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May 25, 2009

28/5/09
Ontario Energy Board
P.O. Box 2319
2300 Yonge Street, 27th Flr.
Toronto, Ontario
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By e-mail
Original by courier

Attention: Ms. Kirsten Walli
Board Secretary

Dear Ms. Walli:

Re: Notice of Proposal to Make a Rule
Storage and Transportation Access Rule (“STAR”)
Ontario Energy Board File No. EB-2008-0052
Comments of TransCanada PipeLines Limited, ANR Pipeline Company, ANR Storage
Company, and Great Lakes Gas Transmission Limited Partnership (collectively
“TransCanada”) on the proposed STAR

TransCanada writes in response to the April 9, 2009 Notice of Proposal to Make a Rule of the Ontario Energy Board (“Board” or “OEB”), in which the Board notified participants in EB-2008-0052 of the release of the proposed STAR and invited participants to provide written comments on the proposed STAR by May 25, 2009. The proposed STAR would apply to transportation services and storage providers subject to the jurisdiction of the Board.

TransCanada supports the three key objectives for the proposed STAR as stated in the July 29, 2008 OEB Staff Discussion Paper:

- Non-discriminatory access to transportation services for storage providers and customers;
- Ensure consumer protection within the competitive storage market; and
- Support a transparent transportation and storage market.

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These objectives have been endorsed by the Board and refined as follows at page 3 of the April 19, 2009 proposed STAR:

- Ensure open, fair and non-discriminatory access to transportation services for customers and storage providers;
- Provide customer protection within the competitive storage market; and
- Support transparent transportation and storage markets.

TransCanada believes that the Board's proposed rules for transportation services, including the requirement for open seasons with clear standards, the requirement for a standard form of contract, and the requirement to post all transportation contracts containing negotiated variations from the standard form of contract, are adequate to ensure that the proposed STAR meets the stated key objectives with respect to transportation services.

TransCanada is, however, concerned that the proposed STAR, as it relates to storage services, is inadequate and will fail to meet the proposed STAR's stated key objectives. As currently proposed, storage service providers will not be required to post negotiated contracts that vary from their standard form; nor will they be required to post rates charged for negotiated services. The lack of information to be made available on storage contracts will prevent a transparent storage market from developing and will facilitate discrimination on the basis of price or contract terms by Ontario-based storage providers. Without access to this vital information, customers will be unable to determine where discrimination has occurred, let alone be in a position to file an informed complaint to the Board concerning alleged discrimination. In these circumstances, a Board complaint mechanism to address alleged discrimination would be ineffective, since the underlying information required to assess whether or not discrimination is occurring would not be available to market participants.

Accordingly, TransCanada recommends that the disclosure rules proposed to apply to transportation service should also apply to storage services to provide transparency in the storage market.

TransCanada notes that storage service providers regulated by the Federal Energy Regulatory Commission ("FERC") in the United States have to file their standard form contract as part of their tariff. In addition, FERC-regulated storage providers, including those that have market based rate authority, are also required to disclose pricing on their website and to file contracts that deviate from the standard form contract contained in their tariff and/or contain negotiated rates for FERC approval. This is illustrated in the FERC Bluewater Gas Storage ("Bluewater") CP-06-350 Decision approving market based rates for storage services. The FERC approved market based rates after finding that Bluewater lacked market power in the applicable market. The FERC conditioned the approval on Bluewater's compliance with all applicable Commission regulations under the Natural Gas Act, including Parts 154, and 284. Section 154.112(b) requires the disclosure of all non-standard service agreements, while Section 284.13(b) requires

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the disclosure of pricing on the service provider's website. Further illustrating the FERC's concern with respect to undue discrimination in providing storage service is its rejection of Bluewater's proposal to permit negotiation of individual ratchets for each storage service. The FERC stated:

The Commission has provided pipelines with flexibility in negotiating individual rate provisions through negotiated-rate authority; the Commission has not allowed the negotiation of terms and conditions of service that would result in a customer receiving a different quality of service than that provided to other customers contracting for the same service under the pipeline's tariff. The Commission has not provided pipelines with the authority to file for pre-approval of the right to negotiate terms and conditions of service with individual customers because of the risk of undue discrimination among customers. The Commission has stated that it generally considers negotiated terms and conditions of service to be those provisions related to operational conditions of transportation service. This includes any provision that results in a customer receiving a different quality of service than that provided other customers under the pipeline's tariff, or affects the definition and the quality of service received by others. Allowing shippers to negotiate the ratchets of a storage service would fundamentally change the nature of the service and create the potential that two parties contracting for the same service might not receive service that is equal or even similar in quality.

To guard against discrimination in the provision of service and to promote transparency, the FERC requires storage providers with market based rate authority to fully disclose rate and contract information. The failure of the OEB to do the same in the proposed STAR creates the potential for discrimination by Ontario storage service providers. A complaint mechanism to the Board can only be effective if there is adequate disclosure of pricing and contract terms.

With respect to the Board's concerns "...about the challenges associated with protecting customer-specific information when there are a limited number of transactions," TransCanada notes that the storage market in Ontario has been found to be competitive by the Board in the Natural Gas Electricity Interface Review. The inadequate disclosure of storage pricing and contract information is not supportive of this competitive market, because it will result in information asymmetry between storage providers and their customers. The objectives of ensuring a transparent and non-discriminatory storage market in Ontario should outweigh any concern over the protection of customer-specific information, especially when this information is required to be disclosed by storage providers competing with those located in Ontario.

For these reasons, TransCanada urges the Board to amend the proposed STAR in order to require Ontario storage providers to fully disclose all rates and non-standard contract terms.

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Implementing these changes would not only meet one of the Board's key objectives of a transparent storage market but place Ontario storage providers on a level playing field with competing U.S.-based storage providers.

Should the Board require additional information with respect to these comments, please contact Jim Bartlett at (403) 920-7165 or Murray Ross at (416) 869-2110.

Yours truly,

A handwritten signature in black ink, appearing to read "N. Berge". The signature is fluid and cursive, with a large initial "N" and a long, sweeping underline.

Nadine Berge
Senior Legal Counsel
Law and Regulatory Research