 cents
13 per gJ, which is obviously higher than the 2012 price that
14 was forecast, but very close to the actual price in 2012.
15 And, in fact, the current price is only 60 cents per gJ.

16 So, in my submission, when you look at the actual
17 evidence, there is no basis on which, on the evidentiary
18 record, you could increase the short-term forecast. And,
19 indeed, there's a pretty good argument it should be
20 decreased. We're not proposing that. But, if anything,
21 applying the logic, it would be decreased.

22 So, in my submission, properly understood, and once
23 you understand the forecast prices, the explanation is
24 entirely understandable and there is no basis to change.

25 The final point I would like to make is with respect
26 to other revenue, and I just want to be clear about this.
27 I am addressing this at this point because this is when --
28 it was in this part of his argument that Mr. Aiken referred

1 to other revenue, but the "other revenue" that he's talking
2 about -- the other revenue that he was talking about is in-
3 franchise revenue. So I might perhaps have addressed it in
4 in-franchise, but I am just taking Mr. Aiken's arguments as
5 they were raised.

6 At page 58 of volume 15, LPMA indicated that it
7 accepted Union's 2013 forecast for other revenue. And that
8 forecast, so you have the evidentiary reference, can be
9 found at Exhibit C1, tab 4. And in C1, tab 4, the forecast
10 is \$23.132 million, and you will see that on page 1 of 2 on
11 line 5.

12 And this was Ms. Newbury's evidence, and I make this
13 point because it is the danger of cherry-picking
14 adjustments that are in favour of ratepayers, on the one
15 hand, where there is positive variances, and ignoring
16 variances which are negative and not proposing or simply
17 accepting Union's forecast.

18 And so what you have at the compendium is -- I believe
19 you should have page 143 behind tab 16 of the in-franchise
20 portion of the compendium. So it should be the last tab,
21 and I hope you have volume 2, July 12th. And you will see
22 that, Madam Chair, you asked Ms. Newbury at the end how the
23 other revenue forecast was tracking year to date. And you
24 will see her answer was that Union is currently below
25 budget by a full \$1.6 million.

26 Now, this would be a material amount and would warrant
27 an adjustment. But, in my submission, an adjustment
28 shouldn't be made here and it shouldn't be made elsewhere

1 on the logic put forward by LPMA, and it simply reflects
2 that when you take the forecast as a whole, in my
3 submission, there are puts and takes. But on the whole,
4 the forecast of ex-franchise revenues for long-term
5 transportation and storage is reasonable on the whole, and,
6 yes, there are puts and takes within that.

7 We're not proposing adjustments, and, in my
8 submission, an analysis that focusses on one side of the
9 ledger and not another should be rejected.

10 That brings me to the end of my submissions with
11 respect to non-exchange-related revenues. The next portion
12 of my submissions may be a bit lengthy, so it may be an
13 appropriate time to take a break.

14 MS. HARE: We will break, then, until 11:15.

15 MR. SMITH: Thank you.

16 --- Recess taken at 10:52 a.m.

17 --- On resuming at 11:21 a.m.

18 MS. HARE: Please be seated. Mr. Smith, just to let
19 you know in terms of our timing, we do have to break at
20 12:30 -- well, maybe a couple of minutes before 12:30 for
21 another meeting, and then we can resume at 1:45.

22 MR. SMITH: Okay, perfect.

23 MS. HARE: Okay.

24 MR. SMITH: This brings me in this afternoon's program
25 to the exchange forecast, and obviously the dominant issue
26 being FT RAM.

27 I just want to start again by clarifying what this
28 case is about and what it's not about. And as the Board

1 will know, in EB-2011-0087, the Board issued its Procedural
2 Order No. 3, and in that procedural order the Board very
3 clearly, in my submission, indicated that this proceeding,
4 this rebasing proceeding, is about 2013 and how should we
5 treat or how should, more appropriately, the Board treat
6 exchange revenues going forward.

7 It is not concerned with the past treatment of those
8 items. A number of parties, Energy Probe, BOMA and CME
9 chiefly amongst them, submitted that the Board should make
10 adjustments in this proceeding to account for the past
11 treatment of FT-related exchanges. Energy Probe went so
12 far as to say at page 46 of volume 14:

13 "The big issue is whether ratepayers are due a
14 rebate from the net transportation
15 optimization..."

16 And, in my submission, not only is that not a big
17 issue, it should not be an issue at all in this proceeding.
18 I disagree -- Union disagrees with it on its merits, in any
19 event.

20 The only relevant issue in Union's submission is
21 whether exchange-related revenue, be it FT RAM or
22 otherwise, should continue to be treated as exchange
23 revenue, or whether it should be treated as a gas cost
24 reduction.

25 In my submission, this would be a new, never-before
26 treatment for these revenues by the Board going forward,
27 and it is not Union's proposal.

28 I would say, on this issue, that there is not

1 unanimity amongst the Board Staff and ratepayers on this
2 issue. And what I mean by that is Board Staff takes the
3 position in its argument that all S&T-related exchange
4 activity should be treated as a gas cost offset subject to
5 incentive, and they propose 90/10.

6 Others maintain a distinction between RAM-related
7 exchanges and base exchanges, the latter of which they say
8 should be a gas cost reduction -- sorry, the former of
9 which they say should be a gas cost reduction, the latter
10 of which they say the regulatory treatment should continue.

11 In Union's submission, there is no distinction, in
12 that fundamentally an exchange is an exchange, and the
13 treatment of this issue going forward should be consistent
14 with the treatment that the Board has accorded this issue
15 going back to at least the early 1990s.

16 And I will conclude my submissions, I hope, by
17 addressing -- or I will conclude them this way, I hope, by
18 addressing and providing you with a specific framework as
19 to how it should be dealt with in 2013 and address the
20 comments by Member Taylor with respect to a principled
21 approach going forward.

22 In Union's submission, there is no reason to depart
23 from the well-established regulatory treatment of
24 exchanges. That is to say that they have been, and should
25 continue to be, regulated revenues sold by Union pursuant
26 to the C1 rate schedule, subject to a forecast, and if the
27 Board determines or the parties agree, as they did in the
28 context of IRM, subject to a deferral account, and

1 historically that deferral account has been 75/25,
2 symmetrical. And, in my submission, that treatment should
3 continue.

4 I want to start by laying out a few foundational
5 principles, and this will really form the structure or the
6 backbone of the argument.

7 First, all exchanges make use of regulated assets.
8 Union can effect exchange transactions because of the
9 regulated assets it holds, be it the Dawn-Parkway system or
10 its upstream transportation portfolio. And I make this
11 observation because there is nothing unique or novel about
12 this fact, and there is nothing in IRM that changed this
13 underlying fact.

14 Exchange revenues were not unregulated. They have
15 never been unregulated. The only difference in the
16 treatment during IRM was that those revenues were not
17 subject to deferral, but they did form part of the utility
18 earnings calculation, and they were subject to earnings
19 sharing at whatever level happened to have been agreed upon
20 or -- and hit in any particular year.

21 I make the observation because, in its argument at
22 page 17, Board Staff says that Union is using capacity,
23 i.e., regulated assets, to generate revenues for its own
24 benefit.

25 And I make two comments in relation to that. The
26 first is the second -- the first part of the sentence is
27 universally true and it has always been the case, and this
28 is what I've just said. There is nothing new about the

1 fact that exchanges have made use of regulated assets.
2 They always have. That doesn't justify a new, different
3 regulatory treatment.

4 The second is the suggestion that Union is using it to
5 generate revenues for its own benefit is wrong, and it is
6 wrong in this respect. Revenues from an exchange --
7 forecast revenues from exchanges in a rebasing proceeding
8 are forecast. They are regulated revenues and they're
9 included to reduce in-franchise rates. They go directly to
10 ratepayers' benefits -- to ratepayer benefit.

11 And, indeed, if you had a situation, a rebasing
12 proceeding, where you had a perfect forecast and you hit
13 the forecast perfectly, every single dollar would be going
14 to ratepayers' benefit.

15 So, in my submission, that misunderstands the
16 regulatory treatment that has been in place for many, many
17 years.

18 The second proposition is that Union has engaged in
19 exchange transactions since at least the early 1990s -- and
20 I don't propose to go over that in further detail, but you
21 have evidence in relation to that, both cross-examination
22 evidence and Board decisions which deal with this topic,
23 and they can be found in our argument in-chief compendium.

24 And by way of reference, the cross-examination can be
25 found at our argument in-chief compendium tab 14, which is
26 volume 6 of the transcript, at page 78.

27 What you see there is that beginning as far back as
28 the 493/494 case and earlier, Union included a forecast of

1 exchange-related revenues in its ex-franchise revenue
2 forecast and that, essentially, since the late 1990s, the
3 sharing associated with those revenues has been relatively
4 stable at the 75/25 level that I indicated before.

5 Since the early 1990s and with the exception -- this
6 is the third proposition -- and with the exception of the
7 period of IRM, exchange-related revenues were treated as
8 regulated revenues subject to deferral, and I would give
9 you the same evidentiary cite.

10 The fourth proposition is: What is an exchange? And
11 in my submission, this, too, has not changed since the
12 early 1990s, and you have evidence on this in a number of
13 different places, but perhaps the most convenient place is
14 in the answer to an interrogatory given in the 2003-0063
15 proceeding, which was an interrogatory J20.10, and that can
16 be found in the CME compendium that was filed in argument.

17 I hope that, members of the Board, you have that.

18 MS. HARE: We do. Where are you taking us to?

19 MR. SMITH: It is -- just by way of reference, it is
20 at tab 13 of that transcript -- sorry, tab 13 of that
21 binder, I believe.

22 Oh, I'm sorry, it's at tab 9. My apologies, tab 9.
23 And that is Exhibit J20.10.

24 This describes essentially what is an exchange, and
25 it's the first part:

26 "An exchange is a contractual agreement where
27 party 'A' agrees to give physical gas to party
28 'B' at one location and party 'B' agrees to give

1 physical gas to party 'A' at another location.
2 Either party 'A' or party 'B' may agree to pay
3 the other party for this service. An exchange
4 can only happen between a point on Union's system
5 and a point off of Union's system. The exchange
6 must also happen on the same day at the same
7 time."

8 And that definition has remained stable, and Mr.
9 Isherwood testified to that again in volume 6 at page 78
10 and elsewhere in his cross-examination.

11 Now, included at tab 8 of the CME compendium are
12 excerpts from the 2003-0063 proceeding, again, the same
13 proceeding we were just looking at. And as described in
14 that evidence and, in particular, at page 6 of that
15 evidence, exchanges and optimization generally represent
16 market-based opportunities which are not guaranteed to be
17 available on a future planned basis.

18 And there was some attempt, which I will come to
19 later, at trying to circumscribe the breadth of what has
20 been captured by an exchange historically. And, in my
21 submission, on any fair reading of this evidence, there is
22 no basis to circumscribe it.

23 But, in particular, if you look at the evidence at
24 page -- at the third paragraph, at line 14:

25 "The actual assets available for S&T
26 transactional service will change on an ongoing
27 basis, dependent upon actual weather and market
28 factors, including the amount of direct purchase

1 switching, T-service switching, in-franchise
2 growth, changes in customer use, market prices
3 and customer demand for S&T services."

4 And in my submission, all of those are things,
5 including customer demand for S&T services, which have
6 historically impacted the S&T activity undertaken by Union.
7 And those, of course, all can sort of broadly speaking be
8 categorized as market-based factors.

9 And what that comes down to is that while Union may
10 forecast a certain level of exchange activity, as it has
11 done in this case and historically, when and what the
12 precise opportunities will be are not known. They're not
13 planned, and they are not and have never been a feature of
14 the gas supply plan.

15 They are, in this sense, consequential and not
16 planned, even though Union forecast a certain level of
17 activity. And while you have page 6 there, one of the
18 things that I think -- we will come to this, but one of the
19 things that is germane is on line 9. There is a reference
20 to certain TCPL services, FT makeup and AOS that were
21 approved and in place for 2002 and only provided
22 transactional revenue opportunities in 2002 and no longer
23 available.

24 So, in my submission, it has always been the case that
25 the volume of exchange activity or the specific features of
26 exchange activities have depended, in part, upon the
27 various services that other parties, specifically TCPL,
28 have made available. And, indeed, FT makeup is really

1 nothing more than an early precursor to FT RAM.

2 But it has always been the case that whether you
3 called them attributes of FT or other services offered by
4 TCPL, that exchanges that take advantage of those services
5 have been captured as exchange-related revenue. So there
6 is no basis on which to draw some distinction on the basis
7 of whether or not something is an attribute of the TCPL
8 tariff, whatever that might mean.

9 The next proposition is that exchanges are not and
10 have never been a pass-through item. The gas supply
11 deferral account and the S&T deferral account, 179-69 and
12 the other S&T deferral accounts which are less relevant to
13 this, have existed in parallel for years.

14 And that is significant for this reason. It reflects
15 the fact that, from a regulatory perspective, toll changes
16 - so actual dollar toll changes - implemented by TCPL and
17 commodity changes have been treated differently from a
18 regulatory perspective than exchange-related revenue.

19 The changes captured in the gas supply deferral
20 accounts were treated differently; that is, that they were
21 treated as a pass-through, whereas exchanges and other S&T-
22 related activities, which makes use of regulated assets,
23 admittedly, were treated as forecast revenues subject to
24 deferral.

25 And, in my submission, it is extremely important that
26 the Board appreciate the distinction between the two
27 different regulatory treatments. And I say that because
28 they are, and the accounting orders are, the best evidence

1 of the regulatory arrangements that have been in place
2 since the early 1990s. They breathe life, in my
3 submission, into the principles, and it's easy enough to
4 say gas costs are a pass-through, exchanges are not, but
5 the rubber hits the road - and the understanding is
6 clarified, in my submission, when you look at the specific
7 accounting orders and you understand the relationship
8 between them, and those are -- understand the relationship
9 between the gas supply deferral accounts, essentially the
10 PGVA in the south, the PGVA in the north, and the north
11 tolls deferral account.

12 And you have, collected in the CME compendium, the
13 deferral accounts, and so what you have at tab 51 of the
14 compendium are the various gas supply deferral accounts,
15 and what you have at tab 14 is the exchange- or S&T-related
16 deferral accounts.

17 And what you see when you look at those deferral
18 accounts, starting with the gas supply deferral accounts,
19 and you look at -- the best place to look is really the
20 PGVA in the north. If you look at the north PGVA deferral
21 account -- it is account 179-105, and whether you want to
22 turn it up or not, I'm not sure it is necessary.

23 But the north PGVA captures the difference in
24 commodity cost. That account works in tandem with account
25 179-100, which is the TCPL tolls and fuel deferral account.
26 That account captures actual dollar changes in TCPL tolls.

27 By comparison, account 179-69 doesn't pick up either
28 of those. It picks up revenues related to the sale of C1

1 regulated services, regulated exchanges.

2 And so, in my submission, it is important that the
3 Board look at those accounting orders and understand those
4 accounting orders, which have been in place for years. I
5 mean, these are not new. These are accounting orders that
6 were in place long before IRM was in place.

7 The next proposition is that in 2007 parties agreed to
8 close 179-69, with the effect that exchange activities were
9 no longer deferred. And Mr. Thompson reviewed some of this
10 history with you. I don't propose to re-review what he has
11 already covered off, but, in my submission, it was
12 incomplete at least as it relates to the EB-2009-0101
13 proceeding, which, in my submission, was significant.

14 So if you start -- and I will try and move through
15 this quickly, but if you take a look at Union's evidence in
16 EB-2007-0606, which can be found at - let me just pull it
17 up - tab 20. I'm sorry.

18 MS. HARE: Of your compendium?

19 MR. SMITH: Of CME's compendium, at tab 18. I
20 apologize for this, but this was an area -- there is so
21 much material in here, that it didn't make sense to me to
22 copy it again.

23 MS. HARE: No, that's fine.

24 MR. SMITH: And you have at tab 18 Union's prefiled
25 evidence in 0606. If you turn to page 11 of that evidence
26 - it's about four or five pages in - this sets out the
27 history, at least up to that point, in a nutshell, that
28 Union had proposed in its 2007 rebasing and in the NGEIR

1 proceeding, which were essentially running at the -- not
2 quite the same time, but pretty much the same time.

3 Union had requested that five S&T deferral accounts -
4 and then those are all listed - be eliminated. What Union
5 had said in its 2007 rate case was that it agreed with the
6 Board's direction - and this is the Board's direction in
7 the Natural Gas Forum Report - that in a true IRM framework
8 there should be no earnings sharing, and transactional
9 services revenues should not receive special treatment.
10 That's what the Board had said.

11 Union further indicated that it believed that the
12 elimination of the deferral accounts was consistent with
13 the Board's direction and concern regarding the
14 proliferation - if I could paraphrase - the proliferation
15 of deferral accounts during an IRM framework.

16 If you move forward to tab 20 of the compendium, you
17 have the parties -- let me just ask you to make a note of
18 this. We don't need to go back to it, but at tab 18, page
19 37, Union had equally indicated in its evidence that it
20 proposed to continue the existence of the gas supply-
21 related deferral account.

22 So, in my submission, it was obviously well understood
23 by everybody what Union's position was. The gas supply
24 deferral accounts, which I have taken you to and which can
25 be found at tab 51, would be continued. The exchange
26 revenue deferral account would be closed.

27 That brings us to the settlement, and that's at tab
28 20. And then you have in the very first page items that

1 will be treated as Y factors, i.e., as a pass-through or
2 upstream gas costs and upstream transportation.

3 That is obviously a reference back to the gas cost
4 deferral accounts and the transportation-related deferral
5 accounts, which can be found at tab 51 and which were
6 discussed in Union's pre-filed evidence.

7 Over the next page, though, you see the listing of the
8 deferral accounts that were closed, and the only one that's
9 particularly germane -- well, I shouldn't say that.
10 There's a focus on this proceeding on 179-69. That's the
11 most important deferral account, but each of these deferral
12 accounts did track S&T-related deferral accounts, although
13 the amounts in them were smaller.

14 Set out below that is the listing of parties who
15 agreed with the settlement of this issue, and there was a
16 broad range of support from a broad range of different
17 constituencies for this arrangement.

18 And if you turn over a few pages to page 33, there is
19 reflected at page 33, line 1, the increase in S&T revenue
20 margin, and that was a margin increase of 4.3.

21 Now, sometimes with settlements it is hard to
22 attribute any particular adjustment as a quid pro quo, but
23 in this case the parties helpfully did that, and there is
24 no question that the closure of the deferral account was
25 the quid pro quo for the increase in the amount of the
26 forecast.

27 And you can see that as the star. It says:

28 "This adjustment has been made to reflect the

1 elimination of certain S&T revenue deferral
2 accounts described in 5.1 above..."

3 And that is exactly where we looked at before. "The
4 parties agree", and this goes back to the point before
5 about in-franchise customers receiving the benefit of S&T
6 transactions:

7 "The parties agree that 100 percent of this
8 amount will be allocated to in-franchise
9 customers as described in Exhibit D1, tab 1, page
10 7 of Union's evidence."

11 Now, in its argument, CME says there's no reference
12 here to FT RAM, no reference to the settlement -- no
13 reference in the settlement, no reference in the pre-filed
14 evidence. And, in my submission, that is a complete red
15 herring. There is no reference to any service, be it FT
16 makeup, AOS, DOS MN, FT RAM or anything, in the settlement
17 agreement, nor would you expect there to be.

18 MS. HARE: I'm sorry to interrupt. Can you just
19 remind me? This was an increase of 4.3. What was the
20 amount already included?

21 MR. SMITH: Why don't I get that for you at the break?

22 MS. HARE: So that we then have the total amount.
23 Thank you.

24 MR. SMITH: I'm advised it is 2.6.

25 I do want to make a brief comment about that, though,
26 and that is this. There is perhaps a tendency to look at
27 what was forecast and the amount of the increase and draw a
28 conclusion, with respect to that, as to the appropriateness

1 of the treatment during the period of IRM.

2 In my submission, that would be absolutely wrong,
3 because logically it doesn't -- logically it doesn't
4 follow. It doesn't follow that you said, You've increased
5 it by four, you made more than that, therefore, there
6 should be an adjustment, any more than if Union had not hit
7 its forecast it would be a basis to say we should redo the
8 deal that was struck in 2007.

9 So that information is provided. It was \$2.6 million,
10 but, in my submission, it doesn't advance the actual
11 analysis, other than to show this is what parties thought
12 at the time. And in any contract law analysis, at all, the
13 who thought what about whether or not that forecast was or
14 was not the right amount to adjust it is absolutely the
15 wrong way to interpret a settlement or a contract. And, in
16 my submission, thinking about it that way would create
17 significant problems.

18 MS. TAYLOR: You're not suggesting that settlement is
19 a contract, are you?

20 MR. SMITH: No, it's not a contract. But let's take
21 the -- although I think that the general -- sorry, I
22 shouldn't say that.

23 A settlement is a contract between the parties as to
24 what they're proposing to the Board. Once it is
25 implemented by the Board, then it becomes part of the Board
26 decision, and the Board decision is not a contract. But
27 that is not to say that the general principles of
28 interpretation, i.e., subjective intention is irrelevant,

1 don't have any bearing.

2 So, for example, there was a submission made in a line
3 of cross-examination: Did you know about FT RAM in 2007?

4 There is a danger to that. It may be attractive to
5 think about it, but there is a real danger to it, and the
6 real danger is this. It would require the Board to
7 analyze, every time it was considering a settlement, who
8 said what to whom or who thought what at the time they
9 entered into an agreement, i.e., the settlement agreement.

10 And, in my submission, that would be a terrible
11 precedent for the Board's settlement process and would
12 fundamentally undermine settlements, because it would
13 require people to give evidence about what they thought and
14 why they did particular -- why they reached particular
15 deals.

16 So I don't take any -- Union was very candid and said
17 it wasn't aware or didn't see the potential in FT RAM at
18 the time. But, in my submission, whether it did or didn't
19 doesn't matter. Whether other parties did or didn't
20 doesn't matter either.

21 MS. TAYLOR: I'm sorry. I just -- so, first of all, I
22 wanted to elaborate that the Board, by accepting a
23 settlement agreement - I think you gave me the answer I
24 wanted - that if there was an agreement between you and the
25 parties, then once the Board accepts it, it becomes part of
26 the regulatory regime.

27 With respect to your last comment about intent and
28 whether you understood RAM or didn't understand RAM, you

1 took us to part of the CME compendium under tab 8, and you
2 read from page 6 of 16. Particularly, you focussed on I
3 believe paragraphs 2, 3 and 4 on that page, but you didn't
4 discuss the first paragraph, which ties into your last
5 point, which is: What parties thought is not germane to
6 the terms of an agreement or contract or settlement, and
7 were there to be discovery on this, it would break down.

8 But it seems quite clear that, from this paragraph,
9 which I understand to be Union's own evidence, and I will
10 read it:

11 "With a balanced gas supply portfolio which meets
12 the forecast in-service and ex-franchise firm
13 demands, there will be few, if any, firm assets
14 available to support transactional services on a
15 future planned basis."

16 And yet what we've talked about throughout this is
17 quite different from that scenario. So my question to you
18 is: Given the way that these activities have evolved, and
19 clearly that sentence is no longer correct, at what point,
20 if any, did Union feel it was necessary to come and inform
21 anybody, other than through us figuring it out, as you
22 suggested earlier, through the extensive discovery process
23 of the Board, that the original going in statement that
24 there would be, quote, "few assets, if any, available on a
25 planned basis" changed?

26 MR. SMITH: Well, let me take that in parts, because
27 we will be -- I will be addressing that, particularly as we
28 look at gas supply.

1 But there is no doubt this was Union's evidence in the
2 2004 rate case. There is no doubt that at the time, in
3 2004, Union did not foresee the development of FT RAM.

4 Pausing there, in my submission, that does not change
5 whether or not exchanges are or are not regulated revenues
6 sold pursuant to the C1 rate schedule and that the
7 regulatory treatment for them is the same.

8 MS. TAYLOR: But do you not agree that information
9 relating to that product, and/or the evolution of it, might
10 have resulted in a regulatory change?

11 MR. SMITH: No, I don't accept that. I mean, I don't
12 accept -- well, there's I suppose three answers to it.

13 I mean, the first is I don't accept that on a planned
14 basis anything - anything - changed. I do accept that
15 during the currency of IRM, there was considerably greater
16 opportunity to effect S&T-related activities that made use
17 of FT RAM.

18 So I don't accept the fundamental principle that, on a
19 planned basis, there is still a balanced portfolio that
20 makes use of firm assets.

21 I do accept -- and we will come to this when we get to
22 the gas supply plan, because underpinning a number of the
23 submissions with respect to gas supply is a suggestion that
24 Union has too much supply, and I do intend to tackle that
25 proposition head on, but I don't accept it. I don't accept
26 that Union has too much supply.

27 What I do accept is that during the currency of IRM,
28 Union had the opportunity, and took advantage of the

1 opportunity, to effect greater exchange-related
2 transactions than it had effected in the past.

3 I also, though, would make the submission that in
4 terms of whether or not ratepayers needed the gas, it was
5 always the case, other than as it relates to UDC actually
6 incurred on Union's system, that ratepayers, in-franchise
7 bundled customers, needed the gas.

8 And so, in my submission, the proposition that you,
9 Union, engaged in exchange transactions and, therefore, you
10 must have had too much gas does not -- does not follow.

11 And the third - and we will come to this when we look
12 at the 2009-0101 transaction - Union did explicitly tell
13 parties that it had taken advantage of, among other things,
14 the FT RAM service offered by TCPL.

15 Now, were there the level of interrogatories in that
16 proceeding that there have been in this proceeding? No,
17 certainly not. But were there any interrogatories at all
18 prior to this proceeding in Union's 2011 deferral account
19 proceeding? The answer to that is no.

20 And, in my submission, the treatment of FT RAM or DOS
21 MN as exchange revenue was consistent throughout, and it is
22 the principle that matters, not anything else. And as to
23 the principle, yes --

24 MS. TAYLOR: Mr. Smith, I just would like to come back
25 to the question about whether or not it was understood
26 whether the principle was in fact frozen. It was - I'm
27 coming back to your own evidence - balanced gas supply, few
28 if any assets on a future planned basis.

1 It seems to me there is a shift. So let me ask the
2 question this way. It is very simple, and then we can move
3 on.

4 What you said earlier, when you began, that there were
5 20 proceedings in front of the Board, can you just point me
6 to a piece of evidence where it was clear what Union Gas
7 was doing with respect to that paragraph and how things
8 potentially had changed?

9 MR. SMITH: Well, we will come to it in the 2009-0101
10 proceeding. Union over-earned in its -- over-earned
11 period, over-earned by a wide margin on its S&T forecast.
12 It was asked how that could be. Union said, We sized up
13 our optimization activities. We took advantage of a bunch
14 of services, including FT RAM.

15 That is what Union told parties. And what parties did
16 in response to that is instructive, in my view. What
17 parties did was they entered into a revision to the 2007-
18 0606 settlement.

19 What they did was they changed the earnings deadband
20 to move from 50/50 to 90/10, over 300 basis points.

21 So to the extent you're looking for a piece of
22 evidence -- but, in my submission, that's not the right way
23 to think about it. And I say that because there are two
24 problems.

25 The first is: What's clear? I mean, at what -- it
26 can always be the case that a party could come along later
27 and say, I didn't ask, or I didn't know from your answer
28 that you were engaging in optimization transactions that

1 made use of TCPL's FT RAM service, or I certainly didn't
2 understand from your answer the extent to which you were
3 doing so.

4 That is a line of argument that people could always
5 raise. And, in my submission, at what point do you draw
6 the line? Is it one interrogatory? Is it two? Is it ten?
7 I don't know what the answer is there.

8 But the second is that fundamentally the proposition
9 is that if an exchange, and if FT RAM transactions are
10 properly understood to be an exchange, then whether they
11 made use of FT RAM which created, as Mr. Isherwood was very
12 candid to admit, a very, very active market, and a very,
13 very active market that Union doesn't think is sustainable
14 because TCPL is proposing to terminate the FT RAM program.

15 But if the proposition is: Did FT RAM effect a
16 significant change in the volume of exchange activity?
17 Absolutely. No question about it. Union did a lot more
18 exchanges during IRM than it had at any period in time,
19 and, in my submission, that is not a surprise to anybody.

20 If you look at Union's earnings through IRM, which
21 were absolutely looked at in 2009-0101, were looked at
22 again in EB- 2010-0039, you see the same thing. You see
23 earnings, as it relates to S&T revenues, well in excess of
24 the amount embedded in rates.

25 And, in my submission, that is not a surprise. I
26 don't think it really comes as a surprise to anybody. But
27 the question is, fundamentally, are they exchanges? My
28 submission is yes.

1 And the next question is: What do we do for 2013
2 going forward? And that is what this case is about. And I
3 hope to knit my submissions together on this point with gas
4 supply to address the point that you are raising.

5 So to give you the evidentiary references that you had
6 asked for, you will see at tab 27 -- you needn't turn it
7 up. At tab 27 is Union's pre-filed evidence in 2009-0101.
8 And the main point to make there is that in the very first
9 year of IRM, Union over-earned by an amount greater than
10 300 basis points.

11 The significance of that is this. Under the parties'
12 agreement in the 0606 case, over-earnings by an amount
13 greater than 300 basis points allowed parties to call for a
14 review of whether or not IRM should continue. So that was
15 what was in place -- what was in play.

16 Also in play was the fact that in that year, a
17 substantial driver of the earnings was Union's S&T
18 activity. I believe the number was \$37 million, and a
19 portion of that was obviously related to FT RAM. I say
20 only a portion, because there were other things that were
21 driving it. You can see that at page 7 of Union's pre-
22 filed evidence.

23 At page -- or at tab 28, you have Exhibit B, tab 1,
24 schedule 4, which was an interrogatory asked by Board
25 Staff. And they asked, essentially, describe the nature
26 and characteristics of these new market opportunities.

27 And you have the first part talking about long-haul
28 transportation capacity, re-contracting to shorter terms,

1 providing an opportunity and a desire by end-use customers
2 for shorter-term contracts and a lower-term transport
3 contract commitment and related financial exposure.

4 Then you see:

5 "The increased demand for short-term short-haul
6 services has provided Union with the opportunity
7 to sell increased transportation exchange
8 services into the market. These services are for
9 terms as short as one day, as described..."

10 Then it goes to page 7:

11 "...reference to both respond to and support this
12 increased market demand and provide the customer
13 support, Union increased its Chatham-based sales
14 staff by two positions, re-focussed the contract
15 and customer support staff and initiated process
16 and IT changes. The overall objective was to
17 capitalize on these opportunities and optimize
18 and market Union's assets and related services."

19 Then in the final paragraph, you have the reference
20 explicitly to FT RAM. And, as I say, this did not lead to
21 throwing the baby out with the bathwater. What it led to
22 was a revision to the settlement agreement, and that's no
23 small change, because if you look at tab 29, what you see
24 there is an adjustment, and it is reflected at tab 29,
25 pages 7 and 8.

26 What you see there is an adjustment in that year
27 alone, at the very bottom, of \$19 million in the amount
28 that was shared with ratepayers.

1 So if you look at the last full paragraph:

2 "In all of the circumstances, the parties have
3 agreed to increase the customer's share of
4 Union's 2008 earnings from the proposed
5 \$15.2 million to \$34.2 million as outlined in
6 appendix A."

7 And then it continues. So there was a very
8 significant shift that took place as a result of the
9 revision to the settlement agreement that the parties
10 negotiated at that time.

11 Now, the Board's treatment of exchange activity during
12 IRM has also been consistent, and you have in the record
13 the 2008-0220 case. That was Union's deferral account
14 proceeding. And the Board in that case had to consider the
15 treatment of exchange activity supported by DOS MN, which
16 was a new service introduced by TCPL called "DOS must
17 nominate", which was a feature of the TCPL tariff in 2008
18 and 2009.

19 You had some evidence from Mr. Isherwood about DOS MN.
20 What happened in that proceeding was that CME questioned
21 why those revenues were not treated as a gas supply pass-
22 through, and, in the result, the Board held that it was
23 appropriate to treat the revenues associated with DOS MN as
24 a contribution to the S&T transactional margin.

25 In my submission, this is nothing more than the
26 application of the principle by the Board at that time, and
27 were there slight differences or are there differences
28 between FT RAM, the mechanics of FT RAM, and DOS MN? There

1 are, but in the application of the principle, that is the
2 same.

3 I will just give you the evidentiary references. You
4 can see at tab 23, Exhibit B2.2, which is an interrogatory
5 asked in relation to DOS MN, in my submission -- I think it
6 is tab 23. I will just make sure I've got it.

7 Yes, tab 23. It is actually an interrogatory asked by
8 APPrO. And it's significant, because if you look at what
9 is happening with DOS MN, I think that the principle is
10 directly applicable. So it says:

11 "On or about November 7, 2008 TransCanada filed
12 an application with the National Energy Board to
13 implement a Dawn overrun service must nominate
14 whereby, for the balance of the current winter,
15 TransCanada will receive gas at Empress and re-
16 deliver such volumes at Dawn. The cost for such
17 service is the FT commodity toll."

18 This part is important:

19 "Thus, shippers avoid the normal demand charge
20 that otherwise would apply."

21 So under DOS MN, what is happening is you just avoid
22 the demand charge:

23 "Certain shippers had the right to their pro rata
24 of this service. Please indicate if Union has
25 taken its pro rata share of this service and, if
26 so, whether the full benefits of this service
27 will flow through the Y factor transportation
28 costs."

1 And the answer to the response from Union is: Yes,
2 we've taken DOS MN, and, no, we're not planning on flowing
3 through to ratepayers the reduction in the demand charge.
4 We plan on treating it as part of the S&T revenues and part
5 of utility earnings.

6 And what the Board ultimately determines - and you see
7 that at tab 26 - is the Board's decision, then Vice Chair
8 Ms. Nowina, David Balsillie and Member Sommerville, and you
9 see the Board's decision at page 8.

10 It picks up on the fact that Union had indicated that:

11 "Pursuant to the settlement agreement, ratepayers
12 were credited with a fixed amount reflecting a
13 forecast performance of its transactional
14 services business. Union also noted that the
15 increased capacity that is associated with the
16 Dawn overrun service may have benefits pursuant
17 to the earnings sharing mechanism that continues
18 to be in place."

19 That is equally true of FT RAM:

20 "In other words, ratepayers have already been
21 credited with an amount intended to reflect the
22 transactional services activity of the company.
23 Any additional revenues which may be occasioned
24 by the new TransCanada service will not accrue
25 under this heading, but may lead to earnings
26 sharing distribution..."

27 Equally true of FT RAM:

28 "The Board finds this explanation with respect to

1 this concern, which was raised by IGUA in its
2 submission..."

3 It should actually be CME:

4 "...to be convincing. In the Board's view, this
5 is a fair approach that is consistent with the
6 general architecture of the IRM plan in the
7 settlement agreement."

8 MS. TAYLOR: Just one question, and it is related to
9 my last line of questioning. I did review the record and
10 submissions from parties in this case, because I knew it
11 would come up, and I don't see in that, and perhaps I just
12 missed it, but any discussion of what RAM was and how it
13 differed from DOS MN.

14 Did I miss it or was it just not discussed?

15 MR. SMITH: It wasn't discussed. The question was
16 specific to DOS MN in Exhibit B2.2. That is what came up
17 at the time, and that is what the Board considered.

18 So there isn't -- I don't think you can say that in
19 the EB-2008-0220 case the Board considered FT RAM. I
20 simply make the observation that the Board had before it
21 another service, which all of the same arguments could be
22 made: Feature of the FT RAM attribute, results in decrease
23 in demand charges, those demand charges not passed on.

24 The Board's decision at that time was that they would
25 be treated not as a Y factor, but as a regulated earnings
26 subject to earnings sharing.

27 MS. TAYLOR: Thank you.

28 MS. HARE: Just very minor. You are reading from page

1 8, and you read, "which was raised by IGUA in its
2 submissions", and then you said which should actually be
3 CME.

4 It was counsel for IGUA, who now happens to be counsel
5 for CME, so it is correct, I believe.

6 MR. SMITH: Not quite, because the actual submission
7 came from Mr. Thompson, but then he was then acting for
8 CME.

9 So I think that the Board just -- it is
10 understandable, Mr. Thompson had acted for IGUA for many,
11 many years - I think just thought IGUA, but the actual
12 submission is a submission from CME.

13 MS. HARE: Okay.

14 MR. SMITH: That is the only difference.

15 MS. HARE: Thank you for the clarification.

16 MR. SMITH: This brings me to the next proposition,
17 which is that the optimization activities undertaken by
18 Union during IRM and forecast for 2013 are fundamentally
19 the same optimization activities Union has always
20 undertaken, and I say that FT RAM was no different in kind,
21 although it was admittedly different in degree.

22 You have in the argument in-chief compendium -- and I
23 will just give you the one cite, but it is -- there are
24 flavours of it throughout Mr. Isherwood's cross-examination
25 and examination in-chief. But there is, collected at the
26 compendium under the "Ex-Franchise" heading, various
27 references to that evidence, one of which, for example,
28 volume 7, page 137, that the transactions are very similar.

1 And he goes on to say later:

2 "...are fundamentally the same. The only
3 difference is the FT RAM program was added to an
4 FT service as an enhancement to that service."

5 And we don't disagree with that.

6 What time would you like me to stop?

7 MS. HARE: This might be a good time to break. Okay,
8 thank you. So we will return at 1:45.

9 MR. SMITH: Thank you.

10 --- Luncheon recess taken at 12:23 p.m.

11 --- On resuming at 1:47 p.m.

12 MS. HARE: Please be seated.

13 MR. SMITH: Thank you.

14 Thank you, members of the Board. Just before I
15 continue, I just wanted to make sure that I had responded
16 to Member Taylor's question, and if I can just maybe
17 summarize, in a nutshell, what we say.

18 Union doesn't depart at all from the principle in the
19 0063 case, and, indeed, I don't resile from it and I
20 continue to stand behind it, and I'm sure we'll talk some
21 more about this when we get to gas supply. But certainly
22 that principle, as enunciated in the 0063 case, included
23 the concept that the market appetite for exchange services
24 might vary.

25 That appetite did vary as a result of FT RAM, and
26 Union, as we talked about, foresees that going away. But
27 that market appetite did vary substantially.

28 Union did advert to FT RAM in the 2009-0101 case.

1 Union equally received guidance on the application of the
2 IRM framework in EB-2008-0220. It was apparent throughout
3 the period that Union had earned substantial revenues as a
4 result of its FT RAM -- sorry, as a result of its S&T
5 activity, and there was not, in my submission, any further
6 need, nor did Union see any, for it to set out further
7 evidence with respect to its use of the FT RAM program, nor
8 was it, frankly, asked to do so by any party through
9 interrogatories.

10 And I say that's particularly the case as the
11 transactions we're talking about were regulated, in that
12 they were always sold pursuant to the Board-approved C1
13 rate schedule, and continue to be treated as regulated
14 earnings throughout the relevant piece.

15 So with that, let me just move forward. And I was
16 under the heading in my submissions dealing with: The
17 optimization activities undertaken by Union during IRM and
18 forecast for 2013 are the same optimization activities
19 Union has always undertaken. And I gave you references to
20 some of the -- some of the evidence.

21 But before I dive right into that, let me just clarify
22 a couple of points as they relate to FT RAM. The first is
23 there was a submission by BOMA at page 100 of volume 14
24 that relates to the permanence, or lack thereof, of the FT
25 RAM program.

26 In my submission, it is really hard to know what to
27 make of this, because ultimately whether it's temporary or
28 permanent does not affect the regulatory treatment of the

1 exchange revenue, and, in any event, if we're talking about
2 2013, whether you classify it as permanent or not, we can't
3 get around the uncertainty that is related to FT RAM, given
4 the NEB proceeding.

5 But, in any event, to the extent the suggestion is
6 made that it's been permanent since 2004 and that something
7 attaches to that, although I have a hard time understanding
8 what, we disagree, and you will have -- and I don't need to
9 review it, but you have the evidence that is actually in
10 the record from TCPL and from Mr. Isherwood that reviews
11 the history of FT RAM.

12 It came into place as a pilot project in 2004. It had
13 actually been preceded by another pilot project, FT makeup,
14 in 2002, but it was a one-year pilot project. In 2005, it
15 was another one-year pilot project. In 2006, it was
16 another one-year pilot project. In 2007, it became a two-
17 year pilot project.

18 And not only were these pilot projects, but what they
19 were linked to, be they short-haul, long-haul or STS
20 contracts, changed throughout the time period. It wasn't
21 until September 2000 -- November 2009 that it became a
22 feature of the tariff, and then we have September 2011.
23 TCPL files evidence with the NEB looking to bring an end to
24 the program effective January 1, 2012.

25 Now, that date has since been pushed out as a result
26 of the timing associated with the proceeding, but as far
27 back as September 2001, TCPL was looking to bring an end to
28 the project relatively promptly.

1 The other suggestion I would like to address is
2 another argument from BOMA by reference to Exhibit K14.4,
3 and you will recall that that was an excerpt from the TCPL
4 case and, in particular, TCPL's pre-filed evidence. And
5 the specific suggestion I wanted to address was the
6 argument that, absent FT RAM, interruptible revenues would
7 have been -- interruptible revenues to TCPL would have been
8 \$400 million higher.

9 And, in my submission, that actually isn't borne out
10 at all by TCPL's own evidence. And if you look at tab 14
11 of the ex-franchise portion of my reply compendium -- and I
12 think we should be back in there from this point forward,
13 but at tab 9 of the ex-fran portion -- the ex-franchise
14 portion of the compendium, this is the excerpt from TCPL's
15 evidence.

16 And of course we talked about this. It was not put to
17 any witnesses, but to the extent BOMA wishes to draw
18 anything from it, in my submission, the evidence itself
19 does not disclose the suggested impact on interruptible
20 tolls. And you can see that at page 29, and it's at
21 line 8.

22 And what you see is that -- at line 8, that TCPL
23 indicates, on line 8, that they have included as their
24 forecast of incremental discretionary revenues a total of
25 \$50 million of IT. In other words, what they're saying is
26 the impact of eliminating FT RAM is \$50 million.

27 Now, they do say it could range up from that to
28 \$150 million, but at least when it comes to calculating the

1 amount of the actual discretionary revenues included in
2 rates, the number is \$50 million. And that, they suggest,
3 has an impact on lowering the 2012 Empress to Union SWDA FT
4 toll by 6 cents per gJ.

5 And this is significant, because the amount, that
6 amount, is actually less than the benefit received by Union
7 ratepayers as a result of Union's own use of FT RAM to earn
8 exchange-related revenues.

9 You have to follow with me to see that, but in Exhibit
10 J.C-4-7-9, attachment 1, Union was asked to calculate the
11 net revenue per gJ of each year of the RAM program. And,
12 for 2011, the benefit was 16 cents per gJ.

13 If you look at K7.3, because K7.3 breaks out the
14 amount of the total RAM benefit received by Union into the
15 amount received by ratepayers, that amount was, in 2011,
16 \$14.5 million. So it is 14.5 of 22 million. And if you
17 apply that ratio, it is roughly two-thirds. Ratepayers
18 received 66 percent of 16 cents per gJ. That's 10.5 cents
19 per gJ.

20 In other words, the suggestion appears to have been
21 made by BOMA, as a result of the FT RAM program and
22 presumably Union's use of it, ratepayers were worse off
23 because tolls would have been higher. And when you look at
24 the evidence that's actually in the record in this
25 proceeding, in my submission, that doesn't bear out.

26 MS. TAYLOR: I'm sorry, Mr. Smith. When you were
27 referring to tab 9, it took me a while to get there. I'm
28 sorry, I'm not sure I still have the right page.

1 MR. SMITH: I hope you have. Sorry, go ahead.

2 MS. TAYLOR: Were you on page 25? The top of 25 gives
3 rise to the \$400 million, or were you looking at some other
4 page?

5 MR. SMITH: No. No. It does talk about the
6 400 million, and there is no doubt that that number sticks
7 in people's mind.

8 But when you actually go forward to page 29, what you
9 see on page 29 is TCPL takes the impact and looks at the
10 impact of eliminating FT RAM, and what they say on page 29
11 is TCPL expects an increase in annual discretionary revenue
12 in the range of 50 to \$150 million if RAM is eliminated.

13 Then it goes on:

14 "This range of incremental revenue is likely
15 conservative..."

16 But then they go on, and then they say that they've
17 included an incremental 50 million in annual discretionary
18 revenue. So when TCPL is looking at what they're --
19 actually included in their Mainline application, it is the
20 \$50 million.

21 And that is consistent with what you generally heard
22 from Mr. Isherwood, which is that the FT RAM program
23 resulted in a bunch of exchange activity that wouldn't
24 otherwise take place and why the amount of discretionary
25 revenue going forward is less.

26 MS. TAYLOR: But you're not disputing that it was
27 \$400 million in 2011, if I can refer you to page 29, again
28 from that paragraph that you just read.

1 So it was 400, but now you're saying it is 50 million
2 in 2012?

3 MR. SMITH: I'm not disputing the numbers on the page.

4 What I'm saying is that TCPL is not saying that
5 eliminating FT RAM is going to lead to a \$400 million
6 increase in its IT revenues, and to the extent BOMA was
7 suggesting otherwise, I think that that is wrong based on
8 TCPL's own evidence.

9 Then I am saying, if you look at the \$50 million
10 number that TCPL is looking at, it is equally wrong to
11 conclude from that that Union's use of FT RAM has resulted
12 in an impact in TCPL tolls greater than the benefit
13 received by ratepayers. In fact, the converse is true.

14 MS. TAYLOR: Okay.

15 MR. SMITH: The next proposition is simply that an
16 exchange is an exchange. And that is easy enough to say,
17 but we've gone over this, that fundamentally the exchange
18 activities undertaken by Union during IRM are no different.

19 And I've given you the transcript references. I would
20 also give you J7.6, which I had included in my compendium.
21 I will just give you the reference, but you should have it
22 -- I'm sorry. It is in the CME compendium. I will give
23 you the reference. You need to turn it up.

24 In the CME compendium, it can be found at tab 42, and
25 that describes the mechanics of the actual exchange
26 transactions and how they work out.

27 Particularly as it relates to 2013, it is Union's
28 submission that they should -- that exchanges should be

1 treated as regulated S&T revenues, subject to forecasting,
2 embedded to decrease franchise rates and subject to
3 deferral. And I will deal with that, because it's a slight
4 change in what we talked about in argument in-chief, so I
5 will come to that at the end.

6 Looking at the FT RAM-related exchanges, Union rejects
7 the characterization of these transactions as gas cost
8 transactions. And I say that for two principal reasons,
9 which I have touched on already. The first is the gas cost
10 reductions have historically fallen into two categories,
11 gas commodity reductions and toll variances, and these
12 transactions, be they exchange transactions or FT RAM-
13 related transactions, fit into neither category; second,
14 that absent an exchange transaction sold by Union pursuant
15 to the Board-approved C1 rate schedule, there is no revenue
16 that arises from Union earning FT RAM credits or any other
17 exchange.

18 In other words, it is the sale of the exchange that
19 actually creates the revenue. And, as I say, the sale of
20 exchanges has historically been captured by account 179-69.

21 Now, I did want to address something head on, and that
22 is that at pages 172 through to -- or, really, 171 to 176,
23 CME in its submissions describes what it says were the
24 transactions relating to FT RAM. There are no evidentiary
25 cites that are offered in support of the descriptions.
26 They're just submissions.

27 And, in my submission, if you look at them closely and
28 compare them to J7.6, they are in a number of respects

1 wrong, but that the -- and that the inescapable conclusion
2 from a review of the transactions is that until an exchange
3 is sold, there actually is no revenue.

4 So until you sell an exchange, there is no revenue to
5 put into account 179-69. Equally, there would be no basis
6 upon which there would be a reduction in gas costs, if that
7 was the relevant comparator, and I say there is not.

8 So, for example, at page 174 to 176, the submission is
9 made in relation to what were described as FT RAM
10 optimization transactions. And what -- the submission that
11 is made is, "They then say" - presumably "they" is a
12 reference to Union - at line 19:

13 "...I will use my IT to shift my gas from A to
14 somewhere else on my system that is likely closer
15 than the FT contract that they are monetizing,
16 i.e., Dawn versus the EDA, as Mr. Quinn was
17 discussing yesterday. And that transaction, just
18 to keep it consistent with the other one, let's
19 assume it costs \$1.84, so there is a 40 cent
20 differential. So if you stopped it there and
21 asked yourself how should that be recorded, how
22 should the use of a lower tolled service on
23 TransCanada be reflected, it would in my
24 submission show up in the north."

25 In my submission, that is fundamentally wrong. Why?
26 Because at the time, if you simply flow IT, the utility
27 incurs both the FT demand charge and the IT charge, because
28 the gas is still needed.

1 So fundamentally ratepayers are not better off as a
2 result of that transaction. In other words, simply
3 deciding to flow IT does not convert a RAM benefit to
4 value.

5 Ultimately what has to happen and what does happen is
6 that Union sells an exchange into the market. It doesn't
7 buy an exchange. It sells an exchange into the market
8 under the C1 rate schedule using the exchange agreements
9 that have been filed in evidence, and it is that action
10 that results in revenue.

11 I will give you a few cites for that in addition to
12 J7.6, but that is volume 7, page 134, page 141, page 147.

13 So to use the example that CME has at pages 175 and
14 176, there is no 40 cent gJ of savings to accrue in the gas
15 supply deferral account. Ratepayers would pay the same
16 \$1.24 if they flowed gas pursuant to the plan to the EDA,
17 and then injected via STS to Dawn.

18 If they flowed to Dawn on an IT basis and used RAM
19 credits, the total cost would be essentially the same,
20 roughly \$2.24. They would continue to pay the eastern zone
21 demand charge on a firm basis, and ultimately there
22 wouldn't be an impact on ratepayers, certainly not the 40
23 cents, and that the 40 cents is only the value of RAM on
24 the, quote, "shelf", if I can put it that way, and it has
25 no value until it is sold as an exchange.

26 Then it is captured as S&T exchange revenue and it may
27 or may not be the full value of the 40 cents per gJ.

28 The same is equally true if you go back in the

1 submission and you look at the example that is described on
2 page 172 of a capacity release. At line 21 on page 172,
3 what Mr. Thompson says is -- well, at line 9, he says:

4 "Step one is they decide not to use FT."

5 I disagree. Step 1 is always the identification of a
6 market opportunity. You cannot have exchanges unless there
7 is a counterparty. So the very first thing that has to
8 happen is you have to have a counterparty, and there is
9 nothing new about that.

10 Later on at line 18:

11 "Step two is they..."

12 Union:

13 "...assign the FT contract to a marketer. That's
14 on TCPL paper, we've been told. It is not Union
15 paper that has that assignment transaction."

16 Line 21:

17 "The assignment is not 100 percent value of
18 the 2.24."

19 That statement is wrong. The assignment is at 2.24,
20 and that is explained in the evidence and we'll no doubt
21 hear more about it on Friday, but it was the subject of
22 considerable cross-examination at the technical conference
23 in that proceeding at pages 51 to 54.

24 That goes on to say:

25 "Let's assume it is \$1.80 for the purposes of
26 this example..."

27 No reason to make that assumption. No reason to
28 assume that it is \$1.80, particularly as we know it is at

1 \$2.24:

2 "...which is the amount that is being received
3 for an unutilized item of FT, which would go into
4 the UDC deferral account as mitigation."

5 That statement is wrong as well, because there is no
6 UDC. Ratepayers need all of the gas that Union is
7 ultimately contracting for.

8 It then goes on to say that:

9 "Union purchases an exchange, and if they
10 purchased it from a third party - in other words,
11 not the same marketer to whom they applied -- to
12 whom they sold the FT - they would have to post
13 that to the UDC deferral account."

14 The evidence, as set out in J7.6, is that these
15 transactions are all done with the same party. So it is
16 not a third party that is being introduced.

17 Ultimately, when you review the record in pages 171 to
18 176, in my submission, what you come down to is that,
19 absent an exchange transaction, there is no revenue that is
20 earned by Union, and there is nothing to put in account
21 179-69, or, if you were thinking this way, to offset the
22 gas supply deferral accounts.

23 And as I said before, the treatment of exchanges has
24 been consistent throughout. That is, that they have always
25 been captured in 179-69, and there is no mystery to this.
26 Exchanges are specifically referred to in the accounting
27 order for 179-69.

28 MS. TAYLOR: Mr. Smith, are you arguing that unless

1 Union is incented, that it will not undertake any steps
2 whatsoever to mitigate gas costs by taking advantage of
3 exchanges or any of the other type of optimization in the
4 market?

5 MR. SMITH: No, I'm not, and that isn't what Union has
6 done.

7 MS. TAYLOR: I know what Union has done, but I am
8 asking you: For 2013, are you saying that unless Union is
9 incented somehow to undertake exchanges in optimization,
10 that they won't?

11 MR. SMITH: Well, let me break it down into two parts.
12 The first is with respect to actual UDC. By actual
13 UDC, I mean an instance where, as a result of weather,
14 Union would otherwise have UDC. And this was described by
15 Ms. Evers, and Union has taken steps in the past to
16 mitigate that UDC.

17 I did say in argument in-chief, and I say now, that in
18 order to continue to engage in optimization activities and
19 to sell exchanges, yes, Union does require an incentive.

20 And as I said in the argument in-chief, in my
21 submission, that incentive should be 25 percent. And to
22 foreshadow where I'm going, in my submission, the
23 appropriate way to deal with this issue for 2013 is to have
24 a deferral account, 179-69, that captures any and all
25 exchange-related activities, regardless of how they come
26 about, and that included in that would be a forecast
27 revenue of \$9.1 million, which is the amount that Union
28 forecast for base exchanges.

1 So, in other words, there would be no forecast amount
2 for RAM, but that you would start at \$9.1 million and that,
3 from that point forward, it would be shared 75/25
4 symmetrically.

5 And the reason I say that is that both Mr. Thompson
6 and Mr. Quinn tried to address the point you raised about,
7 How do we essentially avoid a problem going forward?

8 In my submission, the way to avoid the problem, as it
9 were, going forward is not to try and draw distinctions
10 about whether or not there is a particular level of market
11 demand or what the weather might be doing, or what the
12 services are that are attached to TCPL - because those may
13 change and you want to avoid a forensic audit, every
14 proceeding, about what's happening on any particular day in
15 the market - the way to deal with this in a principled way
16 going forward is to make sure that you have the right gas
17 supply plan - we will talk about that - and then just have
18 an exchange-related account, embed some amount and share
19 it, and then there isn't any issue. There isn't any of the
20 concerns that ratepayers raise. There aren't the concerns
21 that Union is having to respond to now, and I don't think,
22 from the Board's perspective, there are concerns.

23 And this is exactly what the situation was and
24 prevailed going back to 1992. So, in my submission --
25 frankly, I had said in argument in-chief there need not be
26 a deferral account for base exchanges. Union's position is
27 different. Let's avoid this problem going forward, put in
28 a deferral account, make it 75/25, embed it. It would be

1 entirely consistent with the regulatory treatment that it
2 accorded in the past.

3 Make sure you have -- you are satisfied with respect
4 to the gas supply plan - we will talk about that - and this
5 ought not to be a problem. That is our proposal for
6 dealing with it.

7 When you look at what Mr. Thompson said at line -- on
8 page 166, volume 15, what he said was at line 7:

9 "Now, if you're looking for a definition of the
10 transactional -- of the transactional services
11 that were covered by this particular deferral
12 account, my definition is, first of all, they are
13 services provided by Union to third parties, and,
14 secondly, they were supported by transportation
15 assets owned and operated by Union or acquired by
16 Union from third parties to carry upstream gas to
17 its system, provided the resources are
18 temporarily surplussed to Union's utility
19 requirements as a result of changes in weather
20 and declines in demand of its utility customers
21 being matters beyond their contract."

22 And then you had a position put forward in response to
23 your question by Mr. Quinn, and what he says at page 164:

24 "The way I would distinguish the two..."

25 And this is the difference between base exchanges and
26 FT RAM and base exchanges and gas supply costs:

27 "The way I would distinguish the two is, if the
28 assets were purchased for gas supply need, then

1 those should reside with the gas supply, be
2 classified as costs, and benefits stay and remain
3 classified with the gas supply program."

4 Then he goes on all the way over on page 166, "I
5 think a pragmatic" -- this is line 16:

6 "I think a pragmatic and I think practical
7 solution would be that long-haul contracts and FT
8 RAM credits associated with long-haul contracts
9 would be gas costs, because this is landing the
10 gas here in Ontario..."

11 And then it goes on and says:

12 "So you would have FT firm transport long-haul
13 contracts as being gas supply internal to Union's
14 franchise. If they do optimizations of STS
15 contracts or they find a way to get gas from
16 point A to point B and make that cost
17 differential generate a margin, then that would
18 be more consistent with our view of the historic
19 179-69 deferral account, what it captured."

20 In my submission, when you look at what Mr. Quinn was
21 saying and what Mr. Thompson was saying, it reveals two
22 things. One, Mr. Thompson's definition is, at least in
23 part, inconsistent with the treatment historically. There
24 is no focus on the market.

25 Mr. Quinn's description fails, because it is limited
26 to particular services. What is to say if Union's
27 portfolio changes from long haul to short haul, or they're
28 different services or it makes a margin on its Dawn-Parkway

1 system, or, on Mr. Thompson's example, are we going to
2 investigate the weather on any particular day or the
3 demands on any particular day? What is that going to do to
4 deferral account proceedings?

5 In my submission, it is all completely unworkable. It
6 is totally unworkable. And the way to do this is to go
7 back to the arrangement that was in place prior to IRM,
8 have the deferral account, have a gas supply plan - we will
9 talk about what that will involve - and then share
10 symmetrically. Then you can have a fight about the
11 incentive. Lots of people think it should be 90/10. In
12 Union's submission, it should be 75/25. That is the
13 incentive that Union enjoyed beforehand, and, in my
14 submission, it leads to excellent results.

15 I'm just checking my notes because, in answering the
16 question, I covered a number of pages of submissions.

17 I did want to make one further point about the
18 incentive. A number of parties bolstered their submissions
19 with respect to the incentive by reference to the margin
20 shared on the short-term storage account. That is now
21 90/10, but I want to make this observation.

22 It is only just 90/10, in that that was a decision by
23 the Board in June of 2012. You cannot say that Union's
24 behaviour would be identical as a result of that. That's
25 stepping backwards. In my submission, you can't do that.

26 The actual margin sharing that was in place that led
27 to the good results in the short-term account was actually
28 71/29. So it is more than Union is actually proposing.

1 And, in my submission, the best -- or the place to start
2 and finish is with the historic treatment; that is, 75/25.

3 And as I say, that should be right from \$9.1 million,
4 and you should embed that in rates.

5 MS. TAYLOR: Does the 9.1 include RAM?

6 MR. SMITH: No. No. This comes back to the argument
7 in-chief. We talked about this goes to the \$11.6 million,
8 I believe, that Union had indicated that it believes it
9 could earn in 2013 if RAM were continued.

10 You will recall that Union's evidence talks about
11 this, but Mr. Isherwood also talked about this, and that's:
12 What's the best way to deal with this, and is that -- given
13 the uncertainty associated with RAM, is that to embed the
14 \$11 million, and then to share off of that symmetrically?

15 Some parties said, Well -- or the alternative is to
16 embed no amount and just share 75/25 from dollar one.

17 And the simpler approach, in my submission the
18 preferred approach, is effectively to embed no amount, and
19 then share 75/25 from that.

20 If you're talking about combining base exchanges and
21 FT RAM, as I say we should be thinking of it going forward,
22 that would lead you, given the uncertainty with RAM, to
23 simply put in the base exchange number of 9.1 and share
24 75/25.

25 That may have advantages to ratepayers, as well, and I
26 can't recall, but one of the parties alluded to this.
27 There may be an attraction to embedding some amount for
28 RAM, but if RAM goes away, then you would be clawing back -

1 at the beginning of the year, you would be clawing back
2 revenues. And what the submission was is better not to do
3 that.

4 MS. HARE: Okay. That is actually what I was going to
5 ask. One is not simpler than the other. One has the risk
6 that there might have to be a collection from ratepayers if
7 the 11.6 isn't reached?

8 MR. SMITH: That's right.

9 MS. HARE: Otherwise, they're the same?

10 MR. SMITH: That's right.

11 MS. HARE: Thank you.

12 MS. TAYLOR: The 11.6 is for all of fiscal 2013,
13 January 1st 2013 to December 31st; is that correct?

14 MR. SMITH: Yes, yes.

15 MS. TAYLOR: We heard that the earliest that they
16 could get rid of it would be --

17 MR. SMITH: Well, what the evidence was from Mr.
18 Isherwood was he thinks that the date is May, if, if, what
19 you're talking about is a full rollout and elimination of
20 FT RAM after a decision is reached.

21 He also thought it may be possible to do it earlier.
22 Now, that may not be January 1, but it is some date earlier
23 than May. And the evidence is no more precise than that.

24 MS. TAYLOR: Just lastly, with respect to the
25 incentive, do you make any distinction between storage
26 which is revenue and they're sharing, and this, which is
27 arguably mitigating a cost?

28 You make no distinction between management's

1 obligation to manage the costs of the utility in a prudent
2 manner versus the incentive to maximize revenues.

3 MR. SMITH: No, I don't draw any distinction between
4 them for two reasons.

5 One, I don't accept the -- arguably, in that these are
6 regulated revenues and have always been treated as
7 regulated revenues. And fundamentally, I think the
8 situation is analogous, in that if you're talking about
9 excess utility storage, that is no different than -- in
10 that it is ratepayer asset, no different than upstream
11 transportation portfolio ratepayer asset, and ratepayers
12 pay for 100 PJs of storage in their delivery rates.

13 MS. TAYLOR: Thank you.

14 MR. SMITH: So why don't we move from there, and I
15 think it is naturally from there, to gas supply.

16 Union's gas supply-related evidence can be found at
17 D1, tab 1 and the various pages set out there. I don't
18 propose to review all of the principles, but, as discussed,
19 the purpose of the gas supply plan is to provide secure,
20 reliable, diverse supply at a prudently incurred cost.

21 A number of parties have challenged Union's gas supply
22 plan, although most, perhaps all, appear to accept the plan
23 as it relates to 2013.

24 There are two main complaints that are made: First,
25 that Union holds more capacity than it actually needs.

26 The second is that the mix of capacity is -- and I
27 hope I don't cause confusion by the use of this word -- is
28 suboptimal; that is, that Union should be contracting

1 for -- contracting on a shorter-term basis. And the
2 example that you heard in the evidence on any number of
3 occasions was to STFT in the winter.

4 I intend to take each of these complaints in turn.
5 Before doing that, I just want to address a brief
6 submission by Board Staff, and that is a suggestion that
7 Union does not have a gas supply plan. And I say that that
8 submission flies in the face of the evidence in this
9 proceeding.

10 Just by way of example, in addition to the evidence at
11 Exhibit D1, tab 1 that sets out the planning process, the
12 guiding principles, the key inputs and assumptions, the gas
13 plan results, you also have at Exhibit D5, tab 2, schedule
14 3 all of the volumetric detail relating to the gas supply
15 plan; at Exhibit D3, tab 2, schedule 1 for 2012 and Exhibit
16 D4, tab 2, schedule 1 for 2012 -- I should have said my
17 first reference was for 2013. And at Exhibit D5, tab 2,
18 schedule 1 for 2011, and for 2010, Exhibit D6, tab 2,
19 schedule 1, all of the financial data relating to the plan
20 as reflected in the gas purchase expense schedules, which
21 is where the rubber hits the road.

22 You also have in the D binder details as to all of the
23 specific gas transportation contracts held by Union and STS
24 contracts held by Union.

25 You have information in the Exhibit C3, tab 4,
26 schedule 3 with respect to peak storage availability and
27 utilization, and then you also have the storage available
28 for customers contracting for U2 service in Union south and

1 T-service and unbundled service in Union North.

2 And all of that is in addition to what you heard about
3 the SENDOUT model and the -- I'm not sure what the numbers
4 are, but the 42,000-plus lines of data.

5 So, in my submission, when you actually look at the
6 evidence and the volume of information that Union brings to
7 bear and has filed in this proceeding, it is considerable.

8 Let's take the two complaints. Union has more
9 capacity than is required. This is a difficult submission
10 to respond to, because it is not particularized. There is
11 no statement by anybody in argument as to by how much or
12 which particular contracts Union has that it ought not to
13 have.

14 It is simply a generalized submission that it has too
15 much, and that can be attributed to Board Staff, CCC and,
16 to a lesser extent, VECC.

17 In my submission, there is no merit to this complaint.
18 The gas supply plan is designed to meet seasonal, i.e.,
19 average, and peak day demand. Union does not contract for
20 excess capacity on a planned basis, and the suggestion that
21 it did so was rejected categorically in cross-examination,
22 and I gave you in my argument in-chief the various
23 references to that.

24 The one thing that may perhaps be missing here is an
25 understanding as to the correct starting point to
26 understanding the gas supply plan, and that is to
27 appreciate the plan is designed to meet average and peak
28 day demands. And the key to understanding that is an

1 understanding of the peak day requirements, and that is a
2 function of the planning criteria relating to weather and
3 not -- it is a component of the gas supply plan, but not
4 the 20-year declining trend.

5 What I'm talking about there is the heating degree day
6 assumption. You heard evidence with respect to, in the
7 north, Union uses a 47 degree day. That is 47 degrees
8 below 18 degrees Celsius. That is, Union plans around a
9 day that is minus 29 degrees Celsius and that is no doubt
10 cold. But when we're talking about areas like Fort
11 Francis, North Bay, et cetera, they get that temperature.

12 Now, Board Staff attacks this planning criterion. It
13 says planning is inconsistent with the weather evidence and
14 the use of the 20-year declining trend. The complete
15 answer to that is that it confuses declining trend with
16 volatility.

17 And the evidence is, while it may be getting warmer as
18 a trend, weather is still - and getting more so - volatile
19 and that the experience in the weather charts we looked at
20 shows that there are wide swings in the weather year to
21 year, and, frankly, within a year.

22 So while you may have a decline over time, that does
23 nothing for volatility.

24 The importance of the design day criterion is crucial
25 in utility planning, because the consequences of not having
26 gas on design day can be significant, and the analogy here
27 could be drawn easily enough to a levy and whether or not
28 you design your levy to meet last year's high-water mark or

1 you meet the high-water mark over some longer period of
2 time.

3 And what Union does is it designs its system around
4 the 50-year mark. That is not to say it resets it every
5 year. That is a misunderstanding, to the extent people
6 have that.

7 It is: What has been the coldest day in the last 50
8 years? And as it happens, while Union last hit the 47
9 degree day in 1981, it has done so -- sorry, it has come
10 close on multiple occasions. By "close", I mean within two
11 heating degree days.

12 In other words, it's been close to minus 29. And you
13 can see that in K3.1, and you might recall that that was
14 the chart that showed, for 2011 and 2012, what happened
15 with the actual utility gas usage, and that can be found at
16 tab 8 of the gas supply evidence.

17 MS. TAYLOR: Just while we're turning that up, what do
18 you mean by it doesn't change that or reset it every year?
19 Is that a rolling 50-year? Can you just explain to me what
20 you mean by that remark?

21 MS. HARE: Or tell me if I have this right. So for
22 the next 18 years, it will still be the days that was in
23 1981, unless it gets colder in that period; is that right?

24 MR. SMITH: That's right. That's what it means. And
25 the follow-on submission is that you don't have to be at
26 minus 29 to have a really cold day.

27 I mean, it could be minus 28. It could be minus 27,
28 and you're going to have gas needs comparable to what Union

1 is planning for.

2 That was why I wanted you to look at J -- or J3.1. I
3 said tab 8, but I really meant tab 12.

4 MS. HARE: So just following along there, if 2013
5 happens to have a colder day, that colder day will be used
6 for the next 50 years unless there is a colder day?

7 MR. SMITH: That's right.

8 And there's nothing new or particularly novel about
9 Union's use of its design day, 47 degree day. Enbridge
10 uses 45. And they're proposing to go higher, but they
11 currently use 45. And, in my submission, it just makes
12 good utility planning.

13 So if you look at Exhibit J3.1, what is relevant here
14 is that if you look at what was happening over the time
15 period, Union didn't hit its design day or a peak day
16 during this period, but you do see that Union was getting
17 close, particularly in January 2011 when you actually look
18 at its daily utility activity.

19 So, yes, you will have capacity that you need to
20 contract for to hit your design day. No, Union does not
21 over-contract. And, two, looking at this chart, to the
22 extent parties do, and say, Well, the purple line is over
23 the blue line or the red line is over the blue line, I
24 would say -- the blue portion of the chart, I would say two
25 things about it.

26 One, it should be, because that's prudent, and, two --
27 and we talked about this in evidence in-chief and nobody
28 seems to have dealt with it in response, but that during

1 these entirely valley periods, what you have is gas being
2 injected, by use of the STS account, into storage so that
3 it is available to meet average utility consumption
4 throughout the year. And if you didn't do that, then you
5 would have to be contracting for even more gas in the
6 winter.

7 And, as I said, the other complaint that parties make
8 in connection with this is the generalized suggestion that
9 Union has too much upstream capacity. And, as I said,
10 there is no support that is offered for that. The only
11 support appears to be a reference to the fact that Union
12 earned S&T revenue during the period.

13 In my submission, that tells you nothing about the
14 actual gas supply plan and the total quantity of gas,
15 because ultimately the gas was still required to meet in-
16 franchise customer needs. In other words, every time you
17 do an assignment, you may assign 20 gJs a day of capacity,
18 but Union is having to get 20 gJs of capacity on the back
19 half of the exchange.

20 The next response to that is to look at what has
21 actually happened with Union's transportation portfolio
22 over the time period. If you look at what has actually
23 happened with Union's transportation portfolio since 2000 -
24 or since 2002, depending on the area - Union has decreased
25 substantially the amount of long-haul capacity that it
26 holds.

27 You will see that in the compendium at tab 4 of the
28 gas supply portion. What is set out there is the changes

1 in the long-haul capacity on TCPL held in the north and in
2 the CDA by Union from 2000.

3 And just to summarize, let me put it this way.
4 Between 2002 and 2011, Union reduced its long-term firm
5 portfolio of Empress to the NDA - and that includes the
6 EDA, which was the subject of considerable cross-
7 examination - by 47 percent, from 358,643 gJs a day to
8 191,177 gJs per day.

9 MS. HARE: Sorry, Mr. Smith, where is this in
10 evidence?

11 MR. SMITH: This comes from -- just like in -- I will
12 give you the evidentiary cite, but just like Mr. Brett's
13 Exhibit 14.4, this comes from the TCPL Mainline
14 application. It was an interrogatory asked by TCPL of
15 Union to provide its actual long-haul capacity that it held
16 over this time period.

17 My apologies, I should have given you the
18 interrogatory reference so you have it, but I will do that.

19 MS. HARE: Okay, thank you.

20 MR. SMITH: So from 358,643 gJs a day down to 191,177.
21 In the case of the CDA, from 2000 Union has reduced its
22 Empress capacity by 69 percent over that time period, from
23 229,848 gJs a day to 71,327 gJs -- sorry, 71,327 gJs per
24 day.

25 So, in my submission, to the extent parties suggest
26 that Union has not reduced its reliance on long-haul FT
27 capacity, that submission is not borne out by the facts.

28 The next...

1 [Board Panel confer]

2 MR. SMITH: The next submission that parties make is
3 that Union has too much long-term FT capacity, and this
4 appears to be a complaint that is primarily made by FRPO,
5 but to a lesser extent BOMA.

6 You can see this at the compendium -- I'm sorry. It
7 is not in the compendium, but at page 152 of the transcript
8 from day 14. And what Mr. Quinn says is:

9 "The declining level of annual firm
10 transportation contracts is well known ... and
11 the evidence of the continued reduction can be
12 found in Exhibit K3.1, which you've viewed many
13 times in this proceeding. So while other
14 utilities and shippers like Enbridge have moved
15 to shorter-term arrangements such as winter STFT,
16 Union has continued to keep the long-haul FT
17 contract."

18 And, in my submission, that complaint is without
19 merit. First, Union has, as we talked about, turned back
20 substantial quantities of long haul.

21 Second, to the extent there is a reference to Enbridge
22 and what it is doing, what we know from TCPL is that was to
23 backstop Enbridge's winter peaking needs. Union doesn't
24 have any winter peaking service actually needed in its gas
25 supply plan.

26 Why? Because Union can make effective use of its
27 storage facility, something it has in greater abundance
28 than almost every other utility, but certainly more than

1 Enbridge.

2 The other point that this submission overlooks is the
3 point I just made and we talked about in argument in-chief.
4 I won't repeat it, but it is the use of STS and how Union
5 is able to inject using STS into storage to most
6 effectively make use of its storage facilities, something
7 it couldn't do if it bought STF alone.

8 Now, I want to just continue with the submission made
9 by FRPO, and that can be -- I actually included it. I'm
10 sorry. It is at tab 3.

11 But if you look at tab 3, this is the excerpt. What
12 Mr. Quinn suggests at page 153 -- and you will recall Union
13 also said in its evidence, one of its concerns about STFT,
14 in addition to the fact that it doesn't come with STS,
15 which Union needs, but that it may not be available and you
16 certainly can't guarantee it will be available when you
17 might need it.

18 So the only prudent thing to do is to contract for the
19 entire winter, but it may not be available for the entire
20 winter at all.

21 So what Mr. Quinn -- and because this is an attack on
22 what the witness has said, I think it is important that we
23 put it in context. What Mr. Quinn said at page 153 was,
24 line 20:

25 "However, when I posed the question about the
26 availability of STFT to Union's gas supply panel,
27 captured on pages 21 to 23 of volume 3 earlier in
28 the compendium, the barrier was presented that

1 the service may not be available. As can be seen
2 on page 22, the witnesses said the service was
3 not available to Sault Saint Marie delivery area.
4 "What the witness did not say is that the
5 delivery area is not served directly by
6 TransCanada Pipelines, but off of Great Lakes'
7 system under arrangement with TCPL.

8 "Clearly, I was deflected."

9 I assume he means by that the answer was less than
10 candid.

11 However, we were able to ask experts on STFT from
12 TCPL, which can be found on pages 115 and 116 of volume 9,
13 when the last time STFT was not available from the North
14 Bay East, with the exception of a caveat that they placed
15 on Montreal outside of Union's territory. The answer was
16 STFT has been available for decades.

17 Two responses to that. First, in making the
18 submission, Mr. Quinn is mixing apples to oranges. First,
19 he's talking about, on the one hand, the Sault Ste. Marie
20 delivery area and whether it was available, and then in the
21 second part he's talking about STFT North Bay East.

22 To the extent the question was asked in relation to
23 Sault Ste. Marie, the Sault Ste. Marie delivery area -- and
24 that is all the witness said. She was asked, Can you give
25 me an example of an STFT -- an instance where STFT was not
26 available?

27 Answer: This past year in Sault Ste Marie delivery
28 area. That is what she said, and that submission -- that

1 answer was absolutely correct.

2 And if you look at tab 5, what you have collected
3 there at tab 5 and tab 6 is the open seasons by TCPL for
4 STFT for 2011 and 2012, and you will see that Union -- SWDA
5 -- or SSMDA, my apologies, was not available in 2012. So
6 the answer was absolutely correct.

7 And one final point I want to make on this. If you
8 look at tab -- it is very hard to see, but if you look at
9 tab 11, tab 11 is Exhibit K10.4. This is the map of TCPL's
10 system broken down by various utility delivery areas.

11 What is interesting is, if you look at the Sault Ste.
12 Marie delivery area, what you will see there is it is
13 indeed connected physically to the Great Lakes Gas
14 Transmission System, but TCPL sells long-term, long-haul
15 capacity from Emerson to Sault Ste. Marie delivery area,
16 and that is what Union holds.

17 But if what you're looking to buy is STFT, when you
18 look at the open seasons that we just looked at, you
19 actually need to buy first from Dawn across the St. Clair
20 River crossing that you heard something about, so that is
21 the first little nub, and then you need to buy from St.
22 Clair all the way up to Sault Ste. Marie. And this is why
23 I say it is hard to see.

24 But then you need to buy across the international
25 crossing, another bridge, to the Sault Ste. Marie delivery
26 area. In other words, you need to make sure that STFT is
27 available for all three components when you need it.

28 And what Ms. Hodgson was explaining was that it is

1 not. And that's why Union contracts -- in addition to the
2 fact that it gets STFT, that it doesn't contract STFT.

3 The next comment I would like to just make in relation
4 to the submissions by FRPO is at page 154. When talking
5 about the STFT alternative again, at line 18, Mr. Quinn
6 says:

7 "Gas could flow ostensibly in a contract to
8 Cornwall, could actually be diverted to Dawn and
9 flowed to IT. That would create 20 percent more
10 gas available at Dawn for the same price."

11 I don't know what to make of any of this, in that it
12 is not backed up by an evidentiary reference or actual
13 modelling that was done in this case. But the simple
14 proposition is that it was rejected by witnesses as a
15 prudent way to manage your gas supply plan. And, in any
16 event, Union doesn't need 20 percent more gas.

17 Equally, at page 151 of the submissions, there is a
18 complaint made about the quality of service and whether
19 Union requires counterparties to commit to deliver gas on a
20 firm basis. I would say this. To the extent that the
21 submission is made that Union doesn't require firm
22 deliveries, that's wrong.

23 The exchange contracts, which are in evidence and
24 which were talked about by Union, all require firm
25 deliveries, and you can see that at J.C.-4-7-10,
26 attachment 3. And you also had Mr. Isherwood's evidence
27 about the significant contractual penalty provisions that
28 are included, and I will give you the transcript reference.

1 That is volume 7, page 29 to 30.

2 I am mindful of the time. Let me summarize gas supply
3 by saying this. In my submission, when you actually drill
4 down on the facts, rather than a generalized complaint
5 about having too much gas, Union's gas supply plan is
6 prudent and should be approved. The principles are
7 reasonable. They have been approved by the Board before,
8 and they're no different.

9 Let me say this about the submission that came from a
10 number of parties, which is either an independent review or
11 a consultative. In my submission, Union's submission, that
12 is unnecessary.

13 That said, Union doesn't shy away from it. We don't
14 shy away from it for this reason. We stand line the gas
15 supply plan, absolutely. And to the extent this Board
16 feels it is necessary, having regard in particular to the
17 exchange revenues we talked about before, we don't shy away
18 from it at all.

19 And, indeed, we think at the end of the day what Union
20 has proposed and done historically will be confirmed.

21 If the Board were minded to make some sort of an order
22 in this sense, let me offer the following by way of
23 guidance. In 2011-0038 -- sorry, 2010-0039, parties and
24 Union were able to reach an agreement with respect to
25 studying the allocation of costs between Union's
26 unregulated and regulated businesses.

27 That review included an RFP that was subject to
28 intervenor review before it went out to hire a third-party

1 expert, the retention of a third-party expert specifically
2 directed to look in that case at Union's cost allocation
3 method here, gas supply planning.

4 An independent study was conducted. That independent
5 study was then subject to a stakeholdering session, so
6 parties saw it before it went into any application, and had
7 an opportunity to talk to the independent consultant in
8 relation to the work, in that case, he or she had done.

9 The results were then filed as part of, in that case,
10 Union's 2010 deferral account proceeding, and the witness
11 was called. There were interrogatories in respect of it.

12 In my submission, if the Board were minded to go this
13 way, that would be the way to do it. I strongly urge an
14 independent review, rather than a pure consultative, in
15 order to provide the Board with whatever assurance it
16 requires. And even at that, my -- the proposal previously
17 followed gave parties a full opportunity to ask whatever
18 questions they wanted to ask about whatever work is being
19 done and to test that ultimately in a hearing.

20 In terms of how long it will take to do that, that is
21 a lot of work, but we think it is reasonable to assume that
22 that can be done by the second quarter of next year -- or
23 in the second quarter of next year, I should say.

24 So that's our position. We don't think it is
25 necessary, but we don't shy away from it either.

26 Can we just take a quick time check? That is the end
27 of gas supply. We have to cover cost allocation -- sorry,
28 cost of capital, Parkway West, cost allocation and rate

1 design, and I just want to make sure that I'm responding to
2 your timing and when you want to break for -- stop for a
3 break or what you want to do.

4 MS. HARE: I think we would like to stop for a break
5 now. As to when we stop for the day, we have to do a
6 little checking as to what our time commitments are. So we
7 will get back to you.

8 By the way, you left out deferral and variance
9 accounts. Do you have anything on that, as well?

10 MR. SMITH: I do have a brief submission, but I tried
11 to cover it as I was going along. There is one brief
12 submission.

13 MS. HARE: That's fine. Why don't we break until
14 3:20? Thank you.

15 --- Recess taken at 2:59 p.m.

16 --- On resuming at 3:23 p.m.

17 MS. HARE: Please be seated.

18 The Panel is not able to sit tomorrow, so we are
19 prepared to stay tonight, hoping it is not beyond
20 6 o'clock.

21 MR. SMITH: No, it won't be. And I appreciate the
22 Board's indulgence and the reporter's accommodation, very
23 much.

24 MS. HARE: Thank you.

25 MR. SMITH: Before we move to cost of capital, two
26 quick references. Exhibit J7.2, which can be found at
27 tab 9 of the gas supply compendium, gives the TCPL
28 transportation paths that were available for the winter of

1 2012 and those that weren't available, and the Empress to
2 Union SSMDA is not available.

3 Also not available are Dawn or Parkway to Union CDA
4 and Union EDA, and that is significant for this reason.
5 Recall that if Union moves to FTST, it loses its STS
6 rights. It uses STS to move to those delivery areas in the
7 wintertime.

8 And if Union was contracting STF, it would also need
9 to have STFT to go to those delivery areas, and at least
10 this most recent winter TCPL did not offer that in its open
11 season.

12 The second point, just picking up on the question I
13 answered, Member Taylor, about an incentive, and I guess
14 the question was put on the basis of whether it is revenues
15 or a cost, you have my answer. But I suppose I would say,
16 equally, even if it were viewed as cost, an incentive would
17 be appropriate, and that, in my submission, would be no
18 different than regulatory treatment in other areas, but,
19 equally, it would be exactly the treatment if you viewed
20 exchanges as cost mitigation going back to 1992. And it
21 would follow in that circumstance that an incentive would
22 be appropriate, and you have my submission as to the
23 appropriate level of incentive. So I won't repeat that.

24 Let's move to cost of capital. There are two main
25 issues I intend to address under this topic. The first is
26 whether Union's proposal to increase its equity thickness
27 to 40 is appropriate, and there is a sub-issue under that
28 that I will get to.

1 The second is whether Union's proposed negative short-
2 term debt component of its capital structure is
3 appropriate.

4 Turning to the first issue and Union's proposed
5 increase in its equity thickness, parties universally
6 oppose Union's request. Most favour rejecting Union's
7 request and maintaining the equity ratio at 36 percent on
8 the theory that a good defence is a good offence. A few
9 indicated it should be reduced to 35 percent on the theory
10 this was the last litigated figure.

11 There is a fallback position that was referred to -- I
12 can't remember whether it was LPMA or SEC or both, but that
13 is in relation to pref shares and whether the preferred
14 shares should be included as part of Union's equity for
15 purposes of determining its common equity ratio.

16 Turning to the intervenor response, the submissions
17 fall into the following three broad categories: First,
18 that Union has a strong credit rating and there is no
19 evidence that changing the equity ratio will change that
20 rating; two, a related submission that Union has been able
21 to access the debt market on favourable terms; and, three,
22 that Union's business risk is unchanged and, therefore, its
23 request should be declined.

24 Before reviewing these submissions, I would say the
25 following, that no party challenged, at least head on,
26 Union's primary submission of comparability, that its
27 equity ratio is low relative to comparably-situated
28 utilities with whom it competes for capital. That is, that

1 other comparable utilities have equity ratios higher than
2 36 percent, which was a considerable focus, you will
3 recall, of Union's argument in-chief and, indeed, the
4 thrust principally of its evidence in this matter, which is
5 that Union is low relative to its peers.

6 In particular, nobody challenged the comparability of
7 Union to ATCO Gas nor to Terasen. The only response on
8 this front was by CCC and CME, and, really, that was to
9 deny comparability at all. CCC went so far as to say
10 comparisons of are no value.

11 In my submission, that proposition denies their own
12 witnesses' evidence, and, indeed, denies Dr. Booth's own
13 evidence. And at transcript volume 6, page 61, which can
14 be found in our argument in-chief compendium, tab 9, he was
15 asked directly whether or not weight should be attached to
16 comparables, and his answer was, directly: Yes, yes, you
17 should.

18 And then he went on to talk about that. And in my
19 submission, that was a fair concession, and not surprising,
20 given Dr. Booth's reliance on comparables in other
21 proceedings. It's certainly been a feature of his
22 analytical approach and the analytical approach taken by
23 other utility boards. And, in my submission, the same
24 should hold true for all of the reasons articulated in
25 Union's argument in-chief.

26 Dealing first with the submission in relation to
27 Union's credit rating and the submission that increasing
28 the ratio will not change the rating, let me begin by

1 saying, first, this is true of all of the relevant
2 comparators. All of the relevant comparators enjoy ratings
3 that are comparable to Union Gas's; in other words, natural
4 gas and electric utilities.

5 But just looking at -- natural gas utilities in Canada
6 are highly rated, and Union is no exception in that
7 respect. In particular, ATCO and Terasen are both -- and
8 Gaz Mét are all highly rated, and the evidence for that can
9 be found at G -- J.E -- my apologies, J.E-2-3-6, attachment
10 1, which can be found at the argument in-chief compendium,
11 tab 10.

12 So based on bond ratings, there is no basis to
13 distinguish Union from any of the main comparators. It's
14 also important to understand what's actually been said by
15 at least one of the bond rating agencies, and that is DBRS.
16 And I will give you the reference to that. That is
17 J.E-2-15-3, attachment 2.

18 And at page 1, and nobody took a witness to this part
19 of the report, but what it says is:

20 "DBRS notes that the company has filed a rate
21 case for the 2013 rebasing asking for a
22 40 percent deemed equity, currently 36 percent.
23 If its request is granted, DBRS expects Union to
24 manage its balance sheet in line with the new
25 regulatory capital structure and maintain greater
26 financial flexibility commensurate with the
27 current rating category."

28 In other words, in my submission, what they're saying

1 is, You would fit more properly with your current rating if
2 you had a 40 percent rating.

3 As to the second related submission, and that's
4 whether or not Union has been able to raise capital at
5 reasonable rates, and essentially this is a derivative of
6 the first point, but the most that can be said about this
7 position is that Union is in the same position as other
8 utilities, all of whom enjoy a higher equity rating.

9 And you may recall the evidence from Mr. Fetter and
10 from Dr. Vander Weide how those equity ratios have
11 increased since the financial crisis in 2008 and 2009.

12 I would also say that you had Dr. Vander Weide's
13 evidence and Mr. Fetter's evidence, both of which respond
14 to this point about the importance of maintaining a risk or
15 a credit profile and being able to manage going forward.
16 And you had Dr. Vander Weide's evidence, which can be found
17 in the argument in-chief and I don't propose to review it
18 again, but I did read it to you during my argument in-
19 chief.

20 The other observation I would make about this
21 submission is that it essentially sets an unachievable
22 standard, and not one that the Board has ever applied or I
23 am aware of a decision by another regulatory body in which
24 this cost benefit analysis, which is urged upon you by
25 ratepayers, has been ever accepted.

26 And it goes simply like this. The cost of the
27 increase in capital structure equity ratio is \$17 million.
28 And you heard a submission from Mr. Shepherd that it is

1 \$22 million. That number is incorrect. He was looking at
2 it believing there still had to be a gross-up for taxes.
3 The \$17 million has already been grossed up for taxes.

4 But it proposes that in order to justify a higher
5 equity ratio, a utility must be able to establish not only
6 that the cost of borrowing will go down, but that it will
7 go down in an amount equal to the increase associated with
8 the increase in the equity ratio during the test year. And
9 that is both, in my submission, unrealistic and
10 unachievable.

11 And Dr. Vander Weide talked about the logic of this
12 argument, that it would drive you to a zero equity ratio
13 and how that of course made no sense.

14 You also had Mr. Fetter testify about how equity --
15 about how ratings are actually set, and it's not -- it's
16 not, as the submission would imply, that if you have an
17 equity ratio that goes from 36 to 39 percent, then you
18 will, utility, receive a ratings upgrade of X or Y and this
19 will translate into a specific decrease in your borrowing
20 cost.

21 So, in my submission, while somewhat attractive, that
22 submission by intervenors should not be accepted at all by
23 the Board.

24 Just to give you the argument in-chief compendium
25 references to Dr. Vander Weide and Mr. Fetter's evidence,
26 you can see that at tab 6 of the argument in-chief
27 compendium, pages 15, 16 and, again, at pages 52 to 55
28 where Dr. Vander Weide talks extensively about how rating

1 agencies and regulators all have a better appreciation
2 today of risk than they may once have had and certainly had
3 prior to 2008 and 2009.

4 Another thing that this submission overlooks is the
5 interest coverage ratio, and this was alluded to. But when
6 intervenors say that Union is able to raise capital on
7 favourable terms, what they are saying is that it can meet
8 its interest coverage ratio in its debt instruments.

9 And as you heard in argument in-chief and in evidence,
10 that is only true looking at the utility as a whole.

11 Now, both BOMA and CME give the back of the hand to
12 this point. They say they urge you to consider the
13 interest coverage ratio of the entire company and disregard
14 the fact that Union could not meet its debt covenants on a
15 stand-alone basis.

16 This really doesn't make any sense, at least from a
17 fairness perspective, and it is entirely at odds with all
18 of the focus that takes place in this proceeding on
19 ensuring scrupulously that there is no cross-subsidy of the
20 unregulated business by the regulated business. And this
21 is simply the converse of that.

22 What ratepayers are urging you to agree with is
23 effectively a cross-subsidy of the regulated business by
24 the unregulated business in order to meet the interest
25 coverage ratio.

26 In my submission, there isn't a principled basis to do
27 that. And the only reason they want it, obviously, is to
28 avoid the serious consequences of not acceding to the

1 request otherwise.

2 In my submission, the position taken by BOMA and CME
3 on this point, it cannot be reconciled with positions taken
4 elsewhere not just by them, but by all intervenors, on the
5 importance of making sure that there are not cross-
6 subsidies between the regulated and unregulated business.

7 Indeed, I referred to it earlier, but the extensive
8 work that was done simply on cost allocation as part of the
9 parties' settlement that there would be an independent
10 review of the cost allocation study, subject to
11 stakeholdering, all of which, to one end, which is to
12 ensure no cross-subsidization.

13 The third argument that is made is there has not been
14 a change in Union's business risk. The submission on this
15 point is straightforward, but, in my submission, it
16 essentially misses the mark and suffers from one
17 fundamental failing.

18 It proceeds on the basis that Union's risk has not
19 changed since it was analyzed in connection with the EB-
20 2005-0520 case, i.e., in 2006. In other words, it's not
21 changed since it was studied by Dr. Carpenter and the
22 Brattle Group as part of Union's 2007 rate case.

23 What is overlooked in this analysis is that Union's
24 evidence in that case from Dr. Carpenter and the Brattle
25 Group was that Union's business risk warranted an equity
26 ratio of somewhere between 40 and 56 percent, depending on
27 the allowed rate of return, and the cite for that is
28 JT1.5-5. That can be found, again, in the argument in-

1 chief compendium at tab 1.

2 In other words, the minimum equity ratios at ROEs in
3 excess of the formula return was 40 percent, and it is for
4 this reason that Union says that its business risk has not
5 changed and says that its equity ratio is not commensurate
6 with that risk.

7 The advice that it received, the expert evidence it
8 had in 2005-0520, was that its business risk warranted at
9 least an equity ratio of 40 percent. And, in this case, it
10 is similarly received evidence and brought forward evidence
11 in the form of evidence from Mr. Fetter and Dr. Vander
12 Weide that its business risk is roughly equal to that of a
13 comparably or an average utility in Canada or the United
14 States.

15 And you have their evidence. I reviewed it in detail
16 and the excerpts are set out in the argument in-chief, but
17 that the equity ratios for utilities in Canada and in the
18 US is consistent with Union's request, ATCO Gas 39 percent,
19 Terasen 40, and, indeed, in the United States, the equity
20 ratios are higher.

21 And those are -- a point often overlooked, but those
22 are for what Mr. Fetter and Dr. Vander Weide categorize as
23 an average risk utility, comparable in risk to Union Gas's
24 risk, business risk.

25 So, in my submission, it is not a simple exercise of
26 saying your business risk is unchanged. Your equity ratio
27 is 36 percent.

28 In my submission, the step that overlooks is what

1 Union's position was in 2005-0520, what the evidence was in
2 2005 from Union's perspective, and that's why Union says
3 our business risk may not have changed. We just simply
4 feel that the equity ratio isn't commensurate with that
5 risk.

6 The other point I would like to make about business
7 risk is everybody, when looking at business risk, focusses
8 on the cost of gas supply and the impact -- or what's
9 happened with the cost of gas, which has gone down. They
10 make the submission that risk has gone down because the
11 commodity cost has gone down.

12 But, in my submission, that is just one-half of the
13 equation. Why has the cost gone down? Because there is a
14 surplus of supply. But there is a surplus of supply east
15 of Union's Dawn to Parkway system. That is supply that
16 doesn't need to travel, necessarily, along the Dawn to
17 Parkway system. And that is a significant risk to Union.

18 So, yes, the cost has gone down. Why? Lots of
19 supply. And Mr. Isherwood testified to this, and you see
20 it reflected in the A binder. There is an opportunity for
21 Union to repurpose its Dawn to Parkway system, and Mr.
22 Isherwood talked about that. But there is also a risk, and
23 there is a risk of turnback. And we've seen the risk of
24 turnback materialize as a result of the decrease in the
25 Dawn to Kirkwall and M12 revenues, and there is substantial
26 risk of turnback that is discussed in the A binder, as
27 well.

28 Now, turning to the sub-issue of preference shares,

1 LPMA and SEC both indicated that if Union's equity ratio is
2 to be raised, it needs to take account of Union's -- the
3 Board needs to take account of Union's preference shares,
4 which account for 2.75 percent of its capital structure,
5 when considering that request.

6 The response to that is this. Union has had
7 preference share in its capital structure for many, many
8 years. Those preference shares have never been considered
9 relevant by the Board to any assessment of Union's common
10 equity ratio. They were not considered relevant by Dr.
11 Booth in his analysis, and there is no reference to them
12 anywhere in his report in this case, or equally in 2006.

13 And they have not -- in any of the regulatory
14 decisions that are filed in evidence here, they have not
15 resulted in any regulator in Canada making an adjustment to
16 a common equity ratio to account for preference shares.

17 So, in my submission, the Board should not have regard
18 to the preference shares in setting Union's common equity
19 ratio.

20 Just before moving on, as to the suggestion that it
21 should -- the common equity ratio should be 35 percent
22 because that was the last litigated result, I say, in
23 response to that, my friends can't have it both ways on the
24 change in business risk.

25 If it hasn't changed, then you are at 36 percent. And
26 I would also give you Dr. Booth's transcript at volume 6,
27 page 8, where he essentially says that he's indifferent at
28 the 36 level. And, in my submission, there is no basis to

1 -- there is no basis for any move downwards, but obviously
2 our primary position is that Union's equity ratio should be
3 increased for all of the reasons I've said before.

4 As to the short-term debt, LPMA and SEC oppose Union's
5 inclusion of negative short-term debt in its capital
6 structure. The argument is essentially that Union has more
7 long-term debt than needed to finance rate base.

8 There are two responses to this. The first is that
9 the evidence is that non-rate base-related items are funded
10 by short-term borrowings, and you can see that at volume 5,
11 pages 55 to 58, undertaking response J5.4, which is set out
12 in the argument in-chief compendium at tab 7, and in answer
13 to interrogatory J.E-1-1-2. And that interrogatory can be
14 found at volume 5 of your compendium in the -- your
15 compendium for reply argument.

16 What you will see there is that:

17 "When asked to discuss the negative unfunded
18 short-term debt of \$115 million by Board Staff,
19 Union indicated that the short-term debt included
20 in the utility capital structure differs from the
21 actual short-term borrowings. CWIP and deferred
22 pension costs have a significant impact on the
23 amount of short-term borrowings.

24 "In addition, Union's cash position varies
25 significantly due to the seasonal nature of its
26 business, which impacts the average balance.
27 Lastly, the timing of the requirement for cash
28 comes before a proposed change in equity. An

1 increase in equity would be naturally offset by
2 debt. Long-term debt changes cannot happen
3 quickly by their nature."

4 "The cash position will slowly return to short-
5 term debt as the long-term debt level adjusts
6 through maturities and reduced issues."

7 And then it goes on in the second paragraph just to
8 summarize what Union says, is it issued long-term debt or
9 it plans on issuing long-term debt to avoid exceeding its
10 credit facility, which is at risk of occurring in the
11 fourth quarter of this year, and that it is not cost-
12 effective. To issue debt in small amounts would be
13 administratively burdensome and is obviously lumpy.

14 Union obtains long-term debt financing when prudent
15 and tries to take advantage of favourable market
16 conditions.

17 What the interrogatory goes on to observe, which is my
18 second primary submission, is that this is not a new issue
19 for Union, and none of the arguments that are made -- and
20 Union's response is no different.

21 This issue was addressed in the 2003-0063 case. There
22 is an excerpt in the interrogatory, but I have given you a
23 more complete excerpt at tab 1 of this portion of the
24 reply.

25 What the Board says on page 112 -- and this was
26 Union's 2004 rate case. What the Board said at the bottom
27 of page 112:

28 "The Board finds that Union is in compliance with

1 its deemed capital structure. Union's evidence
2 revealed that with respect to long-term debt it
3 had marginally exceeded the 65 percent debt
4 component of its approved capital structure."

5 That is the same instance here:

6 "This excess was offset by a negative short-term
7 debt balance."

8 Same situation here:

9 "Insofar as the variance was marginal..."

10 And I am going to come back to what the Board
11 considered to be marginal:

12 "...the Board considers this practice to be
13 acceptable. If taken to more significant levels,
14 this approach to the debt side of the capital
15 structure equation could become problematic in
16 certain market conditions."

17 And then it goes on to talk about:

18 "...utility management should be in a position
19 where it can conduct the business confidently and
20 conventionally without fear that the regulator
21 will intrude to second guess decisions which are
22 reasonable at the time they are made."

23 That is a reference to issuing debt, long-term debt,
24 which caused the negative short-term balance.

25 You can see that simply by looking back a couple of
26 pages, but I don't propose to spend time doing that now.

27 And it is important to look at what the Board was
28 actually considering at that time when it said "marginal",

1 and I have included the rate order working papers issued by
2 the Board April 2004 after the decision.

3 This is working paper schedule 6. You will see the
4 unfunded short-term debt component. This is found at tab 2
5 of the compendium, and the unfunded component as a portion
6 of rate base was 4.15 percent. Sorry, that was the cost
7 rate, 4.15 percent -- and relative or as a portion of the
8 capital structure, and then you can compare that to tab 4,
9 and the actual amount of unfunded short-term debt was
10 \$130,778,000 back in 2004.

11 You actually have, in this case, less unfunded short-
12 term debt, \$115 million. So, in my submission, if what the
13 Board was concerned with in 2004 was anything more than a
14 marginal exceedance and it considered an exceedance of
15 negative 4.28 percent, 138.8 million to be marginal, then
16 Union is in a better, i.e., improved, position relative to
17 that, and the same result should obtain in this case. And
18 there is no reason to reach a different conclusion.

19 So those are my submissions on cost of capital,
20 subject to any questions.

21 MS. HARE: Thank you.

22 MR. SMITH: That takes me to Parkway West. Most
23 parties did not comment on Parkway West. The parties who
24 did, principally, were TCPL, BOMA and Enbridge. Brief
25 submissions were made by LPMA and APPrO as to the
26 importance of the Board being in a position to make a
27 decision based on a complete evidentiary record and after
28 whatever consultation the Board determines to be

1 appropriate.

2 BOMA and TCPL's submissions were lengthier, but, in my
3 submission, when you actually cut through what they said,
4 it amounts to this, that the OEB should ensure that it has
5 an opportunity to adequately consider the Parkway West
6 project, its implications, available alternatives -- and
7 available alternatives at the time it is actually proposed
8 and the Board is asked to make a decision in respect of it.

9 And I would add to that that they say that the Board
10 should have available to it the full, to use BOMA's words,
11 "suite of projects", whatever those might be.

12 I will come to this, but Union fundamentally does not
13 disagree with that, but let's take it in chunks. Union's
14 position can be summarized as follows. First, Union
15 disagrees that the Parkway West project, which is a system
16 reliability project, is a, quote, to use Mr. Cameron's
17 words, "prebuild to an expansion of Union's transportation
18 system."

19 The evidence, including Union's -- the most compelling
20 evidence, including Union's own recent actions, demonstrate
21 that this submission is just wrong.

22 Second, Union disagrees that it has been unwilling to
23 discuss the project with TCPL.

24 Three, Union disagrees that any of the proposals put
25 forward by TCPL represent an adequate solution to Union's
26 reliability concerns. In most instances, properly
27 understood, they will be more costly than Union's proposed
28 project, and appear largely designed to address competitive

1 concerns that TCPL may have with respect to its own
2 volumes.

3 Now, that is not to say that Union is foreclosing or
4 wishes to foreclose, in this proceeding, discussion with
5 TCPL of alternatives or consideration of those
6 alternatives. And I accept fully -- Union accepts fully
7 that those alternatives may well be the subject of
8 considerable refinement, or cross-examination, or
9 development by TCPL, discussed by Union in the leave to
10 construct application.

11 But it is to say this, that having put the proposals
12 in evidence and argued on the basis of them, there is
13 nothing wrong with Union saying, By the way, we don't agree
14 with those proposals, at least as currently framed,
15 recognizing the world may change.

16 Four, ultimately Union agrees that the Board should
17 have an adequate evidentiary basis on which to base its
18 submissions, and I intend to conclude my submissions by
19 suggesting exactly how that can be accomplished.

20 As to the first comment, What is Parkway West and what
21 is not? The Parkway West project is described at Exhibit
22 B1, tab 9, and you can find that in Union's argument in-
23 chief. It is a reliability project. And you will see that
24 not only at B1, tab 9, but in the compendium at tab 5. We
25 have included the excerpts from volume 8 of the transcript
26 in this proceeding, and you have Mr. Redford's evidence at
27 pages 76 through to 78.

28 As he explains, it is a reliability project that has

1 two components, one being a loss of critical unit
2 protection, and the second is a second feed for Enbridge at
3 the Parkway site for Parkway (Consumers) and the Lisgar
4 feed backup.

5 The rationale for the project is also explained there
6 by Mr. Redford, and, in particular, the concern with
7 respect to LCU, which Union had been looking at as far back
8 at 2010. And that arises -- the LCU concern arises because
9 of what's happening at Parkway, and that's that there is,
10 now, nothing but exports at Parkway, whereas historically
11 there had been imports.

12 That is discussed by Mr. Redford in his evidence, and
13 it is no surprise, because it's been a feature of Union's
14 public position to this Board, and the market generally,
15 since 2010 - and we will come to it - consistently in the
16 Natural Gas Market Review.

17 Parkway West should not be confused with - and,
18 unfortunately, it appears to have been confused with - one,
19 Enbridge's own system reliability project and its own
20 Albion line. The confusion perhaps comes from the fact
21 that at one time -- and there was some discussion about
22 this in cross-examination. At one time, there was an MOU
23 talking about how that line would be jointly owned by Union
24 and Enbridge, but that is not the case. The line is --
25 Enbridge is going ahead with it. It is their line. Union
26 is not involved with it.

27 It should also not be confused with the extension or
28 expansion of the line from Parkway, or Albion for that

1 matter, to Maple, and that is what intentionally or
2 otherwise appears to have happened in submissions made by
3 parties.

4 Let me just address this latter point head on. If you
5 look at the compendium at tab 1 of Parkway West, at page 3
6 -- this is from August 24th. It is volume 15. These are
7 Mr. Cameron's submissions. But if you look at the very top
8 of the page, what he says is that:

9 "...Union and Spectra in fact view this project
10 as a pre-build and a launching pad for an
11 expansion of Union's transportation corridor."

12 He's talking there about Parkway to Maple. Then if
13 you look over to page 8, you see the same submission, that
14 essentially Union is looking to build out Parkway to Maple
15 for its own benefit.

16 As I said at the outset, that submission is flatly
17 contradicted by Union's previous statements to this Board,
18 to TCPL, and actions as reflected in the evidence in this
19 case. And the simple facts are these.

20 For some time, Union has been concerned with the
21 bottleneck at Maple, and this has been Union's public
22 position and well known, frankly, to anybody who would
23 listen, but certainly well known to TCPL, and it was the
24 position put forward by Union in the Natural Gas Market
25 Review.

26 And I have included, at tab 2, Union's presentation to
27 this Board at the stakeholder conference in the Natural Gas
28 Market Review. In the interests of time, I will just take

1 you to the last slide, which is at page 24, large caps:

2 "Bottleneck from Parkway to Maple is limiting the
3 movement of supply into and from Ontario. Urgent
4 need..."

5 At the top:

6 "Urgent need to expand Parkway to Maple."

7 And there is a bunch of -- there's discussion
8 throughout this presentation as to the need, but that
9 what's happening is that there are increased exports at
10 Parkway. There is a considerable -- there's only a single
11 line built between the two, and there is considerable
12 demand that Union believes needs to be met.

13 If you look at tab 4, these are Union's comments at
14 the Natural Gas Market Review. I would just simply draw
15 you to pages 27 and 28. These are Mr. Isherwood's comments
16 at pages 27 and 28 as to why this piece of pipe, as he
17 calls it, between Parkway and Maple is so important to
18 Ontario. You will see that at page 28, page 11:

19 "It definitely adds liquidity, health of
20 liquidity at Dawn and growth of Dawn. It helps
21 with security of supply. It helps with diversity
22 of supply."

23 Line 14:

24 "So for us going forward, that's probably one of
25 the most important things, is the province -- we
26 need to be at least watching, and I think that
27 the market will work. It's just going to be
28 critical."

1 And he goes on. And what he says next on page 30 is,
2 in my submission, extremely important. He's asked at page
3 22 by APPrO about who is going to build Parkway to Maple,
4 and what Mr. Isherwood says at line 22:

5 "I think the most logical choice is TransCanada.
6 It's sort of their path and their assets, and, as
7 I understand it, they're looking at it today.
8 Whether Union would build it or not, I'm not
9 sure, but if TransCanada didn't build it, I think
10 somebody in the market might. There are lots of
11 pipeline companies that would see that as an
12 opportunity."

13 So Union's public position was that this was a natural
14 project for TCPL to undertake.

15 Now, here's the tension. Back at tab 3, TCPL's
16 comments, bottom of page 72, top of page 73. It is three
17 pages in, and these are Mr. Pohlod's comments, but at the
18 very bottom:

19 "We don't believe that path..."

20 I.e., Parkway to Maple:

21 "... has been bottlenecked."

22 That's TCPL's -- that was their position. They don't
23 agree that it's been bottlenecked.

24 So what happens? Ultimately frustrated, Union
25 initiated its own open season - and you heard evidence
26 about that - earlier this year, and to suggest that that
27 caught anyone by surprise asks too much, given Union's
28 position as far back as 2010.

1 In any event, what did this do? It prompted TCPL into
2 action, and a few weeks later it held its own open season.
3 There is not enough demand for two competing Parkway to
4 Maple projects, and Mr. Redford testified to this at some
5 length.

6 And just to give you one reference, compendium tab 6,
7 page 66 to 67, and he says at the bottom of page 66:

8 "Well, I think I answered that previously, but,
9 yeah, we're still working with the market to
10 rationalize support for that path. As I said
11 before, I think either Union or TransCanada is
12 going to obtain the amount of market necessary to
13 hit critical mass to expand through that
14 corridor. Probably not both."

15 What has happened since the open season was launched
16 by TCPL? This piece of evidence came reluctantly. It is
17 set out at tab 8 of the compendium from TCPL. I don't
18 propose to read it all to you, but the bottom line is this.

19 Union bid into TCPL's open season. In other words, it
20 put its money where its mouth is and it did exactly what
21 TCPL -- I will just give you the -- it sort of gets cut off
22 on page 30 with me talking. If you were inclined, you
23 could also look at page 31 where they confirm, in fact,
24 Union did bid into the open season, which means that Union
25 is committed to entering into a precedent agreement and the
26 ball is in TCPL's court. If it builds, Union is committed
27 to the TCPL Parkway to Maple extension project.

28 There is simply nothing in the submission that Union

1 is looking to bypass TCPL in that corridor. And the
2 suggestion otherwise is simply wrong and inconsistent with
3 the evidence in this case.

4 Turning to the second issue with respect to
5 consultation, the evidence is that Union raised with TCPL
6 in October 2001, prior to filing, its intention to include
7 a reference or to proceed with the Parkway West project as
8 ultimately reflected in its evidence.

9 And while TCPL complains about that and the amount of
10 time prior to filing it received, the simple fact is and
11 the evidence is that there were no communications from TCPL
12 at all with respect to its suggestion until its prefiled
13 evidence was received in April of 2012, so basically six
14 months later.

15 MS. TAYLOR: Mr. Smith --

16 MS. HARE: We're probably going to say the same thing.
17 I think you misspoke. You said October 2001. Did you mean
18 to say 2010?

19 MR. SMITH: 2011.

20 MS. HARE: 2011, okay.

21 MR. SMITH: Yes.

22 MS. HARE: Was that the same point?

23 MS. TAYLOR: Yes.

24 MR. SMITH: No, 2011. Which brings me to my third
25 submission, which is simply a discussion of the proposals.
26 And I don't intend to dwell on the merits of TCPL's
27 proposals, other than to say that Union categorically
28 denies that the projects -- the proposals, as they have

1 been put forward by TCPL in this proceeding, are lower-cost
2 or prudent alternatives.

3 You will see at compendium tab 5, pages 79 to 81, a
4 discussion by Mr. Redford of the proposals and the reasons
5 why Union doesn't believe that they are sufficiently
6 responsive to the concerns. And it is important to
7 consider what they are.

8 You have the first alternative, which is a
9 transportation service from Empress using STFT to replace
10 supply at Parkway. Related to that is alternative 4, which
11 proposes using transportation service using backhaul
12 capacity on Great Lakes Gas Transmission.

13 And it is important to bear in mind the quantity of
14 gas that we're talking about, and the quantity of gas is
15 1.1 pJs of supply that would need to be back-stopped.

16 The evidence from TCPL and from Union, frankly, was
17 that that quantity of gas would cost hundreds of millions
18 of dollars, which is well in excess of the amount reflected
19 in the Parkway West project.

20 Alternative 2 and 3 are extremely similar.
21 Alternative 2 proposes to construct a compressor unit at or
22 near Parkway. That is not dissimilar to what Union has
23 proposed. And to the extent in its evidence TCPL suggests
24 that it is less expensive, that entire savings comes as a
25 result, as I understand it, anyway, from the fact that the
26 compressor would be used as opposed to new.

27 But if you assume a used compressor by Union or the
28 sale of a compressor by TCPL to Union, which in my

1 submission would be entirely reasonable if what we're
2 talking about is reliability of Union's system, then the
3 cost is identical. And really what you have is a
4 difference in preparedness, and Union has already optioned
5 the land.

6 And what we're talking about - and people shouldn't
7 forget this - we're essentially talking about a huge parcel
8 of land. I can't remember if it is something like 60
9 acres, but it is a big piece of land. Sorry, that is for
10 the entire Parkway system. Parkway West is smaller, but
11 it's a big piece of land out near the airport.

12 That is a busy area. You heard the evidence from Mr.
13 Redford about the difficulty in obtaining land there and
14 the efforts that Union has had to undertake.

15 But, in any event, all of that is to suggest that at
16 least as far as the proposals go, the cost is comparable to
17 the extent TCPL can even get land, but Union is further
18 ahead.

19 Where does that take you in that analysis?
20 Ultimately, the question is: What is Union's position?
21 And as I said in argument in-chief, there are no approvals
22 that are being sought in this proceeding. And I do agree
23 with Mr. Cass, and I agree with even Mr. Cameron on this
24 point, that the Board should not pre-judge any of the
25 various alternatives that are being put forward,
26 notwithstanding my own temptation to say that the Parkway
27 West project, as contemplated by Union, is to be preferred.

28 The better view is that at this stage and on this

1 evidentiary record, and given that no approvals are being
2 sought, the Board should not pre-judge any of the projects
3 -- any of the proposals. And that's a substantive
4 position.

5 But the Board should also not pre-judge the process
6 relating to Parkway West. I do agree that, absent a filing
7 and an evidentiary record, the Board is not in a position
8 to determine what the appropriate process might be for
9 dealing with the Parkway West project, but I don't think
10 that that's an issue, and I say that it's not an issue for
11 two reasons.

12 One, Union is mindful of what the Board might be
13 concerned about, which is that it have a complete
14 evidentiary record. Two, the Board has considerable
15 procedural tools to order whatever process it feels is
16 appropriate once it has received Union's application.

17 You heard the evidence that Union anticipates filing
18 -- I guess we're getting close, but that it anticipates
19 filing in October of this year. And at that point, the
20 Board, and whichever panel is charged with it, will be in a
21 position to make a determination as to how that proceeding
22 should unfold, and that could extend to considering what
23 consultations may be appropriate as between relevant
24 stakeholders.

25 It could go so far as to extend to other projects,
26 i.e., Enbridge's system reliability project, if that were
27 appropriate.

28 But, in my submission, none of that should be pre-

1 judged here, and parties should be given an opportunity,
2 once Union has filed, to make submissions as to what that
3 process will be, and I'm sure the Board will give parties
4 that opportunity. The Board can then decide how it wants
5 to proceed.

6 But, in my submission, Union should not be foreclosed
7 from filing a leave to construct application in respect of
8 a project at this stage, nor should the Board pre-judge
9 either the substance or the process in relation to that.

10 I just wanted to make one final observation. There
11 was a comment about what the leave to construct application
12 might or might not include.

13 BOMA said, Well, it may not include the compressors,
14 because leave to construct isn't technically necessary in
15 respect to the compressors. That is not -- A, that is not
16 what Union proposes to do, but it is also not the evidence.

17 The evidence from Mr. Redford on this was that Union
18 would file complete project economics, including the
19 compressors, which are all part and parcel of the project.
20 Indeed, as he said, it makes no sense to go ahead with
21 building compressors when you don't have leave to construct
22 the headers.

23 So it all has to be in front of the Board, and Union
24 is committed to doing that.

25 MS. HARE: But, Mr. Smith, what I understood Mr.
26 Cameron to say was that he was asking to have discussions
27 about alternatives with Union Gas and Enbridge before you
28 file.

1 I hear you're saying that you will file, and then
2 people will have the opportunity to discuss alternatives.
3 Is that correct?

4 MR. SMITH: It is. And in my submission, the approach
5 that I've suggested is preferable for this reason, because
6 anything less than that -- at least the Board, under the
7 proposal that Union has put forward, will be in control of
8 the process and can put in place a settlement conference or
9 whatever consultation it feels is appropriate.

10 If you don't do it that way, to be perfectly blunt
11 about it, all of the participants, but Union in particular,
12 whose system reliability project it is, is subject to
13 TCPL's schedule as to its timing for consultation, when it
14 responds to information, and what its position may be in
15 respect of information requests from Union.

16 In my submission, that kicks Union out to who knows
17 when. Obviously you want to presume the good faith of
18 everybody, but the best way to ensure that is to allow
19 Union to file, and then you can put some timetable in place
20 and you can say, Fine, if you think consultation is
21 appropriate, here's the window for having consultation.
22 Get it on.

23 In my submission, that is infinitely preferable than
24 sending the parties off with no return date.

25 MS. TAYLOR: Just a related question to that, Mr.
26 Smith. Consultation after an application has been formed
27 could require a substantial amendment to that application.

28 So I appreciate you would rather be in control, I

1 suppose, of the schedule. There are some Board efficiency
2 issues with having filed an application that has not been
3 out, has not been consulted on, has not been subject to
4 rigorous testing, if you will, or negotiations or whatever
5 you want to call them, with the other two gas systems in
6 this province, may result in a refile of an application
7 and, in effect, change in the process and not an effective
8 use of Board resources or time.

9 MR. SMITH: Well --

10 MS. TAYLOR: To come in with something, in effect,
11 that is premature, since you have not really had
12 conversations, I suppose.

13 MR. SMITH: I don't agree with that for two reasons.

14 The first is I don't think, if what you're talking
15 about is consultation at the front end, which is what we're
16 talking about, that there will be a substantial waste of
17 the Board's time or parties' resources.

18 But I also would submit that in the unusual
19 circumstances of this case, it doesn't arise principally
20 because, while the talks have not been extensive, it's not
21 as though the parties are arriving or would be arriving at
22 a consultation cold.

23 I mean, Union has put out its Parkway West proposal.
24 TCPL has asked interrogatories in respect of it. TCPL
25 brought a motion to compel answers. TCPL filed evidence.
26 Union asked interrogatories in relation to it.

27 I mean, these are all things that, to the extent there
28 was concern about what might happen in a consultation and a

1 refinement of a proposal, I mean, these things have
2 happened. There may well be further refinement but, in my
3 submission, we're not talking about parties coming at
4 something cold anymore.

5 MS. TAYLOR: Just the last question. It was discussed
6 extensively in the hearing that you do plan capital
7 expenditures in 2012 --

8 MR. SMITH: Yes.

9 MS. TAYLOR: -- related to the project, and you
10 anticipate continuing with those expenditures in 2012
11 before consultations and before any sort of determination
12 from the Board in this proceeding?

13 MR. SMITH: I mean, Union certainly is working towards
14 the Parkway West project. The evidence from Mr. Redford as
15 to how much was spent thus far, I think the numbers are
16 relatively modest, mostly relating to put the land under
17 option, as I recall it.

18 But, yes, I mean that would be Union's proposal, but
19 that is not to say that Union is looking -- and this
20 question was asked directly and I answered it -- looking
21 for a hint-hint, wink-wink, nudge-nudge approval from this
22 Board as a result of any process that's taken place thus
23 far or that it suggests ought to take place. Union
24 understands there is a risk associated with that.

25 MS. TAYLOR: I believe Mr. Cameron's issue was it
26 would be a fait accomplis by the expenditure of cash.

27 MR. SMITH: I don't accept that. I don't accept that
28 as a matter of law, and I don't accept that as a matter of

1 this Board's power.

2 MS. TAYLOR: Thank you.

3 MS. HARE: Okay. Does that take us to deferral
4 accounts?

5 MR. SMITH: Sure.

6 [Laughter]

7 MR. SMITH: I was going to touch on them at the end,
8 but you know what? Now is as good a time as any.

9 You have the deferral accounts captured. I just have
10 a very brief submission in respect of the deferral
11 accounts. The submissions are these. I tried to touch on
12 them as I went along, but the first related to the average
13 use deferral account.

14 As I said when making my submissions in relation to
15 NAC, we stand behind the NAC -- Union stands behind its NAC
16 forecast, but, in any event, if the Board is inclined to
17 implement an average use deferral account, that's fine,
18 too.

19 The second is in relation to the ex-franchise exchange
20 revenue forecast, and I don't think we need to go over that
21 again, but you heard my submissions on this point.

22 I would respond to one other request for a deferral
23 account in relation to ex-franchise services, and that was
24 a request by LPMA for a deferral account in relation to
25 long-term transportation revenues.

26 In my submission, there is no basis for that deferral
27 account. Union has never had a deferral account in
28 relation to ex-franchise long-term transportation revenues;

1 that it has always been at risk to forecast those revenues,
2 and that the same regulatory treatment ought to obtain
3 going forward and there is no principled reason why that
4 ought to change.

5 MS. HARE: You're using deferral and variance accounts
6 interchangeably, when in fact you really mean a variance
7 account, for example --

8 MR. SMITH: I was, yes.

9 MS. HARE: -- on the ex-franchise?

10 MR. SMITH: My apologies. That was imprecise.
11 Correct.

12 MS. TAYLOR: Just to clarify your earlier suggestion
13 or recommendation to the panel regarding the RAM of
14 11.6 million.

15 If nothing is built into the revenue requirement, then
16 in fact it would be a deferral account?

17 MR. SMITH: Yes.

18 MS. TAYLOR: Thank you.

19 MR. SMITH: There was a submission by Board Staff with
20 respect to an account established for encroachment, if
21 there happens to be encroachment by Union's unregulated
22 business on its regulated excess utility storage space.

23 In my submission, there is no proper basis for an
24 account to capture that, and that is reflected in the
25 transcript excerpts that are captured at volume 7, pages
26 170 to 175.

27 You will recall the evidence that what happened there,
28 there was an encroachment over the Thanksgiving weekend,

1 that it was brief, but that Union took steps immediately to
2 rectify that situation and incurred a cost of -- I believe
3 it was \$1.1 million, which it bore entirely.

4 So, in my submission, there need not be a deferral
5 account to capture an instance that happens over one
6 weekend where the shareholder is prepared to bear the cost
7 of that. And, as it turned out, the cost was significant.

8 MS. TAYLOR: Mr. Smith, where in the evidence does it
9 point to that as a standing principle on an ongoing basis?

10 MR. SMITH: Well, when you look at the 2011-0038 case,
11 I believe it was, Union was directed to report on
12 encroachments on an ongoing basis, and it is for that
13 reason that the evidence was brought forward here. And, in
14 my submission, that comparable evidence would be brought
15 forward, if it ever happens again, in subsequent
16 proceedings, and the Board can make a determination in that
17 proceeding; if it happens and if it is warranted, that
18 there could be some sort of -- I don't know what the
19 treatment might be, but there could be treatment of that
20 situation, whatever it might be at that time.

21 But, in my submission, what -- on the evidence here,
22 we're talking about a three-day weekend where Union
23 mitigated quickly. The proposal to establish a deferral
24 account presumably to capture the loss of opportunity to
25 sell short-term storage, Union wouldn't sell short-term
26 storage over the Thanksgiving weekend, in any event. So I
27 don't really see where this --

28 MS. TAYLOR: It is the principle regarding mitigation

1 that if the utility portion of storage is encroached upon
2 by the non-regulated part or by error, I suppose, the
3 principle that you have undertaken or Union has undertaken
4 in this situation that the \$1.7 million was paid for by the
5 shareholder, is that the ongoing treatment that Union is
6 saying that they will undertake?

7 MR. SMITH: Yes, yes, that Union will bear the cost of
8 that. Its shareholder will bear the cost of that and
9 ratepayers won't. And that is exactly what Union did, and
10 it would do so going forward.

11 MS. TAYLOR: Thank you.

12 MR. SMITH: Those are my submissions with respect to
13 deferral and variance accounts. There were a number of
14 other accounts that Union has proposed to close, for
15 example, the late payment penalty account, but parties did
16 not oppose that and I don't propose to go over that
17 further.

18 MS. HARE: Okay. Should we take a ten-minute break
19 before we deal with cost allocation and rate design?

20 MR. SMITH: Yes, thank you.

21 MS. HARE: Yes. So we will come back in ten minutes.

22 --- Recess taken at 4:34 p.m.

23 --- On resuming at 4:48 p.m.

24 MS. HARE: Please be seated.

25 MR. SMITH: Cost allocation, you should have -- at the
26 binder at tab 1 of cost allocation, you should have Exhibit
27 G1, tab 1, pages 1 to 15, and that is Union's pre-filed
28 evidence -- well, a portion of Union's pre-filed evidence

1 in relation to cost allocation.

2 Set out in that evidence are the various cost
3 allocation proposals that Union has brought forward in this
4 proceeding, and you can also see at Exhibit G1, tab 1,
5 appendix A, the proposed methodology changes that Union has
6 proposed in this proceeding, and my intention is just to
7 move through those.

8 So following -- I should say, as well, that these are
9 mirrored in the issues list. So turning to issue G2, the
10 Oil Springs East allocation, what Union is proposing is to
11 eliminate the direct assignment of Oil Springs East
12 structures and improvements meter and regulator or plant-
13 related cost to Dawn Trafalgar easterly transmission.

14 Oil Springs East assets provide both storage and
15 transmission services to customers. Union is, accordingly,
16 proposing to treat Oil Springs assets like other assets in
17 the Dawn yard, i.e., functionalize between storage and
18 transmission based on the Dawn horsepower allocation, and
19 that can be found in G1, tab 1, pages 7 to 8.

20 The proposed change is supported by LPMA. Other
21 parties either adopted LPMA's submission on the issue or
22 took no position, and, in Union's position, the proposed
23 change should be approved by the Board.

24 Issue G3 relates to Tecumseh metering. When it looked
25 at the issue, the Tecumseh metering assets were
26 reclassified from transmission to underground storage for
27 plant accounting issues. In other words, Union realized
28 that there was a difference between cost allocation and

1 plant accounting.

2 Tecumseh metering assets continue to provide
3 transmission-related services. To ensure that the costs
4 associated with Tecumseh metering continue to be treated as
5 transmission-related costs, Union proposes to directly
6 assign the costs to Dawn station classified as demand-
7 related costs, and to allocate to rate classes in
8 proportion to design day demands of Dawn compression. And
9 that is explained at G1, tab 1, pages 6 and 7.

10 And like the Oil Springs allocation, the proposed
11 change is supported by LPMA, and others either adopted
12 their submission or took no position. Here again, Union
13 says that its proposal should be adopted.

14 Issue G4 relates to the allocation of system
15 integrity-related costs. Under the -- this was, at least
16 in part, a settled issue. Under the settlement agreement,
17 parties accepted the proposed system integrity amount and
18 the allocation for 2013. The agreement goes on to say that
19 acceptance is without prejudice to the examination at the
20 hearing of matters pertaining to the actual use of utility
21 storage space, including system integrity space, provided
22 that the determination of this issue by the Board will not
23 result in any change to the test year revenue requirement
24 related to issues B or D, and that can be found in the
25 settlement agreement at issue 3.17.

26 The cost allocation study methodology was not settled.
27 That is -- you can see that in the settlement agreement at
28 issue 6.4.

1 For 2013, the only change in cost allocation method
2 related to system integrity space was to allocate system
3 integrity cost for hysteresis based on filled and empty
4 system integrity space requirements. And that is explained
5 at G1, tab 1, pages 3 to 6.

6 As explained, Union requires 6 pJs of filled space to
7 meet winter operational requirements resulting from system
8 upsets, imbalances in forecast variances, i.e., late
9 seasons withdrawals.

10 Union also requires 3.5 pJs of empty space on November
11 1st to meet late season injections. Consistent with
12 current Board-approved methodology, Union proposed to
13 allocate the filled space on the basis of storage
14 requirements, and Union proposed to allocate the empty
15 space costs using storage requirements excluding short-term
16 and long-term non-utility space, because these two services
17 have little or no October/November injection rights.

18 In argument, no party challenged or made any
19 submissions on the allocation method proposed in G1, tab 1,
20 and, in my submission, it ought to be approved by the
21 Board.

22 There was an issue raised by FRPO, but it doesn't
23 relate to cost allocation. FRPO had raised, in its
24 argument, whether or not Union should be required to, in
25 effect, optimize system integrity space. FRPO proposed
26 that the 3.5 pJs of space left empty, if not used, be
27 filled post November 1st so it could contribute to the six
28 pJs full requirement for the winter - you may recall the

1 submissions to that effect - and that FRPO suggested that
2 assuming none of the 3.5 pJs was required in the fall,
3 3.5 pJs of additional space would be available to sell as
4 short-term storage.

5 As reflected in JT1.2, Union does not agree with this
6 proposal, notwithstanding the fact that presumably it would
7 result in increased revenues to Union. But Union has
8 maintained that there is considerable risk around what FRPO
9 is proposing, and it is likely that any gas purchased post-
10 November would be at a higher cost than what Union could
11 get in the market when it disposes of the gas later in the
12 summer.

13 That is really not -- not surprising, given the
14 summer/winter differential.

15 When you look at volume 14, page 125, FRPO requested
16 that Union provide the source of the prices used by Union
17 and demonstrate the merits of the approach.

18 In my submission, the proposal put forward by Union
19 should be -- sorry, put forward by FRPO should be rejected.

20 In answer to the question when Union responded to the
21 undertaking, it calculated -- or when responding, Union
22 used the NYMEX price for the forward months, plus a Dawn
23 basis. As system operator, Union has never optimized its
24 system integrity space.

25 This has been Union's consistent position in any
26 number of proceedings going back at least to 1999. The
27 benefit that FRPO believes to be present is dependent on a
28 number of factors which are out of Union's control, fall

1 weather, winter weather, summer/winter price differentials.

2 What FRPO is proposing is to essentially gamble with
3 system integrity space. In Union's submission, as system
4 operator, that is not a prudent thing for it do with
5 integrity space. It has not done it in the past. Despite
6 what might appear to be a financial incentive to do so, it
7 doesn't propose doing so going forward.

8 FRPO had also said that there should be a third-party
9 study -- or LPMA suggested that there could be a third-
10 party study of the issue. In Union's submission, there
11 isn't really any merit to that, because ultimately, again,
12 the answer is going to depend - and it is going to depend
13 in any particular year - on whether or not there is -- what
14 the summer/winter price differential happens to be and what
15 is happening with fall weather or winter weather.

16 Nobody disagrees that 3.5 pJs empty and 6.5 pJs full
17 is required. No one disagrees with the allocation in G1,
18 tab 1, and for those reasons Union submits that its cost
19 allocation proposal -- and FRPO's optimization proposal
20 should be rejected.

21 That takes me to issue G5, which is north distribution
22 customer station plant allocation. As explained in
23 relation to that issue, Union is proposing to change the
24 allocation of costs related to northern distribution
25 customer station plant to recognize that only customers
26 consuming in excess of 934,400 cubic metres per year
27 contribute to distribution customer station costs.

28 Currently, northern distribution customer station

1 costs are allocated to northern rate classes using average
2 number of customers, excluding rate 01, which is the
3 northern small volume general service rate class.

4 And the effect of the change is to allocate more costs
5 to rate 20, rate 100 and rate 25, and fewer costs to rate
6 10. It is a change of approximately \$2.169 million.

7 APPrO poses the current -- sorry, the proposed
8 methodology change. Other parties take no position. APPrO
9 proposes that the current Board-approved method be used or,
10 in the alternative, the method presented in attachment 1 of
11 J.G-5-13-1 be used. Essentially, APPrO advances two
12 arguments in support of their position.

13 The first is that the 934,000 number is arbitrary, and
14 the second is that because there may be overlap in the
15 Rate 20 and Rate 100 with the Rate 25, the number of
16 customers used in the allocation is overstated and results
17 in double recovery.

18 As to the first point with respect to the 934,000, it
19 is Union's position that it is not arbitrary. 320 cubic
20 metres per hour is the maximum hourly flow per the customer
21 station construction, so that is what it can accommodate.

22 You will see that at G1, T1, page 12 and J.G-5-3-1.

23 Typical industrial load factor for customers in those
24 rate classes is approximately 40 percent, and the
25 assumption is that those customers will flow -- industrial
26 customers will flow 20 hours per day, and those figures
27 themselves are unchallenged.

28 When you do the math as to 320 metres cubed per hour

1 at 365 days, 20 hours a day, 40 percent load factor, that
2 gets you to 934,400 cubic metres a day. So, in my
3 submission, there is a sensible basis for the 934,400.

4 As to the rate 25 suggestion of a double count, there
5 is no double count of the allocation of costs. The costs
6 of distribution customer stations are allocated and
7 recovered from all contract rate classes, including
8 interruptible classes, and customers taking a firm service
9 in combination with an interruptible service pay for only a
10 portion of the station costs in each of their rates.

11 In other words, you don't have a situation where you
12 are recovering more than the actual station costs
13 themselves.

14 So, in my submission, Union's proposed change to the
15 allocation method should be approved by the Board.

16 Issue G6, that is distribution maintenance, operating
17 -- sorry, distribution maintenance, O&M, meter and
18 regulator repairs. What Union is proposing there is to
19 classify and allocate both Union North and Union South
20 distribution maintenance and regulator repairs in
21 proportion to the allocation of distribution meter and
22 regulator gross plant, excluding M1 and rate 01.

23 Essentially, Union is proposing to change the
24 allocation to harmonize the allocation of costs between
25 Union North and South, and recognize that there is minimal
26 maintenance costs associated with residential meters,
27 because it is more economical to replace those meters than
28 to repair them. You see that at G1, tab 1, pages 13

1 and 14.

2 The proposed changes are supported by LPMA, but it
3 submits that the Board should direct Union to address a
4 potential cost allocation issue between the new M1 and M2
5 classes at its next cost allocation study. Other parties
6 either support LPMA or take no position.

7 I will address this point when I come to the M1/M2
8 split. But, in my submission, the premise of LPMA's
9 concern that there is a cost allocation between M1 and M2,
10 an issue that needs to be addressed, doesn't withstand any
11 rigorous scrutiny. So ultimately Union's position is that
12 its proposal in relation to distribution maintenance O&M
13 should be approved.

14 As to issue 7, issue G7, distribution and maintenance
15 O&M, equipment on customer premises, Union is, again,
16 proposing to harmonize the allocation of O&M-associated
17 maintenance of equipment on customer premises. Currently,
18 these costs are allocated on the basis of service call time
19 in the south to rates M1 and M2, and in the north on the
20 basis of a historic allocator, the historic allocator being
21 appliance rentals.

22 As explained at G1, tab 1, page 14, J.G-7-3 -- and
23 J.G-7-3-1, my apologies, equipment on customer premises
24 relates to maintenance of the customer station itself. And
25 the proposed allocator for both the north and south is
26 customer station flow plant. Union's proposed changes are
27 supported by LPMA.

28 Others either support LPMA or take no position. The

1 outlier in this respect is APPrO. APPrO does not support
2 the proposal primarily on the basis that it is not clear as
3 to what costs are included in the distribution,
4 maintenance, O&M equipment on customer premises. And, in
5 my submission, that argument doesn't have any evidentiary
6 traction.

7 If you look at Exhibit G1, tab 1, page 14, and
8 J.G-7-3-1, which I referred to earlier, that explains that
9 what we're talking about is equipment and maintenance of
10 that equipment at a customer station.

11 Union is proposing -- what Union's proposal does is it
12 aligns costs with cost causality, harmonizes the north and
13 south allocation methods and replaces the current Board-
14 approved cost allocation methods that have outlived their
15 purpose with something that is more up to date. And, in my
16 submission, Union's proposal should be adopted.

17 Issue G8, purchase production general plant
18 allocation, that can be found at G1, tab 1, page 15.
19 Without getting into it, this is another area where all
20 parties either accept it or take no position. It is
21 explicitly accepted by LPMA, and Union's proposal should be
22 accepted, in my submission.

23 Issue G9, Dawn to Dawn-TCPL, Dawn to Dawn-Vector, and
24 M12 F24T services, the issue here relates to F24T.

25 Exhibit G1, tab 1, pages 8 and 9, Union's proposed
26 changes to the Board-approved cost study to include cost
27 allocations related to several new ex-franchise services
28 developed since the cost allocation study was last reviewed

1 as part of EB-2005-0520. All of Dawn to Dawn-TCPL, Dawn to
2 Dawn-Vector, and M12 F24T services were all developed in
3 the last few years. I guess the oldest is F24T, which came
4 out of NGEIR.

5 The one issue that has been raised or the cost
6 allocation in relation to one service that's been raised is
7 the F24T service, and at volume 15, page 139, what APPrO
8 says is that the costs of providing F24T service should be
9 rolled into rates, paid by all M12 shippers.

10 Going back to F24T, it was one of a suite of services
11 developed as part of NGEIR to accommodate the need of
12 natural gas-fired generators. The service provides access
13 to five nomination windows over the existing eight - four
14 NAESB windows and four STS windows - at the time of NGEIR.

15 The premise of APPrO's argument appears to be that
16 Union accommodates STS windows within its O&M and does not
17 separately charge for access to the STS windows as it does
18 for F24T.

19 What APPrO in its submission fails to recognize, Union
20 says, is that F24T was specifically developed and agreed to
21 as part of the NGEIR settlement to meet the needs of power
22 generators.

23 And the settlement agreement in the 2005-0551 case
24 speaks to this issue directly. That can be found -- you
25 needn't turn it up in the interests of time, but I will
26 give you the cite. It can be found at tab 8 of the
27 compendium.

28 The settlement agreement speaks to it at pages 9 to

1 14, and it sets out the parameters of what were referred to
2 there as the power services. At page 14, the agreement
3 says:

4 "IT capital costs and the costs associated with
5 the additional staffing required to implement
6 F24T, F24S, UPBS and DPBS will be recovered from
7 customers who elect the new services. The
8 settlement agreement recognized that there would
9 be incremental costs associated with providing
10 F24T. As a result of the settlement, F24T was
11 added to the M12 rate schedule."

12 It's now part of the M12 rate schedule.

13 The costs in rate design are consistent with the NGEIR
14 settlement, and they're set out at H3, tab 8, schedule 1,
15 and they reflect the fact that the IT costs have been fully
16 depreciated. And what we are now left with is only the
17 incremental O&M costs, which the party contemplated as part
18 of the settlement going back to NGEIR.

19 If the Board does not agree with APPrO that the costs
20 of F24T should be rolled into the M12 rate, APPrO says, by
21 way of alternative, that the Board should direct Union to
22 base the rate on the F24T demands of 424,154 gJs per day,
23 provided at J.G-9-13-1.

24 That, by way of comparison, is relative to the 356,000
25 gJs per day, which were used to calculate the rate, and
26 that's at H3, tab 8, schedule 1.

27 Really, what this comes back to, again, is a question
28 for you as to whether it is appropriate to update for an

1 increase in demands from the time Union filed, bearing in
2 mind I suppose that those demands could go down.

3 But what we're talking about is, I believe, additional
4 revenue of \$80,000, so not, in my submission, what would
5 hit the materiality threshold. But there you have it.

6 Issue G10, allocation of Parkway station costs, this
7 was the subject of some testimony from Mr. Rosenkranz, you
8 might recall. Under the Board-approved cost allocation
9 method, the costs associated with the Parkway station are
10 functionalized as Dawn Trafalgar easterly costs and are
11 allocated in proportion to distance weighted design day
12 demands.

13 The treatment of Parkway station costs was last
14 reviewed by the Board in EBRO 493/494. That was in Union's
15 cross-examination compendium to Mr. Rosenkranz, and the
16 relevant excerpts can also be found at tab 5 of our
17 compendium under the cost allocation heading.

18 With the exception of Energy Probe, which continues to
19 support the current allocation, intervenors support Mr.
20 Rosenkranz's proposal reflected in his evidence at K10.7,
21 that being that the Parkway station costs should be
22 separated from other Dawn-Trafalgar easterly costs and
23 allocated to rate classes based on design day demand.

24 Two, Parkway costs should be recovered from all
25 services that utilize Parkway as a delivery or receipt
26 point, and, three, Union should create a non-export M12
27 service that can be used by in-franchise customers to meet
28 any obligated deliveries at Parkway.

1 Ultimately, what underpins that entire argument is the
2 premise that in-franchise customers receive little or no
3 benefit from the Parkway station and, as such, they should
4 not pay for it.

5 In my submission, as the Board found way back in
6 493/494, that premise is unfounded. The Parkway station
7 provides benefits to in-franchise ratepayers for, you know,
8 a number of reasons. First, obligated deliveries received
9 on the discharge side of Parkway provide a direct benefit
10 to in-franchise shippers by reducing the side of the --
11 size of the Dawn-Trafalgar facilities servicing in-
12 franchise rate classes. This is the Parkway obligation.

13 And absent the Parkway obligation, in-franchise rates
14 would be higher. Thus, in-franchise ratepayers receive a
15 substantial benefit from there being a Parkway station.

16 Union North in-franchise customers also receive the
17 benefit from being connected to Parkway, and that's
18 because, without it, they could not access Dawn storage.

19 In EBRO 486, Union was directed by the Board to
20 prepare an M12 cost allocation study to ensure that there
21 was no cross-subsidiary among rate classes using the Dawn-
22 Trafalgar transmission system. That study was ultimately
23 filed by the Board in EBRO 493/494, and the excerpts I have
24 given you at tab 5.

25 The Board's decision addresses there -- and I don't
26 propose to read it, but the Board's decision addresses the
27 allocation of the Dawn station and Dawn-Trafalgar costs,
28 including Parkway station. I have also included in the

1 compendium the excerpts from the cross-examination of Mr.
2 Rosenkranz on this topic.

3 In my submission, two conclusions should be drawn.
4 First, it was surprising, to me at least, that Mr.
5 Rosenkranz was unaware that this issue had been considered
6 previously by the Board. I would have thought that was a
7 natural place to start.

8 The second was that nothing has changed, at least as
9 it relates to the design of the Dawn-Trafalgar system and
10 the Parkway station, and how it is used then as to now.
11 And on that basis, in my submission, the proposal to change
12 the allocation should be rejected.

13 I will just read briefly paragraph 94-13:

14 "The Board is satisfied that Union's cost
15 allocation study properly reflects the peak
16 winter design day. The unchallenged evidence is
17 that in design conditions, the system operates as
18 unidirectional west/east transmission pipeline.
19 The fact the pipeline is multifunctional and
20 operates as a bidirectional integrated pipeline
21 at other times does not change the fact that on
22 design day, both in-franchise and ex-franchise
23 gas is flowing easterly and that it requires
24 considerable upstream capacity and additional
25 compression to provide delivery service to the
26 M12 customers at Parkway, some of whom are in-
27 franchise customers, and other east end delivery
28 points specified in their contract.

1 "The Board accordingly continues to find Union's
2 methodology, based on commodity kilometre
3 allocation factor, appropriate for allocating the
4 costs of the Dawn-Trafalgar system."

5 In my submission, nothing about how Union's system is
6 used on design day has varied from the time of the 493/494
7 submission.

8 Lastly on cost allocation is the issue of regulated
9 versus unregulated split. This does not have an issue, at
10 least an issue specific to itself.

11 Board Staff supports Union's methodology for
12 allocating capital and O&M costs. What Board Staff
13 indicates is that Union should incorporate the revised
14 allocation factors as part of its evidence in this
15 proceeding and reallocate the amounts.

16 FRPO takes the same position as Staff. O&M and
17 capital costs should be updated. FRPO also wants Union to
18 file plant continuity schedules for the unregulated
19 business.

20 Energy Probe and FRPO want Black & Veatch to update
21 the report that was filed in EB-2011-0038.

22 In response to that, let me say this, that the updates
23 to the O&M and capital costs that people are suggesting be
24 made are immaterial, and the reference for that is at
25 volume 8, page 30, and the supplemental response that was
26 given by Union after this hearing, in specific, response to
27 a request from FRPO. The total amount, I believe, is in
28 the neighbourhood of \$50,000.

1 In my submission, it just simply does not warrant the
2 treatment that parties are proposing. Union has a robust
3 methodology to manage plant additions and plant
4 replacements, and that is explained in considerable detail
5 in the response to J8.5.

6 In my submission, there is no reason for Black &
7 Veatch to revisit this issue once again. It was first
8 considered in the 0039 case, and again in 0038. And, in my
9 submission, based on the evidence filed in this case, this
10 would be a make-work project.

11 Mr. Kitchen corrects me. When I was speaking of the
12 -- before I move off this topic, the submission is the
13 same, but on the F24T service I had indicated, in response
14 to APPrO's alternative position, that the amount of the
15 adjustment would be \$80,000. It would be \$150,000.

16 I still say that that is well below the materiality
17 threshold, that it is right to correct it.

18 That takes us to rate design. And really to capture
19 it, what I intend to focus my submissions on, particularly
20 in the interests of time, are on the revenue-to-cost ratios
21 and the M1 and M2 split, and to touch briefly on T1 and T2.

22 There are a number of other rate design proposals
23 Union put forward. Parties did not have submissions in
24 relation to those, but, in the interests of completeness, I
25 will just touch on them at the end.

26 So dealing with revenue-to-cost ratios, it is Union's
27 submission that the rates that Union is seeking approval of
28 are just and reasonable, and that the revenue-to-cost

1 ratios are, themselves, reasonable.

2 At Exhibit H1, tab 1, page 12 - and you have H1, tab 1
3 at this portion of the compendium, tab 11 - the resulting
4 -- I'm sorry, page 12. The resulting revenue-to-cost
5 ratios for 2013 are consistent with, and within the range
6 of, revenue-to-cost ratios that have been approved by the
7 Board in the past.

8 The specific revenue-to-cost ratios themselves can be
9 found at H3, tab 1, schedule 1, in columns H and J,
10 respectively, and in Exhibit J.H-1-5-2, which can be found
11 at our compendium. Indeed, the two cites, two references,
12 are grouped together at tab 12. Unfortunately, it didn't
13 come with a magnifying glass in the reply, but the two
14 references are set out at tab 12.

15 That revenue-to-cost ratios are the outcome of the
16 rate design process and reflect the application of all of
17 the rate design principles described in H1, tab 1.

18 There has never been a requirement that revenue-to-
19 cost ratios be limited to 1.0. In fact, in 2007 the Board
20 approved rates for rate 10 that had a revenue-to-cost ratio
21 of 1.058, and indeed in many of the customers' rates in the
22 north, the revenues depart from unity.

23 The principal submission made by most intervenors on
24 this topic is that the revenue-to-cost ratio for rate M1
25 should be adjusted from the proposed level of 1.003 down to
26 1.0, which would reduce M1 rates by approximately
27 \$1.1 million.

28 A number of parties have suggested that this

1 adjustment could be funded by increasing the M12 revenue-
2 to-cost ratio from 0.984 to unity.

3 The response to that is really twofold. The revenue-
4 to-cost ratio of 1.003 is not, in Union's submission,
5 materially different than 1.0 and is not inconsistent, and
6 indeed is consistent, with resulting revenue-to-cost ratios
7 approved by the Board in the past.

8 With respect to M12, the revenue-to-cost ratio of
9 0.984 is consistent with the cost-based Board-approved rate
10 design for M12 services. The M12 revenue-to-cost ratio was
11 less than 1.0 because Dawn-Trafalgar westerly service
12 revenues earned under C1 rate schedule reduce M12 rates.
13 Increasing the M12 revenue-to-cost ratio to 1.0 would
14 result in over-recovery of Dawn-Parkway costs presently
15 allocated to ex-franchise services.

16 And if you look at the revenue-to-cost ratio now, and
17 combine M12 and C1 Dawn-Parkway service, which are the two
18 relevant rates, the revenue-to-cost ratio is actually
19 already 1.002. The calculation of that is, again, set out
20 at tab 12 of the compendium.

21 This brings me to the use of S&T margin as a rate-
22 making tool. Board Staff made submissions on this point,
23 and Board Staff made submissions on the allocation of S&T
24 margin for the purposes of rate-making.

25 Union does not agree with Board Staff's submission on
26 this issue. The use of S&T margin for rate design purposes
27 has been a long-standing and necessary feature of Union's
28 rate design process.

1 Absent the ability to use S&T margin for rate design,
2 Union would need to deal with rate impacts and rate
3 continuity issues by adjusting revenue-to-cost ratios
4 alone. Union's proposed rates include S&T margin of
5 approximately \$23.9 million, and the calculation of that
6 can be found at H3, tab 10, schedule 1.

7 As part of the rate design process, Union has
8 allocated approximately 13.1 million to the north and
9 approximately 10.8 million to the south. That is a greater
10 proportion than has ever been allocated by Union to the
11 north.

12 It is also the case that the amount that Union is
13 proposing to allocate is less than the amount that was used
14 for rate-making purposes historically and approved by the
15 Board. You will recall some evidence by Mr. Tetreault
16 about this, but this is the result of the phase-out of the
17 long-term storage sharing.

18 Union is seeking to recover proportionally the same
19 level of revenue deficiency between Union North and South
20 because, in Union's view, it reasonably balanced the needs
21 to manage rate impacts in the north and the need to address
22 rate continuum concerns in the south.

23 So in Union's submission, using S&T margin to smooth
24 rate continuum impacts and to manage rate design
25 considerations is a longstanding feature of Union's rate
26 design, and it should be continued by the Board in this
27 proceeding, which brings me to M1 and M2 and the rate 01
28 and rate 10 split.

1 Union is proposing two rate design changes for the
2 general service market. First, Union is proposing to lower
3 the annual volumetric breakpoint between Rate 01 and Rate
4 10 in the north and rate M1 and M2 in the south from 50,000
5 cubic metres to 5,000 cubic metres.

6 Union is also proposing to harmonize block structures
7 between the small volume general service rate classes,
8 being rate 01 and rate M1, and the large volume general
9 service rate classes, being rate 10 and rate M2.

10 Union has proposed that both these changes be
11 implemented effective January 1, 2004 to allow it to make
12 the necessary changes to its billing systems. And
13 suggestions to the contrary, the evidence is that is the
14 amount of time that it will take for Union to effect
15 changes to its billing system.

16 Union is proposing these changes to improve rate class
17 homogeneity, increase class size, harmonize rate structures
18 between the north and the south.

19 What is interesting about Union's proposal is that, in
20 general, parties support the proposed changes to the
21 general service rate class. It appears, I think it is fair
22 to say, everybody understands that the volumetric
23 breakpoint should be lowered.

24 The concern appears to be around the method used by
25 Union to allocate costs as between rate M1 and rate M2 and
26 rate 01 and rate 10, and the rate impacts on customers
27 particularly at the proposed rate class boundaries.

28 Those submissions by parties were principally made by

1 SEC and LPMA. I will just propose to respond to those.

2 First, SEC argues that the Board has no jurisdiction
3 to approve the rate design changes proposed by Union.

4 There is no legal support for that proposition. First
5 of all, the Board has the power -- always has the power to
6 set what it determines to be just and reasonable rates.
7 What is ironic about the submission made by SEC on this
8 front is it says that the rates in 2012 are where you see
9 the problem, but because those rates have already been set,
10 you can't make a change in 2013.

11 With respect, there is not any logic in that
12 proposition at all. I suppose the most that could have
13 been said, although I disagree with this, is that if there
14 were actually concerns with respect to 2013 that had merit,
15 you would set rates on an interim basis and they could be
16 made final.

17 But that, even that I don't think is necessary,
18 because I don't -- I think SEC is just dead wrong on this
19 point.

20 Their argument is largely one of rate continuity,
21 which SEC believes to be demonstrative of some inherent
22 problem with cost allocation.

23 You will recall the charts that Mr. Shepherd took you
24 to, and I intend to take you to those. And, in my
25 submission, what they demonstrate is that, indeed, there
26 was a rate continuity problem; that that rate continuity
27 problem has an explanation; that contrary to Mr. Shepherd's
28 submission or SEC's submission, that problem, if you want

1 to call it that, was made clear in answer to interrogatory;
2 and Union's proposal actually solves for that problem.

3 If you look at Exhibit J.H-1-15-2, page 2 -- and that
4 can be found at tab 13 of the compendium -- and page 2,
5 Union describes there exactly what has happened to the rate
6 continuum over the IR term.

7 Maybe it is unnecessary to say this, but the continuum
8 issue that is being identified is that the volumetric rate
9 for customers on the high end, but below 50,000 cubic metre
10 level, are the volumetric rates are lower, apparently, than
11 on the north of 50,000 cubic metre level, and that is a
12 continuity problem.

13 Mr. Shepherd suggests that that displays a cost --
14 reveals that there was a cost allocation problem. In my
15 submission, this interrogatory explains that that is not
16 so.

17 If you look over at page 2 under the heading "Effect
18 of the monthly charge increases during the IR period" --
19 and this was not referred to by Mr. Shepherd in his
20 submissions, but essentially what has happened is that
21 during the period of incentive regulation, the monthly
22 customer charge for rates M1 and 01 were increased from \$16
23 in 2007 to \$21 in 2010, and they were offset by reductions
24 in the volumetric rates for these rate classes so that they
25 were revenue neutral.

26 But there were no similar increases or -- in monthly
27 charges or corresponding reductions in volumetric rates of
28 the large volume general service classes. So those would

1 be M2 and Rate 10.

2 Consequently, the continuum back in 2007 was gradually
3 eroded, because you have, in effect, a cross-subsidy that
4 is happening in the small volume rates where you have the
5 larger volume, but still below 50,000 customers, getting
6 the benefit of the increase in volumetric rates, the
7 increase in the monthly charge.

8 Then the impact of that is shown at attachment 1 for
9 2008 to 2012, and you can see this at tab 14. What is
10 reflected at tab 14 is the charts that are reflected in
11 Exhibit K15.4, which is SEC's compendium at pages 44 and
12 45, but also including the 2007 approved amounts.

13 So if you look at, for example, Union South, so about
14 halfway through, first, you will see table 12, which is
15 undertaking J12.5, attachment 2. That is the source of the
16 numbers.

17 Then you look over the next page, and this is the
18 continuum problem that is shown. So what you see is, if
19 you look at the 2007 line, which is the blue line, so
20 before any adjustment -- before any adjustment in the
21 volumetric -- sorry, before any adjustment in the monthly
22 customer charge and decrease in the volumetric charge, you
23 see what you hope to see, which is the smooth rate
24 continuum.

25 Then if you look at 2012 and 2013, what you see is
26 what has happened as a result of what was explained earlier
27 in J.H-1-15-2, which is that the continuum was getting
28 disturbed, and it was getting disturbed at around the

1 volumetric breakpoints for the reason I talked about
2 before.

3 But then when you look at 2014, what you see is that
4 this has been solved by the new rate design proposal put
5 forward by Union, and you have, again, a smooth rate design
6 continuum through the annual volumetric breakpoint, so --
7 volumetric level.

8 So, in my submission, this shows you not a problem
9 with cost allocation, but it shows you what can happen with
10 rate design over time and why it is important to keep an
11 eye on it, and Union has and it has brought forward the
12 proposal in this case.

13 So, in my submission, Union's -- sorry, SEC's
14 proposition should be rejected and the volumetric
15 breakpoint reduced as Union has proposed.

16 Just turning to LPMA briefly, LPMA ultimately supports
17 Union's proposal. At least they support it to the extent
18 that they agree that the volumetric breakpoint should be
19 reduced.

20 The primary focus of their argument is on what LPMA
21 says is a lack of detailed cost information supporting the
22 allocation of costs between the new rate classes. This
23 isn't a question of the total allocation between M1 to M1
24 and M2. It is just a question as between M1 and M2.

25 You might recall the evidence in relation to the
26 weightings that had been used, 1.0, 1.5 and 2.0, and that
27 was the basis on which the Board had approved the previous
28 volumetric split back in the 2007 rate case. And that is

1 the approach Union has taken here.

2 Ultimately, Union is prepared to agree with LPMA's
3 proposal subject to this change. The logic of LPMA's
4 position is that there is unlikely to be a significant
5 difference in the customer-related costs used -- customer-
6 related costs to serve residential and commercial
7 customers, and so they should have an equal weighting.

8 In Union's submission, that logic applies equally to
9 all aspects of the general service small volume customer
10 class, and that would be residential, commercial and
11 industrial, and they should all be equally weighted.

12 So for that reason, Union agrees with LPMA's
13 submission that the weight for commercial customers should
14 be 1.0. Union is also of the view that should be extended
15 to small industrial customers, as well.

16 With respect to demand-related costs, LPMA disagrees
17 with Union's use of volume to allocate demand-related costs
18 as between small volume general service and large volume
19 general service.

20 LPMA suggests that Union should have developed an
21 appropriate design day allocator based on engineering data.
22 Again, the methodology used by Union to split the remaining
23 costs is the same as it used to split the costs between the
24 current M1 and M2 classes; that is, demand-related costs
25 for general service rate classes are currently combined and
26 split between -- or split based on winter volumes,
27 reflecting that these are heat-sensitive customers.

28 Lastly, with respect to LPMA's submissions, LPMA has

1 proposed a monthly customer charge of \$30 per month for
2 rate M2 and \$40 per month for Rate 10. And after
3 reflecting on LPMA's proposal, Union is prepared to accept
4 it.

5 In terms of implementation, Union has proposed to
6 implement effective January 1, 2014. LPMA had proposed
7 that that take place at the beginning of next year for rate
8 M1, M2 and rate 01, Rate 10 could be implemented later.

9 As I said at the outset, the evidence is that that is
10 just not possible, and Union needs eight months to change
11 its systems. Depending on the timing of the Board's
12 decision, Union may be able to implement with its July 1,
13 2013 QRAM, and if not July 1, 2014, the next available date
14 would be October 1 QRAM.

15 So Union could do it as soon as it is ready, and,
16 whenever the QRAM falls, that's when it will implement.

17 MS. TAYLOR: Just to clarify, Mr. Smith, you said:
18 And if not July 1st, 2014. Did you mean July 1st, 2013?

19 MR. SMITH: I did. I absolutely did. Thank you.

20 MS. TAYLOR: Thank you.

21 MR. SMITH: Issue H5, that is to lower the M4 and M5
22 eligibility. There was support for this from parties, as
23 well. You can see that, for example, LPMA volume 15,
24 page 93. There was a concern about customer communication
25 and making sure the customers know that they will become
26 eligible for contract rate classes at the lower threshold.

27 Union is prepared to do that. There are about 600
28 customers, and Union will effect a direct mailing to them

1 to let them know that this is possible.

2 M4 -- issue H6 relating to M4 IT service, there were
3 no submissions in relation to that, and I propose that --
4 my submission is that Union's proposal should be adopted.

5 Equally true with respect to issue H7, which is to
6 lower the M7 eligibility. Again, here there were no
7 submissions. The proposal appears to be unopposed.

8 The split of the T1 rate class into T1/T2, that is
9 discussed at Union's evidence in the H1, tab 1 binder. I
10 don't propose to review it, but it is supported by APPrO
11 and IGUA, and the references there can be found in volume
12 15, page 143, and to IGUA's argument dated August 22, 2012,
13 page 1 of the written argument.

14 In my submission, Union's proposal should be adopted.

15 Just a couple of brief points. Monthly customer
16 charge to Kitchener-Union -- or I should say Kitchener has
17 submitted that the monthly customer charge is too high, and
18 that the T3 monthly customer charge is excessive and should
19 be reduced to the T2 monthly customer charge if the T1/T2
20 rate split is proposed.

21 If that is not approved, then Kitchener says the T3
22 monthly customer charge should be equal to the rate T1
23 monthly customer charge.

24 The response to this is pretty straightforward.
25 Kitchener has not led any evidence challenging the
26 customer-related costs and the cost allocations in the 2013
27 cost study, which identified the specific customer-related
28 costs and those attributable to Kitchener.

1 Ultimately, they just don't like the outcome, but they
2 haven't challenged the process or its appropriateness
3 directly.

4 Proposed T3 rates are increasing by 2 percent overall
5 and they have been flat since 2007. In my submission, that
6 is a reasonable -- a reasonable rate of increase.

7 Kitchener is simply requesting that other rate classes
8 pay a portion of Kitchener's customer-related costs. Union
9 could align the T3 monthly customer charge with either T1
10 or T2. However, Union would recover the remaining
11 customer-related costs from Kitchener in their demand
12 charge.

13 The result would be that Kitchener's total
14 transportation bill to Union would remain the same.

15 And if you look at H3, tab 1, schedule 1, page 1 for
16 rate T1 and T3, that's where you see the rate changes that
17 I have talked about. And what you will see there is that
18 the revenue-to-cost ratios for the customers are already
19 equal to 1.0, and, in my submission, Kitchener's submission
20 in this respect should be rejected.

21 Issue H9, recovery of UFG for Dawn to Dawn-Vector
22 service in the winter, this was supported by LPMA, others
23 who supported LPMA. There were no other submissions. And
24 the Board should approve as Union has proposed.

25 Issue H10, supplemental charges, the position of Board
26 Staff and LPMA is that -- Staff takes the position that the
27 supplemental charge, service charge, should be introduced
28 in the north to harmonize with the south.

1 LPMA proposes the converse. They say that the charge
2 in the south should be eliminated to harmonize with the
3 north.

4 I'm not going to go into this in any detail. Union
5 stands by its evidence that south customers who combine
6 meter readings should not receive an unintended benefit
7 related to the monthly customer charge that is unavailable
8 to other customers.

9 At the same time, Union believes that the longstanding
10 policy in the north of allowing customers to combine meter
11 readings without a supplemental charge should be
12 maintained. Should the Board be inclined to harmonize
13 north and south, Union supports the introduction of a
14 service charge in the north over the elimination of the
15 south service, primarily on the basis that there should not
16 be an unintended benefit on south customers.

17 Issues H11, H12 and H13, they are proposals to modify
18 the M12, M13 and M16 rate schedules. That's H11; a
19 proposal to modify the distributor consolidated billing
20 fee, which is issue H12; and issue H13, to modify the gas
21 supply admin fee. None of those received any submissions
22 from intervenors.

23 In my submission, they should all be adopted by the
24 Board.

25 This takes us, lastly, to the issue of rate
26 mitigation. A number of parties suggested that rate
27 mitigation may be required, but perhaps not when the
28 deficiency is updated for the ROE, which is down some more,

1 and the Board's decision in this proceeding.

2 I don't propose to repeat what I said in argument in-
3 chief. Union's position is set out in J11-10. Union
4 stands behind that interrogatory. And, in Union's view,
5 the Board should follow the principled guidance it laid out
6 in the context of electricity bills. The total bill
7 impacts here are much less on average than 10 percent.

8 And it is particularly the case, in my submission,
9 bearing in mind that commodity, for the most part, reflects
10 a significant portion of the bill. So it is appropriate,
11 in my submission, to look at the total bill, as the Board
12 does in electricity.

13 Those are my submissions. I want to thank the Board
14 very much for the indulgence and the reporter for the
15 indulgence.

16 There are two things I should have touched on before
17 that I will just make briefly. Under deferral accounts --
18 sorry, under contract revenues at the very beginning, APPrO
19 indicated that the power commodity revenue should be
20 increased by a million dollars. You can see that at volume
21 15, page 126.

22 What APPrO fails to recognize is that commodity
23 revenue is largely intended to recover variable costs.
24 Therefore, any increase in commodity revenues must also be
25 accomplished by an increase in variable costs. So that has
26 to be considered.

27 A final submission I would like just to make, and I
28 ought to have touched on this before, was in relation to

1 what's been called segmented reporting, and that's the
2 request that Union prepare audited financial -- separate
3 audited financial statements for its regulated business, in
4 addition to the audited financial statements it already
5 files for its total business.

6 In my submission, the evidence is this will cost at
7 least a half-a-million dollars. And, in my submission,
8 nobody who supported this identified any level of
9 information, not disclosed in this proceeding, that would
10 be disclosed or would have been disclosed as a result of
11 this request.

12 And so while the Board can certainly order it, in my
13 submission, it would be a waste of half-a-million dollars.

14 Subject to any questions, again, thank you very much,
15 and I do appreciate the opportunity to finish in one day.

16 MS. HARE: Thank you very much, and thank you to the
17 court reporter. So this concludes the argument phase in
18 the hearing. Thank you.

19 MR. SMITH: Might I make one last point? I had
20 indicated, sorry, that I would tell you the interrogatory
21 in the TCPL proceeding. That interrogatory, for the --

22 MS. HARE: Yes, yes.

23 MR. SMITH: -- for the production. That interrogatory
24 was 1.1a) from TCPL.

25 MS. HARE: Thank you.

26 MR. SMITH: Thank you very much.

27 --- Whereupon the hearing concluded at 5:57 p.m.

28