

**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 for an order or orders amending or varying the rate  
or rates charged to customers as of October 1, 2012.

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**FINAL SUBMISSIONS ON BEHALF OF**  
**ENERGY PROBE RESEARCH FOUNDATION**

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**September 14, 2012**

**Submissions On Behalf Of**  
**Energy Probe Research Foundation**

**How these Matters came before the Board**

1. On April 13, 2012 Union Gas Limited (the “Applicant” or “Union Gas”), filed an Application in respect of 2011 Earnings Sharing under the incentive rate mechanism approved by the Board as well as final disposition of 2011 year-end deferral account and other balances (the “Application”).
2. The Board issued a Notice of Application and Procedural Order No. 1 on April 19, 2012. As an intervenor in the EB-2011-0025 and EB-2011-0038 proceedings Energy Probe was adopted as an intervenor in this proceeding and deemed eligible for costs. Procedural Order # 1 provided a schedule for submitting and responding to interrogatories. As directed, Energy Probe filed its interrogatories on May 25, 2012.
3. Procedural Order No. 2 was issued on June 27, 2012 and provided for the filing of submissions by of the Canadian Manufacturers & Exporters ("CME"), the Federation of Rental-housing Providers of Ontario ("FRPO") and any other interested intervenors, outlining the issue or issues related to the accounting for upstream transportation services that are relevant to this proceeding and that require additional discovery that should be addressed at the Technical Conference.
4. Procedural Order No. 2 also provided a schedule for the filing of the submissions and responses, the Technical Conference, and a Settlement Conference.

**5. Procedural Order No. 3 was issued on August 15, 2012. In it the Board stated that it did not agree with the submissions of CME, FRPO, or Union to the effect that the treatment of upstream transportation optimization revenue should not be considered until after the Board has rendered its decision on the 2013 rebasing application.**

**6. The Board determined that it would address the issue of Union's treatment of upstream transportation revenues in 2011 as a distinct issue in this proceeding. The Board decided that it would hear the single issue as a Preliminary Issue in this proceeding and would issue a decision on it prior to holding a Settlement Conference. The Preliminary Issue was defined as:**

**“Has Union treated the upstream transportation optimization revenues appropriately in 2011 in the context of Union's existing IRM framework?”**

**7. Further, Procedural Order No. 3 provided a schedule for parties to file letters describing issues they wished to address at the Technical Conference in addition to the upstream transportation optimization revenue treatment issue. On August 19, 2012, Energy Probe filed its Technical Conference Questions in writing as requested by the Applicant.**

**8. On August 21, 2012, Energy Probe was one of the parties that participated in the transcribed Technical Conference.**

**9. On August 24, 2012, Procedural Order No. 4 provided a schedule for argument on the Preliminary Issue. Union made its Argument-in-Chief on the Preliminary Issue on September 7, 2012.**

## **Submissions**

**10. Energy Probe notes that upstream transportation optimization by Union that underlies the Preliminary Issue was on the Issues List and extensively canvassed in Union's 2013 Rates and Rebasing Hearing EB-2012-0210. The context in that case was how the transactional services revenues related to transportation optimization should be treated as part of 2013 rates.**

**11. Energy Probe made submissions on the matter in its EB-2012-0210 Oral Argument on August 23<sup>rd</sup> 2012<sup>1</sup>. At the request of the Hearing Panel, we also made a brief submission on the historic transportation optimization activities of Union covering the period 2008-2012.<sup>2</sup> We adopt all of those submissions and commend them to the Board to the extent they are relevant to the Preliminary Issue in this case.**

**12. Energy Probe also attended at the EB-2012-0087 Technical Conference on August 21, 2012 and in making these submissions we have considered the information placed on the record at that time.**

**13. We have read the extensive Reply Argument of Union in EB-2012-0210<sup>3</sup> and Union's Argument-in-Chief delivered in this EB-2011-0087 case on September 7, 2012<sup>4</sup>.**

**14. Energy Probe also relies and adopts the submissions of Counsel to CME on behalf of ratepayers, in EB-2012-0210<sup>5</sup> regarding the characterization of Union's transportation optimization activities, the detailed description of these and whether these were authorized. Accordingly, they will not be repeated here.**

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<sup>1</sup> EB-2012-0210 Transcript Volume 14 Pages 39-44

<sup>2</sup> Ibid Pages 44-47; K14.1 Appendix

<sup>3</sup> EB-2012-0210 Transcript Volume 16 Pages 35-80

<sup>4</sup> EB-2012-0087 Transcript Volume 1, Pages 3-56

<sup>5</sup> Transcript Vol. 15

**15. Energy Probe has some supplementary submissions and perspectives that we hope may assist the Board. These follow.**

**16. At the highest possible 10,000 ft. level, Energy Probe submits that the upstream transportation optimization activities by Union during the IRM period illustrate the difference between the operation of the Ontario Electricity Grid and the Gas Transportation and Storage System in Ontario. On the one hand, we have an Independent Electricity System Operator (IESO) and on the other, private investor- owned Gas transmission and storage companies that service the Provinces gas customers, but also serve the interest of their shareholders. It is true that both are subject to oversight by the Board and for Gas that oversight extends to approval of Facilities, Rates and Conditions of Service.**

**17. However, the underlying motivations for the IESO and Union Gas that owns and operates significant intra-provincial gas transmission and storage operations are different. The IESO is a public body owned by the Province; Union Gas (and Enbridge Gas Distribution) is owned by large Multi-national Energy Companies. One is tasked to serve the public, the other to optimize shareholder profit.**

**18. Given that construct, we are not surprised that Union acted to maximize shareholder profit from optimization of its gas supply transportation portfolio, even though as ratepayers unanimously argue, and Board Staff agrees<sup>6</sup> under the traditional regulatory construct, gas supply, transportation/storage costs and revenues are a pass through/regulated item<sup>7</sup>. Union's interpretation of that construct can be summarized as "were under IRM and if there isn't a Deferral Account (such as the PGVA etc.) there is no need to record the (net) change in costs (forecast-actual) and they flow to the shareholder"**

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<sup>6</sup> Board Staff Submission Page 3

<sup>7</sup> Technical Conference Transcript Pages 21-22 and 26-27

**19. The opportunity for profit resulted from several factors: having a gas supply portfolio based on firm transportation for the Northern Zone, the TransCanada FT-RAM program and the discontinuation of the gas supply and transportation transactional services deferral accounts 179-69 etc in the EB-2006-0606 Settlement Agreement in exchange for embedding \$6.9 million in rates<sup>8</sup>. The deferral/variance accounts were put in place to protect ratepayers from paying too much for gas supply and transportation and incenting Union (and Enbridge) to optimize the gas supply and transportation portfolio for the benefit of ratepayers as does the PGVA and related accounts.**

**20. So did ratepayers make a mistake in agreeing to the discontinuation of the accounts? In hindsight it could be argued that is the case. We note that in the case of Enbridge Gas Distribution, under IRM, \$8 million in Transactional Services (TS) revenue was embedded in base rates, but the TS deferral/variance account continued to record costs and revenues above that amount.**

**21. Energy Probe submits that ratepayers could in fact, be expected to rely on the Regulatory Compact that Union ( or Enbridge) does not profit from optimization of the upstream gas supply and transportation portfolio (except from the agreed incentive/sharing mechanisms for the net revenues from optimization transactions).**

**22. The Board has framed the issue for determination in this proceeding:**

**“Has Union treated the Upstream Transportation optimization revenues appropriately in 2011 in the context of Union’s existing IRM Framework”?**

**23. In Energy Probe’s submission, the Regulatory Compact is the crux of this issue. The rest is voluminous and complex evidence on the transactions, the resulting revenues and the gains realized by Union.**

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<sup>8</sup> Union AIC Transcript Vol.1 Page 13

**24. Energy Probe submits the Board should decide the crux issue first. We offer a compatible alternative wording:**

**“Did Union deviate from the regulatory compact regarding upstream gas costs and transportation in 2011”?**

**25. If as we submit, in agreement with other ratepayer representatives, that the answer to that issue is Yes, then determining how that departure should be remedied in the context of this 2011 Earnings Sharing and Deferral Account balance disposition proceeding and Union’s 2013 rate proceeding is somewhat more complex.**

**26. Energy Probe disagrees with the submissions of Board Staff<sup>9</sup>, that on the one hand support the regulatory compact on gas costs and upstream transportation as a pass through, and the other, derogate its application. The stated reason is because Union is under IRM and reclassified certain transactions which lead to Decisions regarding FT-RAM credits in the absence of a Transactional Services Deferral Account (not the case for Enbridge). The reclassification of such transactions by Union is, according to Board Staff temporary and going forward the traditional regulatory compact should again apply<sup>10</sup>.**

**27. We reiterate our view that the regulatory compact has stood the test of time has been followed by Enbridge under IRM and should guide the Board in its Decision:**

- The net gain or loss from optimization of Union’s upstream gas supply, transportation (and storage) portfolio should be to the account of ratepayers**
- Union should be incented to undertake optimization transactions and rewarded via one or more net revenue sharing mechanisms.**

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<sup>9</sup> Board Staff Submission Page 3 paragraph 3

<sup>10</sup> Ibid

**28. To unravel the details of the complex transactions in the 2011 rate year which is the scope of this proceeding, requires that either the Board accept Unions estimates, (\$22 million for 2011) or in the alternative, require a forensic audit under supervision of Board Staff. The latter approach could also cover years preceding and following 2011.**

#### **COSTS**

**29. Energy Probe requests that it be awarded 100% of its reasonably incurred costs in connection with this Preliminary Issue phase of EB-2012-0087. We have monitored all parts of the proceeding, but relied on other intervenors to “do the heavy lifting” thereby keeping our costs in line.**

**ALL OF WHICH IS RESPECTFULLY SUBMITTED**

**September 14, 2012**

**Dr. Roger Higgin SPA Inc.**

**On behalf of Energy Probe Research Foundation**