

EB-2008-0052
Storage and Transportation Access Rule (STAR)

Comments of the Industrial Gas Users Association
On the Staff Discussion Paper dated July 29, 2008

1. INTRODUCTION

Ontario Energy Board Staff propose three objectives, with which IGUA generally agrees; namely,

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

IGUA proposes that the development of a competitive and fully functional and efficient storage market should be a key objective, a point that could perhaps be captured by rephrasing the second bullet point:

- Ensure consumer protection within an efficient and competitive storage market.

IGUA notes that while the Ontario Energy Board has decided to forebear from regulating storage services, deeming the market for storage services to be a competitive market, the Board has not made that determination for transportation services. Transportation in fact remains a regulated monopoly service. While transparency around access to transportation services is essential, and while transportation services and storage services interact in essential ways, Staff's third objective perhaps over-reaches in referring to a "transportation and storage market".

In considering the terms and conditions to apply to transportation and storage service providers, it is important to recognize several asymmetries in the relationships among the participants in the market.

- Transporters are regulated monopoly service providers.
- In a market that has been deemed to be competitive, storage service providers are unregulated service providers. Some storage service providers have affiliate relationships with transporters, while competing storage service providers may not.
- Market participants, such as natural gas end users or natural gas marketers, are unregulated buyers of storage and transportation services, who compete with one another for these services, and who often compete with one another in their own businesses.

It is necessary to apply different levels of controls or reporting requirements to different market participants, in proportion to their market power, and in consideration of the impact that transparency will have either in enhancing competition, or in hindering a market participant's ability to compete.

IGUA's comments on the specific topics covered in Staff's Discussion Paper follow.

2. NON-DISCRIMINATORY ACCESS TO TRANSPORTATION SERVICES

2.1. Allocation of Transportation Capacity

Transportation services are provided by regulated monopolies, some of whom have affiliated storage marketing operations. Fair and transparent access to transportation services is essential to the efficient operation of the market.

All transportation service providers ought to offer new firm capacity or existing long-term firm capacity (terms greater than or equal to one year) exclusively through open season processes. Existing short-term firm or interruptible capacity could be offered through a transparent “daily open season” or bidding process. Transporters could apply to the Board for an exemption to an open season process on short-term firm capacity only.

2.1.1. Minimum Standards for Transportation Open Seasons

IGUA agrees that notice of an open season must be sufficient to provide potential bidders reasonable time to evaluate service offerings and develop bids. This can be accomplished either by establishing a minimum notice and open season period, or by having bid seasons open and close on fixed dates at regularly scheduled intervals. For example, long-term (new or existing) firm capacity could be offered in open seasons that close on May 15th and November 15th each year.

If the Board opts for a notice period and a bid period, then IGUA suggests a minimum notice period of three weeks and a minimum bid period of one week, for a minimum of four weeks from start to finish.

IGUA agrees that prospective bidders must be informed of all relevant details of the bid package no later than the start date of the notice period. The relevant details include those listed by Staff:

- The amount of capacity being offered,
- The date the capacity will become available,
- Any potential capacity constraints,
- Any minimum term requirements, and
- The methodology that will be used to evaluate bids.

IGUA agrees with Staff that disclosing the amount of capacity being offered contributes to an open, fair and transparent bid process, particularly with respect to affiliated transportation and storage operators, and enhances the efficiency of the storage market by communicating the availability of transportation routes to and from alternative storage providers.

IGUA recommends that the bid package must also identify all information that will be required to be submitted in support of a bid. As well, the package should identify the requirements and deadlines applicable to documents such as precedent agreements, credit support agreements, or other

agreements that a successful bidder will be required to execute following conclusion of the open season.

IGUA agrees that existing customers should have an opportunity to turn back existing rights within an open season for new capacity, to mitigate the risk of overbuilding facilities.

With respect to bid results, sufficient disclosure is required so that all market participants can satisfy themselves that the process was fair. In essence, an unsuccessful bidder should be able to confirm, from the posted results, why they were unsuccessful.

Disclosure of bid results also communicates the demand for transportation services and other important market information that will promote market efficiency.

For new or existing long-term firm M12 and C1 capacity (terms greater than or equal to one year) at regulated rates, the term and the volume of the successful bids should be disclosed. If the successful bid is at a rate greater than the regulated rate, then in addition to term and volume the rate should also be disclosed.

Disclosure of the above bid results can be met without public disclosure of the identity of the successful bidder, although it may be a reasonable requirement that a notation be made if the successful bidder is an affiliate of the transportation service provider.

Short-term firm and interruptible C1 transportation contracts can be negotiated without an open season, and results need not be publicly posted. Summary information (path, rate, volume, term, transacting parties, transaction date) can be filed in report format with the Board. This information supports analysis and market surveillance by the Board if concerns about market abuses arise.

2.1.2. Standard Form of Contracts

It is unclear from the Discussion Paper whether Staff seeks standardization of the form of contracts that are executed, or whether it is merely suggested that a standard contract form be used as a starting point for negotiations. This confusion arises because the paper argues for standard contracts, but then suggests that non-standard contracts be posted on the service provider's web site. The paper does not indicate how standardization results if contracts can be negotiated.

Transportation contracts should be standard form in all material provisions, including those listed by Staff on page 11 of the Discussion Paper. IGUA suggests that Force Majeure provisions should also be included in the list. As a monopoly service provider, the transporter ought to be prepared to offer service on the same terms to all shippers who meet those terms.

Standard form contracts ensure that open season bids can be quantitatively compared and fairly evaluated.

Standard form contracts should be included in Board-approved tariffs and posted on the service provider's web site.

2.2. Storage Connection Agreement

As discussed under section 2.1.2 for transportation contracts, IGUA is of the view that standard form connection agreements will ensure equal access by storage providers to transportation services. It is essential, however, that the terms to be standardized be defined reasonably so as not to create unintended barriers to entry.

Certain parameters (volumes, pressures, and receipt and delivery points) would of course be determined on a case-by-case basis. IGUA agrees with the list of provisions set out on pages 13 to 14 that Staff suggest be standardized in the Storage Connection Agreement.

A storage facility may be embedded or may connect to the transporter's system at a point other than Dawn. In either case, the facility must be able to access Dawn through the transporter's system on fair and equitable terms. Doing so makes the storage facility accessible to other customers, and provides customers of the storage facility access to other markets.

2.3. New Transportation Services

C1 transportation with enhanced nomination windows should be available with or without related storage. Both C1 and M16 need an F24-T service component.

As suggested in section 2.3 of the Discussion Paper, adding more nomination windows to C1 (or M16) service would also further the objective of integrating embedded storage or storage connected at other points into the Ontario market. This would enhance the competitiveness of the storage market and would increase the efficiency of Ontario's natural gas market.

As storage providers are not regulated and compete with one another, they may wish to avoid public disclosure of the commercial or operational terms of their Storage Connection Agreements. In IGUA's view, the objective of ensuring non-discriminatory access to transportation can be achieved without public disclosure of Storage Connection Agreements if the resulting contract is filed with the Board. Specific approval of the contract is not necessary, but an analysis of the contract by the Board would determine whether or not the contract showed evidence of discriminatory practices.

3. CONSUMER PROTECTION IN THE COMPETITIVE STORAGE MARKET

IGUA is hopeful that a fully competitive storage market will develop, and subject to that caveat, agrees that the Board's requirements for competitive storage services and regulated transportation services ought to be different.

One of the benefits sought from a competitive marketplace is that competition motivates innovation and customer responsiveness. While the Board may impose a set of standard general terms and conditions for storage operators, imposing undue standardization on the nascent storage services market would run the risk of stifling the development of the market the Board aims to promote.

We also note that a liquid commodity market drives the value of storage services, and vice versa. Ontario has a liquid commodity market, and as a competitive storage services market evolves, prospective consumers of storage services will be able to assess the value of the storage services offered in that context.

As the storage market evolves, the expectation is that storage operators will offer a variety of services on a continuous basis and at market prices. The variety of services and terms will make comparisons of minimum, maximum and average prices meaningless. The value of storage services, on the other hand, will be evident in the price relationships that will be readily observable in a liquid commodity market with good price discovery.

While Ontario sees the promise of a competitive storage market, important practical consideration must be given to the fact that one competitor has a dominant market share, as well as an affiliate relationship with the monopoly transportation service provider connecting most storage facilities to the market hub. The success or failure of the storage services market in Ontario will be determined by how Union Gas operates, and how it is perceived to operate, in this context.

IGUA strongly supports the recommendation of Staff that a transporter's competitive storage marketing function should not have access to non-public information that would unfairly enhance its position in the storage market. Such information would include, but not be limited to:

- Information about transportation expansion plans;
- Information about potential storage capacity additions, including location and operating characteristics; and
- Information about the operating characteristics of shippers, storage operators or end-users, including their nominations, gas flows, inventory or current imbalances.

4. REPORTING REQUIREMENTS

4.1. Principles

IGUA supports the principles elucidated by Staff. A reasonable level of reporting is necessary to ensure that market participants have fair and equitable access to transportation services. A heavy reporting burden adds costs and complexity, and may result in useful information being harder to find rather than easier. Reporting requirements must serve a useful and defined objective.

IGUA also notes that storage operators, and for the most part their customers, are unregulated parties operating in competitive environments. The obligation to disclose commercially-sensitive information (of the storage operator or its customers) that has no market surveillance value will hinder the evolution of a competitive market rather than help it.

4.3. Reporting Options

4.3.1. Index of Customers

IGUA supports the reporting of Index of Customer information for all firm transportation contracts of one-year term or longer for M12 or C1 service, or Enbridge Rate 331 transportation. A monthly updating and internet posting of this information seems practical and not unduly burdensome.

The reporting of similar information for short-term contracts may not be necessary or efficient if there are a large number of transactions of short duration to report.

For storage, Index of Customer information should only be required to the extent some storage operators serving the Ontario market are already required to publish this information because of Federal Energy Regulatory Commission requirements. Applying these standards uniformly to all operators serving Ontario would then “level the playing field” among competing service providers.

IGUA notes that in other jurisdictions where a healthy, competitive storage market exists (for example, Alberta), a robust market in short-term storage services operates in parallel to the gas trading market (parks, loans, and storage for a term of a month or a few months). Storage provides a physical means of arbitrage for gas price differences over time. The ability of storage operators to execute these transactions quickly helps support gas trading liquidity and makes the commodity market more efficient.

Many of these short-term transactions could be for relatively small volumes. The need to track and report on each of these transactions would add to transaction costs, and may also discourage participation in such transactions (since the nature of the arbitrage and the arbitrageur may ultimately be revealed).

IGUA agrees that Union Gas and Enbridge Gas Distribution must provide timely disclosure of the amount of storage capacity from their integrated storage operations that will be used for in-franchise purposes for the coming withdrawal season. Timely disclosure would dictate that disclosure is made no later than the start of the injection season.

4.3.2. Available Capacity

IGUA agrees that transporters ought to be required to post timely quantitative information on operationally available capacity. As observed by Staff, posting available capacity allows market participants and regulators to identify potential instances of capacity withholding, helps to reveal bottlenecks or operational constraints that will affect supply and pricing, and enables market participants to learn about the operating characteristics of the system.

The “stop light” methodology may be useful as a quick short-hand communication tool, but it is not sufficiently quantitative to serve all the purposes outlined by Staff.

For transporters, IGUA considers it necessary that the transporter post:

- The operational capacity of the pipeline segment under current conditions,
- Currently scheduled flow,
- Operationally available capacity remaining, and
- The segment bottleneck or flow constraint.

For storage operators, IGUA considers it sufficient to post:

- The operational storage capacity,
- Current inventory (at the end of the previous gas day),
- Operational injection/withdrawal capability at current conditions, and
- Scheduled net injection or withdrawal (at each point if multiple points).

The storage operator knows this information and therefore, its posting should not be an onerous task. Also, the posting of this information “levels the playing field” as well as providing another means to check on how the market is working.

4.3.3. Semi-Annual Storage Report

Such a report would be largely redundant.

4.3.4. Storage Price Reporting

IGUA anticipates that if a truly competitive storage market evolves in Ontario, it will come to look more like the commodity trading market than the transportation services market. A large number of storage transactions will take place under a wide variety of commercial terms. Open seasons will not necessarily be the vehicle of choice for marketing capacity.

If these conditions evolve, the volume of transactions may hinder the ability to publish meaningful price reports. Weighted average prices or minimum/maximum prices may be meaningless statistics depending on how dissimilar transactions are lumped together for reporting purposes.

It would not be suggested that marketing companies be required to post statistics about their own trading volumes and average or minimum and maximum prices. It would be impractical and the information is commercially sensitive. So too will it be for a storage operator.

A more effective process for maintaining surveillance on the evolution of a competitive storage market may be found by requiring storage operators to report periodically to the Board on the volume of transactions, the number of different counterparties transacted with, and other parameters that would indicate the robustness of the market.

The economic health of the market participants and the volume and diversity of transactions and counterparties are sufficient indicators of a healthy market.

4.3.5. Design Capacity

IGUA supports the recommendation that all storage operators post information describing the physical capacities of their storage facilities.

5. COMPLAINT MECHANISM

IGUA agrees that the resolution of commonplace operational complaints ought not to involve the Board, but rather should be resolved in accordance with a service provider's own complaint resolution process. The Board need not review and approve each complaint procedure, however it should be a requirement of a complaint resolution process that customers be advised of the circumstances under which they can seek assistance from the Board in resolving a complaint. Recourse to the Board would be appropriate for matters relating to compliance with STAR, but may also be appropriate for other matters that have not been resolved satisfactorily. It may be that recourse to the Board is more appropriate than recourse to the courts, for some matters, if all other measures have failed.

In IGUA's view, having access to an efficient and timely complaint mechanism process offers greater market surveillance value than detailed onerous reporting for the competitive storage market. If parties encounter problems in the market, they need to have access to a timely complaint process where they can have their concerns examined and resolved by an independent party.

IGUA agrees that customers must always have recourse to the Board in cases of perceived unfair and discriminatory practices, whether or not these practices relate to matters covered by STAR.