

ONTARIO ENERGY BOARD

**DRAFT FILING GUIDELINES FOR THE PRE-APPROVAL OF LONG-TERM
NATURAL GAS SUPPLY AND/OR UPSTREAM TRANSPORTATION CONTRACTS**

Comments of Industrial Gas Users Association (IGUA)

1. As outlined in IGUA's Notice of Intent to Participate herein (September 8, 2008), some of IGUA's members take gas supply from Ontario's gas distributors, and some contract for their gas supply with gas marketers or directly with the competitive wholesale supply market. Therefore IGUA has an interest in both the cost and adequacy of default gas supply and in the availability of competitive gas supply options. All of IGUA's members have an interest in the adequacy, availability, and competitiveness of upstream gas transportation.
2. IGUA is not aware of any current market failure that would require Ontario's gas distributors to enter into long-term upstream transportation or gas supply contracts. IGUA is not aware of any security of supply concerns or upstream transportation constraints affecting Ontario gas consumers. Development of significant new upstream pipeline or remote gas supply infrastructure is not required at this time in order to maintain reliability of supply to Ontario.
3. The Board does not need to determine at this time whether long-term upstream contracting by Ontario's natural gas distributors might one day be appropriate. The Board would be better advised to make any such determination in the future, in the commercial and regulatory context then applicable, if and when security of supply concerns arise. The Board would then be better placed to develop policy to address the particular circumstances in which long-term upstream utility contracts would be prudent, and how they might be best structured to address those particular circumstances.
4. If filing guidelines in anticipation of applications for approval of long-term upstream utility contracts are to be developed at this time, the Board should limit itself to

identification of the sorts of things that it would consider were such applications to be brought forward.

Background.

5. In the Board's March, 2005 report; *Natural Gas Regulation in Ontario: A Renewed Policy Framework* (the *NGF Report*), the Board determined that:¹
 - (a) The Board was not in favour of long-term utility supply contracts. The Board felt that security of gas supply was best assured by access to a liquid supply hub. The Board was also of the view that the regulated supply option should be viewed as a default option, which meant that customer mobility was essential and prices needed to reflect the market.
 - (b) The Board was of the view that there was a role for utilities in long-term upstream transportation contracting as underpinning security of supply. The potential benefits cited by the Board were reduced barriers for competitive suppliers and reduced gas price volatility.
 - (c) The Board would consult on development of guidelines that would inform stakeholders of the "*principles and issues the Board will consider when evaluating an application for contract pre-approval.*"
6. In the *Report of the Board: Draft Filing Guidelines for the Pre-Approval of Long-Term Natural Gas Supply and/or Upstream Transportation Contracts*, February 11, 2009 (the *LTC Report*) the Board has indicated its view that both long term supply contracts and long-term transportation contracts may be justified to the extent that such contracts support the development of new natural gas "infrastructure". (The *LTC Report* provides as an example of "infrastructure" "*new transportation facilities to access new natural gas supply sources*".²)
7. The *LTC Report* also states that:
 - (a) "Pre-approval" in the context of long-term utility contracts means pre-approval for the recovery in rates of the costs associated with such contracts. (IGUA assumes that the pre-approval is contemplated to apply to current and future costs under the contracts.)

¹ Pages 72-73.

² *LTC Report*, page 4, first paragraph.

- (b) Applications for pre-approval would be entertained on a case by case basis, rather than granted automatically if certain criteria were met.

Policy need?

8. It is important to consider the two basic justifications generally put forward for the re-introduction³ of long-term utility contracts:⁴
 - (a) Supporting the financing and risk assumption associated with large scale infrastructure development (primarily pipes, but sometimes particularly remote supply sources, like Alaska gas).
 - (b) Securing prices for gas supply.
9. As noted above, the Board has previously rejected the notion that Ontario's gas distributors should secure long-term gas supply prices. IGUA continues to endorse this position. Utility engagement in securing future gas prices would be inconsistent with wholesale and retail competition for gas supply.
10. In respect of supporting large scale upstream infrastructure development (pipes or remote supply sources), there are no security of gas supply concerns or upstream gas transportation constraints for Ontario at this time. There are no current or anticipated applications for approval long-term upstream utility contracts. The Board does not need to determine at this time whether long-term upstream contracting by Ontario's natural gas distributors might one day be appropriate, and if so under what circumstances.
11. In the event that security of gas supply becomes an issue for Ontario in the future, long-term upstream utility contracts might be part of a solution. Whether such contracts had a role, and if so what that role should be, would have to be determined in light of the particular status and all of the specific supply, market and other relevant circumstances presented at that time.

³ Prior to the introduction of competition in the North American gas sector, and the purposive unwinding of vertical utility integration, contracts for transportation and supply for 20 years or more were the norm, though under a fundamentally different gas sector commercial and regulatory structure. For a good description of the evolution of the North American gas sector, see Jeffrey M. Petrash in *Long-Term Natural Gas Contracts: Dead, Dying or Merely Resting?*, Energy Law Journal, Vol. 27:545 2006.

⁴ See, for example, *Policy Recommendations on Long-Term Contracting for Natural Gas Transportation, Storage Services and Liquefied Natural Gas Delivery*, NARUC/IOGCC Joint Task Force, October 2005. A good discussion of these issues is provided by Jeffrey M. Petrash in *Long-Term Natural Gas Contracts: Dead, Dying or Merely Resting?*, Energy Law Journal, Vol. 27:545 2006.

12. It is also important to remember the risks associated with long-term utility contracting. It is the shifting of long-term price and cost risk to captive utility ratepayers that initially gave rise to the unbundling of transportation and supply service, and to regulatory frameworks supportive of both wholesale and retail gas supply competition. The introduction of competition in the gas transportation sector resulted in lower prices and an expansion of gas supply and supply management options, including a broad variety of transportation and related services and associated prices. Along with development of competition and choice came shorter term supply and transportation contracts.⁵

Consideration of the Draft Filing Guidelines.

13. IGUA respectfully suggests that a concise statement of principles, as contemplated in the *NGF Report*, could be usefully included in any filing guidelines document, to inform interpretation of the filing guidelines.
14. With reference to the discussion provided by the Board in the *LTC Report*, IGUA suggests the following statements of principle to inform interpretation of any filing guidelines:
- (a) The Board will consider any application for pre-approval for recovery of the costs associated with long-term supply or upstream transportation contracts on a case by case basis.
 - (b) The Board does not consider the securing of commodity or transportation price, per se, as an appropriate objective for a long-term utility contract in Ontario.
 - (c) In considering “pre-approval” for recovery of the costs associated with a long-term upstream utility contract, the Board will focus primarily on the long-term benefits and long-term costs and whether such contract will materially contribute to addressing an imminent need for the development of major gas transportation, storage or supply infrastructure necessary to secure gas supply for Ontario consumers. The Board will consider;
 - (i) the impending need, from Ontario's perspective, for such infrastructure development;
 - (ii) the existence of market failures and/or other barriers to such development;

⁵ Jeffrey M. Petrash in *Long-Term Natural Gas Contracts: Dead, Dying or Merely Resting?*, Energy Law Journal, Vol. 27:545 2006.

- (iii) the impact of the proposed contract on the continued competition and market liquidity for the supply of gas and of upstream transportation and related services;
 - (iv) whether the proposed long-term contract is economic and in the best interests of Ontario gas consumers *vis a vis* alternative measures to address such need and market failure; and
 - (v) whether pre-approval for recovery of the costs associated with the proposed long-term contract is required to remove one or more barriers to the applicant distributor entering into such contract, including any barriers resulting from perceived regulatory risk from ex-post facto disallowance of associated costs.
15. Informed by principles such as those set out above, IGUA respectfully submits that the draft guidelines could benefit from the following clarifications:
- (a) Description of the need for the project to which the long-term contract would relate should specifically identify the Ontario market concerns or failures which the project is intended to address.
 - (b) Description of cost effectiveness should include consideration of; i) alternative long-term contracting or other long-term gas supply management options, including demand management approaches; and ii) shorter term (i.e. status quo) contracting options.
 - (c) Assessment of the need to secure additional upstream infrastructure should provide a relatively long-term view of the impact on the Ontario market for natural gas of the project to which the proposed contract relates. IGUA notes that an October 2005 NARUC/Interstate Oil and Gas Compact Commission (IOGCC) Joint Task Force report on this subject considered a 10 plus year range to be an appropriate perspective for regulatory evaluation of gas infrastructure needs and development options.⁶
 - (d) Assessment of the cost implications of the contract proposed will require full information on how the applicant would ensure prudent ongoing management of the contract and the costs arising thereunder.

⁶ *Policy Recommendations on Long-Term Contracting for Natural Gas Transportation, Storage Services and Liquefied Natural Gas Delivery*, NARUC/IOGCC Joint Task Force, October 2005, 2nd last policy recommendation at page 15.

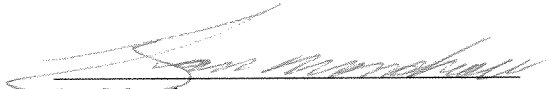
Conclusion.

16. IGUA is of the view that a well developed competitive gas market, and the associated general aversion to the ratepayer risks associated with long-term utility contracts, should continue to be a general principle by which the OEB's regulation of Ontario's gas sector is guided.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

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per:



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