



RP-2000-0001

IN THE MATTER OF ss. 44 and 45 of
the *Ontario Energy Board Act*, 1998,
S.O. 1998, c. 15, (Sched. B);

AND IN THE MATTER OF THE Gas
Distribution Access Rule, made on
December 11, 2002.

BEFORE: Gordon Kaiser
Vice Chair and Presiding Member

Cathy Spoel
Member

Arthur Birchenough
Member

DECISION

This Decision relates to the Gas Distribution Access Rule (“GDAR”) issued by the Board on December 11, 2002 pursuant to the delegated legislative power under section 44 of the *Ontario Energy Board Act* (the “Act”).

The GDAR was the product of an extensive public Rule making process in which all stakeholders had numerous opportunities to make submissions. This Decision deals with the implementation date of various aspects of the GDAR as well as the content of the Service Agreements. At issue are the following matters;

1. The content of the Service Agreement between gas vendors and gas distributors (Chapter 3);

2. The service transaction requests defined in the Service Agreements (Chapter 4);
3. The need for common Electronic Business Transaction (“EBT”) Standards; and
4. The billing options available to gas vendors (Chapter 6).

Background

The need for the GDAR arose from the introduction of competition in the supply of natural gas to consumers in Ontario. Historically, there was one supplier in a franchise area and that utility charged the consumer for the gas as well as the cost of distributing the gas.

Over a number of years, gas supply became competitive and consumers could purchase gas from either the traditional supplier, the gas distributor or a new alternative supplier, called a gas vendor. The gas distributor continues to distribute the gas over the existing gas distribution system regardless of who the consumer purchases the actual gas from.

The Government recognized in 1998 that the Board needed broad rulemaking powers to give direction to the relations that evolved between gas vendors and the regulated utilities. In order to provide for a more efficient, effective and transparent system for managing consumer mobility, including the transfer of pertinent information among vendors and utilities, the Board approved the GDAR on December 11, 2002.

One requirement of the GDAR was that the utilities should develop a Service Agreement to cover the terms of their relationship with gas vendors. The GDAR outlined the nature of these Service Agreements in terms of content.

Initially the GDAR provided that the Service Agreement provisions would come into force on December 1, 2003 and directed the gas distributors to file proposed Service Agreements by April 30, 2003 in order to meet that deadline. However on March 14, 2003, the Board suspended this filing requirement. That Decision was in part related to a challenge to this Board’s jurisdiction with respect to certain aspects of the GDAR by both Enbridge Gas Distribution Inc. (“Enbridge”) and Union Gas Ltd. (“Union”).

In the Court challenge, Union and Enbridge argued that section 44 of the Act did not give the Board jurisdiction to establish Rules regarding the billing provisions contained in Chapter 6 of the GDAR. The Divisional Court on September 8, 2003 rejected this argument holding that the Board did have the jurisdiction to specify the billing options available to the gas vendors. This decision was upheld

by the Ontario Court of Appeal on January 11, 2005. The Appellants have not sought leave from the Supreme Court of Canada to further appeal the matter. Accordingly, the Board is now free to render this Decision and complete the process with respect to the GDAR.

The Service Agreement

Section 3.2 of the GDAR provides that the gas distributor shall enter into a Service Agreement in a form approved by the Board with each gas vendor that intends to provide gas supply services in the gas distributor's franchise area. Section 3.2.2 goes on to specify the matters that at a minimum must be included in the Service Agreement. There are nine such matters.

Section 3.2.3 provides that a gas distributor and a gas vendor may, on agreement, include additional terms and conditions in the Agreement which are different than those in the Board approved form provided that none of the additional terms are in conflict with any Rule or Order of the Board.

For over a year, from early 2003 to early 2004, the interested parties have attempted to negotiate a form of Service Agreement without reaching agreement. Parties indicated to the Board that agreement could not be reached due to disagreements over the scope of the GDAR and the Service Agreement. To date, there has been no agreement.

On February 13, 2004, the Board issued a Notice requiring each gas distributor to file its proposed form of a Service Agreement with the Board. Agreements were filed by Enbridge, Union and Kitchener Utilities (Kitchener) and Utilities Kingston (Kingston). Industry participants were then given an opportunity to comment on the proposed Agreements. Those comments indicated significant disagreement on five matters;

- The scope of the Service Agreement;
- The degree of detail necessary in the Service Agreement;
- The degree of detail necessary in Service Transaction Requests;
- The need for a common form of Service Agreement;
and
- The need for an Electronic Business Transaction Standards.

The Scope of the Service Agreement

The first area of disagreement between the parties is the scope of the Service Agreement. Enbridge and Union filed similar Service Agreements. They claim that their proposed form of Service Agreements meet the requirements of section 3.2.2.

This was disputed by the gas vendors. Direct Energy Marketing Ltd. (“Direct Energy”) claimed that the Union and Enbridge proposed Service Agreements were too narrow. A similar position was taken by Ontario Energy Savings Corporation (“OESC”). OESC claimed that both the Union and Enbridge proposals did not meet even the minimum requirements set out in the Rule.

The response of Union and Enbridge was that the gas vendors did not identify any deficiencies with precision but merely claimed that the spirit and intent of the Rule were broader than what is specifically defined in section 3.2.

Another area of disagreement was the requirement to have a common form of Service Agreement. OESC and Direct Energy submitted that there should be one standard form of Service Agreement governing the basic rights. They relied upon the experience in the retail electricity market where the Board had approved a Standard Service Agreement covering a full range of relations between the interested parties.

Kingston and Kitchener filed a proposed Service Agreement based on the retail electricity Service Agreement template. Kingston supported the development of a standard form Agreement. Union and Enbridge replied that a Standard Agreement is not required under the GDAR. Both Union and Enbridge interpreted section 3.2 of the GDAR to be non-prescriptive and argued that specific wording of Service Agreement ought to be left to the parties to be dealt with through negotiation.

Service Transaction Requests

Chapter 4 of the GDAR attempted to define certain Service Transaction Requests (“STR’s”). Examples include the change of gas supply from system gas to a gas vendor or a change of supply from one gas vendor to another gas vendor. There is disagreement between the parties as to the amount of detail that is necessary.

OESC submitted that a detailed description of services, processes and transactions, systems and procedures are required. Union and Enbridge replied that the only business processes that are required by the Rules are those listed under section 4.1.2 of the Rule.

EBT Standards

The gas vendors take the view that to provide efficiency in gas competition requires that the Board to specify the means by which STRs are transmitted between participants. EPCOR recommended that the Board require transactions to use a common set of standards, processes and time lines. Gas vendors pointed to the EBT Standards framework used in the electricity market as a precedent. EPCOR added that the convergence of electricity and gas industries was another reason for standardization in EBT requirements. It was argued that this would promote regulatory and commercial efficiency.

Kingston and Kitchener indicated that they currently use common transactional process and transport protocols. These parties also recommended that the Board require the industry to transact through a common data system as in the electricity industry.

The response of Union and Enbridge was that the gas vendors' insistence on full standardization of business processes, including EBT systems, ignores the non-prescriptive nature of the GDAR and stated intention of the Rule. They further argued that common EBT standards would impose unnecessary cost in that existing work would have to be redone and would impede innovation.

Billing Options

Chapter 6 and certain aspects of Chapter 3 and 4 of the GDAR require gas distributors to enter into contracts with the gas vendors with respect to the billing options chosen by that gas vendor. Specifically section 6.1.2 of the GDAR provides that a gas distributor must offer each of the following billing options;

- a) Distributor consolidated billing;
- b) Split billing; and
- c) Gas vendor consolidated billing.

In another words, the GDAR permits the gas vendor to determine who will bill his customers. The gas vendor may choose to bill both charges to the customer or require the gas distributor to do so. Alternatively, there could be split billing. Each could provide its own bill to the customer with the gas vendor billing the customer for gas and the distributor billing the customer for distribution. The GDAR Rule provided that the gas vendor, acting on the authority granted to it by the consumer, alone could decide which was preferable.

As indicated, Union and Enbridge questioned the jurisdiction of this Board to

make this Rule regarding billing options. That challenge was unsuccessful in both the Divisional Court and the Ontario Court of Appeal.

BOARD DECISION:

The Board has reviewed the proposed Service Agreements filed by Enbridge, Union, Kitchener and Kingston. In undertaking this review, this Board has been guided by its statutory objectives. A major objective in this regard is to facilitate competition in the sale of gas to consumers. The Board has previously found that providing greater customer mobility and more billing options will facilitate gas supply competition. The Board has also found that consumers may benefit from the convergence in energy service offerings and potential economies of scale as a result of the broader range of competitive offerings and choice of suppliers.

The Board concludes that all four Agreements are too limited in scope and lack the details necessary to implement the GDAR in accordance with its intent. Accordingly, none of the Agreements are approved.

In rejecting these Agreements, the Board is rejecting the position of Union and Enbridge who argue for a narrow view of the matters to be addressed in the Service Agreement.

The Board also rejects the view that the Agreements should be restricted to the minimum requirement set out in section 3.2.2 of the GDAR. These Service Agreements, in order to be effective must, in the Board's view, address all matters that govern commercial relationships between a gas distributor and a gas vendor. This includes incorporation of pre-existing agreements between the parties in order to provide a common understanding of the relationship between a gas distributor and a gas vendor.

The Board also believes that these Agreements must spell out in detail the STRs or Services Transactions Requests. The Board rejects Enbridge's view that this is a technical requirement which is best left to an operational manual. Leaving these crucial matters to an operational manual gives the monopoly gas distributor too much control over the market and the transactions in question.

It is the Board's view that the revised Service Agreement must provide details relating to the processing of STRs which are consistent with Chapter 10 of the Retail Settlement Code except where they would conflict with the GDAR itself or where provisions of Chapter 10 are not applicable to the gas market.

The Board is also of the view that the development of a common EBT standard is necessary for an efficient competitive gas market. Accordingly, the Board will mandate common EBT standards in accordance with section 4.7.1 of the GDAR. The EBT standards will form an Appendix to the Service Agreement. The Board

is not convinced that it will be more difficult to achieve this objective in the gas market than it was in the highly fragmented electricity distribution sector. The Board also believes that these EBT standards in the gas market should be consistent with the Board's EBT standards in the electricity market to the greatest extent possible.

Finally, the Board is of the view that there should be a Standard Service Agreement that would apply to all gas vendors and gas distributors. As discussed in this Decision, the model should be the Standard Agreement that the Board had previously developed for the purpose of the electricity sector.

Implementation Procedure

As stated in these reasons, the attempt to develop a Service Agreement that complies with the GDAR through negotiations between gas distributors and gas vendors has been wholly unsuccessful. A new approach is required.

Accordingly, the Board is directing Board staff to develop a revised form of Service Agreement that is consistent with this Decision. In addition, the Board is also directing the staff to develop draft EBT Standards for the gas market. To the maximum extent possible, the Service Agreement shall mirror Service Agreements used currently in the retail electricity sector. The Service Agreement will contain adequate detail with respect to service transaction requests that allow the market to operate competitively and ensure that consumers have the maximum choice of gas suppliers.

The Service Agreement should be filed with the Board for its approval within 60 days of this Decision. All interested parties will be granted 30 days to comment. The Board will then within 30 days issue the Standard Service Agreement through a Final Order in this proceeding.

The Board also directs Board staff to develop a proposed EBT Standards Appendix for the Service Agreement. The proposed EBT Standards should contain adequate detail with respect to service transaction requests that will allow the market to operate competitively and ensure that consumers have the maximum choice of gas suppliers. To the maximum extent possible, the proposed EBT Standards shall mirror the EBT Standards used currently in the retail electricity sector. The EBT Standards Appendix Service Agreement should be filed with the Board for its approval within 120 days of this Decision. All interested parties will be granted 30 days to comment. The Board will then within 30 days issue the revised Standard Service Agreement with the EBT Standards Appendix through a Final Order in this proceeding.

Implementation Dates

Once the Board has approved the Standard Service Agreement and the EBT Standards Appendix to the Agreement, it will issue a Notice proposing new implementation dates for section 3.2.1 and Chapters 4 and 6 of the Rule. At this time, the Board anticipates that those dates will be no later than January 1, 2006.

Dated at Toronto, May 9, 2005

Original signed by

Signed on Behalf of the Board Panel
Gordon E. Kaiser
Vice Chair and Presiding Member