EB-2017-0306
EB-2017-0307

IN THE MATTER OF the *Ontario Energy Board Act, 1998*, S.O. 198, c. 15 (Sched. B);

AND IN THE MATTER OF an application by Enbridge Gas Distribution Inc. and Union Gas Limited, pursuant to section 43(1) of the *Ontario Energy Board Act, 1998*, for an order or orders granting leave to amalgamate as of January 1, 2019;

AND IN THE MATTER OF an Application by Enbridge Gas Distribution Inc. and Union Gas Limited, pursuant to section 36 of the *Ontario Energy Board Act, 1998*, for an order or orders approving a rate setting mechanism and associated parameters during the deferred rebasing period, effective January 1, 2019.

SUBMISSIONS OF

THE FEDERATION OF RENTAL-HOUSING PROVIDERS OF ONTARIO

JUNE 15, 2018

1. INTRODUCTION

1.1. The merger of Enbridge Gas Distribution Inc. ("EGD") and Union Gas Ltd. ("Union") (collectively "the utilities) holds the potential for synergies to harvested for greater savings. In our view, the question becomes what is the appropriate ratemaking construct to ensure the harvested savings are shared equitably. In our respectful submission, the Application submitted by EGD and Union does not share those benefits equitably.

1.2. Given the magnitude and complexity of the case, the ratepayer groups met early to address the fundamental issues of the case and communicated regularly throughout the proceeding to share the best of our experience and insights for the purpose of assisting the Board with its determinations in the public. The Federation of Rental-housing Providers of Ontario ("FRPO") has benefitted from this collaboration allowing us to focus on some key areas that our experience is best suited while moving up the learning curve on important matters through the experience and insight of others. As such, our submissions will be focused on those key areas while providing informed and considered support for the submissions of our colleagues on the other important matters.

1.3. We have organized our submissions under the broad categories that were created from the Board's decision on the issues list.[1]

2. NO HARM TEST

2.1. The definition of the No Harm test was vigorously contested issue at the outset of this proceeding. After hearing the respective viewpoints, the Board determined:[2]

> *"Parties can however argue how the no harm test should be applied in this case and whether the applicants have met the test on this basis."*

2.2. In our view, we would endorse the previously expressed views of the Board that it is harm relative to the status quo.[3]

> *"The Board does not see any reason to depart from the no harm test, but notes that in any particular case, the determination by the Board of whether there is harm requires a comparison of the effect of the proposed transaction to the status quo."*

2.3. The utilities are already affiliates under a common ownership. If no merger plan existed, each of the utilities would be in the process of applying for rebased 2019 rates. As

[1] Decision and Procedural Order No. 3 issued March 1, 2018
[2] Decision and Procedural Order No. 3 issued March 1, 2018, page
[3] EB-2008-0411 Decision with Reasons dated November 27, 2009, paragraphs 54

ratepayers, given that each utility is coming out of an IRM period, there would be an expectation of downward pressure on rates as each of the utilities have exceeded their respective Board-approved ROE's throughout this period.[4] In addition, even if there was no merger, there would be savings expected from going from two corporate parents to one. A simple example is the $5.2M in annual savings that were achieved in 2017[5]. Both the respective over-earnings and reduction in corporate costs would create downward pressure on rates prior to any potential inflator that would have been added. But neither of these costs are presented in the utilities' "Stand-Alone" model to which they compared their application.

2.4. We appreciate the level of analysis undertaken by the School Energy Coalition ("SEC"). Through our collaboration, we have previewed the SEC's analysis and submissions on the flaws of the Stand-Alone comparison that the utilities asserted and formally adopt these submissions. I suspect that SEC's analysis and submissions will draw criticism from the utilities. However, SEC has laid out its assumptions, provided quantified impacts and all of the numbers behind the submissions. When SEC's work is compared to what we received from the utilities, the contrast is stark

> MR. SHEPHERD: So I had -- this presentation to the board of directors is a PowerPoint; right?
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> MR. KITCHEN: That is correct.
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> MR. SHEPHERD: I don't have Microsoft shares, but I'm looking at page 18, and normally when you do a presentation like this there's a business case behind it. You've done an analysis, management or -- line management has done an analysis that then is presented in this format. Is there a business case behind this?
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> MR. KITCHEN: The closest thing to the business case would be what's provided, the other attachment in FRPO 1, which goes through the estimates of the savings. And then what's contained in BOMA 16.
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> MR. SHEPHERD: So -- so BOMA 16 and FRPO 1 is all that had been done when you went and asked your board for approval to ask for $29.2 billion.
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> MR. KITCHEN: I don't think we quite phrased it that way, but, yes.
>
> MR. SHEPHERD: Okay.
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> MR. QUINN: I had a similar question, Jay, because they link together, but there had to be some analysis. The summary document in BOMA 16 lays out the verbiage as to what the results of the analysis are. There had to be a group or a individual for each of those functional -- or not functional areas, but areas of savings that did the analysis that came up with what a reasonable range would be.

[4] Exhibit C.FRPO.15 and Exhibit C.LPMA.18
[5] Exhibit JT3.1. We recognize there are one-time costs to achieve but if the utilities were rebasing in 2019, the $3.8M and $1.4M would serve to reduce rates

You can't just put your thumb up in the air and say it looks like it's bigger than a bread box. When you are coming up with 50- to $150 million, somebody had to do some analysis.

MR. KITCHEN: There is no further analysis.

2.5. In our respectful submission, given the lack of analysis underpinning the estimates provided by utilities, there is no basis upon which a conclusion that the proposed rate framework of the utilities would cause No Harm relative to what would occur if the utilities rebased, as affiliates, and moved through the more traditional rate frameworks afforded under the Renewed Regulatory Framework.

3. REBASING DEFERRAL

3.1. Using the MAAD's framework coupled with explanations of long runway times[6], the utilities have requested a ten-year deferral.

> *"The ten year rebasing deferral period will give Amalco the "runway" that it needs to carry out detailed integration planning, to make major capital investments, to execute on the integration while maintaining safe and reliable service to customers, to manage the risks associated with these activities and to optimize savings and synergies from the merger that will be delivered to ratepayers on rebasing*."

3.2. Given the weight of information on the ratepayer risks associated with the utilities proposal[7], we strongly believe that the ten-year deferral is inappropriate. FRPO appreciates the efforts of Energy Probe in providing the context from a North American perspective and, to put it nicely, ten-year deferral is an outlier[8]. Having seen submissions of our colleagues, we will not add anything unique but to say the onus is on the applicant to support this need and their evidence is insufficient and unconvincing.

3.3. FRPO recommends that the utilities be required to rebase as soon as practicable which in our view is 2020 but no later than 2021. In the meantime, since the utilities did not present an alternative ratemaking process if the Board denied their application, we endorse the approach captured in SEC's Implications of Denial with one addition. In our view, there ought to be an Earnings Sharing Mechanism for any length of deferral period due to the substantial uncertainty about the costs and benefits. The structure of the ESM we would support is an asymmetric 20 basis point deadband for the reasons outlined in LPMA submissions Rate-setting Mechanism #1f.

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[6] EGDI_Union_ARGChief_20180601 page 3, paragraph 6
[7] SEC Bill Comparison Tables for review_updated_20180528
[8] Review of Regulatory Decisions on Applications for Approval of Utility Mergers and Acquisitions in North America submitted 20180425.

3.4. In the period between this decision and rebasing, the utilities should be required to bring forward evidence and have consultations on the numerous commitments that were tied to rebasing during the last IRM period. FRPO agrees with others in that the utilities ought to be held accountable by the Board for commitments made even if their plans change.

3.5. In addition, there ought to be an additional base rate adjustment for 2019 for removal of the Parkway Delivery Obligation Reduction as substantiated below in section ???.

4. IMPACTS OF THE MERGER

4.1. The merger creates a province-wide utility that will have a huge impact on the contracting and utilization of gas services for storage and transportation in the province. The Storage and Transportation Access Rule ("STAR") was formulated and implemented in a very different time and should be reviewed to ensure the change in utility ownership is considered in the public interest. We offer some reasons in support of this review.

4.1.1. The Secondary Market for Utility Exchange Services has been Consolidated

4.1.1.1. Almost every month, millions of GJ of natural gas are moved in and through the province facilitated by the exchange service provided by the utilities.[9] A quick scan of Exhibit C.FRPO.15 provides an understanding of the many locations around and even outside of the province that gas moves through these exchanges. In the past, secondary market participants would be able to go to one utility to request an exchange. If they did not like the price offered for the exchange, that participant could go to the other utility to determine if they could get a better price.

4.1.1.2. In the scenario of a merged utility, market participants will only be able to get one price for the service. This consolidation has the potential to increase the cost of these services for secondary market participants. Since these participants ultimately serve end-use customers, those prices increases will be passed through to Ontario customers. Consideration ought to be given to enhance reporting requirements on availability and potentially pricing to make the secondary market more efficient.

4.1.2. The Storage Market for both Short-Term and Long-Term has been Consolidated

[9] Exhibit C.FRPO.15

4.1.2.1. While we have used the example of exchange services, this concern extends to short-term storage services in Ontario. Enbridge Inc. ownership extends to 99.1% of the storage capacity in Ontario.[10] Secondary market participants rely on many short-term services such as Park and Loan, HUB and other services facilitated by storage. Once again the field of bidders goes down to one or maybe two providers (AltaGas potentially but they do not have the scale or scope of operations of AMALCO). Again any additional costs of an inefficient market will be passed on to Ontario customers.

4.1.2.2. The utilities may argue that there is a broader storage market as they advanced in NGEIR. However, when a market participant is looking for a short term service, it is often to balance their portfolio of transactions and this is usually done at the location of most of these transactions which in this case is Dawn. As can be seen Exhibit J3.3, throughput at Dawn, as measured by output from Dawn, has increased approximately 33% during the last 4 years. This is in part because Direct Purchase deliveries to Dawn have almost doubled with Enbridge opening up Dawn as a delivery point for direct purchase. All of this speaks to the importance of Dawn and the storage services that facilitate the liquidity.

4.1.3. <u>EGD Purchase of In-franchise Storage at from Union at Market Rates</u>

4.1.3.1. EGD has purchased approximately 20% of its in-franchise customers' storage requirements at market based rates. Historically, most of that storage was purchased from Union. Even if the merger does not proceed, with a common parent being the residual claimant of the margins derived from these transactions, ratepayers are concerned that there is not sufficient oversight to ensure that these transactions are in the public interest. Even if the Board were to decide that existing surplus storage capacity that Union holds for its in-franchise customers should be provided to EGD customers at cost-based rates, there still is an issue with the remaining market purchases.

4.1.3.2. As with most utilities, EGD uses an RFP process to evaluate what the market can provide to meet its needs. Recently, EGD has evidenced that they have a third party vetting the storage bids and anonymizing the bidders so that its affiliate's, Union, bid could not be favoured. Upon inquiry, at the technical conference, EGD produced an undertaking that was substantially redacted citing commercial sensitivity.[11] The matrix shows 7 companies labelled A through G and the parameters in their bid. However, even with the redactions, we believe at a very high confidence level that Union is company B due to the quantity of storage offered and the LST acronym that Union uses even on its contract numbers. We respectfully ask EGD to confirm or deny our belief in their reply.

[10] Exhibit JT2.9
[11] Exhibit JT3.16

4.1.3.3. Part of the challenge in the current situation of two affiliate utilities, this is an issue of both STAR and the Affiliate Relationships Code ("ARC"). If the utilities merge as proposed, the ARC implications go away but the problem does not. The lack of transparency on these transactions that are in the millions of dollars is a great concern to ratepayers. We would recommend that the Board address this situation during a review of the STAR to ensure that customers and markets are protected.

4.1.4. Index of Customers is Not Archived

4.1.4.1. STAR requires that utilities post a current index of customers for the storage and transportation services. In our attempts to do discovery in this proceeding and in the past, we were frustrated by the inability to see postings from past periods. Having access to the current index of customers is beneficial to understand capacity allocations and potential movement of those allocations over time. What is much more beneficial is being able to see the evolution of past indices and future contracts to the extent that they have passed initial uncertainty such as conditions precedent. This is the practice of the TransCanada pipelines.[12] In our view, this information would be very valuable to the market and ultimately to the Board.

4.1.5. Given that the STAR is a decade old and storage and transportation markets are going to change with one major Ontario utility, we respectfully submit that a review of STAR at this time is in the public interest.

5. RATE-SETTING MECHANISM ISSUES LIST

5.1. Through ratepayer collaboration, we have been privy to draft submissions by a number of representatives. While many have different variations on mechanisms that accomplish good regulatory practice and resulting ratepayer protections, we endorse and adopt the submissions of SEC. In our view, their analytical approach and eloquent proposals provide us and, we trust, ultimately the Board with insight into the deficiencies of the utilities' application while providing solutions to the issues before this Panel. FRPO would like to acknowledge formally the efforts of SEC and thank them for their leadership role in this area on behalf of all ratepayers.

5.2. The only significant addition that we firmly believe must be part of the ratemaking going forward is an additional base rate adjustment at the start of 2019 in addition to any of the proposals advanced by the utilities. By way of letter in response to the concerns of the

[12] Transcript, Volume 6, 20180528, page 137, line 27 to page 139, line 3

Consumers Council of Canada ("CCC") supported by FRPO, the Board acknowledged the potential that additional base rate adjustments may arise during the proceeding.[13]

5.3. FRPO firmly believes an additional appropriate adjustment should be made to remove PDO Reduction costs. The additional ratepayer contribution of $9.7M for the demand costs of the PDO should be removed as a base rate adjustment for Union South customers. We submit that this adjustment is just and reasonable for the following reasons:

- 5.3.1.1. The Revenue Requirement for All Existing Dawn-Parkway Assets are in Rates at the end of the IRM Term
- 5.3.1.2. Parkway Delivery Obligation Reduction Costs for Temporarily Available Capacity are Incremental to the Revenue Requirement for the Dawn-Parkway Assets
- 5.3.1.3. Dawn-Kirkwall Turnback Replaced Temporarily Available Capacity Creating Incremental Revenue
- 5.3.1.4. Framework Settlement Agreement for PDO Explicitly Intended to Keep Union Whole through IRM Period but Not to Enhance Earnings
- 5.3.1.5. Dawn-Parkway Capacity is Surplus to In-Franchise and Ex-franchise Demands
- 5.3.1.6. Forgone Revenue Presumes Demand for Service that Cannot be Met

5.4. At a high level, ratepayers paid for a surplus of Dawn-Parkway capacity in rates at the start of the IRM period. Union sold us that Temporarily Available capacity at an incremental cost through PDO Reduction costs added to rates. The capacity was already in base rates but ratepayers had to buy it again to facilitate PDO reduction.

5.5. When Dawn-Kirkwall capacity replaced the Temporarily Available capacity, that Temporarily Available capacity was sold to others generating incremental revenue, ratepayers we were still paying for it through PDO Reduction costs in rates. As each Dawn-Parkway expansion was put in service, all of the costs of the expansions were put in rates even though the builds created a growing surplus. This approach inflated the unit cost of capacity, on top of the fact that ratepayers were still paying twice for a portion of the original surplus deemed as temporarily available capacity through PDO costs in rates.

5.6. Even with the last tranche of Parkway to Dawn shift Nov. 1/17, there is an equivalent of 200 TJ of Dawn-Parkway which ratepayers are now paying for through PDO Reduction costs in rates. Since that amount is less than the 210 TJ of original surplus, ratepayers are paying twice for the 200TJ.

[13] OEB Response_CCC_ltr_20180306

5.7. To assist the Board, we provide a brief summary of the PDO Reduction Framework Agreement after which, we establish an evidentiary basis for our premises.

5.8. The Parkway Delivery Obligation describes a contractual commitment to deliver gas to Parkway on a daily basis subject to Union's approval for other arrangements. From the earliest days of Direct Purchase, those marketers or customers made that commitment to Union as a condition of being allowed to arrange their own supply upstream of Union's franchise for redelivery in the Union South franchise.

5.9. Over the past couple of decades, as the market evolved, the cost of landing gas at Parkway vs. Dawn increased to costs well above M12 rates on an annual basis and the Dawn market increased in liquidity. This prompted customers, some of whom were large customers who were situated west of Dawn, to seek relief from this historic inequity and be allowed to deliver their daily commitment quantity to Dawn. The historic inequity was that the Parkway deliveries were a mechanism to avoid building more facilities from Dawn to Parkway, which saved all ratepayers money, while the costs of the Parkway deliveries were borne by the Parkway obligated customers. For the most part, this was a subsidy from the Parkway obligated customers to the rest of Union's ratepayers.

5.10. The Settlement Framework for the Reduction of the Parkway Delivery Obligation[14] ("the Framework Agreement) was negotiated between ratepayers and Union as a mechanism to try "to rectify this inequity".[15]

5.10.1. "The ultimate objective of the modified proposal is to remedy an inequity. The guiding principle is to keep Union whole rather than to enhance or reduce its earnings during the operation of the Incentive Regulation Mechanism ("IRM") to December 31, 2018."

5.11. The initial phase of the PDO Reduction Agreement called for a prorated share of Parkway delivery obligations in the amount of 212TJ/day to be moved to Dawn being facilitated by Temporarily Available Dawn to Parkway capacity. This Temporarily Available capacity was in excess of the combined in-franchise and ex-franchise peak day needs at the time of the Agreement. It was deemed to be Temporarily Available as it had been designated to be sold in the market prior to the winter of 2015/16.[16] For the winter of 2015/16, the pre-established shift of 212 TJ/day back to Dawn would be facilitated by a combination of Dawn-Kirkwall turnback and incremental resources.[17]

[14] EB-2013-0365 Appendix B, filed June 3, 2014
[15] EB-2013-0365 Appendix B, page 1, paragraph 3
[16] EB-2013-0365 Appendix B, page 4, paragraph 2. ii
[17] EB-2013-0365 Appendix B, page 4, paragraph 2. ii & iii

The Framework Agreement specified that in-franchise customers would compensate for Union for the use of this capacity to continue to support the PDO Reduction.

5.12. Beyond the winter of 2015/16 , it was stipulated that any additional Dawn-Kirkwall turnback would be used to increase the PDO Reduction available. However, what was re-emphasized in the reporting requirements of the Framework Agreement was the principle:[18]

5.12.1. "Parties further agree that ratepayers will be entitled to recover from Union that portion of the costs incurred by Union to manage the Parkway Delivery shortfall to the extent that the cost of the measures used by Union to manage the shortfall are already covered in base rates, Y factors and/or existing deferral or variance accounts."

5.13. Through the course of the Oral Hearing and, in fact in previous proceedings, we strived to get clarity on the evolution of Dawn PDO Reduction mechanism during the IRM which included expansion of the Dawn-Parkway system. An examination of what was learned seen through the Framework Agreement leaves us with the following conclusions:

5.14. <u>The Revenue Requirement for All Existing Dawn-Parkway Assets are in Rates at the end of the IRM Term</u>

5.14.1. The Dawn-Parkway system has been expanded through the IRM term primarily due to the sourcing of natural gas from the Appalachian basin. Undertaking Exhibit J2.5 provides a summary of increases in demand and capacity during this period. Starting with the Winter of 2013/14, the Exhibit depicts that the system had a surplus capacity of 210 TJ[19]. As provided in Note (3) the costs of all of the capacity were included in base rates by being spread over demands forecasted[20]. While these rebased costs remain fixed in rates including the 210 TJ surplus, increased capital for facility builds throughout the term were layered into the Dawn-Parkway revenue requirement prior to allocation to rates.[21] As a result, the original rebased costs of the Dawn-Parkway system were increased by the average investment of incremental Dawn-Parkway facilities during the IRM period resulting in all of the costs of the system being in rates at the end of the IRM term.

[18] EB-2013-0365 Appendix B, page 6, paragraph 10
[19] While Note (3) of Exhibit J2.5 indicates the forecast surplus was approved in EB-2010-0210, it was approved as uncontested with no mention of this surplus in the decision.
[20] Transcript, Volume 6, 20180528, lines 23 to 26 confirm this approach.
[21] Schedule 4 from each Union ratemaking proceeding confirms a multiple step process to remove non-base items such as DSM, Capital Pass Throughs and PDO Reduction

5.15. PDO Reduction Costs for Temporarily Available Capacity are Incremental to the Revenue Requirement for the Dawn-Parkway Assets

5.15.1. Given the fact that the revenue requirement for all of the Dawn-Parkway assets are included in rates as described above, the question becomes: What about the revenue requirement associated with assets used for PDO Reduction? The first year of introduction of the PDO Reduction into rates was for 2015. A review of Schedule 4[22] provides the calculation of the unit rates of the respective rate classes for Union South. After the revenue requirement for each rate class has been adjusted for the price cap index, the requirement is further adjusted by the allocation of costs for the PDO Reduction[23] among other adjustments like DSM.

5.15.2. However, while costs are added for the respective in-franchise rate classes for 2015, there is no corresponding reduction to the revenue requirement to ex-franchise rate classes. In other words, the PDO incremental revenue requirement is on top of the costs for Dawn-Parkway assets already fully recovered in the Board-approved revenue requirement for in-franchise and ex-franchise customers at rebasing. Clearly, there is no additional cost that underpins this incremental adjustment and no compensating adjustment to other rates. The rate increases associated with the Temporarily Available Capacity becomes an additional revenue with no costs over and above the revenue requirement already recovered in rates.

5.15.3. This point was confirmed through Union testimony:[24]

> MS. MIKHAILA: Essentially that is the revenue Union has earned from utilizing 146 tJs of temporarily available capacity to facilitate the PDO shift in that winter. That revenue would have also been subject to earnings sharing had we been in earnings sharing that year.
>
> MR. QUINN: So said differently, what was in rates was the 5,143. The 4,463 in line 19 is only an estimate of what Union believes that has foregone as a result of the PDO shift?
>
> MS. MIKHAILA: No, I would say the 4,500,000 on line 19 is the additional revenue Union received as a result of the PDO agreement. That is because it has sold 146 TJs a day to in-franchise customers to turn their deliveries from

[22] EB-2014-0271
[23] Column (n) of Schedule 4 provides the monetary adjustment which references Schedule 20 for determination.
[24] Transcript Volume 3, 20180514, page 15 lines 13-24.

> Parkway back to Dawn. It was extra -- it was additional revenue Union has earned, but it was as a result of utilizing the 210 TJs a day we had in our cost of service.
>
> MR. QUINN: What was that additional revenue supposed to be used for?
>
> MS. MIKHAILA: It wasn't necessarily to be used for anything. It was incremental revenue to Union as a result of the PDO agreement.

5.15.4. Since those 146 TJ's[25] were part of the 210 TJ's[26] that was surplus and put into rates upon rebasing, Union essentially "sold" to in-franchise customers that which was already bought and paid for previously. This "sale" results in revenues well above "keeping Union whole" as they were already fully compensated for that capacity in rates.

5.16. Dawn-Kirkwall Turnback Replaced Temporarily Available Capacity Creating Incremental Revenue

5.16.1. In the next year, 123 TJ (146 TJ[27] minus 23 TJ[28]) of the Temporarily Available capacity was sold and that amount of PDO Reduction was provided for by 139 TJ[29] of Dawn-Kirkwall capacity with equivalency of 123 TJ[30] of Dawn-Parkway capacity. Union has asserted that, as a result, they are foregoing the revenue associated with not being able to re-sell this capacity.[31] However, this proposition is clearly incorrect when it is understood that this switching of capacity to facilitate PDO Reduction allowed Union to sell and generate M12 revenues from the 123 TJ of temporarily available capacity. Due to the continued ratepayer compensation for PDO, the 123 TJ that were sold along with 23 TJ of temporarily available still facilitating were still generating incremental revenues above the original revenue requirement already fully recovered in rates.

5.16.2. Over the next couple of years, the rest of the Temporarily Available space was sold and additional Dawn-Kirkwall turnback "facilitated" an additional increment of PDO reduction. However, since the resulting Dawn-Kirkwall permanent turnback

[25] Exhibit J2.5 Filed 2018-05-23, Attachment 1, column (b), line 8
[26] Exhibit J2.5 Filed 2018-05-23, Attachment 1, column (a), line 7
[27] Exhibit J2.5 Filed 2018-05-23, Attachment 1, column (b), line 8
[28] Exhibit J2.5 Filed 2018-05-23, Attachment 1, column (c), line 8
[29] Exhibit J2.5 Filed 2018-05-23, Attachment 2, column (b), line 1
[30] Exhibit J2.5 Filed 2018-05-23, Attachment 1, column (c), line 9
[31] Exhibit J2.5 Filed 2018-05-23, Attachment 2, column (b), line 6

of 200 TJ is still less than the 210 TJ that was put in rates, the result is that Union is only over-earning on Dawn-Parkway assets to a lesser degree in 2018.

5.17. Framework Settlement Agreement for PDO Explicitly Intended to Keep Union Whole through IRM Period

5.17.1. When ratepayers sought an agreement with Union to address the historic inequity, specific language was added to try to ensure that Union was kept whole in facilitating this rectification while ensuring ratepayers were not harmed. While explicit elsewhere in the agreement, the Annual Reporting section, intended to be the monitoring mechanism, provided this specific language:

Union will include in its annual rate case filings a report on…

(c) The measures that Union used and the costs incurred to manage the Parkway delivery shortfall (described in paragraph B.2) to acquire incremental resources, the costs of which are not already recovered in base rates, Y factors and/or existingdeferral and variance accounts.

If the costs incurred to manage the Parkway delivery shortfall component of the PDO reduction in any year are less than the annual demand costs related to the shortfall in that year and actual fuel costs in that year for capacity equal to the shortfall capacity, then the entire amount of such cost savings will accrue to Union.

Conversely, if the actual costs in any year to manage the Parkway Delivery shortfall in that year exceed annual demand costs and actual fuel costs in that year for capacity equal to the shortfall amount, then Union will be entirely responsible for those excess costs.[1] Parties further agree that ratepayers will be entitled to recover from Union that portion of the costs incurred by Union to manage the Parkway Delivery shortfall to the extent that the cost of the measures used by Union to manage the shortfall are already covered in base rates, Y factors and/or existing deferral or variance accounts.

5.17.2. In the 2017 Rates proceeding, FRPO requested more fulsome answers to interrogatories seeking information to understand how the PDO Reduction was provided[32]. Some information was provided very late in that process and added to the Settlement Agreement. But the full picture was not clear yet.

[32] EB-2016-0245 Requests for More Fulsome Responses to IR's and Supplemental Information submitted by FRPO, Nov. 13/16

5.17.3. The issue was pursued further in the 2018 Rates proceeding but the answers were not clear and have evolved. With more complete information and explanations coming through this Oral Hearing, we can now state as a matter of evidence, that no incremental resources were required[33] and therefore the PDO Reduction has been facilitated by the Dawn Parkway system recovered in base rates at the outset of the IRM term and by Y factors, specifically the capital pass through from incremental builds. As a result, ratepayers may be entitled to recover from Union those costs. More specific to this proceeding, these costs ought to be removed at the end of the current IRM period as a base rate adjustment prior to any deferred rebasing. This is particularly true when the Dawn-Parkway capacity is surplus to the demands of in- and ex-franchise customers.

5.18. Dawn-Parkway Capacity is Surplus to In-Franchise and Ex-franchise Demands

5.18.1. At the outset of the PDO Framework, Union anticipated managing the shift of 212 TJ/day primarily through Temporarily Available or surplus capacity and incremental resources. In spite of having the coldest February in decades, as outlined above, Union did not acquire any incremental resources in the first year.

5.18.2. In the following year, the primary capacity utilized for PDO reduction was Dawn-Kirkwall capacity[34] that was turned back that was "allocated" to the PDO Reduction. But that turned back capacity is just another form of surplus capacity. Union could not sell contracts for all the capacity it had after the 2015 build as evidenced by the fact that while the forecast predicted a shortage, Union testified that there was, in fact, a surplus.[35] Therefore, Union could not sell the capacity even for the winter. More importantly, that Dawn-Kirkwall capacity was provided by assets that were in the original Dawn-Parkway system assets at the outset of rebasing and therefore their costs were recovered in base rates[36].

5.18.3. What is more telling is that, while we do not have a specific figure for the amount of surplus for the winter of 2015/16, it was likely the tightest demand/capacity balance of the IRM years. And yet, Union did not even contract for a winter peaking service[37] to ensure it could meet Design Day conditions. A prudent utility

[33] EB-2017-0087, Exhibit B.FRPO.8
[34] Exhibit J2.5 Attachment 1, column (c), line 9
[35] Transcript Volume 3, page 19, line 4 to page 20, line 18
[36] M12 Customers must provide 2 year notice so Dawn-Kirkwall capacity expiring before the winter of 2015/16 would have been part of the capacity on the system in 2013/14
[37] Where a utility does not have a strong level of certainty to meet Design Day with its own supply and assets, the next logical choice is to enter into a Winter Peaking Service which is contract that provides the utility a call option on a certain quantity of gas at a certain location for a maximum set number of days in the winter period.

would not expose its customers to that level of security of supply risk unless it had confidence in its existing assets to be able to manage almost all extreme conditions.

5.18.4. For the winter of 2017/18, a surplus of 106 TJ was evidenced by Union.[38] This surplus is anticipated to increase as a number of M12 contracts are end-dated for October 31, 2018. Using the Index of Customers from the Union Gas website[39], it is evident that an additional 160 TJ (see extracted Table 1 below) is scheduled for termination as its end date has not been extended.[40]

TABLE 1

Customer Name	Contract Identifier	Receipt Point	Delivery Point	Quantity (GJ)	Start Date	End Date
1425445 Ontario Limited o/a Utilities Kingston	M12127	Dawn	Parkway	2,113	01-11-08	18-10-31
TransCanada Power, a Division of TransCanada Energy Ltd.	M12131	Dawn	Parkway	70,009	01-11-09	18-10-31
Mercuria Commodities Canada Corporation	M12262	Dawn	Parkway	44,019	01-11-16	18-10-31
Mercuria Commodities Canada Corporation	M12263	Dawn	Parkway	43,837	01-11-16	18-10-31
TOTAL				159,978		

5.19. Forgone Revenue Presumes Demand for Service that Cannot be Met

5.19.1. Union has recently emphasized this concept of forgone revenue as a result of providing the PDO Reduction.[41] Forgone revenue presumes a refraining from selling the space. To refrain, there would need to be a request that was turned away as a result of insufficient capability. That is clearly not the case in this instance. Given Union's clarification of a surplus position of capacity over demand for the winter of 2015/16[42], it is a matter of evidence that there was a surplus of capacity throughout the entire IRM period. In other words, there was no request for capacity that could not be met by the assets that were in place for each winter. Therefore there was no request for Long-Term service that could not be met and therefore foregone revenue, calculated at the annual M12 rate is not an appropriate measure.

[38] Exhibit J2.5 Attachment 1, column (e), line 7
[39] Exhibit K6.2, FRPO Compendium 3, pages 11-12
[40] M12 customers must provide two years notice to Union to terminate contracts
[41] Exhibit J2.5 Attachment 1, lines 18-20 and Attachment 2
[42] Transcript Volume 3, page 19, line 4 to page 20, line 18

5.19.2. This concept extends to Union's ability to sell services short term. Through inquiry in the 2018 Rates proceeding regarding the appropriateness of PDO with the addition of Dawn-Parkway capacity, Union stated:[43]

> *"The guiding principle of the PDO Settlement Agreement is to keep Union whole rather than enhance or reduce its earnings during the operation of the IRM. Including the PDO costs in 2018 Rates ensures Union is kept whole because the Dawn to Parkway capacity used to facilitate the PDO reduction is capacity that could otherwise be sold in the S&T markets as short term transportation revenue."*

5.19.3. However, it is clear that there was a surplus of capacity that was not sold long-term, Union's preference,[44] and therefore would be available for sale short-term or as Interruptible Transport. FRPO inquired about the sales of short-term and interruptible transport[45]. The response provides that Union sold short-term and IT each and every month of the first 3 years of PDO implementation generating revenue in the tens of millions of dollars. Further, they stated that they did not have to turn away any requests for IT during the last four years.[46]

5.20. In summary, the PDO Reduction has allowed Union to over-earn on its rate of return of the Dawn-Parkway system not including the Short-Term and IT sales by facilitating the PDO Reduction by reselling surplus Dawn-Parkway capacity back to ratepayers since 2015. We respectfully submit that, to the extent that the Board approves any deferral of rebasing that this over-earning calculated as $9.726[47] million for 2018 be removed as a base rate adjustment.

5.21. In the alternative, if the Board is not satisfied that there is sufficient evidentiary basis, we respectfully request that the Board order Union to file sufficient evidence detailing the costs and recoveries of the Dawn-Parkway system throughout the IRM period to justify the inclusion of PDO Reduction costs beyond the Dec. 31, 2018 date explicit in the Framework Agreement.

5.22. Further, FRPO would like to bring a concern to the Board's attention. Through several unsuccessful attempts to understand treatment of PDO Reduction costs, we have been unable to receive timely and full disclosure of the information. Drawing from a historic decision from the Board, we respectfully submit that the utility has an obligation

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[43] EB-2017-0087, Exhibit B.FRPO.10
[44] Transcript Volume 3, page 18, lines 18-24
[45] EB-2017-0091, Exhibit B.FRPO.6
[46] EB-2017-0091, Exhibit B.FRPO.11
[47] Exhibit J2.5 Attachment 1, column (e), line 15

to ensure that the Board is provided sound evidence in establishing just and reasonable rates:[48]

> *"The Company has an affirmative obligation to provide the Board with the best possible evidence and it is not incumbent on the intervenors to ensure, through cross examination of the Company's witnesses, that the record is adequate and complete. The Company cannot shirk its responsibilities as a regulated entity by submitting evidence that is vague and incomplete."*

5.23. In our view, the company has not met this obligation in this matter of the PDO reduction costs.

6. **CONCLUSION**

6.1. In our respectful submission, due to the scale, scope and complexity of these matters, FRPO sees this as a landmark decision for the Board. We thank the Board for adding additional time throughout the proceeding to facilitate additional discovery for the benefit of the record and we believe the public interest. We also thank our colleagues for the collaboration that allowed many hands to make lighter work and create efficiencies.

ALL OF WHICH IS RESPECTFULLY SUBMITTED ON BEHALF OF FRPO,

Dwayne R. Quinn
Principal
DR QUINN & ASSOCIATES LTD

[48] RP-1999-0001 Decision, paragraph 4.5