



uniongas

A Spectra Energy Company

May 7, 2010

Ms. Kirsten Walli
Board Secretary
Ontario Energy Board
2300 Yonge Street, 27th Floor
Toronto, ON M4P 1E4

Dear Ms. Walli:

**Re: Application by Union Gas Limited (“Union”) for approval of its tariffs for its M12, C1 and M16 transportation services to Comply with the Storage and Transportation Access Rule (STAR)
Union’s Reply - Board File No. EB-2010–0155)**

Pursuant to the Board’s Notice of Application and Procedural Order No.1 for the above-noted proceeding, please accept this letter as Union’s Reply.

On April 1, 2010, Union filed an application seeking a Board Order approving the proposed STAR-compliant tariffs for its M12, C1 and M16 transportation services. As stated in its filing, Union was required to make a number of revisions to these tariffs to make them comply with STAR. After Union filed its application, the Board issued Procedural Order No. 2 (dated April 27, 2010) which extended the date by which the transportation tariffs must comply with STAR to July 1, 2010.

In Procedural Order No. 1, the Board allowed interested stakeholders to file submissions on Union’s application. CME, IGUA, the City of Kitchener, Kingston Utilities, APPrO, TCPL and Board Staff all filed submissions. From its review of these submissions, Union submits that the proposed changes to the tariffs were for the most part accepted. The most common areas of comment relate to Allocation of Capacity and Service Curtailment (Priority of Service). This Reply will focus primarily on these two areas, and also comment briefly on some of the other issues raised in the submissions.

Allocation of Capacity

A common theme in the stakeholder submissions is that the proposed wording of Article XVI (5) of the proposed General Terms and Conditions (“GT&C”) Schedule “A 2010” for the M12 and C1 services dealing with the allocation of capacity does not provide shippers with enough certainty as to the allocation methodology that will be employed. Board staff commented that it does not support the inclusion of “direct negotiation” as an alternate method of allocating capacity.

Union acknowledges that s. 2.1.2 of STAR requires that transmitters conduct a non-discriminatory Open Season for all new transportation capacity and for all existing long-term capacity that becomes available. However, pursuant to s.2.1.3 firm transportation service that has been offered but not awarded in an Open Season may be allocated by other methods, as defined in the transmitter's tariff

S.2.1.3 provides transmitters with the necessary flexibility to allocate capacity using means other than Open Seasons provided these alternative methods are defined in the tariff. Union has defined the alternative allocation methods. As stated in Union's tariff, these methods include, but are not limited to "first come, first serve", Open Seasons or direct negotiation. These additional methods are required to meet the needs of customers that, for valid business and commercial reasons, are unwilling or unable to participate in the Open Season processes. Further, Union has drafted its tariff to allow for the possibility of new allocation methods which customers may request in the future. Union notes that all of the methods defined in Article XVI (5) have been used by Union in the past and no concerns have been raised by shippers as to their use. Parties should bear in mind that these alternative methods are only used for capacity not allocated through an initial Open Season process.

The appropriate allocation method can vary depending on the situation. Union requires the flexibility to allocate capacity in the manner that best meets the situation, including direct negotiation with shippers.

Union bears the revenue risk associated with all unsubscribed capacity after rates are approved and, more specifically, over the incentive regulation ("IR") term. Union requires the alternative allocation methods as set out in the proposed M12 and C1 tariff to avoid the revenue losses associated with unutilized transportation capacity. The proposed methods for allocating capacity not awarded through an Open Season allows Union to minimize the risk of lost revenue and maximize revenues available for sharing during the IR term.

Accordingly, Union requests that the Board approve its proposed wording related to the allocation of capacity as filed in its April 1st compliance filing.

Service Curtailment

CME raised a concern that Article XVIII of the M12 and C1 GT&C allows Union to curtail service in Union's "sole discretion" whenever capacity or operating conditions require.

It is Union's view that service curtailment must be at its sole discretion. The need to curtail service can arise from a variety of circumstances and can affect any portion of Union's system. When a service issue arises, Union must have the ability to respond immediately. For this reason, the phrase "Union's sole discretion" is not only appropriate but necessary since Union is the only party in a position to properly assess the situation and respond in a timely manner when taking into consideration operational integrity and public safety while at the same time, continue to provide service.

This right has been part of the Union contract for some time and was not changed during the conversion process to become STAR compliant. Union has had the right to curtail service at its “sole discretion” for many years and no complaints have been received. There is nothing in STAR that suggests a need or warrants a change to this policy. Union maintains that “sole discretion” in no way suggests that Union would not act reasonably.

To further reinforce Union’s position, the following is an excerpt from Vector Pipeline’s FERC-regulated tariff, General Terms & Conditions (section7):

PRIORITY OF SERVICE AND CURTAILMENT

Transporter shall have the right to not schedule part of all of a requested transportation, and/or curtail or to discontinue services, in whole or in part, on all or a portion of its system at any time for reasons of Force Majeure or when, in Transporter's *sole discretion*, capacity or operating conditions so require. Transporter shall provide Shipper such notice of such curtailment as is reasonable under the circumstances. Routine repair and maintenance is not deemed an emergency situation or an unexpected loss of capacity and will be scheduled by Transporter in a manner to avoid, wherever possible, the disruption of confirmed service. (*Emphasis added*)

On a related topic, some stakeholders suggested that Article XVIII of the M12 and C1 GT&C should be expanded to fully state all of Union’s detailed policies relating to the priority of service (“POS”). Union’s proposed wording states the general guidelines in the tariff and advises that the detailed policies and procedures are available on Union’s website.

Union opposes embedding the full POS policy in the tariff because all future changes to the policy, regardless of magnitude, would then have to be brought before the Board for review and approval. Union believes this would severely limit its ability to respond to changing flow dynamics and customer’s needs, and it would create an administratively burdensome process for the Board and all stakeholders.

A procedure for protecting the interests of shipper from arbitrary changes to the curtailment policy is already in place pursuant to a Board-approved settlement agreement in EB-2005-0520 (Union’s 2007 cost of service proceeding) which provides that any changes to the detailed curtailment policy are subject to both notification (minimum 2 months notice) and review by the External Policy Team. This team is comprised of various stakeholders including representatives of customers (in-franchise and ex-franchise), utilities, energy marketers, shippers and Union. Members of the External Policy Team have the necessary recourse to involve the Board should they feel their interests are not being adequately met.

For the reasons noted above, Union submits that its detailed POS policy should not be included in the tariff, and that the tariff refers customers to the website for additional detail.

Other Issues

Union would also like to take this opportunity to comment on more specific issues identified in the various submissions.

APPrO raised a concern regarding the wording of Article V (2) of the proposed M12 and C1 GT&C:

“Shipper agrees that Union is not a common carrier and is not an insurer of Shipper’s gas, and that Union shall not be liable to Shipper or any third party for loss of gas in Union’s possession, except to the extent such loss is caused entirely by Union’s gross negligence or wilful misconduct.”

APPrO argued that this language does not represent a proper balancing of Union’s interests with those of the ratepayer. As confirmed in APPrO’s submission, the proposed Article V (2) was taken directly from Union’s existing contract and moved into the GT&C in order to comply with STAR. It is Union’s position that any change to this provision would be outside the scope of STAR. STAR requires that a transmitter include its terms of service in its tariff, but it does not justify the revision of long-established terms of service. The revisions proposed by APPrO transfer a greater risk of loss on Union which it is not prepared to accept.

Further, Union notes that clause (d) of APPrO’s proposed provision would require Union to take steps including taking legal action on a shipper’s behalf to recoup the shipper’s losses. Such a requirement would be unreasonable because there is no reason why the shippers themselves cannot act in their own self interest and why Union should be responsible to act as their protector vis a vis other third parties. In addition, Union questions whether it would even have standing in the courts to take legal action on behalf of a shipper to recover the shipper’s loss. The shipper itself would likely have to bring the action as the injured party.

Union therefore requests that the Board make no changes to the wording of Article V (2) as this clause is part of the existing standard contracts and should not be considered as part of the STAR proceedings.

With respect to the M16 transportation service, Board staff recommended that provisions relating to service curtailment, force majeure, conditions precedent, details of billing, etc. should be included in the GT&C for the M16 service in order to be consistent with Union’s proposal to include those provisions in the GT&C for the M12 and C1 services. Staff further recommended that Union include the priority list for transport services and procedures listed on its website in the M16 GT&C.

Union’s M16 transportation service provides for transportation service only to an embedded storage company. STAR expressly distinguishes between the tariff for transportation services provided to a shipper which is dealt with in s. 2.3 of STAR and transportation services provided to an embedded storage company which is dealt with in s. 2.4. Under s. 2.3.4 the transmitter’s tariff for services to a shipper must include certain provisions, like service curtailment, force majeure, and details of billing. However, pursuant to s. 2.4 of STAR, those specific provisions are exempted from having to be included in the tariff for transportation services to an embedded storage company.

Union disagrees with Board staff's suggestion that Union include in the M16 tariff the priority list for transportation services as it has in the M12 and C1 tariff. In Union's view, this suggestion is not a requirement of STAR and does not make practical sense. 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 on a case by case basis. Union's transportation services are typically curtailed on a peak winter day. This is not the case for the M16 transportation service. For example, Tipperary, an embedded storage pool located in Huron County, has its interruptible M16 transportation service curtailed when local demands are so low that the embedded storage pool cannot flow (i.e. not a peak winter day). On a peak winter day, Tipperary is not curtailed because the local market is able to consume all the gas the embedded storage pool is able to produce. The POS wording included in the M12 and C1 tariff is not relevant to the operations of a storage pool like Tipperary. By definition, the only party that can use the capacity to and from the embedded storage pool is the embedded storage operator which has contracted for a specific level of M16 transportation service. There is no requirement or value in including the POS in the M16 GT&C.

Kingston Utilities raised an issue with respect to Allocation of Capacity - Article XVI (6) of the M12 and C1 GT&C. This clause, as taken from the GT&C, reads as follows:

“Union is not obligated to accept requests for service where the proposed monthly payment is less than Union's monthly demand charge plus fuel requirements for the applicable service.”

Specifically, Kingston is concerned that the wording above creates a disincentive for Union to maximize revenue/margin from short-term transportation services. Kingston's concerns are unfounded. Although this clause states that Union is “not obligated” to accept requests for service when the proposed demand charges are less than Union's cost based toll, it does not limit Union from choosing to sell services at less than tolls in some situations. It is always in Union's best interest to maximize margin from short-term transportation services. The wording changes suggested by Kingston place an inappropriate and unnecessary obligation on Union to sell transportation services at less than the cost of service rate. Further, this wording has been part of Union's existing contract and was not changed during the conversion process to become STAR compliant.

In its submission, TCPL noted that Union's proposed tariffs state that the pressure of gas delivered by Union to a shipper shall be at Union's prevailing line pressure, or at such pressure as per operating agreements between Union and the applicable interconnecting pipeline. TCPL noted that as per historical operating agreements deliveries to Parkway must be at TCPL's prevailing pressures for it to meet its downstream service obligations. Union submits that the proposed tariffs are consistent with TCPL's needs as the tariff specifically refers to the requirements of the operating agreements with the interconnecting pipeline.

In Union's view, the most appropriate place to identify pressures is in the operating agreements with the interconnecting pipeline companies like TCPL as this would allow system operators the most flexibility to make either short or long-term changes. Union

believes it is important to note that pressures are totally at the system operator's control, not the customer's, and therefore the pressures should not be specified in the tariff.

TCPL also questioned why Union does not list Dawn (TCPL) as a delivery point on its system. Union has historically provided a Dawn to Dawn (TCPL) service by displacing volumes that were otherwise flowing from Dawn (TCPL) to Dawn. The facilities do not exist today for gas to physically flow back into TCPL from Dawn. With continued declining supply from the Western Canadian Basin, TCPL is now expecting there to be a physical need to flow back into TCPL from Dawn, as early as this winter. To try to accommodate this, Union has just recently launched an Open Season to judge market support to build the necessary facilities to allow for physical flow back into TCPL at Dawn. If enough market support is received to support the project, Union will be applying to the OEB for approval to provide this new service. If approval is received, Union will provide the Dawn to Dawn (TCPL) firm service to those that contract for it.

With respect to the issue raised by TCPL specific to renewal rights associated with C1 contracts, Union acknowledges that it inadvertently omitted contracts that contain a receipt point at Parkway and a delivery point at Kirkwall from its list of contracts with renewal rights. Union agrees to modify its proposed tariff language in the Renewals Section to address TCPL's issue. A black-line copy of the revised page from the C1 GT&C (Schedule "A 2010") is attached for the Board's review.

Conclusion

Aside from the change to the Renewals Section, Union respectfully requests that the Board approve the proposed changes to the tariffs for its transportation services as filed. Should you have any questions, please contact me at (519) 436-5473.

Sincerely,

[Original signed by]

Karen Hockin
Manager, Regulatory Initiative

c.c.: S.Wong (Blakes)
EB-2010-0155 Intervenors
L. Klein/Z. Crnojacki (Board staff)
M. Kitchen

3. If requests for long-term service can be met through existing facilities upon which long-term capacity is becoming available, Union shall allocate such long-term capacity by open season, subject to the terms of the open season, and these General Terms and Conditions.
4. Capacity requests received during an open season shall be awarded starting with those bids with the highest economic value. If the economic values of two or more independent bids are equal, then service shall be allocated on a pro-rata basis. The economic value shall be based on the net present value ("NPV") using the effective rate at the time the capacity is allocated.
5. If Shippers request Transportation Services where (a) the Transportation Services requested were previously offered in an open season but were not awarded, or (b) the requests for Transportation Services may be served on existing facilities for a term no greater than one year, then the allocation of such capacity shall be carried out by one of Union's methods for allocation of such capacity, which methods include, but are not limited to, "first come, first served" basis, open season, or direct negotiations, provided any such requesting Shipper meets all conditions in Article XXI herein, subject to the remaining Available Capacity.
6. Union is not obligated to accept requests for service where the proposed monthly payment is less than Union's monthly demand charge plus fuel requirements for the applicable service.

XVII. RENEWALS

For contracts with an Initial Term of five (5) years or greater, with (a) a Receipt Point of Parkway or Kirkwall and a Delivery Point of Dawn (Facilities), or (b) a Receipt Point of Dawn (Facilities) and a Delivery Point of Parkway or Kirkwall, or (c) a Receipt Point of Parkway and a Delivery Point of Kirkwall, the Contract will continue in full force and effect beyond the Initial Term, automatically renewing for a period of one (1) year, and every one (1) year thereafter, subject to notice in writing by Shipper of termination at least two (2) years prior to the expiration thereof.

For all other contracts, the Contract will continue in full force and effect until the end of the Initial term, but shall not renew.

XVIII. SERVICE CURTAILMENT

1. Union shall have the right to curtail or not to schedule part or all of Transportation Services, in whole or in part, on all or a portion of its pipeline system at any time for reasons of Force Majeure or when, in Union sole discretion, capacity or operating conditions so require or it is desirable or necessary to make modifications, repairs or operating changes to its pipeline system. Union shall provide Shipper such notice of such curtailment as is reasonable under the circumstances. If due to any cause whatsoever Union is unable to receive or deliver the quantities of Gas which Shipper has requested, then Union shall order curtailment by all Shippers affected and to the extent necessary to remove the effect of the disability. Union has a priority of service policy to determine the order of service curtailment. In order to place services on the priority of service list, Union considers the following business principles: appropriate level of access to core services, customer commitment, encouraging appropriate contracting, materiality, price and term, and promoting and enabling in-franchise consumption.

The priority of service guidelines for Union's Transportation Services shall be as follows, with detailed policies and procedures available on Union's website. The highest ranked service has the highest priority and is curtailed last and the lowest ranked service has the lowest priority and is curtailed first:

- a. Any firm ex-franchise transportation service(s), firm in-franchise transportation and distribution service(s)
- b. Interruptible in-franchise distribution service(s)
- c. M12/C1 interruptible transportation and exchange(s), balancing activity (ex-franchise/in-franchise), overrun (ex-franchise/in-franchise)
- d. Late nomination(s)