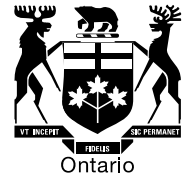


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BY E-MAIL AND WEB POSTING

February 11, 2009

To: All Participants in EB-2008-0280

**Re: Draft Filing Guidelines for the Pre-Approval of Long-Term Natural Gas
Supply and/or Upstream Transportation Contracts
Board File No.: EB-2008-0280**

The purpose of this letter is to notify participants of the release of draft filing guidelines for the pre-approval of long-term natural gas supply and/or upstream transportation contracts ("LTC filing guidelines"), which have been posted on the Board's website at www.oeb.gov.on.ca.

Background

In the Natural Gas Forum ("NGF") report, the Board concluded that it will:

- offer natural gas utilities the opportunity to apply for pre-approval of long-term natural gas supply and/or upstream transportation contracts; and
- consult on the development of guidelines that will inform all stakeholders of the principles and issues the Board will consider when evaluating an application for contract pre-approval.

Further to the NGF report, the Board in a letter dated August 22, 2008 outlined the issues to be addressed when developing a pre-approval process for long-term natural gas supply and/or upstream transportation contracts. The Board indicated that it would hold a consultation to discuss the needs, benefits and risks of entering into long-term contracts, the impact on competition and the filing guidelines.

Also, in its letter dated August 22, 2008, the Board stated that it planned to conduct the consultation in two phases. In the first phase, staff would hold stakeholder meetings which would lead to the development of a staff discussion paper. In the second phase,

the Board would consider whether it is appropriate to develop filing guidelines for the pre-approval of long-term contracts.

On October 15-17, 2008, staff held a number of meetings with stakeholders. At these meetings, staff and its technical expert presented material to initiate discussion on whether: (i) it is appropriate for natural gas utilities to enter into long-term natural gas supply and/or upstream transportation contracts; and (ii) the Board should develop guidelines for the pre-approval of long-term contracts, and if so, what should be included in these guidelines.

At these meetings, no substantive issues were raised and stakeholders generally agreed to a pre-approval process for long-term contracts that support the development of new natural gas infrastructure (e.g., new pipeline facilities to access new natural gas supply sources such as Liquefied Natural Gas plants and frontier production). As a result, a staff discussion paper, as originally contemplated in Phase I of the consultation, was not necessary. The Board has decided to proceed directly to Phase II and release its draft LTC filing guidelines for stakeholder comment. The draft LTC filing guidelines are outlined in Attachment A.

The Report of the Board, Draft Filing Guidelines for the Pre-Approval of Long-Term Natural Gas Supply and/or Upstream Transportation Contracts, is provided as Attachment B.

Draft Filing Guidelines

The draft filing guidelines provide information about the filing requirements for natural gas utility applications to the Board for the pre-approval of long-term natural gas supply and/or upstream transportation contracts.

The Board believes that these applications should be limited to those that support the development of new natural gas infrastructure. The Board does not believe that a pre-approval process for long-term contracts should be used for the natural gas utility's normal day-to-day contracting, renewals of existing contracts and other long-term contracts. These contracts should continue to be addressed in the utility's rate application.

The Board is inviting written comments from parties on the draft LTC filing guidelines as outlined in Attachment A. All written comments will be posted on the Board's website.

Timelines

Written comments on the draft LTC filing guidelines must be filed with the Board by March 26, 2009.

Filings to the Board must quote file number **EB-2008-0280** and include your name, postal address, telephone number and, where available, an e-mail address and fax number. Three paper copies of your filing must be provided. The Board requests that parties make every effort to provide electronic copies of their filings in searchable/unrestricted Adobe Acrobat (PDF) format, and to submit their filing through the Board's web portal at www.errr.oeb.gov.on.ca. A user ID is required to submit documents through the Board's web portal. If you do not have a user ID, please visit the "e-filings services" webpage on the Board's website at www.oeb.gov.on.ca, and fill out a user ID password request. Additionally, parties are requested to follow the document naming conventions and document submission standards outlined in the document entitled "RESS Document Preparation – A Quick Guide" also found on the e-filing services webpage. If the Board's web portal is not available, electronic copies of the comments may be submitted by e-mail at BoardSec@oeb.gov.on.ca.

Written comments must be received by **4:45 p.m.** on the required date.

Cost Awards

As indicated in the Board's letter dated August 22, 2008, costs awards will be available for written comments on draft LTC filing guidelines. Cost awards will be available under section 30 of the *Ontario Energy Board Act, 1988* to eligible participants **to a maximum of 10 hours per eligible party**. The costs to be awarded will be recovered from Enbridge Gas Distribution Inc., Natural Resource Gas Limited and Union Gas Limited and will be allocated based on distribution revenue.

For any questions regarding the draft LTC filing guidelines please contact Laurie Klein at laurie.klein@oeb.gov.on.ca or (416) 440-7661. The Board's toll free number is 1-888-632-6273.

Yours truly,

Original signed by

Kirsten Walli
Board Secretary

Attachments

Attachment A

Draft Filing Guidelines for Pre-Approval of Long-Term Natural Gas Supply and/or Upstream Transportation Contracts

This form applies to all applicants who are requesting pre-approval of long-term natural gas supply and/or upstream transportation contracts that support the development of new natural gas infrastructure.

All applicants must complete and file the information requested in Part I, II, III, IV and V.

Part I – Identification of Applicant

Name of Applicant:	File No: (OEB Use Only)
Address of Head Office:	Telephone Number:
	Facsimile Number:
	E-mail Address:
Name of Individual to Contact:	Telephone Number:
	Facsimile Number:
	E-mail Address:

Part II – Needs, Costs and Benefits

2.1	A description of the proposed project that includes need, costs, benefits (such as this project improves the security of supply and the diversity of supply sources) and timelines.
2.2	An assessment of the landed costs (supply costs + transportation costs including fuel costs) for the newly contracted capacity and/or natural gas supply to the landed costs of the possible alternatives.

Part III – Contract Diversity

3.1	A description of all the relevant contract parameters such as transportation/supply provider, contract length, conditions of service, price, volume, and receipt and delivery points.
3.2	An assessment on how the contract fits into the applicant's overall transportation and natural gas supply portfolio in terms of contract length, volume and services.

Part IV - Risk Assessment

4.1	<p>Identification of all the risks (such as forecasting risks, construction and operational risks, and commercial risks) and plans on how these risks are to be minimized and allocated between ratepayers, parties to the contract and/or the applicant's shareholders.</p> <p>For example, forecasting risks include future demand, prices, actual landed costs and performance of basin; commercial risks include competitive and credit-worthiness of provider/operator; and construction and operational risks include costs escalations, delays or reliability issues pertaining to new construction; and gas interchangeability and quality issues.</p>
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Part V – Other Considerations

5.1	A description of the relationship between parties to the contract and the applicant's parent company and/or affiliates.
5.2	An assessment of retail competition impacts and potential impacts on existing transportation pipeline facilities in the market (in terms of Ontario customers).

Attachment B
Ontario Energy Board

Report of the Board

**Draft Filing Guidelines for the Pre-Approval of
Long-Term Natural Gas Supply and/or Upstream
Transportation Contracts**

EB-2008-0280

February 11, 2009

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1 Introduction

This report sets out the Board's draft filing requirements that should be used by a natural gas utility seeking pre-approval for long-term natural gas supply and/or upstream transportation contracts. The draft filing guidelines for long-term contracts ("LTC") are outlined in Appendix A.

1.1 Background

In the Natural Gas Forum ("NGF") report, the Board concluded that it will:

- offer natural gas utilities the opportunity to apply for pre-approval of long-term natural gas supply and/or upstream transportation contracts; and
- consult on the development of guidelines that will inform all stakeholders of the principles and issues the Board will consider when evaluating an application for contract pre-approval.

Further to the NGF report, the Board in a letter dated August 22, 2008 outlined the issues to be addressed when developing a pre-approval process for long-term natural gas supply and/or upstream transportation contracts. The Board indicated that it would hold a consultation to discuss the needs, benefits and risks of entering into long-term contracts, the impact on competition and the filing guidelines.

Also, in its letter dated August 22, 2008, the Board stated that it planned to conduct the consultation in two phases. In the first phase, staff would hold stakeholder meetings which would lead to the development of a staff discussion paper. In the second phase, the Board would consider whether it is appropriate to develop filing guidelines for the pre-approval of long-term contracts.

On October 15-17, 2008, staff held a number of meetings with stakeholders, as shown in Appendix B. At these meetings, staff and its technical expert presented material to initiate discussion on whether: (i) it is appropriate for natural gas utilities to enter into long-term natural gas supply and/or upstream transportation contracts; and (ii) the Board should develop guidelines for the pre-approval of long-term contracts, and if so, what should be included in these guidelines.

At these meetings, no substantive issues were raised and stakeholders generally agreed to a pre-approval process for long-term contracts that support the development of new natural gas infrastructure (e.g., new pipeline facilities to access new natural gas supply sources such as Liquefied Natural Gas ("LNG") plants and frontier production).

As a result, a staff discussion paper, as originally contemplated in Phase I of the consultation, is not necessary. The Board has decided to proceed directly to Phase II and release its draft LTC filing guidelines for stakeholder comment.

All materials related to this consultation are on the Board's website.

1.2 Structure of the Report

This report is organized into three sections and each section includes the issues and options raised by stakeholders at the consultation as summarized by staff and the Board's conclusions.

2 Are long-term contracts appropriate?

2.1 Consultation Highlights

Stakeholders stated that long-term upstream transportation contracts ("long-term transportation contracts") may be justified to support new pipeline facilities and some of these stakeholders suggested that this could also support access to new natural gas sources.

Many stakeholders did not support long-term natural gas supply contracts ("long-term supply contracts") except when these contracts are linked to long-term transportation contracts that access new resources such as LNG, United States Rockies and Canadian frontier production. Others supported long-term supply contracts to increase price stability.

2.2 The Board's Conclusions

The Board agrees with stakeholders that long-term supply contracts may be justified in limited circumstances such as supporting the development of new natural gas infrastructure.

With regards to long-term transportation contracts, the Board notes that the natural gas utilities (“utilities”) currently have a portfolio of contract lengths. This reflects an upstream transmitter’s market requirement to have long-term contracts to support new large infrastructure investments while contracts for existing capacity are generally shorter. Also, the Board is of the view that long-term transportation contracts may help to ensure an adequate natural gas supply in the Ontario market from a diverse portfolio of sources. This may increase supply reliability and reduce price volatility, which would benefit all market participants. Consequently, long-term transportation contracts may be justified.

3 What approach should be used to pre-approve long-term contracts?

3.1 Consultation Highlights

Stakeholders discussed two approaches to a pre-approval process for long-term contracts. The first approach would be a process in which the cost implications of the long-term contracts would be pre-approved by the Board provided that the long-term contracts met a pre-defined set of criteria. The second approach would be an application reviewed by the Board on a case-by-case basis. Stakeholders supported the second approach which is in essence the status quo.

Also, stakeholders generally agreed to a pre-approval process for long-term contracts (where the utility applies on a case-by-case basis) that support the development of new natural gas infrastructure (e.g., new pipeline facilities to access new natural gas supply sources such as LNG plants and frontier production).

A number of stakeholders wanted the Board to require pre-approval for all long-term contracts that meet certain defined criteria, while others supported having the pre-approval process as an option available to the utility.

3.2 The Board's Conclusions

It is recognized that a utility may file an application to the Board at any time. However, in the case of long-term contracts, the Board agrees with stakeholders and concludes that a pre-approval process is appropriate for specific types of long-term contracts. The Board is of the view that filing guidelines need to be developed to assist a utility when it makes an application to the Board for the pre-approval of long-term contracts. The Board believes that these applications should be limited to those that support the development of new natural gas infrastructure (e.g., new transportation facilities to access new natural gas supply sources). The Board does not believe that the pre-approval process for long-term contracts should be used for the utility's normal day-to-day contracting, renewals of existing contracts and other long-term contracts. These contracts should continue to be addressed in the utility's rate application.

The Board also agrees with stakeholders that the process should allow a utility to apply to the Board on a case-by-case basis to pre-approve the cost implications of the long-term contracts (as per section 36(2) of the *Ontario Energy Board Act, 1988*). The utility is to file its application with the Board either prior to contract execution, or after execution (with a condition precedent regarding Board approval), but before it incurs costs under the long-term contracts. The Board will approve the costs associated with these contracts, not the contracts themselves.

In addition, the Board believes that the pre-approval process for long-term contracts can be used at the discretion of the utility.

4 What should be included in the filing guidelines?

4.1 Consultation Highlights

Several stakeholders thought that it was necessary to examine how the proposed long-term contracts fit into the utility's overall natural gas supply and transportation portfolio. Stakeholders also emphasized the importance of considering affiliate relationships or other related transactions.

In the 2007 rates proceeding (EB-2005-0520) Union Gas Limited ("Union") agreed to prepare an Incremental Transportation Contracting Analysis for each new upstream transportation contract with a term of one year or longer. Enbridge Gas Distribution Ltd ("Enbridge") and Union suggested using this analysis as the basis for the filing guidelines, with the appropriate changes for long-term supply contracts.

In addition, stakeholders stated that the pre-approval process would reduce (but not eliminate) the need for after-the-fact prudence reviews and therefore would decrease the regulatory risk for the utilities. Some of these stakeholders also noted that there are risks, separate and apart from regulatory risk, associated with long-term contracts. For example, large infrastructure projects with long lead times may increase the risk of cost overruns and forecasting errors. Therefore, the risks should be identified in the application.

4.2 The Board's Conclusions

Based on stakeholders' comments, the Board believes that the utilities should file the following information:

- **Need, costs and benefits** – a description of the proposed project that includes need, costs, benefits (such as this project improves the security of supply and the diversity of supply sources) and timelines.
- **Cost effectiveness** in comparison to other alternatives – an assessment of the landed costs (supply costs + transportation costs including fuel costs) for the newly contracted capacity and/or gas supply to the landed costs of the possible alternatives.
- **Contract term, volume and services diversity** – an assessment on how this contract fits into the utility's overall transportation and natural gas supply portfolio.
- **Risk mitigation plan and risk allocation** – identification of all the risks (such as forecasting risks, construction and operational risks, and commercial risks¹) and plans on how these risks are to be minimized and allocated between ratepayers, parties to the contract and/or shareholders.
- All relevant **contract parameters** such as transportation/supply provider, term, conditions of service, price, volume, and receipt and delivery points.
- **Affiliate relationships** – a description of the relationship between parties to the contract and the utility's parent company and/or affiliates.
- **Other Considerations** – retail competition impacts and potential impacts on existing transportation pipeline facilities in the market (in terms of Ontario customers).

¹ Forecasting risks include future demand, prices, actual landed costs and performance of basin. Commercial risks include competitive and credit-worthiness of provider/operator. Construction and operational risks include costs escalations, delays or reliability issues pertaining to new construction; and gas interchangeability and quality issues.

The Board recognizes that the pre-approval process needs to allow for timely decision making, especially in the situation where the utility includes the Board's approval as a condition precedent in its long-term contract. The Board notes that the process must also allow for evidence, discovery and argument.

5 Next Steps

The Board concludes that the draft LTC filing guidelines be issued for stakeholder comment. Stakeholders can file submissions within six weeks of the draft LTC filing guidelines being released. After stakeholder submissions are received, it is expected that the Board will issue the final LTC filing guidelines.

Appendix A

Draft Filing Guidelines for Pre-Approval of Long-Term Natural Gas Supply and/or Upstream Transportation Contracts

This form applies to all applicants who are requesting pre-approval of long-term natural gas supply and/or upstream transportation contracts that support the development of new natural gas infrastructure.

All applicants must complete and file the information requested in Part I, II, III, IV and V.

Part I – Identification of Applicant

Name of Applicant:	File No: (OEB Use Only)
Address of Head Office:	Telephone Number:
	Facsimile Number:
	E-mail Address:
Name of Individual to Contact:	Telephone Number:
	Facsimile Number:
	E-mail Address:

Part II – Needs, Costs and Benefits

2.1	A description of the proposed project that includes need, costs, benefits (such as this project improves the security of supply and the diversity of supply sources) and timelines.
2.2	An assessment of the landed costs (supply costs + transportation costs including fuel costs) for the newly contracted capacity and/or natural gas supply to the landed costs of the possible alternatives.

Part III – Contract Diversity

3.1	A description of all the relevant contract parameters such as transportation/supply provider, contract length, conditions of service, price, volume, and receipt and delivery points.
3.2	An assessment on how the contract fits into the applicant's overall transportation and natural gas supply portfolio in terms of contract length, volume and services.

Part IV - Risk Assessment

4.1	<p>Identification of all the risks (such as forecasting risks, construction and operational risks, and commercial risks) and plans on how these risks are to be minimized and allocated between ratepayers, parties to the contract and/or the applicant's shareholders.</p> <p>For example, forecasting risks include future demand, prices, actual landed costs and performance of basin; commercial risks include competitive and credit-worthiness of provider/operator; and construction and operational risks include costs escalations, delays or reliability issues pertaining to new construction; and gas interchangeability and quality issues.</p>
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Part V – Other Considerations

5.1	A description of the relationship between parties to the contract and the applicant's parent company and/or affiliates.
5.2	An assessment of retail competition impacts and potential impacts on existing transportation pipeline facilities in the market (in terms of Ontario customers).

Appendix B

List of Participants in EB-2008-0280
Alliance Pipeline Ltd.
Association of Power Producers of Ontario
BP Canada Energy Company Ltd.
Building Owners and Managers Association of The Greater Toronto Area
Canadian Manufacturers & Exporters
City of Kitchener
Consumers Council of Canada
Direct Energy Marketing Ltd.
ECNG Energy L.P.
Enbridge Gas Distribution Inc.
Federation of Rental-Housing Providers of Ontario
Gazprom Marketing and Trading USA, Inc.
Industrial Gas Users Association
London Property Management Association
Natural Resource Gas Ltd.
Ontario Energy Savings L.P.
Ontario Power Generation
Shell Energy North America (Canada) Inc.
Superior Energy Management
TransAlta Cogeneration L.P. and TransAlta Energy Corp.
TransCanada PipeLines Limited
Union Gas Limited
Vulnerable Energy Consumers Coalition