

ONTARIO ENERGY BOARD

IN THE MATTER OF the *Ontario Energy Board Act, 1998*, S.O. 1998, C.15, Schedule B;

AND IN THE MATTER OF a proceeding initiated by the Ontario Energy Board regarding the establishment of a Storage and Transportation Access Rule.

**Comments of Market Hub Partners Canada L.P.
regarding the Staff Discussion Paper on a Storage and
Transportation Access Rule (STAR), dated July 29, 2008**

September 9, 2008

Introduction

These comments are submitted by Market Hub Partners Canada L.P. (“MHP Canada”) in response to the Staff Discussion Paper on a Storage and Transportation Access Rule (STAR), dated July 29, 2008 (“the “Discussion Paper”) by the Ontario Energy Board (the “Board” or “OEB”). The Discussion Paper outlines Board Staff’s initial views on the Storage and Transportation Access Rule, EB-2008-0052 (“STAR”).

MHP Canada is a small, affiliated storage operator that is a relatively new entrant to the natural gas storage market in Ontario. MHP Canada operates the St. Clair Storage Pool (1.1 Bcf of working gas capacity) and is a 50% owner, and manager of the development and operation, of the recently approved Sarnia Airport Storage Pool (5.26 Bcf of working gas capacity). MHP Canada continues to actively seek additional storage development opportunities in Ontario to increase its working gas capacity.

MHP Canada was an active participant in the Natural Gas Electricity Interface Review (“NGEIR” or “EB-2005-0551”). During NGEIR, when providing its MHP Core Points Decision¹, the Board determined that MHP Canada cannot wield market power. Following, in its NGEIR Decision with Reasons dated November 7, 2006 (the “NGEIR Decision”), the Board decided to refrain from regulating the rates of certain storage services (“forbearance”) based on the competitive state of the market.²

Subsequent to NGEIR, the Board initiated STAR and following stakeholder consultation, issued the Board Staff’s Discussion Paper for comment by interested parties. MHP Canada notes that it previously commented on a number of the issues addressed in the Discussion Paper during NGEIR.

MHP Canada has and continues to advocate that the regulatory framework must not unduly burden or diminish the effectiveness of the competitive storage services market in Ontario. The Board has already determined that the storage services market in Ontario is workably competitive.³ In fact, market-based pricing existed in Ontario for 17 years prior to NGEIR and seemingly functioned effectively and efficiently.⁴ Given that the market functions effectively today, MHP Canada submits that additional information is not required by the market to maintain its efficiency.

In determining any need for additional protections or requirements to enhance market efficiency and effectiveness, MHP Canada urges the Board to pay particular attention to the submissions of those that participate in the market

¹ EB-2005-0551 (NGEIR): Hearing Transcript, September 7, 2006, v. 17, pp. 166 – 175.

² EB-2005-0551 (NGEIR): NGEIR Decision, s. 5.3, p. 74.

³ EB-2005-0551 (NGEIR): NGEIR Decision, s. 3.6, p. 39.

⁴ EB-2005-0551 (NGEIR): Written Reply Argument of Market Hub Partners Canada L.P., September 7, 2006, p. 5.

today. The Board therefore should take care not to inadvertently end up re-regulating the competitive storage market, adversely altering the functioning of the vibrant Dawn market or disadvantaging Ontario businesses. In particular, MHP Canada is concerned about the making public of commercially sensitive and confidential information.

Furthermore, MHP Canada has advocated for a simple regulatory framework and cautions the Board that rulemaking tailored to the business activities of the utilities may indeed be far too burdensome for small storage operators.

For ease of reference, MHP Canada has organized its comments in accordance with the same headings used in the Discussion Paper.

Non-Discriminatory Access to Transportation Services

Allocation of Transportation Capacity

Discussion Paper

Board Staff indicated that all potential customers must have non-discriminatory access to transportation services (Enbridge's rate 331; Union's M12 and C1 tariffs) regardless of whether storage services are purchased from Union, Enbridge or a third-party storage provider.⁵

MHP Canada Comment

MHP Canada understands that access to those transportation services today is on a non-discriminatory basis.⁶ That open and non-discriminatory access is governed by long established rules approved by the Board, including rates, rate schedules and affiliate relationship codes, which appear to provide adequate protections to the market.⁷ In addition, effective complaint resolution mechanisms are available for a market participant to raise issues regarding unfair or discriminatory practices through (i) the transportation providers; (ii) the OEB Compliance Office; and (iii) the Board under its broad jurisdictional powers.

Storage Connection Agreement

Discussion Paper

Board Staff indicated that a storage provider must have access to transportation capacity on an open, fair and non-discriminatory basis. Board Staff noted that a standard form of contract with standard terms of service would have merit as it would allow storage providers to interconnect to a transporter's facilities on reasonable terms and without undue discrimination. Board Staff noted that the

⁵ EB-2008-0052 (STAR): Discussion Paper, s. 2.1, p.7.

⁶ EB-2005-0551 (NGEIR): Technical Conference Transcript, May 18, 2006, p. 3.

⁷ EB-2005-0551 (NGEIR): Final Argument of Market Hub Partners Canada L.P., August 11, 2006, p. 19.

posted M16 rate contract could provide the basis for the development of a storage connection agreement. Board Staff also suggested that the storage connection agreement should also meet the following standards:

- The transporter must respond to requests for interconnection facilities and transportation services in a timely manner;
- The transporter must not impose operating requirements and financial requirements that discriminate unduly between different storage providers;
- The transporter must offer firm transportation to and from storage provider's meter 365 days per year;
- 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; and
- The transporter must include all related balancing services and overrun provisions in the storage connection agreement.

Board Staff invited comments on these standards and, in particular whether there should be additions or deletions.⁸

MHP Canada Comment

With the number of pipelines serving the market in close proximity to the traditional storage area, an Ontario storage operator has choices available regarding the transportation of natural gas between its storage facility and Dawn. MHP Canada expects that each transportation provider has or, when required, will develop its own storage connection agreement. MHP Canada finds this acceptable provided that agreements for regulated services are compliant with the appropriate regulatory approvals.

M16 Transportation Service

With respect to transportation on Union's system, MHP Canada believes that the existing M16 transportation tariff and pro forma contract for third party storage imbedded within the integrated system of Union constitutes a standard storage connection agreement.

An M16 service agreement provides for the physical interconnection with the integrated Union system and for the transportation of third party storage gas to and from Dawn under specific operating parameters, such as receipt and delivery pressure of 700 psig. M16 service is regulated by the Board under an approved the rate schedule, which includes the general terms and conditions of contract. Variables within the M16 service agreement include the firm and/or interruptible quantity, the term and any aid-to-construct required for the custody transfer measurement station or for additional facilities to provide incremental contracted firm transportation. A pro forma contract and the Board approved general terms

⁸ EB-2008-0052 (STAR): Discussion Paper, s. 2.2, pp. 13-14.

and conditions are posted on the Union internet site⁹ and are available to any Ontario storage operator. Overrun provisions are included in the approved rate schedule.

Other related agreements required by a storage operator associated with the M16 service agreement include: (i) a standard Interruptible Service HUB contract (“HUB balancing agreement”), similar to any party that transacts at Dawn, which allows parking and loaning of small volumes of gas; (ii) an enhanced HUB balancing agreement that provides operational balancing services to manage the daily differences between the nominated and the measured flow, which is a standard requirement when interconnecting to another pipeline system; and (iii) any other services required according to the specific circumstances of each third party connection, such as compression and/or dehydration services. With respect to M16 service, MHP Canada finds the form of contracting acceptable as it exists today.

Other Transportation Options

An Ontario storage operator has other options to move gas to and from its storage facilities and Dawn.

An Ontario storage operator could connect directly to the Dawn facilities. In this case, an M16 service agreement with Union would not be required as the storage operator provides its own transportation service by building directly to Dawn. A HUB balancing agreement and operational balancing agreement (similar to other companies directly connected to Dawn, such as Enbridge, TCPL and Vector) with Union would be required. Compression and/or dehydration services could be contracted with Union.

An Ontario storage operator could connect to the Enbridge Tecumseh Transmission System and contract firm transportation to and from Dawn. MHP Canada is not currently a customer of this service nor is it aware of any other Ontario storage operators physically connected to the Enbridge system. MHP Canada presumes that a storage connection and transportation would be facilitated through Enbridge rate 331¹⁰ services or a new service developed by Enbridge. In any event, an operational balancing agreement with Enbridge would be required and MHP Canada anticipates that dehydration and compression services could be contracted with Enbridge. A HUB balancing agreement with Union would be required for transactions occurring at Dawn.

An Ontario storage operator wishing to connect its storage to either TCPL or Vector would need to negotiate a transportation contract and interconnection

⁹ [www.uniongas.com/Storage & Transportation/Contracts/Long Term M16 Transportation Service Contract](http://www.uniongas.com/Storage%20&%20Transportation/Contracts/Long%20Term%20M16%20Transportation%20Service%20Contract); and [www.uniongas.com/Storage & Transportation/Storage and Transportation Rate Schedules/M16 Rate Schedule](http://www.uniongas.com/Storage%20&%20Transportation/Storage%20and%20Transportation%20Rate%20Schedules/M16%20Rate%20Schedule)

¹⁰ [www.enbridge.com/Enbridge Gas Distribution/Business/Rates & Contracts/Large Volume Rates/Rate 331](http://www.enbridge.com/Enbridge%20Gas%20Distribution/Business/Rates%20&%20Contracts/Large%20Volume%20Rates/Rate%20331); and [www.enbridge.com/Enbridge Gas Distribution/Business/Rates & Contracts/Large Volume Rates/Commercial Rate Handbook](http://www.enbridge.com/Enbridge%20Gas%20Distribution/Business/Rates%20&%20Contracts/Large%20Volume%20Rates/Commercial%20Rate%20Handbook).

agreement with those companies, including an operational balancing agreement. A HUB balancing agreement with Union would be required for transactions that occur at Dawn. At this time, it is unclear whether compression or dehydration services would be available through these transporters, in which case the storage operator would need to build facilities to provide those services.

MHP Canada has had no concerns with the availability of the required storage connection agreements in developing its storage prospects. MHP Canada does not believe that development of one standard form storage connection agreement applicable to all Board regulated transporters is necessary. MHP Canada submits that the storage connection agreements available with Union today are suitable for their purpose and believes that suitable agreements will be developed by other transporters, as required, to provide transportation and interconnection services.

Discussion Paper

Board Staff outlined three possible options to implement a storage connection agreement between a storage provider and transporter:

- A transporter and storage provider negotiate the storage connection agreement (“SCA”) and the final SCA is not in the public domain;
- A transporter and storage provider negotiate the storage connection agreement and the final SCA is approved by the Board; or
- A transporter and storage provider negotiate the storage connection agreement and the final SCA is posted on the company’s website.

Board Staff noted that with the last two options, the SCA would be in the public domain and commented that this would ensure that the Board and other storage providers have the necessary information to verify that non-discriminatory access requirements have been met. Board Staff indicated that it is not aware of any commercially-sensitive material in the negotiated SCA since the price is a toll in accordance with a rate schedule. Board Staff indicated that it would be helpful if Union and/or other storage providers could identify the type(s) of commercially-sensitive material contained in storage connection agreements. Board Staff invited comments on the options.¹¹

MHP Canada Comment

MHP Canada notes that the current practice is for the transporter and the storage operator to negotiate a storage connection agreement and that agreement is not released in the public domain, unless required under existing Board regulation, such as through the affiliate relationship code. MHP Canada has a number of issues with changing from the current practice.

¹¹ EB-2008-0052 (STAR): Discussion Paper, s. 2.2, pp. 14-15.

As an existing storage operator, MHP Canada sees no requirement to view the storage connection agreements, or a summary of the contract parameters, of its Ontario competitors. In fact, MHP Canada does not believe that it has public access to similar contracts, or contract summaries, for all competing storage service providers within the competitive market and is not aware of any requirement that would compel all of its competitors to publicly disclose storage-related transportation contracts, or a summary of the contractual information. Even with respect to Ontario, MHP Canada is unaware of any requirement for transportation service providers under the jurisdiction of the National Energy Board, which could carry gas between Dawn and an interconnection with a storage service provider, to publicly post individual transportation contracts and interconnection agreements. It would be unfair and prejudicial to require storage operators connected to Board regulated facilities in Ontario to publicly file contracts when all competitors within the competitive storage service market are not required to do so.

Accordingly, MHP Canada submits that public posting of individual storage connection agreements is unwarranted and potentially damaging to third party storage operators. The storage services market would realize no value in publicly releasing this information. MHP Canada submits that the Board should refrain from requiring the public release, in any form, of such information.

Information with respect to the physical location of interconnections is publicly available through existing processes and sources. The construction and operation of any storage facility in Ontario requires the approval of the Board and, as a result, a storage operator would be required in its facilities application to very clearly identify the location of its facilities, including any interconnections with transporters, as well as the design of its facilities, including detailed reservoir and operational characteristics. The Board's processes are public: (i) newspaper advertisements are required to announce the submission of the application; (ii) an interested party can intervene in or be an observer to the resultant proceeding; (iii) an applicant is typically required to provide copies of its facilities application to requesting parties; (iv) information with respect to the application is posted on the Board's web-site and (v) facilities applications and associated information is available through the Board's resource centre. In addition, pipeline connections can be readily identified in the field. Therefore, MHP Canada submits that: (i) any interested party can determine where third party storage operators are connected to the Ontario natural gas system and whether an M16 transportation contract exists or is contemplated to exist; and (ii) the Board can monitor the market through its facility application process. MHP Canada sees no compelling need to create a new requirement for additional public postings in this regard.

If the Board determines that it requires review of some details regarding an individual contract, such as firm and interruptible quantities, term or aid-to-construct costs, this commercially sensitive information could be requested confidentially and the information held in confidence.

MHP Canada notes that the posting of storage connection agreement information is irrelevant to parties purchasing services in the storage services market and relates only to Ontario storage operators. Therefore, MHP Canada respectfully requests the Board to pay particular attention to the comments of Ontario storage operators on this issue.

Consumer Protection in the Competitive Storage Market

Discussion Paper

Board Staff invited comments on whether it is necessary to have standard terms of service (general terms and conditions) for competitive storage contracts. Board Staff also invited comments on what the base set of service terms and conditions should be for these contracts, if the Board finds that standard terms of service are necessary.¹²

MHP Canada Comment

MHP Canada interprets the standard terms of service referenced in the Discussion Paper to refer only to the general terms and conditions of a storage services agreement, not the entire contract document.

A number of issues are raised through the Board Staff's proposal. From a practical perspective, offering familiar general terms and conditions for storage services at a market hub may appear convenient but does not necessarily result in increased efficiency for the market. MHP Canada believes that each storage operator should be free to structure general terms and conditions to satisfy its own and its customer's business needs. MHP Canada objects to any notion that a standard set of general terms and conditions for storage services be created to apply to all storage operators in Ontario. Such action tends towards unwarranted re-regulation of a competitive storage market. In a competitive market, market participants often demand particular terms or conditions for which they are prepared to adjust price or term or, ultimately, they might refuse to contract service. In a competitive market, customers are always free to take their business elsewhere.

Accordingly, since Ontario is part of a much larger competitive storage market, MHP Canada strongly encourages the Board to refrain from regulation including, but not limited to requiring approval of each storage operator's general terms and conditions for storage services.

If the Board feels that some measure of transparency is required with respect to general terms and conditions, as an alternative, the Board may recommend to Ontario storage operators that general terms and conditions for storage services be posted on the company internet site.

¹² EB-2008-0052 (STAR): Discussion Paper, s. 3, p. 17.

With respect to the remainder of a storage services contract, MHP Canada opposes any attempt at standardization as re-regulation of a competitive storage market. A storage operator must be free to develop and offer services that: (i) are responsive to the needs of the market; and (ii) are supported by the operating capabilities of that operator's storage system. Standardization unduly constrains the flexibility and creativity needed to meet the ever changing demands of the market.

Discussion Paper

Board Staff noted that one option might be for storage companies to disclose the highest price, the lowest price and the weighted average price resulting from each storage open season. This pricing information could be disclosed within a defined period of time following the open season close. Board Staff invites comments on this suggestion or alternative suggestions that would assist customers in their purchasing decisions while maintaining the integrity of the competitive storage market.

Where storage providers have few customers and disclosing the highest price, the lowest price and the weighted average price might reveal commercially sensitive customer information, Board Staff suggests that a storage provider should have the opportunity to apply to the Board for an exemption.¹³

MHP Canada Comment

As stated during the NGEIR proceeding, MHP Canada does not support publishing any commercially sensitive information, particularly market-based pricing.¹⁴ Nor does MHP Canada support publishing aggregated pricing information. As such, MHP Canada does not support publishing any information with respect to any open season or negotiation processes it undertakes.

The competitive storage market has existed in Ontario for some time, pre-existing the NGEIR Decision, and to MHP Canada's knowledge has functioned efficiently and effectively.¹⁵ Price transparency and discovery for all market participants is attainable through a sufficiency of offers in the active primary and secondary markets. This view was supported during the NGEIR proceeding by the Concentric Energy Advisors, Inc. expert, Mr. John Reed.¹⁶ Additionally, a market participant can estimate the intrinsic value of storage over a two to three year time horizon by using forward NYMEX gas prices and the Dawn Basis differential, which are available through multiple sources. Consultants during NGEIR were able to determine a value for alternative products to physical

¹³ EB-2008-0052 (STAR): Discussion Paper, s. 3, p. 17.

¹⁴ EB-2005-0551 (NGEIR): Final Argument of Market Hub Partners Canada L.P., August 11, 2006, pp. 24-25; and Written Reply Argument of Market Hub Partners Canada L.P., September 7, 2006, p. 10.

¹⁵ EB-2005-0551 (NGEIR): Final Argument of Market Hub Partners Canada L.P., August 11, 2006, p. 4; and Written Reply Argument of Market Hub Partners Canada L.P., September 7, 2006, p. 5.

¹⁶ EB-2005-0551 (NGEIR): Technical Conference Transcripts, May 18, 2006, p. 27, lines 7-20.

storage using posted rates.¹⁷ Every market participant has enough resources available today to assist in purchasing decisions and sees no convincing argument that the publishing of price data increases the quality of the competitive market. Therefore MHP Canada sees no compelling reason to disclose its commercially sensitive information or to have any of its competitors in the primary and secondary storage services markets, and those offering substitutes for storage services, disclose their commercially sensitive information.

MHP Canada views publication of individual storage contract pricing as prejudicial to storage operators and finds no evidence that the competitive market requires such information to function effectively and efficiently. As stated, the storage services market has functioned effectively and efficiently, and continues to function effectively and efficiently, without public posting of storage prices realized in the primary, secondary and substitute markets.

Reporting Requirements

Principles

Discussion Paper

Board Staff identified the following principles to guide the development of new storage and transportation reporting requirements.

1. Reporting should be accessible, timely, and as streamlined as possible. This can be accomplished, for example, by using on-line postings instead of having reports filed with the Board, utilizing existing standards (where appropriate), and avoiding unnecessary reporting.
2. Companies offering competitive storage services should have similar access to information about the natural gas utilities' transportation services.
3. Market transparency should be weighed against the need to protect commercially-sensitive information.
4. Reporting requirements should not put Ontario storage operators at a disadvantage relative to competing storage operators in other jurisdictions.
5. Reporting requirements should be uniform, although there may be reasons for the Board to provide limited exemptions on a case-by-case basis.¹⁸

MHP Canada Comment

As noted by Board Staff, the reporting requirements proposed by Board Staff are similar, while not identical, to FERC requirements under the Code of Federal Regulations, Section 284.13.

¹⁷ EB-2005-0551 (NGEIR): Direct Evidence of Mark Stauff, May 1, 2006, pp. 56-62 and Appendix 2.

¹⁸ EB-2008-0052 (STAR): Discussion Paper, s. 4.1, p.19.

As a small storage operator in a very large market, MHP Canada supports the development of relevant and simple reporting requirements that do not disadvantage Ontario storage operators relative to their competition under the jurisdiction of other regulatory authorities, including secondary storage services providers and substitute service providers. Any reporting requirements developed by the Board should be free of duplication. MHP Canada generally supports the notion that reporting requirements should be uniform however some of the reporting requirements proposed by Board Staff will be onerous for small storage operators and provide limited value to the market. MHP Canada therefore encourages the Board to carefully review each reporting requirement to determine the relevance to the market with respect to small storage operators and to avoid unnecessarily increasing the cost of providing storage services where there is no or limited benefit to the market. Further, MHP Canada encourages the Board to establish minimum thresholds that would exempt small storage operators from specific reporting requirements, as opposed to providing exemptions on a case-by-case basis.

MHP Canada sees no compelling evidence that the market requires disclosure of storage pricing, aggregated or otherwise, to function efficiently and effectively. MHP Canada, therefore, does not support publicly posting of this commercially sensitive information. The market has functioned well over the past many years without this kind of regulatory assistance.

Index of Customers

Discussion Paper

Board Staff stated that an Index of Customers allows market participants to identify how capacity is allocated and to identify counterparties for secondary market transactions. Board Staff indicated that having an Index of Customers had value for all firm transportation and storage services. Board Staff stated that the Board and market participants could then monitor for unfair and discriminatory practices ensuring consumer protection in the competitive storage market and transparency. Board Staff proposed that the transportation Index of Customers include Enbridge's rate 331 contracts as well as Union's M12, M16 and C1 contracts. Board Staff also proposed that Enbridge, MHP Canada, Tipperary and other storage providers post an Index of Customers for their storage services.

Board Staff proposed that contracts with terms three months or greater should be captured in the Index of Customers and requested comments on the frequency of posting Index of Customers information.

Board Staff proposed that the Index of Customers be posted using NAESB standards and proposed the following content for the Index of Customers:

- Customer name
- Contract number
- Rate schedule
- Effective date and expiry date
- Maximum capacity and maximum daily withdrawal quantity (storage transactions)
- Maximum daily transportation quantity (transportation transactions)
- Receipt point(s) and delivery point(s)
- Negotiated rate (yes/no)
- Affiliate relationship (yes/no)¹⁹

MHP Canada Comment

As stated in NGEIR, MHP Canada supports a certain level of transparency for transportation and storage services to maintain an efficient market.²⁰ However, MHP Canada believes that the need for disclosure of the information contemplated in an Index of Customers should be identified by and supported by market participants, particularly customers. MHP Canada would note that Board Staff appears to be only advocating posting of information in the primary storage services market.

If the Board establishes a requirement to post an Index of Customers, the information should be limited to firm (or the firm component of) transportation and storage services. Storage operators should have the flexibility to choose to post the required information either on a dedicated web-site or on a corporate parent web-site.

If the Board establishes a requirement to post an Index of Customers, MHP Canada recommends that the Board require posting of the information on the first business day of each calendar quarter. The information posted would include all relevant transportation and/or storage customers under contract as of the first day of that calendar quarter. This information should remain posted on the internet site until the next quarterly Index of Customers is posted. Posting of an Index of Customers quarterly will provide market participants adequate opportunity to identify potential counterparties for contracting available capacity in the secondary market. Quarterly reporting of the Index of Customers will also allow the Board sufficient opportunity to monitor market activity. More frequent posting of this information is of limited value to the market and therefore not necessary. For clarity, new storage operators would not be required to post their Index of Customers until the first business day of the calendar quarter that follows in-service of the facilities.

¹⁹ EB-2008-0052 (STAR): Discussion Paper, s. 4.3.1, pp. 21-23.

²⁰ EB-2005-0551 (NGEIR): Written Reply Argument of Market Hub Partners Canada L.P., September 7, 2006, p. 9.

MHP Canada believes that posting of firm storage service contracts three months or less in length in an Index of Customers is of limited benefit to the secondary market and can be burdensome for storage operators. As stated in NGEIR, MHP Canada supports posting of firm storage service contracts a minimum of one year in length.²¹

Content of the Index of Customers for firm storage service providers should include no more than the following:

- Full Legal Name of the Customer
- Contract Number
- Effective Date and Expiry Date of the Contract
- Maximum Storage Quantity
- Maximum Firm Daily Injection/Withdrawal Quantity
- Receipt and Delivery Point(s)
- Affiliate Relationship (yes/no)

Rate schedules typically refer to a regulated service and are not applicable for competitive storage services. Similarly, there is no need to indicate whether contracts include negotiated rates. Maximum daily transportation quantity does not apply to storage contracts and should not be required for storage operators. As a result, these elements should not be included in any posting requirements established by the Board for storage providers.

While MHP Canada does not object to the use of NAESB standards for the Index of Customers, the Board should be clear in its requirements for posting an Index of Customers to ensure consistency. Since the requirements for transportation and storage providers may differ slightly, the Board should prescribe the format of the Index of Customers separately for transportation providers and storage providers.

Storage Price Reporting

Discussion Paper

Board Staff noted that this would not apply to storage contracts that are negotiated outside a competitive open season process (e.g., bilateral contracts). An option, which Board Staff noted one stakeholder suggested, is to have information on negotiated storage contracts filed confidentially with the Board, which could then be used to develop a weighted average price or another index that would be made publicly available. Another possible alternative would be to require storage companies to report annually the weighted average price

²¹ EB-2005-0551 (NGEIR): Written Reply Argument of Market Hub Partners Canada L.P., September 7, 2006, p. 9.

received for each class of storage service. Board Staff invited comments on these options.²²

MHP Canada Comment

As stated during the NGEIR proceeding, MHP Canada does not support publishing commercially sensitive information, particularly market-based pricing.²³ Price transparency and discovery for all market participants is attainable through a sufficiency of offers in the vigorous primary and secondary markets. This view was supported during the NGEIR proceeding by the Concentric Energy Advisors, Inc. expert, Mr. John Reed.²⁴

FERC does not require public posting of market-based rates in an Index of Customers.²⁵ As such, MHP Canada views publication of individual storage contract pricing as prejudicial to Ontario storage operators, specifically when other storage operators and service providers within the competitive market are not required to publicly post such information.

Further, MHP Canada finds no evidence that the competitive market requires such information to function effectively and efficiently. In fact, the storage services market has functioned effectively and efficiently for many years, and continues to function effectively and efficiently, without regulatory assistance involving a requirement for the public posting of storage prices.

As to aggregated or weighted data, MHP Canada sees no merit in aggregating and publishing the price of storage contracts on a weighted average or indexed basis. The underlying service supporting storage contracts may differ from storage provider to storage provider. For instance, a new storage provider may offer a service with partial firm injections and/or withdrawals while a storage provider with a broader portfolio of customers and assets may offer full firm injections and/or withdrawals. Without fully understanding the underlying services, an aggregated storage price or index is meaningless, difficult to context and has limited value to the market.

Aggregating storage services by class is also difficult as each storage service contract can be differentiated by firm and interruptible entitlements, reliability of interruptible service, variable charges, fuel charges, service parameters and ratchets, and other contractual parameters critical to price differentiation. Consistency in classifying storage services will be very difficult to achieve.

Therefore, aggregating pricing of individual storage operators or across all storage operators is not practical. Without understanding the underlying

²² EB-2008-0052 (STAR): Discussion Paper, s. 4.3.4, pp. 25-26.

²³ EB-2005-0551 (NGEIR): Final Argument of Market Hub Partners Canada L.P., August 11, 2006, pp. 24-25; Written Final Argument of Market Hub Partners Canada L.P., September 7, 2006, p. 10;

²⁴ EB-2005-0551 (NGEIR): Technical Conference Transcripts, May 18, 2006, p. 27, lines 7-20.

²⁵ EB-2005-0551 (NGEIR): Concentric Energy Advisors, Inc., Reply Evidence Submitted to the Ontario Energy Board on behalf of Market Hub Partners Canada L.P., May 26, 2006, p.11.

services, it does not provide the market with relevant data. Where a storage operator is contracted with less than three parties and is required to report aggregated pricing, MHP Canada would note that individual contract pricing can be derived by the contracted parties if individual storage contract quantities are posted as part of an Index of Customers.

Should the Board require market participants to file commercially sensitive transactional information on a confidential basis in order to monitor the state and health of the market, the Board must be able to protect the information from public release. If such information can be obtained through other avenues (such as the *Freedom of Information Act*) then the Board may prejudice a specific storage provider by the disclosure of commercially sensitive information. MHP Canada notes however that if the objective of such a provision is to police against unfair discrimination that objective could be realized without disclosure of commercially sensitive information by making it available confidentially to the Board which could take action as required based on its own review.

Semi- Annual Storage Report

Discussion Paper

Board Staff noted that a semi-annual storage report may not be required based on the reporting completed as part of the Index of Customers. Board Staff invited stakeholders to comment on this assessment.²⁶

MHP Canada Comment

Based on the comments submitted by MHP Canada with respect to the content of the Index of Customers, and in order to avoid duplication in reporting requirements, MHP Canada does not believe that a semi-annual storage report is necessary and does not support the requirement to file such a report. Further, MHP Canada does not see any value to the market or the Board in publishing customer specific injection and withdrawal data and is doubtful that active storage service customers will support publication of such data.

Available Capacity

Discussion Paper

Board Staff noted that several stakeholders have expressed an interest in reporting of detailed operational capacity of available firm and interruptible services available on the pipeline segments that connect natural gas storage facilities with the Ontario market, including storage located at Dawn, embedded storage facilities connected to the Ontario pipeline network at other locations, and storage operators located outside the province that could provide storage and balancing services to Ontario customers. Board Staff indicated that this data

²⁶ EB-2008-0052 (STAR): Discussion Paper, s. 4.3.3, p. 25.

is required to assess capacity available today and to be able to assess over time how availability of transportation and storage service is affected by changes in operating conditions. Board Staff also indicated that posting of available capacity allows market participants and the Board to identify potential instances of capacity withholding. Board Staff considers the FERC reporting requirements with respect to Operationally Available Capacity appropriate.

Board Staff proposed that the Available Capacity reports be posted using NAESB standards, that the information be updated each nomination cycle and that the content for storage operators include the following:

- Operational storage capacity
- Operational withdrawal capacity at each withdrawal point
- Operational injection capacity at each injection point
- Storage inventory
- Amount scheduled for withdrawal
- Amount scheduled for injection
- Operationally available storage capacity
- Operationally available withdrawal capacity for each withdrawal point
- Operationally available injection capacity for each injection point

Board Staff recognized that for some small storage providers the cost of posting this information may be high relative to the value obtained by the market and indicated that a storage provider should have the opportunity to apply to the Board for a full or partial exemption from posting the Available Capacity report.²⁷

MHP Canada Comment

MHP Canada considers posting this type of information to be burdensome on a small storage operator even without considering the proposed requirement to post at the frequency of the nomination cycles. The resources required to report such information, particularly with multiple frequencies during each gas day, will be significant. MHP Canada suggests that the value obtained by the market will indeed be low relative to the cost and effort in posting this information.

The Board should consider that one of the difficulties in determining available capacity for a storage operator embedded into the integrated system of Union Gas or connected to the transportation system of Enbridge or other service providers is that available capacity is a function not only of storage pool performance characteristics but of available take away capacity on the transportation system that the storage pool is connected to. Therefore determination of available capacity for an embedded storage operator requires significant coordination with the operator of the interconnected transportation system, which will be burdensome and is in many respects impractical. Again, MHP Canada questions the value of this reporting and submits that rules such as this can be a deterrent to a new entrant. Customers have managed to arrange

²⁷ EB-2008-0052 (STAR): Discussion Paper, s. 4.3.2, pp. 23-24.

their affairs respecting available capacity quite well for many years without this new regulatory requirement, which by its very nature seems inconsistent with the workings of the competitive marketplace.

If the Board determines that it requires storage operators to post an Available Capacity report, MHP Canada recommends that the Board address exemptions directly during the STAR rulemaking and establish a significant minimum threshold of total working gas capacity that would trigger the requirement for a storage owner to post this type of information. To ensure consistency, MHP Canada supports this approach rather than addressing exemptions on a case-by-case basis.

Design Capacity

Discussion Paper

Board Staff proposed that storage operators post certain design capacity information on their internet sites by November 1 each calendar year and update that information whenever there are changes. Board Staff proposed the following information to be posted:

- Total Physical Storage Capacity (by individual Storage Pool)
- Base Gas Quantity (by individual Storage Pool)
- Working Gas Capacity (by individual Storage Pool and aggregated)
- Design Withdrawal Capacity (by individual Storage Pool and aggregated)
- Design Injection Capacity (by individual Storage Pool and aggregated)²⁸

MHP Canada Comment

MHP Canada provides storage services defined by contract. The underlying assets and how MHP Canada uses them is a matter for its sole discretion. Storage services are delivered based on the capability of the aggregated portfolio which can include physical storage, contracted storage and any contracted balancing services. The listed information is reminiscent of an old-style regulated rate of return storage marketplace and is quite out of place in the constantly changing storage marketplace in which MHP Canada competes. Respectfully, this information is not useful in the assessing the health and competitive state of the market nor is this information important (or even relevant) to a potential storage customer. MHP Canada finds publication of this information to be unnecessary.

In principle, MHP Canada believes that creating new regulatory requirements to govern a competitive marketplace is regressive and that little to no value is gained by market participants from posting working gas capacity, total physical storage capacity, base gas quantity, design withdrawal capacity and design injection capacity, whether aggregated or on an individual facility basis.

²⁸ EB-2008-0052 (STAR): Discussion Paper, s. 4.3.5, p. 26.

As a practical matter, MHP Canada notes that total physical storage capacity, working gas capacity, design withdrawal capacity and design injection capacity are usually contained within the applications for approval of the construction and operation of each storage facility. Base gas quantity can be determined by deduction. Therefore, this information is already available to the Board and to interested parties for monitoring purposes.

Notwithstanding MHP Canada's concerns, should the Board establish a requirement to post any capacity information, storage operators should be required to post aggregated information on an appropriate internet site and, to keep reporting simple, this information should be posted (or updated) no more frequently quarterly.

Complaint Mechanism

Discussion Paper

Board Staff indicated that the complaint mechanism to be developed as part of STAR should provide customers (or other market participants) with the opportunity to have their concerns about unfair and discriminatory access to transportation services dealt with in a fair, timely and effective process.

In addition, Board Staff indicated that customers (or other market participants) should have the opportunity to have concerns related to the competitive storage market addressed by the Board consistent with its jurisdictional authority.²⁹

MHP Canada Comment

MHP Canada recognizes that an important element of a functioning market is an efficient and effective complaint resolution process.³⁰ An efficient and effective complaint resolution process should be fair, timely and clearly documented. MHP Canada supports engaging in voluntary complaint resolution prior to referring any complaint with respect to unfair or discriminatory practices to a jurisdictional body.

With respect to the competitive storage market, market participants currently have a suite of complaint resolution processes available.

- The Board offers a Market Participation Hotline under the OEB Compliance Program that can be accessed by market participants. The

²⁹ EB-2008-0052 (STAR): Discussion Paper, s. 5, p. 27.

³⁰ EB-2005-0551 (NGEIR): Evidence of Market Hub Partners Canada L.P., May 1, 2006, p. 8; Hearing Transcript, June 29, 2006, v. 5, p. 4, lines 19-25 / p. 7, lines 1-9 / p. 56, lines 11-17; and Final Argument of Market Hub Partners Canada L.P., August 11, 2006, p. 23.

OEB Compliance Program is well documented on the Board's web-site and is consistent with the practices of other industry regulators.³¹

- The Board's jurisdictional powers are framed broadly to deal with market abuse and issues of non-compliance.³²
- The Board's Affiliate Relationships Code for Gas Utilities includes a specific complaint process which outlines form of complaint, timing for acknowledgement and response, and record keeping.³³ If a complaint cannot be resolved voluntarily, a complainant can refer the matter to the Board through the OEB Compliance Program.
- The complaint process of the Competition Bureau under the *Competition Act*³⁴ is well described on the Competition Bureau's web-site and is specifically designed for investigation of alleged market abuse.³⁵

As stated during NGEIR, MHP Canada believes that the existing complaint systems are adequate.³⁶ If a complaint cannot be addressed through voluntary resolution, the OEB Compliance Office and the jurisdictional powers of the Board are adequate for resolution of complaints and can assist the Board in monitoring the health and competitive state of the market. As an alternative, market participants can also refer complaints not able to be voluntarily resolved to the federal Competition Bureau. MHP Canada submits that market participants have adequate opportunity to have their concerns about fair and discriminatory access to transportation services dealt with in a fair, timely and effective process and to have their concerns related to the competitive storage market dealt consistent with the jurisdictional authority of the Board. With the remedies available to market participants, MHP Canada does not see any need for additional requirements regarding complaint resolution processes.

Options

Discussion Paper

Board Staff stated that it believes that day-to-day operational issues are best worked out between the parties. To facilitate this, Board Staff believes that it would be reasonable to include in STAR a requirement that transporters and storage companies develop complaint handling procedures and post these procedures on their website. Board Staff noted that this was consistent with the

³¹ [www.oeb.gov.on.ca/OEB/Industry Relations/Compliance Office](http://www.oeb.gov.on.ca/OEB/Industry%20Relations/Compliance%20Office)

³² *Ontario Energy Board Act, 1998*, Part VII.1 - Compliance

³³ Affiliate Relationships Code for Gas Utilities, Ontario Energy Board, July 31, 1999 as revised on December 9, 2004 with effect June 9, 2005, Section 2.9.

³⁴ Competition Act, R.S., 1985, c. C-34, s.1; R.S., c. 19 (2nd Supp.), s.19.

³⁵ [www.competitionbureau.gc.ca/The Organization/Enquiries and Complaints](http://www.competitionbureau.gc.ca/The%20Organization/Enquiries%20and%20Complaints).

³⁶ EB-2005-0551 (NGEIR): Final Argument of Market Hub Partners Canada L.P., August 11, 2006, p.23; and Written Reply Argument of Market Hub Partners Canada L.P., September 7, 2006, pp. 10-11.

Board's Electricity Distribution License where the Board stipulates the principles for a complaint procedure.

Board Staff invited comments as to whether it is necessary that each company's complaint procedures be reviewed and approved by the Board.³⁷

MHP Canada Comment

MHP Canada believes that voluntary complaint resolution should precede referring any complaint to a jurisdictional body. Complainants should be required to attempt to resolve any disputes with a storage operator prior to approaching the Board or any other agency. Voluntary resolution encourages market and regulatory efficiency and should eliminate most potential disputes, which often can be based upon a degree of miscommunication.

To that end, MHP Canada supports the implementation of voluntary complaint handling procedures and does not object to publicly posting those procedures on a web-site (either on a dedicated web-site or on a corporate parent web-site). MHP Canada expects that every market participant will have access to the internet and therefore MHP Canada sees no need to display a copy of its complaint handling procedures in its place of business for inspection by members of the public during normal business hours, particularly for small storage operators who unlike large public utilities, are not set up to host members of the general public. In the event that internet access is not available, MHP Canada is certainly willing to send a copy of its complaint handling process, free of charge, to any person who reasonably requests a copy.

Any storage operator, including a new storage operator, has sufficient access to: (i) the Board's Sample Electricity Distribution Licence, Section 16, Customer Complaint and Dispute Resolution; (ii) guidelines in other jurisdictions for developing effective complaint handling procedures, and (iii) the complaint handling procedures of other natural gas operating companies. With this availability of information, MHP Canada believes that there is no requirement for the Board to establish guidelines for complaint handling procedures for the natural gas storage industry nor is there a requirement for the Board to review and approve individual complaint procedures. In a competitive market, customers have choice and are free to contract with competitors if doing business with any one of them becomes disagreeable.

To reiterate, parties operating in a well-functioning competitive marketplace, as has been the case in Ontario for some time, do not need the kind of regulatory tools for resolving commercial disputes that may be appropriate for a monopoly gas distributor. The courts are also available, as well as other mediation and arbitration services, to deal with any commercial disputes that a customer and storage operator may encounter. An open, competitive marketplace deals with

³⁷ EB-2008-0052 (STAR): Discussion Paper, s. 5.3, pp. 28-29.

this type of dispute resolution all the time without the need to create a regulatory process to assist.

Discussion Paper

Board Staff stated that it believes that customers with compliance concerns regarding STAR should be directed to contact the OEB Compliance Office. Board Staff invites parties to provide any alternatives to the approach of directing parties with compliance concerns to the Compliance Office.³⁸

MHP Canada Comment

Compliance concerns with respect to the implementation and interpretation of the forthcoming STAR rulemaking are appropriately addressed through the OEB Compliance Office if matters cannot be voluntarily resolved among individual parties.

Unfair and Discriminatory Practices

Discussion Paper

The Board stated in its NGEIR Decision that it had a duty to protect the interests of customers using competitive storage services and that it expects parties to bring issues of market failure to the Board's attention. Board Staff also stated that it recognizes that issues relating to unfair and discriminatory practices may occur in transportation markets not covered by STAR. Board Staff has proposed that the process for addressing these concerns is for parties to bring the issues directly to the Board. The Board would review and respond to these issues consistent with its jurisdictional authority. Board Staff invited comments from parties on this proposed process.³⁹

MHP Canada Comment

As stated previously, MHP Canada believes that voluntary complaint resolution should precede referring any complaint to a jurisdictional body.

Respectfully, the Board should take care not to inadvertently re-regulate the competitive storage market by inviting parties to expect equivalence in price and terms and conditions of service when the very nature of a competitive market will result in differentiation and the discipline that winning or losing business brings to competitors. The ultimate complaint mechanism in a competitive market is the right to deal with other service providers. MHP Canada respectfully submits that these rules should neither complicate nor constrain the normal functioning of the competitive market. In an extreme case of alleged anti-competitive behaviour, a

³⁸ EB-2008-0052 (STAR): Discussion Paper, s. 5.4, p. 29.

³⁹ EB-2008-0052 (STAR): Discussion Paper, s. 5.4, p. 29.

market participant could refer such complaints to the Board or to the federal Competition Bureau.

Disputes arising in monopolistic transportation markets, on the other hand, which are subject to the jurisdictional authority of the Board, have any remedies available today, including the general powers of the Board and the processes of the OEB Compliance Office.

All of which is respectfully submitted on September 9, 2008.