

Introduction

1. The Board is well aware of the Federation of Rental-housing Providers of Ontario (FRPO) concerns about the conduct of Union Gas in the recently discovered approach to managing its transportation portfolio. As our collective understanding of this issue grew in this proceeding and the concurrent rebasing proceeding, ratepayers have strived to understand how Union has evolved its approach to transactional services to take advantage of market opportunity along with lack of understanding of its gas supply activities to advantage its shareholders.
2. While FRPO has been leading the inquiry of the operational characteristics of the aforementioned evolution, we will convey upfront that we have relied on counsel for CME to assist the Board with a detailed chronology of the relevant facts and to describe applicable legal principles. We adopt CME's submissions in their entirety.
3. Therefore, we offer the following submissions in response to the Board's Procedural Order No. 3 which ordered submissions to the preliminary issue. We have focused more on the operational aspects and the principles underlying the duty that Union has to its ratepayers. The Procedural Order ordered the preliminary issue as:  
  
***Has Union treated the upstream transportation optimization revenues appropriately in 2011 in the context of Union's existing IRM framework?***

Our Main Premise

- 4. The movement of gas to Ontario by natural gas utilities is an activity that has historically been a pass through of costs where the utilities were held harmless and were expected to pass through the costs of this process. Independent of an Incentive Regulation regime and the increased financial shareholder incentives, a utility ought not to be allowed to profit by retaining excessive gas supply transportation contracts for the purposes of converting that excess into shareholder profit by characterizing the transactions by their own definition as exchanges. Up until this hearing and the rebasing proceeding, Union did not provide detail on these transactions to the Board. In our view, Union has chosen to seek shareholder return over ratepayer interest by changing its approach to gas supply and its accounting without required Board approval. We urge the Board to correct this misclassification of benefits from upstream transport returning the margins obtained to the customers that paid for the transport.**

Gas Supply Plan for Upstream Transportation

5. One of the first principles in designing an asset plan is to “right-size” the assets and contracts to meet the obligations of a utility<sup>1</sup>. If done properly, the opportunities to optimize the assets are driven by weather variances or market changes. In the rebasing case (EB-2011-0210), Union described that it has a gas supply plan that meets two goals: the seasonal needs relating to the amount of gas that the company needs in Ontario and peak day needs to meet their system integrity requirements for the coldest day of the winter in their respective delivery areas. However, during discovery, it became clear that while they have contracted

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<sup>1</sup> EB-2011-0210, Transcript, Volume 3, July 13, 2012, pages 14-18

for the gas to one location, they turn the contracts over to their capacity management division who assigns the contracts to third parties<sup>2</sup>. As part of the agreement with the third party, Union requires the third party to deliver the gas to the delivery point where it is actually needed during the winter and to Dawn in the summer<sup>3</sup>. Since the contracts assigned have delivery points that are further downstream than the designated delivery point, the third party is able to secure FT-RAM credits for the unutilized portion of the transportation path. And we want to emphasize that these transactions do not occur because of a change in market conditions or weather. These transactions occur months ahead of the start of the winter and term of the transactions are up to one year.<sup>4</sup>

6. While a case could be made that sending gas directly to Dawn in the summer appears prudent, there can be no principled argument for why ratepayers ought to be burdened with the additional cost of transport to a delivery area that is not consistent with the requirements for system integrity on a peak day. The capacity is clearly not needed for the location to which it is contracted or based upon Union's own principles of system integrity, Union could not assign that capacity and specify a point of delivery upstream of the delivery area of the contract. Union's actions in designating a different delivery point demonstrate where they actually need the gas in the winter months. An argument could be made that if the benefits of the assignment do not stay in the account that pays for the demand cost of the contract, the contract is not completely used and useful to the ratepayers who are paying for that contract.

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<sup>2</sup> EB-2011-0210, Transcript, Volume 6

<sup>3</sup> EB-2011-0210 Transcript, Volume 6, pages 131-136

<sup>4</sup> EB-2011-0210 Exhibit J3.6

7. These planned diversions of gas from the contracted delivery point to the point designated in the assignment have resulted in a significant increase in profit enjoyed by the shareholder. But those windfalls were not generated without a significant cost to ratepayers. In the rebasing case, we asked Union to provide the difference in demand charges between these two points and compare it to the net proceeds for an annualized assignment from the EDA to points upstream<sup>5</sup>. While the table shows that the proceeds of this example average about \$1.9 million per year over a two year period, the additional annualized incremental demand charges paid for by ratepayers were in excess of \$3 million per year. In the Technical conference in this proceeding, we tried to have this quantification done for all contracts assigned during calendar 2011<sup>6</sup>. We were trying to provide the Board with an understanding of the total cost for calendar 2011. However, in Union's unwillingness to provide a table similar to Exhibit J6.5 from the rebasing case, we were diverted to a debate about the applicability of STFT. After days of consideration, Union filed an Additional Undertaking<sup>7</sup> that created a convoluted scenario that we were not asking for. In our respectful submission, the undertaking only serves to "muddy the waters" and is completely unresponsive to our request to examine cost impacts. We had considered bringing a motion to compel quantification of the incremental demand charges but in respect of this preliminary issue, we have chosen to defer our request until the Board has determined this classification issue.

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<sup>5</sup> EB-2011-0210 Exhibit J6.5

<sup>6</sup> Technical Conference Transcript pages 107-119

<sup>7</sup> Additional Undertaking, filed August 29, 2012

The Board Has Not Approved These Schemes

8. In the rebasing proceeding, it was clear that these conversions of excess demand charges into profits had not been known by intervenors or the Board. Union has indicated its reliance on the Board decision on DOS-MN in EB-2008-0220<sup>8</sup>. In our submission, as we would respectfully submit that there was insufficient evidence provided in that proceeding for intervenors or the Board to know what was being done to create the additional margins that Union was claiming from DOS-MN.
9. Knowing Union's intention to rely on the 2008 decision, we tried to achieve an understanding of how Union used this service<sup>9</sup>. It is clear upon examination that the DOS-MN was an additional service that came without the burden of a demand charge to ratepayers. In other words, ratepayers were not at risk for Union's acceptance of the service which distinguishes from choices that Union has made to contract for a longer distance than their gas supply plan requires as described above.
10. Notwithstanding the fact that Union lead evidence in the examination-in-chief to that panel, when we tried to get an understanding of how the benefits were generated, we received resistance on the production of the accounting on the grounds that it had already been approved<sup>10</sup>. The resulting undertaking<sup>11</sup> provided that Union, in fact, used the DOS-MN to replace gas expected spot purchases at Dawn for that winter. In Exhibit J7.1, Union shows

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<sup>8</sup> Transcript Volume 1, pages 23-24

<sup>9</sup> EB-2011-0210 Transcript Volume 7, pages 4-10

<sup>10</sup> EB-2011-0210 Transcript Volume 7, pages 5-6

<sup>11</sup> EB-2011-0210 Exhibit J7.1

the calculation used to generate margin. But in providing the avoided purchase price at Dawn, Union does not provide a reference for their establishment of a price at Dawn. Given our experience with their provision of unreferenced prices at Dawn<sup>12</sup>, we would be concerned about their establishment of the price.

11. More importantly, Union had found a cheaper way to meet its gas supply needs at Dawn through using additional transportation services received under the transportation contract paid for by ratepayers. While Union calls it an exchange, detail provided in the undertaking that exposes the fuel and commodity costs of TCPL demonstrates that they used the transportation services and called it an exchange. But clearly it is a transportation service. Characterizing the transaction as an exchange seems to make this look like an optimization transaction and not a lowering of the landed gas cost to Ontario. If it was recognized as a lowering of gas cost to Ontario, which clearly it is, the margin would have been captured in the South Purchase Gas variance account<sup>13</sup>. This characterization as an exchange seems to be what they have relied on to say that the benefits should be streamed to profit. Given that this scheme had not been discovered until recently, in our view, Union cannot rely on the Board's belief that the DOS-MN was used for exchanges as a precedent for FT-RAM being used for exchanges.

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<sup>12</sup> EB-2011-0210 Transcript Volume 14, pages 144-145

<sup>13</sup> Transcript Volume 1, pages 73-74

FT-RAM Program Benefits Ought to be Returned to Customers who Paid for Transportation

12. Union has argued<sup>14</sup> that under the IRM framework, the elimination of the short-term transportation exchanges deferral account incented them to be more proactive in pursuing benefits for shareholders and ratepayers. We have argued above that these incentives ought not result in changes of how gas is contracted relative to customer need. Further, it should not provide incentives to the company to change its accounting approaches without Board knowledge for explicit approval. For these reasons, we would urge the Board to order a reclassification of these benefits to gas costs returning the margins to those who paid for the services.

Costs

13. We respectfully submit that the Federation of Rental-housing Providers of Ontario has acted responsibly in its intervention in this matter and respectfully requests that it be awarded 100% of its reasonably incurred costs in connection with this matter.

All of which is respectfully submitted on behalf of FRPO,



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Dwayne R. Quinn  
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<sup>14</sup> Transcript Volume 1, page 26