

# ONTARIO

# ENERGY

# BOARD

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| FILE NO.: | EB-2013-0109 |  |
| **VOLUME:**  **DATE:**  **BEFORE:** | **1**  **October 22, 2013**  **Ken Quesnelle**  **Marika Hare**  **Ellen Fry** | **Presiding Member**  **Member**  **Member** |

**EB-2013-0109**

#### 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 for an order or orders clearing certain non-commodity related deferral accounts and sharing utility earnings pursuant to a Board approved earnings sharing mechanism;

**AND IN THE MATTER OF** an Application by Union Gas Limited for an order approving a deferral account to capture variances between earnings sharing, deferral account and other balances approved for disposition and amounts actually refunded/recovered.

Hearing held at 2300 Yonge Street,

25th Floor, Toronto, Ontario,

on Tuesday, October 22nd, 2013,

commencing at 9:37 a.m.

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VOLUME 1

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BEFORE:

KEN QUESNELLE Presiding member

MARIKA HARE member

ELLEN FRY member

KRISTI SEBALJ Board Counsel

LAWRIE GLUCK Board Staff

MUNIR MADHAVJI

CRAWFORD SMITH Union Gas Ltd.

TOM BRETT Building Owners and Managers Association (BOMA)

PETER THOMPSON Canadian Manufacturers & Exporters

(CME)

JULIE GIRVAN Consumers Council of Canada (CCC)

ROGER HIGGIN Energy Probe Research Foundation

DWAYNE QUINN Federation of Rental-housing Providers of Ontario (FRPO)

RANDY AIKEN London Property Management Association (LPMA)

MICHAEL BUONAGURO Ontario Greenhouse Vegetable Growers

JAY SHEPHERD School Energy Coalition (SEC)

MICHAEL JANIGAN Vulnerable Energy Consumers'

Coalition (VECC)

ALSO PRESENT:

MARK KITCHEN Union Gas

VANESSA INNES

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Tuesday, October 22, 2013

--- On commencing at 9:37 a.m.

MR. QUESNELLE: Good morning, everyone. Please be seated. I apologize for the delay.

The Board sits today on the matter of an application dated May 9th, 2013 and filed by Union Gas Limited under section 36 of the Ontario Energy Board Act. The application is for an order of the Board amending or varying the rate or rates charged to customers as of October 1st, 2013 in connection with the sharing of 2012 earnings under the incentive rate mechanism approved by the Board, as well as final disposition of 2012 year-end deferral accounts and other balances.

The Board's file number for this hearing is EB-2013-0109.

On June 25th, 2013 the Board issued Procedural order No. 1, which established a process for written interrogatories and dates for a settlement conference, as well as the filing of a settlement proposal. The settlement conference was held on August 1st, 2013. A letter was filed on August 7th, 2013 on behalf of Union and the intervenor parties that participated in the settlement conference, informing the Board that a settlement had not been reached.

The Board was also informed that Union and the participating parties had agreed that there were no matters in dispute with respect to balances to be cleared and the allocation to ratepayers for certain deferral accounts. The August 7th letter lists those accounts.

With respect to the remaining matters raised by Union's application, the parties requested that they be heard at an oral hearing. The Board issued Procedural order No. 2 on August 20th, 2013, establishing the dates for this oral hearing, as well as the matters to be heard.

My name is Ken Quesnelle, and I'll be presiding over the hearing. Joining me on the Panel are Board members Marika Hare and Ellen Fry.

I'll now take appearances.

Appearances:

MR. SMITH: Good morning, members of the Board. My name is Crawford Smith. I appear as counsel to Union Gas, and with me to my left is Mark Kitchen from Union Gas and, to my right, Vanessa Innes, also from Union Gas.

MR. BRETT: Good morning, Mr. Chair, members of the Panel. My name is Tom Brett. I'm appearing for BOMA here this morning.

MR. QUESNELLE: Thank you.

MR. SHEPHERD: Good morning, Mr. Chairman. Jay Shepherd, School Energy Coalition.

MR. QUESNELLE: Mr. Shepherd.

MR. THOMPSON: Peter Thompson for Canadian Manufacturers & Exporters.

MR. QUESNELLE: Okay. Your mic wasn't on, Mr. Thompson, but I think -- did the court reporter get that? Okay. Thank you.

MR. QUINN: Good morning, Chair and Panel. Dwayne Quinn on behalf of the Federation of Rental-housing Providers of Ontario. And I also would like to register an appearance this morning for Michael Buonaguro on behalf of the Ontario Greenhouse Vegetable Growers. Michael's not able to be with us this morning, but may be joining us later on in the proceeding.

MR. QUESNELLE: Mr. Quinn.

MS. GIRVAN: Julie Girvan for the Consumers Council of Canada.

MR. JANIGAN: Michael Janigan for the Vulnerable Energy Consumers Coalition.

DR. HIGGIN: Roger Higgin for Energy Probe.

MR. QUESNELLE: Mr. Higgin.

MR. AIKEN: Randy Aiken for the London Property Management Association.

MR. QUESNELLE: Mr. Aiken.

MS. SEBALJ: Kristi Sebalj for Board Staff, and with me are Lawrie Gluck and Munir Madhavji.

MR. QUESNELLE: Ms. Sebalj.

Preliminary Matters:

MR. QUESNELLE: Okay. I'll ask if there's any preliminary matters of the applicant or anyone else before we have a few ourselves.

MR. SMITH: No preliminary matters, members of the Panel, other than to observe that we have circulated a package of the curriculum vitae for the various witnesses that we will be calling. Those have been provided to the parties, and I believe you should have copies of them in front of you as well, and at the appropriate time it may be appropriate to mark that as an exhibit.

MR. QUESNELLE: Okay. We'll do that in due course. Thank you, Mr. Smith. Mr. Shepherd?

MR. SHEPHERD: Mr. Chairman, I've advised my friend and Ms. Sebalj of this the other day. For panel 4 the applicant has presented the audit report, the DSM audit report, for 2011, and has provided witnesses for some of the subsidiary reports and Union witnesses, but is not able to provide a witness with respect to the expert report itself.

I'm not asking for a ruling by the panel right now. I am -- the reason they can't provide the witness is because the witness has left the firm that did the work.

The normal course is that you can't provide an expert report unless you can provide the expert for cross-examination. I've advised my friend that I'm hopeful that with the panel they have provided I'll be able to ask the questions and indirectly get the information I would have gotten from the expert, but I want to go on the record as reserving my right to challenge the audit report as being improperly presented to this panel in the event that we can't -- the work-around doesn't work.

MR. QUESNELLE: Thank you, Mr. Shepherd.

MR. SMITH: I should just observe, members of the Panel, I don't think that it's necessary for Union to make submissions on this issue at this time. I think we'll see how things go. I don't agree with the premise or obviously the result, in that the audit and the receipt of the audit is a matter of fact and the claim by Union is a claim that Union has to substantiate.

So I don't agree with the characterization, but in any event I'm hopeful that this matter doesn't need to be resolved by the Board, and we'll see how things go, and panel 4 will be up tomorrow or the next day.

MR. QUESNELLE: Thank you, Mr. Smith, and closing off on this, Mr. Shepherd, because we can hear it later.

MR. SHEPHERD: Thank you, Mr. Chairman. And with the Board's permission then, I'm not actually involved very much in panels 1, 2, and 3, so I'll take my leave.

MR. QUESNELLE: Thank you very much, Mr. Shepherd, and thank you for putting us on notice for this, and the applicant as well. We'll deal with it in due course. Thank you.

The Panel has had an opportunity to take a look at the estimated times that have been put forward by the intervenors, and in recognition it is usually the case that people are putting forward the time based on what -- as though they were stand-alone and haven't heard the cross-examination on the same subject matters from those going before them.

But as it stands now we have three days set aside, and by the looks of it we'll be using all of that, with the -- and possibly, you know, that will be tight, given the hours that have been estimated.

So I'll just, you know, ask the parties to be mindful of that and to pay attention to the questioning before you, that precedes you, and that you tailor your cross-examination accordingly.

The other element of the schedule which adds to the need to be mindful of the time that is passing is this panel would like to be engaged in something other than this hearing tomorrow afternoon. We have a Board information session at two o'clock that we will or will not join, depending on where we sit at the end of the day today.

So we'll take stock at the end of the day as to how far we've progressed, and we'll either hold the normal schedule of 9:30 start and moving through the full day with a regular lunch hour, or perhaps if we feel our way is clear, tomorrow we'll take a look at -- or at the end of the day today determine whether or not tomorrow we'll move to a different schedule, and it would be 9:00 until 1:30, with a short break about mid-way through that period. So at the end of the day today we'll take stock of that, but just to put you on notice that the schedule may alter from the norm tomorrow.

One other item that the panel would like to hear from parties on is the addendum to the application that came in on July 26. And this is with respect to the -- a previous Board order or Board direction on the filing of audited financial statements for the regulated business, and Mr. Shepherd has left, and I would have appreciated his input on this, but unfortunately -- I should have mentioned it before he left.

The Board would like to ensure that everyone is on the same page as we go through discovery and cross-examination on this issue as to what the Board intends to do with it. It's been brought forward as an information item by the applicant, and we would like to ensure that we are comfortable with a process that would allow us to consider revisiting or not, and so the process that we would like to ensure that we have everyone not agreeing to but everyone understanding what the Board may do with this information, prior to their cross on it, is whether or not the Board would be reconsidering it, given the new information that has been supplied or not, and we recognize that the applicant has not sought any relief on this item; they're just providing the Board with the information, but if the Board of its own volition were to do something with it, we would want to know that that is a possibility and have the parties know that that is a possibility prior to cross-examination.

So perhaps, Mr. Smith, I can start with you as far as the Applicant's stance on that, or any suggestions that you can make to the Board as to how we would adopt this process.

The notice did not include this particular item. This came in after the notice was issued, and therefore the proceeding was framed. So if the Board were to want to consider this new information and perhaps entertain making a determination on the validity or the merits of the current or the previous direction that was made under a different premise, how would you see that process unfold?

MR. SMITH: Thank you, Mr. Chairman.

As you've correctly observed, Union filed the addendum by way of information and has not sought relief in relation to it. By way of brief background, this was a response or the work is being done in response to a Board directive that came out of Union's rebasing proceeding at the time. I believe it was Ms. Elliott was asked in cross-examination for a very high level estimate of what it might cost, but Union had not had the benefit of -- because it was not seeking any relief at the time in relation to its audited

-- or to the preparation of audited financial statements of talking to an external auditing firm about the cost of that. And Union provided an estimate.

As matters turned out, subsequent to the decision and after the Board had made its order directing that Union prepare separate financial statements for its regulated business, Union obviously had the discussions with Ernst & Young. They provided an estimate of the work levels that would be required to do the work, and once that was received, Union felt it was appropriate, given the distinction or the considerable difference between what had been the estimate and the new information from Ernst & Young, to bring it forward at its first opportunity, which it did.

Obviously it's a Board directive and so Union has been proceeding with complying with that, but from Union's perspective, I mean, to the extent parties framed their request for this and there were parties who had asked for this -- principally Board Staff had framed their request based on a high-level cost-benefit analysis -- Union wanted to make the information available so that to the extent parties wanted to, they could revisit that idea. But Union, of course, is not, as I say, not proposing to do anything with it.

Mr. Wathy is available on speak to it, as is Ms. Elliott, so we have the witnesses who are available to answer any questions in cross-examination about the interaction with Ernst & Young, the status of the work, where that is at, and why it's costing more than the original high-level estimate.

So I think we have available to us the information, or there will be available information if people want that information, to argue for a different result.

In terms of the particular notice, I will confess not having focused on that issue. And it may be that I'll have to think about it a bit more at a break, but the parties who are intervenors in this proceeding are substantially the intervenors who were parties in the prior proceeding. So in terms of the actual practicalities, what people know, it's the same individuals and the same constituencies.

The form of notice is different, and I think maybe we'll have to think about whether that has any ramifications. I think as a practical matter it doesn't, but technically we'll have to just think about that. My apologies.

MR. QUESNELLE: Thank you, Mr. Smith. It's probably best or easiest to get possible input if I put forward a scenario.

If the Board were to allow this cross-examination, have examination on the new information that was brought forward, and choose to put its mind to the merits of the requests -- or the requirement, rather, to have separate audited financial statements for the regulated business, given the new information, would there be any objections or any concerns on behalf of the intervenors that are involved in this case as to us hearing the information and coming up with that determination? Given that the Applicant hasn't sought that relief, this would be the Board doing something on its own volition with it in a -- obviously its consumers interest mandate. Mr. Thompson?

MR. THOMPSON: Thanks, Mr. Chairman. Speaking for myself, we would have no objection to you to doing something. I think it might be prudent, though, if you are going to do down that road, for the Board to either put something on the record or perhaps generate something official which would be in the nature of a motion by the Board of its own volition to review the prior directive. And then I think you'd then have an arguably better procedural basis for going forward with it.

But it seems to be pragmatic to look into these audited statements. They were perceived by certainly the Board Staff and others, I believe, to be a matter of considerable importance going forward with Union, because of its size and all of these unregulated storage operations that it has.

But certainly the Board should consider this new information.

MR. QUESNELLE: Thank you.

MS. FRY: Just to be clear, Mr. Thompson, are you contemplating that within this proceeding, or as a separate proceeding?

MR. THOMPSON: I was contemplating within this proceeding.

MR. QUESNELLE: Mr. Brett?

MR. BRETT: Thank you, Mr. Chairman, Panel.

I'm not very familiar with this document. I don't have it with me at the moment, with the July 26th document filing that was referred to.

If we were going to consider, I take your point and I don't object to the idea of considering it here, but on the condition that we would get circulated -- I don't know exactly what all of the documents we have here. We have something that was filed on the 26th of July. Mr. Thompson has mentioned some statements or draft statements. I'm not sure whether Union has produced financial statements that are based on just -- for the regulated utility, or how far along that path they are.

And then finally I think it would be helpful to have Union's statement, written statement filed on why it would be advisable to -- what their case is for changing the earlier directive.

MR. QUESNELLE: Mr. Brett, just to remind you, this is part of the evidence that was filed. It was filed on July 26. So it is on the record, and I wouldn't ask them to re-file it to be on the record. But just to be clear, and I wanted to be careful in prefacing my comments, was that the applicant to date has not sought any relief and they are not making a case for anything to be different. This would be something that the Board may be interested in contemplating and considering.

So to the extent that we are having a process, if we were to have a process within this proceeding to deal with that, I want to hear how would we operationalize that and hear submissions on that.

To the extent that the Board determines that it will do that, then obviously whatever process is in place, we'll ensure that it's done under the typical scenarios of fairness and openness and transparency, and everybody has the documents that they need and what have you.

That's what I would like to hear this morning. And I just wanted to restate that the Applicant to date has not made a case for this.

MR. BRETT: Okay. Thank you. That helps.

And I guess what I would say is that if you were going to do that, it would be helpful for us -- for me at least, speaking for myself -- to have some opportunity to review this material, because I have not.

MR. QUESNELLE: Understood.

MR. BRETT: Thank you.

MR. QUESNELLE: Mr. Quinn?

MR. QUINN: I want to just support what Mr. Thompson said. We were one of the parties that had interest in it. We understand Board Staff did.

It appears pragmatic, so if notice is what needs to be provided and that's suitable to counsel, then we would support a review during this proceeding. Thank you.

MR. QUESNELLE: Thank you. Mr. Aiken?

MR. AIKEN: I want to support Mr. Quinn and Mr. Thompson as well. And for Mr. Brett, if Staff can give him a copy of the LPMA compendium, he will find the six pages of evidence -- the addendum in that.

MR. BRETT: Yes, I have that.

MR. AIKEN: And I actually plan to do a little bit of cross on that first thing.

MR. QUESNELLE: Okay. Mr. Higgin? Dr. Higgin?

DR. HIGGIN: Yes, we would support what Mr. Thompson and Mr. Aiken have said. We believe the original directive was appropriate, and basically that it should be followed, and there are a number of reasons. We can get into those as we proceed.

MR. QUESNELLE: Thank you, Dr. Higgin. If we determine that we will have the need for a cross-examination and make a determination on that, I think that's the point we're at now. Thank you.

MR. JANIGAN: Yes, Mr. Chair. VECC would also support the position that's been advanced by Mr. Thompson et al., and that the matter can be brought forward within the proceeding with the appropriate procedural safeguards.

MR. QUESNELLE: Thank you, Mr. Janigan. Ms. Sebalj?

MS. SEBALJ: Board Staff just wanted to -- we have a copy of the EB-2011-0210 decision, which is the rebasing decision, which lists the parties that were intervenors in that proceeding.

It appears that largely those parties that are participating in the current proceeding were represented there. The bulk of the parties that are not here at the earnings sharing mechanism and deferral account disposition proceeding are the large generators, TCPL, and I think the City of Kitchener, although I can't remember if the City of Kitchener is represented here -- which might be the one -- I wouldn't imagine -- I'm trying to evaluate whether or not we need to pause and issue notice.

It would be difficult to proceed with cross-examination today if we need to reissue notice, however targeted that notice would be. I see Six Nations Natural Gas Company, Shell Energy, TransAlta Generation, TransAlta Cogeneration, TransCanada PipeLines, TransCanada Energy, and the City of Kitchener. I'm not sure if Jason Stacey, or Just Energy are here. Those parties I would tend to think may not be as interested in this issue, but of course I can't speak for those parties.

So that's sort of with respect to trying to be helpful on the notice issue and potentially trying to avoid that, although I'm cognizant of the fact that that's the safest route for the Panel to take if they decide to go that way. But it will, I think, warrant a pause with respect to the addendum if we issue notice, because we're issuing notice for the purpose of people potentially coming to this proceeding that weren't otherwise involved.

Also, I wasn't involved in either the rebasing proceeding nor the IRM proceeding, but it occurs to me somewhere in the back of my mind that there may have been a settlement provision with respect to the filing of this information. I'm not sure if that's the case. No?

MR. SMITH: I can help with that and the other matters, which may be of assistance to the Board. Thanks to Ms. Innes's good work, I have both the letter of direction in this proceeding as well as the notice of application, and in my submission there is, members of the Board, no need for any further step, and I say that for two reasons.

First, the letter of direction issued by the Board in relation to this application on June 3rd, 2013 asks that the application be served on all registered intervenors in EB-2011-0210, which was Union's rebasing proceeding and all intervenors in EB-2012-0087, which was Union's 2011 deferral account proceeding. So the notice of application was provided to all intervenors, including those who are not physically present here today.

In terms of the notice of application, that went out three days later on June 6th, 2013, and consistent with the typical notice of application, it's fairly high-level. In terms of what it indicates, it says that Union is seeking various orders of the Board that if granted would result in the following estimated amount for the six-month period, and then it sets out what those are, in terms of customer impacts. Nothing about the Board directive will change those amounts.

So there's no, in my submission, variation on the information that is reflected in the notice of application. So there is no concern about parties being caught unaware.

In my submission, the fact that Union has not sought relief itself also is not a reason why the Board needs to do anything, because it's always open to parties on the basis of the evidentiary record to make argument for a different result than the applicant is seeking.

And so from that perspective people would not be foreclosed by the notice of application from making a different argument and, in my respectful submission, there is therefore no further need for procedural safeguard.

In response to Ms. Sebalj's question about the incentive regulation framework -- and Mr. Kitchen can correct me if I'm wrong, but there is in the IRM agreement which was approved by the Board a provision which requires Union to file -- to make certain reports available.

One of the items that Union is -- has agreed and the Board has ordered that it file as part of its annual incentive regulation applications is the audited financial statements for its regulated business contemplated by this Board's directive.

But of course, that filing is the product of the Board's directive in 0210, so if the Board were to order that Union needn't comply with the directive then, in my submission, Union wouldn't be required to file under the Board-approved IRM framework those reports. But it is separately listed as one of the things Union is -- has agreed to provide, and it is listed in Union's August 7, 2013 letters as well, and it is -- that letter, of course, was filed in this proceeding with the Board secretary and would be available on the Board's filing system, and parties who are registered and intervenors in this proceeding, obviously, and anybody else would have access to it.

But one of the things that Union advised at that time is, on page 2 of the letter Union said:

"With respect to the remaining matters raised by the present application, the parties, being all of them, request an oral hearing on dates to be determined by the Board."

And one of the items -- it's the fourth from the bottom -- on which the parties requested an oral hearing was the preparation of audited utility financial statements. So there again is specific notice to those parties who are registered intervenors in this proceeding, and obviously you can go back as far as the direction back to June.

MS. HARE: Mr. Smith, was there any evidence filed as to what the estimated cost of those statements would be?

MR. SMITH: At what point?

MS. HARE: Well, I don't want to get into what was discussed in the ADR, of course, so --

MR. SMITH: Oh, sorry, in the context of this proceeding, you mean.

MS. HARE: In the context of the IRM proceeding, where there was agreement to file those audited statements for the regulated businesses. Was the understanding that the cost would be around 400,000, as it was in the cost of service, or was the understanding that it was upwards of a million dollars?

MR. SMITH: Maybe I'll tackle it this way, because obviously we don't want to get into anything that was specifically discussed in the settlement agreement. But the timing of Union's addendum preceded the finalization -- preceded the finalization of the settlement agreement, and the intervenor group is overlapping, and so you can take it from that that the information was available to parties -- you might recall that Union's IRM framework developed in a somewhat unorthodox way, in that there were discussions initiated by Union and the parties prior to a formal Board process. Union's evidence developed out of those discussions and the resulting agreement. But the agreement was subsequent to the addendum in this case, which did identify the amounts and the new information.

MS. HARE: Thank you.

MR. QUESNELLE: Mr. Smith, and perhaps Ms. Sebalj, if you can confirm or respond directly, when you mention, Mr. Smith, the registered intervenors, now, on the letter of direction, that would have been something that would have been directed for service, but I'm not sure that everyone who received service of the notice intervened.

Is that the difference between what your list that you are suggesting, Ms. Sebalj, that not everyone that would have been served actually has intervened, and therefore would not have gotten either the addendum or the August 7th letter?

MS. SEBALJ: That's correct. I think the point that Mr. Smith was trying to make is that the notice is high- level enough -- at least that's what I understand his argument to be -- the notice is high-level enough that we don't get into a level of detail on many of the issues that are before you, including this particular issue.

My problem from a Staff perspective, I do think that it's a fairly minor issue in the grand scheme of things. However, the fact that the Board may consider varying its own order is a significant issue regardless of the quantum.

And so I'm struggling, as Staff, with the idea that parties may want to have notice that there is a potential variance of this order, which was, granted -- I think it was a Staff-initiated issue at the rebasing, but parties definitely were supportive of it, including probably some of the parties that are not here today. And they may, had they known that this was going to be revisited in this proceeding, have intervened.

MR. QUESNELLE: Thank you very much. Thank you. That's very helpful.

From a practical point of view, I believe the witness that will be speaking to this issue is on this panel; is that correct, Mr. Smith?

MR. SMITH: That is correct.

MR. QUESNELLE: Just give us half a minute here.

[Board Panel confers]

MR. QUESNELLE: Thank you. The Panel has determined that for practical purposes, we'll carry on with the cross-examination. We're likely to take a break before we get into the depths of it. And whoever's -- I'm not sure what the order is for cross-examination. If people can hold their questions on this issue towards the end, we'll confer at the break and come back and provide our direction on that, and a determination as to how we'll go forward.

So if that suits everyone, that's the way we'll proceed. And, Mr. Smith, your first panel's ready to be introduced?

MR. SMITH: Yes. Thank you, members of the Board. We have our first panel. The panel is comprised of Mr. Rick Birmingham, to my left, Mr. Greg Tetreault, Ms. Patty Elliott and –- Pat Elliott -– I don't know where "Patty" came from. I'll be calling on Patty later.

[Laughter]

Mr. SMITH: Ms. Pat Elliott, and Mr. Richard Wathy.

The purpose of the panel is to discuss the calculation of earnings sharing, the amount recorded in the various deferral accounts which are at issue or still at issue and the resulting impacts, and they will be addressing specifically Union's prefiled evidence at Exhibit A, tabs 1 through 4, with the exception of the DSM deferral accounts, which will be the subject of Union's fourth panel, and the unabsorbed demand charge account, which is properly with the gas supply panel which is being called third.

And they will also, subject to the Board's direction and as we just discussed, be in a position to discuss the addendum, which, just so everyone has it clear on the record, that can be found following Exhibit A, tab 1 in the binder of materials Union provided.

So subject to that, I would ask that the witnesses come forward to be sworn or affirmed.

MR. QUESNELLE: Thank you, Mr. Smith.

UNION GAS LTD. - PANEL 1

**Richard Wathy, Sworn**

**Pat Elliott, Sworn**

**Greg Tetreault, Sworn**

**Rick Birmingham, Sworn**

MR. QUESNELLE: Mr. Smith, you had made reference earlier to a package of CVs. Do you want to enter those in as a full package for all panels?

MR. SMITH: Yes, please.

MR. QUESNELLE: Ms. Sebalj?

MS. SEBALJ: Sorry, I was chatting with Mr. Gluck. We were talking about the packages of CVs?

MR. QUESNELLE: That's right, yes.

MS. SEBALJ: We'll mark the full package as K1.1.

EXHIBIT NO. K1.1: UNION GAS WITNESS CVS.

MR. QUESNELLE: Thank you.

Examination-In-Chief by Mr. Smith:

MR. SMITH: Just very briefly, Mr. Birmingham, starting with you, I understand that you are the vice president, regulatory lands and public affairs, for Union Gas Limited?

MR. BIRMINGHAM: I am.

MR. SMITH: You have held the position of vice president of regulatory since approximately -- sorry, earlier than that. Since approximately 2002?

MR. BIRMINGHAM: That's correct.

MR. SMITH: And you've had positions of increasing responsibility with Union Gas dating back to at least 1989?

MR. BIRMINGHAM: That's right.

MR. SMITH: And I understand that you are a chartered accountant?

MR. BIRMINGHAM: I am.

MR. SMITH: And you hold a bachelor of mathematics from the University of Waterloo?

MR. BIRMINGHAM: That's correct.

MR. SMITH: And you have testified before this Board, as listed on your curriculum vitae, on upwards of a dozen occasions?

MR. BIRMINGHAM: I have.

MR. SMITH: Mr. Tetreault, I understand that you are the manager of rates and pricing for Union Gas Limited?

MR. TETREAULT: That's correct.

MR. SMITH: You've held that position since 2008?

MR. TETREAULT: Yes.

MR. SMITH: You've been employed by Union Gas since approximately 1998?

MR. TETREAULT: That's correct.

MR. SMITH: And you hold a bachelor of commerce finance degree from the University of Windsor?

MR. TETREAULT: Yes, I do.

MR. SMITH: And a geography degree from that university as well?

MR. TETREAULT: That's correct.

MR. SMITH: And you have testified before this Board on a number of prior occasions?

MR. TETREAULT: Yes, I have.

MR. SMITH: And Ms. Elliott, I understand that you hold the position of controller with Union Gas?

MS. ELLIOTT: That's correct.

MR. SMITH: And you've held that position since 2008?

MS. ELLIOTT: Yes.

MR. SMITH: You've been employed by Union Gas in various roles of increasing responsibility since about 1981?

MS. ELLIOTT: Yes.

MR. SMITH: And you are a chartered accountant?

MS. ELLIOTT: I am.

MR. SMITH: And you hold a bachelor of mathematics degree as well from the University of Waterloo?

MS. ELLIOTT: Yes.

MR. SMITH: And you are a member of the Institute of Chartered Accountants of Ontario and of Canada?

MS. ELLIOTT: Yes.

MR. SMITH: And you've testified before this Board on a number of prior occasions?

MS. ELLIOTT: I have, yes.

MR. SMITH: Mr. Wathy, I understand that you are the manager of regulatory accounting?

MR. WATHY: Yes, I am.

MR. SMITH: And that's a position you assumed earlier this year?

MR. WATHY: That's correct.

MR. SMITH: And prior to that you were the manager of financial reporting and general accounting?

MR. WATHY: That's correct.

MR. SMITH: You've been employed by Union Gas since approximately 2008?

MR. WATHY: Yes, I have.

MR. SMITH: Prior to that you were employed by the accounting firm Roth Mosey & Partners?

MR. WATHY: That's correct.

MR. SMITH: And before that, KPMG?

MR. WATHY: Yes.

MR. SMITH: And you too are a chartered accountant?

MR. WATHY: Yes, I am.

MR. SMITH: You hold a bachelor of commerce degree from the University of Windsor?

MR. WATHY: Yes, I do.

MR. SMITH: You have testified before this Board or you did testify before this Board in EB-2011-0025?

MR. WATHY: Yes, I did.

MR. SMITH: Perhaps, Mr. Birmingham, I could just ask through you that the panel adopt the witness -- sorry, the evidence -- the pre-filed evidence in relation to the issues previously discussed in the interrogatories provided by Union in response to that pre-filed evidence.

MR. BIRMINGHAM: We do.

MR. SMITH: Thank you very much. I have no examination in-chief for this panel and tender them for cross-examination.

MR. QUESNELLE: Thank you, Mr. Smith.

I understand there has been an order struck, or at least the starting order, anyway?

MS. SEBALJ: I think Mr. Aiken from LPMA has volunteered to go first.

MR. QUESNELLE: Thank you, Mr. Aiken.

Cross-Examination by Mr. Aiken:

MR. AIKEN: Thank you. I have a compendium of material that I will be referencing, so if we could have that marked.

MS. SEBALJ: You have it before you, Panel? Are you finding it? There should be -- there is a package of three compendia, and the LPMA is at the top, I think, with a bull clip.

MR. QUESNELLE: Okay. We have it, yes --

MS. SEBALJ: It will be K1.2.

EXHIBIT NO. K1.2: LPMA Cross-Examination COMPENDIUM

MR. AIKEN: I should note that I did have some cross-examination on the addendum, but I will hold that until after the break and the Board's decision. So I'm going to start with the request for the new deferral account, account 179-132. And I've included Union's evidence on this at page 7 of the compendium, page 7 of 20. And it's from Exhibit A, tab 1, pages 39 through 41.

So as I understand Union's request, this variance account is for the 2011 and proposed 2012 balances. Have I got that correct?

MS. ELLIOTT: That's correct, yes.

MR. AIKEN: And if the Board approved the account, would it also remain in place for the 2013 balances and for balances in 2014 through 2018 under the approved IRM framework?

MS. ELLIOTT: Yes, it would.

MR. AIKEN: Okay. At the end of the section, at the bottom of page 19 -- make sure I've got that right -- no, sorry, page 9 in the compendium -- you originally estimated that the 2011 deferral account disposition would be about $1.7 million. Is that the original estimate?

MS. ELLIOTT: That's correct, yes.

MR. AIKEN: So if we could turn briefly to page 11 of the compendium, I've included your updated response to Exhibit D2.1, which is an interrogatory from LPMA. I take it that the variance for the 2011 disposition that has just concluded last month is now about 5.3 million, and my question is, is this an actual amount, or does it still include some estimate?

MR. WATHY: It still includes an estimate for the unbilled volumes for September.

MR. AIKEN: And did you expect it to be materially different than the 5.3 million in total?

MR. WATHY: No, not at this time.

MR. AIKEN: Okay. While we're on this updated response, if you look at the table in part (b), I'm curious as to why there are variance associated with contract rates M4 and M5 for 2011 when the response to part (c) indicates that contract rate classes were subject to a one-time adjustment in 2010. Was the same not true for the 2011 balances?

MR. TETREAULT: It is true, Mr. Aiken, for the delivery-related adjustments. We perform for the contract rate classes. However, for the gas-supply-related deferrals we either refund or recover those amounts prospectively from all rate classes in Union South. In the past that has only been for the -- any small amounts allocated to contract rates for UDC, but in 2011 of course that has changed with the addition of the gas supply optimization margin account.

MR. AIKEN: Okay. I think I understand that.

Then in part (e) of the question I asked why Union did not propose to collect or refund the balances to general-service customers in the same manner as for the contract customers, which of course is the one-time charge or refund based on actual volumes, given that Union should have been aware of the potential difference between forecast and actual volumes. And the response indicates that the banner CIS system does not have the functionality to process one-time adjustments and that to implement this functionality would involve significant effort and cost. So what is the estimated cost of implementing such functionality?

MR. TETREAULT: I can't tell you, Mr. Aiken. We haven't done a detailed estimate of that. With regard to the banner system, to implement something like that, my understanding is you would essentially have to do one-time adjustments for well over a million customers, which is why we've answered the IR in this way, just suggesting that it would be significant process, and estimate involved in that, costs involved in that, and from a practical standpoint may not be realistic.

MR. AIKEN: Do you have a high-level estimate of the cost?

MR. TETREAULT: No, I don't.

MR. AIKEN: Has Union ever considered investigating the potential of changing the banner system so that it can do the one-time rebates or refunds?

MR. TETREAULT: We have not in the context of this proceeding.

MR. AIKEN: Okay. What about in the context of something else?

MR. TETREAULT: No.

MR. AIKEN: Okay. The evidence you've provided at the two or three pages at Exhibit A, tab 1 -- I'm back on page 9 of the compendium – appear to indicate that the variance is related to the volumetric forecast issues in three areas. And the first that you've identified is shown as Roman numeral (i), where it's indicated that the forecast error from -- or for M1 and M2 volumes was a driver, because the planned recovery from the M1 rate class was negatively impacted by lower volumes than forecast, while the planned refund to the M2 class was also negatively impacted, but this time by higher volumes than forecast. Have I got that right? That's the way I interpreted the paragraph on page 9 of the compendium.

MR. WATHY: Mr. Aiken, the first Roman numeral (i) is in reference to the 2010 balances. That item itself was not one of the more significant drivers of the over-refund for 2011.

MR. AIKEN: Well, if you go down to the last paragraph on that page, starting at line 16, it says "in addition to the 2010 factors outlined above". Then it goes on to list the direct-purchase driver. So I assume that Roman numerals (i) and (ii) were both contributing drivers to the 2011 variance.

MR. WATHY: I guess the point I was making is they are contributors. They're just not as significant as what they were in 2010.

MR. AIKEN: Okay. So my question is, how does Union forecast the volumes over which the accounts are to be disposed of? In other words, how did you forecast the M1 and M2 volumes?

MS. ELLIOTT: There isn't anyone on this panel that is responsible for the forecasting, but the methodology for this forecast will be the same as all of our forecasts.

MR. AIKEN: Okay. I can follow up on that.

If you go to page 10 of the compendium -- this is Exhibit B5.7 from EB-2009-0052. Would you undertake to determine if your response there is still appropriate for the 2011 variances? And basically, your response in that interrogatory says that Union used its most current operational forecast for the calculation of the rates to be applied prospectively for account clearances. So would you undertake to confirm that that was the case for 2011 balances going forward?

MR. TETREAULT: Mr. Aiken, I think I can answer that here. We did use for the disposition of 2011 balances the most current operational forecast, and that forecast was the same forecast that would have been used for the April 2013 QRAM that was being disposed of, if you will, at the same time.

MR. AIKEN: What about your response to part (b)? I take it that you no longer agree with the final statement you provided in that response that your expectation is for minimal variances, given that use of the most recent forecast available.

MS. ELLIOTT: The statement in that proceeding certainly applied to the information that we had at that time, but based on the information that we now have available from 2010 and the 2011 disposition, no, the balances aren't minimal.

MR. AIKEN: Does your proposed Account 179-132 also record variances in the situation covered by the response to part (c) of that question?

This is for customers that are no longer on the system.

MS. ELLIOTT: The question refers to one-time adjustments, which only apply to contract customers. I think the answer is -- continues to be the same, if the contract customer that the one-time adjustment applies to

-- we would make every effort to process that adjustment.

And if we can't, the difference is not going to be captured in this deferral account.

MR. AIKEN: May I ask you why you think that only -- the question only applies to contract customers?

MS. ELLIOTT: Because in the general service market, that we're applying the disposition to the customers on the system at the point in time. So they are active customers on our system. There shouldn't be any issues with finding those customers.

MR. AIKEN: So customers that leave your system, general service customers that leave your system, you don't try and refund or collect monies from them?

MS. ELLIOTT: The process is a prospective process, so the refund or collection is applied prospectively. So you have to be an active customer on our system for the amount to be processed.

MR. AIKEN: Okay. So then if I go back to page 9 of the compendium, the second area of variances between forecast and actual is shown in Roman numeral (ii).

In summary, is it fair to say the small-volume forecast in the April through September period resulted in higher than normal rate riders, and when the actual volumes in the low-volume months deviated from forecast, this resulted in larger variances? Larger than what you would have if the rate rider had been based on a winter period?

MR. TETREAULT: Yes, that's fair, Mr. Aiken.

MR. AIKEN: Did Union choose the April through September disposition period?

MR. TETREAULT: Yes, we did.

MR. AIKEN: Did Union choose this period rather than a longer period that would encompass larger volumes, and hence reduce the risk identified by Union?

In other words, instead of April through September, why didn't you pick April through December, for example?

MR. TETREAULT: Our practice over the last several years has been to try to dispose of the amounts prospectively over six months. So in this particular case, these are the 2011 deferral account balances that were dealt with in a proceeding that spanned the latter half of 2012, ultimately to get a decision in the -- I believe the first part of 2013.

So from our perspective, we wanted to ensure we could prospectively dispose of the amounts as quickly and expeditiously as we could, given we were, let's say, two years removed from the deferral account balances in question.

MR. AIKEN: If you flip over to page 11 of the compendium, the response here indicates that the 2011 disposition was not the first time you used the April through September period, and that you had also used it for the bulk of the 2010 disposition.

My question is: Were you aware, when you proposed the April through September disposition period for the 2011 balances, that the 2010 balances were giving rise to this variance of 1.3 million? I'm just not sure of the time line, which came first.

MS. ELLIOTT: I think the short answer is no, we weren't aware. As soon as we became aware, we filed our application for this deferral account, which I think was in mid-April.

So we became aware of the issue with the April to October -- April to September period as we were closing out the 2010 balances after the March disposition was complete. And as soon as we identified it as a problem, we applied for the deferral account to deal with the 2011 issue.

MR. AIKEN: So you filed the request for this deferral account in –- sorry, when did you say?

MS. ELLIOTT: It was in April of 2013.

MR. AIKEN: Okay. But your disposition of the 2010 balances that created the $1.3 million variance was finished in September of 2012?

MS. ELLIOTT: There were two parts to the 2010 disposition, so while the first part was finished, the second part rolled into the disposition in October. So there was essentially an overlapping period where we had increased the balance again for refund, so the account wasn't actually closed and reconciled until the end of March.

MR. AIKEN: But you would have known what the balance was at the end of September, in late 2012?

MS. ELLIOTT: If we hadn't had to roll in the second refund for October, we would have known, but because the 2010 deferral account was being -- was disposed of in two parts, there was a second refund that went into that account, which basically masked the issue with the first refund.

MR. AIKEN: I guess my question was maybe a little bit simpler. Do you track on a monthly or quarterly basis where the variance account stands relative to forecast?

MS. ELLIOTT: We weren't, no.

MR. AIKEN: Okay. Then going back to page 9 of the compendium again, the last paragraph, you discuss a third source of the volume variance being the uncertainty in the forecast of system sales versus bundled direct-purchase volumes. I take it this means that a higher volume of direct-purchase volumes came back to system sales than was forecast; is that right?

MR. TETREAULT: Mr. Aiken, I think it's is it fair to say that the sales service volumes -- I would describe it this way -- were higher than forecasted, and part of that would have been due to any direct-purchase customers switching that may not have –- that may not have been forecasted.

MR. AIKEN: And you may have to do an undertaking on this, given that there is nobody there on the panel directly involved in the forecast, but does Union do a system sales forecast in addition to the total throughput volume forecast?

My assumption is you would have to for gas supply planning purposes, but...

MS. ELLIOTT: My understanding is the forecast of system sales is based on a point-in-time estimate of what customers are system and direct, and that we're actually not trying to predict what customers are moving from system to direct. And as that happens, the gas supply planning process will deal with that.

But we don't attempt to predict what system sales volumes are; we use a point-in-time estimate.

MR. AIKEN: Just on this account in general and the evidence that Union has presented, I notice that the time of the account is "deferral clearing variance account," yet throughout the evidence it's referred to as a deferral account.

I guess the point I wanted clarification on is this is really a variance account, is it not, not a deferral account? It's a variance account around deferral account balances, but it is in fact a variance account?

MS. ELLIOTT: I would say yes, that's true, Randy. It is a variance account on deferral account balances.

MR. AIKEN: All right. There used to be a Board member, Mr. Vlahos, who always made a substantial distinction between the two. If we go back to --

MR. QUESNELLE: The legacy lives on, Mr. Aiken.

[Laughter]

MR. AIKEN: If we go back to the updated Exhibit D2.1 at page 13 of the compendium, at the bottom right-hand corner of the bottom table, the variance for 2011 that you want to record on this account is the amount I mentioned before, the 5.307 million.

And based on the breakdown you've provided here, the two accounts that are driving the variance are the UDC and the FT-RAM optimization account. Are those accounts cleared to system sales customers only or to all customers, including direct purchase?

MR. TETREAULT: For Union South those two accounts are disposed of to sales service customers only, whereas in Union North those two accounts are disposed of to sales service and bundled direct-purchase customers.

MR. AIKEN: So are you going to have two different rate riders then to dispose of this? If we just focus on Union South, are you going to have two different rate riders, one basically for the UDC and the FT-RAM account that only goes to system customers, and then the small amount that is based on everything else, would that be for system and direct-purchase customers?

MR. TETREAULT: We will have one rider, Mr. Aiken, or one price adjustment for Union South. That will be a gas-commodity price adjustment. And then in the north, as it relates to the UDC and the other account, it would be -- it would have been a transportation price adjustment.

MR. AIKEN: Okay. So -- and because in this case the two drivers in Union South are gas-supply-related accounts the rate rider is only to apply to system gas customers, even though in the future some of the deferral account variances might be driven by rate riders that would be collected from system and direct-purchase customers.

MR. TETREAULT: Perhaps I misspoke, but I was speaking specifically to the two gas-supply deferral accounts, Mr. Aiken, not necessarily any variances that derived from other accounts.

MR. AIKEN: And that was my question. For Union South we have this third category of costs that go into the 5.3 million. Is that going to be cleared or recovered from only system gas customers or from all customers?

MR. TETREAULT: No, I would expect it to be recovered from or disposed of to all customers on the same basis as it was originally intended to be disposed of.

MR. AIKEN: I'm going back again to page 11 of the compendium. On the proposed -- on the 2012 proposed line, I see you have a disposition period of October 2013 through March 2014. Given that we're already in October and will not have a decision that you can implement until probably January, what period is Union now proposing to dispose of the 2012 balances?

MR. TETREAULT: Assuming we don't receive a decision until January, we would use a six-month period, starting in April of 2014, to the end of September.

MR. AIKEN: And if you were to get a decision that you could implement January 1st, it would be January through June?

MR. TETREAULT: That's correct.

MR. AIKEN: Okay. Now, my understanding is that Union did not have this type of true-up mechanism for account variances in the first three years of its IRM term; is that correct?

MR. TETREAULT: That's correct.

MR. AIKEN: And then what about prior to 2008 and the commencement of the IRM term? Did Union ever have such an account?

MS. ELLIOTT: We have not had such an account, no.

MR. AIKEN: I knew you would remember, Ms. Elliott.

If you turn to page 14 of the compendium. This is Exhibit D2.13. In this response Union states that the IRM settlement provided the deferral accounts would be treated as Y factors in the plan.

Now, I've included the Y factor portion of the IRM settlement agreement, beginning at the next page in the compendium. Can you show me where in the agreement it indicates that all deferral accounts would be treated as Y factor?

MS. ELLIOTT: I think the list on page 16 of the compendium, under "Y factors", those are all gas-cost deferral accounts.

MR. AIKEN: That leads me to my next question then, and specifically, given that the proposed account includes variances associated with the FT-RAM optimization account, does this mean that Union is agreeing that FT-RAM credits are upstream transportation costs that should be treated as Y factor?

MS. ELLIOTT: I think the fact that the deferral account existed and there was a balance in it for 2011 puts it in the category of a gas-cost deferral account, according to the Board's decision.

MR. AIKEN: Now, similarly, Union states in the response to Exhibit D2.13 that Union and ratepayers agreed and the Board subsequently approved that the amounts associated with approved deferral accounts would be passed through to ratepayers.

Now, here I'm taking the reference to deferral account to mean deferral and variance accounts. Now, so my question is, can you show me where in the settlement agreement again that is noted?

MR. BIRMINGHAM: I just want to make sure I've got your question right, Mr. Aiken. It says the amounts associated with approved deferral accounts would be passed through to ratepayers; that is, they are not adjusted by the price cap index and will be -- the actual cost will be passed through into rates. I mean, that is the purpose of the deferral and variance account.

So to the extent that deferral accounts are in existence, that's how they would continue to be treated, in the context of the incentive regulation framework.

MR. AIKEN: Now, at the time of the IRM settlement agreement would you agree that the approved deferral account would be those listed on page 18 of the compendium, which is appendix B from the settlement agreement?

MR. BIRMINGHAM: That's correct. That's Appendix B from the settlement agreement, yes.

MR. AIKEN: Yes. And then finally, back on the interrogatory response, the final sentence in the first paragraph states that:

"Deferral accounts protect the ratepayer, the shareholder, from potential gains or losses due to forecast variances."

This does not seem to be quite true, since until this request there was no true-up for many of the deferral and variance accounts under IRM; is that correct?

MR. BIRMINGHAM: That's true, Mr. Aiken, but as I said, the intention really is that deferral and variance accounts are there because they can't be properly forecast, and that the actual costs are going to be passed into rates. We thought we had a mechanism to do that because the variances were so small over history, the last time that we updated was plus or minus $3,000, that we thought we had a mechanism to do that.

What we've discovered, of course, is that the mechanism that we had in the past isn't working and we need a new mechanism to achieve what the deferral and variance accounts are intended to achieve.

And just on that, Mr. Aiken, I know you'll be familiar with this, but in the context of the new incentive regulation settlement agreement -- and so this is EB-2013-0202 -- in section 7 there is a segment on deferral and variance accounts, and if I can just beg your indulgence for a second, on page 22 what it says there is:

"It is understood and agreed that Union will administer the pass-through items of expenses and savings in a manner that is compatible with the principle that neither Union nor its ratepayers should gain or lose on such pass-through items."

And I think from our perspective that's always been the case. That's not a new principle. That is the very reason why deferral and variance accounts are put in place.

MR. AIKEN: But it was not a principle that was included in the 2008 through 2012 IRM agreement.

MR. BIRMINGHAM: I would say it was included in the agreement. It was not explicitly stated in the language, I agree with that.

MR. AIKEN: So it was not in the agreement.

MR. BIRMINGHAM: The purpose of the deferral and variance accounts as to pass actual costs through rates, that specific language was not in the agreement.

MR. AIKEN: During the IRM period were there any Board-approved load forecasts? I'm talking about the 2008 through 2012 IRM mechanism.

MR. BIRMINGHAM: No, our volume throughput forecasts were not part of the Board approval that was required in the incentive regulation agreement. They were filed as part of our annual reporting and monitoring statements, but not for the Board's approval during that period.

MR. AIKEN: Did you consider the current operational forecasts that were used as the denominator in the calculation of the rate riders as being Board-approved forecasts for the -- in the IRM period?

MR. TETREAULT: No, Mr. Aiken, we wouldn't consider that to be -- we wouldn't consider that to be a Board-approved forecast in the context of setting distribution rates.

As I mentioned earlier, though, it was the same forecast used to deal with this prospective recovery related to gas supply deferral accounts as part of the QRAM, as we did dispose of deferral accounts or we began disposing of deferral accounts on the same basis at the same time.

MR. AIKEN: Would you agree that changes in actual volumes or the composition of those volumes between rate classes were part of the risk taken on by Union during the IRM period, under the price cap mechanism?

MR. TETREAULT: Yes, I can agree with that, but I would not agree with that in the context of a deferral account disposition, where the goal is to true up with ratepayers any variances between actual and forecast costs in that deferral. The intent of a deferral account clearing is not for one party, whether it's Union or ratepayers, to gain or lose as a result of that disposition.

MR. AIKEN: Do you have any concerns about rate retroactivity with respect to the 2011 variances that you under -- I take it the answer is no?

MR. BIRMINGHAM: The answer is no, because we're not concerned about rate retroactivity when deferral accounts are set out with the express purpose of passing actual costs through to ratepayers.

MR. AIKEN: So your proposal is essentially, then, to recover this $5 million from customers that you just finished giving it to them in September?

MR. BIRMINGHAM: Our proposal is to ensure that they get the actual cost passed through to them. There is a difference between what's been given to them and what should have been given to them, and that needs to be corrected.

MR. AIKEN: Then one last question on this issue.

Now that you know the 2011 balance or have a pretty good idea that it's going to be close to the 5.3 million, would that –- sorry, are you proposing to recover it as part of the disposition of the deferral and variance accounts balances in this proceeding, or will it be part of the disposition in the 2013 balances?

MR. TETREAULT: We would bring that balance forward for disposition with the 2013 annual disposition, Mr. Aiken.

MR. AIKEN: And is part of the reason you are not proposing to clear it now is because at this point you've made no allocation proposals as to how that would be recovered?

MR. TETREAULT: Yes, I think that's fair. That's part of it. And obviously we've got the request here, but we don't have a Board decision at this point in time as well.

MR. AIKEN: I'm moving on now to the area of rate impacts and allocation. So if you could please turn to page 20 of the compendium, this is the table provided in the response to Exhibit D2.20.

I want to make sure that I understand what's being shown in columns C and D in that table. If I start with column C, it shows the balances to be collected from or refunded to the various rate classes under Union's proposal for both the collection of the 15.929 million for deferral and variance accounts, which are almost offset by 15.73 million in earnings sharing. That results in the total recovery shown in line 50 of about $199,000.

So stopping there, have I got that right so far?

MR. TETREAULT: That's correct.

MR. AIKEN: Then in column D, the FT-RAM deferral column, I take it this reflects the allocation of the debits and credits assuming the FT-RAM revenues are allocated based on the Board-approved methodology for the 2011 -- sorry, well, the previous year's FT-RAM optimization revenue?

MR. TETREAULT: That's correct, based on the Board's decision in the 2011 deferral proceeding.

MR. AIKEN: Okay. So this column shows the same deferral and variance account recovery of 15.929 million, and then a refund of 32.977 million in FT-RAM optimization?

And those two figures I get from Exhibit A, tab 1, page 6; have I got that right?

MR. TETREAULT: That's correct, Mr. Aiken.

MR. AIKEN: Just a small clarification before I move on to the important questions.

When I add those numbers, a credit of 32.977 and a debit of 15.929, I get a net credit of 17.048 million, and that agrees with the figure on page 6 of Exhibit A, tab 1, but on line 50 here, I see the credit is about exactly 200,000 higher.

What is that $200,000 related to?

MR. TETREAULT: Mr. Aiken, I'm seeing the same figure you stated earlier, which is under the FT-RAM deferral alternate treatment, the net disposition of deferral account balances is 17.048 million.

You mentioned a figure 200,000 higher. Assume you are referring to column E, line 50, which is just the delta, the change, between Union's proposal --

MR. AIKEN: Okay. So that takes into account the 200,000 under the --

MR. TETREAULT: Yes, that's correct.

MR. AIKEN: Following on, in the FT deferral account column there's no earnings sharing, because my understanding is without the FT-RAM optimization revenues, Union did not exceed the earnings sharing threshold?

MR. TETREAULT: That's correct.

MR. AIKEN: Now, the interesting thing that caught my eye on this table is that the direct-purchase customers in Union South are better off under Union's proposal, while system gas customers are better off if the Board's decision from 2011 was followed.

And I take it that this is because the allocation of earnings sharing based on a different methodology than that approved by the Board for the FT-RAM optimization account; is that right?

MR. TETREAULT: That's correct.

MR. AIKEN: Is the FT-RAM account allocated based on system volumes by rate class?

MR. TETREAULT: In Union South it is.

MR. AIKEN: Okay. What about in the North?

MR. TETREAULT: In the North it is allocated to both sales service and bundled direct-purchase customers. Those are the customers that Union provides transport to in the North.

MR. AIKEN: And how are the earnings sharing allocated? Is it based on rate base from 2007?

MR. TETREAULT: It is based on rate base. We describe it in evidence as being based on 2007 return on equity, which is a rate base allocation.

MR. AIKEN: If you look at lines 45 through 49 in the table, these are the ex-franchise customer rate classes. And in particular, if you look at the M12 rate, there's a $3 million difference between earnings sharing and the FT-RAM deferral column.

Does this mean the M12 customers are getting $3 million of the earnings sharing allocated to them under your proposal?

MR. TETREAULT: I would like to turn that up, Mr. Aiken. I believe the answer is yes, but I would like to confirm.

Mr. Aiken, in Exhibit A, tab 3, appendix A, schedule 1, page 1 of 2, we show the allocation to rate classes of all deferral account balances and earnings sharing. And the amount of earnings sharing under Union's proposal allocated to M12 is the 3,065,000.

MR. AIKEN: I take it from your previous answer that the M12 rate class, as an example, does not get allocated any of the FT-RAM optimization revenues and did not get allocated any of the 2011 disposition?

MR. TETREAULT: That's correct.

MR. AIKEN: Can you explain why they didn't get any of those optimization revenues?

MR. TETREAULT: Well, in 2011 the FT-RAM-related margin was considered a gas cost reduction, based on the gas supply plan that Union has to meet the needs of sales service customers in Union South and sales and bundled-T customers in Union North.

Union doesn't hold any upstream transportation for M12 customers.

MR. AIKEN: So am I correct to conclude, then, that the M12 customers and the direct-purchase customers in the South, for example, do not get allocated any of the optimization revenues -- or did not get allocated any of the optimization revenues, because they do not and did not pay for any of the upstream transportation assets?

MR. TETREAULT: That's correct.

MR. AIKEN: In your earnings sharing proposal, however, these customers get to share in these benefits from upstream assets paid for by other customers; is that correct?

MR. TETREAULT: Yes, under a treatment where the transportation exchange amounts are considered to be revenue and part of utility earnings, subject to earnings sharing.

MR. AIKEN: Do you believe it's fair for these customers to share in the benefits when they do not contribute to the costs associated with the assets that have generated the earnings sharing in this particular year?

MR. TETREAULT: Well, Mr. Aiken, you have our position in this proceeding where we're -- where we are proposing to treat any exchange revenue as revenue subject to -- so therefore part of utility earnings, subject to earnings sharing, so in our -- our position is that it is S&T revenue, if you will, like any other S&T revenue, so we're treating it consistent with any utility earnings that might result in earnings sharing with ratepayers.

MR. AIKEN: Do the M12 and direct-purchase customers pay any of the UDC costs that you will be seeking to recover?

MR. TETREAULT: No, they do not.

MR. AIKEN: Are the UDC costs the result of the same upstream assets that have generated the earnings sharing?

MR. TETREAULT: Can you repeat that, Mr. Aiken? I'm not sure I understood your characterization.

MR. AIKEN: Yeah, are the UDC costs that you are going to be recovering from system gas customers, are those costs in that variance account the result of the same upstream assets, transportation assets, that have generated the earnings sharing, and the earnings sharing being generated in 2012, solely based on the FT-RAM credits? So are the credits, FT-RAM credits, and the UDC associated with the same upstream transportation contracts?

MR. TETREAULT: The UDC costs are associated with our overall upstream transportation assets that form part of the gas supply plan.

MR. AIKEN: Okay. Now, if the Board agreed with your proposal that the FT-RAM revenues should be dealt with as part of earnings sharing, would Union be able to allocate the earnings sharing based on the same methodology that the Board approved for the 2011 FT-RAM optimization account if the Board so directed?

MR. TETREAULT: If the Board so directed, yes.

MR. AIKEN: So in that case we would have a different total allocation from that shown in the earnings sharing column on page 20 of the compendium. Would Union undertake to provide an additional column in the response to Exhibit D2.20 that shows the impact and the same level of detail as shown in attachment 1 with no change to the deferral and variance-accounts allocation, but with the earnings sharing based on the 2011 approved methodology for the FT-RAM optimization account?

MR. SMITH: Yes we'll do that.

MR. QUESNELLE: Ms. Sebalj?

MS. SEBALJ: It's J1.1.

MR. QUESNELLE: Thank you. I took it that everyone's happy that the understanding of that. I think it was very explicit. Thank you very much, Mr. Aiken.

UNDERTAKING NO. J1.1: TO UNDERTAKE TO PROVIDE AN ADDITIONAL COLUMN IN THE RESPONSES TO EXHIBIT No. D2.20 THAT SHOWS THE IMPACT AND THE SAME LEVEL OF DETAIL AS SHOWN IN ATTACHMENT 1 WITH NO CHANGE TO THE DEFERRAL AND VARIANCE-ACCOUNTS ALLOCATION, BUT WITH THE EARNINGS SHARING BASED ON THE 2011 APPROVED METHODOLOGY FOR THE FT-RAM OPTIMIZATION ACCOUNT

MR. AIKEN: And on that note, those are my questions. Thank you.

MR. QUESNELLE: Mr. Aiken, do you have any with respect to the --

MR. AIKEN: The addendum?

MR. QUESNELLE: -- the addendum.

MR. AIKEN: I would, yes.

MR. QUESNELLE: So we'll be coming back you to after the break then. Okay. Thank you.

Okay. With that we'll take a -- let's give ourselves a little extra time on this break. We'll take 25 minutes this morning and return at 11:25.

--- Recess taken at 11:01 a.m.

--- On resuming at 11:38 a.m.

Preliminary Matters:

MR. QUESNELLE: Thank you. Please be seated.

Just as a follow-up to our earlier conversation, the Panel has not been able to determine at this point -- and quite frankly, we're not sure exactly what point we'll be able to determine -- from the Board's perspective how we will treat this, which goes to the potential notice, it goes to the potential of what determinations we will have available to us in hearing information or gathering evidence and hearing cross-examination on the issue of the audited statements and the costs ramifications of that.

But we're mindful that we have the people here, we have the people ready for cross-examination. And we think it would be appropriate to take advantage of that and have people conduct their cross-examination, to gather whatever facts they feel are necessary. And the unfortunate thing is necessary for what.

But we would think that if they have questions on this, that from a fact-collecting perspective, that that would be appropriate to take advantage of that at this time.

We're certainly willing to hear from the Applicant as to what their thoughts are on that, but that's this Panel's thinking at the time, that we would take advantage of it, not have to double back, if that was deemed appropriate, at a later date. And we're hoping that we can dispense of this one way or the other within the next few days, but we can't even suggest that we can confirm it today.

Mr. Smith?

MR. SMITH: I think that's sensible. We have the witnesses here. I think that makes the most practical sense. Perhaps at the lunch break I could have a discussion with Ms. Sebalj and maybe we'll just come forward with, perhaps, a recommendation to address the concerns that the Board has raised.

MR. QUESNELLE: Thank you very much, Mr. Smith.

With that, Mr. Aiken, if you want to continue?

I had one other, really -- sorry, Mr. Aiken, so I don't interrupt you and I forget a second time. There was another preliminary matter I was going to raise this morning, Mr. Smith, and it was to do with confidentiality issues. I think there were some filings. And two things I would like to ask on the record, if all have parties have been cognizant of the Applicant's request and have destroyed documents that were earlier filed, but then were re-filed in a confidential basis subsequent to that.

And I just put that on the record. I don't need a show of hands around the table, but I will remind people of that request, and the Board would deem it appropriate to have that carried through.

And, Mr. Smith, just over to you, are there any other issues around confidentiality that you're aware of that we should be dealing with from a procedural matter?

MR. SMITH: No, members of the Panel, as far as I'm aware, the only party who has signed the requisite undertaking is CME. And so Mr. Shepherd, as I understand it, will be the individual who will be conducting most all of the cross-examination in relation to the DSM issues, and the confidential information was in relation to a verification report which addresses DSM.

So I have some confidence that this is not going to be an issue, and we won't need to be going into camera for any reason or anything like that.

MR. QUESNELLE: From the other parties, we haven't received any objections from the filing of this information in confidence and using the Board's confidentiality practice, so if there are no objections to that, the Board will accept that they can be and will remain in confidence. Thank you.

Mr. Aiken, sorry for the interruption.

Continued Cross-Examination by Mr. Aiken:

MR. AIKEN: Thank you, Mr. Chair.

I just have a few brief questions on the addendum information. If I go to this addendum, Exhibit A, tab 1, addendum at pages 1 through 6 of my compendium, on the first page you've quoted the Board's decision there that reflects the Board's direction.

Then in the evidence, you provide an update to the costs that would be incurred in order to prepare these statements, and the costs are estimated to increase from 400,000 to 1.3 million.

So I just wanted to stop there. Is the 1.3 million still a current cost estimate?

MR. WATHY: Yes, it is, at this time.

MR. AIKEN: Then on page 5 of the addendum, there's a table that shows the composition of the 1.3 million in 2013. And then for 2014 and '15, it appears that the annual fees going forward to prepare these statements would be $80,000 a year; is that correct? There's no other costs at some point in the future?

MR. WATHY: As referenced in the evidence, Mr. Aiken, the only additional cost to the $80,000 would be any costs that are unforeseen with regards to an IT solution.

Right now we're not expecting or anticipating any additional system-related costs, but should they arise in the future, we would be looking to capture those as well.

MR. AIKEN: Okay. And then I guess really the only two questions I have, then, is -- and I guess you kind of covered this this morning with the Panel members, but is Union asking intervenors specifically to comment on the appropriateness of the directive, given the $900,000 increase in costs?

And let me just follow up with a second question. Is Union asking as part of this proceeding for the Board to reconsider its directive, given the cost increase?

MS. ELLIOTT: As was indicated this morning, we filed this for information purposes only, because the costs went up. We are proceeding to comply with the Board's directive. We just have a revised cost estimate at this point, so we weren't asking for anything. We wanted to file this to let parties know what the costs are going to come in at.

MR. QUESNELLE: Mr. Aiken, we have a question from --

MS. FRY: Yes, just a little follow-up question. So you are saying 1.3 is the best estimate you have at this point in time, and I guess what I would ask is at this point, are you aware of any contingencies that, if they came to pass, might cause some kind of a material variation? And if so, what would they be?

MS. ELLIOTT: We're not aware of anything at this point that would cause a material variation to those costs.

MS. FRY: Okay. Thanks.

MR. AIKEN: Has Union started any of this work yet?

MR. WATHY: Yes, we have. We're currently in phase I of the project, which was outlined in the Ernst & Young report as our methodology phase. So we're currently assessing the balance sheet and working on separating any accounts that have not previously been separated.

MR. AIKEN: Do you have any estimate at this point in time how much cost you've incurred to date? Just a high-level.

MR. WATHY: Approximately $400,000 to date.

MR. AIKEN: Thank you. Those are my questions.

MR. QUESNELLE: Thank you, Mr. Aiken.

Dr. Higgin, I see you are going for the mic. I take it you are next?

DR. HIGGIN: Thank you, Mr. Chair. So, fortunately, Mr. Aiken has asked some of my questions, so I will be a little shorter than I...

MR. QUESNELLE: Thank you.

Cross-Examination by Dr. Higgin:

DR. HIGGIN: Good morning, panel. My questions pretty well all relate to the 2012 earnings sharing and the upstream transportation FT-RAM optimization and Account 179-130. That's most of my questions.

I just wanted to go slightly back in history for a moment, and I wonder if you could turn up Exhibit D1.3, attachment 1 and page 41. And this is from the 2012 consolidated audited financial statements, and we will be looking at page 41.

So when that's up on the screen -- coming up now. I just take you briefly to paragraph 3, if you have that. And the reference there talks about what happened to the 2011 FT-RAM optimization revenues and their treatment as per the Board's decision to be a reduction to natural supply costs. So then it goes on to the impact of that.

I just wanted to get an update from you regarding, first of all, the appeal of that decision. I understand that is proceeding, and maybe somebody could just give us a brief update on that appeal.

MR. SMITH: Certainly the --

MR. BIRMINGHAM: Yes, Dr. Higgin. That hearing was conducted on October 16th and we're awaiting a decision from the court.

DR. HIGGIN: Mr. Smith, do you anything to add? Is that --

MR. SMITH: No, no, that's correct.

DR. HIGGIN: Okay. Thank you. So now coming -- we're now concerned about 2012, and that's the topic here, and if you look at the next paragraph, it says here that with respect to 2012, given, I assume, that Board finding, that there will be a payable to customers of approximately 34 million in 2012, and that that amount has been recorded in the 2012 consolidated financial statements.

So could you just tell us what that means and that provision and how has that been made for 2012?

MS. ELLIOTT: Yes. In the evidence that we provided at Exhibit A, tab 2, page 5 we refer to that provision as basically a contingency accrual that we recorded in 2012 financial results.

DR. HIGGIN: So right now it has been recorded, and that's the key point, as a provision, and I'm trying to understand the word "contingency". Can you please just expand what you mean by "contingency"?

MS. ELLIOTT: It was a provision to reflect the -- in the event that the Board finds the treatment in 2012 should be the same as the treatment in 2011.

DR. HIGGIN: Okay. Thank you very much for that.

So I would like now to move on to the proposals for 2012. That's the earnings sharing and the upstream transportation, FT-RAM optimization, account disposition. So could we start just as a segue here to turn up Exhibit B, tab 1, and take a quick look at table 1, that just sort of orients us where we are. You have that up on the screen.

Basically, perhaps I could ask you just to summarize what is meant by the proposed treatment and then the alternative treatment per EB-2012-087, in summary.

MS. ELLIOTT: The proposed treatment filed by Union in this application is for the deferral account balances to be the $15.9 million receivable from ratepayers that excludes any balance in the FT-RAM optimization deferral but includes that revenue in the earnings sharing calculation, which results in a $15.7 million payable to ratepayers, so the net balance is a $200,000 receivable from ratepayers, and that's our proposal in evidence.

The column referred to as the treatment per EB-2012-0087 puts the FT-RAM revenue in the FT-RAM deferral account and results in a total payable under the deferral accounts of 17 million with no earnings sharing.

DR. HIGGIN: So when you say "deferral account" you mean the 179-130 account?

MS. ELLIOTT: That's correct.

DR. HIGGIN: Correct? Okay.

Now, it won't surprise you that my clients don't agree with Union's proposition for the treatment of the 2012 FT-RAM revenue. So as you would know, we've thought about the options, and we actually see there could potentially be three and, maybe now with Mr. Aiken's proposal, four.

So I sent a schedule to your counsel and regulatory affairs people to try and set out this. Just to confirm, there is no 2012 transactional-services deferral account, because it was eliminated as part of the settlement of the IRM, which was the old 179-69; is that correct?

MS. SEBALJ: Sorry, Dr. Higgin, I just want to make sure that the Panel has what you are looking at and that it's marked for the record.

DR. HIGGIN: Yeah, no, I was just going to -- this was a preliminary, but, yes.

MS. SEBALJ: Oh, sorry. I see this up on the screen.

DR. HIGGIN: I just wanted to confirm with the panel that -- the witnesses -- that there is no 2012 transactional services deferral account similar to the 179-69 that was eliminated in the settlement agreement in EB-2007-0606; correct?

MS. ELLIOTT: That's correct.

DR. HIGGIN: So what I've tried to do on this schedule, if we could now give it a number, is to --

MS. SEBALJ: K1.3.

EXHIBIT NO. K1.3: SCHEDULE PROVIDED BY DR. HIGGIN

DR. HIGGIN: Thank you. So what I would like to do is just briefly outline my framework. So option A is the one that is called the FT-RAM optimization, using 179-130, to collect the revenues and then clear it through the QRAM. That's -- I've called it option A.

And that -- the exhibit I've shown there where my main source is Exhibit A, tab 3, appendix B, schedule 1. So that's the first option that I've outlined.

The second is to accept your proposition that the FT-RAM is reclassified and net revenue becomes part of transportation margin and utility income, and then under the Board-approved IRM ESM, 2012 excess utility earnings are shared between Union and ratepayers.

And the rate-class allocation for that as I understand it is based on calendar year 2007 ROE, and the reference is there. So am I correct with respect to that characterization?

MR. TETREAULT: Yes, you are.

DR. HIGGIN: Thank you. Now, option C relates to the fact that what happened in history before the IRM period -- and that was that at that point -- I don't want to go into the history -- there was a transactional services variance account, and that used to be designated 179-69.

However, as we said, there isn't one, there is nothing approved, and so on. So my proposition is to pretend that -- have a notional one, if that existed, notionally, because there isn't one, just as a proposition. That's my proposition. And then look what would happen to how the FT-RAM upstream optimization revenues would be shared under that proposition of there being the old type of account.

So I'm not asking Union to agree or disagree with those options. That's probably a matter for argument. However, if you have some comments on the proposed framework, then please go ahead and tell me if I've got some things wrong and clarifications if you wish.

MR. TETREAULT: Dr. Higgin, it may be worthwhile -- I don't know if you can do this, but could you walk us through your proposition, and then -- briefly, and I think we could perhaps comment on a few elements of what you've proposed here.

DR. HIGGIN: Okay. Well, perhaps the best way to do that is to look at the schedule that is attached as Schedule 1, and basically what I've tried to do is to draw out on line 1 an amount which is designated as the non-FT-RAM deferral accounts. And that's 15.73 million, et cetera.

What I think is the big difference, leaving aside numbers, is on line 2, and that is how should the FT-RAM transactions be classified. And do you have any comment on that relative to the two options? Start with the two options which are in evidence.

MR. TETREAULT: Dr. Higgin, I don't have any issue with the column marked A or the column marked B, and I understand your proposition with regard to C. From my standpoint, as I read through column C, there appears to be two different steps at which there would be an incentive sharing or an incentive payment to Union. And if I had a concern or a struggle with your -- with what you've proposed there, it would be that.

Again, as I said, I understand what your -- ultimately where you're trying to get to. So what we have, if I can describe it this way, there is no -- or we can make the assumption, anyway, there is no FT-RAM-related margin in, let's call it, base rates. And then we have, of course, actual margin in 2012 related to FT-RAM, and that actual margin is the difference between your gross revenues or our gross revenues on, I guess it would be, line 3 here. That's the $40 million, less the next line, which is the fuel UFG costs on Union's Dawn-to-Parkway system, and any third-party costs, which total approximately 3.36.

So from my review of this, the margin that we should be considering for the 75/25 percent sharing you've proposed here is the difference between those two, or approximately 36.6 million, whereas the way you've laid this out, you've deducted a 10 percent incentive payment for Union of approximately 3.6, but then there is a further sharing based on 75/25 percent ratios of the remaining 90 percent. So it's the second sharing that I'm concerned about.

So if I could make a suggestion, I think we should use the actual FT-RAM margin of 36.6 million and show you or illustrate to you by way of an undertaking how -- what the Union North, Union South rate class impacts would be based on 75 percent of that amount being shared with ratepayers.

DR. HIGGIN: Thank you very much for that. I myself thought long about that, because if you look at the first page, you'll see note number 1, footnote number 1.

So what we see here is that section of the account –- sorry, of the settlement agreement, the 606, had a reduction to base rates of 4.3 million, and that was subsequently, as counsel just mentioned, increased; correct?

MR. TETREAULT: I believe the $4.3 million reduction was an outcome of the 2007-0606 settlement, which led to, I believe it was, a total margin in rates beginning in 2008 related to this type of activity of 6.9 million. There was an additional amount of 2.6 million that came forward from 2007.

DR. HIGGIN: Yes. Thank you very much. You and I, totally on the same page for that.

So that's why I struggled with that issue. So rather, we will accept your change; I think it's appropriate. And then if you could, then, take that and produce the -- first of all, just update the schedule to reflect that properly, and then if, as you know, where I would be going next -- and I'll come to that in a minute -- is to look at the rate impacts that that would have, if you took that proposal. Okay?

MR. TETREAULT: Yes, we can do that.

DR. HIGGIN: So that's an update to this, first of all, as an undertaking.

MR. QUESNELLE: I think we can put that in one undertaking, the two elements of it. Ms. Sebalj.

MS. SEBALJ: J1.2.

UNDERTAKING NO. J1.2: TO UPDATE ENERGY PROBE SCHEDULE 1 WITH ENERGY PROBE OPTION C

DR. HIGGIN: If we could then go to schedule 2, and as I noted, this is really very similar to your exhibit that Mr. Aiken showed you before, but I actually derived it from the response to our Interrogatory D10.9, attachment 1. I hope I've translated it correctly.

I found a few errors, and so I'm going to ask you to check the schedules again. Some of the columns don't quite add up to the totals which were put in as hard-coded. So that's one of the issues. So there might some minor but there would only be minor issues. Okay?

So then if, as we just discussed, I could ask you to produce the schedule with option C filled out, showing the recovery refund under the proposal which is coming from schedule 1 and then provide the result, that would be helpful. Have you any questions about that at the moment, Mr. Tetreault?

MR. TETREAULT: No questions. We can do that.

DR. HIGGIN: Thank you very much.

MS. SEBALJ: J1.3.

UNDERTAKING NO. J1.3: to update ENERGY PROBE schedule 2 WITH ENERGY PROBE OPTION c

MR. QUESNELLE: Thank you.

DR. HIGGIN: So those are my questions. Thank you, Mr. Chair.

MR. QUESNELLE: Dr. Higgin, thank you very much. Mr. Janigan?

MR. JANIGAN: I've conferred with Union, and I think we're in agreement that all my questions are basically policy and regulation questions associated with the proposed treatment of the FT-RAM revenues, and I'm better off in panel number 2, rather than panel number 1. So I will pass on crossing panel number 1 and address my questions to panel number 2.

MR. QUESNELLE: All right. Thank you very much, Mr. Janigan. Mr. Quinn, perhaps?

Cross-Examination by Mr. Quinn:

MR. QUINN: Yes. Thank you, sir. And I will change the order of what I was going to do this in, to hopefully stay on track with where Dr. Higgin left off with the panel.

I had reviewed what Mr. Aiken had gone through and I see Dr. Higgin has added another approach. And in our view I guess there may be another approach, but I'll get to that in a moment.

If you can turn up appendix A of Exhibit D, tab 4, this was in your original prefiled evidence. Appendix A. Exhibit B, tab 4, appendix A. It's Union's presentation of treatment of exchange revenues within the 2012 earnings sharing. Thank you.

I just want to pause briefly to understand this, and then move to my undertaking requests that will be aligned with Dr. Higgin's.

First off, it says:

"Exchange revenues and costs are properly accounted for within utilities earnings."

As the first key message.

And I guess I'm trying to understand the basis for that comment. Can you help me with the basis for that comment?

MR. QUESNELLE: Mr. Quinn, can I interrupt just for a second? This is out of an abundance of caution.

Mr. Smith, the exhibit that is up right now is still labelled "confidential." Is there an issue with that, or no?

MR. SMITH: No, that's a remnant, but it's not confidential in this case.

MR. QUESNELLE: Thank you very much.

MR. QUINN: Yes. Thank you, sir. I'd gone through the same thought process when I saw it, but it was filed as part of their evidence publicly, so I didn't think there was any remaining issue.

MR. QUESNELLE: Thank you.

MR. BIRMINGHAM: Mr. Quinn, it may be best to hold this for panel 2, and I'm going to be on that panel.

But to be able to at least get you started on this, with respect to that particular statement, the reason that it's made is laid out at Exhibit B, tab 1, page 5 of 39.

There are six reasons why we're proposing to treat this as utility revenue subject to earnings sharing. So they are laid out there in the evidence. That statement is consistent with our evidence.

MR. QUINN: And I did read that evidence previously, and I guess this is a line where Mr. Aiken was going.

My concern is: In making this statement, who was the audience for this statement?

MR. BIRMINGHAM: Maybe we can just hold the response to that one, Mr. Quinn, just because I think it's largely Mr. Isherwood's group that was conducting these presentations with customers and other stakeholders. So he will have a better sense for the actual audiences that participated in these presentations.

MR. QUINN: Okay. I'll defer my remaining questions in that area. I just want to ask one more question, I think it is to this panel, in terms of, does that list that you provided me -- I didn't get a chance to turn it up -- on page 5, does it include cost causality as one of the reasons for it being properly accounted for within utility earnings?

MR. BIRMINGHAM: I'm not sure what you mean by cost causality in this context, but listed under those six reasons is -- cost causality is not one.

MR. QUINN: It's not one. Okay. I have to defer some questions, and I respect that. I was of the understanding that this panel was to do Exhibit B, tab 4, but nonetheless, I do want to ask for an undertaking, and there have been different scenarios laid out as to how balances could be disposed of, and I would like to have a further scenario analyzed and the rate impacts added to the appropriate schedules, being not only D-220, but also the schedules that are laying out the rate impact, and what I would like to have Union do is apply the decision of EB-2011-0210, the rebasing decision.

Could you provide an undertaking to show the numerical impacts of applying the methodology as prescribed by that decision?

MR. SMITH: I'm sorry, Mr. Quinn, I missed it. What would you like us to do and to what would you like it done?

MR. QUINN: Mr. Aiken was using D-220, and the panel is familiar with that breakout, and he had observed a different approach that he wanted. I think if you extend that table to add a breakdown of the customer impacts or the rate-class impacts of using the rebasing decision's 90/10 breakout of cost, to the extent that all optimizations are treated 90/10 as gas costs?

MR. TETREAULT: Mr. Quinn, I expect this is directed at me. I'm struggling with how the decision in the 2013 case is different than what we've presented resulting from the Board's 2011 deferral-account disposition decision.

MR. QUINN: That decision in 0210 provided a different process for allocating the benefits of optimization, and as was expressed through some staff at Union, we were concerned about this process, in that the gas supply panel -- in our view, gas supply panel plans things. Your next panel that's coming up here, panel two, executes them. This panel here measures them and shows the results.

So now we're asking this panel to provide a breakdown that is consistent with a past decision, and we haven't created a basis for that request, but that will have to be established with your future panels. But given the order of panels in front of us, I would like to ask that Union would undertake that.

MR. SMITH: Mr. Quinn, so I'm clear, is your request that Union would prepare a schedule that would show the allocation not of the FT-RAM-related optimization revenue which is captured in account 179-130, which was the amount that the Board determined in 0087 should be separately treated, but you would like to propose for 2012 that all exchange revenue be treated and shared 90/10? Is that what you are asking?

MR. QUINN: That's correct. In our view -- the Board made a decision in the 2011 deferral accounts. Union presented to select customers a different approach, going back and putting the proceeds into earnings sharing. In our view, if we're going to look at alternative approaches which we may have to argue later, one of the alternative approaches is the 90/10 split, as laid out in the rebasing decisions for the reasons that that decision was made.

MR. SMITH: I'm going to have to reflect on that request, and the reason I say that is, that is not a proposal that was reflected in Union's evidence. It's not consistent with Union's application, and this is the first that this request has been made.

And so to the extent the Board has expressed concerns around, for example, the treatment of the directive and proper notice, this is exactly the same sort of issue, because it's reflecting a different treatment than in Union's application, and it's inconsistent with the 0087 decision which preceded it.

I do concede that it would be consistent, in that -- the 0210 decision, the rebasing decision, does treat all optimization revenue in a particular way, but I'm just pausing over the appropriateness of this, because this is, of course, the first time that we've heard of this request in the context of this case, and it's a very significant change.

MR. QUESNELLE: Okay. Mr. Smith, I think the panel will allow you time to think about that, obviously, but I think if -- when putting your mind to it, how would you distinguish this request from a typical running of scenarios where there has been something presented and an intervenor asked for a different scenario, and whether or not that information could be formatted in such a way that provides the outcome of that scenario?

MR. SMITH: I don't, and I'm not drawing that distinction. I'm simply reflecting the concern the Board had earlier indicated, that you, of course, had my submission earlier that the Board does routinely ask for different scenarios and does sometimes reach decisions based on those scenarios.

So I don't want to be -- I'm not --

MR. QUESNELLE: No, and --

MR. SMITH: -- deviating from that scenario, but I do pause over it, given the difference of dollars, which is somewhat significant.

MR. QUESNELLE: Well, perhaps at a time after the lunch break that we can revisit this, Mr. Quinn, and you'll have an opportunity to -- or depending where you are in your cross-examination -- to comment as well when the applicant gives its response to the request for the undertaking.

MR. QUINN: Yes, sir. I'll finish with just saying my friend Dr. Higgin had laid out a scenario that I didn't see in Union's evidence either. It's a calculation. This may be from a different decision or different framework, but that is what we're asking for, is the numbers, and because of the order of the panels I haven't been able to lay out sufficient grounds at this point why this might be a pertinent way of looking at it.

MR. QUESNELLE: Thank you, Mr. Quinn.

MR. QUINN: Thank you.

MR. QUESNELLE: Those are all your questions?

MR. QUINN: Sorry, sir, yes. I deferred the rest of the questions to the next panel, and maybe it will be clear at that time, but maybe Union will have had time to reflect in the interim. So those are my questions for this panel at this time. Thank you.

MR. QUESNELLE: Thank you.

Okay. Looking at slots here, cross, I have -- Mr. Thompson, you have an hour, I think, scheduled. Is there a clean way to get started, or should we take a break, or do you want to go into it for about 15 or 20 minutes or so?

MR. THOMPSON: Yes, Mr. Chair, let's get started. I don't think I'll be up to 60 minutes, which was my estimate. I had the "up to" in there. I should have probably underlined it.

MR. QUESNELLE: All right.

Cross-Examination by Mr. Thompson:

MR. THOMPSON: So, panel, I'm interested in getting just some background facts here pertaining to your deferral account proposals, and that includes the FT-RAM proposal.

In terms of that proposal -- and I appreciate this may be a question for the next panel, but as I read this Exhibit B, tab 4, to which Mr. Quinn referred, and then looked at some other wording in the evidence, is your proposal for 2012 compared to 2011 to reclassify FT-RAM amounts as revenues subject to earnings sharing? In other words, is the transactional-services-revenues debate off the table?

MR. BIRMINGHAM: I'm not sure I have the -- I'm not sure I understand the second part of the question, Mr. Thompson, but the first one is that, yes, our proposal is to treat exchange revenues, all exchange revenues, including those related to the FT-RAM service as utility revenue and earnings subject to the earnings sharing mechanism, the same way that it was treated in 2008, '09 and '10.

MR. THOMPSON: The reason I ask is there was a debate in the 0087 case. As I understood the Union argument, you were saying these revenues were transactional services revenues that would have fallen within the ambit of a deferral account that was closed. And the Board on that issue said no, they don't fall within the ambit of transactional services revenues, and then moved forward from that point.

So I wondered if your wording here classifying them as revenues subject to earnings sharing was trying to avoid getting into that debate again.

MR. BIRMINGHAM: It was not.

MR. THOMPSON: It was not? Okay. So we still that have debate again, do we?

MR. BIRMINGHAM: We always seem to have this debate, yes.

MR. THOMPSON: So that was one context factor I wanted to touch on.

Now, in terms of the 2011 case -- and Dr. Higgin touched on this -- that case was subject to an appeal and the decision is pending, as I understand it?

MR. BIRMINGHAM: That's correct.

MR. THOMPSON: Now, in terms of 2013, the Board ruled in the 0210 proceeding to classify all exchanges as gas cost reductions, gas transportation cost reductions, and I believe in the 2014 to '18 case, you have -- the company has accepted that classification and has accepted the 10 percent incentive formula going forward?

MR. BIRMINGHAM: That's right.

MR. THOMPSON: Now, moving forward, then, from that to a topic that Dr. Higgin mentioned, which was the recording of the 0087 decision in the financial statements, and he had drawn your attention to -- I think it was page 41. There's similar language at page 9 of the financial statements.

I think at both places, the statements -- and correct me if I'm wrong, Ms. Elliott, but do the statements refer to the effect of the 2011 -- the Board's 2011 decision and the 2012 decision? And is the effect of the 2011 decision to increase a deduction from earnings in 2012 by an amount of $6 million?

I'm referring to the fourth paragraph on page 9, which happens to be, I think, identical to one that appears at page 41. These statements say:

"The result of this decision is to further increase the refund payable to customers for 2011 non-commodity deferral account balances by 5 million to an approximate 11 million."

So I've got that wrong. So it's a 5 million increase, not a 6 million increase?

MS. ELLIOTT: That's correct, yes.

MR. THOMPSON: Then is the 34 million that Dr. Higgin referenced, which appears two paragraphs down as the payable with respect to 2012, an additional amount, so that the total is 39 million?

MS. ELLIOTT: That's correct, yes. It says here:

"The amount has been recorded as part of our 2012 financial results."

And as I understood your discussion with Dr. Higgin, you mentioned a contingency, and my question is: Is the contingency somewhere described in these financials?

MS. ELLIOTT: The contingency is the $34 million. We don't have a decision from the Board in 2012 on the 2012 issue, but there is a provision in the financial statements for the loss of that money.

MR. THOMPSON: So the 2012 financials show the corporate earnings as $34 million -- sorry, $39 million less than they would be otherwise, if this contingency hadn't been recorded?

MS. ELLIOTT: The $5 million from the 2011 decision was recorded in 2012. That's not a contingency; that's a result of the Board's decision in the 2011 deferral disposition hearing, which was not finalized until 2012.

So that expense was recorded in '12, and the provision for '12 in '12 was recorded at $34 million.

MR. THOMPSON: So in these statements, then, are the corporate earnings reflecting an expense of $34 million for 2012?

MS. ELLIOTT: Yes, they are.

MR. THOMPSON: What is the accounting principle that applies to produce that result?

MS. ELLIOTT: It's a contingency accrual, just to provide for the event of certain circumstances.

MR. THOMPSON: So in this case where you're seeking the reclassification in 2012, are you effectively seeking relief that will lead to a change in the 2012 corporate financials?

MS. ELLIOTT: No, it would -- it would change the '13 financials. Any reversal of that provision would be recorded in '13, assuming we get a decision in '13 that would allow us to do that.

MR. THOMPSON: Can you tell me whether the incentive agreement refers to earnings sharing being based on corporate financials?

MR. BIRMINGHAM: So Mr. Thompson, in answer to your question, the earnings sharing provisions are based on actual utility earnings, so not corporate, but actual utility earnings.

MR. THOMPSON: Is that the -- I don't have the document in front of me.

MR. BIRMINGHAM: Yes. And I'm reading out of the section 11.1 of the most recent incentive regulation agreement, but it's the same as the previous one.

MR. THOMPSON: Does it refer to corporate earnings in there?

MR. BIRMINGHAM: No. It says:

"The parties agree that there will be an earnings sharing mechanism based on actual utility earnings."

And then it goes on to talk about the ROE thresholds.

MR. THOMPSON: Thanks. Now, another point, if I might by way of just getting the facts straight.

I think in Exhibit -- excuse me -- A, tab 2, at page 1 of 10, there's a table there that shows the revenue sufficiency for 2012 of $62.4 million; have I got that straight? That's line 14 in column C?

MS. ELLIOTT: That's correct, yes.

MR. THOMPSON: And that, as I understand it, is based on your proposal with reclassifying FT-RAM-related revenues as utility revenues?

MS. ELLIOTT: That's correct yes.

MR. THOMPSON: And I believe we see the same number for that scenario at Exhibit A, tab 2, appendix A, schedule 1, at line 9 in column C; is that right?

MS. ELLIOTT: Yes.

MR. THOMPSON: Now, in terms of the – of the hearing to the 0087 decision concept, am I correct -- and I'm referring now to Exhibit A, tab 2, appendix D, schedule 1. Am I correct that the revenue sufficiency in that scenario where the FT-RAM-related amounts are classified as gas-cost reductions, the revenue sufficiency is $25.823 million?

MS. ELLIOTT: That's correct, yes.

MR. THOMPSON: Now, in that scenario -- when I say "that", that's the 0087 scenario -- used to apply in 2012, the company will realize 10 percent on the FT-RAM revenues as the incentive percentage. Have I got that straight?

MS. ELLIOTT: Yes.

MR. THOMPSON: And am I correct that that -- and that produces a number of 3.8 million. It's somewhere in the evidence. I just don't have my finger on it at the moment. But is that amount over and above the 25.823 sufficiency, in terms of the shareholders realizing funds?

MS. ELLIOTT: Yes, it is.

MR. THOMPSON: And in the 0087 continuance scenario am I right there is no earnings sharing?

MS. ELLIOTT: That's correct. There is no earnings sharing.

MR. THOMPSON: Just big picture, earnings sharing kicks in, as I recall it, at 200 basis point over the Board-approved?

MR. BIRMINGHAM: That's right.

MR. THOMPSON: And so 25.823 million, where does that come in? Is it 150 basis points?

MR. BIRMINGHAM: Yeah, 200 basis points would be about $36 million pre-tax, Mr. Thompson. 25 million would be, as you say, roughly in the order of 150.

MR. THOMPSON: And in the scenario you're proposing where the revenue sufficiency is 62.367 million, that produces, according to the evidence, 340 basis points of ROE, and from 2- to 300 the ratepayers get half of it, and then from over 300 they get 90 percent of it, on your proposal.

MS. ELLIOTT: That's correct.

MR. THOMPSON: Thanks. Now, just following up on one of the points that Dr. Higgin mentioned, again, it's making sure we've got these schedules straight, the -- in terms of the deferral account presentation, he had an excerpt up just showing the total amounts in each of the scenarios, your proposal and the 0087 model.

And am I correct that in Exhibit A, tab 1, appendix A, schedule 1, this is your proposal that contains the deferral account amounts with nothing shown at line 2 for upstream transportation, because you are classifying that as revenues?

MS. ELLIOTT: That's correct, yes.

MR. THOMPSON: And the equivalent of that exhibit, but in the 0087 scenario, is, I believe, Exhibit A, tab 1, appendix B, schedule 1.

MS. ELLIOTT: Yes.

MR. THOMPSON: Where I believe all of the numbers except for line 2 are the same as they are in the first exhibit.

MS. ELLIOTT: And obviously the total.

MR. THOMPSON: Yes, yes. And the numbers that Dr. Higgin had on his schedule are the 15,929 in Exhibit A, tab 1, appendix A, schedule 1 at line 21, and the credit amount that was on his exhibit found at 21 of Exhibit A, tab 1, appendix B, schedule 1?

MS. ELLIOTT: Yes.

MR. THOMPSON: Thank you. All right. Now, just again, one other clarifying question with respect to the amounts reflected in the revenue sufficiency of 25,823 that we were talking about in the continuance of the 0087 scenario. If you would go to Exhibit D7.12, which is a CME interrogatory, please. And I think this may have relevance to this question for Mr. Quinn that you are thinking about.

But D7.12, for 2012 results we see the total transportation exchange is FT-RAM 37.3 million, down in the third box on the page, 2012 results. Do you see that?

MS. ELLIOTT: Yes.

MR. THOMPSON: And then up above that we have the base exchanges of $14.3 million, right?

MS. ELLIOTT: Yes.

MR. THOMPSON: And then above that we have total utility benefit of the utility use of FT-RAM at $7.3 million?

MS. ELLIOTT: Yes.

MR. THOMPSON: And am I correct that those two numbers are subsumed in the 25 million, or do -- does the shareholder realize those over and above the 25 million?

MS. ELLIOTT: The first section on that table, the utility use of FT-RAM at 7.3 million, those are benefits that are going through deferral accounts, so the UDC deferral account or the north transport deferral or other deferrals for the system balancing.

So the 7.3 is not in utility earnings. The 14.3 of base exchanges is in utility earnings, and in the alternate scenario the 37.3 is not in utility earnings.

MR. THOMPSON: Thanks. All right then. Just before -- were you planning to break at 12:30? I will just ask one other question that flows from information that Mr. Aiken was putting to you. And this goes to the impacts.

He has one page in his compendium. I would like to take you to Exhibit B, tab 4. And if you go to the schedule Mr. Aiken has in his material, this is -- I think it's Exhibit B, tab 4, schedule 1, and then following that there's Exhibit B, tab 4, schedule 2. It has three pages which has different sizes of customers taken into the -- analyzed from the perspective of impacts.

And just so that I'm understanding this, in terms of the impact on M1, M2, M4, and M5, and you have sales service at lines 1, 3, 7, and 10, and this -- the impact on them of adhering to the 0087 decision compared to your proposal is that they will be better off by these credit amounts; is that right?

MR. TETREAULT: That's correct.

MR. THOMPSON: Okay. Similarly, when we drop down to Union North at lines 27 -- 29 for 01 and 10, 32 and 33 for Rate 20, that's both sales and bundled, direct-purchase, and then Rate 25, sales service, once again they will be better off by adhering to the 0087 decision for 2012 by these amounts, as a class?

MR. TETREAULT: That's correct, Mr. Thompson.

MR. THOMPSON: Now, in the -- I think it was the 0210 case, you provided an exhibit, you gave us some information pertaining to the number of manufacturers in these various rate classes. Do you recall that, Mr. Tetreault?

MR. TETREAULT: I do, vaguely. I recall it perhaps being an interrogatory response to CME.

MR. THOMPSON: Right. And my recollection is the total number -- and you were classifying some small entities as manufacturers, but my recollection is that the total number was close to about 9,900 manufacturers in these smaller rate classes.

MR. TETREAULT: I can take that, Mr. Thompson, subject to check.

MR. THOMPSON: Would you mind, by undertaking, just pulling out those responses that you gave me and filing them in this case?

MR. TETREAULT: We can do that.

MR. THOMPSON: Thanks.

MR. QUESNELLE: Undertaking, Ms. Sebalj?

MS. SEBALJ: J1.4.

UNDERTAKING NO. J1.4: to PROVIDE the NUMBER OF MANUFACTURERS IN VARIOUS RATE CLASSES.

MR. QUESNELLE: Thank you.

MR. THOMPSON: Then just lastly, Mr. Tetreault, over on the next page, in terms of the impacts on particular rate sizes -- and I'm looking in particular at Rate 10 and Rate 20 -- the numbers in the brackets, as I understand them, in the column on the right-hand side indicate the extent to which a particular small Rate 20 would be better off under sales or direct-purchase bundled-T by adhering to the 0087 decision?

MR. TETREAULT: That's correct.

MR. THOMPSON: Similarly, average Rate 20, it's about $180,000 per customer, and for the large Rate 20, $231,000 per customer?

MR. TETREAULT: Yes, for sales or bundled direct-purchase.

MR. THOMPSON: okay. Thanks. Mr. Chairman, that would be a convenient place to break.

MR. QUESNELLE: Thank you, Mr. Thompson.

So we will resume at 1:40 and Mr. Thompson will finish up, and then I believe it's just Mr. Brett for BOMA and then Board Staff. Okay. Thank you very much.

--- Luncheon recess taken at 12:41 p.m.

--- On resuming at 1:46 p.m.

MR. QUESNELLE: Good afternoon. Please be seated.

Unless something came up at the break that we have to deal with, Mr. Smith?

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

MR. QUESNELLE: Thank you.

Mr. Thompson, care to resume?

MR. THOMPSON: Yes, thank you, sir.

Panel, I would like to move on and deal with, if I might, just a couple of points. With respect to line 1, unabsorbed demand costs, UDC variance account, this is line 1 in Exhibit A, tab 1, appendix A or B, I guess, schedule 1. And there's a credit balance there of $1,388,000.

My initial questions are with respect to the text of this deferral account. There's some evidence on that at Exhibit B as in Bob, tab 1, appendix B. Turn that up. And I believe this particular account is number 108, which is on the second-last page. And if you could just keep your finger there and also then go to -- it's Exhibit C, tab 3, which is the Concentric report, and at page 17 of that text there's also some description of that particular account. Do you have that, folks?

MS. ELLIOTT: I do.

MR. THOMPSON: Okay. Now, I would just like to get clarity on the wording. The concentric text talks about -- this is the last part:

"This account is also used to record the benefit from the temporary assignment of unutilized capacity under Union's transportation contract of the northern and eastern operations area. The benefit will be equal to the recovery of pipeline demand charges and other charges resulting from the temporary assignment of unutilized capacity that had been included in gas sale rates."

But when I go back to the text in appendix -- sorry, Exhibit B, tab 1, appendix B, I don't see any language there that deals with that sort of north situation. Could you help me understand where that comes from?

MS. ELLIOTT: So the Exhibit B, tab 1, appendix B, that deferral account was the deferral account that was in effect during 2012. The language that you're referring to on the temporary assignments is actually showing up on -- in the tolls and fuel deferral account, the 179-100 account, and we've subsequently changed these accounting orders so that the language on the temporary assignment moves from the tolls and fuel account to the UDC deferral account, which reflects how we were actually recording the transactions.

MR. THOMPSON: Okay. So you are telling me it's in there now but it's not in this particular --

MS. ELLIOTT: This version is the version before we made that adjustment.

MR. THOMPSON: Okay. Well, how long has the pre-adjustment account been there? Because the pre -- this -- the pre-adjustment account, as I understand it, applies both to the north and to the south. The language that appears at Exhibit B, tab 1, appendix B.

MS. ELLIOTT: The UDC deferral account, I would say it's a generic deferral account, not specific, but the only UDC that's built into rates is in the north.

MR. THOMPSON: All right. So just explain to me then what you mean when you say "built into rates". I think there's some discussion of this in your testimony at Exhibit A, tab 1, pages 2 to 5.

MS. ELLIOTT: There is a level of UDC forecast in the gas supply plan that is included in rates, so 2007 rates were set on a gas supply plan that had a forecast level of UDC, and the deferral account will take the variances between the actual UDC and the amount recovered in rates and also reflect any benefit from temporary assignments.

MR. THOMPSON: Okay. So if I look at Exhibit A, tab 1, page 2, it says, if I'm reading it correctly, line 14, the UDC built into Union North was 4.4 pJs and 0.2 pJs in the south. So there appears to be some UDC built into south rates.

MS. ELLIOTT: Yes, there's a small amount of UDC in the south.

MR. THOMPSON: So the account does apply to the south?

THE WITNESS: It does, yes, I apologize.

MR. THOMPSON: That's okay. Okay. So in terms of the -- how it works, we did ask some questions, in terms of the operations of the account, we did ask some questions about this in Exhibit D7, and there's questions (i) to (v). I would like you to look at D7.5, page 3, where we were trying to understand how this account operates and what gets recorded and what doesn't get recorded.

And there's an example there in part (c) dealing with a scenario where you have some UDC, I think it's in the -- well, it doesn't really matter where it is, but you have some forecast surplus that's in some periods of time in your gas supply plan, and you've assigned this to a third party, and these assignments, as I understand it, based on what appears at page 4 in (i) could be for a day, a month, or three-month periods. Have I got that straight?

MS. ELLIOTT: That's my understanding. The actual assignment process would be better put to the next panels. I can speak to the accounting, though.

MR. THOMPSON: It's really accounting I'm interested in. So the example that's given is an assignment that's at less than the toll value, right? We're talking about ratepayer impact. This is my understanding of a scenario where an assignment has been made of some of this forecast surplus capacity for 31 days. The cost of the -- sorry, the signee has agreed to pay 40 cents per gJ, and the upshot of all of this is that something gets recorded in the UDC deferral account.

MS. ELLIOTT: That's correct.

MR. THOMPSON: And what gets recorded -- just explain to me what is the actual UDC cost. What does that mean?

MS. ELLIOTT: So the actual cost would be what we had to pay for the capacity that was left empty. So it would be the TransCanada invoice cost that we incurred for the unfilled pipe.

MR. THOMPSON: Well, do you actually receive an invoice for that, or is the -- does that invoice go to the...

MS. ELLIOTT: In this particular example of the assignment the invoice went to the party that the assignment went to.

MR. THOMPSON: All right. So the release value is what the assignee has agreed to pay; is that right?

MS. ELLIOTT: That's correct.

MR. THOMPSON: So the net UDC cost is the difference?

MS. ELLIOTT: That's correct.

MR. THOMPSON: So is there three numbers that get recorded in the account, or is it one number?

MS. ELLIOTT: I would say there's actually three numbers that get recorded. There will be the actual cost of UDC, and then there will be the benefit that we received for the net difference.

MR. THOMPSON: So these three items, then, are -- would all show up in the UDC account?

MS. ELLIOTT: Yes.

MR. THOMPSON: So in a scenario where the assignment is done at exactly posted toll, what are the entries?

MS. ELLIOTT: If the assignment had been done at full toll, the actual UDC would be recovered by the assignment; the net would be zero. There would be a charge for the UDC and a recovery of those costs, with a net actual of zero. To the extent it was forecast UDC, the customers would get a refund of what they had paid.

MR. THOMPSON: So they would get the 132 -– it would all flow through to the customers?

MS. ELLIOTT: Yes.

MR. THOMPSON: In a scenario where the assignment was at greater than toll value, does it follow the customers would get the full amount of what was received for the assignment?

MS. ELLIOTT: Yes.

MR. THOMPSON: Okay. Let's take another example in terms of the operation of deferral accounts. And I don't know if it's this one; it might be another.

But let's assume that something happens in the area where you need some additional transport to meet your obligations to utility system gas customers or bundled customers. And so you have go and buy that and move some additional gas to those customers.

Where does the additional transport get charged? In this deferral account or some other deferral account?

MS. ELLIOTT: So if we're buying additional transport, there should be additional revenues. So the actual cost of the transport is -– and cost of gas expense, and there should be a corresponding offset in the "Revenue" line.

The only time it would go through a deferral account is if there was a price variance on it. So if we were paying –- if the toll was higher than the toll that was built into rates for a comparable purchase, then there would be a purchase price deferral.

But a straight volume increase is offset by a sales increase.

MR. THOMPSON: But the costs do flow through a deferral account?

MS. ELLIOTT: The costs flow directly through the cost of gas expense and not through a deferral account unless they -- unless the price of that service on a per-unit basis is greater or less than the price that was built into rates.

MR. THOMPSON: Let me try one more scenario here.

Let's assume that an assignment has been done of –- for, let's say, 60 days of some capacity that the company expected it wouldn't need. Then after 30 days it turns out they need some capacity to meet the needs of their system customers. In other words, the expectation that it wouldn't be needed hasn't materialized, so they have to go out and by some substitute transportation.

Where does that get charged?

MS. ELLIOTT: That would get charged -- assuming the assignment is an assignment you are referring to that would generate exchange revenues, then the cost of the additional capacity to replace that capacity, if we needed to incur some costs, would be expensed against the revenue that the exchange generated or the assignment generated.

MR. THOMPSON: No, I'm not talking about a combined assignment exchange. I'm talking about you've assigned some away for 60 days, so that's one transaction. Then expectations didn't materialize and you actually need some capacity to serve your customers, and you are going to buy that as a standalone transaction to meet the needs of those customers.

I'm assuming that cost would get charged somewhere. Does it?

MS. ELLIOTT: The capacity assignment didn't reduce my cost, so the capacity that was assigned away, there was still costs incurred.

If the assignment was an assignment for exchange revenue and if we had to incur additional costs as a result of that exchange revenue, it would be expensed against the revenue.

MR. THOMPSON: I hate to dwell on this. No, it's not for exchange revenue; it's an assignment of the type that's described in this example that you've provided to me in response to CME 7.

That is an outright assignment for a limited period of time. And what you recover from the assignee, as I understand it, flows through to ratepayers?

MS. ELLIOTT: If the assignment is done to mitigate UDC, the benefit we receive for that assignment goes into the UDC deferral account. If we subsequently needed to incur additional cost as a result of that assignment, those costs, again, would be offset. The reason we would incur the cost is because there's a revenue offset, so those costs would be expensed against the revenue that we realized as a result of the additional sale, as a...

MR. THOMPSON: And so do they or do they not show up in any deferral account?

MS. ELLIOTT: They wouldn't show up in a deferral account unless there was a price variance with them. The reason we had to incur the cost was we were moving more gas to in-franchise customers. We have a revenue offset and an additional expense.

MR. THOMPSON: All right. Well, let me move on then. Let me turn to, then, this new deferral account you were discussing with Mr. Aiken. And we can use his compendium, if you wish, at page 13.

This is something out of some updated information you provided to Mr. Aiken. He was discussing this table with you. And at the bottom of the page, we see the drivers of the under-recovery of –- is it under- or over-recovery of -- under-recovery of refund, I think it is, that you're concerned about.

MR. TETREAULT: It's an over-refund.

MR. THOMPSON: An over-refund? Okay. I knew I was going to screw that up. An over-refund.

And it appears that what's driving this proposal to some degree is the existence of the FT-RAM optimization account, which involved a large refund and created greater risk; is that fair?

MS. ELLIOTT: It involved a large refund. It also involved a large refund to system gas customers, so that the gas supply -- the systems sales forecast was an important component of that.

MR. THOMPSON: But the thing I'd like -– you've challenged the FT-RAM optimization for 2011 in court, and you're challenging it in this case for 2012.

Does your proposal assume that you're going to lose both those challenges?

MR. BIRMINGHAM: It actually doesn't make any conclusion about either one of those applications, Mr. Thompson. All this does is say if we were to continue with the disposition of the FT-RAM deferral account in accordance with the Board's decision in EB-2012-0087, then what we want to do is make sure that the amount that's paid back to them is exactly what the Board ordered, so it should be 18.2 million, not 22.2 million.

To the extent that the Divisional Court appeal is successful, then of course those things would have to be changed, but at this point we're complying with the Board's decision, and this is the implementation, and there's an over-refund that needs to be corrected.

MR. THOMPSON: Okay. So is it fair to say this proposal is contingent on the outcome of those proceedings? In other words, are you going to pull it if you win, and are you going to leave it if you lose?

MR. BIRMINGHAM: No. This proposal isn't contingent on either one of those. To the extent that the appeal was successful, then there would have to be another application made to the Board to deal with that. But at this point all this does is comply with the existing Board order.

MR. THOMPSON: I see what you are saying. If this money is out now and you want the over-refund back --

MR. BIRMINGHAM: Too much is out right now, right, and we want the correct amount out.

MR. THOMPSON: But depending on the outcome of the appeal and this proceeding, we may have to circle back again.

MR. BIRMINGHAM: That's right.

MR. THOMPSON: Now, what is the impact on all of this if the Board makes the -- agrees with your proposal but makes it prospective from April 1, 2013, which is when you first filed the request for the deferral account, as I understand it?

MS. ELLIOTT: There is no impact, because all of this variance was after April 1st, 2013. So the refund period for the 2011 deferral account balances was April 2013 to September 2013.

MR. THOMPSON: So you're using as your trigger the refund date for the operation of this account?

MS. ELLIOTT: Yes. And we applied for the deferral account in April as soon as we identified this as a risk.

MR. THOMPSON: All right. Thank you. I understand that now.

With respect to the audited utility financial-statements issue, and you had some discussion with Mr. Aiken about this, the initial estimate of what that was going to cost was, I think, about $400,000, and now your best estimate is 1.3 million. What's the explanation for the estimated costs tripling?

MS. ELLIOTT: The 400,000 was a high-level estimate that I provided on the stand as an approximate cost of what the financial statement preparation might take. The 1.3 is actually done as a result of an analysis and investigation, in terms of what the work is -- what work is required to be done.

MR. THOMPSON: Now, is the -- is that 1.3 million based on -- is it based on something E&Y did? And this -- I think this...

MR. WATHY: Yes, it is. It's based on an Ernst & Young estimate.

MR. THOMPSON: And I know there's a report in the evidence there. But did you use an RFP process on this or are you stuck with E&Y because they are auditors?

MS. ELLIOTT: We didn't do an RFP. We initially hired E&Y to do an investigation of what it would take to do the project, and then we in fact retained E&Y to do the project.

MR. THOMPSON: Are they your auditors, or --

MS. ELLIOTT: They are not, no.

MR. THOMPSON: Who were the auditors?

MS. ELLIOTT: Deloitte.

MR. THOMPSON: And so if this gets implemented will it be Deloitte's that actually apply what E&Y are recommending, or are you going to have two separate auditors?

MS. ELLIOTT: Sorry, Deloitte will audit the financial statements. E&Y is helping us to prepare them.

MR. THOMPSON: But at the end of the day do we get utility results certified by Deloitte's?

MS. ELLIOTT: That's correct, yes.

MR. THOMPSON: Thank you.

My last topic deals with the subject matter of your updated responses here to some interrogatories. This was discussed in a letter of October 18, and I think it's supplemental interrogatory D722.

Just to put this in context, if you would be good enough to turn up -- again, it's the Concentric report, Exhibit C, tab 3. And first of all at page 1 -- and I'm reading the scope of the work that Concentric did. They:

"...would examine the structure of current natural gas supply, deferral and variance accounts with a view to simplifying and standardizing these accounts in Union North and south delivery areas and determine whether the structure and text of the various natural gas supply, deferral and variance accounts is consistent with the principles of the decisions and orders that provided the authorization for these accounts and consistent with the findings of the Board in this proceeding and recommend remedial action if required. "

That was the scope -- part of the scope of their work, was it?

MS. ELLIOTT: Yes.

MR. THOMPSON: And I'm reading the report to say your accounts are okay, but am I missing something?

MS. ELLIOTT: No, their conclusion was that the structure is appropriate or consistent with the regulatory principles.

MR. THOMPSON: Then the other part of their report that prompted this supplementary interrogatory is at pages 8 and 9, where in their finding section, first of all, at the bottom of page 8, first paragraph, the last sentence, it's:

"To the extent Union revises its gas purchasing practices and sources of gas used to serve Union North customers, the calculation of the reference price should be revisited."

And then on the next page, 9, the second paragraph, another statement:

"However, if Union revises its gas portfolio and begins to source gas at locations closer to its markets, the cost allocation and rate designs' methodologies will need to be revisited."

So that then prompted the questions that were posed in this supplemental Exhibit D7.22. Fair?

MS. ELLIOTT: That's my understanding, yes.

MR. THOMPSON: Okay. And could you just explain for us, in terms of going forward, if these sources of gas shift to the east, how that will play out in the calculation of the reference price? I was told I should direct these questions to you folks. Am I in the right spot?

MS. ELLIOTT: I'll take it as far as I can. In the north there's a reference price for each of the delivery areas. So as we defer our purchase costs in the north we defer against a reference price that is set for each delivery area. To the extent that we change supplies, the portfolio changes, there would need to be a reference price for the new supplies.

MR. THOMPSON: But is it going to be a significant change in existing numbers, or do we know?

MS. ELLIOTT: We don't know at this point.

MR. THOMPSON: All right. And then the other question was the impact on cost allocation and rate design methodologies. Could you give us some insight as to how this is going to be play out under the five-year IRM if sources of gas get shifted to Marcellus, for example?

MR. TETREAULT: I think it's difficult to say at this point, Mr. Thompson. As you reference with regard to Marcellus supply, in our Parkway applications we've called out that as we change the way we serve the North and bring some diversity to how we serve the North, we would need to consider, potentially, cost allocation and rate design changes, but in terms of what those actual changes, if any, look like, we haven't made any determinations there as of yet.

MR. THOMPSON: During the IRM, will all of this be done based on current data in terms of cost allocation and rate design?

MR. TETREAULT: I'm not sure I know what you mean by "current data."

MR. THOMPSON: We get locked into 2013 baseline stuff, and then if all of this changes in terms of sources of gas supply, I'm just wondering are we running into a problem there. Or are we going to have sufficient updated information to make the allocation and rate designs realistic for what is going on in 2015, for example?

MR. TETREAULT: Yeah. I think that if there is a need to change cost allocation and rate design to reflect significant changes in the gas supply plan over the course of the IRM term, we have the information we need to do that, should we determine that is a prudent course of action.

We also have, of course, the gas supply deferral accounts, which are operating as expected and truing up gas costs to actuals. So we have mechanisms in place to deal with those true-ups, regardless of whether we make rate changes.

But we do need to consider whether there's some fundamental rate changes to make as the gas supply plan evolves.

MR. THOMPSON: Thank you very much. Those are my questions.

MR. QUESNELLE: Thank you, Mr. Thompson.

Mr. Brett, for BOMA?

MR. BRETT: Yes, Mr. Chairman and Panel. My questions have been answered, so we're fine. Thank you.

MR. QUESNELLE: Thank you very much, Mr. Brett.

Ms. Sebalj?

Cross-Examination by Ms. Sebalj:

MS. SEBALJ: Thank you. Good afternoon. I would like to start with a question that I think is a follow-up to one of Mr. Thompson's questions.

He was talking to you about -- this was with reference to one CME's IRs, but he was talking to you in general about this question of, if you've assigned away capacity on the pipe and then realized during -- partway through that assignment that you actually need additional capacity upstream. And I think, Ms. Elliott, you responded that the expense would get booked against revenue. But I have either a slightly different variation on it, or maybe it's not a follow-up and it's just an entirely different question.

In your evidence at Exhibit B, tab 2, page 33, I guess it's page 34, but in general, starting at page 31, you're talking about risk, transportation exchange service risks. And I realize that this may not be one of the exhibits this panel is responsible for, but I just want to situate you so that I can ask a question.

At line 14 of page 34, there's an actual scenario given, and at line 14 it talks about Union's ability to mitigate in the event that this exact eventuality happens, which is that it has assigned away part of the pipe -- or it has assigned away capacity on the pipe, and it realizes partway through that it's going to need it. And it had various mitigation strategies for that.

And at line 14, it says:

"S&T incurred 77,000 of balancing penalties on this day that were attributed to transportation exchange service revenue."

And then it goes on to say it could have been a lot worse. It could have been up to $1.5 million, had Union not been watching and had these strategies in place.

So in that example, where does that $77,000 get booked?

MS. ELLIOTT: It would be booked as an expense associated with the exchange revenue.

MS. SEBALJ: How does that translate -- who pays? Do the ratepayers pay for that expense?

MS. ELLIOTT: It's a cost that is associated with the revenues. So to the extent that we're dealing with the revenue as revenue and expenses, it's all part of the utility income calculation.

If you go to the deferral account scenario, the revenue is net of third-party cost, so it's -- the cost of any mitigation would be included in the third-party costs.

MS. SEBALJ: So it's an expense against revenue in general, not with respect to the revenue associated with this particular transaction, because in this transaction there is no revenue because it's a mitigation -- it's a penalty? So there's actually no --

MS. ELLIOTT: That's correct, yes.

MS. SEBALJ: It's booked against revenue generally of the utility, is what you are saying?

MS. ELLIOTT: Yes.

MS. SEBALJ: I wanted to take you as well –- and again, I'm sort of in the same boat as Mr. Quinn in the sense that I have questions that would have been appropriately -- I would have been able to sort of set the stage and then get to this panel and ask questions with respect to how it impacts revenue. But I'm going to give it a shot anyway.

In that same exhibit, B, tab 2, but this time at page 9, there's a table, table 1, which is entitled "Valuation of 2012 transportation exchange service and FT-RAM-related capacity." And I'm interested in talking in particular with you about lines 6 and 7 of that table.

And in particular, I'm wondering whether it's possible for you to -- so again, in panel 2 I'm going to talk about the inclusion in the summer of the months of March and November and essentially question whether that is appropriate. So I'm wondering, given that, if it's possible for you to put March and November back into winter and recalculate for me, run the calculation again as to what the 2012 results would be.

MS. ELLIOTT: That's probably a question that you can ask the next panel.

MS. SEBALJ: And they will be able to give the undertaking to produce the numbers? Because I have a couple of others related to that.

MR. SMITH: Yes, they will.

MS. SEBALJ: Great. Thanks. So then I'm going to move to the addendum, the financial statements for the regulated entity.

And as I understood the discussion this morning, your $400,000 into the project, approximately; is that correct?

MR. WATHY: Yes, that's correct.

MS. SEBALJ: And do you have a sense of schedule, of timing as to how this is going to -- how this is going to roll out, at what point the $1.3 million will be spent and the project will be complete?

MR. WATHY: We will be targeting to have these financial statements completed on a time line similar to our annual financial statements, consolidated for the company. So around March to April, we would expect to have this wound up.

MS. SEBALJ: And you spoke to Mr. Thompson a little bit about the choice of consultant. And as I understand it, Deloitte prepares your consolidated audited financial statements currently; correct?

MS. ELLIOTT: They audit our consolidated financial statements.

MS. SEBALJ: Sorry, they audit.

MS. ELLIOTT: We prepare them.

MS. SEBALJ: I guess I had a series of questions with respect to why you wouldn't have approached Deloitte, given their familiarity with your business, to do the work associated with this project.

MS. ELLIOTT: It's an independence issue. The auditor can't be associated with the preparation of the statements.

MS. SEBALJ: Is there a specific reason that you approached Ernst & Young in particular?

MS. ELLIOTT: They have a familiarity with us, and they were the primarily consultant on our IFRS project. So they are quite knowledgeable with what we are doing and how we are doing it. So they could hit the ground running.

MS. SEBALJ: And I assume Union will have to continue preparing the consolidated statements; is that correct?

MS. ELLIOTT: Yes, that's correct.

MS. SEBALJ: Why is that?

MS. ELLIOTT: Those are the statements that we publicly file as a publicly accountable entity. Those are filed on SEDAR.

MS. SEBALJ: Do you prepare quarterly consolidated financial statements?

MS. ELLIOTT: Yes, we do.

MS. SEBALJ: And are those -- those are for internal purposes?

MS. ELLIOTT: No, they are publicly filed as well.

MS. SEBALJ: And they are audited, presumably?

MS. ELLIOTT: No, the quarterlies are reviewed by Deloitte, but not audited.

MS. SEBALJ: And what's the cost of preparing the annual consolidated statements?

MS. ELLIOTT: Again, management prepares the statements, so it's our internal finance costs. The -- Deloitte audits the annual financial statements and reviews the quarterlies.

MS. SEBALJ: And do you know what Deloitte's costs are associated with that?

[Witness panel confers]

MS. ELLIOTT: I couldn't give you a precise number, but it's in the 3- to $400,000 range, I think.

MS. SEBALJ: In total for the quarterlies and the --

MS. ELLIOTT: Yes.

MS. SEBALJ: -- and the annual? Would you be able to provide an undertaking with a breakdown of the costs, including broken down by quarterly and annual?

MS. ELLIOTT: We can do that, yes.

MR. SMITH: Yes.

MS. SEBALJ: We are at J1.5.

UNDERTAKING NO. J1.5: TO PROVIDE A BREAKDOWN OF COSTS for financial statements, INCLUDING BROKEN DOWN QUARTERLY AND ANNUALLY

MS. SEBALJ: Do you currently recover the costs of preparing the audited annual consolidated statements through rates?

MS. ELLIOTT: Yes, we do.

MS. SEBALJ: And do ratepayers pay the entire cost?

MS. ELLIOTT: To the extent that the costs we incur, the cost that we forecast in rates, yes.

MS. SEBALJ: And the quarterly statements as well are paid for by ratepayers?

MS. ELLIOTT: Yes.

MS. SEBALJ: And is it Union's intention to continue to seek to recover from ratepayers for the consolidated statements if -- given that it's required to prepare the regulated financial statements?

MS. ELLIOTT: Yes, given that we're required to prepare a consolidated financial statements for our debt-holders and the financing costs are -- we are required to prepare and file those, so in order to finance the company we need to prepare the consolidated statements.

MS. SEBALJ: And presumably, given that you've been granted a deferral account for the regulated statements, the intention is to recover that -- to dispose of that account and recover that amount from ratepayers as well?

MS. ELLIOTT: That's correct, yes.

MS. SEBALJ: Now, at page 5 of 6 of the addendum itself, there's that table -- I think you've been referred to it at least once today already. I'm assuming the 1.3 million is just an estimate or an addition of the external incremental report, the Ernst & Young project plan of 150, and the audit fees of 100; is that correct? Under the -- under 2013?

MR. WATHY: That's correct.

MS. SEBALJ: And can you just give us a breakdown of

-- I think I have a pretty good handle of the E&Y project plan. Is that the preparatory work that E&Y did then based upon once you made the decision to continue with E&Y?

MR. WATHY: Yes, that's the original project plan. That just scoped the project that we were about to undertake.

MS. SEBALJ: So that work is completed.

MR. WATHY: That's right.

MS. SEBALJ: And then the external incremental support piece, you refer in the verbiage of the evidence about the burden -- the internal burdens associated with this, and it's somewhere in the vicinity of $550,000 spread across 24 departments. Now, is that 550 captured in this million-14?

MR. WATHY: No, it is not.

MS. SEBALJ: So that 550 is -- because it's internal, it's not even captured in this table; is that right?

MR. WATHY: That is correct.

MS. SEBALJ: So what is the million-14? What's included in that? And I have read the report, but it didn't jump out at me, so if you want to just point me to a paragraph, that's fine too.

MR. WATHY: Essentially, that's the cost estimate from Ernst & Young to assist us with the scoping of the project. That would have been the 150. Then the project management, because it does span across so many departments, we do have to get the assistance of a project management office, so they will be assisting with those tasks. They're also assisting with some of the development of the different carve-out methodologies for certain areas of the balance sheet, and then they are going to assist us with building our reporting process to make this set of financial statements able to be reproduced on an annual basis.

MS. SEBALJ: And this 1.3 million is one time. This is the upfront cost?

MR. WATHY: That is correct.

MS. SEBALJ: And the $80,000 is the ongoing cost.

MR. WATHY: Correct.

MS. SEBALJ: And are there systems -- so you -- I think you just described a number of processes, but there are also systems changes required as a result of this; is that correct?

MR. WATHY: At this point we're still in the methodology development stage of the project, so we're in Phase 1. We have as part of our project team brought along one of our internal IT consultants, so we are looking at any automation that may be possible on a go-forward basis, but it's still too preliminary to know whether or not systems are going to change as a result of this.

MS. SEBALJ: And so is that the reference in the addendum to the IT solution between 2014 and 2016?

MR. WATHY: Exactly.

MS. SEBALJ: And that IT solution, there's no cost estimate?

MR. WATHY: At this point we would think we would be able to leverage our existing accounting systems, that there wouldn't be significant incremental cost, but again, we're still in the preparation phase, we're in the development phase, so it's a little too early to draw a conclusion to that.

MS. SEBALJ: Do you have a ballpark?

MR. WATHY: No, not at this time.

MS. SEBALJ: Now, obviously some of the work is being done internally. That's the 550,000 estimate. Did you ever consider any alternatives as to how much of the work would be done in-house and how much would be done by E&Y? Was there ever any sort of counter-proposal or any alternatives looked at?

MR. WATHY: When we first started scoping out the project we did look at our internal staffing constraints, and at that time the determination was made that we did not have the capacity in-house in order to complete the project on time in accordance with the Board's directive, and at that point we decided to move on with Ernst & Young to do very specific portions of the project.

MS. SEBALJ: Just -- sorry, I neglected to follow up on the systems. To the extent that there are systems-related costs, I believe it's your proposal that those go into the deferral account and get recovered as well.

MR. WATHY: Yes, that is correct.

MS. SEBALJ: And the 80,000 per year, is that also a cost that you intend to recover from ratepayers?

MR. WATHY: Yes, it is.

MS. SEBALJ: Did you ever consider any alternatives to -- and I realize you were directed by the Board to do this, so -- but in your internal discussions have you ever considered any alternatives to the preparation of audited regulatory financial statements? Another way that we could get to the same goal?

MS. ELLIOTT: I mean, we really were looking to how we would comply with the directive, which was to prepare audited financial statements. Through the course of the last couple of proceedings as we were being asked about segmented information, we were at that point looking at the information that we were currently providing as meeting the Board's requirements for the segmented information, but the directive came to us to prepare audited financial statements. That's, in fact, what we're complying with.

MS. SEBALJ: So in your view, then, what you had been doing previously was preparing essentially segmented financial statements?

MS. ELLIOTT: No, we weren't preparing segmented financial statements, which was the previous discussion, the segment information.

What we prepare is an earnings sharing calculation that is utility earnings, that takes the non-utility activity out of our corporate earnings.

And that was the information that we previously provided, thinking it met the requirement for the Board's utility financial statements, because we don't do segment earnings for our corporate statements.

MS. SEBALJ: Those are all of Staff's questions. Thank you.

Questions from the Board:

MR. QUESNELLE: I just have one follow-up, just for clarity for my own edification here.

Ms. Elliott, if you could explain to me -- and perhaps Ms. Sebalj covered this and if I missed it, I apologize -- the opportunity costs of the internal staffing consumed by the project, am I to read that as a one-time cost that is project-driven, not the ongoing requirement?

MR. WATHY: Yes, that is correct.

MR. QUESNELLE: So when we're looking at -- we could add that as a line item into the chart, as far as the implementation goes, as a one-time cost, then?

MR. WATHY: You could, yes.

MR. QUESNELLE: Great. Thank you. Anything else?

Any redirect, Mr. Smith?

Re-Examination by Mr. Smith:

MR. SMITH: Yes. Thank you, members of the Board.

Just one question, Mr. Birmingham, if you have Exhibit K1.2. This is Mr. Aiken's compendium. He took you to the list of deferral accounts continuing during the IR term. Do you recall that? It's page 18 of 20.

MR. BIRMINGHAM: I do.

MR. SMITH: Can you show me where I could find Account 179-130?

MR. BIRMINGHAM: It is not there. It was not in existence at the time that the settlement agreement was reached and approved by the Board.

MR. SMITH: Thank you. Those are my questions.

MR. QUINN: Mr. Chair, I wanted to ask –- I may have had a miscommunication with Mr. Smith at the break. We had a brief discussion regarding the undertaking request this morning.

Mr. Smith, I want to ask: Do I understand you correctly that Union will be able to provide that undertaking?

MR. SMITH: Yes. My apologies. Mr. Quinn and I had a discussion about that. We are prepared to provide the information that Mr. -- or the scenario that Mr. Quinn had requested.

I should probably observe that from Union's perspective, the scenario is neither appropriate nor permissible as a matter of law, and we would reflect that in argument to the extent necessary. But we can, as a -- factually we can do it, and we will do it as he's requested.

MR. QUESNELLE: Thank you, Mr. Smith.

Can we have an undertaking? I believe...

MS. SEBALJ: You can. It's J1.6.

UNDERTAKING NO. J1.6: to ADD ADDITIONAL COLUMN TO INFORMATION PROVIDED IN D2.20 SHOWING IMPACTS ON RATE CLASSES OF EB-2011-0210 DECISION ON OPTIMIZATIONS; AND to PROVIDE SAME FOR SCHEDULES 1-3 IN EXHIBIT B, TAB 4.

In the interests of not requiring the court reporter to find this discussion from earlier this morning, can you reiterate for us what the undertaking is?

MR. QUINN: We requested that the undertaking or -- yes, it was an IR that Mr. Aiken had directed the panel to this morning, in D2.20, and we had asked for an additional column to provide a scenario whereby the EB-2011-0210 decision on optimizations would be applied, and we would see the resulting impacts to the rate classes.

In addition, there is the schedules that showed up in schedules 1, 2 and 3 that were referred to earlier. I don't have the specific reference -- oh, sorry, Exhibit B, tab 4, schedules 1, 2 and 3. If those could be developed also, that would be helpful.

MR. QUESNELLE: That's your understanding? Okay. Thank you.

MR. QUINN: Thank you, sir. Sorry for the interruption.

MR. QUESNELLE: No problem, Mr. Quinn. Thanks very much for clearing that up.

We have probably an opportune time to take a break, Mr. Smith, to allow you to have your next panel set up. Thank you very much to this panel. And I know some of you will be sticking around.

Thank you. We'll break until five after 3:00.

--- Recess taken at 2:42 p.m.

--- On resuming at 3:09 p.m.

MR. QUESNELLE: Thank you. Please be seated.

Maybe just before we start off I'll -- this morning we discussed the potential of altering the schedule over the next couple of days. We've taken a look at the schedule and the times that people have requested for their cross over the next couple days, and I don't think it's worth the risk of cutting short tomorrow, so we'll stay at our normal schedule starting at 9:30 tomorrow morning, and with that we will look for a natural break as close to five o'clock as possible, is what we'll try to do, to maximize today, but we don't want to go beyond 5:00, other commitments that we have.

So with that, Mr. Smith, if you could introduce your next panel.

MR. SMITH: Thank you, members of the Board. We have Union's second panel before you. The purpose of the panel is to address Union's transportation exchange revenue, and just to introduce them, we have Ms. Elliott, who was just here, Mr. Stephen Acker, Ms. Pattie Piett, Mr. Mark Isherwood, and Mr. Rick Birmingham, and if I could just ask the witnesses with the exception of Ms. Elliott and Mr. Birmingham to come forward to be sworn or affirmed.

MR. QUESNELLE: Yes, thank you.

UNION GAS LTD. - PANEL 2

**Mark Isherwood, Sworn**

**Patti Piett, Affirmed**

**Steve Acker, Affirmed**

**Rick Birmingham, Previously Sworn**

**Pat Elliott, Previously Sworn**

MR. QUESNELLE: Thank you very much.

Do you have any direct, Mr. Smith?

Examination-in-Chief by Mr. Smith:

MR. SMITH: I do. Members of the Panel, first let me just go down the qualifications of the witnesses. Mr. Isherwood, it feels like you should have a standing opt-in/opt-out attendance here before the Board the last little while, but I understand that you are the vice-president, business development, storage, and transmission for Union Gas?

MR. ISHERWOOD: I am.

MR. SMITH: And you've held that position since 2012?

MR. ISHERWOOD: That's correct.

MR. SMITH: And you've held positions in business development, storage, and transmission since approximately 2005?

MR. ISHERWOOD: Yes.

MR. SMITH: And you've been employed by Union Gas since approximately 1982?

MR. ISHERWOOD: That's correct.

MR. SMITH: You have a Bachelor of Engineering degree from Waterloo University?

MR. ISHERWOOD: I do.

MR. SMITH: And do you have an MBA and a Bachelor of Commerce from the University of Windsor?

MR. ISHERWOOD: Yes.

MR. SMITH: You are a proposal engineer?

MR. ISHERWOOD: I am.

MR. SMITH: And you've testified before this Board and before the National Energy Board on several occasions.

MR. ISHERWOOD: I have.

MR. SMITH: Ms. Piett, I understand that you are the director of storage and transportation, marketing, and utilization?

MS. PIETT: That's correct.

MR. SMITH: And you assumed that role earlier this year?

MS. PIETT: Yes.

MR. SMITH: And prior to that you were the director of storage and transportation sales?

MS. PIETT: Yes.

MR. SMITH: And you have held positions with Union Gas dating back to approximately 1984?

MS. PIETT: That's correct.

MR. SMITH: And you have an MBA from the University of Western Ontario?

MS. PIETT: Yes.

MR. SMITH: And an Honours Business Administration degree from that university as well.

MS. PIETT: That's correct.

MR. SMITH: And you similarly have testified in relation -- sorry, testified before this Board and the National Energy Board on several occasions, including before the National Energy Board in RH-003-2011 case.

MS. PIETT: That's correct.

MR. SMITH: Mr. Acker, I understand that you are -- I'm sorry, before we get to Mr. Acker, with the exception of Mr. Acker, can I ask, Mr. Birmingham, again through you, that the panel adopt Union's pre-filed evidence in relation to transportation exchange revenue and the interrogatories asked in relation to that evidence?

MR. BIRMINGHAM: We do.

MR. SMITH: Mr. Acker, I understand that you are the past vice-president, marketing and origination with BP Canada?

MR. ACKER: I am.

MR. SMITH: And that you left the employ of BP towards the beginning of this year.

MR. ACKER: That's true.

MR. SMITH: And in your role with BP you were responsible for BP's natural gas marketing and asset origination in eastern Canada, the U.S. northeast, and New England.

MR. ACKER: That's correct.

MR. SMITH: And do I take eastern Canada to include Ontario?

MR. ACKER: It does.

MR. SMITH: And my understanding, sir, is that you held marketing-related positions with BP or its predecessor Amoco since approximately 1990?

MR. ACKER: That's correct.

MR. SMITH: And you have been involved in the oil and gas industry in various capacities for approximately 32 years.

MR. ACKER: That's correct.

MR. SMITH: And as I understand it, your asset origination and marketing experience in eastern Canada, the U.S. northeast, and New England dates back to approximately the mid-1990s?

MR. ACKER: That's also correct.

MR. SMITH: And am I correct, sir, that in that role you were ultimately responsible for approximately 100-plus customer accounts?

MR. ACKER: At its peak, yes.

MR. SMITH: And am I correct that those accounts included LDCs?

MR. ACKER: They did.

MR. SMITH: Institutions such as secondary schools?

MR. ACKER: Absolutely.

MR. SMITH: Universities?

MR. ACKER: Yes.

MR. SMITH: Municipalities?

MR. ACKER: Yes.

MR. SMITH: Power generators?

MR. ACKER: Yes.

MR. SMITH: Industrial customers?

MR. ACKER: Yes.

MR. SMITH: Commercial operators?

MR. ACKER: Yes.

MR. SMITH: And retail marketing aggregators.

MR. ACKER: Yes.

MR. SMITH: And for those customers what was the role that you -- or the service that you provided?

MR. ACKER: Primarily we provided access to the commodity, natural gas, and many occasions we also optimized our managed assets that those customers may have held at that time. We also acquired third-party assets in an attempt to provide services to those end-use customers.

MR. SMITH: And when you say assets, you either acquired or managed them, what do you mean by "assets"?

MR. ACKER: Primarily those would be transportation assets.

MR. SMITH: Okay. And am I correct, sir, that those transactions would occur in what has been referred to in your report as the secondary market?

MR. ACKER: That is correct.

MR. SMITH: And my understanding is that you have testified before the National Energy Board before?

MR. ACKER: I have.

MR. SMITH: And you testified at the Board's request before this Board in the NGEIR proceeding; is that correct?

MR. ACKER: That is correct.

MR. SMITH: And did you prepare, sir, the report that can be found in Exhibit C, tab 1 of Union's pre-filed evidence?

MR. ACKER: I did.

MR. SMITH: And do you adopt that report for the purposes of testifying before this Board?

MR. ACKER: I do.

MR. SMITH: Members of the Board, I would tender Mr. Acker to provide opinion evidence before this Board in the area of the secondary market for the transportation sale of -- sorry, and sale of gas commodity of natural gas in Ontario, the U.S. northeast, and New England.

MR. QUESNELLE: Thank you, Mr. Smith.

Any submissions from any of the parties? Okay. The Panel accepts that. Thank you, Mr. Smith.

MR. SMITH: Thank you. I'm going to just start -- I have a couple of questions, with the Board's indulgence, in examination-in-chief, and before I begin those questions I should just advise the Board that we have placed up -- this will be a familiar board to individuals -- certain individuals in the room, but that is a storyboard or graphic which shows Union's various delivery areas and which people have found a convenient resource from time to time.

Mr. Acker, perhaps I could just start with you, and you could just tell me what is the secondary market as you speak of it in your report?

MR. ACKER: In my opinion, the secondary market for natural gas in Ontario specifically is a commercial arena in which participants are free to negotiate the price for natural gas and/or transportation services.

MR. SMITH: And what role, if any, does that play in the Ontario natural gas marketplace?

MR. ACKER: As I see it, the primary value of the secondary market for natural gas and services in Ontario is the ability to manage to deliver price of natural gas at an acceptable manner to those participants.

Participation in the market does not necessarily guarantee cheaper natural gas prices, but it does provide that opportunity. Participation in the natural gas secondary market does offer the opportunity to risk-manage the delivered price of natural gas, such as fixed prices versus index floating prices, financial derivatives such as caps, floors, costless collars, longer-term price certainty. It also provides the opportunity to access market-based transportation services, as opposed to regulated toll-based natural gas transportation services.

MR. SMITH: In your report -- let me ask this question first. Who participates in the secondary market?

MR. ACKER: The natural gas secondary market requires not only the participation of producers or marketers and the LDCs, but most importantly, end-users and marketer/traders was the terminology I used, as providing services to the end-use markets, which I defined as either LDCs themselves, but more specifically end-use consumers, those who actually burn or consume the nature gas molecule.

MR. SMITH: And you talk about this in your report, sir, but why, in your opinion, is a vibrant secondary market important for Ontario?

MR. ACKER: If I were to summarize it, it offers the opportunity for end-use market participants to manage their natural gas price commodity in a fashion that they are unable to in the regulated environment -- i.e., through system supply gas -- and also allows them to manage or optimize transportation assets they may hold that are not fully utilized.

The market does at times value those assets at less than their cost. Any effort that results in being able to mitigate that cost, of course, ultimately benefits the end-use consumer.

MR. SMITH: Thank you.

Mr. Isherwood, if I should just turn to you, obviously Union received the Board's decision in the 0087 case, and can I just ask you to explain why Union has filed the detailed evidence that it has in this case about your transportation exchange revenue?

MR. ISHERWOOD: Last year, FT-RAM exchanges were discussed, at great length, actually, in both the 2013 rebasing hearing as well as the 2011 deferral disposition hearing, and in both cases received the decision in the fall. We had filed evidence, obviously, much earlier than that in the year.

I have to say that from our perspective, the focus and the interest around FT-RAM was quite surprising to us, actually, whether that's right or wrong. It was definitely much different than we experienced in the '08, '09 and 2010 deferral disposition case, where we didn't have the same in-depth discussion around FT-RAM and other type products.

Certainly the applications that we submitted in both hearings last year did not carry enough evidence in the applications to cover off FT-RAM in a more robust, transparent approach. So it definitely was not fully covered off there. I think the evidentiary record was mostly created through testimony, through interrogatories and through undertakings.

As a result of that, obviously, the Board developed concerns around both the gas supply process, as well as how FT-RAM was treated.

And so from our perspective, clearly we didn't live up to the expectation of the Board in terms of providing the evidence that the Board needed in order to have the full case in front of them.

So what we have done this time is to provide a very robust evidence. The S&T evidence we're going to talk about on this panel, more than 80 pages, lots of examples, lots of hopefully clear discussion on how RAM works and what RAM is. So we're hoping we're submitting this evidence with a lot more robust background to it, that supports a different outcome.

MR. SMITH: Ms. Piett -- and just with the Board's indulgence, on reviewing Enbridge's transcript, that -- in relation to their case that took place a couple of weeks ago, it became apparent that some examples and discussion would be useful to the Board and to the parties. So we have circulated a two-pager that includes case 1 and case 4 from Union's prefiled evidence. And with your leave, I would just ask Ms. Piett to summarize the transactions that are taking place in both of these examples, so that everybody is working from a common framework.

So Ms. Piett, perhaps I could just, with that, ask you to describe the transaction taking place on case 1, figure 1, and figures 2 and 3 as well.

MS. PIETT: Sure. Case 1 is a good example, we thought, of a base exchange service. And it's the type of exchange service that's been done for years; even prior to the RAM program being introduced in 2004.

Further than that, it's also served using a temporary surplus upstream asset. So we think it's a good example of the type of exchange service that would be represented by the base exchanges.

So how it works, if you look first at figure 1, Union holds a TransCanada firm contract for the eastern delivery area, capacity to serve the Kingston area. It's sized to meet winter peak design day, and the only choice is to subscribe for that capacity for the full year.

In the summer, however, that full quantity of gas is not required in the delivery area due to warmer weather. So Union subscribes for TransCanada's storage transportation service -- otherwise known as STS -- to take the excess gas to Dawn, as shown in figure 1.

So therefore gas continues to be purchased in Alberta all year long, and in the summer a portion of that supply lands at Dawn for injection into storage.

If it had been transported directly there in the first place -- that is to Dawn -- it would have actually been a shorter path. Having moved -- then having moved to the EDA and then back to Dawn afterwards. That's shown in figure 2; so what figure 2 shows is notionally what the surplus capacity is by the dotted line.

So one might ask: Why doesn't Union just buy service to the Dawn area in the first place in the summer, and to the EDA in the winter?

And the answer is that TransCanada doesn't offer that service. If you wish firm service to the EDA to meet our peak winter day, then we have to subscribe for that service for a full year in order that it be cost-based tolls and renewable and that it's firm.

So we contract for the EDA for the full year and then we have this STS service, which takes that gas back and forth to storage as required. This results in notionally surplus capacity for a portion of the path between Empress and the EDA in the summer, as shown in figure 2. That is that Empress gas needs to go to Dawn in the summer, but we have to contract it to go to EDA first and then to Dawn, using the STS service.

So given that we have this surplus capacity shown on the dotted lines in figure 2, we have learned over the years how to monetize that dotted line. And we do that through offering exchanges to marketers or third parties.

In this example, a third party approaches Union and requires a service to move gas from Dawn to the Enbridge CDA. This service isn't available in the market from TransCanada, so that third party looks to the secondary market to see if they could buy that service there. And they approach Union knowing that we have capacity through that area.

So Union looks for a solution to this customer's request, and what we have is figure 3. And what we do there is Union diverts a portion of its EDA capacity to the Enbridge CDA, and gives this gas to the third party exactly where it wished it to be. And the third party simultaneously gives Union an equal amount of gas at Dawn.

The result is the third party receives the service exactly as they request it, so that it effectively has moved gas from Dawn, where they gave it to us, to where we gave it back to them in the Enbridge CDA.

And likewise, Union ends up with our Empress gas, purchased in Alberta, and it moved to Dawn, which is exactly where we wanted it.

And all of that, for all of that, the marketer provides a fee to Union Gas for that service, and the system supply customers receive the service that they required as well.

MR. SMITH: Maybe you can then turn to case 4 and explain the distinction there, or the transactions there, I should say.

MS. PIETT: Yes. So case 4 is an example of an assignment, and in this case it's a RAM assignment, but it could be done without the RAM program as well.

What we have here is it's the similar example to the one I just described, in that we're using the very same EDA contract and the same surplus capacity. So you'll notice that the pictures in figure 1 and in figure 2 are exactly what I just spoke of in case 1.

And the difference between this example and the previous is that we've offered a different service by using that dotted line, that excess capacity. And the commercial arrangement is different as well.

So how it works is that the third party approaches Union, who is interested in buying an exchange service where the third party would give Union Gas at Dawn and Union would give the third party gas at Empress. Union would also assign to the third party the Empress-to-EDA contract.

Essentially what happens is the EDA long-haul contract is assigned to the third party in exchange for Union Gas being -- moving their gas from Empress to Dawn. The third party is willing to pay a service fee for this, because the contracted capacity has excess value because of the RAM credits in this case.

The third party would then use the credits, presumably -- we don't know for sure, because this happens on their side of the deal, but presumably to provide that transportation service to Union or that exchange, and they would also have excess credits to provide another service to yet another secondary market participant.

The result is the third party receives a service where capacity is assigned to that party in exchange for an Empress-to-gas exchange service -- from Empress gas to Dawn service, pardon me.

Union ends up with an Empress gas delivered to Dawn, where it was needed in the first place, just like the previous example. The third party pays Union for this exchange and the assignment service, and it is recorded in the S&T revenue account.

In all cases gas continues to be purchased as we had planned in the gas supply plan at Empress, and in all cases the system supply customers' needs are met exactly as planned.

Meanwhile, Union is able to provide a service in the secondary market for a fee, such that it promotes the efficient use of assets and liquidity in the secondary market, and also cost-effectiveness.

MR. SMITH: Can I ask you to turn -- thank you. Can I just ask you to turn briefly to Exhibit B, tab 2, page 9 of 82, Ms. Piett?

MS. PIETT: I have it.

MR. SMITH: I'll just wait til it comes up on the screen.

I expect there will be some questions about this table, and hopefully this will help those along, but I have an initial question in relation to table 1. And what is being shown at a high level in this table?

MS. PIETT: The purpose of this chart in our evidence was really to respond to Board decisions in the past that have provided criteria against which exchange revenue would be qualified. And there were three categories that we identified in this chart, and the one that I want to draw your attention to is the column that's called "temporary surplus". And this was put forward by the Board as a criteria that would be necessary for a transaction to be considered optimization.

And what we have done is we have separated out the types of exchange transactions that we do into the seven categories that you see down the left. And at the bottom, on line 7, there's an X under "temporary surplus", and the reason we have the X there, that we put it there, is because we were responding there in general to, if you have a capacity assignment where you assign capacity away in the peak season, then you probably don't have surplus capacity. You are doing that based on risk, and because our capacity is sized to meet winter day, and if there is a peak design day, then of course we wouldn't have surplus capacity.

MR. SMITH: So why have you included it in transportation revenue?

MS. PIETT: Exactly. So what we have done here is we've said in general you would wonder why there is an X there, and yet we've included it here. But what we're talking about in 2012 is, the transactions that were assigned away in the winter all related to the CDA contract, and you --

MR. SMITH: What -- sorry, what's the CDA contract?

MS. PIETT: You may recall in evidence several occasions, and in fact one place that describes it well is Exhibit -- tab 3, page 20, which is our gas supply evidence.

And you don't need to draw it up at this point, but what it does is it describes how the CDA contract that comes from Empress to the CDA is dropped off in the north to meet winter peak days, and otherwise it flows to the CDA and provides annual gas service to the south portfolio.

And what we've done to optimize that plan and to provide an exchange service to the market is we drop that gas off, that CDA gas, into the areas where it would be dropped off for peak day anyway, and we drop that off for three months in the winter or for the entire other months as well -- possibly for the entire year, but in this case we're talking the winter three months, and we drop that gas off in the north so that when a peak day occurs it's exactly where the gas supply plan needs that gas to be, and where the surplus capacity comes in is, all the days that it isn't a peak design day, that gas is being offered into the north, and the rest of that path is surplus capacity.

So in this circumstance, on that chart, because category 7 only relates to the CDA contracts, then that could be a checkmark in that column.

MR. SMITH: Thank you, Ms. Piett.

Members of the Board, those are my questions. I wonder whether it's appropriate to mark the handout as an exhibit.

MR. QUESNELLE: For ease of reference, why not. Thank you.

MS. SEBALJ: 1.4 or 1.5? I think we're at K1.4?

MR. SMITH: Yes.

MS. SEBALJ: Thank you.

MR. QUESNELLE: Thank you.

EXHIBIT NO. K1.4: HANDOUT from Ms. PIETT

MR. SMITH: Thank you. Those are my questions, and I tender the panel for cross-examination.

MR. QUESNELLE: Thank you.

I believe there's some discussion of order. I don't know, Mr. Aiken, are you going first again? No? Okay.

MR. JANIGAN: I think I'm proceeding first, Mr. Chair.

MR. QUESNELLE: Oh, thank you very much, Mr. Janigan.

Cross-Examination by Mr. Janigan:

MR. JANIGAN: Panel, I think what I would first like to do is to try to unpack the rationale that you've advanced for supporting the approach -- a different approach to the treatment of FT-RAM net revenues or transportation exchange revenues.

And the first thing I would like to have you turn up is Exhibit B, tab 1, page 13. At the top of the page you state the decision which you take issue with, that on November 19th, 2012 the Board issued its decision on the preliminary issue, finding that Union's 2011 FT-RAM revenue should be classified and treated as a gas-cost reduction and a Y factor, and then in its EB-2012-0087 decision, the Board stated, I'll go in, that:

"This determination is no way a departure from the IRM framework. The Board is simply reclassifying revenue based on evidence that has been filed with the Board as part of the Union's rebasing proceeding and incorporated by reference in this proceeding."

And later on, on line 14, you indicate:

"Respectfully, Union disagrees with the Board's findings and states that this is a fundamental departure from the principles on which natural gas IRMs are based and articulated in the natural gas forum."

Now, does that -- does that effectively summarize your principal objection to the treatment of these revenues?

MR. BIRMINGHAM: I think there's probably two main reasons, Mr. Janigan. The first one is exactly that. That is, when an incentive regulation framework is established and the Board accepts that framework, then it's the utility's expectations and, indeed, I think all the expectations of all the shareholders -- stakeholders, rather, that those parameters are going to stay in place.

And so the -- one of the key roles of the Board as we go through incentive regulation is to ensure that the parameters of the framework are properly applied.

The issue that we have here is, beginning in, well, as early as 1993, but certainly beginning in 2008, exchange revenues were treated as net revenue and were part of utility earnings, and that was the same for 2009 and the same for 2010.

And it wasn't until 2011 came along that there was this change, and we say that that isn't appropriate in the context of the framework.

Now, I want to be clear then from a principled standpoint the Board isn't powerless when there is an incentive regulation mechanism in place; that is, to the extent that the Board finds that the framework is not achieving the key objectives that the framework was put in place to achieve, so to incent the utility to be more productive; that is, to grow its revenues and manage its costs, to make sure the customers are properly served, to make sure that the framework is conducive to investment.

If it's not achieving some of those key objectives then it's entirely within the Board's power to call for a rate review and a review of the framework, but that review would then terminate the incentive regulation framework as it currently exists, and they could conduct their review.

The issue that we have is the treatment of these revenues got changed midstream, and we don't think that's appropriate.

MR. JANIGAN: In your view, your proposed treatment of these revenues is in line with the principles of the NGF report?

MR. BIRMINGHAM: That's correct. More importantly, it's consistent with the parameters of the incentive regulation framework as it was established for the 2008 to 2012 period.

MR. JANIGAN: And I note on page 17 that you believe that -- on the top of that page:

"The growth of the transportation exchange revenue, including FT-RAM revenue, was a critical contributor to Union's ability to become more productive during the IRM term. That productivity gain helped Union manage many of its unexpected circumstances that occurred during the five-year IRM term."

I take it, then, that you believe that there wasn't an effective incentive regulation process in place that involved the FT-RAM revenue?

MR. BIRMINGHAM: Well, indeed that's one of the benefits of a comprehensive incentive regulation framework, in that it's impossible to predict what might happen over the course of a five-year period.

But if you set it up properly, then you can manage all the ups and downs as you go through that period. So the point of table 2 was to give a bit of an example of what happened during the incentive regulation period, that I don't think any of the parties -- and I can speak specifically for Union Gas -- would have imagined could have happened during that period.

So as an example, we actually thought when we set a fixed productivity factor at 1.82, that inflation would be more than that and that we would have some sort of annual rate increase coming out of the framework. In fact, that wasn't the case, and GDP was actually on average less than the productivity factor.

We went in with a pension expense that was set at $29 million. We hadn't expected the recession to come along. We hadn't expected the government to respond with the type of monetary policy that would drive interest rates to record lows, and therefore we hadn't expected that our pension expense would just about double.

So there's a number of ups and downs that happen during the course of the incentive regulation period, and if you set it up right, in a comprehensive way, and you have the revenues and expenses that are able to be managed, then I think all stakeholders can benefit.

In fact, as you know from our evidence, our position is that all stakeholders have benefited from this arrangement.

MR. JANIGAN: On page 18, I think in the top of the page, you make that point in a somewhat more succinct way, that you've been able to maximize the benefit of the transportation exchange-related market opportunities and protected customers and provided significant benefits to ratepayers?

MR. BIRMINGHAM: That's right, Mr. Janigan. So back on page 17 for a second, you can see the transportation exchange revenues were an area of focus for us, and we increased the number of counterparties that we dealt with, the number of transactions, and in fact the revenue. And then of course the ratepayer benefits, we had actually laid out in a -- as you say, in a more succinct fashion in this same section, at page 32.

MR. JANIGAN: Now, I want to sort of contrast that with another picture that's presented in your evidence, and I'm having difficulty attempting to rationalize the two. And that is on page 5 of Exhibit B. It's under paragraph that starts with numeral 1:

"A key premise of the Board's EB-2012-0087 decision with respect to the treatment of net FT-RAM revenues is that Union's gas supply plan was driven in part by optimization opportunities. As shown in the report at Exhibit C, tab 2, Union's gas supply plan was right-sized, and does not consider opportunities for optimization. Accordingly, the Board should reinstate the treatment of FT-RAM revenue as part of utility earnings and consistent with the past treatment of these revenues."

Now, what I see that saying is, is that in effect, your gas plan does not allow you to optimize those revenues and do the kinds of things which you have expounded in the rest of your evidence is effectively buffering ratepayers and the rest of your customers from the effects of certain negative developments in the marketplace.

So if you can't optimize -- if the gas plan is such that you can't optimize your revenues, why is it that we should consider what you've done in relation to gas supply as being part of a program that requires incentive by putting it in ordinary revenues and obtaining the benefit of 50 percent in relation to earnings sharing, rather than 10 percent, as suggested by the Board?

MR. BIRMINGHAM: I'm not sure I've got all the components of your question, Mr. Janigan, but let me take the first couple.

First of all, this paragraph was intended to address one of the key considerations that drove the Board to give us the treatment that it did in their 0087 decision. And that is, there is a concern that Union was over-contracting for upstream capacity, and therefore having planned optimization opportunities available to them. And that was one of the things that was driving our exchange revenue opportunities, and in fact our exchange revenue results; that is, their concern was we were contracting for upstream transportation, asking ratepayers to pay for that, and then using that capacity to drive revenue for the benefit of the shareholder and the company under incentive regulation.

And that simply isn't the case. It isn't the fact that we over-contract for upstream transportation. It's not.

And as Mr. Isherwood said, I think one of the concerns that we've had around the timing is that a lot of these things came out through the regulatory process before we knew that this was even a concern of the Board's or any of the other stakeholders. And that's one of the reasons why we brought forward the comprehensive that approach we have here.

We want to make sure that regardless of whatever decision Board makes in this case, that they have the full evidentiary record before it. And I'm not sure that Mr. Isherwood said that we actually did as good a job as we should have in the past.

MR. JANIGAN: Okay. Now, in relation to the Board's previous concern about over-contracting, if that was the case, how was that -- how would that be addressed by the Board, and aren't you building in circumstances which may allow you to profit from the same, under an IRM period?

MR. BIRMINGHAM: First of all, it's not the case, Mr. Janigan. We don't over-contract for upstream transportation.

Second, if the Board was to find that we did over-contract for upstream transportation, then what they should do is find that our gas supply plan isn't prudent and disallow the cost.

They haven't done that. They had a concern about it, but that concern then led to this -- that concern was one of the factors that led to the treatment of the upstream optimization revenues.

And it's our view that, in fact, the evidentiary base for that finding needed to be more comprehensively put forward to the Board.

MR. ISHERWOOD: If I could add to that, Mr. Janigan, the -- in the evidence that we filed in this case, we actually had the report done by Sussex. And Sussex had done a complete study of the gas supply plan back in the January, February, March time frame and filed the report in April. And that April was very -– that report, sorry, was very conclusive that the gas supply plan was right-sized and that we did not over-contract.

MR. JANIGAN: Do you or do you not try to optimize earnings in the exchange market?

MR. ISHERWOOD: We have a long history going back to the early '90s where we would do exchange-type activity when gas supply assets were deemed to be excess and were unplanned, and we had a third-party market that would require the exchange. It goes back to the early '90s, and from that early '90 period right through until the end of 2010, exchange activities, whether they're RAM or otherwise -- and they're basically the same transaction -- have always been treated as revenue.

MR. JANIGAN: But my question is: Do you try to optimize those opportunities?

MR. ISHERWOOD: I don't know what you mean by optimize the opportunity.

MR. JANIGAN: Well, optimize it in terms of the attempt to take advantage of it in a way which benefits the shareholders and ratepayers of the company.

MR. ISHERWOOD: We have always tried to maximize our revenue exchange, and there have been various deferral accounts before the IRM period where that was shared 75/25; in some cases 90/10 earlier on in the actual forecast part of it.

We've always tried to maximize it to benefit both the shareholder and the ratepayer.

MR. JANIGAN: Today you've come forward and indicated that, in fact, the benefits of those -- of that maximization should flow directly into the earnings of the company and not be considered as part of the transactional exchange services and set off against costs.

MR. BIRMINGHAM: They are transactional revenues that are revenues of the company, and should be treated pursuant to the earnings sharing mechanism within the incentive regulation framework.

MR. JANIGAN: And not the kind of sharing mechanism that took place before the IRM was --

MR. BIRMINGHAM: That's correct. That was all part of the cost-of-service rates that were set coming into the incentive regulation framework that existed for the 2008 to 2012 period.

MR. JANIGAN: And just so that I understand, what is the key new considerations that are before the Board now that weren't before the Board before associated with this issue? What does the Board -- did the Board not know at the time it made the decision in EB-2012-0087?

MR. BIRMINGHAM: Well, as a general comment, I'd say, Mr. Janigan, that the reasons are listed at Exhibit B, tab 1, page 5, and the six reasons that begin on page 5 and move to page 6. In particular, you know, one of the items, as an example, is the fact that I think the Board was concerned about whether our gas supply plan was right-sized, and as I say, if there was a change made in the treatment of the revenues, one of the reasons that the Board gave us for that change in treatment was that they were concerned about the size of our gas supply plan, and we now have evidence before the Board that shows that that in fact is an appropriate gas supply plan.

MR. JANIGAN: Is there anything else, Mr. Birmingham, that you can point to in relation to considerations that would not have been before the Board or might not have been before the Board in the fashion that you would have liked?

MR. BIRMINGHAM: Well, I continue to point to, say, point 3, where there is a decision made in an Enbridge Gas Distribution hearing that dealt specifically with the identification of temporarily surplus upstream assets, which wasn't much of an item that was profiled in Union's proceeding, and so we've taken the benefit of that decision and provided evidence to the Board on that point as well.

We've also, as a result of the Sussex work, under point 5 dealt with the comparison of our gas supply plan and planning principles with respect to those utilities who operate in a similar way in other jurisdictions.

And then finally, we have information before the Board now about how the exchange revenues that Union enters into helps to support a robust and active secondary market.

MR. JANIGAN: Now, in relation to this particular part of Union's operations being a driver for productivity, would you agree with me that, unlike many other productivity measures, whatever productivity is achieved in relation to the optimization of revenue cannot be carried forward into rebasing into a new IRM?

MR. BIRMINGHAM: No, I disagree with that, Mr. Janigan. To the extent that we can grow revenues or manage our costs, all of those get carried into cost-of-service rebasing. Then how they are dealt with in the cost-of-service rates I think is a separate question. The intention of the Board by and large is to take those productivity gains and give most of the benefit back to ratepayers so that the company benefits during the incentive regulation framework and ratepayers get -- are the primary beneficiaries once the cost-of-service rates are reset.

MR. JANIGAN: The matter of surplus capacity, for example, is serendipitous. It's not something that you can predict from year to year, as I understand from your evidence. How do you build that into rebasing?

MR. BIRMINGHAM: I think it's fair to say, Mr. Janigan, you can't necessarily rely on temporarily surplus capacity on any particular pipeline on any particular day. But as Mr. Isherwood said, we have a long history of working with the secondary market to help generate these revenues, and as you can see, I think there's a reasonable pattern that we can achieve at least some base level of revenues when it comes to exchanges, and the Board can rely on that when they are looking at our cost-of-service rates.

MR. JANIGAN: I guess my point here is that if ratepayers are going to share in productivity benefits generated in this program, it's likely going to involve a sharing of revenues from that program, and not from a rebasing that might take place in the future.

MR. BIRMINGHAM: Again, I disagree, Mr. Janigan. The sharing takes place in two ways. One is, when Union gives a productivity factor in its pricing formula, as well as earnings sharing mechanism in the incentive regulation framework, ratepayers benefit from those.

So to the extent that there are exchange revenues that contribute us to achieving the productivity measure and contributing to earnings sharing, ratepayers benefit from that.

Then second, when we come in for our cost-of-service rebasing, the Board can have a look at that and determine how much should go back to ratepayers, and in fact, for 2013 rates the Board did exactly that, and 90 percent of the forecasted revenues around exchanges are being given back to ratepayers.

MR. JANIGAN: Now, in Exhibit B, tab 4, page 4 in this proceeding, you indicated that:

"Union has presented preliminary impacts of Union's proposal compared to the alternative gas costs, deferral treatment to various customer groups: APPrO, CME, and IGUA. A copy of the presentation is provided in appendix A."

Did you make any similar presentations for the benefit of other intervenors?

MR. ISHERWOOD: That presentation was presented just to those three: CME, IGUA, and APPrO.

MR. JANIGAN: I guess if the picture of Union's efforts is as rosy as has been indicated today, why did you not invite other intervenors to share in that presentation?

MR. ISHERWOOD: I think the purpose of our presentation was, we identified the three groups that have large, larger customers, and specifically those that have direct-purchase, T-service type customers that really benefit from an earnings sharing type of proposal that we have put into our proposal for our 2012 deferral disposition.

So we really went to the three associations whose members would benefit from our proposal, and just to have a discussion with them.

MR. JANIGAN: Now, didn't you think that the other ratepayer groups, such as the M1 rate class, for which sales customers would be disadvantaged by Union's proposal, yet direct-purchase customers would be advantaged by Union's proposal, would be interested in the materials presented in the meeting?

MR. ISHERWOOD: I think all intervenors ultimately saw the entire evidence package in April or thereabouts. These were presentations we were doing just before that, so just a bit of a precursor to the actual filing. But certainly the filing is more robust than the presentation was.

MR. JANIGAN: Thank you, Mr. Chair, thank you, panel. Those are all my questions.

MR. QUESNELLE: Thank you, Mr. Janigan. Mr. Quinn?

MR. QUINN: Yes, thank you --

MR. SMITH: Sorry, members of the Board, just before Mr. Quinn begins, I don't know whether this is a concern for the panel members, but I can see a lot of sun on their face, and I just wonder if --

MR. QUESNELLE: We can lower the shade?

MR. SMITH: -- we could lower the blinds, if that's -- only if it's bothering them. But I just...

MR. QUESNELLE: I see Mr. Gluck is going to wave his magic there.

MR. SMITH: Thank you very much.

MR. QUESNELLE: Thank you. No problem.

We just finished off on adducing evidence on a closed meeting, and here we are, yeah.

Okay. Mr. Quinn?

Cross-Examination by Mr. Quinn:

MR. QUINN: Yes, thank you, sir, and good afternoon, panel. I'm going to carry on from where Mr. Janigan was and where I started with Mr. Birmingham this morning, just for ease, because we had asked the question in a similar area in Exhibit D8.36 about the specifics of this meeting and the criteria Union used.

Mr. Isherwood, you've provided part of the answer we were interested in. But my question, when we looked at the presentation this morning -- I don't know if you need to draw it up or pull it up or if you are familiar with it. You had some key messages about -- that you want to extend to this audience, and I guess my first question was, the audience was intended -- was this an audience of end-use customers, directly?

MR. ISHERWOOD: I was only actually involved in one of the meetings, Mr. Quinn, the APPrO meeting, and I believe there's some customers in the room, but it was primarily the executive of the association.

MR. QUINN: So it wasn't the actual customers, it was the executive?

MR. ISHERWOOD: I was trying to think back. I did a similar presentation on Parkway projects as well. And in one case it was the executive and in one case it was a customer group, and to be honest, I can't recall which was which.

MR. QUINN: Are you aware if the regulatory counsel for these respective associations were invited also?

MR. ISHERWOOD: We presented the presentation to the executive and/or customers of the association, and it was up to them on who they decided to invite. It was primarily focussed as a commercial discussion because there was a commercial consequence.

MR. QUINN: But you agree with me, though, that the key messages made some assertions about the appropriateness of your proposal from a regulatory context?

MR. ISHERWOOD: We were trying to explain our proposal relative to the alternative proposal, and obviously supporting our proposal.

MR. QUINN: Right. So did you provide the customers with a summary of what the Board said and why in the 0087 decision?

MR. ISHERWOOD: Provided a summary to the customers of the impact, financial impact by rate class, a sales customer relative to a direct-purchase T-service customer through both the North and the South. So we compared the two alternatives at a customer rate class level.

MR. QUINN: So I did ask the question: Did you provide them with a summary of what the Board said in 0087, and why they said it?

MR. ISHERWOOD: It was not included in the presentation, but I suspect we would have talked about it.

MR. QUINN: Okay. I didn't -- I only had the benefit of the slides, but you were present at all of these meetings, were you, or just the one?

MR. ISHERWOOD: As I previously said, just the APPrO meeting.

MR. QUINN: Okay. My concern, I guess -- and I'll get right to the point -- your approach, from our perspective, looks like you're asking customers to support Union based upon whether they get a cheque or they get an invoice, independent of the principles behind the Board's 0087 decision. What's your response to that?

MR. ISHERWOOD: I think at the association level they are there to represent their customers and their members, I guess, in terms of the associations.

So we're just -- at the time of this presentation, just describing it from a commercial point of view and the impact, specific impact to customers.

MR. QUINN: What were you expecting as a result of these meetings?

MR. ISHERWOOD: I was expecting that the association and the members would be better informed.

MR. QUINN: Better informed and provide instruction, then, to their counsel, accordingly?

MR. ISHERWOOD: That would be up to them to decide, Mr. Quinn.

MR. QUINN: Well, I think I'll leave it there for now, but suffice to say it -- I don't read principles in that presentation. And I guess we're going to have to argue those later.

Maybe if I could -- before I get into the questions I had, there was extensive presentation and I appreciate some of this is for the benefit of the Board, to be able to help them understand how gas moves around Ontario, and I respect that.

But one of the things that I want to be cautious about as we discuss these things -- and Ms. Piett, you may or may not have said it the way I thought, but what I'm trying to do is separate current circumstances from where things were at in 2012. And one of the things that I think I heard you say was that to get firm service to the EDA, only FT was available to be able to provide that service. Did I hear you right?

MS. PIETT: What I had said was that in order to have firm service to the EDA that was renewable, that was cost-based, was to take that service for an annual term.

MR. QUINN: I don't think I heard the word "renewable," but then you would agree with me STFT was available in 2012 and could provide firm service?

MS. PIETT: It was available in 2012, but it's not the type of service that supports our gas supply planning principles.

MR. QUINN: I want to make it clear for the record that there was a service available. I understand that you're now saying renewable is part of your criteria. I just want to make sure we have clarity for the record.

MS. PIETT: It's always been part of our criteria, sir.

MR. QUINN: I guess I'm just trying to focus on the record of this proceeding.

So moving forward, then, if I could ask you to pull up IR response D8.14, and you recall that this was -- we had requested an update of undertakings that were provided in the rebasing proceeding.

And so in attachment 1, we have the capacity assignments to your respective delivery areas. You have that, I assume?

MS. PIETT: Yes, I do.

MR. QUINN: So in the winter -- and I'm going to focus on the year that was calendar 2002. So starting at line 31 for winter of '11-'12, we see January and a monthly assignment for January 2012 of 60,000 gJs.

Am I reading that correctly, that that was an assignment of 60,000 gJs from the EDA for the month?

MS. PIETT: That's correct. It's for -- pardon me, it's for the eastern zone, not the EDA. That's the zone which includes the CDA as well as the EDA.

MR. QUINN: That's a clarifying point, because I'm trying to reconcile these numbers. So this is not broken down between EDA and CDA? We've just got, broadly, the eastern zone?

MS. PIETT: That's correct.

MR. QUINN: So if I can move forward, then, to Exhibit D8.42?

MS. PIETT: We have it.

MR. QUINN: Now, this is something we had asked, and I want to just preface by making sure for the Board that they have the context of what we're asking for here. And then I may ask the panel to elaborate on the content of the respective columns.

But what we had asked in our interrogatory response in the preamble is:

"Throughout the evidence in IRs, Union has provided information on how it manages its upstream portfolio through the incentive regulation period. While aspects of how gas supply planned for meeting peak day deliveries and how gas control implemented the deliveries to Ontario are provided in the evidence, we believe it would be helpful to summarize the volume of gas that was available to the respective delivery areas during the months of January. To simplify the exercise, please provide the days that were the highest and lowest in their respective months."

And the question asked specifically:

"Please provide the highest and lowest daily deliveries available in the month of January to the respective delivery areas by completing the table in attachment 1."

Which I had provided.

And I appreciate Union has provided that response in attachment 1, and I just want to make sure we get some clarity about what is in the table first, and then I have some questions about it.

If I'm reading this table properly, you provided the highest day of consumption and the lowest day of consumption in the month of January for the respective five years?

MS. PIETT: That's correct.

MR. QUINN: And you've also provided a peak day requirement in -- on -- in column D, "Design day 2."

I see that going from 2011 to 2012, there was an increase in the peak day requirement. Was that driven by any change in heating degree days, or what drove that change?

MS. PIETT: I'm not sure what drove the change, but the next panel up is the gas supply panel that will be able to answer that question.

MR. QUINN: That's appreciated. I'll reserve for tomorrow.

The next is the market requirement, and I would translate that as the amount of actual consumption; is that correct?

MS. PIETT: That is what we expected to have our customers consume on that day, based on our volume planning work.

MR. QUINN: So that's a forecast, not an actual?

MS. PIETT: To tell you the truth, I'm not certain, but it would be very close; one or the other would be very close.

MR. QUINN: I appreciate that, but I guess that's what we had asked for, so I was assuming that answer was given in (e), in context.

Would you be able to check -- take it subject to check that that is assumption? Or do you want to provide a different response by undertaking as to what exactly is contained in (e) and how it was -- if it was a forecast, how it was developed?

MS. PIETT: I'll take that, subject to check.

MR. QUINN: Thank you.

So in the next column is the contracted daily capacity and it's as driven by your gas supply plan. And it seems pretty constant in the area of 162- or 163,000 over the last few years.

So that would be a total of both your FT capacity and your STS capacity to the eastern delivery area?

MS. PIETT: That's correct.

MR. QUINN: So in column G, we have the respective amounts released, and again, dealing specifically with 2012, what we see is on the day of the highest consumption -- which, again, we'll check as to the market requirement definition -- we have an amount of almost 44,000 gJs that was released; is that correct, that that's what that number is showing?

MS. PIETT: It could either be released or could be optimized in another way. It could be how we managed our optimization with the RAM program, where we left the FT portion of the contract empty and flowed IT instead. So that would be included in that column.

MR. QUINN: So I guess I'm not sure that I understand. Maybe you could --

MS. PIETT: So that would be the same as -- pardon me. That would be the same as case 3, where we gave that example. It could be. FT flowed as IT.

MR. QUINN: So the market requirement was severed by IT capacity on that day -- potentially served by IT capacity on that day.

MS. PIETT: It could be.

MR. QUINN: Okay. Since we only have one day, would you be able to check what was -- how that 43,921 was actually transacted for the day, so that we have an understanding of the transactions that underpinned the release for assignment?

MS. PIETT: We can do that.

MS. SEBALJ: That's J1.7.

UNDERTAKING NO. J1.7: TO DETERMINE HOW THE 43,921 NUMBER WAS TRANSACTED FOR THE DAY

MR. QUINN: Now, in column H we had asked the question about how much was available, contractually available, to serve the EDA, and of course we were somewhat surprised to see the same number appear in column H as in column F, and in reading the note 5 below, you have interpreted:

"Contractually available capacity equals contracted daily capacity for the gas supply plan. System gas customers continue to have full access to contract capacity since transactions completed by the S&T group are interruptible or are met using incremental assets as required at the expense of the S&T -- at the expense of S&T."

Stopping there, those incremental assets provided by S&T, those could be interruptible services also?

[Witness panel confers]

MS. PIETT: So contractually available capacity in column H, that of course matches the number that we have in the gas supply plan, so in a way it's a principled statement to say that if the gas supply plan contracted for that capacity to be available, then the S&T group would assure that that capacity would be served in one fashion or another.

So if the optimization program on that day was that we flowed FT as IT, like in case 3, then that would be an interruptible service. So if we saw cold weather coming or a peak day or anything close to that, we would interrupt the exchange, and we would not flow IT, and we would flow FT if we thought that's what we needed.

So that's why -- one of the reasons we say it continued to be available, because we would just change our optimization to make it available. On the other hand, if it was capacity that we had assigned, that wouldn't have happened in 2012, but in previous years, where we had assigned capacity away, then what we would have done, if that capacity was needed in the market area, then we would assure -- be assured that that capacity would be met one way or another. We would use other assets that we had to get that gas to the market as needed.

MR. QUINN: You said two different things, and both are included in that statement, that it could be an interruptible transaction or it's met by other incremental assets. I want to focus on that -- using incremental assets as required. Is it correct that what you said is it could be delivered in one fashion or another and that could include interruptible transport?

MS. PIETT: It could include interruptible transport if we felt that it would be scheduled and it would meet the market needs. If we thought that that interruptible transport was at risk, then we wouldn't have an IT, that we would flow at firm contract in its place, so that we could be sure that gas would get where it needed to go.

That was the kind of daily planning that we did and we still do every single day, particularly in the winter, and particularly as the weather is getting cold. We meet every morning to assure that all the gas will flow exactly where it needs to do -- to go, and we'll make whatever changes we need to make to make sure that happens.

MR. QUINN: But you'd agree with me there has been an evolution in how you manage this program in the last few years?

MS. PIETT: There has been an evolution to how we optimize since about 1993.

MR. QUINN: Okay. Specifically it's the last few years you said that you would be evaluating if it could be scheduled. And you would agree with me the TransCanada can have an expectation of capacity that would deliver, but has the right to accept or not accept IT nominations within their nomination windows?

MS. PIETT: That's what "interruptible" means, is that they have the prerogative to interrupt that service if they so choose.

MR. QUINN: Exactly. And so if it is interruptible service, you believe it could be scheduled, but you don't know that with certainty.

MS. PIETT: No, so the S&T group would examine what the profile for the day looked like, in terms of market need, and also what assets we had serving that market need, and the S&T group would make an evaluation on risk and mitigation options if something changed and so on, and we do that every day.

MR. QUINN: Okay. Before -- I'm going to go through a couple more, but while we're looking at this column G, I would ask for 2012 and how the day at the highest consumption, how the market requirement was met and what type of -- if it was a release or an exchange -- sorry, a release or an assignment in the -- in column G, but I would like to ask for 2011 and '10, just to look to see what the evolution may have been in the recent period, and I ask that knowing that the data, I think, is somewhere in D8.43, but when we'd asked that question we thought we might be able to reconcile one to another, and we can't, so I'm hoping that Union, with the data there, could distinguish which transactions were made in those respective years.

MR. SMITH: Maybe I could just ask for direction from the witness panel as to amount of effort required. Obviously 2011 and earlier balances are not at issue, but if it's not a significant amount of work, then we'll be prepared to provide it.

MR. QUESNELLE: Thank you. Mr. Quinn?

MR. QUINN: Sorry, I --

MR. SMITH: Just ask the witnesses to think about that question.

MR. QUINN: Yes.

MR. QUESNELLE: Mr. Quinn, you had thought that this was available on this sheet. Is that something that you are looking beyond that, or...

MR. QUINN: I am looking beyond that, sir, and I said that improperly. The amount for 2012 in G is available on that sheet, and it looks like it's just been pulled from a query. So I'm presuming doing 2011, 2010 could be done similarly and isolated the day of, in this case 2011, January 23rd, but I respect Mr. Smith's request of the panel to determine the amount of effort involved with that.

MR. QUESNELLE: Thank you.

MS. PIETT: We have the records, and we can provide that information.

MR. SMITH: Thank you.

MR. QUESNELLE: Thank you.

MS. SEBALJ: Are we -- this is a new undertaking, not a sub-undertaking?

MR. QUINN: Yes, I think this would be separate, Ms. Sebalj.

MS. SEBALJ: J1.8.

MR. QUINN: Thank you.

UNDERTAKING NO. J1.8: To provide the column G amount for 2010 and 2011 and isolated to the day of january 23rd, 2011

MR. QUINN: And I referenced an evolution in Union's planning, and I don't believe you need to turn it up, but just for the record, Exhibit B, tab 2, page 71 referred to the fact that Union does not do annual assignments any longer. That's a change that happened between 2011, 2012; is that correct?

MR. ISHERWOOD: The last annual assignment we did was -- ended in October 31 of '11.

MR. QUINN: Okay. Thank you.

Now, this one we probably -- actually, before we go off the sheet, because I was going to go to another reference, what we have here is what I call the execution of the plan. Gas supply develops the plan. This is operationally how it was executed in the EDA. Would you agree with that summary?

MR. ISHERWOOD: You are referring to page 73?

MR. QUINN: I'm sorry, Mr. Isherwood, I'm still on Exhibit D-42, attachment 1, what's up on the screen here.

MR. SMITH: Sorry. Perhaps you can ask the question again, Mr...

MR. QUINN: Okay. In Exhibit D8.42, attachment 1, which is on the screen, I refer to this as the execution of what was the gas supply plan. Is that a close enough definition to what we're looking at?

MR. ISHERWOOD: I would actually say it's probably a combination of the gas supply plan in action, as well as optimization happening on the side around the excess assets.

MR. QUINN: Okay. So it's an operational execution? Is that term...

MR. ISHERWOOD: I think the gas supply plan gets operationalized differently, and then different folks get involved on the actual optimization of it. This really is a combination -- I think your undertaking is really to find out how that day was really met and what was happening with the optimization in parallel.

MR. QUINN: What I was looking for, Mr. Isherwood -- maybe you can help me. I'll work with your definition. What would you say is the definition of this table?

MR. ISHERWOOD: How I read it actually was in terms of the market requirements, how did Union Gas meet the market requirement, recognizing that there was some exchange activity happening as well.

MR. QUINN: Thank you. Given that definition -- and I'm asking this specifically probably of you, but which one of Union's consultants would have evaluated this -- how Union delivered on its market requirements for these days in 2012?

MR. ISHERWOOD: I don't believe we asked any of our consultants to do that.

MR. QUINN: So neither Sussex nor Concentric would have had opportunity to see this as the way you evaluated

-- or this as the way you delivered on the market requirement?

MR. ISHERWOOD: Sussex evaluated primarily the gas supply plan, and how it was actually put together and how it was derived at, and then how it was operationalized and that the market demand and the pipe requirement match.

MR. QUINN: So they wouldn't have looked at the amount that was released on the day, and see if that is prudent or met practices?

MR. ISHERWOOD: I don't believe they looked at January 12th, 2012.

MR. QUINN: I'm sorry?

MR. ISHERWOOD: I don't believe they would have looked at January 12th -- January 20th, 2012, for example.

MR. QUINN: So to be clear, then, they didn't look at this plan and evaluate the way Union delivered on the market requirement and compared it to how other utilities across North America do that?

MR. ISHERWOOD: That would not be in their mandate.

MR. QUINN: Okay. I just wanted to make sure we were clear on that.

And in what is contained in the summary, which I read before in note 5, essentially what you are saying is the contractually available capacity is the same as the contracted daily capacity, because S&T would find a way to make sure that that amount was available; is that a close enough summary?

MS. PIETT: That's correct.

MR. QUINN: So if that amount of released or exchanged or assigned capacity can be backstopped by S&T, why wouldn't Union plan to deliver to the market area in that way for the winter?

MR. ISHERWOOD: The gas supply plan has its five guiding principles, which I'm sure the next panel will discuss; Mr. Shorts and I will discuss that at length tomorrow.

But the five principles really ensure that we have firm assets surveying each of the delivery areas across the North.

We have an obligation to serve and to deliver, and we take that under the utmost seriousness as we put together the gas supply plan.

And as Sussex's report confirmed, it's consistent with how other LDCs across North America put together their plans as well.

MR. QUINN: That provides a scoping to Sussex, and I think we'll have a chance, as you said, to discuss that tomorrow.

But I guess my question is: If this is a more economic way of using your assets to meet your customers' market need, why could it not be delivered in an ongoing fashion in this way?

MR. ISHERWOOD: I guess historically, Mr. Quinn, the gas supply plan does respect the five principles. The plan is based on firm renewable contracts wherever possible. Those types of principles all come into play.

And where ratepayers get a chance to benefit in terms of the S&T activity around the gas supply plan is through, first of all, the revenue that's embedded into the forecast.

And then secondly, historically there are deferral accounts in place for the benefit of it as well. Going forward, there is deferral accounts for the benefit as well. But during the IRM period, they would have benefited each and every year in earnings sharing.

MR. QUINN: I think we've heard that as part of -- the proposal. And I won't use a pejorative term.

So I think it's appropriate to move onto D8.28. I just wanted to understand, again, the meeting of the market need.

I see it's up on the screen. Does the witness panel have it?

MR. ISHERWOOD: Yes, we do.

MR. QUINN: In this interrogatory, we're asking about Union's verification of gas being delivered on a firm basis. And this is specific to your evidence that -- the reference is above that, but your evidence did state:

"Second, S&T provides a transportation exchange service where gas is provided to an S&T customer at Empress, and the S&T customer provides gas to Union at the Union NDA on a firm basis."

Now, we asked about:

"Does Union require proof of the underpinning firm contract?"

Your response says they assign a contract and there's penalties put in place, but you do not require proof of the underpinning contracts.

Based on your knowledge of what is available in terms of service, how else could that service be provided? In other words, if your exchange partner is providing you gas on a firm basis, what are their alternatives?

MR. ISHERWOOD: Mr. Quinn, I would liken this to, really, the obligation to deliver at Parkway. It's not any different.

We obligate all of our direct-purchase customers to obligate at Parkway. We obligate marketers and brokers to deliver and exchange on a firm basis as well.

In both cases, we don't go back and do a thorough check of the contractual requirements they have in place. We do handle it, though, through our contractual arrangements and having a penalty clause that basically allows us to, in the provision, recover our cost plus a penalty.

And it is the penalty and the cost, the known cost to the marketer, that is their incentive to deliver on a firm basis. And if they want to take the risk of delivering on an IT basis, they can do that. As long as the time that gets interrupted, they then go out to the market and get the supply they need.

MR. QUINN: I had asked what you options they had for service. You've just given us IT. What other options would they have to provide service to the NDA?

MR. ISHERWOOD: They could have firm assigned by some other customer. They could take firm out on TransCanada. They could do STFT. They could do whatever they get an exchange with another counterparty that's firm.

MR. QUINN: But they're entering into this agreement with you for the benefit of the IT credits that flow from FT-RAM?

MR. ISHERWOOD: So the Empress-to-EDA contract that we assign to them comes with the FT-RAM attribute, which adds value to the exchange. And it's really that attribute is the value they are getting from the exchange.

MR. QUINN: Which increases their capability to flow IT?

MR. ISHERWOOD: IT is how they use -- they have to actually flow IT to use the FT-RAM credits, but it's not necessarily flowing -- it may be flowing in this path, but not necessarily flowing in this path.

MR. QUINN: It doesn't have to be flowing in this path, but it does increase their capacity to flow IT, and the credits may have to be used in the same month; correct?

MR. ISHERWOOD: They have to use it the same month. That's correct.

MR. QUINN: So there is a probability that some of this gas is delivered IT to the NDA?

MR. ISHERWOOD: Again, Mr. Quinn, I can't speculate, but it's possible. But if it is flowing on IT and it gets interrupted, it's their obligation to resolve that problem.

MR. QUINN: Would you equate an IT service to a firm service in terms of the quality of service?

MR. ISHERWOOD: I have a firm service.

MR. QUINN: You have contracted for firm service, but is an IT service on TransCanada of the same quality as FT service on TransCanada?

MR. ISHERWOOD: I don't know they're flowing IT. All I know, they have a firm obligation for them to deliver to me, as they do for industrials delivered to me at Parkway.

I have no notion of whether they're using IT or some other firm product. I don't know.

MR. QUINN: I'm asking the question more generically, Mr. Isherwood.

Does a TransCanada IT service have the same quality as an FT service on TransCanada?

MR. ISHERWOOD: Obviously not. IT is interruptible.

MR. QUINN: Thank you. And I understand you're saying you're transferring the risk, but to the extent that a -- we have an organization providing this –- a third-party organization providing this service, this is part of your need to meet your firm market requirement; correct?

MR. ISHERWOOD: It is. And the other way we manage that risk, obviously, is to ensure we do the transaction with credit-worthy counterparties and counterparties that we trust and know have the wherewithal to make sure we get delivered firm gas on the days we need it.

MR. QUINN: But when we were talking about why you wouldn't plan to deliver to the EDA, similar to what we discussed in Exhibit D8.42, you indicated you had some principles around your gas supply plan that would preclude you doing it that way.

Are you not turning around, then, and compromising those principles when you rely on a third party to provide the service, and not have them demonstrate that they have a firm contract that underpins it?

MR. ISHERWOOD: Absolutely not. We also contract with upstream producers for firm supply. We don't go looking for their firmness either. It's all handled contractually, whether it's at the Parkway obligation or they're buying supply in Alberta or supply in Texas or whether they are buying firm exchange in the NDA. It's all handled through the contractual penalties for not meeting the firm obligations, so we are maintaining a firm delivery into the NDA.

MR. QUINN: I need to double-check something. I think it's for tomorrow anyway, for the panel tomorrow, so...

Thank you, sir. Those are my questions.

MR. QUESNELLE: Thank you, Mr. Quinn. How far down the order line we've gone as far as people volunteering to step up. Okay. I see, Mr. Thompson, you are in for quite a chunk of time. Have you re-evaluated that, or can you take us to the end of the day?

MS. SEBALJ: I had thought -- sorry, just to -- we had sort of decided on an informal order, and I had thought that Dr. Higgin was next. I can't see if he's even there.

DR. HIGGIN: I'm here.

MS. SEBALJ: Oh, he's there.

DR. HIGGIN: I was hiding, because most of my questions have just been answered, and so I would like a minute just to look at -- see if I have anything left, and that's why -- because they've just been asked, most of my questions.

MR. QUESNELLE: Thank you, Dr. Higgin.

Mr. Aiken, just while I'm up in that area?

MR. AIKEN: Well, this neighbourhood will have to be content with Dr. Higgin's cross, because I don't have any for this panel.

MR. QUESNELLE: Okay. Mr. Thompson?

MS. SEBALJ: Mr. Brett was also on the list.

MR. THOMPSON: I think Mr. Brett was to precede me, as I understood. I'd prefer to be over 'til tomorrow if that's possible.

MR. QUESNELLE: That would be fine.

Mr. Brett, are you...

MR. BRETT: Yes, I could go ahead.

Cross-Examination by Mr. Brett:

MR. BRETT: Okay. I have a couple of questions to begin with, Mr. Acker, and these are mainly an informational nature. But Mr. Acker, could you turn up the D3.13. That is a BOMA interrogatory. D as in Dickens, 3.13.

MR. ACKER: I have that, Mr. Brett.

MR. BRETT: I had asked you a question there, and you -- part of the answer -- you started off the answer this way. I'm looking at the first paragraph of the answer:

"Mr. Acker does not have an opinion on what the LDCs define as an appropriate incentive or how the revenue associated with optimization activity should be treated."

So I take it that is still your view, that you were called here to testify or engaged to testify on the -- really, on the significance of the secondary market, what the secondary market was all about, who the players were, the importance of the local distribution companies as participants in that market because of the amount of pipeline capacity that they hold, the importance of marketers and traders in that market because of the services they offer.

But as you say here, you were not asked to give an opinion on the appropriate incentive to the utility, either the nature of that incentive or the amount of that incentive, and you were not asked to talk about the proper characterization of the optimization activity. Is that fair?

MR. ACKER: That's correct.

MR. BRETT: And that remains your view?

MR. ACKER: That's correct.

MR. BRETT: Okay. I think I have only one other question for you, and that is that you will recall -- well, let's -- just suppose with me for the moment that I'm a university in Ontario, a large university, and I wish to take advantage of direct-purchase opportunity.

What I would do -- one of the things I could do -- and this is kind of a rhetorical question -- one of the things that I believe I could do is enter into a bundled -- a western bundled-T transaction with my utility, whether it be Enbridge or Union. Let's assume I'm in southern Ontario, in Toronto.

And if I entered into a -- what I would do -- and this is something that I could have done -- well, it's something I could do today. If I did that, as I understand the way that transaction works, and I just would like you to tell me if you agree with me or not, I would be -- one of the ways I could do that is to find a producer in Alberta who would sell me gas at Empress. I would then turn that -- I would have a bundled transportation agreement with Enbridge. I would turn that gas over to Enbridge at Empress, Enbridge would transport that gas over the TransCanada Mainline using capacity that they hold on the Mainline, and then Enbridge would redeliver that gas to me at my plant or at my university campus using both the TransCanada capacity that they hold and their own distribution system. Is that fair?

MR. ACKER: That represents the contractual agreement you have with both the producer and the utility. I can't comment as to how the utility would move the gas from Empress to your plant gate.

MR. BRETT: Fair enough. Now, in that case would you include that bundled-T transaction as part of what you are calling the secondary market?

MR. THOMPSON: I would, generically speaking, because it is the first iteration post-Halloween agreement of you being able to buy your gas directly from the producer of your choice versus the pipeline sales affiliate of TransCanada. But it does not represent a fully unbundled market, which you are able to access today, which I would characterize as a much more vibrant and healthy secondary market.

MR. BRETT: All right. Thank you.

Now, I have -- I guess my next questions -- I have a couple of questions on the -- I do this with some trepidation, because we've talked a lot about these cases both in this hearing and the 0087 and in the 0210, as well as in the Enbridge cases, but this is for you, Ms. Piett.

If you look -- I'm looking at these sheets that you handed out just before we started, and I wanted to just examine, in the case 1 situation, how does -- if -- how would -- I want to go through with you and have you sort of point out to me how FT-RAM credits would be used to enhance this service.

If I look at -- could you sort of point out to me how FT-RAM would fit in here or could fit in here? F -- well, I say FT-RAM credits or STS-RAM credits, or both.

MS. PIETT: Case 1 actually was meant to show how exchanges happen without RAM.

MR. BRETT: All right.

MS. PIETT: So case 4 that I talked about included RAM, but also in our evidence case 3, 4, 5, 6 had RAM, so I --

MR. BRETT: All right. Now, perhaps we could go to case 4, since it's -- since you have a chart on that. And could you just advise me and advise the Board how the FT-RAM and STS-RAM credits would be used in this case for, sort of just going picture by picture.

MS. PIETT: Sure. So you'll recall, of course, that the first picture shows how, according to the gas supply plan, we would flow the gas to meet the needs of our customers in the summer, so we have a long-haul contract from Empress to the EDA that would be scheduled to go to the EDA, and then on top of that we would schedule it to go back to Dawn using STS injection contract.

So that has a surplus built into it, because what you really need is Empress-to-Dawn service --

MR. BRETT: Right.

MS. PIETT: -- then you would notionally have figure 2. And the dotted line is really what we call unlocked excess surplus capacity.

MR. BRETT: Right.

MS. PIETT: So what we have, a situation there, is where if we assign that long-haul contract, the entire EDA contract, to a third party, and in exchange for that assignment we also arrange where they take our gas at Empress and redeliver a similar quantity back to us as Dawn --

MR. BRETT: Right.

MS. PIETT: -- they get the use of that contract and all the RAM credits that go with it if they were to leave it empty.

MR. BRETT: Right.

MS. PIETT: So let's say, for instance -- and I'll just give an example here of what the third party might do, because we don't really know. It happens on their side.

MR. BRETT: Right.

MS. PIETT: But that party may say, Well, I will take that contract. I will leave it empty. I will get all the RAM credits that that would generate, and I will flow IT to meet Union's needs. I will use IT to get the gas from Empress to Dawn.

I will have excess credits left over, about 15 percent, actually. And I will be able to use that to offer yet another service in the market.

MR. BRETT: And it's that excess chunk of credits -- it's really the -- it's the excess chunk of credits and the amount of -- and the value of the FT and STS-RAM credits that allow that transaction to work economically for both parties, essentially?

MS. PIETT: That's correct.

So what the third party is doing is they are providing us a service and paying us a fee for that. And on their side, they will take those excess credits that they have earned -- which is about 15 percent -- they will offer yet another service, and that's how they can afford to pay us a service.

MR. BRETT: Can I ask you, Mr. Birmingham or Mr. Isherwood -- and I don't want to get into this -– you know, I don't need to have long answers here, because I think you dealt with this with a couple of people, but I just want to ask a couple -- well, one, I think, is a fairly easy question. The other may be a little more difficult.

The first question is: You would agree with me, I think, that the –- and I think you've stated this in your evidence before in this case, certainly in the 0210 case -- that the utilization of FT-RAM credits and STS-RAM credits, the utilization of RAM credits, if you like, in shorthand, has been a critical driver of the increase in the revenues of -- what you call exchange revenues over the last few years? I mean, it has been driven, the increase has been driven not entirely but largely by the presence and utilization of FT-RAM credits; is that a fair statement?

MR. ISHERWOOD: That's correct, Mr. Brett. Over the five years of the IRM framework, we had steady growth in exchange activity. And it was primarily driven by the activity associated with the FT-RAM attribute of FT long-haul and the STS service as well.

MR. BRETT: All right. I'm pleased to hear you say that, because that's what you said in the -- at some length in the 0210 case.

Now, the other question. You've said -- and you've discussed this with some others, but you've said that you disagree with the Board's decision in –0087, and one of the reasons you disagreed with it was that you felt that the Board had effectively said that you had -- you had included in your gas supply plan some additional -- or if I can put it this way, excess –- capacity, which would allow you to

-- give you the capability, then, to do these transactions.

MR. ISHERWOOD: Actually, Mr. Brett, I'll ask you to stop there, because we do not have excess capacity in our gas supply plan.

MR. BRETT: No, I know. I'm saying, though, I don't

-- pardon me, I misspoke. I didn't mean to mislead you.

What you were -- I think what you -- what I was trying to say was the reason you disagreed with the Board decision in 0087 was in part because the Board said they thought you had extra capacity in your -- they thought that you had extra capacity built into your gas supply plan, above and beyond what you needed to meet the normal needs of your customers, and that you were going to use that extra piece -– I mean, that was not your view, I know, but that was one of the things they concluded that you didn't think was appropriate?

MR. ISHERWOOD: That's correct. And they had asked us to do a full study of our gas supply plan, which led to the Sussex report.

MR. BRETT: I understand that you got a study, and we'll talk about that tomorrow, and in particular to what extent that study does opine on this precise question.

But I wanted to ask now: You're aware in a general sort of way, are you, that in the -- of the Enbridge 0055 case? You've looked at that case as sort of part of your preparation?

MR. ISHERWOOD: We did take a look at it, yes.

MR. BRETT: You're aware that in that case the Board said, among other things, that they didn't think that the

-- they were talking about Enbridge's capacity release activities, and they said: We don't think that they were truly planned. In other words, they didn't really think that Enbridge had built in a margin for capacity release into their gas supply plan.

But then they went on to say that: Notwithstanding that, we -- we're of the view that Enbridge's capacity release RAM-enhanced activities are reductions in gas cost, and they characterized them that way and they said that that is what they were and that they would -- they went on to, I think -- well, I'll just stop there.

You're aware that they said that as part of their decision?

MR. ISHERWOOD: Yes, I am.

MR. BRETT: Okay. They said -- I guess the second thing they said was that there was an analogy, they felt there was an analogy between what they called FT or STS-RAM own-use situation, where the utility used the ST-RAM or the STS-RAM or the FT-RAM credits themselves, and the capacity release situation, where they released the capacity to a third party and the third party then used the STS or FT-RAM credits for themselves. They drew an analogy there.

On that basis, they said -- they said in each case the landed price of gas to be used by Enbridge ratepayers is reduced, and each case Enbridge started off by buying gas at Empress for delivery to Enbridge for use by its ratepayers.

Are you aware of that analogy they drew and...

MR. ISHERWOOD: I think you are probably going beyond my level of understanding. I did look at it, but not in that level of detail. But I do know they have led new evidence in their current proceeding as well, to try and clarify their transactions as well.

MR. BRETT: Thank you. Those are my questions.

MR. QUESNELLE: Thank you. Dr. Higgin, will you be able to stay within our expected time lines?

DR. HIGGIN: Very definitely, Mr. Chair.

MR. QUESNELLE: Thank you.

DR. HIGGIN: Just a couple of follow-ups. Thank you.

Cross-Examination by Dr. Higgin:

DR. HIGGIN: Could I ask you to turn up Exhibit B, page –- sorry, tab 1, page 26? So I would just like to get the panel's view on the point 2, when it comes up a bit more.

This is with respect to the settlement agreement. It starts with 0606, but then of course there's Mr. Birmingham and others who know we went to another settlement adjustment, which I'll come to in a minute. Okay?

So this is, I believe, a statement that refers to the 0606 settlement, and perhaps we'll just read it. So this is regarding what revenues and expenses should be included as part of the earnings sharing calculation under that settlement. And it says:

"Specifically, all revenues and expenses would be included in a cost of service application."

That's the key. That would be in a cost of service application.

So what I want to ask you is just -- then is with respect to: Can you clarify what did you interpret in a cost of service with respect to transportation revenues and specifically S&T revenues?

MR. BIRMINGHAM: Yes. The S&T revenues have formed part of our revenue base in our cost of service applications, and our interpretation was that S&T revenues, including exchange revenues, would continue to be treated as revenues and part of utility earnings during the incentive regulation framework.

DR. HIGGIN: So we're correct that under cost of service, a base amount was forecast as S&T revenue and included in rates; correct?

MR. BIRMINGHAM: There was an amount included in the base rates --

DR. HIGGIN: What happened to any deviation above or below that amount under cost of service?

MR. BIRMINGHAM: I guess it depends under which cost-of-service framework you are talking about, Dr. Higgin. Generally speaking, what happened prior to the EB-2007-0606 framework was that there was an amount included as a forecasted revenue item that would otherwise go to reduce rates under cost-of-service framework, and any variances from that amount would be caught, any deferral account, that would be shared between ratepayers and the company.

DR. HIGGIN: Right. So if we --

MR. BIRMINGHAM: That was typically the framework.

DR. HIGGIN: -- go back to old cost-of-service regimes, which I'm familiar with, we go to, for example, EBRO-499, was the first occasion that happened. You don't need to check that. Just take that as being where the account was set up.

So what I would like to come back now then is just, let's talk a bit more about this and look at, the fact is that what happened in 0101, which was EB-2009-0101 -- okay? And if you look at page 26, as we just did, what happened to that statement about what would be included in cost-of-service application in 2009-0101.

MR. BIRMINGHAM: Right. So in EB-2007-0606, that was the proceeding where the S&T revenues were increased in base rates and the deferral accounts that existed up until that time were eliminated. Four deferral accounts that were eliminated. That was in the settlement agreement and the framework that was approved by the Board in the 0606 hearing.

DR. HIGGIN: However --

MR. BIRMINGHAM: Then we came forward into the 0101 settlement, and that was triggered because in the original 0606 framework we had an offering, and that offering was with respect to utility earnings, and to the extent that utility earnings exceeded 300 basis points over the allowed return on equity, then that would trigger a review of the framework. So the 0101 application and result was the end result of triggering that review and coming up with a new framework, or that framework put in place a 90/10 sharing in favour of ratepayers for any utility earnings above 300 basis points.

DR. HIGGIN: Yeah, you've -- that was the main change. However, take it subject to check that that provision that all revenues would be included in revenues in a cost-of-service application was carried forward. Would you agree with that, that provision was still there?

MR. BIRMINGHAM: Not only would I agree with that, Dr. Higgin, but it's actually been carried forward into our EB-2013-0202 framework in section 11.1 --

DR. HIGGIN: Right.

MR. BIRMINGHAM: -- where we talk about:

"All revenues that would be included as revenues in a cost-of-service application shall be included in the earnings calculation, and similarly with operating and capital expenses."

DR. HIGGIN: Right. Thank you. So the point is that, going forward, your current plan -- and it's just been filed, your first case for the new IRM -- would deal with S&T revenues how? How will they be dealt with under the new IRM?

MR. BIRMINGHAM: You can't lump S&T revenues into one umbrella, Dr. Higgin, but if you want me to talk about exchange revenues, the exchange revenues in our cost-of-service proceeding are now being treated as gas-cost reductions, and 90 percent of that benefit is going to ratepayers, and that will carry forward into our incentive regulation framework for the 2014 to 2018 period.

DR. HIGGIN: Yes, thank you for that clarification. That was my question. Thank you very much.

MR. QUESNELLE: Thank you, Dr. Higgin. I think with that, unless you had anything else, Mr. Smith, we'll conclude for the day, and we will, as I mentioned earlier, we'll have our usual start-up at 9:30 tomorrow morning, and we'll see the panel again in the morning. Thank you.

--- Whereupon the hearing adjourned at 4:54 p.m.