

December 14, 2012

Ontario Energy Board
2300 Yonge Street, 27th Floor
Toronto, ON
M4P 1E4

Dear Ms. Walli:

**Re: EB-2012-0087 - Union Gas Limited - 2011 Earnings Sharing & Disposition of
Deferral Accounts and Other Balances – Settlement Agreement**

Please find attached the Settlement Agreement in this matter. As reflected in the Agreement, outstanding issues will proceed to hearing before the Board.

If you have any questions please contact me at (519) 436-5473.

Yours truly,

[Original Signed by]

Karen Hockin
Manager, Regulatory Initiatives

cc Alexander Smith (Torys)
Crawford Smith (Torys)
EB-2012-0087 Intervenors

EB-2012-0087

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.

SETTLEMENT AGREEMENT

December 14, 2012

This Settlement Agreement (“Agreement”) is for the consideration of the Ontario Energy Board (“the Board”) in its determination, under Docket No. EB-2012-0087, for an Order of the Board amending or varying the rate or rates charged to customers as of April 1, 2013 in connection with the sharing of 2011 earnings 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”).

By Procedural Order No.5 dated October 24, 2012, the Board scheduled a Settlement Conference to commence November 27, 2012. The Settlement Conference was duly convened, in accordance with Procedural Order No. 5, with Ms. Karen Wianecki as facilitator. The Settlement Conference proceeded on November 27 and November 29, 2012.

The settlement presented in this Agreement includes all proposals identified in Union’s response to the Board’s Decision and Order on Preliminary Issue. The settlement is a partial settlement in that the Agreement does not settle all issues in this proceeding. The Agreement identifies the issues for which agreement has been reached, as well as those that remain unsettled. All issues have been settled with the exception of the balance in the Upstream Transportation FT-RAM Optimization deferral account No. 179-130 and the wording of the Upstream Transportation FT-RAM Optimization deferral accounting order No. 179-130.

The Agreement is supported by the evidence filed in the EB-2012-0087 proceeding.

The purpose of this proceeding was for:

- (a) approval of final balances for all 2011 deferral accounts and an order for final disposition of those balances;

- (b) approval of the market transformation incentive for 2011 and an order for final disposition of the balance;
- (c) approval of the Low-income incentive for 2011 and an order for final disposition of the balance;
- (d) approval of \$2.542 million as the customer portion of earnings sharing in 2011 and the proposed disposition of that amount to Union's customers;
- (e) approval of the proposed wording changes to the accounting order for Deferral Account No. 179-100;
- (f) approval of the proposed disposition of the variance between the DSM budget included in 2012 rates and the revised budget approved by the Board in EB-2011-0327; and
- (g) approval of the establishment of the Upstream Transportation FT-RAM Optimization deferral account No. 179-130 resulting from the Board's Decision and Order on the Preliminary Issue dated November 19, 2012.

It is acknowledged and agreed that none of the provisions of this Agreement is severable. If the Board does not, prior to the commencement of the hearing of the evidence in EB-2012-0087, accept the Agreement in its entirety, there is no Agreement (unless the parties to the Agreement agree that any portion of the Agreement the Board does accept may continue as a valid agreement).

It is further acknowledged and agreed that parties to the Agreement will not withdraw from this Agreement under any circumstances except as provided under Rule 32.05 of the Board's Rules of Practice and Procedure.

It is also agreed that this Agreement is without prejudice to any of the parties re-examining these issues in any subsequent proceeding and taking positions inconsistent with the resolution of these issues in this Agreement. However, none of the parties will, in any subsequent proceeding, take the position that the resolution therein of any issue settled in this Agreement, if contrary to the terms of this Agreement, should be applicable for all or any part of 2011.

These settlement proceedings are subject to the rules relating to confidentiality and privilege contained in the Board's Settlement Conference Guidelines (the "Guidelines"). The parties understand this to mean that all positions, negotiations and discussions of any kind whatsoever which took place as part of the Settlement Conference and all documents exchanged during the conference which were prepared to facilitate settlement discussions are strictly confidential and without prejudice, and inadmissible unless relevant to the resolution of any dispute that subsequently arises with respect to the interpretation of any provision of this Agreement. The role adopted by Board Staff in Settlement Conferences is set out on page 5 of the Board's Settlement Conference Guidelines. Although Board Staff is not a party to this Agreement, as noted in the Guidelines, "Board Staff who participate in the settlement conference are bound by the same confidentiality standards that apply to parties to the proceeding".

The parties have used their best efforts to ensure that the evidence supporting the Agreement is set out in the Agreement. Abbreviations are used when identifying exhibit references. For example, Exhibit B1, Tab 4, Schedule 1, Page 1 is referred to as B1/T4/S1/p1. There are Appendices to the Agreement that provide further evidentiary support. The Appendices were prepared by the Applicant. The parties are relying on the accuracy and completeness of the Appendices in entering into this Agreement. The structure and presentation of the settled issues is consistent with settlement agreements that have been accepted by the Board in prior cases. The parties agree that this Agreement forms part of the record in the proceeding.

In Procedural Order No. 1 in this proceeding, the Board granted intervenor status to all intervenors of record in EB-2011-0025 and EB-2011-0038 as listed in Appendix A of Procedural Order No. 1. The following entities participated in the Settlement Conference:

- Association of Power Producers of Ontario ("APPrO")
- Building Owners and Managers Association Toronto ("BOMA")
- Canadian Manufacturers & Exporters ("CME")
- Consumers Council of Canada ("CCC")
- City of Kitchener ("Kitchener")
- Energy Probe ("EP")

Federation of Rental-housing Providers of Ontario (“FRPO”)

Industrial Gas Users Association (“IGUA”)

London Property Management Association (“LPMA”)

School Energy Coalition (“SEC”)

Union Gas Limited (“Union”)

Vulnerable Energy Consumers Coalition (“VECC”)

The parties to this Agreement include all of the above noted entities (the “parties”). The parties to this Agreement represent major stakeholders and constituencies with an interest in Union’s rates.

The parties to this settlement encourage the Board to accept this Agreement in its entirety. The parties to this Agreement also support finalization of the rate order in these proceedings to enable implementation of this Agreement with Union’s April 1, 2013 QRAM.

1. Unabsorbed Demand Cost Variance Account (179-108)

(Complete Settlement)

The parties accept the balance to be disposed of in the Unabsorbed Demand Cost Variance Account (179-108) is a credit of \$5.882 million which represents the difference between the actual UDC incurred by Union and the amount of UDC collected in rates.

Evidence References:

1. A/T1
2. B3.1, B3.6, B5.1, B5.2, B7.1, B7.2, B7.7, B9.1

2. Balance of Upstream Transportation FT-RAM Optimization (179-130)

(No Settlement)

Union's Response to the Decision and Order on Preliminary Issue proposed the establishment of the Upstream Transportation FT-RAM Optimization deferral account (No. 179-130). Union proposed the amount of FT-RAM net revenue that shall flow to ratepayers in account No. 179-130 is \$18.947 million. This is 90% of FT-RAM revenue net of third party costs or \$22 million less compressor fuel and UFG on Union's system of \$0.948 million (\$22.0 million - \$0.948 million) X 90%).

The parties do not accept the reduction for compressor fuel and UFG costs on Union's system of \$0.948 million as shown at Appendix A and calculated at Appendix B of Union's November 26, 2012 submission as an appropriate reduction in the amount of net FT-RAM revenue to be credited to ratepayers. The parties agree that this issue will proceed to hearing before the Board for determination.

Evidence References:

1. Response to Decision and Order on Preliminary Issue, November 26, 2012 filing, Appendix A and B.

3. Short-Term Storage and Other Balancing Services (179-70)

(Complete Settlement)

The parties accept the balance to be disposed of in the Short-Term Storage and Other Balancing Services account (No.179-70) is a debit balance of \$4.145 million. The balance is calculated by comparing the actual 2011 net revenue for Short-Term storage and Other Balancing Services of \$7.899 million (minus a 10% incentive) to the net revenue included in rates of \$11.254 million in the EB-2010-0148 Rate Order.

Evidence References:

1. A/T1 pages 4-8

2. B1.1, B5.3, B6.1, B7.3, B7.4, B7.5, B7.6, B7.7, B9.2, B9.8, B9.9, B9.10, B10.1

4. Long-Term Peak Storage Services (179-72)

(Complete Settlement)

The parties accept the Long-Term Peak Storage Services account (No. 179-72) has no balance. Union no longer shares net revenues on long-term storage transactions as approved by the Board in EB-2005-0551. This account was closed January 1, 2012 in accordance with the Board's EB-2011-0025 Partial Decision and Order dated February 23, 2012.

Evidence References:

1. A/T1

5. Deferred Customer Rebates/Charges (179-26)

(Complete Settlement)

The parties accept the deferred Customer Rebates/Charges account (No. 179-26) account has no balance. Parties agreed as part of the Partial Settlement Agreement for Union's 2012 rates (EB-2011-0025) and approved by Board November 14, 2011 to close this account effective January 1, 2012.

Evidence References:

1. A/T1

6. Lost Revenue Adjustment Mechanism (179-75)

(Complete Settlement)

The parties accept the amount to be disposed of in the Lost Revenue Adjustment Mechanism account (No.179-75) is a debit balance \$2.009 million. This balance includes volume variances

related to 2010 audited versus unaudited DSM activities and the unaudited volumes related to 2011 DSM activities.

Evidence References:

1. A/T1
2. B1.2, B2.2, B2.9, B8.1, B8.2, B8.3, B8.4
3. JT.1

7. Unbundled Services Unauthorized Storage Overrun (179-103)

(Complete Settlement)

The parties accept the Unbundled Services Unauthorized Storage Overrun account (No. 179-103) has no balance. No unauthorized storage overrun charges were incurred by customers electing unbundled service in 2011.

Evidence References:

1. A/T1

8. Demand Side Management Variance Account (179-111)

(Complete Settlement)

The parties accept the balance of Demand Side Management Variance Account (No. 179-111) is calculated using the difference between actual direct DSM costs incurred and the direct DSM budget included in rates which is a debit balance of \$3.081 million. This is the difference between actual 2011 DSM expenditures of \$26.271 million and \$23.190 million included in rates. Expenditures include \$2.056 million related to Union's incremental Low-income program.

Evidence References:

1. A/T1
2. B1.3, B2.1, B2.3, B2.4, B2.10, B3.7, B3.9, B4.1, B6.2, B8.1, B8.2, B8.3, B8.4
3. JT1.1

9. Gas Distribution Access Rule (“GDAR”) Costs (179-112)

(Complete Settlement)

The parties accept the Gas Distribution Access Rule (“GDAR”) Costs account (No. 179-112) has no balance. Capital costs for 2011 and 2012 will be disposed of as part Union’s 2012 deferral disposition proceeding.

Evidence References:

1. A/T1
2. B3.2. B4.2, B8.5

10. Late Payment Penalty (“LPP”) Litigation (179-113)

(Complete Settlement)

The parties accept the amount to be disposed of in the Late Payment Penalty (“LPP”) Litigation deferral account (179-113) is a debit balance of \$1.822 million. This represents a balance of \$1.800 million and interest of \$0.022 million. The amount was agreed to as part of the Settlement Agreement to Union’s 2009 Deferral Disposition and Earnings Sharing proceeding (EB-2010-0039).

Evidence References:

1. A/T1

11. Shared Savings Mechanism (“SSM”) Variance Account (179-115)

(Complete Settlement)

The parties accept the amount to be disposed of in the Shared Savings Mechanism (“SSM”) Variance Account (No. 179-115) is a debit balance of \$9.664 million which consists of \$9.243 million related to 2011 DSM activity and a \$0.421 million related to the 2010 audit true-up for

DSM activity in 2010. In addition to the balance in the SSM deferral account the parties accept the amount to be disposed for the incentive for the 2011 Incremental Low-income Program and Home Weatherization Scorecard is \$0.544 million.

Evidence References:

1. A/T1
2. B1.4, B1.10, B2.5, B2.6, B3.9, B6.2, B8.1, B8.2, B8.3, B8.4
3. JT1.1

12. Carbon Dioxide Offset Credits (179-117)

(Complete Settlement)

The parties accept the Carbon Dioxide Offset Credits account (No. 179-117) has no balance.

Evidence References:

1. A/T1

13. Average Use Per Customer (179-118)

(Complete Settlement)

The parties accept the amount to be disposed of in the Average Use Per Customer deferral account (No. 179-118) is a credit balance of \$5.105 million. It represents the margin variance resulting from the difference between the actual rate of decline in use-per-customer for 2011 and the forecast rate of decline in use-per-customer (\$5.076 million plus interest).

Evidence References:

1. A/T1
2. B1.5, B5.4

14. International Financial Reporting Standards (“IFRS”) Conversion Costs (179-120)

(Complete Settlement)

The parties accept the balance in the International Financial Reporting Standards (“IFRS”) Conversion Costs account (No. 179-120) is a debit of \$0.335 million in accordance with the EB-2010-0039 Settlement Agreement and Exhibit JT1.11.

Evidence References:

1. A/T1
2. B2.7, B3.3

15. Cumulative Under-recovery – St. Clair Transmission Line (179-121) and Impact of Removing St. Clair Transmission Line from Rates (179-122)

(Complete Settlement)

The parties accept these accounts have no balance. These accounts were closed in accordance with the EB-2012-0048 Decision and Order effective April 1, 2012.

Evidence References:

1. A/T1
2. B5.5, B5.6, B7.8

16. Conservation Demand Management (179-123)

(Complete Settlement)

The parties accept the amount to be disposed of in the Conservation Demand Management account (No. 179-123) is a credit of \$0.212 million plus interest of \$0.003 million. The credit of \$0.212 million represents 50% of the net revenue generated from CDM programs.

Evidence References:

1. A/T1
2. B1.6, B1.10, B4.3

17. Harmonized Sales Tax (179-124)

(Complete Settlement)

The parties accept the balance of Harmonized Sales Tax account (No. 179-124) is a credit of \$0.664 million. This represents the impact to Union related to the provincial component of HST. It consists of Capital savings and O&M savings offset by compressor fuel costs.

Evidence References:

1. A/T1
2. B1.7, B1.8, B2.8, B3.4, B3.8, B9.3

18. Market Transformation Incentive

(Complete Settlement)

The parties accept the amount to be disposed of for Market Transformation is a debit of \$0.500 million. This is the incentive amount based upon meeting or exceeding the performance goals as outlined in the MT Scorecard.

Evidence References:

1. A/T1
2. B8.1, B8.2, B8.3, B8.4

19. 2011 Earnings Sharing

(No Settlement)

The parties accept the earnings sharing calculation and all other adjustments except for the adjustment Union made in its earnings sharing calculation for the compressor fuel and UFG costs on Union's system of \$0.948 million related to upstream transportation optimization as described in Section 2, which remains unsettled. The parties do not accept this adjustment.

The parties agree the amount of income tax will be updated to reflect a future tax rate of 26.5%. The impact to earnings sharing of this adjustment is \$0.086 million. An updated earnings sharing calculation has been provided at Appendix A.

Evidence References:

1. A/T2
2. B1.9, B1.10, B1.11, B4.4, B4.5, B5.6, B6.3, B6.4, B6.5, B7.5, B7.6, B7.8, B8.6, B9.4, B9.5, B9.6, B10.2,

20. Allocation of 2011 Deferral Account Balances, Market Transformation, 2011

Incremental Low-income Incentive, 2011 Earnings Sharing and 2012 DSM Settlement Rate Impacts

(Complete Settlement)

The parties accept Union's proposal for allocation of 2011 Deferral Account Balances including the allocation of deferral account No. 179-130, Market Transformation, 2011 Incremental Low-income Incentive, 2011 Earnings Sharing and 2012 DSM Settlement Rate Impacts including impacts to rates of the Settlement in EB-2011-0327 (Union's 2012-2014 DSM plan).

Evidence References:

1. A/T3
2. B1.12, B2.11, B3.6, B3.9, B6.2, B8.1, B8.2, B8.3, B8.4, B8.5, B9.7
3. JT1.1
4. Response to Decision and Order on Preliminary Issue, November 26, 2012 filing, Appendix F.

21. Disposition of 2011 Deferral Account Balances, Market Transformation, 2011

Incremental Low-income Incentive, 2011 Earnings Sharing and 2012 DSM Settlement Rate Impacts

(Complete settlement)

The parties accept Union's proposal to dispose of balances prospectively over six months for the general service rate classes and as a one time adjustment for ex-franchise rate classes. For in-

franchise contract rate classes parties agree to dispose of 2011 earnings sharing and deferral account balances as a one time adjustment. Customers in contract rate classes will, however, have the option of paying any amount owing for earnings sharing and deferral account clearance either immediately in full, or in a number of equal monthly instalments to a maximum of 6. Agreement on this issue is without prejudice to the arguments any party may make related to the appropriateness of mitigating 2013 rate changes.

Evidence References:

1. A/T3
2. B5.7, B6.6, B7.2

22. Proposed changes to the TCPL Tolls and Fuel – Northern and Eastern Operations Area Deferral Account Accounting Order (179-100)

(Complete Settlement)

The parties accept Union's proposed changes to the wording of the TCPL Tolls and Fuel – Northern and Eastern Operations Area Deferral Account accounting order (179-100) to replace all references to TCPL with the more generic "Transportation" effective November 1, 2012.

Evidence Reference

1. A/T4
2. B5.8

23. Wording of Upstream Transportation FT-RAM Optimization (179-130)

(No Settlement)

The parties do not agree with the wording of the Upstream Transportation FT-RAM Optimization deferral account No. 179-130 as proposed by Union at Appendix D of its November 26, 2012 submission, specifically with respect to the reference to fuel costs. This wording is subject to resolution of the deductibility of compressor fuel and UFG costs on Union's system as described in Section 2.

Evidence References:

1. Response to Decision and Order on Preliminary Issue, November 26, 2012 filing, Appendix A and B.

UNION GAS LIMITED
Earnings Sharing Calculation
Year Ended December 31

Line No.	Particulars (\$000s)	2011 (a)	Non-Utility Storage (b)	Adjustments (c)	2011 Utility (d)=(a)-(b)+(c)
Operating Revenues:					
1	Gas Sales and distribution	1,484,768	-	(2,030) i	1,482,738
2	Storage & Transportation	310,109	116,314	(22,190) ii	171,605
3	Other	34,226	-	(11,146) iv	23,080
4		<u>1,829,103</u>	<u>116,314</u>	<u>(35,366)</u>	<u>1,677,423</u>
Operating Expenses:					
5	Cost of gas	755,265	(215)	(1,290) iii	754,190
6	Operating and maintenance expenses	384,773	14,716	(587) v	369,470
7	Depreciation	204,344	8,731	(136) i	195,477
8	Other financing	-	-	343 vi	343
9	Property and capital taxes	62,057	1,358	-	60,699
10		<u>1,406,439</u>	<u>24,590</u>	<u>(1,670)</u>	<u>1,380,179</u>
Other					
11	Gain / (Loss) on sale of assets	6,322	(115)	(6,402) vii	35
12	Other / HTLP	(1,165)	(1,165)	-	-
13	Gain / (Loss) on foreign exchange	701	27	-	674
14		<u>5,858</u>	<u>(1,253)</u>	<u>(6,402)</u>	<u>709</u>
15	Earning Before Interest and Taxes	<u>428,522</u>	<u>90,471</u>	<u>(40,098)</u>	<u>297,953</u>
Financial Expenses:					
16	Long-term debt				142,509
17	Unfunded short-term debt				<u>1,312</u>
18					<u>143,821</u>
19	Utility income before income taxes				154,132
20	Income taxes				25,197
21	Preferred dividend requirements				<u>3,075</u>
22	Utility earnings				<u>125,860</u>
23	Long term storage premium subsidy (after tax)				-
24	Short term storage premium subsidy (after tax)				<u>8,075</u>
25					<u>8,075</u>
26	Earnings subject to sharing				<u>133,935</u>
27	Common equity				1,289,973
28	Return on equity (line 26 / line 27)				10.38%
29	Benchmark return on equity				10.10%
30	50% Earnings sharing % (line 28 - line 29, maximum 1%)				0.28%
31	90% Earnings sharing to ratepayer % (if line 30 = 1% then line 28 - line 29 - line 30)				0.00%
32	50% Earnings sharing \$ (line 27 x line 30 x 50%)				1,824
33	90% Earnings sharing to ratepayer \$ (line 27 x line 31 x 90%)				<u>-</u>
34	Total earnings sharing \$ (line 32 + line 33)				<u>1,824</u>
35	Pre-tax earnings sharing (line 34 / (1 minus tax rate))				<u>2,542</u>

Notes:

- i) Impact of Removing St. Clair Transmission Line from rates
- ii) Impact of Removing St. Clair Transmission Line from rates
Removal of FT-RAM optimization revenue (net of TCPL cost)
(190)
(22,000)
(22,190)
- iii) Impact of Removing St. Clair Transmission Line from rates
Fuel costs related to FT-RAM optimization
(342)
(948)
(1,290)
- iv) Shared Savings Mechanism
Market Transformation Incentive
Low Income Incentive
CDM / HPNC
Cash Distribution from DGLP
(9,862)
(500)
(500)
(244)
(40)
(11,146)
- v) Donations
- vi) Customer deposit interest
- vii) Cumulative Under-recovery St. Clair Transmission Line