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Sept. 5, 2008

Ms. Kirsten Walli  
Board Secretary  
Ontario Energy Board  
2300 Yonge Street  
Suite 2700  
Toronto, Ontario, M4P 1E4

Dear Ms. Walli:

**Re: EB-2008-0052 – Rules of Conduct and Reporting related to Storage – Storage and Transportation Access Rule (“STAR”) – BOMA and LPMA Comments on Staff Discussion Paper**

## INTRODUCTION

The comments provided herein on behalf of the Building Owners and Managers Association of the Greater Toronto Area (“BOMA”) and the London Property Management Association (“LPMA”) are in response to the Staff Discussion Paper On a Storage and Transportation Access Rule (STAR) dated July 29, 2008.

In general, BOMA and LPMA support the principles and proposals in the Staff Discussion Paper.

BOMA and LPMA would like to remind participants in this process and the Board that any Rule that is ultimately developed should be developed to stand the test of time, rather than be tailored to the current existing situation. For example, while in-franchise storage requirements are currently available at cost-based rates there may soon come a time when the 100 PJ threshold determined by the Board in the NGEIR proceeding is not sufficient to meet the requirements of Union’s in-franchise customers. When Union goes to the market to obtain the additional capacity, it will be imperative that there be a transparent market for storage and the associated transportation services so that all parties will be able to determine that the utility has chose the proper alternative to serve in-franchise customers. This is especially true when Union will have non-storage alternatives, storage

services from affiliates, and unregulated storage services from within Union. The in-franchise customers of Enbridge already face this issue as Enbridge requires storage and associated transportation services that are in addition to their own regulated resources. For the Board and ratepayers to be sure that the utilities provide their ratepayers the least cost option that meets their requirements is an essential component of utility regulation.

In addition, the storage market is more likely to evolve over time than remain static. New third party providers may enter the market; there may be further consolidation of existing storage assets; there may be divestitures or separation of existing storage assets by parties; there may be transmission expansion that would allow greater access to Ontario based storage for parties outside of the province and/or allow greater access to parties in Ontario to storage outside of the province. In any case, any Rule should be sufficiently flexible to accommodate changes while still remaining relevant and effective.

The remainder of this paper provides comments in response to Staff's invitation for comments on the specific proposals found the Staff Discussion Paper.

## **SPECIFIC COMMENTS**

### **2.1 Allocation of Transportation Capacity**

BOMA and LPMA believe that the allocation of transportation capacity should be done in a manner consistent with other providers where possible. Transportation capacity on Union's system may complement or compete with transportation capacity on TCPL, ANR and other pipelines. Consistent allocation policies would make it easier for parties to evaluate the options available to them. Different allocation policies may add complexity to the process and some parties may not fully investigate all the options available to them because of the different allocation methodologies. In effect, this could be considered a form of a market barrier. Any methodology and/or process needs to be user friendly.

BOMA and LPMA also agree with Staff that a transporter should have the opportunity to apply to the Board for an exemption if holding an open season is too burdensome. However, the Board should indicate that any such exemption would be granted on a

limited basis and on a limited time horizon, after which the transporter would have to reapply if they wished a further exemption.

The Board may also want to consider how to deal with any excess capacity (either long-term or short-term) that may remain after an open season. If a party approaches a transporter shortly after an open season has concluded to contract for capacity, the transporter should not be required to go through another open season. In this situation, it would seem to BOMA and LPMA that an allocation of existing capacity remaining after an open season has concluded could be allocated on a first-come, first-served basis. However for this to be appropriate, the transporter would have to have a pre-determined and known schedule for open seasons for existing capacity.

BOMA and LPMA support the Staff suggestion that the allocation methods and associated processes for each of their transportation services should be outlined in detail in the company's tariffs, consistent with the current practices of the NEB and FERC. Again, in the view of BOMA and LPMA, consistency is desirable.

### **2.1.1 Minimum Standards or Transportation Open Seasons**

As noted above, BOMA and LPMA believe that there should be consistency wherever and whenever possible. BOMA and LPMA therefore concur with Staff that there is merit in adopting an approach that STAR should be consistent with FERC and NEB requirements for regulated pipelines. The Board should not create, not allow the development of a regulatory advantage or disadvantage in the market.

BOMA and LPMA agree with the Staff comments related to the concerns expressed by Union Gas in relation to the amount of capacity being disclosed, the posting of the bid results and the provision of the criteria and timing of open seasons.

First, if a transparent market is to be developed and enhanced, all parties need to know the amount of capacity that is being made available to that market. If, for example, Union were allowed to exclude this information from the market as a whole, but its affiliates were aware of the general magnitude of the capacity, this would provide those

affiliates an advantage over other potential market participants. This knowledge could be obtained by an affiliate simply through the day to day interactions they may have with Union and may not be intentional. Nevertheless, the market would be compromised.

Staff has indicated that this information is typically provided in other transportation open seasons such as the ones used by TCPL and ANR. BOMA and LPMA see no reason why this information should not be provided by Union. Union indicates that providing this information could influence the market. BOMA and LPMA agree that this information may well influence the market, but that this is a positive influence. Markets tend to work better when information is equally available to buyers and sellers. It is submitted that if Union were allowed to withhold this information, then the market would be negatively impacted.

The posting of bid results is essential for transparency of the market. This is the only way that participants in the market will be able to assess why a certain bid was successful while another was not. It should be noted that the disclosure of bid results does not require the disclosure of the parties associated with the individual bids. Bid results, both successful and unsuccessful, can be disclosed anonymously.

BOMA and LPMA note that Staff has indicated that the C1 paths pertain to all of Union's pipelines that are upstream of Dawn and that interest in these paths will most likely increase over time. As noted in our introductory remarks, the Board should be cautioned about dealing with these issues in the current context only. It may well be that there will be growing interest in C1 paths downstream of Dawn related to ex-Ontario parties as well as in-Ontario parties such as electricity generation. Further, the development of LNG terminals on the East Coast may further have an impact on the use of storage in Ontario and the surrounding region.

Staff has proposed two potential options to assist market participants in their purchasing decisions related to the C1 rate. The first is for Union to provide a minimum bid price (or reserve price) and the second is for the Board to establish a recourse rate for this service.

It is the understanding of BOMA and LPMA that the C1 rate is a negotiated rate, but that the identified rates included on the rate schedule represent maximum prices for service. It would seem, therefore, that the Board has effectively already established a recourse rate for the service (the maximum price as shown in the rate schedule). As to Staff's first potential option, that of a minimum or reserve price, it is unclear to BOMA and LPMA if this would assist market participants in their purchasing decisions. It may be useful if the rate schedule included minimum prices for service. Assuming that these minimum prices were equal to the marginal cost of providing the service, the range of potential prices would be somewhat narrower than it is now. This may be more relevant for firm capacity than for interruptible capacity, since it is likely that the marginal cost for interruptible capacity is close to zero.

The third and final concern expressed by Union relates to the criteria and timing of open seasons. BOMA and LPMA support Staff's objective of establishing a level playing field and believes that disclosure of the relevant information by Union is needed to ensure that all market participants are treated equitably. Union would have an unfair advantage in selling storage services, for example, if it knew that transportation services were going to be expanded at a certain point in time. Other storage providers may be in a position to compete with Union in terms of timeframes, etc., but only if they have access to the same information that is available internally at Union.

### **2.1.2 Standard Form of Contracts**

BOMA and LPMA support the need for a standard form of contract within each utility. In other words, each company's transportation service should have a standard form of contract with standard terms and conditions. Such standard terms of service appear to be widely used (such as at the NEB and FERC) and there is no reason why they could be implemented by the OEB through the approved tariffs.

However, BOMA and LPMA do not believe that having a standard form of contract with standard terms of service across companies is an option that needs to be considered. It is doubtful whether such standardization is possible across Union and Enbridge because of the different type of services offered and the operating requirements of the two utilities.

BOMA and LPMA agree with the minimum terms and conditions as listed by Staff in the Discussion Paper. However, BOMA and LPMA do not agree with the Staff concern that if contract terms and conditions are negotiated that are different from the standard that all customers may not receive a uniform service. It may well be that not all customers want a uniform service. Some may want a “premium” service while others may want a “discount” service. They should be able to negotiate such service differences with Union and Enbridge. In order to maintain transparency, BOMA and LPMA believe that such contracts should be posted on the company’s website and filed with the OEB. It would also be useful if a short synopsis of the variance from the standard terms and services was attached to the negotiated contract.

BOMA and LPMA believe that the easiest and most efficient way to achieve the objective of a level playing field is for standard forms of contracts with standard terms of service for all transportation services to be used and to be included in the Board approved tariffs. Any contracts that deviate from the standard should be filed and made available on the company’s website with a short description of variances from the standard form.

## **2.2 Storage Connection Agreement**

BOMA and LPMA agree that the M16 rate contract should provide the basis for the development of a storage connection agreement.

Staff have proposed a number of additional standards that should be met for a storage connection agreement. BOMA and LPMA agree with the first two bullet points provided by Staff. The transporter must respond to requests for interconnection facilities and transportation services in a timely manner and the transporter must not impose operating requirements and financial requirements that discriminate unduly between different storage providers. BOMA and LPMA do believe, however, that the wording should be changed to “must not impose operating requirements and/or financial requirements” in the second bullet point.

These proposed standards are basic necessities for encouraging growth in the storage market. However, it should be noted that this does not mean that the operating requirements imposed by the transporter should be the same for different storage providers. The operating requirements are likely to be determined, in the most part, by the specific geographical location of the storage and by the pipeline facilities available from Union to connect it to Dawn.

BOMA and LPMA do not agree with the third bullet point. If a transporter is required to offer firm transportation to and from the storage provider's meter 365 days per year, the resulting cost may result in the storage not being developed. As noted above, the facilities in place to serve a storage provider will vary by location. With the current distribution system in place, it may not be possible for the transporter to offer firm transportation to the storage facility every day of the year. In order to make this offering available, the transporter may have to substantially increase the capacity of the line serving the storage provider. Obviously none of these costs should be allocated to distribution customers because the additional capacity is not required for distribution purposes. The costs should be recovered directly from the customer that is driving the need, i.e. the storage provider. However, this would entail either an aid-to-construct contribution up front or a higher ongoing rate to serve that customer under the M16 rate schedule. These added costs may make the development of the storage uneconomic, or at a minimum, less economic. Furthermore, the storage provider may not necessarily require or even want firm transportation service to and from storage 365 days per year. Union may be able to provide a balancing service for these storage providers that may be less expensive than the physical ability to move the gas. It is this service that should be offered on a non-discriminatory basis, subject to any operating requirements or constraints related to the actual physical connection of the storage provider to the system.

In relation to the fourth bullet point that the transporter must respond to requests for additional nomination windows and capacity so customers have access to third-party storage and balancing services with the same flexibility as the transporter's own competitive storage services, BOMA and LPMA believe that more information is required. These services may very well be available to customers, but through Union

rather than through the third-party storage provider directly. Since it is the Dawn Hub that provides the ability for flexibility, it is not clear that individual third-party storage providers can provide this flexibility. Rather it may be something that they need to contract for with Union or some other party. Again, it is this access that the Board should ensure is standardized and available to all parties so that these storage providers have the ability, if they choose, to provide a service comparable to that from Union.

BOMA and LPMA agree with the fifth and final bullet point. The transporter must include all related balancing services and overrun provisions in the storage connection agreement. As noted above, these provisions are likely to be more important to the storage providers than the physical ability to move the gas on a firm daily basis and/or provide balancing services directly.

With respect to the three possible options to implement a storage connection agreement between a storage provider and a transporter, BOMA and LPMA agree that the first option, which is Union's current practice, is sufficient for the current M16 contracts. However, if a storage connection agreement adds the items contemplated by Staff that is in addition to the current M16 contract, then public disclosure may be required. A possible alternative to the two options proposed by Staff would be a parallel system to that for transportation contracts. A standard storage connection agreement would be posted on the transporters website and any negotiated contract that deviates from the standard terms and conditions would be posted on the website and/or filed with the Board. Again, a short description of the variance from the standard contract should be attached to the negotiated contract.

### **2.3 New Transportation Services**

New storage and transportation services need to be offered on a stand-alone basis to ensure that no advantage can accrue to the transporters own storage services. There should be no transportation barriers imposed on customers that are dependent on the ownership of the storage services selected.



This does not mean, however, that there should not be differences in the transportation services available. Depending on the location of the storage being utilized and/or the type of storage services available at that location, the transportation services may very well need to be different. In other words, Union and Enbridge must be willing to develop new transportation services for customers that may not be applicable to their own storage facilities. In fact, these new transportation services may increase the level of competition for their own storage services by providing greater access to competing alternatives. Recognizing that developing such alternatives are not likely to be higher up on the priorities of the utilities, BOMA and LPMA believe that the Board should require Union and Enbridge to meet standards similar to those suggested by Staff related to the storage connection agreement. In particular, the utilities must respond to proposals for transportation services brought forward by other parties in a timely manner and that the utilities must not impose operating requirement and/or financial requirements that discriminate unduly against such proposals.

### **3. Consumer Protection in the Competitive Storage Market**

Most of the areas that Staff have invited participants to comment on in this section are dealt with in greater detail in various sections of the Staff Discussion Paper and will not be repeated here.

BOMA and LPMA strongly believe that there needs to be transparency in both the storage and transportation markets to ensure sufficient protection for in-franchise customers who may purchase these services. The Board needs to ensure that these customers are treated equally with ex-franchise parties that may be looking to obtain storage and/or transportation services. In-franchise customers should not receive preferential treatment for services in excess of their cost based allocations either.

BOMA and LPMA agree that in a perfect world a transporter's competitive storage marketing personnel should not have access to non-public transportation and storage operating information that may enhance the company's position in the competitive storage market. However, it would be extremely difficult, if not impossible, to prevent the potential abuse of non-public information.

BOMA and LPMA believe that the most effective way to minimize this potential problem is to maximize the amount of the information that is publicly available to all parties. This would limit the advantage that could be obtained through non-public information. Elsewhere in these comments, BOMA and LPMA support the disclosure of pricing information, capacity information, and detailed reporting requirements that should help to minimize this problem.

#### **4.1 Principles**

BOMA and LPMA believe the principles outlined in the Staff Discussion Paper are adequate at this time. BOMA and LPMA believe that the Board should be prepared to amend the reporting requirements should a party adequately demonstrate the need for the change.

#### **4.3.1 Index of Customers**

BOMA and LPMA agree with Staff that there is value in having an index of customers for all firm transportation and storage services, rather than only for contracts in excess of some term.

If the Board wants to ensure consumer protection in the competitive storage market and transparency in both the storage and transportation markets, then all transactions need to be available to be effectively monitored. As such, BOMA and LPMA believe there may also be merit in having a separate index of customers for all interruptible transportation and storage services.

BOMA and LPMA do not agree with Staff the contracts with terms of three months or greater should be captured in the index. There should be no artificial term imposed. All contracts should be captured in the index, regardless of term. With an artificial term, parties would be able to avoid being captured in the index by simply contracting, for example, for two consecutive two month contracts rather than one four month contract. To sufficiently monitor the market, all contracts, regardless of term, should be included in the customer index.

BOMA and LPMA support a monthly update to the Index of Customers, consistent with the TCPL practice. Given that most contracts are expected to have a beginning date of the beginning of the month, it may be useful to have the monthly update available by the 15<sup>th</sup> of each month. This would ensure that the index is updated to include the contracts that started at the beginning of the month. This would make the reports more timely.

BOMA and LPMA do not believe that a monthly Index of Customers would create any significant burden when compared to a quarterly posting. Most storage providers will have a very limited number of contracts to report. In fact, some of the smaller storage providers may only have a handful of contracts that will not change month to month, eliminating the potential for any significant burden. The larger storage providers, such as Union, already have systems in place to deal with their contracts. The information to be reported monthly is not new information that has to be gathered from scratch – it is already available internally.

BOMA and LPMA believe there is a benefit in requiring Union to report on the amount of storage that will be offered to the market each storage season that is part of the 100 PJ of storage capacity that is reserved for in-franchise customers. This benefit is that the competitive storage market will have information related to the need for future storage and storage services from the in-franchise customers of the utilities in Ontario.

Further, if the Board believes that there is merit in having this information disclosed, then BOMA and LPMA agree with Staff that the simplest way of reporting this information would be to have Union and Enbridge report the amount of storage capacity from their own integrated storage operations that is anticipated to be used for in-franchise customers over the next storage season as a separate customer.

This information may be useful over a longer term. It would show the movement of the in-franchise need for storage toward the 100 PJ cap. Other storage providers could then better anticipate the need for additional storage services that would be required by Union on behalf of their in-franchise customers, leading to the potential for more competition for provision of those services when needed. The Board may also wish to consider

whether the “customer” that is reported should be all in-franchise customers, or whether it would be useful to split the “customer” into two “customers”: storage allocated to direct purchase in-franchise customers and storage allocated to system supply customers.

#### **4.3.2 Available Capacity**

BOMA and LPMA concur with the Staff suggestions related to the available capacity reporting requirements.

#### **4.3.3 Semi-Annual Storage Report**

In addition to the maximum daily withdrawal quantity, it is submitted that the maximum daily injection quantity should also be added to the Index of Customers. This parameter is also a defining term of any storage service and may differ from the withdrawal quantity.

#### **4.3.4 Storage Price Reporting**

Actual market prices of storage services should be disclosed so customers can make informed decisions about potential purchases. Those stakeholders that disagree with disclosing the details of individual transactions on the basis that they believe it reveals commercially sensitive information have failed to provide any evidence that revealing this information in Ontario would cause problems that apparently do not exist in other jurisdictions, such as FERC. Again, BOMA and LPMA note that this information could be provided based on an Index of Customers approach, where the name of the company purchasing the storage need not be revealed.

If the Board believes that it would not be appropriate to reveal the individual prices paid for storage, then BOMA and LPMA provide the following alternative to that suggested by Staff. Staff has suggested that the highest, lowest and weighted average prices should be disclosed. BOMA and LPMA believe that this would not be adequate. A weighted average price index could easily be influenced by a small number of large volume contracts. The highest and lowest prices are, in effect, the extreme outliers. This information is of limited use in the marketplace.

The alternative approach suggested by BOMA and LPMA is the reporting of a number of weighted average prices from both a storage open season and from negotiated (bilateral) contracts. Because prices are likely to vary with the size of the contract, it is suggested that a number of volumetric ranges could be set and the storage providers would report the weighted average price for all contracts that fall within each of the size categories. This would provide the marketplace with information that is more useful and relevant than would one weighted average price and the highest and lowest prices.

A review of Union's current Index of Customers for long term storage shows a total of 40 storage contracts, ranging in size from 106,910 GJ to 7,359,300 GJ. A further review of the size of the contracts shows the following distribution of the existing contracts.

<u>Size of Contract (GJ)</u>	<u>Number of Contracts</u>	<u>Apr. 1, 2008</u>
0 – 999,999	9	0
1,000,000 – 1,999,999	12	3
2,000,000 – 2,999,999	11	3
3,000,000+	<u>8</u>	<u>2</u>
Total	40	8

Based on the above, it appears that there appear to be four sizes that should have separate weighted average prices. Recognizing that some of these categories may have only a single customer in any open season, such customers may have to be aggregated with another category. The third column in the above table shows the distribution of the contracts that had an April 1, 2008 start date. BOMA and LPMA believe that the three weighted average prices would be more relevant than one weighted average price for all eight contracts, along with the highest and lowest of the eight. Once again, however, BOMA and LPMA support the disclosure of individual prices, as is done, for example for Bluewater Gas Storage as the best approach.

#### **4.3.5 Design Capacity**

BOMA and LPMA support the need for publicly available design capacity information for all storage facilities. This is key information that should be equally available to all parties in the marketplace.

### **5.3 Options**

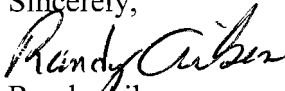
BOMA and LPMA do not believe that it is necessary that each company's complaint procedures need to be reviewed and approved by the Board, at this time. BOMA and LPMA are unaware of any problems currently existing with regard to the day-to-day operations. However, should a party feel that a company's complaint procedures are inadequate or ineffective, that party should be able to refer the issue to the Board for review.

BOMA and LPMA believe that the most efficient approach from a regulatory point of view is to have customers with compliance concerns related to STAR bring those concerns to the OEB Compliance Office.

### **5.4 Unfair and Discriminatory Practices**

BOMA and LPMA agree with the process proposed by Staff. Whenever any such complaints or concerns are brought forward, the Board should inform all stakeholders of the issues and propose a process to deal with it.

Sincerely,



Randy Aiken

Aiken & Associates