ONTARIO ENERGY BOARD

IN THE MATTER OF the *Ontario Energy Board Act, 1998;*

IN THE MATTER OF an Application by Enbridge Gas Distribution Inc. for an Order or Orders approving or fixing just and reasonable rates and other charges for the sale, distribution and storage of gas commencing January 1, 2009.

Phase II Argument
Industrial Gas Users Association (IGUA)

Introduction.

1. The issue that EGD has raised for review in this phase of the proceeding is whether the gas transportation market as it has developed can be relied upon for the delivery of gas to EGD's franchise on peak days, or whether the Board needs to override that market and direct re-contracting on Trans Canada Pipelines Limited's (TCPL) main line to ensure that such supply is delivered.[1]

2. The evidence indicates that gas volumes delivered to Ontario via TCPL's main line have been increasingly delivered through short term firm or interruptible transportation services in place of long term firm transportation services.[2]

3. The coming into service of the Alliance and Vector pipeline route at the end of 2000, and of other pipeline routes competing with TCPL's main line, and the decreasing competitiveness of TCPL's tolls, have resulted in de-contracting of long term firm TCPL capacity. This de-contracting has left significant main line capacity available for "discretionary" (short term firm and interruptible) services. These discretionary services are generally less expensive than long-term firm transportation services because they either include a shorter term commitment or do not include demand charges.

4. Since as early as 1999[3] Ontario gas customers and suppliers have availed themselves of the option to turn back long term firm TCPL capacity that had been assigned to them by

[1] Transcript 2, page 62, line 21 through page 64, line 21.
[2] Transcript 1, page 26, line 20 through page 28, line 29; Transcript 2, page 61, lines 15 through 21.

EGD, presumably in favour of less expensive discretionary transportation services. This turn back became significant starting in 2005.[4]

5. In this proceeding, EGD has raised a concern that the low, and decreasing, level of contracted long term firm transportation capacity to its franchise area poses risk for system integrity on days when the availability of discretionary transportation capacity may be constrained.

6. EGD's proposal to alleviate this risk is to require direct purchase customers to contract for additional long term firm transportation capacity. Long-term firm transportation capacity is required, EGD says, because it comes with annual renewal rights. Absent annual renewal rights, EGD is concerned that in the longer term the availability of short term firm transportation capacity cannot be guaranteed.[5]

EGD's Proposal.

7. EGD proposes to amend its Rate Handbook to require direct purchase customers to meet their obligations to deliver gas to EGD by contracting long-term firm transportation for at least 90% of the customer's mean daily volume (MDV) delivery requirement. [6]

8. EGD's initial proposal as filed in September, 2008 would have applied to all direct purchase customers, representing approximately 521,000 Gj/day of customer gas delivery commitments and requiring firm transportation evidence in respect of approximately 469,000 Gj of daily delivery commitments.[7]

9. In March, 2009 EGD narrowed its proposal to cover only agency billing and collection (ABC) service Ontario T-service customers.[8] This customer group consists primarily of gas marketers serving low volume residential and commercial (and some small industrial)

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[3] Transcript 2, page 100, line 27 through page 101, line 22.
[4] Transcript 1, page 28, lines 10 through 15.
[5] Transcript 2, page 80, lines 8 through 26.
[6] Exhibit C/1/10, paragraph 2.
[7] Exhibit C/□/⅛□
[8] Exhibit C/1/10.

end users.[9] EGD's revised proposal applies to approximately 270,000 Gj/day of customer gas delivery commitments, requiring firm transportation evidence in respect of approximately 243,000 Gj/day.[10]

10. These delivery requirements constitute about 6.5% of EGD's design day gas delivery plan. That design day plan provides for delivery of a total of 3.7 million Gj.[11] (Within this total, long term firm contracted TCPL capacity represents 28%, EGD's Ontario delivered gas peaking services and curtailment options represent 13%, and most of the balance is delivered under long term firm contracts for capacity held by EGD on Union Gas' gas transportation system. EGD's contracts on Union's system relate both to moving gas from storage at Dawn to EGD's franchise and to moving EGD gas coming in to Dawn via the Alliance/Vector route.[12])

11. EGD's evidence is that its current proposal could be re-expanded to cover EGD's 3000 larger volume (non-ABC) Ontario T-service customers following consideration of whether there might be mechanisms made available to some of these customers in the alternative. Such alternative mechanisms could include backstop service provided by the utility and remotely controlled meters to ensure capability to physically curtail the customer's consumption in the event of system exigencies.[13]

12. In the interim, EGD has unilaterally suspended its large customers' TCPL capacity turn back rights and associated conversions from western to Ontario delivery obligations.[14]

IGUA Position.

13. IGUA submits that the evidence in this proceeding has failed to validate a near term exigency which requires the Board to override the functioning of the competitive gas market.

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[9] Transcript 2, page 23, lines 9 through 17.
[10] Exhibit C/1/10, Table at page 8.
[11] Exhibit HD1.1, page 3.
[12] Transcript 2, page 87 line 15 through page 88, line 26.
[13] Exhibit C/1/10, page 11; Transcript 2, pages 69 through 75 (line 22).
[14] Exhibit TCU-2.11.

14. Further, regulatory prescription of transportation contracting practices would impair the proper functioning of that market.

15. In these circumstances, the implications for longer term integrity of gas supply to the EGD franchise territory of TCPL main line de-contracting are better examined as part of the "unbundling" review for EGD that the Board directed in its issues decision prior to Phase I of this proceeding. That review is to take place in the second half of this calendar year. The outcome of that review could expand the menu of options available to address EGD's concerns in the longer-term.

16. In the interim, the Board should direct EGD to reinstitute its TCPL turn back program, pending further direction from the Board following the unbundling review.

Need for Board intervention.

17. Cross-examination of EGD's witnesses by counsel for CCC demonstrates that despite the recent history of TCPL main line de-contracting and increasing reliance on discretionary transportation services instead, the system which delivers gas to Ontario has worked without exception.[15] All required gas supplies have always been delivered to EGD's franchise, including on the three days in January 2009 which EGD has cited as best evidencing its concern for the ability of the system to meet Ontario peak day requirements.

18. Indeed, the evidence is that even on these three days in January 2009 cited by EGD, all Ontario T-service customers delivered their committed gas on each of these days.

19. Further, there was 600,000 Gj of leeway available on the system on these days.[16] Included in this 600,000 Gj was 145,000 Gj of supply delivered by EGD customers who had been provided with notice of curtailment by EGD[17], 260,000 Gj of EGD's own Ontario delivered "peaking supply", and the physical availability of emergency

[15] Transcript 1, pages 24 through 29.
[16] Transcript 2, pages 107 and 108.
[17] Exhibit I/9/24, part c.

curtailment of 200,000 Gj of gas load (including the customers who had delivered the 145,000 Gj following receipt of curtailment notices).

20. EGD was, and continues to be, concerned about periods such as these three days in January 2009 on the basis that while all of the gas was delivered, including EGD's own peaking supplies, the transportation capacity to deliver that gas was not all nominated in the morning of the day before the deliveries.[18] That, however, is neither in breach of system protocols nor unusual.[19]

21. EGD's evidence indicates that relative to the January 2009 period in evidence, design day conditions (which are six degree days colder) would have required an additional 400,000 Gjs of deliveries to the franchise.[20] Even then, the system as it operated in January 2009 would have provided leeway of at least 200,000 Gj beyond this design day requirement.

22. The testimony of TCPL's witnesses indicates that, in the near term, there is a significant amount of TCPL capacity for contracting on a discretionary basis to meet Ontario gas delivery requirements.[21]

Impact of EGD's proposal.

23. Against this evidence of the significant amount of currently available capacity for discretionary contracting and the continuing ability of the gas supply system to meet EGD's design day criteria, the implications of EGD's proposal on the competitive Ontario gas supply market must be considered. The proposal could cause negative impacts.

24. While EGD has evaluated its proposal with reference to its system operator function, the record indicates that EGD has little understanding of the potential impact of its proposal on the Ontario gas market.

25. EGD has had no significant discussion of its proposal with the direct purchase community in its franchise.[22]

[18] Transcript 2, page 25, lines 12 through 28.
[19] Transcript 3, page 134, lines 25 through 27, *et seq.*; page 136, lines 17 through 21.
[20] Transcript 2, page 108, lines 11 to 14.
[21] Transcript 3, page 153 line 1 through page 154, line 23.

26. EGD has little information on the financial or operational impact that its proposal would have on shippers.[23] The evidence indicates that the cost to customers targeted by EGD's current proposal to unwind their current hedges and contract for incremental long-term firm transportation is material.[24] EGD's witnesses testified that they were not even aware of the way that Ontario's competitive gas retailers' hedges were set up.[25]

27. The per unit transportation costs for Ontario's gas marketers that would result from promulgation by the Board of EGD's proposal would be greater than EGD's own per unit transportation costs, rendering competitive gas supply options less competitive.[26] Current forecasts are that TCPL tolls will jump significantly for 2010 (from $1.19 to $1.44) The impact of such an increase would be moderated for EGD's system gas customers by being averaged into EGD's existing, lower cost, transportation portfolio. The impact would, however, be largely undiluted for marketers and their gas supply customers should they have to replace their current transportation arrangements with those sought to be mandated by EGD.

28. EGD's proposal would constrain, relative to current arrangements, the ability of Ontario's gas marketers and their suppliers to optimize their transportation portfolios.[27]

29. EGD's witnesses repeatedly referred to the current transportation billing situation as indicative of the transportation costs that competitive gas retail customers are currently paying as part of their contract prices. Under the current situation, and due entirely to limitations in EGD's CIS and associated billing and settlement systems, competitive gas retail customers pay Union's weighted average cost of transportation. Union then credits the customer's retailer for transportation not arranged by EGD. That credit is calculated based on current TCPL long-term firm contract transportation tolls.[28]

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[22] Transcript 3, page 142, lines 13 through 22.
[23] Transcript 2, page 84.
[24] Exhibit L, Tab 7, page 7 (section 4.); Transcript 3, page 79 line 24 through page 81, line 2.
[25] Transcript 1, page 37, lines 23 *et seq.*
[26] Transcript 3, page 85, lines 7 through 19.
[27] Transcript 2, page 93, lines 4 *et seq.*
[28] Exhibit I/11/5; Transcript 2, page 91, lines 3 through 9.

30. It is common ground that TCPL's current tolls are greater than the costs of transportation that would be incurred by competitive marketers who have optimized their transportation arrangements with discretionary transportation services. The evidence indicates that this delta between the transportation credit paid to the retailers and the actual transportation costs incurred by the retailers is effectively returned to customers through fixed term gas supply contract prices in a highly competitive retail gas supply market.[29]

31. If competitive retailers were forced to increase their actual transportation costs by contracting for long-term firm transportation, these increased costs would be borne by their customers, current and/or future.[30]

32. Promulgation by this Board of EGD's proposal would also more broadly impact the functioning of an Ontario competitive gas supply market that has been carefully and thoughtfully developed over many years.

33. The only gas transportation route to the EGD franchise other than the main line - i.e. short haul TCPL and Union capacity from Dawn - is fully contracted.[31] In this circumstance, EGD has recognized that the effect if its proposal would be to move the source for all competitive retail gas supply back to Empress.[32] This would negatively impact liquidity in the Ontario landed gas segment of the competitive market, as 240,000 Gj/day of Ontario consumed volumes would be removed from that market. Ontario hedges would be unwound and replaced by Alberta hedges.

34. In the longer term, a regulatory proscription requiring transportation contracting on TCPL's main line would distort otherwise market driven investment signals for new capacity, including in particular in respect of new capacity from Dawn to the EGD franchise. EGD's witnesses agreed that new capacity from Dawn would significantly

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[29] Transcript 2, page 91, line 11; Transcript 3, page 81, lines 3 through 24 and page 84, line 13 through page 85, line 1.
[30] Transcript 3, page 85, lines 7 through 13.
[31] Exhibit L/Tab 21, page 13, table 4; Transcript 2, page 87, lines 15 through 18.
[32] Transcript 2, pages 89 and 90.

diversify and enhance gas supply options for Ontario consumers.[33] The evidence is that TCPL is currently considering adding such capacity.[34]

35. In summary, IGUA submits that avoidance of these negative Ontario gas customer and gas market impacts should be a prime consideration for the Board in considering EGD's proposal. This is particularly so against the backdrop of evidence that there is no immediate exigency requiring a rushed intervention.

Recommendations.

36. EGD's concerns regarding peak day system security, regardless of how well intentioned, have been demonstrated on the record in this proceeding to be unnecessary in the near term.

37. The likely costs of EGD's proposal, on the other hand, have been demonstrated to be material.

38. The impact of the proposal on the competitive Ontario gas market would be detrimental.

39. In the face of this record, IGUA submits that the Board should decline to act precipitously. The Board should decline to apply EGD's proposal for the upcoming winter.

40. The Board has already directed, in its issues decision prior to Phase I of this proceeding, a review of the wisdom of further unbundling of EGD's services. That review will take place during the second half of this calendar year, and be presented to the Board along with EGD's 2010 IRM rate application.

41. Part of that review will entail consideration of a "vertical slice" approach to allocation of transportation, and potentially storage space, serving EGD's franchise. That would include consideration of allocation of currently fully contracted short-haul capacity from

[33] Transcript 2, page 98, lines 2 through 15.
[34] Transcript 3, page 173, line 16 through page 174, line 7.

the Dawn hub to the EGD franchise.[35] Dawn can receive gas essentially from anywhere in the lower 48 states, as well as from Alberta. Capacity from Dawn to the EGD franchise would significantly diversify Ontario gas supply.[36] Allocation of such capacity would also enhance equality of access for competitive gas supply customers to the infrastructure serving Ontario's gas market. (EGD's proposal, on the other hand, would constrain supply options for competitive gas retailers and force them to incur costs to their competitive disadvantage *vis a vis* EGD's own transportation arrangements.)

42. In addition to the potential for unbundling and assignment to competitive gas suppliers of existing capacity from Dawn to the EGD franchise, TCPL has indicated to the market an intention to expand capacity along this route in the near future.[37]

43. Given the lack of exigency, it would be premature for the Board to intervene in the face of these near term gas transportation market developments.

44. IGUA further notes that it appears to be relatively straightforward for EGD to monitor, and periodically report to the Board, on the degree of short term firm transportation capacity availability as well as any TCPL system maintenance or outage expectations.[38] Should the Board have any residual concern regarding the near term integrity of supply to Ontario, it could direct EGD to monitor the situation and report periodically. Access to TCPL capacity reports would also be available directly to the Board.[39] Should an exigency manifest itself, appropriate action could be directed. In addition to addressing any residual concerns for the upcoming winter, such monitoring would provide the Board with additional data to inform the upcoming consideration of further unbundling and related market development.

45. Finally, IGUA objects to EGD's suspension of the turn back entitlements provided for in EGD's approved Rate Handbook.

[35] Transcript 2, page 98.
[36] Transcript 2, page 88.
[37] Transcript 3, page 173, line 16 through page 174, line 7.
[38] Transcript 3, pages 137 through 139.
[39] Transcript 3, page 141, lines 20 through 27 and page 145, line 8 through page 148, line 2.

46. EGD asserts that it is unilaterally entitled to suspend this aspect of its approved tariff based on a phrase found in paragraph numbered 2 on page 50 of its Rate Handbook (filed herein as Exhibit B/1/9). That phrase is found in a lengthier section of the Rate Handbook setting out terms and conditions for TCPL firm transportation capacity turn back entitlements. The paragraph in which the phrase is found, with the phrase relied on by EGD underscored, reads as follows:

> *The Company will accommodate all TCPL FT capacity turn back requests in a manner that minimizes stranded and other transitional costs. <u>The Company is committed to maintaining the integrity of its distribution system</u> and the sanctity of all contracts.* [Emphasis added.]

47. IGUA disagrees that the emphasized general reference in the Rate Handbook entitles EGD to suspend this Board approved term of service without further Board approval.

48. In any event, the record herein indicates no immediate threat to the integrity of EGD's distribution system from turn back of any part of the remaining 36,000 Gjs of direct purchase firm long-haul capacity[40]. Thus even on EGD's interpretation of its tariff there is no entitlement to continue to suspend turn back.

49. The record indicates that turn back entitlements on TCPL capacity are cumulative in each year.[41] The loss of such entitlements this year thus resulted in a permanent cost to affected EGD customers. This situation should not be permitted to continue.

50. IGUA respectfully requests that the Board direct EGD to reinstitute the turn back provisions of its approved Rate Handbook until further directed by the Board.

Conclusion.

51. As noted at the outset of this argument, EGD's original proposal for requiring long-term firm capacity in support of its customers' Ontario MDV requirements applied to all Ontario T-service customers, including industrials.

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[40] Exhibit HD1.1, page 3.

[41] Exhibit I/9/7; Technical Conference Transcript (April 23, 2009), page 56, line 18 through page 58, line 2 and TCU3.6, page 2, table.

52. While EGD subsequently narrowed its current proposal thereby excluding most (though not all) industrials, it remains apparent that EGD intends further actions in the same direction in respect of non-ABC Ontario T-service customers. IGUA thus has a direct interest in the outcome of this proceeding and has actively participated accordingly.

53. IGUA respectfully submits that it has participated responsibly, seeking first to assess EGD's concerns through selective interrogatories and judicious technical conference participation, and then cross-examining following those parties whom EGD's current proposal primarily affects.

54. IGUA's interests and positions, as reflected in this argument, relate both to anticipated impacts directly on its members from expansion of EGD's proposal, or a similar initiative, in the coming years, and to the impact of EGD's current proposal on the competitive Ontario gas supply market at large. The continued integrity and development of that market has been, and remains, in the best interests of IGUA's members.

55. IGUA hopes that its participation has been of assistance to the Board, and respectfully requests recovery of 100% of the costs reasonably incurred for its intervention herein.

ALL OF WHICH IS RESPECTFULLY SUBMITTED:
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