



By E-mail

September 8, 2008

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Dear Ms Walli

Staff Discussion Paper on a Storage and Transportation Access Rule

Board File No.: EB-2008-0052

Our File No.: 339583-000006

We are writing on behalf of our client, Canadian Manufacturers & Exporters (“CME”), to provide comments on the July 29, 2008 Staff Discussion Paper entitled “On a Storage and Transportation Access Rule (STAR)” (the “Discussion Paper”).

I. Overview

Board Staff seeks comments on the STAR options set out in the Discussion Paper. CME’s comments, which follow, focus primarily on the principles which the Board should apply when formulating and eventually finalizing the provisions of the STAR. We understand that the provisions of the STAR are to be framed to achieve two objectives:

- (1) to assure that access to the regulated transportation services that Ontario-based utilities provide is non-discriminatory; and,
- (2) to establish measures which will protect consumers of storage services acquired at unregulated prices from storage providers the Board permits to operate in Ontario.

For there to be non-discriminatory access to regulated transportation services, the Regulator must clearly specify the process that the utilities are to follow in making the regulated services available to those who wish to acquire them. The Regulator must specify the charges and other terms and conditions which apply to the provision of the services, and require that any deviation or exception from these terms be publicly disclosed in a timely manner and be subject to its approval. If there is no public and timely disclosure of all of the terms and conditions of the relationship between the utility and one of its customers, then the result is a potential for discrimination.



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What is needed to protect consumers of storage services acquired at unregulated prices are rules which will assure timely price discovery with respect to the services to be acquired. Without an ability to obtain fulsome price discovery in a timely manner, consumers of storage services at unregulated prices will not be adequately protected.

These are the guiding principles which inform CME's comments on the matters raised in the Discussion Paper.

II. Non-Discriminatory Access to Transportation Services

Under Non-Discriminatory Access to Transportation Services, the Discussion Paper invites comments under the following topics and subtopic headings:

- (1) Allocation of Transportation Capacity
 - a. Minimum Standards for Transportation Open Seasons
 - b. Standard Form of Contracts
- (2) Storage Connection Agreement
- (3) New Transportation Services

CME's comments on each of these topics are as follows.

(1) *Allocation of Transportation Capacity*

The Regulator must establish a process to allocate transportation capacity that is predictable and transparent. To be predictable and transparent, the process needs to be published in Board approved Tariffs or Rates Schedules. In this context, we accept, as reasonable, Board Staff's Discussion Paper recommendations which take into account the practices of the National Energy Board ("NEB") and the Federal Energy Regulatory Commission ("FERC").

a. *Minimum Standards for Transportation Open Seasons*

These provisions should describe the process standard to be followed and should be published Board approved Tariffs or Rate Schedules. Adding the word "minimum" to a description of a process standard implies that unspecified actions, over and above the steps described in the rules, are contemplated. We suggest that adding the word "minimum" to describe these process provisions, sends the wrong message and we suggest the word "minimum" be eliminated so that the topic heading describing these provisions becomes "*Standards for Transportation Open Seasons*".

b. *Standard Form of Contracts*

We are uncomfortable with the use of the word "minimum" to describe the terms and conditions of transportation service which are an integral part of a regulated service. We



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submit that all of the terms and conditions of a contract for the provision of a regulated service should be approved in advance by the Regulator. The word “minimum”, we submit, sends the wrong message.

(2) *Storage Connection Agreement*

The terms and conditions of this Agreement are, in our view, an integral component of a regulated transportation service and, as a result, must be approved by the Board and published. Any deviation or exceptions should not be allowed unless fully disclosed and approved by the Regulator.

(3) *New Transportation Services*

Like Board Staff, we encourage the development of new transportation services but reiterate that, as regulated services, they must be clearly specified and approved in advance by the Board. We do not agree with Board Staff that utilities which sell both regulated and unregulated should be able to bundle regulated services into a sale of a package of regulated and unregulated services at an unregulated price. This is a recipe for discrimination.

III. Consumer Protection in the Competitive Storage Market

The measures needed to protect consumers of storage services sold at unregulated prices should be established in the context of the reality that the information currently available to the consumers of such services which provides any meaningful price discovery is very limited.

The measures which the Board prescribes should be designed to provide consumers with timely disclosure of all information needed to provide them with fulsome price discovery. In this context, we support the imposition of consumer protection measures described in the Discussion Paper, including the prescribed standard terms and conditions suggested by Board Staff. After the fact disclosure of actual market prices, and terms and conditions related thereto, is critical to providing consumers with fulsome price discovery. Without such information, consumers will be inadequately protected.

IV. Reporting Requirements

Reporting requirements for the transportation of regulated services should be established with the goal of assuring non-discriminatory access to such services.

Reporting requirements for those providing storage service at unregulated prices should be established with the objective of assuring fulsome and timely disclosure of all information relevant to price discovery.

In this context, CME is comfortable with Board Staff’s Discussion Paper recommendations for these reporting requirements which supplement the FERC reporting requirements and the standards of the North American Energy Standards Board



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(“NAESB”). All of the information which Board Staff suggests should be reported is necessary to assure non-discriminatory access to regulated services and fulsome price discovery with respect to storage services being sold at unregulated prices.

V. Complaint Mechanism

CME is comfortable with Board Staff’s Complaint Mechanism suggestions.

Please contact me if the Board requires any clarification of these comments.

Yours very truly,

Peter C.P. Thompson, Q.C.

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