EB-2013-0109

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.

FINAL SUBMISSIONS OF
ENERGY PROBE RESEARCH FOUNDATION
("ENERGY PROBE")

November 25, 2013

SUMMARY OF ENERGY PROBE RECOMMENDATIONS

UPSTREAM TRANSPORTATION FT-RAM OPTIMIZATION (ACCT. 179-130) & ASSOCIATED IMPACTS ON 2012 ESM

The Board Order a 2012 179-130 Upstream Optimization Deferral Account. The Balance should be allocated as per EB-2012-0087 based on the appropriate cost/causality principles that who pays for the underlying assets receives the benefits.

The Board categorically reject Union's Earnings and ESM proposition - it is simply an attempt at shareholder financial gain, unfair to ratepayers and contrary to the Board's EB-2012-0087 Decision that Union has appealed to the Court.

DEFERRAL CLEARING VARIANCE ACCOUNT (179-132)

The Board should reject Unions proposition for the Deferral Clearing Variance Account (179-132)

HOW THESE MATTERS CAME BEFORE THE BOARD

i. Union filed the EB-2013-0109 Application on May 8, 2013.

ii. The Board issued a Notice of Application (the "Notice") on June 6, 2013.

iii. Interrogatories were filed with the Board and delivered to Union on July 3 and July 10, 2013.

iv. Union filed Responses to the Interrogatories on July 24, 2013.

v. Union amended its evidence on July 26, 2013.

vi. A Settlement Conference was held on August 1, 2013. Union on its behalf and on behalf of intervenors, filed a letter indicating that in respect of certain deferral accounts listed therein, there were no matters in dispute with respect to the balances in those accounts or the proposed method by which those balances would be cleared by Union.

vii. On August 20, 2013 the Board issued Procedural Order No. 2 providing for an oral hearing in respect of those matters which remained in dispute.

viii. The Hearing took place on October 22, 23 and 24, 2013.

ix. Union amended its evidence on November 4, 2013 and filed its Argument in Chief on November 12, 2013.

The Application

1. By application dated May 8, 2013 and later amended July 26, 2013 and November 4, 2013, Union Gas Limited's applied to the Ontario Energy Board for approval of the following:

   (1) Approval of final balances for all 2012 deferral accounts and an order for final disposition of those balances;
   (2) Approval of $15.730 million as the customer portion of earnings sharing in 2012 and the proposed disposition of that amount to Union's customers; and,
   (3) Approval to close Shared Savings Mechanism Account No. 179-115 effective January 1, 2013.

2. Union also applied to the Board for approval of a variance account to capture variances between earnings sharing, deferral account and other balances approved for disposition and amounts actually refunded to ratepayers or recovered (Account No. 179-132).

Outstanding Issues for Board Determination

3. Following Settlement discussions, no agreement was reached, but with respect to the matters raised by Union's Application, the Parties requested an oral hearing to hear the following matters:

   Gas Supply and Transportation
   - Unabsorbed Demand Costs (Account No. 179-108);
   - Upstream Transportation FT-RAM Optimization (Account No. 179-130) and associated impacts on the Earnings Sharing Calculation;
   - Gas Supply Plan Review.

   Demand Side Management
   - Lost Revenue Adjustment Mechanism (Account No. 179-75);
   - Demand Side Management Variance Account (Account No. 179-111);
   - Shared Savings Mechanism Variance Account (Account No. 179-115);
   - Demand Side Management Incentive Deferral Account (Account No. 179-126).

   Deferral Clearing Variance Account
   - Union's request for Deferral Clearing Variance Account (Account No. 179-132).

   Audited Utility Financial Statements
   - Preparation of Audited Utility Financial Statements (Account No. 179-129).

4. Energy Probe's primary focus of submissions is Upstream Transportation FT-RAM Optimization (Account No. 179-130) and associated impacts on the 2012 Earnings Sharing Calculation. We will also have short submissions on the Deferral Clearing Variance Account (179-132) and comments on Audited Utility Financial Statements (179-129).

UPSTREAM TRANSPORTATION FT-RAM OPTIMIZATION (ACCOUNT NO. 179-130) AND ASSOCIATED IMPACTS ON THE 2012 EARNINGS SHARING CALCULATION.

BACKGROUND

2013 OPTIMIZATION REVENUE

5. In EB-2011-0210 -Union's 2013 Rebasing Rate Application, the issue of the treatment of optimization of the upstream gas transportation portfolio and specifically the TCPL FT-RAM program was a major issue.

6. The Board determined that ***for 2013 and going forward***:

> Consistent with the long-standing principle that a gas utility should not profit from the procurement of gas supply for its in-franchise customers, and to eliminate the creation of inappropriate incentives during the test year, the Board finds that the optimization activities, as defined below, are to be considered part of gas supply, not part of transactional services. The Board reiterates that gas supply costs refer to both the upstream gas cost, including fuel gas, and the cost (rate multiplied by contract volume) of upstream transportation that is required to deliver gas supply to Union's in-franchise customers in the North and South Delivery Areas.
>
> Consistent with the description provided by Union, the Board will define *optimization as any market-based opportunity to extract value from the upstream supply portfolio held by Union to serve in-franchise bundled customers,* including, but not limited to, all FT-RAM activities and exchanges.[1]

7. Also the Board distinguishes optimization from other S&T margin.

> The Board notes that elsewhere in this Decision, the Board has found that certain optimization activities are to be considered part of gas supply, removing these activities from what Union has previously defined as transactional services and included in its S&T margin forecast. In this Decision, the Board has defined optimization as any market-based opportunity to extract value from the upstream supply portfolio held by Union to serve in-franchise bundled customers, including, but not limited to, all FT-RAM activities and exchanges. The net revenues related to these optimization activities are no longer to be included in the S&T margin forecast.[2]

[1] EB-2011-0210 Decision Page 39
[2] EB-2011-0210 Decision Page 85

8. With regard to allocation of 2013 optimization revenues:

> The Board finds that optimization related net revenues should be *allocated to those customers that pay the costs of facilitating Union's gas supply plan.* Therefore, the Board directs Union to file a proposed allocation methodology, as part of the Draft Rate Order process, which allocates the optimization margins to those customers. The Board notes that this proposal must be based on regulatory principles.[3]

9. Account 179-131 was established based on the following:

> The Board orders the establishment of a new gas supply variance account in which 90% of all optimization margins not otherwise reflected in the revenue requirement are to be captured for the benefit of ratepayers. This variance account is symmetrical. The balance of this gas supply variance account will be disposed of on an annual basis.

10. The Order includes the following Accounting definition:

> To record as a debit in Deferral Account No. 179-131 a receivable from customers and a reduction in cost of gas for the unit rate of optimization revenues refunded to in-franchise customers multiplied by the actual distribution transportation volumes.

2011 OPTIMIZATION REVENUES

11. In Union's EB-2012-0087 Earnings Sharing and Deferral Account Application the amount and disposition of optimization revenues, including FT-RAM-generated revenues was in dispute. The Board established a Preliminary Issue and following submissions rendered the following Decision:

> Union's gas supply related upstream transportation FT-RAM optimization revenues shall be classified as gas cost reductions and be recorded in the appropriate gas supply deferral account(s). Union shall share 90% of the net revenue amount of $22 million for 2011, or the appropriate amount as provided by Union, with ratepayers.[4]

12. Union subsequently submitted and the Board accepted that UFG, fuel and other third party costs should be deducted before recording 90% of the net balance in the approved 2011 Deferral Account:

> Upstream Transportation FT-RAM Optimization Deferral Account (No. 179-130)
> To record as a credit in Deferral Account No. 179-130 the ratepayer portion of net revenues related to FT-RAM optimization as ordered by the Board in EB-2012-0087. Net revenue is

[3] EB-2011-0210 Decision Page 87

[4] Board Decision and Order on Preliminary Issue, dated November 19, 2012, page 32,

defined as FT-RAM optimization revenue less related third party costs and incremental compressor fuel and UFG costs directly attributable to the provision of FT-RAM optimization transportation services.

13. Union has Appealed the Board's EB-2012-0087 Decision on several grounds, including the Board's Decision on treatment optimization revenues.

14. For 2012 Union has recorded a provision of 34 million in its audited Financial Statements[5]

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.

2012 OVERVIEW

15. In 2012, Union realized net transportation Exchange revenues of $51.6 million, of which $37.3 million is related to net FT-RAM revenue[6]. This revenue is in excess of the margin included in delivery rates ($6.9 million).

16. Union's position is this contributes towards Union's utility earnings that it proposes to be shared with ratepayers through the ESM, since 2012 earnings exceed the ESM formula amounts.

[5] Exhibit D1.3 Page 41
[6] Exhibit ATab1Appendix B Schedule 2 Shows $36.3 million net

17. The balance of the net transportation revenues, $14.3 million, relates to the sale of non-FT-RAM related Base Exchanges. Union indicates these exchanges are the same as the transportation exchanges that occurred historically prior to the existence of the FT-RAM service attribute, and prior to IRM.

18. Union's proposed treatment is to include in utility net income 2012 net revenue from **both** FT-RAM and Base Exchanges.[7] The basis of this claim is that treatment of transportation exchange revenue was accepted by the Board for 2008, 2009 and 2010 under the terms of the IRM Settlement Agreements.

19. Energy Probe disagrees - the Board has considered this matter three times in EB-2011-0210, EB-2012-0087 and EB-2012-0055 and each case has not adopted the inclusion of FT-RAM Exchanges in utility earnings. Energy Probe will argue for a different approach for 2012 that also may include treatment of non FT-RAM exchange revenues.

20. Specifically, Union's proposed treatment differs from the Board's EB-2012-0087 Decision in which 2011 FT-RAM revenue was classified as a gas cost reduction and recorded in the newly-created Upstream Transportation FT-RAM Optimization Deferral Account (Account 179-130). The balance in that account was disposed of to Sales Service and Union North bundled direct purchase customers between April 1, 2013 and September 30, 2013.

21. Union notes that "the sale of transportation exchanges is one form of optimization activity. That activity is sometimes referred to herein as *"S&T activity".*

22. Union also notes "Base exchanges and FT-RAM exchanges are transportation services sold to customers pursuant to a Board Approved rate schedule. They are fundamentally the same in that they use upstream transportation assets that are temporarily surplus, only differing as a result of the value provided by TCPL's FT-RAM service (Exhibit B, Tab 2)."

23. We agree with Union that historically, revenues arising from S&T activity have been shared with ratepayers in a variety of ways. Prior to 2008 and the IRM Settlement Agreements, forecast margins for *S&T activity* were *directly credited to ratepayers* through delivery rates (not gas supply commodity or transportation rates) and any positive variance to forecast was recorded in a deferral account to be shared between ratepayers and Union. The sharing of margins was intended to recognize, "Union's role in developing opportunities and facilitating [revenue generating] arrangements."[8]

24. We submit that nothing fundamental has changed regarding Transportation Exchanges, **except for the Board's characterization in its recent Decisions noted above, of certain**

[7] Tr. Vol 1 Pages 79-80
[8] Exhibit B, Tab 1, p. 9

exchanges involving the upstream transportation assets in the Gas Supply Plan as gas supply related and treated differently to "normal" historic S&T transactions.

25. In its Argument in Chief, Union states several times that FT-RAM optimization **is** a type of Transportation Transactional Service:

Para 20
The nature of Union's S&T activity fundamentally did not change as a result of the 2008 IRM Agreement. Union continued to engage in the sale of transportation exchanges and other S&T activity as opportunities presented themselves and Union had available temporarily surplus assets (discussed further below).

Para 49
The fundamental nature of transportation exchange services sold by Union has not changed since the early 1990s. However, the market for *transportation exchange services* increased during the IRM term, driven by unforeseen changes in natural gas markets.

Para 50
The introduction of the FT-RAM program did not change the types of *transportation exchange services* Union provided to the secondary market

Para 51
The dramatic increase in transportation exchange transactions sold by Union resulted in significant benefits for Union's ratepayers. Union's ratepayers benefitted directly from sharing *transportation exchange revenue* through a base delivery rate reduction and through earnings sharing.

26. We point out these references to make the key point that the underlying basis of transportation exchanges has not changed since the 1990s **but** given recent Board Decisions, there is a reclassification of those transactions involving the upstream gas supply assets, driven in part by the incremental revenues due to the TCPL FT-RAM Program.

27. The remaining issue is how to treat the resulting revenues for 2012.

TREATMENT OF 2012 TRANSPORTATION EXCHANGE REVENUES, INCLUDING FT-RAM REVENUES.

28. The Boards Decisions[9] lead to definition of the characteristics of the Upstream Transportation optimization transactions:

[9] EB-2012-0087 Preliminary Decision Page 28; EB-2012-0055 Decision and Order, page 6,

In the Board's view...the portion of utility gas supply assets that is available to support transactional service activities is only the portion of those assets that is **temporarily surplus** to the gas supply plan as a result of factors beyond Union's control.

The essential characteristic of transactional services is that they are arrangements made to generate revenue from unplanned, **temporary surplus transportation capacity** that Enbridge may have, from time to time, as part of its gas supply arrangements. The portion of utility gas supply assets that is available to support transactional services activities is only the portion of those assets that are temporarily surplus because of factors beyond Enbridge's control (e.g. weather, market demand).

29. Union's extensive evidence on classification of exchanges is shown at Exhibit B, Tab 2 (82 pages) Table 1 shows how each of Union's exchange service transaction types has been evaluated against the following three criteria:
    - Whether the portion of utility gas supply assets that is available to support transactional service activities is only the portion of those assets that is **temporarily surplus** to the gas supply plan as a result of factors beyond Union's control.

    This is the Board's criterion.

    Union adds the following criteria:
    - Whether the S&T activity was *unplanned or not*, and
    - Whether temporary surplus capacity was used to *provide a service (and Sale) to an S&T Customer.*

30. Union concludes that the majority of 2012 Base exchanges meet its criteria "if the purchase and delivery of gas supplies for system supply and direct purchase customers continued, then it is appropriate to treat any proceeds as utility revenue subject to earnings sharing"[10].

.

31. We submit that Union is suggesting that if the exchange transaction was an opportunity and had no impact on the gas supply plan costs then it should be recognized as pure utility income. We totally disagree that this meets the Boards optimization definition and characterizes the optimization revenue as "normal S&T revenue" category for which, under IRM, there is no Deferral Account.

32. Energy Probe suggests that the transportation exchange revenue should be treated on the basis of ***established regulatory principles of cost causality***.

    First, the majority of the transportation exchange revenue is generated from upstream assets paid for by Sales customers. (and in Union's North, bundled direct purchase customers).

[10] Union AIC Paragraph 38

The exception to this is transactions related to System Supply Balancing. Union does not require the System Gas supply and assigns the capacity to a third party. The net revenue from these assignments is accounted for in the Unabsorbed Demand Cost Deferral Account (179-108) for future disposition.

Second, we accept that Union should get an incentive for optimization of the assets.

Third, the net revenue (Gross-costs-incentive) should not be included in utility revenue but paid (refunded) directly to the ratepayers that pay for the underlying assets in rates. As the Board Indicated in the EB-2012-0210 Decision, benefits should be *allocated to those customers that pay the costs of facilitating Union's gas supply plan*[11].

33. In our submission the Board should Order a 2012 179-130 Upstream Optimization Deferral Account to capture revenues that meet its criterion.

34. In our view, the inclusion of net FT RAM transportation revenues in earnings under IRM was an outcome of the overall EB-2007-0606 Settlement on a broad package of financial matters and was not explicitly segregated from that package. Therefore the Settlement and IRM should not be:

    - a basis for not applying proper cost causality principles, or,
    - a basis for a fair allocation of transportation exchange revenues.

35. To make this clear in financial terms:

Earnings + ESM - Union

Union gets **$21.6 million,** Ratepayers **$15.6 million.** Ratepayers benefit *indirectly*, but only because of IRM/ESM and that in 2012 there are excess 2012 Earnings above the ESM base formula amount.

Gas Cost Reduction (EB-2012-0087) 2012 179-130 Account

Union gets Incentive and Fuel costs **$4.3 million** (not included in 2012 Earnings). Ratepayers get **$33 million** allocated to Sales and Bundled T who paid for assets. There is no Earnings Sharing available under ESM.

36. Accordingly, for all of the above cost causality and fairness reasons, we submit that the Board reject Union's analysis supporting its position that the Decisions in EB-2012-0087 and EB-2012-0055 do not apply to 2012.

[11] Ibid 3

37. **We submit that the Board Order a 2012 179-130 Upstream Optimization Deferral Account. This follows the appropriate cost/causality principles that who pays for the underlying assets receives benefits and is also fair to Union and ratepayers.**

38. However, even if, the Board accepts Union's evidence that the 2012 transactions (including FT-RAM based transactions) meet Union's 3 criteria for transportation exchanges, then we submit that including the revenue in 2012 Earnings still does ***not follow cost causality principles***.

39. In our submission, Union is substituting another basis of sharing of the TS revenues that is not cost causality based and is rather based on the premise of overall utility earnings sharing under the IRM ESM. Also, we submit that the purpose of IRM is to improve the *productivity* of the utility. A big increase in external market demand for transactional services does not do this—it is just an opportunity for shareholder gain.

40. We submit that Union's approach to including 2012 transportation exchange revenue in Earnings disproportionally favors Union's shareholder and disadvantages ratepayers. Within the ratepayers' group, it treats sales/bundled T customers unfairly. These are the customers that should get most of the benefits, since they are paying the costs of the assets.

41. **We strongly suggest that the Board categorically reject Union's Earnings and ESM proposition - it is simply an attempt at shareholder financial gain, unfair to ratepayers and contrary to the Boards EB-2012-0087 Decision that Union has appealed to the Court**.

RATE CLASS ALLOCATION AND RATE IMPACTS OF 2012 UPSTREAM OPTIMIZATION REVENUE INCLUDING FT-RAM REVENUE AND OTHER DEFERRAL ACCOUNT BALANCES

Allocation

42. Energy Probe has urged the Board to adopt the EB-2012-0087 approach to allocation of 2012 Upstream Transportation Optimization Revenues. We will therefore not make submissions on the allocation under Union's Earnings + ESM proposition.

43. Under the method approved for 2011 in EB-2012-0087 whereby 90% of the net FT-RAM Revenues are included in the 179-130 Deferral Account and allocated as a gas cost reduction; Union indicates there are zero earnings sharing.[12]

44. Union's Evidence[13] shows the following 2012 Deferral Account Groupings and Balances:

[12] Tab 2, Appendix D Schedule 19 Earnings Sharing schedule under this treatment as well as related financial schedules (1-18).

a) Gas Supply accounts

179-130 UFG	$1,388 million
179-130 Upstream Transportation	$32,977 million
b) Storage accounts;	-$1,879 million
c) Other accounts	-$15,309 million.
Net Total of the balances	*$17,048 million*

45. The portion of the balance in the Upstream Transportation FT-RAM Optimization Deferral Account related to Union North is allocated to rate classes in proportion to the allocation of 2007 Board-approved TCPL FT transportation demand costs. The portion of the balance in the Upstream Transportation FT-RAM Optimization deferral account related to Union South is applicable to sales service customers only. Accordingly, Union will allocate the Union South portion of the balance to sales service customers based on sales service volumes.

46. The proposed allocation of the 179-130 Account Upstream Transportation FT-RAM Optimization Account is shown at Exhibit A, Tab 3, Appendix B, Schedule 1, Page 2.

47. The other balances are allocated according to previously approved methodology. The allocation to the rate classes is shown in Exhibit A, Tab 3, Appendix B, Schedule 1.

RATE CLASS IMPACTS

48. The combined Deferral Account Rate Class Impacts are shown in Exhibit D10.09. We have extracted the data related to the Base Deferral Account and 2012 179-130 Account in **Appendix A.**

    This schedule shows:

    - Union South -Other accounts (charge) $18.5 m; 179-130 (refund) -$17.7 m. Net $0.73m
    - Union North- Other accounts (refund) -$3.0 m; 179-130 (refund) -$15.2 m. Net $18.2m

49. As noted earlier, Union's allocation factors result in different impacts on Direct Purchase and Sales/Bundled T customers. However, the latter are paying for the upstream transportation assets and accordingly this allocation follows appropriate cost causality principles.

[13] Exhibit A Tab 1 Appendix B Schedule 1

IMPLEMENTATION

50. Union indicated in its Application that the disposition of the Other Deferral accounts would occur in the period October 2013-March 2014. Given the timing of the completion of the Hearing, this would now occur in the first part of 2014. The disposition of the FT-RAM credit would likely occur in the second Quarter 2014 QRAM.

ALTERNATIVE TREATMENTS OF 2012 TRANSPORTATION EXCHANGE REVENUES INCLUDING FT-RAM REVENUES

51. If the Board finds that Union's evidence and position that the 2012 Transportation Exchange transactions (including FT-RAM based transactions) meet Union's 3 criteria for transportation exchanges *and the Board rejects the inclusion of FT-RAM revenues in earnings*, then we note there are other treatments of 2012 FT-RAM Revenues based on cost causality principles and prior regulatory precedent.

52. One alternative <u>*is for the Board to reinstate for 2012 the Transactional Services 179-69 Account*</u> that was in place prior to IRM. This would lead to the "traditional sharing structure" - a base amount in rates then 75:25 sharing of net revenues. In the past this was appropriate on cost causality principles and was fair to both Union and ratepayers. Undertaking J1.2 shows this treatment for FT-RAM Exchanges. However the same approach should apply to **both** FT-RAM and other Base exchanges totalling $51.7 million.

53. Another alternative is *to apply the treatment in Union's J1.6 Undertaking Response.* Union was asked by FRPO to provide an alternative allocation based on the EB-2011-0210 Decision:

> The impact of reflecting the EB-2011-0210 decision results in 90% of net Base Exchange revenue of $12.45 million, or $11.204 million in the deferral balance. Net Base Exchange revenue is comprised of $14.278 million (Exhibit B, Tab 2, Page 9, Table 1, item 3), less fuel and UFG costs of $1.828 million. The allocation is shown in the attachment.

54. We note these options because, unlike including the FT-RAM revenue in Earnings, they follow reasonable cost causality and fairness principles.

55. However, we submit that for FT-RAM based Exchanges these treatments are inferior to the 179-130 deferral Account and allocation to in-franchise sales and bundled customers as per EB-2012-0087.

2012 NON FT-RAM BASE EXCHANGES.

56. Union's evidence[14] is that the 2012 net revenue from these transactions ($14.278 million gross $12.45 million net) is included in utility income. Accordingly, for 2012 Union gets the benefit of this revenue as a shareholder benefit. These Base Exchanges are the same as the transportation exchanges that occurred historically prior to the existence of the FT-RAM service attribute, and prior to IRM.

57. We have considered whether including this revenue in utility earnings is appropriate, given the EB-2007-0606 Settlement Agreement allowed for elimination of the historic TS account 179-69, in return for a base amount in rates of $6.9 million. We will take no position on this matter and expect others to make submissions.

DEFERRAL CLEARING VARIANCE ACCOUNT (179-132)

OVERVIEW

58. Union's AIC indicates:

> Deferral and variance accounts record the difference between actual and forecast results. The accounts eliminate forecast error, with the intention that actual results be disposed of as Directed by the Board.
> The 2011 gas supply deferral account balances (Upstream Transportation FT-RAM Optimization deferral account (179-130) and UDC deferral account (179-108)) are the two major drivers of the over-refund of deferral account balances (Exhibit D2.1 Updated).
> Union's proposal to establish a new deferral clearing variance account ensures that ratepayers receive actual, approved deferral balances passed through to them. With 2011 deferral balances, there is a significant difference between what was disposed of to ratepayers and what should have been disposed of.[15]

59. The 2011 and 2012 amounts are shown IRR D2.1:

> 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.

[14] Ibid 6
[15] AIC Page 23

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.[16]

60. As Mr. Birmingham later described:

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.[17]

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

61. As to the nature of the Account:

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.

[16] Tr Vol 1 Page 40
[17] Tr. Vol 1, p. 33 and Exhibit A, Tab 1, page 41

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.

62. Union's position regarding the Deferral Accounts in the EB-2007-0606 Settlement Agreement:

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.[18]

63. Energy Probe disagrees with Union:

First, Union cannot speak out of both sides of its mouth about Deferral Accounts Union says in its evidence that under IRM, the deferral accounts are those listed as part of the Settlement Agreement. Union's position is that the Board establishing the 2011 and potentially the 2012 179-130 Deferral Account was inappropriate and in fact it has taken the financial implications to Court, On the other hand it proposes that it now needs a new clearance variance account not included under the IRM Settlement to correct over-refunds to ratepayers. The logic simply does not fit.

Second, Union's support for this proposition is as Mr. Birmingham testified, the principle that pass-through costs should be treated so neither Union or ratepayers gain or lose. When the amounts refunded were small Union did not have an issue but because of the Board's EB-2012-0087 Decision there were material amounts in 2011 and could also be so in 2012. Union fought and lost the battle regarding treatment of 2011 FT-RAM Revenue and is fighting the same battle again in 2012.

Third, as Mr. Aiken suggested, the requested Clearing Variance Account is **not** a deferral account, but rather a *variance account* for balances from other accounts that were incorrectly estimated and disposed of. Union should not get two kicks at the can. It should live with the Board-Approved dispositions.

Fourth, the 179-132 Account is not explicitly included in the Board-Approved EB-2013-0202 Settlement Agreement for 2014-2018.

[18] Tr Vol 1 Page 110

64. **For these reasons, Energy Probe submits that the Board should reject Unions proposition for the Deferral Clearing Variance Account (179-132).**

AUDITED UTILITY FINANCIAL STATEMENTS (179-129)

65. In its EB-2011-0210 Decision the Board Ordered Union to *"prepare and file separate audited financial statements for that portion of its business that is subject to rate regulation……*
An Addendum on Audited Financial Statements was filed by Union on July 26, 2013.This indicated an increase in costs from $400,000 to $1.3 million.

66. As a result of the increase in the cost estimate to prepare audited financial statements for Union's regulated business, the Board, on its own motion, determined that it would initiate a review of the Board's directive (EB-2013-0109 Notice of Motion and Procedural Order No. 3).

67. The Motion was filed on October 25, 2013.

68. Given the Motion, Union indicated in its AIC that it has suspended work on the preparation of the financial statements. Union states this decision is not expected to impede its ability to meet the June 30, 2014 deadline as outlined in the Board's Directive.

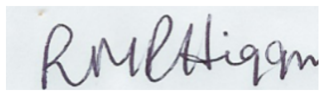
69. Energy Probe will make a short submission on the substance of the issue and further process.

70. We submit that with Union's non-utility business increasing the Board's Directive for preparation of audited utility financial statements remains valid. The current method of Union making non-utility cost/revenue eliminations lacks the independent oversight to provide surety for ratepayers that historic utility costs are correct as the basis for forward year costs and rate setting. Therefore, we suggest the Board allow submissions from parties, but in the interim continue to require Union to comply with the Directive.

COSTS

71. Energy Probe has participated in the proceeding efficiently in cooperation with other intervenors and accordingly requests that the Board order that it be reimbursed for 100% of its legitimately incurred costs.

Respectfully Submitted at Toronto this 26th day of November 2013.



Roger Higgin SPA Inc. Consultant to Energy Probe

APPENDIX A: RATE CLASS ALLOCATION OF BASE DEFERRAL BALANCE AND ACCOUNT 179-130

EP Schedule based on Exhibit D 10.9 Attachment 1						
Rate Classes				Impacts On Rate Classes		
		cust	Volume	Base Deferral	FT-RAM Deferral	Total Impact
		#	103 M3	Recovery(-Refund)	179-130(-Refund)	Recovery(-Refund)
		(a)	(b)	(c)	(d)	(e)=(c+d)
Union South						
M1	Sales		1,985,247	$9,621,735	-$14,558,504	-$4,936,769
	DP		247,631	$966,506	$0	$966,506
				$10,588,241	-$14,558,504	-$3,970,263
M2	Sales		412,655	$1,566,890	-$3,026,144	-$1,459,254
	DP		385,090	$1,098,844	$0	$1,098,844
				$2,665,734	-$3,026,144	-$360,410
M4	Sales	15	20,353	$109,712	-$78,867	$30,845
	DP	146	408,288	$1,997,268	$0	$1,997,268
				$2,106,980	-$78,867	$2,028,113
M5	Sales	10	19,039	$27,925	-$73,774	-$45,849
	DP	134	451,207	$436,827	$0	$436,827
				$464,752	-$73,774	$390,978
M7	DP	4	141,165	-$202,623	$0	-$202,623
M9	DP	3	57,878	$9,330	$0	$9,330
M10	Sales	3	118	$398	-$457	-$59
	DP	1	79	$228	$0	$228
				$626	-$457	$169
T1	DP	60	5,023,637	$2,734,206	$0	$2,734,206
T3	DP	1	239,361	$97,624	$0	$97,624
TOTAL	**Sales**		**2,437,412**	**$11,326,660**	**-$17,737,746**	**-$6,411,086**
	DP		6,954,336	$7,138,710	$0	$7,138,710
TOTAL			9,391,748	$18,465,370	-$17,737,746	$727,624
Union North						
Rate 01	Sales+ BT		714,975	-$2,430,620	-$9,477,094	-$11,907,714
Rate 10	Sales+BT		241,642	-$1,964,705	-$3,854,333	-$5,819,038
	T-Service		427	-$1,943	$0	-$1,943
					-$3,854,333	-$5,820,981
Rate 20	Sales	2	6,471	$563	-$102,316	-$101,753
	DP	18	96,026	$8,350	-$1,518,320	-$1,509,970
	T-Service	36	552,219	$676,916	$0	$676,916
					-$1,620,636	-$934,807
Rate 10	T-Service	17	1,912,232	$716,413	$0	$716,413
Rate 25	Sales	58	44,659	$6,376	-$287,345	-$280,969
	T-Service	43	162,978	$23,267	$0	$23,267
					-$287,345	-$257,702
TOTALS						
	Sales+BT			**-$4,380,036**	**-$15,239,408**	**-$19,619,444**
	DP			$1,414,654	$0	$1,414,654
				-$2,965,382	-$15,239,408	-$18,204,790