

IGUA/ACIG

February 21, 2001

Board Secretary
Ontario Energy Board
2300 Yonge Street
P.O. Box 2319
Toronto, ON, M4P 1E4

Dear Sirs:

Board File RP-2000-0001
Gas Distribution Access Rule

This is the response of the Industrial Gas Users Association ["IGUA"] to the Board's letter of 6 February 2001, wherein the Board invited comments on the draft *Gas Distribution Access Rule*.

IGUA has two comments on the Draft *Gas Distribution Access Rule* dated 06 February 2001, with respect to Section 3: Emergency Supply Planning.

1. Compensation for Curtailed Deliveries

Section 3.2 addresses the financial consequences of emergency curtailments. Paragraph 3.2.4 reads:

"The claimed purchase price may include:

- *commodity costs; and*
- *charges incurred to convey the gas from the point **at which title is assumed by the distributor** to the delivery point at which the curtailed or interrupted firm service customer would have otherwise consumed the reallocated gas volumes".*

It will most likely be from industrial firm customers that a utility would curtail, or interrupt, the delivery of natural gas under emergency conditions. Therefore, IGUA has a principal concern regarding the terms and conditions that would apply to such a curtailment or interruption.

In some situations, the proposed wording of the first bullet under paragraph 3.2.4 will not cover all of the costs that a curtailed firm customer incurs to gather, transport, store and deliver the natural gas to the point at which title is assumed by the distributor exercising

a right of curtailment in an emergency situation. By the strict definition of the “commodity cost” (which is not defined under paragraph 1.2), that cost is for the physical natural gas molecules, and would not therefore cover any charges included in the gas purchase contract between the gas producer/supplier and the industrial or marketer buyer for costs to move the gas to the point of entry into the transmission pipeline. Typically, gas buyers buy their gas supplies at the Alberta border at a contract price that would comprise a component for the commodity price, and a component covering transportation on the NGTL system. The wording of paragraph 3.2.4 does not require the distributor to compensate the industrial customer for any non-commodity charges he must pay his gas supplier that are included in the contract price provisions of his gas purchase contract.

The proposed language of the second bullet of paragraph 3.2.4 would be acceptable in those cases where an industrial customer has entered into a T-Service contract with the Gas Distributor, whereby the gas purchased by the industrial is taken at the Alberta border for delivery immediately to the distributor, who then transports the gas from Alberta to the distributor’s franchise area under transportation contracts held by the distributor.

The proposed wording of the second bullet of paragraph 3.2.4 does not provide for the compensation of industrial who purchases his gas under other supply arrangements [ie: other than under a T-Service arrangement]. Some industrial customers purchase their gas from suppliers at the Alberta border and then have that gas moved to the delivery point with the distributor under a transportation contract held by the industrial. Other industrials purchase their gas at the pipeline-distributor delivery point in Ontario from marketer-suppliers who hold the upstream transportation. In these cases, the wording of paragraph 3.2.4 would leave the industrial customer and/or his gas supplier exposed to unrecoverable upstream transportation charges, because the distributor could curtail or interrupt the industrial customer and take his gas at the point of delivery into the distribution system, leaving the industrial or his gas supplier exposed to the payment of the upstream pipeline demand charges. This can be illustrated by an example:

Ontario industrial ABC Industries buys its gas supplies at the Alberta border from XYZ Producing Company under a firm contract, and has that gas moved from Empress, AB (the “receipt point”) to the “delivery point” between TransCanada PipeLines Limited and the Enbridge Consumers Gas system at Markham, ON. From the TCPL delivery point to the ABC plant located in Markham, the gas is delivered by Enbridge using its own mains. ABC pays the producer the gas commodity price for the gas, pays TCPL the pipeline toll, and pays Enbridge the distribution delivery charge.

Under the proposed wording of paragraph 3.2.4, if there is an emergency and Enbridge curtails ABC, Enbridge would take delivery of the gas at the TCPL Markham delivery point, and would pay ABC’s gas commodity costs. But the wording would not require Enbridge to pay ABC for the TransCanada PipeLine tolls ABC would be required to pay for moving the gas to Markham from Alberta.

The example would have the same result if the industrial purchased his gas supplies from a marketer, where the marketer holds the transportation on the upstream pipeline, and delivers the gas to industrial at the pipeline-distributor delivery point. The wording of the second bullet of paragraph 3.2.4 does not provide for the payment by the distributor to the industrial for the marketer's pipeline costs that would be included in the contract price.

We would therefore suggest that the second bullet under paragraph 3.2.4 be amended to provide for the compensation of the industrial for all other charges he legitimately incurred in the purchase of the gas that has been curtailed or interrupted and taken by the distributor during the emergency. We suggest adding an additional "bullet" as follows:

- “ • any additional charges incurred by the curtailed or interrupted firm service customer to gather, transport, store and/or deliver the gas from its source to the point at which title is assumed by the distributor.”

We assume that the second bullet in paragraph 3.2.4 (and now the third bullet point in the revision proposed by IGUA) is intended to relieve curtailed or interrupted firm customer from having to pay any demand charges the customer would otherwise pay the distributor for the distribution services.

2. Declaration of an Emergency

In IGUA's view, the discretionary right of a distributor to declare an emergency under paragraph 3.1.1 of the proposed rule is still too broad. The proposed rule should not confer a discretionary right on a distributor to declare an emergency and to curtail some or all of its firm customers that is any broader in scope than the contractual right by which a distributor may declare an emergency and curtail firm deliveries under the terms and conditions the *force majeure* provision of the distributor's firm service contracts with customers. The definition of "emergency" in paragraph 1.2 of the proposed rule must be reasonably reconcilable and consistent with those *force majeure* provisions.

IGUA suggests that the definition of "emergency" in section 1.2 of the proposed rule operates to provide the distributor with greater emergency powers than it has pursuant to the terms of its contracts with firm service customers . To make the definition of "emergency" in paragraph 1.2 reasonably reconcilable with the *force majeure* provisions of the distributor firm service contracts, IGUA proposes that the definition be changed to the following:

“emergency” means a sudden and unanticipated situation, not caused in whole or in part by the distributor, during which a distributor is unable to acquire sufficient gas supplies in the commodity markets or from the

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curtailment of its interruptible gas customers to maintain firm distribution service to all firm customers and, as a result, requires the distributor to reduce or eliminate service to some firm customers.”

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All of which is respectfully submitted.

P.L. Fournier
President