

November 2, 2009

EB-2008-0052

ONTARIO ENERGY BOARD

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

AND IN THE MATTER OF the Ontario Energy Board's
Notice of Proposal to Make a Storage and Transportation
Access Rule

SUBMISSIONS OF ENBRIDGE GAS DISTRIBUTION INC.

Overview

1. Enbridge Gas Distribution Inc. ("EGD") appreciates this opportunity to comment on the Board's second version of the proposed Storage and Transportation Access Rule ("STAR", or the "Rule"), issued September 18, 2009.
2. Overall, and as noted in its prior submissions, EGD generally supports a STAR that regulates storage and transportation services to the extent necessary to give effect to the Board's decision in the Natural Gas Electricity Interface Review ("NGEIR"), and to protect the public interest. Although the majority of the proposed Rule appears to be consistent with NGEIR, the requirement to disclose pricing information of competitive storage services is a marked departure from NGEIR principles and the previous version of the Rule, and EGD opposes its inclusion for the reasons outlined below.
3. EGD is also providing comments respecting certain of the administrative and general provisions, transportation open seasons, and reporting requirements.
4. EGD also wishes to reiterate that in addition to costs related to regulatory filings, EGD expects to incur expenses for internal administration and information technology systems to comply with the Rule, the extent of which cannot be determined at this time. EGD will seek recovery of appropriate expenses through rates at the relevant time.

Administrative & General Provisions

5. **Purpose of the Rule:** The third objective of the Rule, in section 1.1.1(iii), is to "[e]nsure customer protection within the competitive storage market." The Rule

does not define “customer”, the intended object of the Rule’s protection. Customers of competitive storage services invariably are sophisticated entities that employ market experts who ensure those entities’ interests are fully protected. These customers often have greater financial means than the storage company itself. EGD questions the need to impose any requirements on Ontario storage companies aimed at protecting sophisticated and experienced market participants in an already mature competitive market. EGD respectfully requests that the Board provide reasons for why this should be an objective of the Rule.

6. In the NGEIR decision, the Board found that “the customers in this competitive part of the market (commonly referred to as ex-franchise) have been acquiring storage at market-based rates for some time. The Board sees no benefit from continuing to regulate the prices of these services; on the contrary, competition in this area is sufficient to protect the public interest.”¹ In relation to high-deliverability storage services, this finding is repeated in two other places in the NGEIR decision, with the Board explicitly confirming each time that competition in new storage services will be sufficient to protect the public interest.² If the public interest is sufficiently protected by the offering of competitive services, what other interest remains vulnerable and in need of supplemental Board protection? EGD submits that there is none, and that section 1.1.1(iii) should therefore be removed.
7. In the alternative, EGD requests that the Board define “customer” and identify the customer interests the Rule is seeking to protect, and provide reasons for why such protection is needed. This will help to avoid confusion about interpretation of the Rule at a later date if disputes arise. Interpretation of section 1.1.1(iii) is otherwise unclear and confusing in relation to the operative provisions of the Rule.
8. **Definitions:** EGD notes that the definitions proposed for “delivery point” and “receipt point” are the reverse of how these terms are typically used by transmitters. That is, a transmitter would typically receive gas from a shipper at the receipt point, and deliver gas back to the shipper at the delivery point.
9. EGD appreciates the Board’s clarification of the definitions of “natural gas transmitter” and “storage company” to include the phrase “pursuant to the Act”, to ensure that “the transportation and storage services referred to in the STAR do not apply to the services in the secondary market.”³ EGD makes further comments under “Reporting Requirements”, below, related to this clarification.
10. **Coming into Force:** EGD submits that it is premature to set a specific date upon which the Rule will come into force, given that the final Rule has not yet been issued. Although EGD will submit the necessary application(s) to the Board as soon as possible after the Rule is issued in its final form, the timing of Board approvals is largely outside of EGD’s control. EGD therefore suggests that

¹ NGEIR, p. 71.

² NGEIR, pp. 54 and 70.

³ EB-2008-0052 Notice of Revised Proposal to Make a Rule, September 18, 2009, p. 3.

implementation of the Rule be delayed at least six (6) months from the date of its issuance, and that enforcement of requirements depending upon Board approval be relaxed beyond this timeframe, if necessary, to accommodate the regulatory process.

Transportation Open Seasons

11. ***Open Seasons for Existing Capacity:*** EGD accepts the requirement to hold open seasons for new transportation capacity, but maintains that open seasons for existing capacity is unwarranted. In addition to comments made in prior submissions that open seasons are cumbersome and inflexible, such a requirement creates an unlevel playing field, to the disadvantage of Ontario transmitters. To the best of EGD's knowledge, no other transmitters in the same geographic market are subject to these requirements. Furthermore, the prescribed timelines are unworkable for existing capacity open seasons that have limited market demand (such as EGD's Rate 331 service), or require rapid processing.
12. Transmitters should be free to choose any fair method of allocating transportation capacity, as approved by the Board in the transmitter's tariff. As previously noted, Ontario transmitters bear the financial risk of underutilized assets during incentive regulation. It is not fair to increase this risk in the absence of any specific concerns about unfair allocation procedures. If such concerns arise, the complaint mechanism in the Rule should serve to address an adequate remedy. EGD therefore recommends that the Board delete the second sentence of section 2.1.2 of the Rule.

Competitive Storage

13. ***Storage Pricing Disclosure:*** EGD objects to the inclusion of section 3.1.4 in the Rule for the following reasons:
 - a. The requirement to disclose pricing information is inconsistent with forbearance, as decided in NGEIR, and does not serve the public interest. As noted above, entities bidding for competitive storage services are market savvy, and well-positioned to protect their own financial interests. Pricing disclosure is not required either to maintain or enhance the competitiveness of the storage market that EGD serves. Stated differently, the absence of transaction-specific pricing information will not deter market participants from bidding for and procuring storage services. As a large purchaser of storage services, EGD can attest to the fact that there is already an abundance of forward-looking pricing information available to assist market participants in making bids for storage services. Alternatively, customers can, and often do, issue their own requests for proposal ("RFPs") for storage services. In fact, EGD successfully relies upon this method of storage procurement.

- b. As the Board stated in the NGEIR decision, “the development of competitive options will provide adequate price protection for these consumers”.⁴ The other reporting requirements prescribed in the Rule should provide comfort to the Board, and to parties, that the interests of consumers are protected in terms of the availability, reliability and quality of unregulated storage services. Assuming that the services are available, and are being purchased, then (as the Board notes on numerous occasions in the NGEIR decision) the competition for the service will be sufficient to protect the public interest and no pricing disclosure is necessary.
- c. The disclosure of customer-specific competitive pricing information does more harm to the market than good. Such disclosure is not appropriate, as the Board again recognized in framing its initial draft of the STAR, wherein it stated:

“The Board is of the view that it is not necessary to disclose aggregated pricing information from competitive storage open seasons. The Board believes that the requirements to post firm storage contracts in the Index of Customers and to report available storage capacity will provide the appropriate customer protection and will support a competitive storage market. The Board questions the value of aggregate information given the range of potential storage services. The Board is also concerned about the challenges associated with protecting customer-specific information when there are a limited number of transactions.”

No change has occurred since the Board made the above comments that should cause the Board to change its views. It is still true that disclosure of pricing information will be of limited usefulness and will not increase competitive market participation. Conversely, storage providers and customers may be harmed by disclosure of commercially sensitive information. If parties are inclined to participate in the storage services market, they will do so with the current pricing indicators available to them. No parties have indicated otherwise in their submissions to date.

- d. The disclosure of customer-specific pricing information is of limited usefulness to market participants because the value that any one customer attributes to storage is comprised of many factors specific to that customer, such as the customer’s physical requirements for gas, other assets the customer has at its disposal (e.g., transportation capacity), its tolerance for price volatility, and so on. Assessing price and term alone will not result in an accurate valuation of a service, and will not be meaningful unless all aspects of the customer’s needs and storage provider’s service are taken into account. This is precisely why RFPs for storage services are a preferred method of procurement for EGD; they cater to EGD’s individual needs as a customer.

⁴ NGEIR, p. 70.

- e. Market participants will likely be harmed because disclosing pricing information in the manner proposed by the STAR reveals commercially sensitive customer information that could be used against both the customer and the service provider. Storage project economics may be discerned from open season bid information. Further, parties knowing the bids accepted by a storage company in an open season will likely make subsequent bids that equate with the lowest common denominator of bids accepted, which may have an adverse effect on future storage project economics. Neither of these results is fair to the storage provider, and clearly puts the storage provider at a competitive disadvantage. Storage projects may, in turn, be abandoned. This result is directly contrary to the Board's findings in NGEIR that:

“The key consideration is to ensure that new innovative services are developed and offered into the market. The Board concludes that the best way to ensure this public interest is met is to refrain from regulating these services. This will stimulate the development of these services, by the utilities and by other providers. The Board finds that competition in these services will be sufficient to protect the public interest.”⁵

- f. EGD expects that potential customers will be deterred from bidding into the Ontario storage market if customer-specific pricing is to be publicly disclosed. APPrO advocates protection of customer-specific information with the use of various aggregating methods, in its submission to the April 9th version of the Rule, thereby recognizing that customer information is confidential in nature. Notably, APPrO's rationale for promoting price disclosure is to ensure development of a competitive marketplace.⁶ APPrO members are active participants in the very competitive market of electricity generation, and have no need for further market protection. Competitive pricing information is no less commercially sensitive than the specific terms of a negotiated storage agreement, which the Board has recognized parties should retain the flexibility to negotiate.⁷ EGD submits, consistent with the Board's findings in NGEIR, that there already is a competitive marketplace for storage, and the Board need not intervene to the potential detriment of market players.
- g. Finally, EGD questions the value of reporting semi-annual revenues received from each storage customer, when such revenues will include overrun charges and any other financial penalties applied under the contract. It is not at all apparent how this information will enable competition without unduly

⁵ NGEIR, pp. 69-70.

⁶ APPrO May 25, 2009 submission to OEB, p. 3.

⁷ EB-2008-0052, Notice of Proposal to Make a Rule, April 9, 2009, p. 17: “The Board does not believe that [making available standard terms of service on a website] will reduce a storage provider's flexibility to develop or negotiate individual contracts with customers.”

disadvantaging storage companies and their customers for the reasons stated above.

Reporting Requirements

14. In reference to EGD's earlier comments above regarding the Board's intended exclusion of secondary market services from the Rule, we note that sections 4.2.4 and 4.2.5 are inconsistent with this statement. There is a strong bias in the primary market for storage and transportation services for long-term contracts (i.e., greater than one year). Shorter term services, as the Board has recognized, are much more volatile in nature, and specific to time-limited market conditions and customer circumstances. The unregulated secondary market caters to these circumstance-specific service offerings, and is not subject to reporting requirements such as those being proposed in the STAR (with the exception of certain US short-term transportation services). Such reporting is not required for this market to thrive as it has done for many years. The STAR would impose a competitive disadvantage and unnecessary administrative burden on Ontario utilities by requiring reporting of all short-term arrangements. Such information is of limited usefulness given its specificity. Therefore, EGD submits that the Board ought to revise sections 4.2.3 to 4.2.5 to require that the Index of Customers only include contracts with a duration of one year or more.

15. In conclusion, EGD urges the Board to resist regulation where the need for such regulation has not been demonstrated, and where harm may result. Specifically, the Board should:
 - be consistent with the NGEIR findings and revert to its earlier views on storage pricing disclosure, to not require it;
 - permit transmitter discretion regarding the use of open seasons for existing firm transportation capacity; and
 - eliminate the requirement to report short-term transactions, consistent with secondary market practices, and the Board's agreement that the STAR does not apply to secondary market services.

We look forward to receiving the Board's response and to reviewing the comments of other parties, upon which EGD reserves the right to provide further comment, if necessary.