



uniongas

A Spectra Energy Company

November 2, 2009

Ontario Energy Board
2300 Yonge Street, Suite 2700
Toronto, Ontario
M4P 1E4

Attention: Ms. Kirsten Walli, Board Secretary

Re: EB-2008-0052 - Union Gas Comments on the Board's Revised Proposed Storage and Transportation Access Rule ("STAR")

Dear Ms. Walli:

The purpose of this letter to provide Union's comments on the Board's Notice of Revised Proposal to Make a Rule – Storage and Transportation Access Rule ("STAR" or "the Rule") dated September 18, 2009.

Union appreciates the opportunity to provide input on the second draft of the Rule. As stated by Union in prior submissions, Union supports the key objectives of the STAR. Further, Union acknowledges and appreciates that the Board has reflected in this latest version of the Rule, a number of the comments and suggested modifications included in Union's May 25, 2009 submission. Union remains concerned, however, with a number of key aspects of the STAR.

Union has limited its comments to four key areas. They are:

- i) The requirement to allocate all existing firm transportation capacity through an Open Season;
- ii) The requirement to post storage pricing and revenue;

- iii) The requirement to post available capacity related to M16 transportation service;
and
- iv) The proposed timing for implementing STAR and associated costs.

i) **Allocation of existing transportation capacity**

S.2.1.2 of the revised STAR requires that when existing long-term transportation capacity becomes available it must be allocated through an Open Season. S.2.1.3 allows transmitters that are unable to allocate all of the existing capacity through an open season to allocate any remaining capacity by other allocation methods as set out in the tariff. Further, under the revised STAR, Open Seasons for existing capacity must be open for a minimum of 15 days (s.2.2.1 (b)).

It is Union's view that this latest version of the Rule, as it pertains to the allocation of existing capacity, fails to address the very real concerns expressed by Union in its May 25th submission. It is also inconsistent with Open Season requirements and regulatory framework of other pipelines in the Great Lakes area (Vector Pipeline, Panhandle Eastern Pipeline and Michigan Consolidated Gas Company (MichCon)) and, is not required given the extensive reporting requirements and consumer protection aspects of the proposed Rule.

As indicated in Union's May 25th submission, Union allocates existing M12 and C1 firm transportation capacity through a combination of Open Season bidding and direct negotiation with customers. With respect to filling existing capacity, Union once again stresses the importance of having the flexibility to use either Open Seasons or direct negotiation with customers. This flexibility is appropriate and necessary because Union carries the revenue risk associated with all unsubscribed capacity after rates are approved and, more specifically, over the incentive regulation ("IR") term. The flexibility to offer existing capacity through either Open Season or direct negotiation allows Union to manage the risk of lost revenue and maximizes the ratepayer benefit through the Earnings Sharing Mechanism.

Union is not opposed to using an Open Season to market existing capacity. Union has used Open Seasons for existing capacity in the past. However, Union does not support the position that Open Seasons should be the only option for long-term transportation services on capacity segments that are not fully contracted. In some situations Open Seasons are not the best means of allocating available transportation capacity. To illustrate why mandating Open Seasons for existing capacity is not appropriate, Union offers the following examples of services that are requested by customers from time to time that could not be accommodated if Open Seasons are required under STAR.

Example 1

Union has received requests for capacity for transportation services on very short notice. If, for example, a customer approached Union on January 30th, wanting to contract for transportation service for a year or longer starting at the beginning of February on a path that has unsubscribed capacity, Union would not be able to provide service because of the requirement to conduct an Open Season. It would take Union approximately a month to conduct a 15-day Open Season, including the preparation at the front end and the analysis awarding and contracting at the back end. In this example, the winter would be essentially over and the customer would have found alternative market based options rather than contract with Union.

Example 2

Union receives requests from customers that have capacity on upstream (i.e. Panhandle or Vector) or downstream (i.e. TCPL) pipelines connected to Union wanting to combine that capacity with capacity on Union's system. Under the proposed STAR, Union could not sell capacity to these customers without an Open Season. If the capacity was available on the other upstream and downstream pipelines, the customer could contract the same day with them. However, the customer could not contract on Union. If the customer requires the capacity on short notice, Union will not be able to sell the transportation service to the customer

For the examples above, the customer will look to other parties (TCPL, Nexen, etc.) holding Union transportation capacity to meet their transportation needs. The customer will purchase that capacity in the secondary market which has no Open Season requirements. Union requires flexibility when offering services using existing capacity so that it can effectively manage available capacity, satisfactorily meet the needs of customers and prevent any competitive disadvantages that could result from the rigid Open Season time requirements.

As indicated above, based on Union's review of the Open Season requirements for existing capacity applicable to other pipelines in the Great Lakes area, the Board's proposed Rule is inconsistent. Great Lakes Gas Transmission Company, for example, does not require an Open Season to allocate existing capacity to a potential shipper. The Great Lakes tariff, however, provides Great Lakes with the flexibility to conduct an Open Season at any time if they choose (which is consistent with FERC guidelines). The tariffs of Vector Pipeline, Panhandle Eastern Pipeline and Michigan Consolidated Gas Company (MichCon) all contain provisions allowing customers to request transportation service at any time and that the pipeline company will allocate available capacity between shippers based on the highest NPV or based on the timing of the submission (i.e. first come first serve). None of these regulated pipelines have a regulatory requirement or obligation to conduct an Open Season to market existing capacity.

Union acknowledges that TCPL has a very prescriptive policy with respect to the allocation of existing capacity. The policy requires that all existing capacity is initially sold via an annual Open Season. For any capacity not sold, half can be posted on a daily Open Season and sold at any time. Union notes, however, that TCPL is not subject to the recovery risk associated with unsubscribed capacity. Specifically, TCPL has a deferral account that captures all unrecovered revenue from underutilized firm capacity. The amounts in the deferral account are recovered from shippers in the next year. Union does not have this type of protection under its regulatory or IR framework.

Finally, the Board provided its rationale for requiring transmitters to allocate existing capacity for long term transportation services at page 4 of its Notice. The Board states that:

“In determining the appropriate methodology for allocating existing long-term firm transportation capacity, the Board must consider the trade-off between a methodology that may be less flexible and the need for transparency and customer protection. The Board believes that due to the integrated structure of the utilities in Ontario, open seasons are the best means of ensuring that all potential customers have the opportunity to purchase existing long-term firm transportation capacity in an open and transparent manner. This would ensure that all potential customers would have non-discriminatory access to transportation services regardless of whether they purchase storage services from Union, Enbridge or a third-party storage provider.”

It is Union’s view that the Board’s goals of ensuring transparency and customer protection are sufficiently satisfied by the Rule’s reporting requirements and complaint mechanism without imposing restrictive and mandated Open Season requirements for existing capacity. Under the proposed Rule, transmitters will be required to post shipper name, contract identifier, receipt/delivery points, contract quantities, contract effective/expiration dates and whether or not the rate was subject to negotiation. Transmitters will also be required to post available capacity. The Rule will require that all transportation services be sold under a standard contract and that all variations to the standard be posted. Finally to the extent that shippers, existing or potential, feel they are discriminated against, the Rule provides for a complaint mechanism and with ultimate recourse to the Board. Union believes that with these provisions of the Rule, there is a high degree of transparency and customer protection for existing capacity and, accordingly, there is no need to require or mandate Open Seasons. Union notes that, to date, there have been no complaints related to how it offers or allocates existing transportation capacity.

Consistent with its May 25th submission, Union does not support adopting practices that are inconsistent with other pipelines and result in it being less competitive and flexible as compared to other transmitters in the Great Lakes basin. Union therefore proposes to reword s. 2.1.1 of the draft Rule to include “all firm” transportation capacity. As noted in its May 25th submission, Union would modify its tariffs to indicate that Open Seasons would be used for the allocation of new firm transportation capacity and that, at Union’s discretion, Open Seasons or direct negotiation would be used to allocate existing long term firm transportation capacity. This would eliminate the need for s.2.1.2.

ii) **Posting storage pricing and revenue**

S.3.1.4 of the revised proposed Rule requires that a storage company post on a semi-annual basis, its pricing and revenue for competitive storage services on its website. The posting will also include the shipper name. In Union’s view, not only is this requirement excessive but more importantly, it is not consistent with the dynamics of a competitive market.

The Board provides its rationale for requiring storage companies to post pricing and revenue information at page 8 of the revised Notice. The Board states:

“The Board agrees that price disclosure for competitive storage services would assist customers in their purchasing decisions and would not put Ontario storage providers at a disadvantage relative to competing storage providers in other jurisdictions. The Board believes that price disclosure will meet two of the key objectives of STAR – customer protection and transparency.

The Board notes that in the relevant geographic market there are price disclosure requirements for both interstate storage providers and intrastate storage providers. Specifically, an interstate provider is required to post daily pricing information for each storage contract while an intrastate provider that sells interstate storage services is required to file a semi-annual storage report that details unit charge and total revenue

for each shipper. Therefore, the Board is of the view that a storage provider should provide pricing and revenue information semi-annually (on April 1 and October 1) on its website”

Union acknowledges that there is some price disclosure in the relevant geographic market area. Union notes however that the disclosure requirements are not consistently applied to all storage companies. Specifically, FERC regulated storage companies (i.e. Bluewater, ANR) do have reporting requirements. MichCon, however, which is a direct and major competitor to Union, is not required to post unit pricing or revenue specific to any storage contract. Union is deeply concerned that the requirement to post pricing and revenue information at the level of detail contemplated in the proposed Rule will put Union at a competitive disadvantage to a major competitor. Union notes that of the parties making submissions with respect to the posting of storage pricing, none of those parties take complete storage services from Union. Further, the only storage company that made a submission in support of posting storage pricing information was Bluewater which is required to post storage prices under FERC.

In its April 9, 2009 Notice (pg.18) the Board stated, with respect to storage pricing, that;

“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.”

It is Union’s view that the concerns expressed by the Board, with respect to the reporting of storage pricing, in its April Notice continue to be valid. Union is not aware of any changes in the market or in regulations in other jurisdictions that would support the Board

changing its direction on this issue. Union maintains its support for the Board's stated principles for competitive storage (and transportation) access – transparency, non-discriminatory practices and fairness. Union proposes that s.3.1.4 be removed from the STAR.

iii) **Posting available capacity related to M16 transportation service**

S.4.3.1 requires transmitters to post for each nomination window the operationally available transportation capacity for each capacity segment for which the transmitter provides transportation services. Under this section of the proposed Rule, Union would be required to report operationally available capacity for the M16 transportation services. For the same reasons that s.2.1.5 excludes embedded storage companies taking M16 transportation services from s.2.1 which addresses the allocation of transportation capacity, M16 transportation services should be excluded from the posting requirements of s.4.3.

The M16 transportation service provides transportation service between Dawn and the embedded storage pool. Union's ability to provide this service depends on a number of factors including, but not limited to, the size and location of the storage pool; and, the available capacity and operating conditions on Union's distribution and transmission system. Since, by definition, the only party that can use the capacity to and from the embedded storage pool is the embedded storage provider which has contracted for a specific level of M16 transportation service, the information will be of no value to any other shipper.

As noted above, Union therefore respectfully requests the Board add a provision in the final STAR which states s4.3.1 does not apply to transportation services for an embedded storage company.

iv) **Implementation timing and costs**

The Board is proposing March 22, 2010 as the implementation date for the final STAR. Given that the comments on this latest draft Rule have only just been filed and that the final Rule is yet to be issued, Union does not believe there is enough time to make the necessary system changes, changes to standard contracts, changes to tariffs and obtain required OEB approvals to implement on March 22, 2010. For this reason, Union recommends that the Rule come into effect 6 months after the date it is issued.

Also, at page 10 of the Board's September 18, 2009 Notice, the Board states that stakeholders "failed to raise concerns" that the requirements outlined in the proposed Rule would lead to major increases in implementing and reporting costs. This is not the case. Union has previously cited the "potential" for significant implementation and ongoing costs resulting from STAR. Union, however, is unable to estimate the costs associated with the implementation of STAR at this time. Once the STAR is finalized and costs can be reasonably estimated, Union will seek recovery of its implementation costs.

In addition to key areas of concern noted above, Union is proposing one minor change to the definition of delivery and receipt point.

Definitions

In s.1.2 (Definitions) of the proposed Rule, the definitions for delivery and receipt points are reversed from the perspective of the transmitter relative to industry standards. For purposes of consistency and to avoid confusion, the definitions should read as follows:

"Delivery point" means the point where a transmitter delivers gas to a shipper under a transportation service.

“Receipt point” means the point where a transmitter receives gas from a shipper under a transportation service.

Should you have any questions or concerns with respect to this submission, please contact me at 519-436-5275.

Sincerely,

[original signed by Joanne Clark for]

Mark Kitchen
Director, Regulatory Affairs

cc: Sharon Wong (Blakes)