



EB-2010-0155

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

AND IN THE MATTER OF an Application by Union Gas
Limited for approval of its tariffs for its M12, C1 and M16
transportation services;

AND IN THE MATTER OF the Storage and Transportation
Access Rule.

BEFORE: Paul Sommerville
Presiding Member

Paula Conboy
Member

DECISION

June 3, 2010

Background

On December 9, 2009, the Ontario Energy Board (the "Board") issued a Notice of Issuance of a New Rule, under section 44(1) of the *Ontario Energy Board Act, 1998* (the "Act"). The new rule, known as the Storage and Transportation Access Rule ("STAR") comes into effect on June 16, 2010. All materials related to the STAR are available on the Board's website (EB-2008-0052).

On April 1, 2010, in accordance with sections 2.3.3 and 2.4.3 of the STAR, Union Gas Limited ("Union") filed with the Board an application seeking Board approval of tariffs for its M12, C1 and M16 transportation services to be effective as of June 16, 2010. Union

has proposed revisions to the tariffs for its M12, C1 and M16 transportation services in order for these tariffs to be compliant with the STAR.

Section 2.3.3 of the STAR applies to a transmitter that provides transportation services for a shipper while section 2.4.3 applies to a transmitter that provides transportation services for an embedded storage provider. Sections 2.3.3 and 2.4.3 of the STAR read as follows:

2.3.3 A transmitter shall include in its tariff the terms of service for each of its transportation services. The tariff shall be filed with the Board for approval and the approved tariff shall be posted on the transmitter's website.

2.4.3 A transmitter shall include in its tariff the standard terms of service for each of its transportation services. The tariff shall be filed with the Board for approval and the approved tariff shall be posted on the transmitter's website.

The Board issued a Notice of Application and Procedural Order No. 1 on April 9, 2010, which allowed registered participants in the development of the STAR (EB-2008-0052) and all shippers taking M12, C1 or M16 transportation service from Union to file submissions on Union's application. The Board decided to proceed by way of a written proceeding.

On April 27, 2010, the Board issued Procedural Order No. 2. In its application, Union expressed concern that there would be a two week period when it would not have Board-approved M12, C1 and M16 transportation contracts for potential shippers and/or storage providers. The Board decided to extend the implementation date for sections 2.3.3 and 2.4.3 to July 1, 2010 to coincide with the issuance of the Quarterly Rate Adjustment Mechanism ("QRAM") Rate Order.

The Proceeding

On April 23, 2010, the Board received written submissions from the Association of Power Producers of Ontario ("APPrO"); Canadian Manufacturers & Exporters ("CME"); City of Kitchener ("Kitchener"); Industrial Gas Users Association ("IGUA"); TransCanada Pipelines Limited ("TCPL"); Utilities Kingston ("Kingston"); and Board staff ("Staff").

Stakeholders supported the majority of the proposed M12 and C1 tariff changes requested by Union but had concerns in two areas – the Allocation of Capacity (section XVI of the proposed C1 and M12 tariffs) and Service Curtailment (section XVIII of the proposed C1 and M12 tariffs).

In addition, APPrO raised a concern with the proposed M12 and C1 tariffs regarding section V (Possession of and Responsibility for Gas). TCPL suggested that there were omissions in the proposed M12 and C1 tariffs related to Renewal Rights. TCPL made two further submissions. First, it urged the Board to require Union to provide service at its prevailing gas pressure levels as part of Union’s tariff obligation. Second, it sought the addition of Dawn (TCPL) as a Delivery Point in Union’s “Schedule C 2010” for C1 transportation services.

On May 7, 2010, the Board received Union’s Reply. Union argued that aside from the change to the Renewals section, which it adopted entirely in accordance with TCPL’s submission, the proposed M12, C1, and M16 transportation service tariffs as filed with the Board on April 1, 2010 meet the requirements of the STAR.

The Board will address the issues raised by stakeholders and Union.

Allocation of Capacity - Section XVI in the M12 and C1 Tariffs

With regard to section XVI.5, the majority of the stakeholders were of the view that Union’s proposed methodologies for allocating capacity are not clearly defined. These stakeholders commented that it is incumbent upon Union to clearly define the rules that will govern the allocation of any capacity that is not awarded pursuant to an open season.

Further, the stakeholders stated that the phrase “but not limited to” in the proposed section XVI.5 of the tariffs is ambiguous and fails to provide the requisite certainty respecting the proposed allocation methods. They also stated that the potential for Union to use other unspecified methods, as is suggested by that term, is contrary to the STAR.

Union argued that it has defined the alternative allocation methods in accordance with the STAR and noted that these capacity allocation methods have been used in the past. Union stated that it needs the flexibility to allocate capacity in the manner that best

meets the situation. Union also pointed out that it alone bears the revenue risk of unsubscribed capacity. Further, Union stated that it drafted its proposed tariff to allow for the possibility of new allocation methods which customers may request in the future.

With respect to section XVI.6¹, Kingston submitted that this sub-section in the tariff should be eliminated as it provides for an approach that is not appropriate for the allocation of short-term transportation services. These allocations “can include and, have historically included, under-utilized Dawn-Parkway capacity whose demand charge is covered by in-franchise rates”. In the alternative, Kingston suggested that this sub-section “could be modified with the addition of the phrase ‘**For service requests beyond 5 years**’ at the beginning of the proposed sentence”.

In Reply, Union stated that section XVI.6 does not limit Union from choosing to sell services at less than tolls in some situations. Union commented that it is always in its best interest to maximize margin from short-term transportation services and that the suggested wording changes by Kingston places an inappropriate and unnecessary obligation on Union to sell transportation services at less than the cost-of-service rate. Further, Union maintained that this wording has been part of Union’s existing contract and was not changed during the conversion process to become STAR compliant.

IGUA suggested that when Union refers to long-term firm transportation (as in section XVI.3), the definition of long-term firm transportation should be the same as the STAR definition (i.e., “long-term” means, in the case of transportation, a service that has a term of one year or greater).

Board Findings

The Board believes that the transmitter-specific allocation methods outlined in the tariffs need to be consistent, predictable and transparent²; and not susceptible to undue shipper interpretation. The Board is concerned that the lack of specificity regarding the proposed allocation methods outlined in Union’s proposed M12 and C1 tariffs may lead to the potential for Union to treat shippers differently. Therefore, the Board requires Union to clearly define its transmitter-specific allocation methods in its M12 and C1 transportation tariffs (i.e., direct negotiations and first come, first served as these are the only allocation methods listed in the tariffs). The definitions should also include the

¹ XVI.6 states that Union is not obligated to accept requests for service where the proposed demand charge is less than Union’s monthly demand charge plus fuel requirements for the applicable service.

² Notice of Proposal to Make A Rule, Storage and Transportation Access Rule, April 9, 2009.

rules that will be applied to the allocation of capacity using these methods. Further, the Board is of the view that all other allocation methods must be exhausted before Union uses direct negotiations to allocate transportation capacity.

The Board notes that section 2.1.1 of the STAR requires a transmitter to define its allocation methods in the tariff. Therefore, the Board is of the view that the phrase “but not limited to” in section XVI.5 should be deleted from the M12 and C1 tariffs. The Board disagrees with Union’s proposal to use transmitter-specific allocation methods that are not listed in its tariffs as this is contrary to the STAR. The Board does not believe that this will reduce a transmitter’s flexibility to develop new allocation methods which customers may request in the future.

With respect to section XVI.6, the Board notes that this wording is not included in Union’s existing M12 and C1 contracts. However, as Union indicated in its Reply, this section does not prevent Union from choosing to sell transportation services at less than tolls in appropriate situations. The Board believes that the current practice of selling short-term transportation services at less than tolls will continue and therefore, this section does not need to be deleted from the proposed M12 and C1 tariffs.

The Board agrees with IGUA that the definition of “long-term firm transportation” in the tariffs should be consistent with the STAR. Union is required to define “long-term firm transportation” in its tariffs for M12 and C1 transportation services.

Service Curtailment - Section XVIII in the M12 and C1 Tariffs

CME, Kitchener, and Kingston were concerned with Union’s proposed “provisions that appear to have the effect of conferring on Union a discretion to vary the rules it applies”. An example of such a proviso highlighted by CME appears in section XVIII which states that “Union shall have the right to curtail or not to schedule part or all of Transportation Services, in whole or in part, on all or a portion of its pipeline system at any time ... when, *in Union’s sole discretion*, capacity or operating conditions so require ...”. CME suggested it should be changed to read “... when, acting reasonably, Union determines ...”. CME noted that such a phrase connotes an obligation to justify to the affected parties the appropriateness of such a decision.

In Reply, Union argued that service curtailment must be at its sole discretion. The need to curtail service can arise from a variety of circumstances and can affect any portion of its system. When a service issue arises, Union argued that it must have the ability to respond immediately, and that it is the only party in a position to properly assess the situation and respond in a timely manner, taking into consideration operational integrity and public safety. Also, Union stated that this right has been part of its contract for some time and was not changed during the conversion process to become STAR compliant. Union maintained that “sole discretion” in no way suggests that it would not act reasonably.

Stakeholders submitted that the full Priority of Service (“POS”) policy as listed on Union’s website should be included in the proposed M12 and C1 tariffs and that any changes to these service priorities would require Board approval before implementation.

Union, in its Reply, opposed embedding the full POS policy in the tariff because all future changes to the policy, regardless of magnitude, would then have to be brought before the Board for approval. Union believed this would limit its ability to respond to changing flow dynamics and customer’s needs, and it would create an administratively burdensome process.

Board Findings

The Board notes that the wording “in *Union’s sole discretion*, capacity or operating conditions” is not in the existing contracts for Union’s M12 and C1 transportation services but may be implied in Union’s POS policy on its website. The Board is of the view that Union should include the phrase “acting reasonably” in section XVIII.1. The sentence therefore should read “.... or when, in Union’s sole discretion, *acting reasonably*, capacity or operating conditions so require ...”.

Union has proposed to include a partial list of the POS policy in its M12 and C1 tariffs, not the full POS policy outlined, on its website. Although Union commented that future changes to the tariffs that include the full POS policy would reduce Union’s flexibility and create an administratively burdensome process, it did not provide the Board with any evidence to demonstrate that changes are frequently required or that approval of subsequent changes would be burdensome. The Board notes that section 2.3.4 of the STAR requires a transmitter to include its service priority rules in its tariff. Therefore,

the Board finds that the full POS policy (the 11 categories of service) should be listed in Union's M12 and C1 tariffs.

Possession of and Responsibility for Gas - Section V in the M12 and C1 Tariffs

APPPrO submitted that section V.2 does not represent a proper balancing of Union's interests with those of its ratepayers. APPPrO noted that section V.2 was in the existing M12 contract which the Board did not approve. As a consequence of the adoption of the STAR, it is now in the General Terms and Conditions ("GT&C").

APPPrO proposed new wording in its submission that would put additional obligations on Union with respect to any incidents of loss to a shipper's gas while in Union's possession.

In Reply, Union commented that any change to this provision would be outside the scope of the STAR. The STAR requires that a transmitter include its terms of service in its tariff, but it does not justify the revision of long established terms of service. Further, Union noted that clause (d) of APPPrO's proposed provision would require Union to take steps, including taking legal action, on a shipper's behalf to recoup the shipper's losses. In its view, such a requirement would be unreasonable.

Board Findings

The Board finds that section V.2 as written is adequate and provides proper balancing of Union's interest with those of the ratepayer. The Board notes that the sole purpose of this application is to revise certain existing tariffs so as to make them compliant with the requirements of the STAR. This is not an opportunity to otherwise revise tariffs. Such revisions could be the subject of applications in the future, at the instance of parties seeking them.

Receipt and Delivery Pressures in the M12 and C1 Tariffs

Union's proposed Schedule "C 2010" for its C1 tariff and Schedule "D 2010" for its M12 tariff contain the following provision pertaining to Receipt and Delivery Points and Pressures:

2. Receipt and Delivery Pressures:

- (a) All Gas tendered by or on behalf of Shipper to Union shall be tendered at the Receipt Point(s) at Union's prevailing pressure at that Receipt Point, or at such pressure as per operating agreements between Union and the applicable Interconnecting Pipeline as amended or restated from time to time.*
- (b) All Gas tendered by or on behalf of Union to Shipper shall be tendered at the Delivery Point(s) at Union's prevailing pressure at that Delivery Point or at such pressure as per operating agreements between Union and the applicable Interconnecting Pipeline as amended or restated from time to time.*

TCPL noted that in accordance with historical operating agreements, gas tendered by Union to TCPL at the Parkway Delivery Point has been provided at TCPL's prevailing pressure. TCPL stated that it requires this arrangement at Parkway to continue in order to physically allow TCPL to satisfy its downstream firm service obligations.

Union submitted in its Reply that the proposed tariffs are consistent with TCPL's needs as the tariff specifically refers to the requirements of the operating agreements with the interconnecting pipeline. In Union's view, the most appropriate place to identify pressures is in the operating agreements with the interconnecting pipeline companies like TCPL as this would allow system operators the most flexibility to make either short or long-term changes.

Board Findings

The Board agrees with Union that the most appropriate place to identify requisite delivery pressures is in the respective operating agreements with TCPL. This is how the matter has been addressed to date, and the Board sees no need to make new provisions in this proceeding.

Receipt and Delivery Points in the C1 Tariff

TCPL argued that Dawn (TCPL) should be added as a Delivery Point in Union's Schedule "C 2010" for C1 transportation services. TCPL noted that Dawn (TCPL) is currently only designated as a Receipt Point in the proposed C1 tariff. In its view, in order to support interruptible C1 customers, the Dawn (TCPL) needs to be also listed as a Delivery Point. This would be consistent with all other similarly located pipeline connections.

Union, in its Reply noted that it has historically provided a Dawn to Dawn (TCPL) service by displacing volumes that were otherwise flowing from Dawn (TCPL) to Dawn. Union indicated that the facilities do not exist today for gas to physically flow back into TCPL from Dawn. However, to accommodate TCPL, Union has recently launched an Open Season to judge market support to build the necessary facilities to allow for physical flow back into TCPL at Dawn.

Board Findings

The Board will not require Union to take any further steps in this regard at this time. The Board encourages Union to develop new transportation services for customers on a timely basis. Also, the Board expects that Union will continue to provide Dawn to Dawn (TCPL) service by displacing volumes that were otherwise flowing from Dawn (TCPL) to Dawn when that is operationally appropriate.

Renewal Rights - Section XVII in the C1 Tariff

As noted above, TCPL brought to Union's attention the fact that it had omitted a receipt point at Parkway and a delivery point at Kirkwall for renewal rights associated with the C1 transportation services. TCPL noted that it currently holds a C1 contract on this path that contains a renewal provision and commented that its C1 contract or any other C1 contract should be treated in a similar manner.

In its Reply, Union has agreed to modify its proposed tariff language in the Renewals Section. Union acknowledged that it inadvertently omitted contracts that contain a receipt point at Parkway and a delivery point at Kirkwall from its list of contracts with renewal rights.

Board Findings

The Board requires Union to modify its proposed tariff language in the Renewals section (XVII) for the C1 transportation services to address TCPL's concern.

M16 Tariff

Staff submitted that the service curtailment, force majeure, conditions precedent, details of billing, etc. should be included in the GT&C for the M16 transportation service. This would ensure consistency for all transportation services.

Staff also submitted that Union should include the priority list for transport services and the procedures as listed on its website in the GT&C for the M16 transportation service. This would ensure that all storage providers receive the standard terms of service as per section 2.4.2 of the STAR.

In its Reply, Union disagreed with staff's submission that the above noted provisions should be included in the GT&C for the M16 service. Union commented that pursuant to section 2.4 of the STAR, those specific provisions are exempted from having to be included in the tariff for transportation services to an embedded storage company.

Union also disagreed with including the full POS in the M16 tariff. In Union's view, this suggestion is not a requirement of the STAR and does not make practical sense. Union's ability to provide this service depends on a number of factors including, but not limited to, the size and location of the storage pool, and the available capacity and operating conditions on Union's distribution and transmission system on a case-by-case basis.

Board Findings

The Board notes that section 2.4.3 of the STAR states that a transmitter shall include in its tariff the standard terms of service for each of its transportation services. The section does not outline in detail the standard terms of service for storage providers that is required for shippers as set out in section 2.3.3. As a result, the Board finds that Union does not need to include the service curtailment, force majeure, conditions precedent, details of billing, etc. in the GT&C for the M16 tariff.

Due to the unique operational requirements of each storage provider, the Board also finds that Union does not need to include the full POS in the M16 tariff. Also, the Board notes that a transmitter is required to post all executed M16 contracts and any related agreements on its website to ensure non-discriminatory access.

Cost Awards

The Board may grant cost awards to eligible intervenors pursuant to its power under section 30 of the *Ontario Energy Board Act, 1998*. The Board will determine such cost awards in accordance with its Practice Direction on Cost Awards. When determining the amounts of the cost awards, the Board will apply the principles set out in section 5 of the Board's Practice Direction on Cost Awards. The maximal hourly rate set out in the Board's Cost Awards Tariff will also be applied. The Board directs the following procedural steps to be followed:

1. Intervenors eligible for a cost award shall file with the Board and forward their respective cost claims for the proceeding to Union no later than 21 days of the issuing of this decision.
2. Union shall file with the Board and deliver to the applicable intervenor any objections to the claimed costs no later than 14 days upon receipt of cost claims.
3. The intervenors shall file with the Board and forward to Union any responses to any objections for cost claims no later than 7 days upon receipt of objection by the Union.

All filings to the Board must quote the file number, EB-2010-0155, be made through the Board's web portal at www.errr.oeb.gov.on.ca, and consist of two paper copies and one electronic copy in searchable / unrestricted PDF format. Filings must clearly state the sender's name, postal address and telephone number, fax number and email address. Parties must use the document naming conventions and document submission standards outlined in the RESS Document Guideline found at www.oeb.gov.on.ca. If the web portal is not available parties may email documents to the address below. Those who do not have internet access are required to submit all filings on a CD or diskette in PDF format, along with two paper copies. Those who do not have computer access are required to file 7 paper copies. All communications should be directed to the attention of the Board Secretary at the address below, and be received no later than 4:45 p.m. on the required date.

DATED at Toronto, June 3, 2010

ONTARIO ENERGY BOARD

Original Signed By

Paul Sommerville
Presiding Member

Original Signed By

Paula Conboy
Member