October 19, 2018

Ms. Kirsten Walli
Board Secretary
Ontario Energy Board
2300 Yonge Street, 27th Floor
Toronto, ON M4P 1E4

Dear Ms. Walli:

RE: EB-2018-0105 - Union Gas Limited - 2017 Disposition of Deferral Account Balances and 2017 Utility Earnings – Reply Argument

Pursuant to Procedural Order No.2 in the above noted proceeding, please find attached Union Gas Limited's reply argument.

If you have any questions concerning this submission please contact me at 519-436-5334.

Yours truly,

[Original Signed by]

Vanessa Innis
Manager, Regulatory Applications

c.c.: Crawford Smith (Torys)
Lawrie Gluck (OEB)
Michael Millar (OEB)
EB-2018-0105 Intervenors

EB-2018-0105

ONTARIO ENERGY BOARD

IN THE MATTER OF an Application by Union Gas Limited for disposition and recovery of certain 2017 deferral account balances and approval of the earnings sharing amount.

REPLY ARGUMENT OF UNION GAS LIMITED

A. Overview

1. On June 6, 2018, Union Gas Limited ("Union") filed an application with the Ontario Energy Board (the "Board") for approval to dispose of and recover certain 2017 deferral account balances. In the same application, Union advised that its 2017 actual utility earnings did not exceed the threshold established in Union's 2014-2018 Incentive Regulation framework and therefore there were no earnings to share with ratepayers.

2. In Procedural Order No. 2, the Board established a schedule for argument in this matter. Pursuant to that Order, Union received argument from the following parties: Board Staff, BOMA, CCC, Energy Probe, FRPO, IGUA, Kitchener Utilities, LPMA, OGVG, SEC and VECC. These parties made submissions primarily with respect to the following deferral accounts:

- Account No. 179-138 Parkway Obligation Rate Variance Account
- Account No. 179-144 Lobo D/Bright C/Dawn H Compressor Project Costs
- Account No. 179-151 OEB Cost Assessment Variance Account

3. This is Union's reply argument. It addresses only those accounts in respect of which submissions were received expressing disagreement with Union's proposed disposition or recovery. In relation to all other accounts, parties either took no position or agreed with Union.

The argument also briefly comments on the calculation of utility earnings and the timing of disposition of the deferral account balances.

4. For the reasons set out below, Union submits that its application should be approved by the Board as filed.

B. Response to Board Staff and Intervenor Submissions

Account No. 179-138 Parkway Obligation Rate Variance Account

5. The balance in this deferral account is a credit to ratepayers of $0.121 million. In the 2014 Rates Settlement Agreement (EB-2013-0365), parties agreed to permanently shift the Union South Direct Purchase ("DP") Parkway Delivery Obligation ("PDO") to Dawn over time and agreed to the payment of a Parkway Delivery Commitment Incentive ("PDCI") for any continuing obligated Daily Contract Quantity deliveries at Parkway beginning November 1, 2016. As part of the Settlement, Union agreed to record rate variances associated with the timing differences between the effective date of the PDO and PDCI changes and the inclusion of the cost impacts in approved rates in the Parkway Obligation Rate Variance Deferral Account. This is the only purpose of the account.

6. Union adjusted rates effective January 1, 2018 to reflect the PDO shift to Dawn by DP customers of 54 TJ/d and the reduction in obligated deliveries at Parkway by sales service customers of 8 TJ/d. To account for the actual effective date of November 1, 2017, Union is proposing to refund $0.121 million to ratepayers for the November 1, 2017 to December 31, 2017 period.

7. Exhibit A, Tab 1, Appendix A, Schedule 8 provides the calculation of the Parkway Obligation Rate Variance Deferral Account balance. The calculation of the deferral account balance is consistent with the 2014 Rates Settlement Agreement. With the exception of FRPO, all parties either agree with or have not opposed the calculation of this amount.

8. The following parties made submissions in relation to the account: IGUA, SEC, Energy Probe, Kitchener Utilities, BOMA and FRPO.[1]

9. IGUA and SEC agree with Union that (1) the appropriate balance in the account is a credit to ratepayers of $0.121 million, which (2) should be disposed of on a final basis.[2] Those intervenors recognize the limited purpose of the account. As SEC says, the "Parkway Obligation Rate Variance simply records variances associated with the timing differences between the effective date of the PDO changes in a given year (November 1st) and the inclusion of costs in rates (the following January 1st)."[3]

10. Energy Probe argues that the account should not be cleared pending review of the PDO, and Kitchener Utilities supports this position.[4]

11. Likewise, despite agreeing with Union's calculation of the balance in the account, BOMA argues that the account either should not be cleared or should only be cleared on an interim basis. Its stated rationale is that there is disagreement between "some intervenors" and Union over whether ratepayers may have overpaid for "the capacity required to implement the Parkway Delivery Obligation."[5]

12. Respectfully, while Union disagrees with the suggestion that ratepayers have overpaid for anything (let alone the PDO), this disagreement has nothing to do with Account No. 179-138. Energy Probe, Kitchener Utilities and BOMA all overlook the fact that amounts relating to the PDO have already been approved by the Board for inclusion in rates for 2017 and 2018.[6] Delaying disposition of the credit to ratepayers does not change this fact. The account simply trues-up the PDO amounts in rates to the effective date of the underlying PDO changes.

---

[1] Board Staff, CCC, LPMA and VECC each indicated their submissions were directed at only those accounts where they disagreed with Union. As Account No. 179-138 Parkway Obligation Rate Variance Account was not identified as an area of disagreement, Union understands that those parties agree with Union's proposed disposition.

[2] SEC submission, p. 3; IGUA submission, pp. 1-2.

[3] SEC submission, p. 3.

[4] Energy Probe submission, p. 3; Kitchener Utilities submission, p. 1.

[5] BOMA submission, p. 2.

[6] EB-2016-0245, Decision and Rate Order; EB-2017-0087, Decision and Rate Order.

13. For its part, FRPO makes a different, though not new argument. Its argument is abusive of the Board's process. Rather than engage in a discussion regarding Account No. 179-138 and the correct balance in that account, FRPO simply repeats, almost verbatim, the argument it made in the recent Union and Enbridge Gas Distribution MAADs proceeding (EB-2017-0306/EB-2017-0307). So similar are the arguments that Union has run a blackline between them. It is attached as Appendix A. As evident there, the only real difference between the two arguments is that FRPO has lowered its demand for a credit to ratepayers from $9.7 million to $5.014 million, while adjusting its original request of a base rate adjustment to be a deferral account credit. [7] In fact, even if the two arguments were not duplicative, it is apparent that FRPO's argument here has nothing to do with the deferral account at issue. This is plain from the references contained in FRPO's argument on Account No. 179-138, <u>none</u> of which point to evidence filed in this case.

14. The Board made a decision in the MAADs proceeding in response to FRPO's argument. The Board ordered Amalco to track the actual costs and amounts recovered through rates related to the PDO during the deferred rebasing period for review at the time of rebasing, which is expected to occur in 2024. The Board did not invite the parties to re-litigate the issue at the first available opportunity and FRPO's efforts should be rejected. However, in the unlikely event the Board does want to hear from the parties again, Union has attached as Appendix B its own argument from the MAADs proceeding on the issue of PDO (Paragraphs 200 – 216) and relies on that argument.

15. FRPO's argument regarding Union's willingness to provide information is also unfounded. At paragraph 1.21 of its submission, FRPO again claims that it "has been unable to receive timely and full disclosure" of information. Yet, FRPO fails to point to a single interrogatory, question asked at a technical conference, cross-examination question or undertaking that Union has refused to answer, in full. Union has demonstrated its commitment to responding to FRPO's repeated inquiries on the subject of PDO in this proceeding

[7] Union understands the now lower $5.014 million request is derived from an attempt to calculate the 2017 PDO demand costs associated with the PDO shift of customers without M12 service, rather than FRPO's original $9.726 million request in the MAADs proceeding for the full amount of PDO demand costs included in 2018 Rates. Union has not confirmed the mathematical accuracy of FRPO's requested adjustments, which were only provided to Union in FRPO's final submission and are not relevant to Union's requested relief in this proceeding.

(notwithstanding Union's expressed view that the inquiries were irrelevant to the issues).[8] FRPO's claim otherwise lacks any substance.

Account No. 179-144 Lobo D/Bright C/Dawn H Compressor Project Costs

16. In the EB-2015-0200 Settlement Proposal, parties agreed to the establishment of the Lobo D/Bright C/Dawn H Compressor Project Costs Deferral Account. Its primary purpose was to track the differences between the actual revenue requirement related to costs for the Lobo D/Bright C/Dawn H Compressor Project and the revenue requirement included in rates. In its EB-2015-0200 Decision, the Board deferred approval of the account to Union's 2016 IRM Rates proceeding, where the Board ultimately approved establishment of the account.[9]

17. The balance in the account is a debit from ratepayers of $4.912 million plus interest as of December 31, 2017 of $0.006 million, for a total of $4.918 million. The balance of $4.912 million is substantially the result of a debit of $4.9 million which represents the difference between the $6.758 million of costs included in 2017 rates (EB-2016-0245) and the calculation of the actual revenue requirement for 2017 of $11.658 million as shown in Table 20 of Exhibit A, Tab 1. The 2017 difference is mainly due to earlier in-service dates for assets than the forecast included in 2017 rates.[10]

18. The remaining $0.012 million debit is comprised of two adjustments related to 2016: one for an interest rate true-up, and the other related to capital expenditures.[11]

19. The balance of $4.912 million (plus interest) is not at issue in this proceeding. Rather, at issue is whether there should be a credit to the account related to revenues associated with the sale of surplus capacity on the Dawn-Parkway system. In Union's submission, there should not be. Board Staff and intervenors say that there should.

20. SEC and VECC argue that the credit should be based on revenues associated with the sale of long-term capacity.[12] Other parties propose that the credit should be based on revenues

---

[8] EB-2018-0105, Exhibit B.FRPO.1 (Updated), p. 3.
[9] EB-2015-0200, Decision and Order, p. 6; EB-2015-0116, Decision and Order, p. 4.
[10] EB-2018-0105, Exhibit A, Tab 1, p. 51.
[11] EB-2018-0105, Exhibit A, Tab 1, p. 51.
[12] SEC submission, p. 2; VECC submission, p. 4.

generated from the sale of all surplus capacity on the Dawn-Parkway system multiplied by the proportion of the total Dawn-Parkway system surplus the Lobo D/Bright C/Dawn H project created.[13] This is in the amount of 30,393 GJ/d[14] and implies that a proportional allocation of Union's 2017 C1 Short Term Transportation revenue of $8.318 million be made to the deferral account.[15]

21. Resolution of the issue turns on the interpretation of the Board-approved Settlement Proposal in EB-2015-0200.

22. In Union's submission, properly interpreted, the Settlement Proposal provides for a credit only where Union has sold the 30,393 GJ/d associated with the Lobo D/Bright C/Dawn H project. As this did not happen – Union's actual Dawn to Parkway surplus for winter 2017/2018 was in excess of 30,393 GJ/d (i.e. demands on the system were lower than forecast in the Lobo D/Bright C/Dawn H proceeding, creating additional surplus capacity in excess of the 30,393 GJ/d associated with the project) – no credit should be made to the account.[16]

23. By way of relevant background, in EB-2015-0200, Union applied for pre-approval of the cost consequences of the Lobo D/Bright C/Dawn H project. Following interrogatories and a technical conference, Union and intervenors entered into a Settlement Proposal. Under Issue 1, whether the proposed facilities were needed, parties advised the Board as follows:

> As described at A/T8, upon the completion of the proposed facilities <u>Union expects to be in a slight surplus capacity position of 30,393 GJ/d on the Dawn Parkway System, as a result of the "lumpy" nature of transmission capacity expansions</u>. This represents less than one-half percent of the total Dawn Parkway System capacity. Despite the 2015 and 2016 Dawn to Parkway builds, Union forecast a slight shortfall in capacity in each of 2015 and 2016. Union does not know how long the Dawn Parkway System will be in a surplus position following the in service date of the Project. As stated in B.TCPL.2 f), <u>Union will actively market the surplus capacity in accordance with the Storage and Transportation Access Rule ("STAR"), starting with a new capacity open season for service commencing November 1, 2018, and the parties agree that the revenues from</u>

[13] Board Staff submission, pp. 3-4; BOMA submission, p. 5; CCC submission, p. 2; Energy Probe submission, p. 3; FRPO submission, pp. 11-13; IGUA submission, pp. 2-3; Kitchener Utilities submission, p. 1; LPMA submission, pp. 2-4; OGVG submission, p. 1.

[14] EB-2018-0105, Exhibit A, Tab 1, p. 51.

[15] EB-2018-0105, Exhibit A, Tab 2, Appendix A, Schedule 11, column (c), line 10.

[16] EB-2018-0105, Exhibit A, Tab 1, pp. 51-52.

> such marketing will be credited to the proposed Dawn H/Lobo D/Bright C Compressor Project Costs Deferral Account. As well, the surplus capacity could be used to eliminate a portion of the Parkway Delivery Obligation, though no such determination has as yet been made.[Emphasis added.][17]

24. The parties' agreement with respect to the revenues arising from the marketing of the 30,393 GJ/d of surplus capacity was further documented later in the Settlement Proposal under Issue 10, whether the proposed deferral account (ultimately, the account at issue) was appropriate:

> The parties agree the 2017 Dawn Parkway System Expansion Deferral Account is appropriate … In the interest of Settlement, Union will include in the deferral account balance a credit of $1.34 million related to the 30,393 GJ/d of surplus capacity. As addressed at B.ANE.18, the $1.34 million is the maximum annual revenue that could be realized from the sale of long-term firm surplus capacity effective November 1, 2017 (30,393 GJ/d x $0.121/GJ/d x 365 days). Variances in the actual revenue generated from the surplus capacity to the $1.34 million will also be recorded in the deferral account, and will be subject to review at the time of disposition of the account. The account is symmetrical, meaning that it will capture both positive and negative variances in actual revenue generated from the surplus capacity relative to the $1.34 million to be included as a credit in the deferral account.[Emphasis added.][18]

25. As set out above, the Settlement Proposal followed interrogatories and a technical conference. Relevant to the interpretation of the above provisions of the Settlement Proposal, it is apparent from the evidence that two issues were important to the parties at the time:

(1) how the surplus capacity of 30,393 GJ/d would be marketed and what the maximum revenue associated with that capacity could be; and,

(2) how any revenue associated with the capacity would be treated by Union.

26. On the first issue, Union advised that it would market the capacity pursuant to the Board's Storage and Transportation Access Rule ("STAR").[19]

---

[17] EB-2015-0200, Settlement Proposal, p. 8.
[18] EB-2015-0200, Settlement Proposal, pp. 23-24.
[19] EB-2015-0200, Exhibit B.TCPL.2 f).

27. On the second issue, Union advised that revenue would be treated in the same manner as other transmission revenue; that is, as utility earnings subject to sharing:

> DR. HIGGIN: Okay. So the second question, the follow-up which you would expect is Union indicates in its evidence that it is going to market this surplus. What happens to the costs -- the revenues, sorry, from the marketing of that surplus or any other surplus that may arise?
>
> MR. TETREAULT: So if we are able to market the surplus between the time the facilities are in-service and, let's say, rebasing, 14 months, that would be transmission revenue, of course. So it would form part of -- it would be utility revenue and would form part of utility earnings and, therefore, be subject to the earnings sharing mechanism as part of IRM.
>
> DR. HIGGIN: Thank you. So the fact is, then, that any revenue generated will go to utility earnings, and depending on how the IRM ESM works, as you have just said, the IRM ESM ratepayers may or may not get some of that revenue. Correct?
>
> MR. TETREAULT: That's correct.[Emphasis added.][20]

28. Both issues were addressed in the Settlement Proposal. With respect to the first issue, it was captured expressly. As set out above, the Settlement Proposal provides, "Union will actively market the surplus capacity in accordance with the Storage and Transportation Access Rule ("STAR"), starting with a new capacity open season for service commencing November 1, 2018." With respect to the second issue, the parties agreed, as a compromise, to stream any revenues arising from the sale of the surplus capacity created by the project directly to the deferral account, rather than have those revenues be subject to the earnings sharing mechanism. Again, as the Settlement Proposal provides, the parties agreed to include a credit in the deferral account equal to the maximum amount of revenue that could arise from the sale of the surplus capacity ($1.34 million) recognizing that, ultimately, this credit may not materialize and would be adjusted accordingly (i.e. that the account would be "symetrical"). That is what Union has done.

29. In simple terms, having regard to the relevant background and the words of the Settlement Proposal, the parties' intention was to flow the benefits generated from the surplus

---

[20] EB-2015-0200, Technical Conference Transcript, October 15, 2015, p. 13, lines 7 – 25.

capacity created by the project to ratepayers, rather than have those benefits be subject to earnings sharing.

30. Contrary to intervenor submissions now, the parties did not agree to a credit in the deferral account regardless of whether or not Union was actually able to sell the capacity that had been created by the project. It is wrong, and the Settlement Proposal does not support the suggestion that the parties agreed that a proportionate share of all revenues (or even those only arising from short-term sales) would be captured in the deferral account. Indeed, the Settlement Proposal contains no wording to that affect.

31. With respect to the submissions by SEC and VECC regarding the sharing of long-term revenue created by the Lobo D/Bright C/Dawn H project, no such revenue has been earned. Union's surplus is greater now than forecast at the time of the EB-2015-0200 Settlement Proposal, which evidences the fact that no incremental long-term contracting of surplus capacity has occurred. Further, Union bears the risk for the loss of revenue arising from the turnback of capacity included in rates while ratepayers continue to receive the benefit from these billing determinants through lower rates.

32. With respect to the arguments made to include revenues from the sale of short-term transportation, Union's 2013 Board-approved revenue forecast already included short-term transportation revenue of $11.067 million[21], the margin from which is already included as a credit in Union's 2017 In-franchise rates.[22] The implication of intervenor and Board Staff submissions is that Union, while earning only $8.318 million in actual short-term transportation revenue in 2017 compared to the $11.067 million credited in rates, should be required to credit a portion of this revenue again through the deferral account. While Union submits that proportionally allocating its C1 Short Term Transportation revenue was not the intent of the EB-2015-0200 Settlement, it is certainly not justified if a higher amount has already been included for the benefit of In-franchise ratepayers in base rates. There can be no requirement to confer this benefit twice.

[21] EB-2018-0105, Exhibit A, Tab 2, Appendix A, Schedule 11, column (a), line 10.
[22] EB-2016-0245, Rate Order, Working Papers, Schedule 13, column (f).

33. In the result, it is Union's position, consistent with the Settlement Proposal, that as no revenue was earned from the sale of the capacity created by the project, there should be no credit in the deferral account.[23] Union should not be required to credit revenue that does not exist or that was outside the intent of the Settlement Proposal. Going forward, Union will continue to market its surplus capacity and determine whether revenue has been earned from the sale of capacity that will be credited to the deferral account.

34. However, should the Board direct an allocation of Union's short-term transportation revenue be made to the deferral account (which Union submits would be grossly inappropriate), Union submits any such allocation should only be based on: (1) amounts earned since the in-service date of the Lobo D/Bright C/Dawn H project; (2) amounts that are incremental to amounts already credited to ratepayers; and (3) amounts earned on Dawn-Parkway system paths where the Lobo D/Bright C/Dawn H project has provided incremental capacity.[24]

Account No. 179-151 OEB Cost Assessment Variance Account

35. The balance in this deferral account is a debit from ratepayers of $1.159 million plus interest as of December 31, 2017 of $0.008 million, for a total of $1.167 million.

36. On February 9, 2016, the Board issued a letter to Regulated Entities subject to the Board's Cost Assessment notifying stakeholders of changes to the Board's Cost Assessment Model. As part of these changes, the Board established a variance account to record any differences between Board cost assessments currently built into rates, and cost assessments that will result from the application of the new cost assessment model effective April 1, 2016.

37. Entries to the account are made on a quarterly basis, when the Board's cost assessment invoices are received. In Union's Board-approved rates, there is $2.5 million in Board cost assessment amounts. In 2017, the total amount of cost assessment invoices was $3.659 million, resulting in a variance of $1.159 million.[25]

[23] EB-2018-0105, Exhibit A, Tab 1, pp. 51-52; Exhibit B.Staff.13 b).

[24] This would exclude paths west of Dawn or paths moving westerly on the Dawn-Parkway system.

[25] EB-2018-0105, Exhibit A, Tab 1, p. 63.

38. All parties oppose Union's proposed disposition of the balance in this account.[26] In the main, their submissions can be distilled to the assertion that the balance is not material; that is, they say, below Union's company-specific materiality threshold (for Z-factor purposes) of $4 million. In support of this position, parties point to the following statement by the Board in its February letter: "Regulated entities are reminded that, in the normal course, any disposition of deferral account and variance account balances must meet any Board default or company-specific materiality thresholds."[27] Board Staff and CCC also note that Union agreed to not recover the 2016 balance in this account.[28]

39. Alone, VECC argues that the balance in the account should not be disposed of because the account is only intended for variances "which are caused by the change from a revenue based allocation to a customer allocation."[29] VECC further states that since Union is not rebasing, it should not be allowed to dispose of the account at this time.[30]

40. It is Union's submission that there is nothing in the Board's letter or the relevant accounting order which precludes disposition of the balance in the account.

41. Dealing first with materiality, Union has not sought Z-factor treatment in relation to the assessments it is subject to from the Board. The reference to the materiality threshold for Z-factor treatment is therefore inapposite.

42. Even if a materiality threshold does apply, it must be the threshold for new deferral accounts. As pointed out by Board Staff, this figure is $1 million. And, while Board Staff argues that the natural gas filing requirements that contain this same threshold post-date the Board's February 2016 letter, this submission overlooks the fact that the filing guidelines then in place for electricity distributors, which could be looked to for guidance, contained the same materiality threshold of $1 million.

---

[26] Board Staff submission, p. 6; BOMA submission, p. 4; CCC submission, p. 2; Energy Probe submission, p. 3; FRPO submission, p. 14; IGUA submission, p. 3; Kitchener Utilities submission, p. 1; LPMA submission, p. 4; OGVG submission, p. 1; SEC submission, p. 1; VECC submission, p. 2.

[27] Letter of the Board, Re: Revisions to the Ontario Energy Board Cost Assessment Model, dated February 9, 2016, p. 2.

[28] Board Staff submission, p. 6, CCC submission, p. 2.

[29] VECC submission, p. 3.

[30] VECC submission, p. 4.

43. With respect to VECC's submission that the account balance should only be based on variances due to the change in methodology, nothing in the Board's February 9, 2016 letter or Union's Account No. 179 - 151 accounting order supports this position. Moreover, as Union stated in response to interrogatories, VECC's positon is practically unworkable as the forecast built into rates was based on prior experience rather than the stand-alone application of the Board's former model. [31] In addition, the Board no longer issues cost assessment invoices under the former model, which Union would require in order to ascertain what the allocation difference between the models would be using the Board's present costs.

44. VECC's second argument that disposition be denied because Union is not in a rebasing year also should also be rejected. It would be unreasonable for Union, and detrimental to ratepayers, to accumulate balances in this deferral account until Union's next rebasing application, which is now expected in 2024, compared to Union's proposal to dispose of the balance annually through Union's pre-existing non-commodity deferral account proceeding. This delayed approach would result in the accumulation of potentially seven years' worth of OEB cost assessment variances and related interest costs, to then be levied upon ratepayers in a single year if approved for disposition. Union would also have to absorb the variance annually until potentially recovering it upon rebasing. This is not a preferable or desirable outcome for Union or ratepayers.

45. As to the suggestion that recovery now should be denied because Union agreed last year to forego recovery, this too lacks any force. Quite apart from the fact that the 2016 Deferrals Settlement Agreement reflected a comprehensive package of trade-offs, the Agreement expressly provides that it is without prejudice to position parties (including Union) might take in future proceedings.[32]

46. The Board's prior Decisions approving the disposition of accounts of this nature are also informative. From 2004 to 2006, Union had Account No. 179-114 Incremental OEB Cost Assessment. The purpose of the account was to capture the difference between the actual payments made in respect of OEB cost assessments and the costs included in rates as approved

[31] EB-2018-0105, Exhibit B.VECC.10.

[32] EB-2017-0091, Settlement Proposal, Updated August 28, 2017, p .5.

by the Board.[33] The Board approved Union's request to dispose of the balance in the account each year from 2004 to 2006 until the account was closed upon Union's rebasing in 2007.[34]

47. Ultimately, in Union's submission, it is important to step back and view the costs at issue in the account in context. They are beyond Union's control – it can do nothing to mitigate, avoid or delay the costs. Moreover, the costs are entirely for the benefit of ratepayers. They reflect the cost associated with regulation by the Board. Utilities, such as Union, subject to Board oversight should be able to recover the costs of such oversight from the customers who benefit from utility service.

48. Likewise, it is important to view intervenor submissions in context. In this proceeding, Union is seeking clearance of some 20 deferral or variance accounts. The balances in these accounts ranges from approximately $8 thousand to $11.1 million and reflect a mix of debits and credits.[35] The net balance is a debit of just $2.2 million, including interest as at December 31, 2017. Yet, no party has taken the position that Union should not be entitled to recover or dispose of the balance in any account on the basis of materiality other than the balance in Account No. 179-151. Indeed, they have taken the opposite position. For example, Union has proposed 10 deferral accounts with credits to ratepayers, totaling approximately $19.0 million.[36] Of these accounts, eight (totaling approximately $8.5 million) have individual balances of less than $4.0 million. Nevertheless, no party has argued that these amounts should not be disposed of to ratepayers due to materiality. Account No. 179-151 should not receive special treatment in this regard.

Earnings Sharing Mechanism

49. Union's utility earnings in 2017 did not exceed the threshold established in Union's 2014-2018 Incentive Regulation proceeding. As a result, there is no sharing of earnings with ratepayers. This is so whether or not the costs incurred by Union in relation to the merger of

---

[33] EB-2007-0598, Exhibit A, Tab 1, p. 22.
[34] EB-2005-0211, Interim Decision and Order, p. 3; EB-2006-0057, Decision and Order, p. 7; EB-2007-0598, Decision and Order, p. 11.
[35] EB-2018-0105, Exhibit A, Tab 1, Appendix A, Schedule 1.
[36] EB-2018-0105, Exhibit A, Tab 1, Appendix A, Schedule 1.

Spectra Energy Corp. and Enbridge Inc. are included in utility earnings.[37] Accordingly, while some parties have questioned the appropriateness of including these, there is no need for the Board to make a decision in this respect.[38]

50. Nevertheless, for completeness, it is Union's position that the costs should be included. This is because, under the existing Incentive Regulation framework, the savings received by Union arising from the merger (some $3.7 million) have also been reflected in utility earnings.[39] Plainly, it would be inappropriate to exclude the costs while including the savings.

C. Timing of Disposition

51. Union proposes to update rates as part of the next available QRAM application following the date of the Board's Decision and Final Rate Order in this proceeding. Union has proposed an implementation date of January 1, 2019. Upon receipt of a Board Decision, Union confirms it will update account balances to reflect interest up to the disposition date and include these balances with the filing of its Draft Rate Order. Union respectfully requests a timely Board Decision on this matter in order to meet its proposed timeline. Union would require an approved Final Rate Order by the first week of December 2018, otherwise, Union expects implementation would be delayed to the April 1, 2019 QRAM.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

Crawford Smith, Torys LLP

Lawyers for Union Gas Limited

---

[37] EB-2018-0105, Exhibit B.Staff.16, Attachment 1.

[38] Board Staff submission, pp. 8-9; BOMA submission, pp. 4-5; Energy Probe submission, p. 4; IGUA submission, pp.3-4; Kitchener Utilities submission, p. 1; OGVG submission, p. 1; SEC submission, p. 3; VECC submission, p. 4.

[39] EB-2018-0105, Exhibit B.Staff.16.

Appendix A

~~any of the proposals advanced by the utilities. By way of letter in response to the concerns of the Consumers Council of Canada ("CCC") supported by FRPO, the Board acknowledged the potential that additional base rate adjustments may arise during the proceeding.~~[13]

1.1 ~~5.3~~ FRPO firmly believes an additional appropriate adjustment should be made to ~~remove~~**recover** PDO Reduction costs. The ~~additional~~**portion of the** ratepayer contribution of $~~9.7~~**5.014**M for the demand costs of the PDO ~~should be removed as a base rate adjustment for~~**facilitated surplus capacity starting with 146TJ of Temporarily Available Capacity should be returned to** Union South customers. We submit that this adjustment is just and reasonable for the following reasons:

- **1.1.1** ~~5.3.1.1~~ The Revenue Requirement for All Existing Dawn-Parkway Assets are in Rates at the ~~end~~**beginning** of the IRM Term
- **1.1.2** ~~5.3.1.2~~ Parkway Delivery Obligation Reduction Costs for Temporarily Available Capacity are Incremental to the Revenue Requirement for the Dawn-Parkway Assets
- **1.1.3** ~~5.3.1.3~~ Dawn-Kirkwall Turnback Replaced Temporarily Available Capacity ~~Creating~~**thus Continuing** Incremental Revenue
- **1.1.4** ~~5.3.1.4~~ Framework Settlement Agreement for PDO Explicitly Intended to Keep Union Whole through IRM Period but Not to Enhance Earnings
- **1.1.5** ~~5.3.1.5~~ Dawn-Parkway Capacity is Surplus to In-Franchise and Ex-franchise Demands
- **1.1.6** ~~5.3.1.6~~ Forgone Revenue Presumes Demand for Service that Cannot be Met

1.2 ~~5.4~~ At a high level, ratepayers paid for a surplus of Dawn-Parkway capacity in **the rebased** rates at the start of the IRM period. Union sold ~~us~~**in-franchise ratepayers** 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.

1.3 ~~5.5~~ When Dawn-Kirkwall capacity replaced the Temporarily Available capacity, that Temporarily Available ~~capacity~~**Capacity** was sold to others generating ~~incremental~~**a replacement** revenue~~,~~ **stream while** ratepayers ~~we~~ were still paying for ~~it~~**that capacity** 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~~**Temporarily Available Capacity** through PDO costs in rates.

~~[13] OEB Response_CCC_ltr_20180306~~

1.4 ~~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 **capacity in base rates**, ratepayers are paying twice for the 200TJ.

1.5 ~~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.

1.6 ~~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.

1.7 ~~5.9~~ Over the past couple of decades, as the market evolved, the cost of landing gas at Parkway vs. Dawn increased to ~~costs~~**a level** well above M12 rates on an annual basis ~~and~~**while** 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.

1.8 ~~5.10~~ The Settlement Framework for the Reduction of the Parkway Delivery Obligation[~~14~~1] ("the Framework Agreement) was negotiated between ratepayers and Union as a mechanism to try "to rectify this inequity".[~~15~~2]

> ~~*5.10.1*~~***1.8.1*** *"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."*

1.9 ~~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~~**Capacity**. This Temporarily Available ~~capacity~~**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~~**was expected** to be sold in the market prior to the winter of 2015/16.[~~16~~3] For the winter of 2015/16, the pre-established shift of

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

212 TJ/day back to Dawn would be facilitated by a combination of Dawn-Kirkwall turnback and incremental resources.[~~17~~4] 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.

1.10 ~~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]

> ~~5.12.1~~***1.10.1*** *"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."*

1.11 ~~5.13~~ Through the course of the Oral Hearing **in the Merger proceeding** and, in fact in previous proceedings, ~~we~~**FRPO** 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:

1.12 ~~5.14~~ The Revenue Requirement for All Existing Dawn-Parkway Assets are in Rates at the ~~end~~ **Beginning** of the IRM Term

1.12.1 ~~5.14.1~~ The Dawn-Parkway system has been expanded through the IRM term primarily **to move gas from Dawn** due to the **increased** sourcing of natural gas from the Appalachian basin. Undertaking Exhibit J2.5[6] 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~~7]. As provided in Note (3), the costs of all of the capacity were included in base rates by being spread over demands forecasted[~~20~~8]. While these rebased costs ~~remain~~**remained** 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~~9] As a result, **with each successive build,** the original rebased costs of the Dawn-Parkway system were ~~increased~~**inflated** by the average investment of

[~~17~~4] EB-2013-0365 Appendix B, page 4, paragraph 2.ii & iii
[~~18~~5] EB-2013-0365 Appendix B, page 6, paragraph 10
[6] EB-2017-0306 Exhibit J2.5
[~~19~~7] 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~~8] **EB-2017-0306** Transcript, Volume 6, 20180528, **page 121,** lines 23 to 26 confirm this approach.
[~~21~~9] 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

incremental Dawn-Parkway facilities during the IRM period resulting in all of the costs of the system being in rates ~~at the end of~~**throughout** the IRM term.

1.13 ~~5.15~~ PDO Reduction Costs for Temporarily Available Capacity are Incremental to the Revenue Requirement for the Dawn-Parkway Assets

1.13.1 ~~5.15.1~~ Given the fact that the revenue requirement for all of the Dawn-Parkway assets ~~are~~**were** 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~~10] 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, **including all of the costs of the entire Dawn-parkway system,** the requirement is further adjusted by the allocation of costs for the PDO Reduction[~~23~~11] among other adjustments like DSM.

1.13.2 ~~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~~**A any** 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.

1.13.3 ~~5.15.3~~ This point was confirmed through Union testimony:[~~24~~12]

> 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 Parkway back to Dawn. It was extra -- it was additional

[~~22~~10] EB-2014-0271 **Schedule 4**
[~~23~~11] Column (n) of Schedule 4 provides the monetary adjustment which references Schedule 20 for determination.
[~~24~~12] Transcript Volume 3, 20180514, page 15 lines 13-24.

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.

1.13.4 ~~5.15.4~~ Since those 146 TJ's[~~25~~13] were part of the 210 TJ's[~~26~~14] that was surplus and put into rates upon rebasing, Union essentially "sold" to in-franchise customers that **146 TJ's** which was already bought and paid for previously **in rates**. This "sale" results in revenues well above "keeping Union whole" as they were already fully compensated for that capacity in rates.

1.14 ~~5.16~~ Dawn-Kirkwall Turnback Replaced Temporarily Available Capacity Creating Incremental Revenue

1.14.1 ~~5.16.1~~ In the next year, 123 TJ (146 TJ[~~27~~15] minus 23 TJ[~~28~~16]) of the Temporarily Available ~~capacity~~**Capacity** was sold and that amount of PDO Reduction was provided for by 139 TJ[~~29~~17] of Dawn-Kirkwall capacity with equivalency of 123 TJ[~~30~~18] 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 **Dawn-Kirkwall** capacity.[~~31~~19] 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~~**Temporarily Available Capacity. Due to this** continued ratepayer compensation for PDO, the 123 TJ that were sold along with 23 TJ of ~~temporarily available~~**Temporarily Available Capacity** still facilitating **PDO reduction** were still generating incremental revenues above the original revenue requirement already fully recovered in rates.

1.14.2 ~~5.16.2~~ Over the next couple of years, the rest of the Temporarily Available space was sold ~~and~~**being replaced by** additional Dawn-Kirkwall turnback "facilitated" an additional increment of PDO reduction. ~~However, since the resulting Dawn-Kirkwall permanent turnback 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.~~**In parallel, Dawn-Parkway capacity was being built incremental to new contracts.**

[~~25~~13] **EB-2017-0306** Exhibit J2.5 Filed 2018-05-23, Attachment 1, column (b), line 8
[~~26~~14] **EB-2017-0306** Exhibit J2.5 Filed 2018-05-23, Attachment 1, column (a), line 7
[~~27~~15] **EB-2017-0306** Exhibit J2.5 Filed 2018-05-23, Attachment 1, column (b), line 8
[~~28~~16] **EB-2017-0306** Exhibit J2.5 Filed 2018-05-23, Attachment 1, column (c), line 8
[~~29~~17] **EB-2017-0306** Exhibit J2.5 Filed 2018-05-23, Attachment 2, column (b), line 1
[~~30~~18] **EB-2017-0306** Exhibit J2.5 Filed 2018-05-23, Attachment 1, column (c), line 9
[~~31~~19] **EB-2017-0306** Exhibit J2.5 Filed 2018-05-23, Attachment 2, column (b), line 6

1.15 ~~5.17~~ Framework Settlement Agreement for PDO Explicitly Intended to Keep Union Whole through IRM Period

1.15.1 ~~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~~**existing deferral** 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.

1.15.2 ~~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~~20]. Some information was provided very late in that process and added to the Settlement Agreement. But the full picture was not clear yet.

1.15.3 ~~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~~21] and

[~~32~~20] EB-2016-0245 Requests for More Fulsome Responses to IR's and Supplemental Information submitted by FRPO, Nov. 13/16

[~~33~~21] EB-2017-0087, Exhibit B.FRPO.8

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, **by application of the negotiated settlement** ratepayers ~~may be~~**are** 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.~~

1.16 ~~5.18~~ Dawn-Parkway Capacity is Surplus to In-Franchise and Ex-franchise Demands

1.16.1 ~~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.

1.16.2 ~~5.18.2~~ In the following year, the primary capacity utilized for PDO reduction was Dawn- Kirkwall capacity[~~34~~22] 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~~23] 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~~24].

1.16.3 ~~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~~25] to ensure it could meet Design Day conditions. A prudent utility 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.

[~~34~~22] **EB-2017-0306** Exhibit J2.5 Attachment 1, column (c), line 9
[~~35~~23] Transcript Volume 3, page 19, line 4 to page 20, line 18
[~~36~~24] 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~~25] Where a utility does not have a strong level of certainty to meet Design Day with its own supply and assets, the n ext 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.

~~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~~		

1.17 ~~5.19~~ Forgone Revenue Presumes Demand for Service that Cannot be Met

1.17.1 ~~5.19.1~~ Union has recently emphasized this concept of forgone revenue as a result of providing the PDO Reduction.[~~41~~26] 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~~27], 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.

1.17.2 ~~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~~28]

> *"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*

~~[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~~26] **EB-2017-0306** Exhibit J2.5 Attachment 1, lines 18-20 and Attachment 2
[~~42~~27] ~~**EB-2017-0306**~~ Transcript Volume 3, page 19, line 4 to page 20, line 18
[~~43~~28] EB-2017-0087, Exhibit B.FRPO.10

reduction is capacity that could otherwise be sold in the S&T markets as short term transportation revenue."

1.17.3 ~~5.19.3~~ However, it is clear that there was a surplus of capacity that was not sold long- term, Union's preference,[~~44~~29] 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~~30]. 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~~31]

1.18 ~~5.20~~ In summary, the PDO Reduction has allowed Union to over-earn on its rate of return ~~of~~**for** 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~~**The costs of that capacity were originally recovered in base rates and have been inflated by the Y factor adjustments of Dawn-Parkway builds over the IRM period**.

~~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.~~

1.19 Dawn-Parkway M12 Turnback from In-franchise Customers Warrant PDO Reduction Compensation

1.19.1 While FRPO urges the Board to correct the over-earning of PDO Reduction related to surplus capacity, we will acknowledge that, as part of the Reduction Framework Agreement, some customers were allowed to turn M12 capacity in moving their contracted delivery point from Parkway to Dawn. This situation can be differentiated as, in forecasting revenues to meet the revenue requirement in rebasing, this M12 capacity had an expected revenue stream. In accepting the turnback of this capacity, Union was foregoing expected revenue from these customers and holding the capacity as a means to get the gas from Dawn to Parkway. As such, PDO compensation ought to be provided.

[~~44~~29] Transcript Volume 3, page 18, lines 18-24
[~~45~~30] EB-2017-0091, Exhibit B.FRPO.6
[~~46~~31] EB-2017-~~0091,~~**0087,** Exhibit B.FRPO.11
~~[47] Exhibit J2.5 Attachment 1, column (e), line 15~~

1.19.2 This aspect in-franchise turnback of the PDO Reduction highlights the difference between foregone expected revenue from encumbered capacity versus Temporarily Available Capacity for which revenue would be provided throughout the IRM period since the cost of this surplus capacity was included in rates at the time of rebasing.

1.20 Relief Requested

1.20.1 As the PDO Reduction Framework Agreement explicitly establish that the Settlement was not to enhance earnings[32] and ratepayers were entitled to recover costs that were already recovered in base rates and Y factors, FRPO respectfully request the Board order an adjustment to the deferral account dispositions in the amount of $ 5.014M for 2017.

1.20.2 This amount is derived by extracting the demand charges for surplus capacity (either Temporarily Available or Dawn-Kirkwall that replaced it) on a prorate basis from the PDO Demand Charges for 2017. This effectively leaves recovery of the PDO Reduction charges associated with Customer Turnback of M12 -Permanent Capacity[33]. For ease of reference, we provide a snapshot of the referenced table.

	PDO Shift					/18
	Customers without M12 service					
8	Temporarily Available Capacity	-	146	23	13	-
9	Permanent Capacity (from Dawn-Kirkwall Turnback) (5)	-	-	123	133	200
10	Total	-	146 (4)	146	146	200
	Customers with M12 service - Permanent Capacity					
11	All Customers excluding TCE Halton Hills	-	19	19	19	19
12	TCE Halton Hills	-	48	48	48	62
13	Total	-	66	66	66	81
14	Total PDO Shift (line 10 + line 13)	-	212	212	212	280
	PDO Shift cost in Rates		2015 Rates	2016 Rates	2017 Rates	2018 Rates
15	Dawn-Parkway Demand Costs ($000's) (5)		5,143	5,694	6,720	9,726
16	Incremental Compressor Fuel Costs ($000's)		1,900	1,797	1,707	1,705
17	Total		7,043	7,491	8,426	11,431

1.20.3 Given the additional PDO shift as of November 1, 2017 (10 months at one demand rate and 2 months of the next demand rate) and using the columns created for the Winters of 16/17 and 17/18 in the Exhibit, we believe the reduction would be calculated with the following formula:

Reduction = 146(line 10 of W16/17) divided by 212(line 14 of W16/17) times $6,720 times 10/12 Plus 200(line 10 of W17/18) divided by 280(line 14 of W17/18) times $9,726 times 2/12 = $5,014

[32] EB-2013-0365 Appendix B, filed June 3, 2014
[33] EB-2017-0306 Exhibit J2.5 Attachment 1, line 13

Whether Union accepts the merits of our exclusion of surplus capacity, to assist the Board in their determinations, we would ask that Union confirm or correct the mathematical calculation of the cost reduction that would be associated with the surplus capacity.

1.21 ~~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 to ensure that the Board is provided sound evidence in establishing just and reasonable rates:[~~48~~34]

> *"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."*

1.22 ~~5.23~~ In our view, the company has not met this obligation in this matter of the PDO reduction costs. **There, in** the alternative, if the Board is not satisfied that there is sufficient evidentiary basis **to remove the PDO Reduction costs associated with surplus capacity, we respectfully request that the Board:**

~~6. CONCLUSION~~

1.22.1 Establish a deferral account and place amount equal to the 2017 PDO Reduction charges in rates

1.22.2 Adjust Union's net disposition in this proceeding by that amount

1.22.3 Order Union to file sufficient evidence detailing the costs and recoveries of the Dawn-Parkway system throughout the IRM period to **allow a determination of this issue in the IRM period.**

2. Lobo D/Bright C/Dawn H Compressor Project Costs Account (179-144)

2.1 ~~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.~~ **Union's last Dawn-Parkway capacity expansion (EB-2015-0200), three compressors were installed in 2017. The evidence indicated that as a result of the build, the Dawn- Parkway system would have excess capacity (capability minus**

[~~48~~34] RP-1999-0001 Decision, paragraph 4.5

Appendix B

199. Finally on this point, the Applicants reiterate their submission that, should the Board consider it necessary or appropriate that a change be made to the Applicants' proposals to allow ratepayers to share in more savings prior to the end of the deferral period, a balanced ESM over the 10 year deferred rebasing period will deliver the best outcomes for customers, as opposed to other mechanisms such as a base rate adjustment or a stretch factor.

200. FRPO submits that "[t]he additional ratepayer contribution of $9.7 million" for the demand costs of the Parkway Delivery Obligation ("PDO") should be removed as a base rate adjustment for Union South customers.[269] LPMA adopts, without discussion, FRPO's submission.[270] There is no merit to FRPO's submission and it should be rejected by the Board.

201. While lengthy and somewhat difficult to follow, FRPO's argument can be distilled to one fundamental assertion: the claim that ratepayers are paying for the cost of eliminating the Parkway Delivery Obligation twice. This can be seen most clearly in the following claim made by FRPO:

> 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 200 TJ."[271]

202. FRPO's claim is wrong. Indeed, not only are ratepayers not paying twice, but the PDO has been eliminated in precisely the manner contemplated and agreed to by the parties in the PDO Settlement Agreement approved by the Board in EB-2013-0365.

[269] FRPO Submission, page 7, paragraph 5.3
[270] LPMA Submission, page 16.
[271] FRPO Submission, page 7, paragraph 5.6

This Agreement followed shortly after the Board's decision in respect of Union's 2013 rebasing application, EB-2011-0210.

203. In EB-2011-0210, the Board considered and approved:

- the costs of the Dawn-Parkway system;
- the methodology for allocating those costs (distance weighted easterly design demands); and,
- the demands used in the allocation.

204. The final item noted above, the "demands used", was based, in part, on Union's forecast of ex-franchise M12 transportation on the Dawn-Parkway system. Contrary to a statement made in the FRPO Submission,[272] this was a contested issue in the EB-2011-0210 proceeding. The Board came to the following conclusion on this issue:

> The Board accepts Union's forecast of 2013 M12 Long-Term Transportation Revenue, Other Long-Term Transportation Revenue, and Other S&T Revenue as reasonable. The Board will not require Union to adjust estimated revenues as was suggested by some parties, as the Board concurs with Union that the adjustments are selective in nature. <u>The Board rejects LPMA's request to establish a variance account related to Long-term Transportation Revenue, as the Board believes that Union should continue to bear this forecast risk, consistent with the current treatment.</u>[273]
>
> (Emphasis added.)

205. Throughout its submission, FRPO refers to Union having "surplus" or "excess" capacity.[274] This is a red-herring that has nothing to do with the Parkway Delivery Obligation. It is a backdoor attempt by FRPO to re-argue the above issue in relation to the appropriate M12 revenue forecast. As the Board decided, Union should be at risk in

[272] FRPO Submission, page 9, footnote 19.
[273] EB-2011-0210 Decision and Order, page 22.
[274] For example, FRPO Submission, page 13

relation to the forecast: if Union fails to meet the forecast, the company bears the loss; if it exceeds the forecast, subject to earnings sharing, both the company and ratepayers benefit.

206. Ultimately, as a result of the Board's decision, all costs of the Dawn-Parkway system (and the capacity available on the system) were allocated to ratepayers in proportion to distance weighted easterly design day demands. This produced the following allocation: 84% to ex-franchise rate classes, 11% to Union South in-franchise rate classes and 5% to Union North rate classes.

207. On design day, Union requires gas at Parkway to meet the needs of its customers.

208. The PDO Settlement was reached in Union's first rate proceeding following rebasing. The purpose of the Settlement Agreement was set out in the "context and guiding principles." In those paragraphs, the parties, including FRPO and LPMA, agreed that there was an "inequity" in that direct purchase customers with a PDO were conferring a benefit on users of the system (primarily Union South in-franchise customers); that the PDO should be permanently reduced primarily in the manner proposed by Union; and that Union should be kept "whole", with the reduction neither intended to reduce or increase its earnings potential over the IR term.

209. The parties next set out in the Agreement the timing and manner in which the PDO would be reduced and ultimately eliminated (the PDO Reduction Proposal). While divided into three phases, only the period after Phase 1, April 2014 is relevant. Fundamentally, the parties agreed that Dawn to Kirkwall M12 capacity turned back by ex-franchise shippers would be used to reduce the PDO. The parties agreed that:

> All incremental costs associated with the incremental PDO reduction [subsequent to the Phase 1 reduction], including demand charges and fuel, will be recovered by Union either through the deferral account due to timing differences or included in rates per paragraphs B.1(d), B.1(e), B.1(f) and B.3.[275]

210. In simple terms, the parties recognized (i) that as M12 shippers turned back capacity (which capacity could then be used to move gas to Parkway thus reducing the need for a PDO) this would result in decreased revenues to Union - a shortfall relative to what had been approved by the Board in EB-2011-0210 – and agreed (ii) that, to keep Union "whole" relative to that decision, in-franchise rate payers would make up that revenue through a change(s) in their rates.

211. As explained by Union's witnesses during cross-examination in this proceeding, eliminating the PDO came at a cost. For example:

> MR. KITCHEN: The Parkway delivery obligation and the shift to Dawn was something that customers wanted for quite a long time, and it was something that we worked very hard as a group to facilitate.
>
> But the move was not free. <u>When you move the deliveries from Parkway to Dawn you need facilities equivalent to get that gas back to Parkway because that's where it's needed, and so the costs that were built into rates in '15 and throughout the last term of the IRM were costs associated with facilitating that shift.</u>
>
> So in essence, customers were getting an additional service, and they paid for that service.[276]
>
> (Emphasis added.)

212. And, to the same effect:

---

[275] EB-2013-0365 Decision and Order on Parkway Delivery Obligation, June 16, 2014, Appendix B, page 4, part iii.
[276] 3 Tr. 15-16.

> MS. MIKHAILA: Yes, because we had customers that had M12 capacity, turned it back so that they could deliver at Dawn, and we included that -- the offset of that is included in line 15, the recovery of Dawn to Parkway demand cost.[277]

213. Since entering into the PDO Settlement Agreement, Union has used easterly Dawn-Parkway system capacity to allow direct purchase customers to shift their obligated deliveries from Parkway to Dawn, which has resulted in Union South in-franchise rate classes requiring firm Dawn-Parkway capacity on design day that is incremental to the original allocation of Dawn-Parkway costs from the 2013 Board-approved cost allocation study. In other words, in-franchise ratepayers have been asked to pay costs not previously allocated to them; they are not paying twice. These costs are the current Dawn-Parkway system demand costs of $9.7 million shown in Exhibit J2.5.[278]

214. In each rates proceeding subsequent to the PDO Settlement Agreement, Union has proposed to adjust rates as contemplated by the Agreement and the Board has approved these adjustments. In none of the proceedings has any party objected to the adjustment.

215. The Applicants submit that it would be inappropriate, and contrary to the PDO Settlement Agreement and the various Board decisions which have subsequently implemented the Agreement, to now deny recovery of Dawn-Parkway demand costs during the deferred rebasing term (as argued by FRPO) while at the same time maintaining the PDO shift to Dawn for direct purchase customers. The recovery of the Dawn-Parkway demand costs for the capacity used to facilitate the PDO shift and the benefit to customers of shifting their obligated deliveries to Dawn are elements of the comprehensive PDO Settlement Agreement agreed to by all parties.

---

[277] 3 Tr. 14.
[278] Exhibit J2.5, Attachment 1, line 15.

216. As a final point on this matter, the fact that Union South in-franchise ratepayers are not paying the same Dawn-Parkway system costs twice is further evident from evidence given by the Applicants in an undertaking response.[279] The analysis in the undertaking response shows that the change in rates since the PDO Settlement Agreement reasonably reflects the result that would have obtained had the PDO shift occurred at the time of rebasing. Union South in-franchise demands would have made up a larger portion of overall demands and those customers would have been allocated a greater portion (greater than the 11% they were allocated) of the Dawn-Parkway system costs.

9. Deferral and Variance Accounts

(i) Continuation of Existing Accounts

217. The Applicants propose to continue the deferral and variance accounts listed in the pre-filed evidence for the Price Cap Application.[280] OEB Staff have no concerns with the continuation of the accounts[281] and, with the exception of the NAC/AU accounts, others support the continuation of accounts as proposed by the Applicants.[282]

218. The Applicants' submissions on NAC/AU are set out above.[283] Given the Applicants' submissions with respect to NAC/AU, and given that there is no opposition to the Applicants' proposal regarding continuation of any other existing deferral and variance accounts, the Applicants submit that approval should be granted to continue accounts as listed in the Price Cap pre-filed evidence.

[279] Exhibit J3.5.
[280] Mechanism Exhibit B-1, Attachment 4.
[281] Staff Submission, page 35.
[282] LPMA Submission, page 35; OGVG Submission, page 25.
[283] See section 6(iv), Y Factors, above.