

**Board Staff Discussion Paper on
Storage Transportation Access Rule (“STAR”)
EB-2008-0052**

Comments of City of Kitchener (“Kitchener”)

General Comments

Staff is to be commended on its Discussion Paper. Overall, it fairly captures the essential issues and input of participants at the consultation sessions in a balanced way.

Kitchener participated actively in the stakeholder consultations on STAR and appreciates this opportunity to comment on the Staff Paper. In developing the general and more specific comments which follow, Kitchener has benefited from dialogue with other stakeholders, in particular, FRPO with which it has directly collaborated in the review and comment process.

As a guiding principle, Kitchener suggests that the STAR must yield what is best for the natural gas and electricity markets to function efficiently and effectively for all existing and potential participants.

Kitchener suggests that “level playing field” is a crucial element to STAR, but it may not have a standard or common meaning among the stakeholders. Can it be defined? If so, it should reflect the geographic area (“playing field”) in which the Board found in NGEIR that gas storage was competitive. This area goes beyond the borders of Ontario.

Kitchener suggests that the STAR must ensure equivalent transparency of price and terms and conditions of service between existing and potential subscribers to Ontario based storage and transportation assets to “level” the playing field. This transparency should be independent of the length of term to which parties are willing to contractually commit to storage and transportation services. In other words, there should be “no strings attached” to transparency. Transparency should not be impeded or enhanced by the length of term of existing or pro forma contracts, within reason and consistent with FERC rules.

Detailed Comments

Section 2 – Non-Discriminatory Access to Transportation Services

Section 2.1 – Allocation of Transportation Capacity

The methods used to allocate new and available transportation capacity to potential subscribers are crucial to the efficient and effective functioning of the market. They should not be “glossed over”. Kitchener believes that the methods used by TCPL and ANR could be applied to Union.

Section 2.1.1 – Minimum Standards for Transportation Open Seasons

Bid package should include any conditions precedent (credit assurances, for example), standard form of contract and general terms and conditions of service. The bid results to be disclosed should include the identities of the successful bidders. Union's concern with influencing the market if the amount of available capacity is divulged in the open season is unfounded. Kitchener shares Staff's doubts, expressed at page 10, in this regard. Kitchener agrees with FRPO's practical observation that the point of divulging information is to "move the market". Proper price signals cannot be sent in a vacuum. Market participants, including Kitchener, should be justly wary of information asymmetry where the owner and operator of capacity retains the self serving ability to influence the market price of unutilized capacity offered in subsequent rounds if it is the only party privy at all times to the amount of capacity that is available. Of the two options which Staff identifies at the bottom of page 10 with respect to C1 short-term FT service, Kitchener prefers the recourse rate option.

Section 2.1.2 – Standard Form of Contracts

Standard forms of contracts should also include renewal and de-contracting rights, force majeure, and arbitration or dispute resolution provisions. All of these standard provisions must be balanced and reasonable – financial assurances, in particular. Kitchener agrees with Staff's conclusion on page 12 that "...the minimum terms and conditions as proposed by staff should be included in the Board approved tariffs and not in a company's policies or guidelines." Balanced contractual terms and conditions are essential and departures from the "minimum" are problematic.

Section 2.2 – Storage Connection Agreement

Kitchener is unsure what is meant by the first standard suggested by Staff for the storage connection agreement on page 13: "...transporter must respond to requests...in a timely manner..."

Section 2.3 – New Transportation Services

In the last paragraph on page 13, Staff suggests that "...new competitive storage services may be bundled with transportation services as long as the equivalent storage and transportation services are also offered on a stand-alone basis". Kitchener observes that the relative pricing of the bundled option versus the stand-alone options will determine whether any inappropriate or discriminatory bundling of storage with transportation occurs.

Section 3 – Consumer Protection in the Competitive Storage Market

At page 16, Staff observes: "Staff does not think it is necessary for the Board to have the same requirements for both competitive storage services and regulated transportation services." Due to the hybrid nature of the gas market in Ontario and the integrated

structure of the key storage providers, with Union Gas, in particular, as a non-independent system operator, Kitchener is of the view that a *higher* standard of consumer protection is required for the storage market.

With respect to whether it is necessary to have standard terms of service for competitive storage contracts, Kitchener agrees with the market benefits of doing so as identified by FRPO in its comments. Kitchener notes that standard forms of contract have been developed in the competitive natural gas commodity market, i.e. NAESB and GasEDI, and are in widespread use. Company specific departures from, or additions to, the standard form of contract are accommodated by “Special Provisions”. This model could be adapted for competitive storage contracts.

At page 17, Staff observes: “...price disclosure could lead to price collusion in an energy market the Board has recently found to be competitive”. Kitchener is unsure of how such collusion might occur and among how many parties?

Section 4 – Reporting Requirements

Section 4.1 – Principles

Regarding the principles listed on page 19, under the fourth principle, Kitchener suggests that the phrase “or advantage” be inserted after the word “disadvantage”.

Section 4.2 – NGEIR Reporting Requirements

With respect to available capacity and Union’s “traffic light” system, Kitchener agrees with FRPO that this system has its shortcomings. As a practical matter, Kitchener has been impacted and impeded by this system from time to time in its attempts to load balance and optimize gas supply with demand. In particular, under “yellow light” (somewhat restricted) operational conditions, Kitchener has been unable to conclusively determine if it has been treated equitably with other storage and transportation customers who need to balance and have unutilized firm contractual capacity to do so. This doubt arises from the lack of clear operational criteria upon which to base an economic decision to engage in balancing. The economic consequences of such decisions, both for costs incurred and for lost opportunities, are non-trivial. This underscores the need for clear criteria to the “traffic light” system or, better still, for a more complete and transparent solution to Available Capacity, such as presented in section 4.3.2 of the Staff Paper.

Section 4.3.1 – Index of Customers

On page 22, Staff proposes that contracts with terms three months or greater should be captured in the Index. While Kitchener is not opposed to this proposal, it notes that including contracts with at least minimum seasonal terms (such as the conventional five month “winter” or seven month “summer” term) could be sufficient for purposes of the Index. Kitchener suggests that a monthly Index of Customers should not pose any significant burden as compared to a quarterly Index. Also, it is essential that Union

clearly and accurately report the amount of storage to be offered to the market which is deemed “surplus” to in-franchise needs within the 100 PJ cap established by the OEB’s NGEIR Decision. Kitchener supports Staff’s suggestion that Union and Enbridge report the amount of in-franchise storage required as a separate “customer” in the Index. Kitchener supports the information that Staff proposes be included in the Index of Customers and suggests that maximum daily injection quantity also be included. The format of this information should allow for downloading to spreadsheet software to permit sorting by criteria, for example, by length of term or customer. This would assist transparency and efficiency.

Section 4.3.2 – Available Capacity

Kitchener strongly agrees with Staff’s observation in the first paragraph on page 24 regarding the reporting of all in-franchise activities that may affect the availability of competitive storage services or related transportation capacity. Kitchener also supports the information that Staff proposes be included in the Available Capacity report. The proposed frequency at each nomination cycle is particularly relevant to the efficient use of design capacity to the benefit of market participants and Union and Enbridge.

Section 4.3.3 – Semi-Annual Storage Report

Kitchener agrees that a Semi-Annual Storage Report may be unnecessary if it largely duplicates information provided in the monthly Index of Customers.

Section 4.3.4 – Storage Price Reporting

Ongoing price discovery is essential to achieve market efficiency. Buyers and sellers of storage services must have ready and timely access to reliable prices to make informed decisions. Commercial sensitivity must be balanced against the need for timely price disclosure to all market participants, not take precedence over it. Staff’s suggestion that storage companies disclose high, low and weighted average prices from a storage open season is certainly better than no reporting of prices. Confidential filing of pricing under negotiated storage contracts serves no one but the parties making such filing unless the price information is subsequently disclosed in some fashion which shields the identity of the parties but permits other market participants to take note of the market value of the service before too much time elapses as to make the disclosure stale or less than helpful. Annual reporting of weighted average prices would, again, be better than no reporting.

Section 4.3.5 – Design Capacity

Kitchener suggests that the extent to which storage pool capacity has been enhanced or could be enhanced by delta pressure should be included in the information provided by storage operators on Design Capacity.

Section 5 – Complaint Mechanism

Section 5.3 – Options

Regarding the review and approval of complaint procedures, Kitchener agrees that it may not be necessary for the Board to do so. It may be possible to delegate this process to a working group which includes the storage and transportation companies and a cross-section of their customers and other market participants. The complaint procedures that are jointly developed by the members of the working group could be filed with the Board and made broadly available by other means. Under the current and expected regulatory structure and mandate, Kitchener agrees that incidents of non-compliance with STAR should be directed to the OEB Compliance Office.

Section 5.4 – Unfair and Discriminatory Practices

Kitchener notes that issues relating to unfair and discriminatory practices may occur in the *storage* market – as well as the transportation market – that are not covered by the prevailing STAR. Kitchener agrees with Staff that any issues of market failure should be brought directly to the attention of the Board. Kitchener also notes that the federal Competition Bureau exists to deal with issues of price collusion, bid rigging and other non-competitive and illegal business practices in Canada.