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.

SUBMISSIONS OF THE LONDON PROPERTY MANAGEMENT ASSOCIATION

I. INTRODUCTION

These are the submissions of the London Property Management Association ("LPMA") on the disputed issues in the matter of an application by Union Gas Limited ("Union") for an order or orders of the Board 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 non-commodity related deferral account and the approval of a deferral account to capture variances between earnings sharing, deferral account and other balances approved for disposition and amounts actually refunded/recovered. The Board assigned file number EB-2013-0109 to the Application.

II. SUBMISSIONS

a) Upstream Transportation FT-RAM Optimization and Associated Impacts on the Earnings Sharing Calculation

LPMA stated in its EB-2012-0087 Submission (Sept. 12, 2012) that the fundamental question for the Board to resolve is whether the FT-RAM related activities undertaken by Union are revenue generating activities (which could then be classified as transactional services) or cost reduction activities (which should then be classified as a reduction in gas transportation costs). LPMA submits that this fundamental questions remains relevant in the current proceeding.

LPMA notes that in a FT-RAM transaction, the gas purchased by Union at Empress is still required to service its system gas customers. Union could continue to use the transportation contracts to transport the purchased gas to its customers. However, when available, Union uses the FT-RAM credits to facilitate the movement of the gas purchased for its customers to the location where that gas is needed. This could be in the original delivery area associated with the contract, another delivery area, or to storage at Dawn. In any event, these transactions do not rely on temporarily surplus assets - Union has clearly indicated that the assets are still required to bring in the gas purchased. The assets would only be surplus if it did not have gas, needed by its customers, to transport.

LPMA further notes that Union could use the FT-RAM credits generated by keeping the pipe empty for itself. In this situation, Union purchases gas at Empress for delivery to Union's territory for use by its system gas ratepayers. Union reduces the cost of the delivered gas through the use of the FT-RAM credits. In the capacity release transaction, the cost of the delivered gas is also reduced, and Union continues to get the gas where it is needed. LPMA submits that in either case, the delivered price of gas to be used by Union's ratepayers is reduced. LPMA submits that similar treatment of the gas cost reductions from both of these types of activities is appropriate.

In the EB-2012-0055 Decision (dated October 25, 2012) the Board found that it did not agree that Enbridge's capacity release activities occurred on a planned basis. It did find that the capacity releases were a function of circumstances that arise, and factors taken into account by Enbridge's gas control group, as the gas supply plan is implemented. The Board further found that regardless of the fact that Enbridge's capacity releases occur on an unplanned basis, the result of these transactions is that gas - needed by Enbridge's customers - was delivered to these same customers at a reduced cost . The Board concluded that it was clear that revenues generated from capacity release transactions should be treated as gas cost reductions. LPMA submits that the Board should arrive at the same conclusion for Union Gas.

LPMA continues to submit that if Union is able to deliver gas to Ontario for consumption by system gas customers using utility assets that are paid for in their entirety by those same system gas customers at less than the forecast based on the gas supply plan, then the reduction in costs should be passed through to those customers. Section 5 of the January 2008 EB-2007-0606 Settlement Agreement clearly identifies that upstream transportation costs were to be treated as a Y factor.

In the response to Exhibit D2.14, Union indicated that if it received a discount from a gas supplier for early payment and assuming Union could meet the time line to take advantage of the discount, the discount would be recognized as a reduced cost in gas costs and would go through the purchased gas variance account ("PGVA") mechanism.

LPMA submits that the FT-RAM credits are just that - credits. Credits that should be accounted for a reduction to the cost of gas, and not credits that should be recorded as a revenue. This would be consistent with the response to Exhibit D2.14 related to early payment discounts or credits.

Consistent with the EB-2012-0055 Decision for Enbridge, LPMA submits that if the Board does find that the FT-RAM credit transactions should continue to be treated as a reduction in gas costs, the Board should direct that all of the related net revenues, in their entirety should be passed on to ratepayers, with no incentive percentage accruing to Union Gas.

b) Allocation and Disposition of 2012 Deferral Account Balances; Federal and Provincial Tax Changes and 2012 Earnings Sharing Amounts

LPMA supports the allocation and disposition of the various deferral and variance accounts as proposed by Union with one exception. This exception is related to the allocation of the FT-RAM related optimization amounts.

LPMA submits that the allocation of the FT-RAM related optimization amounts should be the same regardless of whether the Board determines that these amounts are cost reductions that should flow through gas costs or revenues that are shared through the earnings sharing mechanism. Union has provided different allocation methodologies depending on the treatment of the optimization amounts in Appendix A and Appendix B of Exhibit A, Tab 3. LPMA discusses the two scenarios below.

Scenario 1 - Gas Cost Reductions

As described on pages 8 through 11 of Exhibit A, Tab 3, if the Board determines that the optimization amounts should be treated as cost reductions to gas costs, then the allocation proposed by Union, which is consistent with the 2011 Upstream Transportation FT-RAM Optimization deferral account and treated as gas cost reduction, is appropriate in the view of LPMA.

This treatment results in a credit balance of $32.977 million in the 2012 Upstream Transportation FT-RAM Optimization deferral account. The allocation of this amount to rate classes is shown in Exhibit A, Tab 3, Appendix B, Schedule 1, line 2. Most importantly, the credit is only applicable to system gas supply customers.

LPMA submits that the allocation proposed by Union is appropriate because it is consistent with cost causation principles. The credit balance in the deferral account is entirely the result of FT-RAM transactions that are derived from use of upstream transportation assets that are paid for entirely by sales service customers in Union South and by sales service and bundled direct purchase customers in Union North. Mr. Tetreault confirmed that these are the customers that Union provides transport for (Tr. Vol. 1, page 46, lines 11-18). As a result, LPMA submits that it is appropriate that the gas cost reductions flow through to only the customers that pay the gas costs.

Scenario 2 - Revenues Shared Through Earnings Sharing

If the Board approves Union's proposal and treats the FT-RAM optimization amounts as revenues rather than gas cost reductions, then Union proposes to allocate the resulting earnings sharing amount of $15.730 million (Exhibit A, Tab 3, Appendix A, Schedule 1, line 23) to rate classes based on the allocation of the 2007 Board approved return on equity. Mr. Tetreault confirmed that this was equivalent to an allocation based on rate base (Tr. Vol. 1, page 46, lines 19-23).

LPMA submits that the allocation of the earnings sharing based on rate base is not appropriate for 2012. While it is true that the allocation of earnings sharing in previous years has been based on rate base, the situation in 2012 is significantly different. In particular, there would be no earnings sharing for 2012 whatsoever in the absence of the FT-RAM optimizations revenues (Exhibit A, Tab 3, page 9, Tr. Vol. 1, page 45, lines 24-28).

LPMA submits that the Board should determine the allocation of the earnings sharing based on the evidence in this proceeding, and not use the allocation methodology approved in previous years as a precedential value for determining this year's allocation methodology.

The impact of Union's proposal is that customers that do not pay for upstream transportation - because they do not utilize any upstream transportation assets (i.e. TCPL contracts that were used to generate FT-RAM credits) - benefit from the optimization of these assets by Union. As a glaring example, M12 customers would receive more than $3 million generated through the FT-RAM optimization of assets that they do not pay for. LPMA submits that this is not appropriate.

The benefits achieved through the optimization of these upstream assets should be allocated only to those customers that pay for those assets.

Union's proposal to allocate based on rate base should not be applied to upstream assets. Allocations based on rate base are based on the storage, transmission and distribution assets utilized by Union to serve customers. All customers utilize these assets, regardless of whether or not Union purchases their gas commodity and upstream transportation on their behalf.

The cost of upstream transportation assets (contracts held by Union to serve system gas customers in Union South and system sales and bundled direct purchase customers in Union North) are not allocated to all customers. Nor should they be. Based on cost causation, only the customers that use these upstream assets should pay for them. For example, direct purchase customers in Union South do not use any of the upstream transportation assets utilized by Union. These customers purchase their own upstream transportation assets for their own use. Similarly, Rate M12 customers do not use any of

Union's upstream transportation assets (Tr. Vol. 1, page 47, lines 24-25). Allocation of any of the upstream transportation costs to these customers would violate the principle of cost causality.

Union's proposal for the allocation of the earnings sharing - which only exists because of the FT-RAM optimization revenues - does not allocate these revenues to customers on the same basis as the costs incurred for the upstream contracts. LPMA submits that benefits associated with the optimization of the assets used to generate them should be allocated in the same manner as the costs of the assets. Anything else would not be just and reasonable.

The impact of Union's proposal can be seen in Attachment 1 to Exhibit J1.1. Column (f) in the attachment shows the allocation to rate classes and to system or direct purchase customers within each class if the earnings sharing amount of $15.730 million was allocated on the same basis as the FT-RAM deferral account. Column (g) in the attachment shows the difference in the two proposals. It should be noted that the figures in column (g) are solely related to change in the allocation of the earnings sharing amount, as the allocation of the other deferral and variance accounts is unchanged between columns (c) and (f).

LPMA notes the significant amounts that would flow to customers who do not pay for the upstream assets. In particular, line 25 of Attachment 1 shows that direct purchase customers in Union South would receive $2.6 million. T-service customers in Union North would receive more than $650,000 (line 42 in Attachment 1). M12 customers would receive nearly $3.1 million (line 45 in Attachment 1). Other rate classes (M13, M16 and C1) would also receive rebates based on the earnings allocation proposed by Union.

In aggregate, Union's proposal provides more than $6.3 million to customers that do not get allocated any of the costs associated with the assets used to generate the revenues. Of course, this takes away the same $6.3 million from the customers who have paid for the asset.

LPMA notes that Unabsorbed Demand Charges ("UDC") are recovered solely from system gas customers. This follows the principle of cost causality. Direct purchase customers and Rate M12 customers do not pay any of these costs (Tr. Vol. 1, pages 48-49).
LPMA supports the recovery of UDC costs as proposed by Union. Clearance of the UDC variance account results in a rebate to customer classes in Union North and a payment

from customer classes in Union South (Exhibit A, Tab 3, Appendix A, Schedule 1, line 1).

The UDC rebates and recoveries are generated from the exact same upstream assets as have been used to generate the FT-RAM optimization revenues, a portion of which is being shared with ratepayers (Tr. Vol. 1, page 49). The allocation of the amounts should be to the same customers, those who use the assets and have paid 100% of their associated costs.

Finally, LPMA notes that it is comprised of members that are both system gas customers and direct purchase customers. Union's proposed approach benefits direct purchase customers at the expense of system gas customers, while the approach proposed by LPMA benefits system gas customers at the expense of direct purchase customers. LPMA has taken this position because it is a principled approach that ensures that customers bear the appropriate costs and benefits.

c) Union's Request for Deferral Clearing Variance Account

Union is requesting the establishment of a deferral clearing variance account, effective April 1, 2013, as a result of the increased risk of variances associated with the disposition of deferral and variance accounts, including earnings sharing. Union's evidence on this request is found on pages 39 to 41 of Exhibit A, Tab 1.

In principle, LPMA supports such an account as it ensures that both the utility and ratepayers are held whole. However, Union is requesting that the account be used for balances associated with the disposition of 2011 and 2012 accounts. Both of these years were years in which Union was under an IRM regime.

LPMA submits that the Board should reject Union's proposal for a deferral clearing variance account for the 2011 and 2012 dispositions as this is not consistent with the IRM Settlement Agreement in EB-2007-0606 dated January 3, 2008.

The increase in the volatility in the recovery/rebate to customers in 2010, 2011 and 2012 is based on the variance between actual and forecasted volumes in these years. Union describes these major drivers on page 41of Exhibit A, Tab 1. In addition to the volume forecast error, Union describes a third driver, being the difference in the forecast of sales service versus bundled direct purchase volumes.

LPMA submits that under a price cap IRM, the utility has assumed the risk associated with changes in volumes. Had Union been concerned with the risk associated with the volumetric forecasts used to set rate riders to dispose of/collect deferral and variance account balances, it should have included the requested deferral variance clearing account as either a Y factor or a specific account throughout the IRM plan. Union did not.

Union has indicated that the IRM settlement agreement provided that deferral accounts would be treated as Y factors in the plan (Exhibit D2.13). Appendix B to the Settlement Agreement (also found on page 18 of Exhibit K1.2 in this proceeding) provides a list of the deferral accounts/Y factors that were approved in the IRM application. Those approved Y factors did not include the requested deferral clearing variance account. In other words, Union is proposing to add a Y factor during the IRM plan term. At the same time, Union's evidence states that "*all components of the IRM should remain together*" (Exhibit B, Tab 1, page 18). LPMA submits that request for the new account/Y factor is not consistent with Union's own evidence and view of the components of an IRM plan.

Union has not had an account such as this before. In particular, Union did not have a true-up mechanism as that requested in this proceeding, in the first three years of the IRM term (2008, 2009 and 2010). Neither did Union have such an account prior to 2008 and the commencement of the IRM term (Tr. Vol. 1, page 38).

LPMA submits that the Board should deny the request for the establishment of the account on the basis that it alters the 2008-2012 IRM agreement and that the variances being experienced by Union could have been mitigated if Union had requested such an account as part of the IRM plan. Requesting a significant change to the IRM plan after the plan is over based on hindsight is not consistent with the intent of IRM.

If the Board determines that it is appropriate to approve the deferral clearing variance account for 2011 and 2012 disposition balances, then LPMA submits that Union should also be directed to include in the account any amounts that cannot be processed (credits or debits) as one-time adjustments related to contract customers that are no longer on the system. Union proposes that these amounts would not be included in the requested account (Tr. Vol. 1, pages 30-31). If the goal of the new account is to hold both the utility and ratepayers whole, then any amount not refunded to or collected from contract customers should not accrue to the company, but also be included in the requested account.

d) Union's Response to the Gas Supply Directive

LPMA has reviewed the draft submissions of the Federation of Rental Properties of Ontario ("FRPO") and adopts those submissions as its own.

e) Preparation of Audited Utility Financial Statements

In the evidence Addendum filed on July 26, 2013, Union provided an updated cost estimate required to prepare and file separate audited statements for the portion of the business that is subject to rate regulations. The Board directed Union to file these separate audited statements as part of the 2013 cost of service proceeding (EB-2011-0210). The costs are to be recorded in a deferral account.

Union provided an estimate of the cost of doing the separate statements in EB-2011-0210. The Addendum indicates that the expected cost has increased to $1.3 million, broken out as shown in Table 1 for 2013. Table 1 further illustrates that the annual cost associated with these statements is $80,000. These costs would be incremental to the cost of preparing the consolidated financial statements for Union (Tr. Vol. 1, pages 103-105). The consolidated financial statements already cost ratepayers more than $577,000 per year (Exhibit J1.5).

The Addendum also states that as part of the implementation project plan, Union will be developing a long-term IT solution, which is expected to occur in 2014-2016. Union has indicated that it is not anticipating any additional system related costs, but notes that if it does incur costs in the future, it would also capture those costs in the deferral account.

The costs shown in Table 1 do not include approximately $550,000 in one-time internal staffing costs to support the project (Tr. Vol. 1, pages 105-106).

Union has spent approximately $400,000 to date on this project (Tr. Vol. 1, page 55) and has indicated that it has suspended work on the preparation of the financial statements in question pending a decision on the Motion that is part of this proceeding (Union Gas Argument-in-Chief dated November 12, 2013, paragraph 86).

LPMA submits that the Board should relieve Union of this directive. LPMA does not see the need for these audited financial statements for the regulated business. As indicated by Ms. Elliott (Tr. Vol. 1, page 109) Union already prepares an earning sharing calculation that is based on the regulated utility earnings. Non-utility activity is taken out of the corporate earnings. Because the earnings sharing calculation requires a regulated utility return on equity, the adjustments made by Union in this calculation are extensive and involve a number of schedules, as evidenced in Exhibit A, Tab 2 of this proceeding. In particular, Appendix A contains numerous schedules based on the regulated utility business. Appendix B shows the adjustments made to the corporate figures to arrive at the regulated utility figures used to calculate the earnings sharing amount.

LPMA does not see any substantial incremental value in requiring audited financial statements for the regulated business relative to the cost. As noted above, the information already provided by Union for earnings sharing purposes is quite extensive. LPMA submits that intervenors and the Board are as qualified as any auditor in determining what adjustments are appropriate in the calculation of financial information for the regulated entity.

The additional cost of $900,000 (estimated cost of $1.3 million versus $400,000 already spent) to complete the project, along with an incremental annual cost of $80,000 for preparing the statements is far above any incremental benefits that would be derived from a second set of audited financial statements.

f) Demand Side Management Accounts

LPMA has had the opportunity to review the non-confidential draft submissions of the School Energy Coalition ("SEC") on the matters related to the clearance of the 2011 DSM accounts. LPMA supports the SEC submissions on these accounts.

LPMA is concerned that Union is claiming substantial amounts through the various DSM related accounts for savings that are not the result of its activities related to the custom projects. During Mr. Shepherd's cross-examination on behalf of the SEC, it became apparent that there were some major issues in connection with the savings calculated from a number of custom projects.

These issues include Union claiming substantial savings for providing incentives to customers that it knew were going to do the projects anyway. This could be the result of internal company policy at the customer, or the customer's own emphasis on reducing energy costs. If the incentives to be provided by Union had no impact on the behaviour of the customer, then Union should not be entitled to claim any savings. Ratepayers should not be expected to reward the shareholder and pay the costs of the associated incentives that deliver no incremental savings from what would have occurred in any event in the absence of the Union incentives.

Similarly, LPMA submits that Union has overestimated savings related to custom projects that simply advance the replacement of old equipment with more efficient equipment. Union has claimed the savings for the entire life of the new equipment. In many cases, the equipment being replaced in 2011 would have been replaced in the next few following years. Giving Union credit for 20 years of savings to replace equipment that was going to be replaced in 5 years is a unjustified burden on ratepayers.

LPMA has not seen the confidential information that would be necessary in order to try and come up with an appropriate reduction in the Union claims for the various DSM related accounts. LPMA will, therefore, rely on the calculations that SEC is likely to include in its confidential submissions.

On a going forward basis, LPMA submits that the Board should require Union, the CPSV contractors and the auditors to obtain the expected replacement date of equipment in the absence of incentives from Union to advance the replacement. Savings would then only be calculated over this period, not the entire life of the new equipment.

Similarly, Union should be required to present evidence that the custom project incentives did indeed have an impact on customer behaviour. If Union cannot demonstrated that in the absence of incentives the customer would not have done anything, then Union should not be able to claim any savings.

With respect to the clearance of the preliminary 2012 DSM related account balances, LPMA disagrees with the submissions of SEC. SEC submits that the unaudited balances should not be cleared on a provisional basis with a true up the following year. Rather, the balances should only be cleared when Union has filed the Audit Report in the proceeding.

While LPMA supports the need to have an opportunity to review the claim on the basis of a full evidentiary record, LPMA continues to support the current practice of clearing the DSM accounts on a provisional basis, followed in the next year with a true up based on audited information. The basis for this submission is that the amounts recovered from customers is often in the $8 to $10 million range. Waiting to recover these amounts in the following year only adds the carrying costs to the amounts to be recovered from ratepayers. While interest rates are relatively low at the current time, this still adds about $150,000 to the amount to be recovered from ratepayers and could be substantially more when short term interest rates begin to rise.

III. COSTS

LPMA requests that it be awarded 100% of its reasonably incurred costs for participating in this proceeding. It is submitted that the LPMA has participated responsibly in all aspects of this process in an efficient manner.

All of which is respectfully submitted this 26th day of November, 2013.

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